

Industrial Property

Published monthly
Annual subscription:
Sw.fr. 135.-
Each monthly issue:
Sw.fr. 13.-

22nd Year - Nos. 7/8
July/August 1983

Monthly Review of the
World Intellectual Property Organization (WIPO)

Special Issue for the Commemoration of the
Centenary of the Paris Convention

The First Hundred Years of the Paris Convention for the Protection of Industrial Property

by
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Property Organization

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ISSN 0019-8625

Centenary of the Paris Convention

The First Hundred Years of the Paris Convention for the Protection of Industrial Property

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INTRODUCTION

Scope of the Present Article

The present article is intended to commemorate the hundredth anniversary of the Paris Convention for the Protection of Industrial Property, adopted and signed on March 20, 1883.

The present article was written during the first months of 1983.

Apart from some introductory chapters, the present article consists of three main parts, each corresponding to the three main sets of provisions of the Paris Convention: provisions dealing with the objects of industrial property or the rights whose protection the Paris Convention guarantees ("substantive provisions"), provisions dealing with the organs and the activities of the Paris Union created by the Paris Convention ("administrative clauses") and provisions of general treaty law ("final clauses").

Each part recalls the first occurrence of the various provisions in the Paris Convention and the changes that those provisions have undergone in the conferences of revision in which the original (1883) text of the Paris Convention was modified, so far six times in its century-long life.

The first part is subdivided so that different subparts are devoted to each of the objects of industrial property, namely, inventions (patents, inventors' certificates and utility models), industrial designs, marks, trade names, indications of source and unfair competition.

The second part deals not only with the history of the administrative clauses of the Paris Convention but also with the history of the administration of the Paris Union. In the latter context, the following are particularly recalled: the activities of the International Bureau, the history of the finances of the Union, the changes in the location of the International Bureau, the evolution of the staff of the International Bureau, the careers of the persons who directed the International Bureau and the history of the relations of the Paris Union with the World Intellectual Property Organization (WIPO) and the United Nations.

The third part deals not only with the history of the final clauses of the Paris Convention but also with what has happened during the past one hundred years under those clauses. In particular, it recounts the history of the conferences of revision, the conclusion of special agreements under the Paris Convention and the evolution of the membership of the Paris Union.

The Objects of the Paris Convention

The objects of the Paris Convention may be

classified in three groups: *one*, certain creations of the human intellect, namely, inventions and industrial designs, *two*, certain indications used in trade, namely, marks (trademarks and service marks), indications of source on goods and trade names, and *three*, unfair competition.

With the exception of unfair competition, none of the said objects is defined in the Paris Convention itself.

In this section, a general description is given of each.

Inventions. An invention is a novel idea which permits in practice the solution of a specific problem in the field of technology.

Inventions are "protected" by law for a certain period of time, provided that protection is asked for and is granted—characteristically through the issuance of what is called in English a *patent*—by a government authority. That authority is frequently called, at least in English-speaking countries, a "patent office."

The patent confers the right to protection on the inventor or the employer of the inventor (if the inventor is an employee and has made the invention in the performance of his duties as an employee) or on the party to whom the inventor or the employer has transferred the right ("assignee"). The holder of the right is called the patentee or the owner of the patent. The extent of the protection is defined in the patent law of each country. The protection is effective on the territory of the country whose patent office granted the patent and not outside that country. The essence of the protection is that if any person other than the owner of the patent uses ("exploits") the invention without the express permission ("authorization" or "license") of the owner of the patent, such person commits an illegal act which he has to stop, for which he has to pay damages to the owner of the patent, and for which he may be criminally punished. To "use" an invention characteristically means to make ("manufacture") articles ("products") in which the invention is incorporated or to use a process (for manufacturing a product or simply to obtain the processing of some materials) based on the invention. The protection may, characteristically, last between 15 and 20 years.

Patents are available in some 140 of the some 170 countries of the world.* Taking into consideration countries with approximately one million inhabitants or more, patents are not yet available—in

* In eleven Western European countries, two kinds of patents are available: the "European" patent, potentially effective in all those eleven countries, and a "national" patent in each country. In 12 countries of Africa, a regional patent effective in all of them is available and no national patents are available. The effect of Swiss patents are, on the request of the owner of the Swiss patent, extended to Liechtenstein, without a separate grant by Liechtenstein.

1983—in Afghanistan, Angola, Bhutan, Burma, China, Ethiopia, Laos, Mozambique, Oman, Papua New Guinea, Saudi Arabia, the United Arab Emirates and Yemen.

It is estimated that the number of patents granted for inventions in the world in 1981 (the most recent year for which statistics are available) was around 420,000 and that the total number of patents still valid (that is, not expired, withdrawn or cancelled) at the end of 1981 was around 3,500,000. Since, as has been already indicated, where the protection of an invention is desired in several countries, a patent is needed in each of those countries, many of the patents concern the same invention and, generally, the same owner. It is estimated that the 3,500,000 patents cover, very roughly, 2,200,000 different inventions.

The ten countries which, in 1981, granted the most patents, and the number of patents granted by each in that year, were the following (the second number, in the case of the United Kingdom, France, the Federal Republic of Germany, Switzerland and Italy, is the number of European patents whose effect extended to those countries): United States of America 65,770; Japan 50,904; United Kingdom (22,994 + 3,107) 26,031; France (21,447 + 2,957) 24,404; Canada 22,696; Federal Republic of Germany (13,429 + 2,827) 16,256; Brazil 10,292; Switzerland (8,289 + 1,987) 10,216; Italy (6,500 + 1,752) 8,252; Spain 7,255.

In Algeria, Bulgaria, Czechoslovakia, the Democratic People's Republic of Korea, Mongolia, the Soviet Union and Vietnam, an inventor may or can only apply, for his invention, for what may be translated in English as an "inventor's certificate."* The inventor who is granted such a certificate receives a remuneration and other rights and privileges fixed in the law or in regulations. Generally speaking, domestic enterprises may use the invention without any authorization, whereas use by others requires the authorization of a State authority. The "economic patent" (*Wirtschaftspatent*) of the German Democratic Republic is similar in its effect to an inventor's certificate.

The Mexican "certificate of invention" is a *sui generis* title of protection which gives no exclusive right to exploit the invention, but only a right to remuneration, to its holder.

The number of inventors' certificates granted in 1981 was none in Algeria, 1,560 in Bulgaria, 5,657 in Czechoslovakia and 96,763 in the Soviet Union. There are no statistics for the Democratic People's Republic of Korea, Mongolia and Viet Nam. In the

said year, the German Democratic Republic granted 6,002 economic patents.

Mexico granted 556 certificates of invention in 1981.

In some ten countries—Japan, the Federal Republic of Germany and Spain being the industrially most active among them—certain inventions may be registered as "utility models" (at least this is the English translation of the expression, which is unknown in laws of English-speaking countries). Utility models are also available in certain countries of Africa under the Bangui Agreement of March 2, 1977, Relating to the Creation of an African Intellectual Property Organization. Characteristically, utility models are only available or are mainly applied for in the case of inventions in the mechanical field, obtaining them is generally cheaper and simpler than obtaining patents, and the duration of their protection is shorter than that of patents. But the nature of the protection is similar to that attaching to patents. The "petty patent" of Australia shows some similarity to utility models, whereas the "utility certificate" of France is closer to patents.

In 1981, some 75,000 utility models were registered. Of this number, 50,900 were registered in Japan, 12,254 were registered in the Federal Republic of Germany and 5,873 in Spain. The number of petty patents granted in Australia was 47 in 1981, whereas the number of utility certificates granted in France was approximately 300 in the same year.

Industrial Designs. An industrial design is the ornamental or aesthetic aspect of a useful article. The ornamental aspect may consist of the shape and/or pattern and/or color of the article. The ornamental or aesthetic aspect must appeal to the sense of sight. The useful article must be reproducible by industrial means; this is why the design is called "industrial."

Industrial designs are protected by law for a certain period of time, provided that they are original or new (depending on the law of the country) and that their registration is applied for and the registration is effected. Characteristically, the registration is effected by a State authority. The registration confers the right to protection on the applicant, who, or whose successor in title, is then called the owner of the registration.

The extent of the protection is defined in the industrial design law of each country. The protection is effective on the territory of the country whose national authority (mostly, the same as the one granting patents for invention) effected the registration and not outside the country. The essence of the protection is that if any person other than the owner of the registration manufactures useful articles having the design of the registered

* In the Soviet Union, Soviet citizens apply almost exclusively for inventors' certificates, whereas the vast majority of foreigners apply for patents. However, in some fields of technology, only inventors' certificates may, and patents may not, be obtained.

industrial design without the express permission ("authorization") of the owner of the registration, such person commits an illegal act which he has to stop, for which he has to pay damages to the owner of the registration and for which he may be criminally punished. The protection, characteristically, lasts five years, prolongable for one or two further periods of five years each.

Industrial design registration is available in some 120 of the some 170 countries of the world.* It is estimated that the number of applications for industrial design registration in the world, in 1981, was around 135,000, and that the total number of registrations still valid (that is, not expired, withdrawn or cancelled) at the end of 1981 was around 550,000.

Marks. A trademark is a sign used on or in connection with the marketing of goods (industrial products, agricultural produce, etc.). A service mark is a sign used in connection with the marketing of services (airlines, hotels, beauticians, etc.). When both trademarks and service marks are meant, the expression "mark" should be used. In practice, however, it is more usual to say "trademark" even where service marks are (also) meant.

The sign constituting the mark may consist of one or more distinctive words, letters, numbers, pictures or drawings.

A mark helps the consumer in choosing the goods or services that he wishes, allows the manufacturer to identify the goods manufactured by him when they are no longer in his possession, allows the authorities controlling the quality of goods and services to trace the (supposed) origin (manufacturer and/or distributor) of those goods and services, and allows anyone to distinguish the goods or services of one enterprise from the goods or services of a similar kind of another enterprise.

In most countries, marks are protected only if their registration is applied for with, and if they are registered by, a government authority, sometimes called, in English, a "trademark office." In some countries, marks, once used, are protected—even if not so registered—but the scope of such protection is usually less than that of registered marks. In some countries only trademarks are protected and service marks are not protected. In some countries, registration must be cancelled if the mark is not

used—effectively employed in commerce—for a number of (e.g., five) years.

Characteristically, initial registration is granted for 7 or 10 years. This registration may be renewed (characteristically, for 14 or 10 years) any number of times. Consequently, provided renewal is continued, the validity of a registration has no limit in time.

Every registration must identify the goods and/or services for which the mark is used or, when initially registered, is intended to be used.

The protection of a mark, characteristically, consists of making it illegal for anyone other than the owner of the registration to use the mark, without the permission ("authorization") of the owner, in commerce in connection with the goods and/or services for which the mark was registered. Infringing acts must be stopped, damages must be paid to the owner of the registration, and the infringer may suffer penal sanctions.

There are some 150 of the 170 countries of the world in which marks can be registered. A registration in a country is effective only in the country in which it was effected.* Taking into consideration countries with approximately one million inhabitants or more, registration of marks does not seem to be available yet—in 1983—in Angola, Bhutan, Burma, Ethiopia, Laos, Mozambique and Oman.

It is estimated that the number of marks registered in the world in 1981 (the most recent year for which statistics are available) was around 400,000, that the number of marks whose registration was renewed in the same year was around 90,000, and that at the end of 1981 the total number of marks whose registration seemed to be valid was around 4,500,000. Since, as has already been indicated, where the protection of a mark is desired in several countries, a registration is (mostly) needed in each of those countries, many of the registrations concern the same mark and, frequently, the same owner. It is estimated that the 4,500,000 registrations cover, very roughly, 3,000,000 different marks.

The ten countries which, in 1981, showed the highest number of registrations of marks, and the number of marks registered in that year, were the following (the second number in the case of France,

* "International" registration under the Madrid Agreement Concerning the International Registration of Marks (there were 8,268 in 1981) and/or the Trademark Registration Treaty (TRT) may be effected with the International Bureau of the World Intellectual Property Organization in Geneva for 25 and 5 countries, respectively, but the validity of such registration is judged, in each country, also on the basis of the national law on marks. In 12 countries of Africa, a regional mark is available and no national registrations are available. In the three Benelux countries, only regional marks ("Benelux marks") are available (there were 7,100 in 1981).

* Nationals of those 17 countries which are party to the Hague Agreement Concerning the International Deposit of Industrial Designs may obtain protection in those countries, without applying for registration in each of them, by depositing their industrial designs in Geneva with the International Bureau of the World Intellectual Property Organization (there were 1,619 registrations in 1981). In the three Benelux countries, only regional registration (*dépôt*: "Benelux designs") is available (there were 3,076 in 1981).

Spain and the Federal Republic of Germany is the number of international trademark registrations extended to those countries): Japan 68,314; United States of America 42,702; France (32,330 + 5,353) 37,683; Spain (16,766 + 5,333) 22,099; Federal Republic of Germany (14,699 + 5,335) 20,034; China 17,756; Mexico 14,881; Argentina 12,371; Canada 11,262; United Kingdom 9,542.

Indications of Source. An indication of source on goods may be geographical ("Made in France," "Brussels Lace") or it may relate to the manufacturer (of industrial goods), producer (of agricultural goods) or distributor (of either kind of goods).

In many countries, using an indication of source which is false is illegal, and goods bearing false indications are seized either *ex officio* or at the request of an interested party. In some countries, the use of false indications of source even leads to the application of penal sanctions.

Unfair Competition. As already indicated, this is the only object of the Paris Convention that is defined in that Convention. It is defined as "any act of competition contrary to honest practices in industrial or commercial matters" (1967 (Stockholm) Act, Article 10*bis*(2)). The Paris Convention even gives examples of such acts. It gives three of them. They are the following: "1. all acts of such a nature as to *create confusion* by any means whatsoever with the establishment, the goods, or the industrial or commercial activities, of a competitor; 2. false allegations in the course of trade of such a nature as to *discredit* the establishment, the goods, or the industrial or commercial activities of a competitor; 3. indications or allegations the use of which in the course of trade is liable to *mislead* the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods" (1967 (Stockholm) Act, Article 10*bis*(3); emphasis added).

In many countries, committing acts of unfair competition is illegal, must be stopped and the perpetrator must pay damages to the injured party. In some countries, the perpetrator may be subject also to penal sanctions.

Present Status and Revisions of the Paris Convention

The Paris Convention for the Protection of Industrial Property is a multilateral treaty. The contracting parties are sovereign States ("countries" (*pays*), in the terminology of the Convention). Any country may become party to the Paris Convention, provided it is "in a position under its domestic law to give effect to the provisions of this [the Paris] Convention" (1967

(Stockholm) Act, Article 25(2)). There is no procedure for admission; to become a party to the Convention, all that a country has to do is to deposit an instrument of ratification of, or accession to, the Convention. On March 20, 1983, the date of the centenary of the Paris Convention, the number of countries party to the Convention was 92. They were the following: Algeria, Argentina, Australia, Austria, Bahamas, Belgium, Benin, Brazil, Bulgaria, Burundi, Cameroon, Canada, Central African Republic, Chad, Congo, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Dominican Republic, Egypt, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guinea, Haiti, Holy See, Hungary, Iceland, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Lebanon, Libya, Liechtenstein, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Niger, Nigeria, Norway, Philippines, Poland, Portugal, Republic of Korea, Romania, San Marino, Senegal, South Africa, Soviet Union, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syria, Tanzania, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, United States of America, Upper Volta, Uruguay, Viet Nam, Yugoslavia, Zaire, Zambia, Zimbabwe.

Approximately 90% of all the patents granted in the world in 1981, and approximately 87% of all the trademark registrations effected in the world in that year, were granted or effected in the 92 countries party to the Paris Convention.* Almost 100% of all inventors' certificates granted in 1981 were granted in countries party to the Paris Convention.

The Paris Convention was adopted in a diplomatic conference held in Paris in 1880 and 1883 and was signed on March 20, 1883, on behalf of Belgium, Brazil, France, Guatemala, Italy, Netherlands, Portugal, Salvador, Serbia, Spain and Switzerland. It consisted of the Convention proper, containing 19 articles, and the Final Protocol (*Protocole de clôture*), which is almost as long as the Convention proper. The two constituted an integral whole and are, in this article, generally referred to as "the original (1883) text of the Paris Convention."

The original (1883) text of the Paris Convention

* In 1981, there were four countries not party to the Paris Convention that granted more than 300 patents, namely, India (1,289), Venezuela (813), Chile (635) and Peru (345). In the same year, there were eleven countries not party to the Paris Convention that registered more than 1,000 trademarks, namely, China (17,756), Peru (7,553), Paraguay (4,942), India (4,431), Thailand (2,559), Venezuela (2,250), Ecuador (2,072), Honduras (1,498), Bolivia (1,456), Costa Rica (1,361) and Pakistan (1,208).

was revised six times between 1883 and 1967, the date of the last completed revision. "Revision" means the introduction of new provisions or the modification of existing provisions. Each revision was effected in a "conference of revision," called a diplomatic conference, in which the power of decision lies with the delegates of those countries that, at the moment of the decision, are party to the Convention.

The six conferences of revision were held in 1887 and 1900 (in Brussels), in 1911 (in Washington), in 1925 (in The Hague), in 1934 (in London), in 1958 (in Lisbon) and in 1967 (in Stockholm). Whereas the conference of revision of 1900 (Brussels) adopted what is called an Additional Act (*Acte additionnel*) merely containing the changes decided, each of the other conferences of revision adopted what is called an "Act" (*Acte*), and each Act reproduces the text, as modified, of the whole Convention. (Two conferences of revision, one in Rome in 1886 and one in Madrid in 1890, did not result in texts that went into effect.)

The seventh revision started in 1980 in a conference of revision which held its first session in Geneva in 1980, its second session in Nairobi in 1981, and its third session in Geneva in 1982. The conference has not yet completed its work by the date of the centenary.*

Each Act has maintained, as far as practicable, the numbering of the Articles of the original (1883) text of the Paris Convention. Where new articles were inserted, they are designated by suffixes taken from Latin and affixed to the preceding number; *bis*, *ter*, *quater*, *quinquies*, *sexies* and *septies* have been used so far. Some articles have been divided into sections, marked by capital letters (e.g., Articles 5A, 5B, 5C, etc.). Paragraphs (*alinéa*, in French), not numbered in the earlier texts, are now numbered ((1), (2), (3), etc.). The most recent Act (Stockholm, 1967) is about five times longer than the original (1883) text of the Paris Convention.

So far, all the texts have been signed in French only and, although official texts exist in English and in other languages beginning with the 1967 text, the French text is the authentic text (*fait foi*).

At the conference of revision that started in 1980 and has not yet been completed in 1983, one of the questions examined is whether the Convention should be signed in four, equally authentic, texts, namely in English, French, Russian and Spanish.

* Where proposals for the revision of a given article are before the said conference, they are mentioned, in this essay, in connection with that article. There are a few proposals, however, which do not relate to any existing article. They would constitute new Article 10*quater* on geographical indications, new Article 12*bis* on furnishing information on patent applications or patents, and new Article 12*ter* on contributing to the development of developing countries by means of industrial property.

PART I

HISTORY OF THE SUBSTANTIVE PROVISIONS OF THE PARIS CONVENTION

Equal Protection for Nationals and Foreigners

As has already been stated, the laws of a country—including its laws on industrial property—have effect only on the territory of that country. Consequently, the industrial property of a given person is protected only in the country in which he obtains a patent for his invention, registers his mark, etc. Quite naturally, the law of a country gives such a possibility to its own nationals. It may, of course, also give such a possibility to foreigners but it also may not give it at all or may give it under conditions that are different from the conditions applicable to its own nationals. This flows from the right of each State to legislate.

From the very beginning, the Paris Convention has guaranteed to foreigners that they have the *same* protection as nationals in any given country party to the Convention.

The original (1883) text of the Paris Convention expressed this guarantee—usually called "national treatment"—in the following terms: "The subjects or citizens of each contracting State shall, as regards patents (*brevets d'invention*), industrial designs (*dessins ou modèles industriels*), trademarks (*marques de fabrique ou de commerce*) and trade names (*le nom commercial*), enjoy the advantages that their respective laws now grant, or may hereafter grant, to nationals. Consequently, they shall have the same protection as the latter and the same legal remedies (*recours légal*) against any infringement of their rights, provided they observe the formalities and conditions imposed upon nationals by the domestic legislation of each State" (Article 2).

This text was, at the subsequent conferences of revision, perfected mainly in three respects: in respect of clarifying to what objects the national treatment applies; in respect of the exact extent of the "assimilation" (another usual term to refer to national treatment) of foreigners to nationals; and in respect of defining what relations a foreigner has to have with a country party to the Convention in order to be able to benefit from the protection provided in the Convention.

As to the first issue—objects of the national treatment—the original (1883) text of the Paris Convention, as indicated above, applied to four: patents, industrial designs, trademarks and trade names. The 1911 (Washington) Act added three more: utility models (*modèles d'utilité*), indications of source (*indications de provenance*) and the repression of unfair competition (*répression de la*

concurrency déloyale) (see Article 2). At the conference of revision of 1925 (Hague), the approach was changed: the enumeration, in Article 2, of the objects was abandoned and was replaced by a statement to the effect that national treatment applies in respect of "the protection of industrial property." However, at the same time (that is, in 1925), Article 1 of the original (1883) text of the Paris Convention—which simply spoke about the "protection of industrial property"—was completed by a sentence which enumerated the seven objects mentioned in the 1911 (Washington) Act ("The protection of industrial property is concerned with patents, utility models, industrial designs, trademarks, trade names, and indications of source or appellations of origin (*les appellations d'origine*), and the repression of unfair competition") (Article 1). ("Appellations of origin" appear for the first time in the 1925 (Hague) Act of the Convention but since they are put in the alternative ("or") to indications of source, they are not counted as an eighth object.) The last change in the enumeration of the objects was made in the conference of revision of 1958 (Lisbon), where service marks (*marques de service*) were added in the definition of the objects of industrial property (see Article 1).

At the conference of revision that started in 1980 and has not yet been completed in 1983, one of the questions examined is whether inventors' certificates ("*certificat d'auteur d'invention*") should be mentioned as a ninth object of industrial property in the enumeration of the objects of industrial property and, if so, whether both the notion of "patent" and that of "inventor's certificate" should be defined.

As to the definition of the exact extent of the assimilation, the original (1883) text of the Paris Convention already contained a provision to the effect that the rule concerning assimilation did not mean that a country could not apply different rules to foreigners than those that it applies to nationals concerning procedures before, and the competence of, its courts (*tribunaux*) (see Final Protocol of 1883, paragraph (3)). At the conference of revision of 1911 (Washington), two additional provisions were added to those on court procedure, and the competence of courts, in which different or additional rules may apply to foreigners and nationals: one provides for the election of domicile (*élection de domicile*) (translated, in the official English text of the 1967 (Stockholm) Act as "designation of an address for service" (Article 2(3)); the other provision is intended to make it possible to serve legal notices on a foreigner *in the country* of the authority or court rather than in the (foreign) country of the foreigner and to be able to require the designation of a (local) agent

(*constitution d'un mandataire*) (Final Protocol of 1911, *ad* Article 2). The last change in this context was made at the conference of revision of 1925 (Hague), at which the reference to judicial procedures was extended to administrative procedures (see Article 2).

As to the definition of what relations a foreigner has to have with a country party to the Paris Convention in order to be able to benefit from the protection provided in that Convention, already the original (1883) text of the Paris Convention provided that, even if a person is *not* the subject or citizen of a country party to the Convention, he must be assimilated to the subjects or citizens of the country party to the Convention if he is domiciled ("*domicilié*") or has an industrial or commercial establishment in the territory of that country, namely, the country party to the Convention (Article 3). The conference of revision of 1900 (Brussels) added two qualifications to the notion of industrial or commercial establishment: such an establishment must be real ("*effectif*") and effective ("*sérieux*") (Article 3).

At the conference of revision that started in 1980 and has not yet been completed in 1983, one of the questions examined is whether nationals of a developing country should have to pay only one half of the normal fees to industrial property offices.

The Value of Equal Protection

The principle of equal protection says nothing about the actual degree or value of the protection; this depends entirely on what the protection provided for nationals consists of. If that protection is, so to say, sub-standard, the protection given to foreigners will be sub-standard—and consequently of little value—too. For example, should the patent law of a country provide, in spite of the standard 15 to 20 years of protection for patents, a protection that lasts only seven years, the practical value of the protection would be very little, if any, and it would be little consolation to the foreigner that the nationals suffer from the same situation.

There are two traditional ways of combatting the risks of sub-standard protection.

One is to provide for reciprocity, that is, allowing country A to grant to nationals of country B no more protection than country B grants to its (B's) own nationals. Reciprocity is, of course, an exception to the principle of equal treatment, since, under this principle country A should grant to nationals of country B the same protection as it (country A) grants to its (A's) own nationals, *irrespective* of what protection country B grants to its (B's) own nationals. Reciprocity would mean,

for example, that country A, which has a patent protection for its nationals of 20 years' duration, would give protection to nationals of country B for seven years only if country B has a patent law which provides that the duration of patent protection is seven years. The question of whether the Paris Convention should allow reciprocity, at least in some specific cases, is a question which has been repeatedly discussed in various conferences of revision of the Paris Convention. The answer to the question has always been in the negative. There are at least two reasons for this. One is that reciprocity is ineffective—it does not raise the standard of protection—whenever the country having the sub-standard protection is, for its own nationals, satisfied with that (sub-standard) protection. The other reason for not adopting the principle of reciprocity is that it would be well-nigh impossible to apply it—at least, seriously apply it—in practice, since its application would require that the governmental authorities granting patents, registering marks, etc., as well as the courts, of a given country would have to know the industrial property law of each of the (more than 90) other countries party to the Paris Convention, would have to compare each of those laws with the said country's own national law and, depending on the results of the comparison, would have to apply the national law or the foreign law.

The other way of combatting the risks of sub-standard protection resulting from the application of the principle of equal treatment consists in providing for minimum standards of protection in a treaty itself. This is the way that the Paris Convention has chosen to follow. There are several provisions in the Paris Convention fixing minimum standards, and they are expressly referred to—since the conference of revision of 1925 (Hague)—in the text of the Convention itself: the provision establishing equal treatment for foreigners is qualified by the following words: “all without prejudice to the rights specially provided for by this Convention [for the benefit of owners of patents, etc.]” (Article 2(1)).

Patents for Invention

First Occurrence in the Paris Convention. The expression “patents” (*brevets d'invention*, literally translated “patents for invention”) occurs for the first time in the Paris Convention in the original (1883) text of that Convention.

*Right of Priority (Article 4).** In order to have the right to a patent in a given country, the

invention must qualify as being “patentable.” Most laws provide for three conditions that an invention must meet to be patentable: novelty, non-obviousness and industrial applicability. Generally speaking and simply stated, an invention is new (that is, meets the condition of novelty) if it consists of a solution that differs from all other solutions that were published or otherwise disclosed to the public before the date on which the application for the grant of a patent was filed; it is non-obvious if the solution it proposes is unexpected and means significant progress over all other solutions that were published or otherwise disclosed to the public before the said date (it is sometimes said that the invention represents an inventive “step,” that is, an advance of some distance over what already exists); finally, it (the invention) is industrially applicable if it is of a kind which can be applied for practical purposes and can be carried out in practice (that is, it cannot be purely theoretical).

As just stated, novelty and non-obviousness must exist on the date on which the application for the grant of a patent is filed. In most cases, applicants, naturally, try to file as early as possible because, according to most laws, if several applications are filed by several different applicants for the same invention, the one whose application was the earliest—who was “first to file”—will have the right to the patent, and the others will not. Another reason for which an applicant usually is in a hurry to file is that, if his solution is published (typically, by a third person) on a date earlier than the date on which his application is filed, the solution generally cannot be regarded as a patentable invention since it is not novel (and, sometimes, also is not or no longer non-obvious).

But if the applicant wishes to file applications in several countries, it is hardly possible for him to file in all of them on the day on which he is ready to file in one of them (usually, his home country). Why? Because filings in foreign countries frequently require that the original application be translated into foreign languages, be re-formatted—if not completely rewritten—to correspond to the differing legal requirements of the various foreign countries and, in any case, such filings must be preceded by communications between the applicant who is in one country and the foreign patent offices which are in other countries (usually through patent agents domiciled in those other countries). The difficulties—and therefore the need for time after the first, original filing—are proportionate to the number of languages involved, the degree of differences between the various national requirements, and the distance between the applicant's home country and the foreign countries in which the applications are to be filed.

* References to articles after the titles of paragraphs are references to the articles in the most recent Act of the Paris Convention, namely, the 1967 (Stockholm) Act. The same is true for references in the text except where it follows from the context that an earlier Act is meant.

This practical problem—of gigantic size—is resolved by the Paris Convention in what is usually referred to as its provisions on “the right of priority.” It is resolved by a legal fiction. This right means, in essence, that, on the basis of the first application filed *in one* (usually, the applicant’s own, home) *country party to the Paris Convention*, the applicant may, within a period of 12 months, apply for a patent *in any of the other countries party to the Paris Convention*, and these later-filed applications of his will then be regarded *as if they had been*—herein consists the fiction—filed on the same day as that on which the first application was filed. In other words, these later-filed applications of his will have priority—hence the expression “right of priority”—over applications which may have been filed during the said 12-month period by other persons for the same invention. Moreover, the said later-filed applications, being based on the first application, are not affected by any event that may have taken place in the interval, such as any publication or other public disclosure of the solution, whether by the applicant himself or by others.

The original (1883) text of the Paris Convention already provided for this right of priority, except that the term was six (rather than 12) months and the right could not be invoked against persons who, during the (then six-month) priority period already worked the invention. The exception in favor of such “third party rights” was eliminated at the conference of revision of 1934 (London), whereas the priority period was extended from six to 12 months at the conference of revision of 1900 (Brussels).

Each of the conferences of revision introduced also additional changes in the provision concerning the right of priority. These consist mainly of clarifications without changing the originally adopted principle.

At the conference of revision of 1911 (Washington), it was provided that, if an applicant wishes to enjoy the right of priority, he has to state so, *expressis verbis*, in writing, in what is called a “declaration.” The declaration must be addressed to the patent office and must indicate the country in which the first application (i.e., the application whose priority is “claimed”) was filed and the date on which it was filed. Other formalities and refinements concerning the way in which priority must be claimed and may be required to be proven were introduced by the said conference of revision of 1911 and the conferences of revision of 1934 (London) and 1958 (Lisbon). The conference of revision of 1911 (Washington) also introduced an obligation for the industrial property offices, namely, that they must publish the particulars concerning priority claims (so that the general

public may be aware of them).

At the conference of revision of 1925 (Hague), the starting date of computing the 12-month priority period was defined (“the date of filing of the first application in a country [party to the Convention]” (Article 4C)), and the possibility of claiming, in a patent application, the priority of an application for the registration of a utility model—and vice versa—was established. It was also at the conference of revision of 1925 (Hague)—and, then, for certain details, at the conferences of revision of 1934 (London) and 1958 (Lisbon)—that the following matters were clarified: that, if the invention claimed in the subsequent application contains elements from different, separate earlier (first) applications, that application may invoke the right of priority of all those earlier (first) applications (“multiple” priority); that, if the invention claimed in a subsequent application contains more elements than the first application, one may, in the subsequent application, claim the priority of the first application for those elements of the first application which are the same in the two applications (“partial” priority); that, if the subsequent application is, after it has been filed, divided into several applications (“division”), the priority of the first application claimed in the subsequent (yet undivided) application extends to each of the (later) applications created by the division.

At the conference of revision of 1934 (London), it was provided that not only applications filed “under the domestic law of a country [party to the Paris Convention]” (Article 4A(2)) but also applications filed “under international treaties concluded between several countries [party to the Paris Convention]” (*ibid.*) may be first applications whose priority may be claimed. Such treaties are the Patent Cooperation Treaty, the Convention on the Grant of European Patents and the Agreement Relating to the Creation of an African Intellectual Property Organization.

At the conference of revision of 1958 (Lisbon), it was clarified that the “subsequent fate” of the first application (basis of the right of priority)—that is, its fate after it has been filed—has no influence on the right of priority. For example, the right of priority continues to subsist even where the first application is withdrawn or the grant of a patent on it is refused. At the same conference, it was decided that, under certain conditions, the subsequent application may invoke the priority of what, in fact, is not the first application but an application filed later than the first, the main condition being that the *de facto* first application was withdrawn or refused, without having been opened to public inspection (and without leaving any rights outstanding), at the time

the subsequent application was filed.

At the conference of revision of 1967 (Stockholm), it was established that a patent application may serve as the basis of the right of priority for an inventor's certificate, and that an inventor's certificate may serve as the basis of the right of priority for a patent, where the country in which the subsequent application is for an inventor's certificate or in which the first application was for an inventor's certificate is a country in which "applicants have the right to apply at their own option either for a patent or for an inventor's certificate" (Article 4I, paragraphs (1) and (2)).

Independence of Patents Granted in Different Countries (Article 4bis). Since the patent laws of the various countries differ from each other, and since the circumstances in which patents are refused, granted or expire also are frequently different in the patent laws of the various countries in which patent protection is sought for the same invention, it would be neither logical nor equitable to make the fate of a patent application filed or granted in one country (or the fate of a regional patent application or patent) for a given invention depend on the fate of any patent application filed or granted for the same invention in *another* country. At the conference of revision of 1900 (Brussels), therefore, the principle called "independence of patents" was inscribed in the Paris Convention: any patent applied for in one country is "independent of patents obtained for the same invention in other countries" (Article 4bis(1)). This rule is of particular practical relevance where patents for the same invention granted in different countries are, at a certain point in time, no longer renewed by the owner of the patent in some of the countries: in those in which they are renewed, they will continue to be valid patents although in the others the protection will have ceased. In the conferences of revision of 1911 (Washington) and 1934 (London), the principle was further clarified through illustrating it with examples.

Restrictions of Sale (Article 4quater). At the conference of revision of 1958 (Lisbon), a provision was adopted according to which no authority may refuse to grant a patent, and no authority may invalidate a patent, "on the grounds that sale of the patented product or of a product obtained by means of the patented process is subject to restrictions or limitations resulting from the domestic law" (Article 4quater). The rationale behind this provision is that the restriction or limitation may be temporary and, once it is lifted, the patent will have a value. Also, that the patented invention suffering from such restrictions may serve as a basis for further patented inventions not suffering from such restrictions and there is no

reason for depriving the owner of the former of the rights that the dependence of the further inventions on his invention give him.

Mention of the Inventor (Article 4ter). There is a short sentence in the Paris Convention, adopted at the conference of revision of 1934 (London), which reads as follows: "The inventor shall have the right to be mentioned as such in the patent" (Article 4ter). Why is such a provision useful? Because, under the laws of most countries, a patent application need not be filed by the inventor, and if it is not filed by the inventor, the inventor's identity may remain unknown, unless it is required that the name of the inventor be mentioned — *as the name of the inventor* — in the public document that every patent is. Such mention is just, since any inventor has a natural pride in his intellectual creation and the world should know that the creation is his brainchild. But the mention is also useful for safeguarding the material interests of the inventor since it reduces the chances of fraudulent applications: a person other than the inventor may apply for a patent only if, because of a certain relationship between him and the inventor, the law allows him to apply; for example, he is the employer, heir, or assignee of the inventor; if the required relationship is missing but the inventor sees, when the patent is published, that his name has not been indicated (when it should have been indicated) or has been illegally used, he may claim his rights against the applicant or patentee. It is this relative ease with which any fraud can be discovered, thanks to the requirement to mention the inventor, that reduces the chances of fraudulent applications.

Notice, on Articles, of Patent Rights (Article 5D). At the conference of revision of 1934 (London), the following provision was inserted in the Paris Convention: "No indication (*signe*) or mention (*mention*) of the patent ... shall be required on the goods as a condition of recognition of the right to protection [in the original French the words corresponding to the last ten English words are "*pour la reconnaissance du droit*"]" (Article 5D). Examples of such indications or mentions are "US Patent Pending," "Patent Pending," "Patent No.," "US Patent No.," "*Brevet*" or "*Brevet No.*" It is quite normal, in some countries, to put such indications or mentions on products containing patented inventions. The Paris Convention does not prohibit the use of such indications or mentions; it merely prohibits such indications or mentions from being made a condition of patent protection. Why? First, because there are products — not to speak about processes — on which the placing of an indication is a physical impossibility (too small, liquid, etc.). Second, because if every country required a specific

indication, then, for an article susceptible of being present in several countries, one would have to place (and constantly update) as many indications (possibly in various languages) as there are such countries; a requirement which would be even more difficult – if not impossible – to comply with.

Grace Period for Paying Maintenance Fees (Article 5bis(1)). At the conference of revision of 1925 (Hague), the following provision was adopted: "A period of grace of not less than three months shall be allowed for the payment of the fees prescribed for the maintenance of industrial property rights, subject, if the domestic legislation so provides, to the payment of a surcharge" (Article 5bis). The three-month period was, at the conference of revision of 1958 (Lisbon), extended to six months. It is recalled that, in most countries, patents must be renewed (usually annually; in the United States of America after three and a half, seven and a half and eleven and a half years), registrations of utility models must be renewed (for example, annually or once for three years), registrations of industrial designs must be renewed (usually twice, for five years each) and registrations of marks must be renewed (usually every five or ten years) if the owner of the patent or registration wishes to enjoy protection for the maximum period possible (in the case of patents and industrial designs) or indefinitely (in the case of marks). Such renewal – resulting in "maintenance" – consists of, or is conditional upon, the payment of a sum of money ("renewal fee" or "maintenance fee") by the owner of the patent or registration to the patent or trademark office. It was considered that foreigners particularly may have difficulties in calculating the time required for their payments to reach the patent or trademark office and, consequently, it was considered only fair that if their payments are, in fact, late, they should be given an opportunity to pay, albeit late. The provision under examination makes it mandatory to create such a possibility. The possibility may be limited in time (but not less than six months) and it may be subject to paying more ("surcharge") than the missed fee.

Restoration of Patents Lapsed for Non-Payment of Fees (Article 5bis(2)). At the conference of revision of 1925 (Hague), as already indicated, the minimum grace period for paying maintenance fees was fixed at three months only. However, at the same conference, an additional provision was adopted which, in the case of patents – but not in the case of other industrial property rights, such as, for example, marks – obliged the countries *either* to extend the period of grace to six months *or* "to provide for the restoration of a patent which has lapsed by reason of non-payment of fees" (Article 5bis). The three-month minimum was extended to six months, as also already indicated,

at the conference of revision of 1958 (Lisbon). Thus, the first alternative became pointless. And the second alternative was transformed: instead of an obligation ("the countries ... undertake ... to provide for the restoration ..." (Article 5bis)), it became a mere faculty, worded as follows: "The countries ... shall have the right to provide for the restoration of patents which have lapsed by reason of non-payment of fees" (Article 5bis(2)).

Certain Acts that Cannot Be Treated as Infringements of Patent Rights (Article 5ter). The use of a patented invention, without the patentee's permission, is generally an infringement of the rights of the owner of the patent. There are, however, uses in respect of which it would be unreasonable to require the patentee's permission, namely, when the device patented in a country is used on a vehicle (boat, airplane, automobile, etc.) which is, and while it is, in the territory (including the territorial waters and airspace) of the country "temporarily or accidentally" (Article 5ter). This is the reason for, and the essence of, the provision that the conference of revision of 1925 (Hague) adopted when it inserted Article 5ter in the Paris Convention.

Temporary Protection of Patentable Inventions Exhibited at Certain Exhibitions (Article 11). The original (1883) text of the Paris Convention provided that "The High Contracting Parties undertake to grant temporary protection to patentable inventions, industrial designs and trademarks in respect of goods exhibited at official or officially recognized international exhibitions" (Article 11). What is the object of protection is an invention for which no patent (or utility model) application has been filed (or an industrial design or trademark for which no application for registration has been filed) at the time of the exhibition (otherwise, the normal protection would apply). The obligation is to grant "temporary" protection. At the conference of revision of 1900 (Brussels), it was provided that the obligation applied only if the exhibition was held in the territory of a country party to the Paris Convention.

What the "temporary protection" consists of is not defined in the Paris Convention. It is left to the domestic legislation of each country, as stated in the Convention since the conference of revision of 1900 (Brussels). Some laws treat the exhibition as if it were a first filing of an application to which the right of priority attaches. Such laws prompted the conference of revision of 1925 (Hague) to provide, in effect, in the Paris Convention, that any State party to the Convention may consider, as the starting date of such a quasi-priority, "the date of introduction of the goods into the exhibition" and that the 12-month (or, in the case of industrial

designs and trademarks, 6-month) priority period may count from such date rather than from the date of the filing of the first application that occurs between the said date and the expiration of the said period.

At the conference of revision of 1925 (Hague), an additional provision was introduced, reading as follows: "Each country may require, as proof of identity of the article exhibited and the date of its introduction [into the exhibition], such evidence as it considers necessary" (Article 11(3)).

Patent Protection for Certain Imported Products (Article 5quater). It is usual, in patent law, to speak about product patents and process patents. Product patents are patents which are granted for inventions that consist of products (for example, an invention that consists of a new alloy). Process patents are patents which are granted for inventions that consist of processes (for example, an invention that consists of a new method or way of making (that is, a process) an alloy, irrespective of whether the alloy itself (that is, a product) is patentable and patented). The national laws of several countries provide, in effect, that a process patent gives the patentee a right not only against the unauthorized use of the patented process but also against the unauthorized sale or use of the products that are manufactured through the direct use of the patented process. The conference of revision of 1958 (Lisbon) inscribed an article in the Paris Convention the main effect of which is that a country whose national law provides for such protection must apply it also where the manufactured product is not made in the country but is imported into it from a foreign country. It is to be noted that neither the provision in question nor any other provision of the Paris Convention obliges any country to grant process patents or protection in respect of products manufactured with the help of patented processes (where process patents exist). In other words, the provision in question merely means that *if* a country grants process patents and *if* that country's law extends to the protection of the right to use or sell the products manufactured through the said process, then, but only then, will the unauthorized use or sale of the products manufactured with the process be illegal not only when the product was manufactured in the country but also if it has been manufactured abroad and subsequently imported.

At the conference of revision that started in 1980 and has not yet been completed in 1983, one of the questions examined is whether Article 5quater should be stricken from the Paris Convention or, alternatively, whether any developing country should be allowed to disregard it.

Importation of Patented Products by the Patentee (Article 5A(1)). The original (1883) text of the Paris

Convention provided that "The importation by the patentee into the country where the patent has been granted of articles manufactured in any of the States of the Union [created by the Paris Convention] shall not entail forfeiture (*déchéance*) of the patent" (Article 5). The provision was necessary because, at that time, several countries had or contemplated having laws with the effect that the provision disallowed. The provision is still in the Paris Convention although nobody seriously proposes any more that importation should lead to forfeiture. It is another question what should happen if there is *only* importation, *without* manufacture ("working") of the patented invention in the country. That question is considered in other provisions of Article 5A to be considered in the following two sections.

However, at the conference of revision that started in 1980 and has not yet been completed in 1983, one of the questions examined is whether the provision under consideration should not be replaced by one which would expressly recognize the faculty of each country to require that a patented invention be worked on its territory and which would leave it to the legislation of each country to decide whether importation is working or not.

Sanctions in the Case of Abuse of Patent Rights (Article 5A(2) and (3)). The conference of revision of 1925 (Hague) was the first to deal with "abuses which might result from the exercise of the exclusive rights conferred by the patent" (Article 5). The measures provided for in the 1925 (Hague) Act of the Paris Convention were amended at the conferences of revision of 1934 (London) and 1958 (Lisbon), resulting in the following system: each country has the right to grant compulsory licenses to prevent abuses, and where a compulsory license has not been sufficient to prevent the abuse, forfeiture of the patent may be provided for; however, proceedings for the revocation (*action en déchéance* (forfeiture) *ou en révocation*) may be instituted only after two years from the grant of the first compulsory license. Neither "abuse" nor "compulsory license" is defined in the text of the Paris Convention. But, as far as "abuse" is concerned, the Convention does mention, as an example, failure to work; it is, however, generally admitted that failure to work *per se* is not an abuse, and that failure to work is an abuse only under certain circumstances. This follows from the fact that—as will be seen in the next chapter—special rules are provided in the Paris Convention where there is failure to work without abuse. Abuse may exist even where the patented invention is worked in the country; for example, where the price asked for an essential product is excessive. As far as "compulsory

license" is concerned, it is generally understood as a license given to a party other than the owner of the patent by a government authority—even against the will or in spite of the opposition of such owner—to do any of the acts, particularly manufacturing, which otherwise would require the permission ("license") of the owner.

Sanctions in the Case of Non-Working of the Patented Invention (Article 5A(4)). Non-working of the patented invention is a notion which was first introduced in the Paris Convention at the conference of revision of 1900 (Brussels). At that conference, the countries party to the Convention were given the right to sanction non-working by the forfeiture of the patent (*frappé de déchéance*): the sanction could be applied only after three years from the filing of the patent application and where the owner of the patent could not justify his inaction (consisting of lack of working) (see 1900 (Brussels) Additional Act, Article 2). The conference of revision of 1925 (Hague) amended the Paris Convention so that it no longer spoke of non-working *per se* but only of non-working as an instance of abuse (Article 5). The conference of revision of 1958 (Lisbon) further amended the Paris Convention and introduced separate provisions concerning abuse (of which non-working may be an instance) and concerning non-working or insufficient working (*défaut (lack of) ou insuffisance d'exploitation*). The thus amended provision (Article 5A(4)) allows a compulsory license to be applied for but not before "the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last" (*ibid.*); furthermore, it provides that the application must be refused "if the patentee justifies his inaction by legitimate reasons" ("*si le breveté justifie son inaction par des excuses légitimes*") (*ibid.*); also, it provides that the compulsory license must be "non-exclusive" (*ibid.*) and that it "shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill (*fonds du commerce*) which exploits such license" (*ibid.*). What a non-exclusive license is is not defined in the Paris Convention; it is generally understood that what is meant is that the exploitation of the patented invention will be legitimate not only by the beneficiary of the compulsory license but also by the owner of the patent and any person authorized by the owner of the patent (his licensee).

At the conference of revision that started in 1980 and has not yet been completed in 1983, one of the questions examined is whether developing countries should not have the faculty to grant compulsory licenses within shorter periods of time than the three or four years provided in the present

text of the Paris Convention and whether a compulsory license could not be exclusive rather than non-exclusive.

Inventors' Certificates

First Occurrence in the Paris Convention. The expression "inventor's certificate" was first used in the 1967 (Stockholm) Act of the Paris Convention.

Right of Priority (Article 4I). As already stated, the right of priority under the Paris Convention in the case of inventors' certificates was introduced by the conference of revision of 1967 (Stockholm): the principles concerning the right of priority as developed by the various conferences of revision in respect of inventions for which patents are applied for were extended also to cases where either the first application (i.e., the basis of the priority) or the subsequent application (i.e., the application in which the right of priority is claimed) is an application for an inventor's certificate, provided, in either case, that the country in which the application for an inventor's certificate has been, or is being, filed is a country "in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate" (Article 4I, paragraph (2)).

At the conference of revision that started in 1980 and has not yet been completed in 1983, one of the questions examined is whether inventors' certificates should be mentioned alongside patents for invention in all respects and not only, as is the case under the 1967 (Stockholm) Act, in connection with the right of priority and, if so, whether it should be required—with or without certain exceptions—that, in those countries in which the institution of inventors' certificates is known, patents should be available in all fields of technology in which inventors' certificates are available.

Utility Models

First Occurrence in the Paris Convention. The expression "utility models" (*modèles d'utilité*) was first used in the 1911 (Washington) Act of the Paris Convention.

Right of Priority (Article 4). The right of priority under the Paris Convention in the case of utility models was introduced by the conference of revision of 1911 (Washington). Its duration was fixed, by the same conference, at 12 months.

The principles concerning the right of priority as developed by the various conferences of revision in respect of inventions for which patents are applied for concerned and concern also the right of priority in respect of utility models whose registration is applied for, except that the rules concerning

multiple priority, partial priority and division do not seem to concern utility models.

At the conference of revision of 1925 (Hague), the possibility of claiming, in an application for the registration of a utility model, the priority of an application for the registration of an industrial design—and vice versa—was established and the period therefor was fixed at six months.

At the conference of revision of 1967 (Stockholm), it was established that an application for an inventor's certificate may invoke the priority of an application for the registration of a utility model where the country in which the inventor's certificate is applied for is a country in which "applicants have the right to apply at their own option either for a patent or for an inventor's certificate" (Article 4I, paragraph (2)).

Notice, on Articles, of Rights in the Utility Model (Article 5D). At the conference of revision of 1934 (London), the following provision was inserted in the Paris Convention: "No indication (*signe*) or mention (*mention*) of the ... utility model ... shall be required on the goods (*le produit*) as a condition of recognition of the right to protection" (Article 5D). Examples of such indications or mentions are "Protected Utility Model," "Registered," or "Registered under No... ." The comments made under "Notice, on Articles, of Patent Rights," above, apply here too.

Grace Period for Paying Maintenance Fees (Article 5bis(1)). This question is dealt with under the same heading in the section "Patents for Invention," above.

Temporary Protection of Utility Models Exhibited at Certain Exhibitions (Article 11). The comments made under "Temporary Protection of Patentable Inventions Exhibited at Certain Exhibitions," above, apply here too.

Protection of Certain Imported Products Protected by Utility Model Rights; Sanctions in the Case of Abuse of Rights in, and in the Case of Non-Working of, the Protected Utility Model (Article 5A(5)). The conference of revision of 1934 (London) provided that "The foregoing provisions [that is, paragraphs (1) to (4) of Article 5A] shall be applicable, *mutatis mutandis*, to utility models" (Article 5A(5)). The said provisions are analyzed under "Patent Protection for Certain Imported Products," "Sanctions in the Case of Abuse of Patent Rights" and "Sanctions in the Case of Non-Working of the Patented Invention," above.

Industrial Designs

First Occurrence in the Paris Convention. The expression "industrial designs" (*dessins et modèles industriels*) was first used in the original (1883) text of the Paris Convention.

Right of Priority (Article 4). The right of priority under the Paris Convention in the case of industrial designs was established already in the original (1883) text of the Paris Convention. The same text fixed the priority period at three months. This period was modified twice: the conference of revision of 1900 (Brussels) extended it to four months, whereas the conference of revision of 1925 (Hague) extended it to six months.

The principles concerning the right of priority as developed by the various conferences of revision in respect of inventions for which patents or utility models are applied for concerned and concern also the right of priority in respect of industrial designs whose registration is applied for, except that the rules concerning multiple priority, partial priority and division do not seem to concern industrial designs. Furthermore, the act of "putting on sale of copies of the design" (Article 4B) is mentioned in the Convention as an act which, if effected during the priority period, does not, among other acts, affect the right of priority. Finally, it should be noted that, as a result of the references to international treaties (see 1967 (Stockholm) Act, Article 4A(2)), an application filed under the Hague Agreement Concerning the International Deposit of Industrial Designs may serve as a first application whose priority may be invoked.

At the conference of revision of 1925 (Hague), the possibility of claiming, in an application for the registration of an industrial design, the priority of an application for the registration of a utility model—and vice versa—was established.

Notice, on Articles, of Rights in the Industrial Design (Article 5D). At the conference of revision of 1925 (Hague), the following provision was introduced in the Paris Convention: "No indication or mention of the registration [of the industrial design] shall be required on the goods (*le produit*) as a condition of recognition of the right to protection" (Article 5). Examples of such indications or mentions are "Protected Design," "Registered Design," the letter "D" in a circle, "US Design Patent Pending" or "US Design Patent No... ." The comments made under "Notice, on Articles, of Patent Rights," above, apply here too.

Grace Period for Paying Maintenance Fees (Article 5bis(1)). This question is dealt with under the same heading in the section on "Patents for Invention," above.

Temporary Protection of Protectable Industrial Designs Exhibited at Certain Exhibitions (Article 11). The comments made under "Temporary Protection of Patentable Inventions Exhibited at Certain Exhibitions," above, apply here too.

Importation of Articles Incorporating Industrial Designs; Failure to Work Industrial Designs

(Article 5B). The conference of revision of 1925 (Hague) adopted a provision reading as follows: "The protection of industrial designs shall not be liable (*ne peut être atteinte*) to any forfeiture (*déchéance*) by reason of the importation of articles (*objets*) corresponding to those which are protected" (Article 5). This provision corresponded to a similar provision concerning patents contained in the Paris Convention from the beginning (1883) (see under "Importation of Patented Products by the Patentee," above).

The conference of revision of 1934 (London) extended the same rule to the case of failure to work so that, since that revision, the Paris Convention provides that the protection of industrial designs shall not be subject to any forfeiture "either by reason of failure to work (*pour défaut d'exploitation*) or by reason of the importation (*introduction*) of articles corresponding to (*conformes à*) those which are protected" (Article 5B).

Marks

First Occurrence in the Paris Convention. The expression "trademark" (*marque de fabrique ou de commerce*) was first used in the original (1883) text of the Paris Convention, whereas the expression "service mark" (*marque de service*) was first used in the 1958 (Lisbon) Act of the Paris Convention. The expression "mark" (*marque*) has also been used in the Paris Convention since 1883. Although in contemporary usage "mark" is generally understood as including both trademarks and service marks, this is not, or not always, the case, when the Paris Convention uses the expression "mark": in most of the provisions of the Paris Convention that use the expression "mark," probably only trademarks are meant.

Right of Priority (Article 4). As has already been stated, under the laws of some countries, the protection of the rights in a mark starts when the mark starts to be used in commerce, that is, publicly. In other countries, such protection starts when the mark is registered, and between several competing applications for registration, the one filed earliest will lead to registration. Even in those countries in which protection starts by use, registration may give more rights than does use alone. All this means that the date of filing of the application for registration has decisive or some importance in obtaining registration.

Just as in the case of applications for patents for invention, if an applicant wishes to file applications for the registration of his trademark in several countries, it is hardly possible for him to file in all of them on the day on which he is ready to file in one of them (usually, his home country), because filing in foreign countries frequently requires the

translation of the list of goods for which the trademark is desired to be registered and, in any case, such filings must be preceded by communications between the applicant, who is in one country, and the foreign trademark offices, which are in other countries (usually through trademark agents domiciled in those other countries). The difficulties—and therefore the need for time after the first, original filing—are proportionate to the number of languages involved and the distance between the applicant's home country and the foreign countries in which the applications are to be filed.

This practical problem is resolved by the Paris Convention in a way similar to that which the Convention provides in the case of patents, namely, through the provisions on the right of priority. That right, in the case of trademarks, means in essence that, on the basis of the first application for the registration of a given trademark in respect of goods enumerated in the application filed in one (usually, the applicant's own, home) country party to the Paris Convention, the applicant may, within a period of six months, apply for the registration of the same trademark in respect of all or part of the same goods in any of the other countries party to the Paris Convention, and these later-filed applications will then be regarded as if they had been filed on the same day as that on which the first application was filed. In other words, these later-filed applications of his will have priority over any application which may have been filed during the said six-month period by other persons for the same or a similar trademark in respect at least of the same or similar goods. Moreover, the said later-filed applications, being based on the first application, are not affected by any event that may have taken place in the interval, such as the use of the same mark by another person.

The original (1883) text of the Paris Convention already provided this right of priority, except that the term was three (rather than six) months and the right could not be invoked where third-party rights existed. At the conference of revision of 1900 (Brussels), the term was extended to four months (an extra month for overseas applications being omitted at the same time). At the conference of revision of 1925 (Hague), the priority period was extended once more, that time to six months, and, at the conference of revision of 1934 (London), the said exception in favor of third-party rights was eliminated.

The provisions of the Paris Convention dealing with the following matters concern not only patents but also trademarks, and the history of those provisions has been indicated in connection with patents, under the heading "Right of Priority": the declaration of the claim of priority and the

publication of such claim, the starting date of the computation of the priority period, the subsequent fate of the first application, and the substitution of the first application by another application. The same holds also for the case where the first application is an application filed under an international treaty concluded between several countries party to the Paris Convention. Such treaties are the Trademark Registration Treaty (1973), the Benelux Convention Concerning Trademarks (1962), and the Agreement Relating to the Creation of an African Intellectual Property Organization (1977).

Trademarks Registered in Their Country of Origin (Article 6quinquies). There is a set of provisions in the Paris Convention which provides for special treatment for trademarks for which protection is sought in a country party to the Paris Convention where that trademark is registered in its country of origin. Such special treatment was already provided in the original (1883) text of the Paris Convention, but it has undergone several changes at the various conferences of revision. A trademark is registered in a country if it appears on the trademark register of that country, a register which is kept by a government authority, called, for example, the "trademark office."

"Country of origin" was defined in the original (1883) text of the Paris Convention as the country in which the applicant (*déposant*) "has his principal establishment" and, if the principal establishment is not in a country party to the Paris Convention, then that country party to the Paris Convention to which the applicant "belongs" (*auquel appartient le déposant*) (Article 6(1) and (2)). The conference of revision of 1925 (Hague) modified the definition so that the country of origin is the country party to the Paris Convention in which the applicant has a real and effective industrial or commercial establishment, *or*, if he has no such establishment, then the country party to the Paris Union in which he has his domicile, *or*, if he has no such domicile but is a national of a country party to the Paris Convention, then the country of which he is a national (Article 6(3); in the 1958 (Lisbon) Act of the Paris Convention, Article 6quinquies A(2)).

The special treatment consists of the fact that—irrespective of what is provided in the national law of the country in which the application for registration is presented (hereinafter referred to as the "country of the application")—such a trademark (that is, a registered trademark that has a country of origin among the countries party to the Paris Union) must be accepted for registration (that is, must be registered) and protected as it is (*telle quelle*) in the country of the application (that may be any of the other countries party to the Paris Convention) and that the country of the

application may refuse registration or may invalidate the registration only for the reasons indicated in the Paris Convention itself. The obligation to register and protect *telle quelle* appears in the original (1883) text of the Paris Convention and has not been altered by any of the conferences of revision. The original (1883) text of the Paris Convention clarified what "*telle quelle*" meant, namely, that the registration cannot be refused for the sole reason that the trademark does not comply with the domestic law of the country of the application "with regard to the signs of which it is composed" and that, consequently, the rule concerns "the form of the mark" (Final Protocol of 1883, paragraph (4)). These clarifications were omitted in the text adopted by the conference of revision of 1911 (Washington) but it is generally believed that such omission did not alter the intended sense of "*telle quelle*" as it was made explicit in 1883.

As to the reasons—the only reasons—for which the country of the application may deny registration, or may invalidate the registration (once having erroneously granted registration), the original (1883) text of the Paris Convention provided only one, namely, that the sign constituting the trademark is "contrary to morality or public order (*contraire à la morale ou à l'ordre public*)" (Article 6), and the Final Protocol of 1883 attached to that text explained that "the use (*usage*) of public armorial bearings and decorations" may be considered as contrary to public order.

At the conference of revision of 1911 (Washington), two further reasons for possible refusal or invalidation were added: one is that the trademark infringes acquired rights of third parties in the country of the application; and one is that the trademark has no distinctive character. Lack of distinctive character was illustrated at the same time by trademarks that consist exclusively of signs or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, value, place of origin or time of production of the goods, and by trademarks that consist exclusively of signs or indications that have become customary in the current language or in the *bona fide* and established practices of the trade of the country, and it was added that, in determining the distinctive character of a trademark, all the factual circumstances—particularly the length of time the trademark has been in use—must be taken into consideration. It is customary to say—but these are expressions not used in the text of the Paris Convention—that a trademark which merely designates the kind, quality, etc., of the goods is "descriptive," whereas the signs or indications that have become customary in the current language are "generic." For example, "nylon"—originally a

protected trademark—has, because of the way it is now used in current language, become, in most countries, generic and can no longer enjoy trademark protection. One can see from this example the negative effect of the “length of time.” But the length of time may also have a positive effect: for example, the number 4711, *per se*, seems to lack any distinctive character but, because of long usage on a certain eau de cologne, it has become distinctive (has acquired a “secondary meaning,” that is, a meaning different in trade from its meaning outside trade).

The provision, mentioned above, authorizing the country of application to refuse or invalidate the registration of a trademark because the mark is contrary to morality or public order was further elucidated at the conference of revision of 1934 (London) when, as a particular case of such a kind, trademarks “of such a nature as to deceive the public” (Article 6B) were mentioned. (A trademark falsely claiming that the goods originate in a given country could be an example in point.) Furthermore, at the same conference of revision, it was expressly provided in the Paris Convention that public signs or decorations, *if* used in a trademark with the authorization of the competent authorities, were *not* contrary to public order; also, public emblems were given the same treatment as public signs and decorations, and, finally, “official signs and hallmarks indicating control and warranty” were given a similar treatment to public signs and decorations.

At the conference of revision of 1934 (London), a provision was added in the Paris Convention according to which the possibility of refusal (subject to the above exceptions) in the country of application is not admitted, not only when the trademark in that country and the trademark registered in the country of origin are absolutely identical (“*telle quelle*”), but also where the two trademarks differ from each other “only by elements that do not alter the distinctive character and do not affect the identity of the trademark” (Article 6B(2)).

At the conference of revision of 1958 (Lisbon), a further reason was, in fact, added to the reasons for which the country of application may refuse or invalidate the registration of a trademark (although it is registered in the country of origin). The reason is that the use of the trademark would constitute an act of unfair competition. A trademark disparaging the goods of a competitor could be an example of such an act.

At the conference of revision of 1958 (Lisbon), the provisions mentioned above (and some other provisions concerning certain details not mentioned here) were put into a separate article (Article 6*quinquies*), new paragraphs were con-

stituted from texts that were not in separate paragraphs, and other changes in presentation were made. In the process, the provision, which provided that all factual circumstances (particularly the length of time the mark has been in use) must be taken into account, became a separate paragraph of the article in question (Article 6*quinquies* C(1)) and is applicable to determine whether a mark *is eligible for protection* rather than, as in the previous texts (since 1911), whether the registration may be refused or annulled.

Independence of Trademarks Registered in Different Countries (Article 6). As already recalled, the law of each country, including its law on trademarks, has effect only on that country's territory. The original (1883) text of the Paris Convention expressly stated this principle by the words “each State shall apply its domestic law [in respect of trademarks]” (Final Protocol of 1883, paragraph (4)) but also mentioned that the principle was subject to other relevant provisions of the Paris Convention, in particular, the provisions concerning the *telle quelle* principle, analyzed in the previous chapter. The word “independence” was first used in the 1934 (London) Act (Article 6D) and, in its most recent context, appears in the 1958 (Lisbon) Act, which provides that “a mark duly registered in a country [party to the Paris Convention] shall be regarded as independent of marks registered in the other countries [party to the Paris Convention], including the country of origin” (Article 6(3)). The principle of independence found also other expressions in the texts adopted by the various conferences of revision. For example, in connection with renewals, the 1925 (Hague) Act stated that “In no case shall the renewal of the registration of a mark in the country of origin involve the obligation to renew the registration in the other countries [party to the Paris Convention] where the mark has been registered” (Article 6). This provision was maintained in the 1934 (London) Act (Article 6E) but, at the conference of revision of 1958 (Lisbon), it was made further explicit, namely, the 1958 (Lisbon) Act deals not only with renewal but also with application and registration: “However, an application for the registration of a mark filed by a national of a country [party to the Paris Convention] in any country [party to the Paris Convention] may not be refused, nor may a registration be invalidated, on the ground that filing, registration, or renewal, has not been effected in the country of origin” (Article 6(2)). The word “However,” introducing the quoted provision, underlines that, although the conditions for filing and registration are determined by the domestic law of each country, such law *cannot* link the fate, in its own territory, of the trademark to the

same trademark's fate in other countries. On the other hand, the 1958 (Lisbon) Act does not say—what the original (1883) text of the Paris Convention said—that independence is also qualified by the other relevant provisions of the Paris Convention. That this continues to be so, however, clearly follows from the context.

Protection of Well-Known Trademarks, Even if Not Registered (Article 6bis). The Paris Convention, since the conference of revision of 1925 (Hague), contains special provisions for the protection of "well-known" (*notoirement connu*) trademarks. There is no definition in the Paris Convention of the meaning of the expression "well-known." It is usually considered that a trademark is well known if those active in the branch of commerce in which the trademark is used are aware of the existence of the trademark and of the fact that it belongs to a given enterprise. The provision deals with the situation in which the well-known trademark is *not* registered in a given country and in which someone else other than the legitimate owner of that trademark tries to have the same or a similar trademark registered in that country in his own name for goods of the same or similar kind as those for which the well-known trademark is being used. The effect of the provision is that, even in a country (and most countries are in this category) in which the protection of a trademark requires that it be registered, an unregistered trademark used by A will stand, or should have stood, in the way of the registration, for the benefit of B, of that (or a similar) trademark, provided that A's trademark is well known, that B asks for the registration for goods which are the same as or are similar to those for which A's trademark is used and provided that A is entitled (on account of his nationality, etc.) to protection under the Paris Convention. In the 1925 (Hague) Act, the countries party to the Paris Convention undertook—in the said situation—to refuse registration or, if such registration (that should not have been effected) was (inadvertently or erroneously) effected, to cancel the registration; in the 1958 (Lisbon) Act, the undertaking of the countries was extended to prohibit the use of trademarks conflicting with well-known trademarks. In other words, the unregistered, well-known trademark may be infringed by the use of another trademark even if the latter is unregistered.

Where the remedy sought is the cancellation of the registration (of the improperly registered trademark), the minimum period within which such cancellation may be sought was, in the 1925 (Hague) Act, three years (from the date of the improper registration), and it is, since the 1958 (Lisbon) Act, five years. Fixing a period within which prohibition of use may be sought is left to each country. However, no country is allowed to fix

any time limit either for asking for the cancellation of the (improper) registration or the prohibition of the use where the registration or the use of the trademark (that is identical or similar to the well-known trademark) was obtained or is carried out in bad faith.

Non-Use of the Registered Trademark (Article 5C). The laws of several countries provide that if the registered trademark is not "used" in the country, by the owner of the registration or by licensees of such owner, for a certain period of time (generally, five years), then the registration must be cancelled. The rationale behind such provisions is that unused trademarks should not "clog" the register because it is not always easy to "invent" new trademarks and the task becomes even more difficult where the register contains more trademarks than necessary. "Use" of the trademark means the sale of goods bearing the trademark, and use of it in a country means such sale in that country.

However, it would not be equitable to cancel an unused trademark after only a relatively short period of non-use or if the non-use is not the fault of the owner of the trademark. This is why, at the conference of revision of 1925 (Hague), it was provided that "if, in any country, use of the registered mark is compulsory, the registration may be cancelled only after a reasonable period (*délai équitable*) and then only if the person concerned does not justify his inaction (*et si l'intéressé ne justifie pas des causes de son inaction*)" (Article 5; in the 1967 (Stockholm) Act, Article 5C(1)).

Notice of Trademark Rights on Goods and in Advertisements (Article 5D). At the conference of revision of 1934 (London), the following provision was inserted in the Paris Convention: "No indication (*signe*) or mention (*mention*) of ... the registration of the trademark ... shall be required upon the goods as a condition of recognition of the right to protection" (Article 5D). Examples of such indications or mentions are "Trademark Registered," "Registered Trademark," the letter "R" in a circle. It is customary in many countries to use such mentions, and it is useful to use them, particularly where the trademark consists of a word and one could have doubts whether it is a generic name. Such mentions are frequently used, not only on the goods (or their wrappings) but also in advertisements and letterheads. The Paris Convention does not prohibit the use of such mentions; it merely prohibits that such mentions be made a condition of protection of the trademark. One of the reasons for such prohibition is that there are goods—not to speak about services—on which the placing of the mention is a physical impossibility (too small, etc.). Another reason for such prohibition is that if every country required a

specific mention, goods susceptible of being introduced into several countries would have to bear as many indications as there are such countries, a requirement which would be extremely difficult, if not impossible, to comply with.

Prohibition to Use State Emblems, etc., as Trademarks (Article 6ter). As already stated, the original (1883) text of the Paris Convention allowed the refusal of the registration of a trademark (even if duly filed in its country of origin) if the trademark is contrary to public order (Article 6). The Final Protocol of 1883 provided that "[the use 'as trademarks' of] public armorial bearings (*armoiries publiques*) and decorations (*décorations*) may be considered as contrary to public order" (paragraph (4)).

At the conference of revision of 1911 (Washington), the provision was extended to public emblems (*insignes*) and to official signs and hallmarks indicating control and warranty (*signes et poinçons officiels de contrôle et de garantie*), but, at the same time, it was stipulated that, if the public authorities (of the country of origin) authorized the use (as trademarks) of the said bearings, etc., trademarks incorporating them could not be regarded as contrary to public order. In order to facilitate knowing what are official emblems, etc., the text adopted by the conference of revision of 1925 (Hague) provided for their mutual communication among the States party to the Paris Convention, through the intermediary of the International Bureau (see Article 6ter). It also prohibited the unauthorized use (as trademarks) of State armorial bearings, etc., when the use is of such a nature as to be misleading as to the origin of goods. Further details were regulated in the texts adopted by the revision conferences of 1934 (London) and 1958 (Lisbon), and the latter extended some of the said provisions to the armorial bearings, etc., of intergovernmental organizations.

Since the conference of revision of 1958 (Lisbon), the essence of the rules contained in what is one of the longest articles of the Paris Convention (Article 6ter), is as follows. The objects of the protection are (i) the State emblems, including the armorial bearings and flags, of any country party to the Paris Convention, (ii) the official signs and hallmarks indicating control and warranty adopted by a country party to the Paris Convention and (iii) the armorial bearings, flags, other emblems, abbreviations and names of any international intergovernmental organization of which at least one member is a country party to the Paris Convention. The protection that must be granted consists, in the case of each of the three kinds of objects mentioned above, in the undertaking "to refuse or to invalidate the registration, and to prohibit ... the use, without authorization of the

competent authorities, either as trademarks or as elements of trademarks" (Article 6ter(1)(a); emphasis added) and—but only in the case of State emblems—"to prohibit the unauthorized use in trade ... when the use is of such a nature as to be misleading as to the origin of the goods" (Article 6ter(9); emphasis added). With the exception of State flags—which are protected even without any formality—the other objects of protection seem to be protected by the provision under examination only once they have been communicated by the government authorities of the interested country party to the Paris Convention through the intermediary of the International Bureau (see Article 6ter(3)). However, the protection may be denied by any country if it would affect rights earlier acquired in that country in good faith (see Article 6ter(1)(c)).

At the conference of revision that started in 1980 and has not yet been completed in 1983, one of the questions examined is whether the *official names of States* party to the Paris Convention should be given the same kind of protection that the said Convention already gives to the flags of such States.

Prohibition of Certain Acts of the Agent of a Foreign Owner of a Trademark (Article 6septies). It was the conference of revision of 1958 (Lisbon) that introduced in the Paris Convention the provision under consideration. That provision is intended to protect the owner of a trademark in one country (hereinafter referred to as the "foreign owner") against possible abuses committed or intended to be committed by his own agent or representative in any country (characteristically, the agent's or representative's country). The "agent or representative" may, characteristically, be a trader or a trademark agent. If he is a trader, he is characteristically a licensee of the foreign owner. What the provision intends to forestall is that the agent or representative obtain a registration of the unregistered trademark of his foreign principal in his own (that is, the agent's or representative's) name, or that he use the trademark (registered or unregistered), in either case, naturally, only if the contract between the principal and the agent or representative does not allow the agent or representative to apply for registration of, or does not allow him to use, the trademark. The possible remedies mentioned are the following: opposition to the registration, cancellation of the registration (if already effected), transfer of the registration (if already effected) from the name of the agent or representative to the name of the foreign owner, and opposition to the use of the trademark (through injunctions, etc.).

Nature of Goods (Article 7). The original (1883) text of the Paris Convention provided that "the

nature of the goods to which the trademark is to be applied (*doit être apposé*) shall in no case form an obstacle to the application for the registration (*dépôt*) of the mark" (Article 7). The provision is still the same, except that the conference of revision of 1925 (Hague) changed the word *dépôt* (meaning application for registration) to *enregistrement* (registration). The provision means, among other things, that a registration may not be refused only on the grounds that the goods, or some of the goods, listed in the application are goods whose sale (at that time) is prohibited or that the use of trademarks is (at that time) generally prohibited on certain types of goods.

Grace Period for the Paying of Maintenance Fees (Article 5bis(1)). This question is discussed under the same heading in the section on "Patents for Invention," above.

Temporary Protection of Registrable Trademarks at Certain Exhibitions (Article 11). The comments made under "Temporary Protection of Patentable Inventions Exhibited at Certain Exhibitions," above, apply here too.

Seizure, etc., of Goods Unlawfully Bearing a Protected Trademark (Article 9). The original (1883) text of the Paris Convention provided that "any goods unlawfully bearing a trademark or trade name *may* be seized on importation (*à l'importation*) in those countries [party to the Paris Convention] where such mark or trade name is entitled to legal protection" (Article 9; emphasis added). At the conference of revision of 1900 (Brussels), it was added that, if the legislation of the country does not allow seizure on importation, such seizure may be replaced by "prohibition of importation." The faculty ("may") of seizure upon importation was replaced, at the conference of revision of 1911 (Washington), by an obligation ("shall") but, in reality, the obligation is more apparent than real since, at the same conference, it was specified that, if the law of a country does not allow seizure on importation (or seizure in the country, or prohibition of importation), such measures are "replaced by the actions and remedies (*actions et moyens*)" (Article 9(6)) that the laws of such country may provide in such cases to nationals. Although, consequently, the net effect of the provisions is a confirmation of the obligation of equal treatment of foreigners and nationals (discussed earlier in this article), the said provisions are still useful as a means of urging countries to adopt certain specific measures.

Repression of Trade in Goods Unlawfully Bearing a Trademark (Article 10ter(1)). At the conference of revision of 1925 (Hague), a provision was introduced in the Paris Convention which provides that the countries party to the Paris Convention undertake to assure to nationals of the other

countries party to the Paris Convention "appropriate legal remedies effectively to repress (*réprimer*) all the acts referred to in Articles 9...." (Article 10ter(1)). The acts in question seem to be the unlawful affixation of a trademark or a trade name on goods and the sale or importation of goods bearing such unlawfully affixed trademarks or trade names. Such remedies are not specified in Article 10ter; they are, typically, seizure, injunctions ordering the stopping of the unlawful affixation, sale or importation, the payment of damages to the injured party and penal sanctions (fine, imprisonment). The provision also suggests, *expressis verbis*, that countries should allow "federations (*syndicats*) and associations (*associations*) representing interested industrialists, producers, or merchants ... to take action in the courts or before administrative authorities" (Article 10ter(2)).

Collective Marks (Article 7bis). The notion of collective mark appears in the Paris Convention for the first time in the 1911 (Washington) Act. In that Act, such marks are called marks belonging to collectivities (*appartenant à des collectivités*), whereas the expression "collective mark" is first used in the 1934 (London) Act. The notion is not defined in the Convention. It is generally understood to mean a trademark that is used—under the control of its owner—by several persons or enterprises producing or trading in goods which have some common characteristics, for example, come from the same country or region, or are made of the same material (for example, pure wool). The provision assumes that the owner is a "*collectivité*" (translated in the official English text of the 1967 (Stockholm) Act as "association"). The association need not be an association established in the country where the registration or the protection of the collective mark is sought. The essence of the provision is that any country party to the Paris Convention must accept for registration, and must protect, any foreign collective trademark, provided the trademark is not contrary to the public interest.

Service Marks (Article 6sexies). The notion of service mark found its way into the Paris Convention for the first time at the conference of revision of 1958 (Lisbon). It appears in two places: in the enumeration of the objects of the protection of industrial property (Article 1(2), discussed above) and in Article 6sexies, the provision under discussion. The latter requires the protection of service marks but expressly states that it is not necessary to provide for the possibility of registering service marks. In other words, whereas each country party to the Paris Convention must protect service marks, the way in which such protection is to be provided is not specified: it may

be exactly the same—and in many countries it is exactly the same—as the protection of trademarks, including registration, but it may be quite different too. In any case, the obligation of each country party to the Paris Convention to give the same protection to the objects of industrial property of foreigners entitled to protection on account of their nationality, etc., as that country gives to the objects of industrial property of its own nationals applies also to service marks. Consequently, in those countries which protect service marks in the same way as trademarks, the service marks of entitled foreigners will receive protection in the same way as trademarks.

Geographical Indications. At the conference of revision that started in 1980 and has not yet been completed in 1983, one of the questions examined is whether the registration of certain geographical indications as trademarks, or the use of such geographical indications on goods, should not be expressly prohibited—subject to the preservation of acquired rights—where their registration or use could mislead the public as to the true geographical origin of the goods involved.

Trade Names

First Occurrence in the Paris Convention. The original (1883) text of the Paris Convention already dealt with trade names (*nom commercial*; see Article 8).

Obligation to Protect (Article 8). The original (1883) text of the Paris Convention provides that a trade name must be protected “without the obligation of filing (*sans obligation de dépôt*), whether or not it forms part of a trademark” (Article 8). The conference of revision of 1925 (Hague) added the words “or registration (*enregistrement*)” after the word “filing.” What the protection must consist of is not specified in the Paris Convention. Characteristically, national laws prohibit the use of the trade name of one person or enterprise by another—coming later—person or enterprise, particularly if such use may cause confusion and, in any case, if it is done in bad faith. The unlawful use may consist in the use of the protected trade name (or a similar name) *qua* trade name or *qua* trademark. Furthermore, the protection, characteristically, consists in ordering the unlawful use to stop and in ordering the payment of damages to the lawful owner of the trade name.

Seizure, etc., of Goods Unlawfully Bearing a Protected Trade Name (Article 9). The question is dealt with under “Seizure, etc., of Goods Unlawfully Bearing a Protected Trademark,” above.

Repression of Trade in Goods Unlawfully Bearing

a Protected Trade Name (Article 10ter(1)). The question is dealt with under “Repression of Trade in Goods Unlawfully Bearing a Trademark,” above.

False Indications of the Source of Goods or of the Identity of the Producer, Manufacturer or Merchant

First Occurrence in the Paris Convention. The original (1883) text of the Paris Convention speaks, in Article 10—the article under consideration—of “goods which falsely bear as an indication of source (*indication de provenance*) a specified locality,” whereas the 1958 (Lisbon) Act speaks, in the same article, also of “the false indication of ... the identity of the producer, manufacturer or merchant” on goods.

Seizure, etc., of Goods Bearing False Indications of Source, etc. (Articles 9 and 10). The original (1883) text of the Paris Convention extended the application of Article 9, then dealing exclusively with the seizure of goods unlawfully bearing a protected trademark or trade name (see above) to goods which falsely bear an indication of source of a specified locality “when such indication is joined to a trade name of a fictitious character or used with fraudulent intention” (Article 10), and gave the right to ask for seizure to any manufacturer or trader engaged in the manufacture of, or trade in, such goods and established in the locality “falsely indicated as the source” (Article 10). The 1900 (Brussels) Act extended the right also to producers and to persons established in the region (*région*) where the locality is situated (see Article 10). The 1925 (Hague) Act extended the protection to the case where names of countries are falsely used, whereas the 1958 (Lisbon) Act further extended the right: it extended it to interested persons of the country fraudulently indicated and of the country where the fraudulent indication is used, so that, since 1958, the provision reads as follows: “(1) The provisions of the preceding Article [that is, Article 9] shall apply in cases of direct or indirect use of false indications of the source of goods or the identity of the producer, manufacturer, or merchant. (2) Any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party [that is, a party entitled to ask for seizure, etc.]” (Article 10).

In view of the fact that Article 9 in the now prevailing 1967 (Stockholm) Act does not only deal

with seizure, and that the right is qualified in several ways, the observations made in respect of that Article under "Seizure, etc., of Goods Unlawfully Bearing a Protected Trademark," above, apply also in respect of Article 10.

Repression of Trade in Goods Bearing a False Indication of Source, etc. (Article 10ter). At the conference of revision of 1925 (Hague), a provision was introduced in the Paris Convention which provides that the countries party to the Paris Convention undertake to assure to nationals of the other countries party to the Paris Convention "appropriate legal remedies effectively to repress (*réprimer*) all acts referred to in Articles ..., 10 ..." (Article 10ter(1)). The acts—according to the now prevailing 1967 (Stockholm) Act—are the direct or indirect use of a false indication of source of the goods or the identity of the producer, manufacturer or merchant. The said remedies are not specified in Article 10ter; they are, typically, seizure, injunctions ordering the stopping of the unlawful affixation, sale or importation, the payment of damages and penal sanctions (fine, imprisonment). The provision also suggests, *expressis verbis*, that countries should allow "federations (*syndicats*) and associations (*associations*) representing interested industrialists, producers or merchants ... to take action in the courts or before administrative authorities" (Article 10ter(2)).

Prohibition to Use State Emblems as Misleading Indications of Source (Article 6ter(9)). This question is discussed under "Prohibition to Use State Emblems, etc., as Trademarks," above.

Unfair Competition

First Occurrence in the Paris Convention. The first mention of unfair competition (*conurrence déloyale*) is contained in the 1900 (Brussels) Act of the Paris Convention (Article 10bis). The repression of unfair competition as one of the objects of the protection of industrial property was introduced in the Paris Convention by the conference of revision of 1925 (Hague) (see Article 1).

Obligation to Protect (Article 10bis(1)). The 1900 (Brussels) Act provided that "nationals (*ressortissants*) of the [Paris] Convention (Articles 2 and 3) shall enjoy, in all the countries [party to the Paris Convention] the protection accorded to nationals against unfair competition" (Article 10bis). The conference of revision of 1911 (Washington) replaced the quoted wording by the following: "All contracting countries undertake to assure to the nationals (*ressortissants*) of the Union [that is, of the countries party to the Paris Convention] effective protection against unfair competition" (Article 10bis). What the "effective protection" must consist of is not specified. It is

generally admitted that it should include injunctions prohibiting the starting or continuation of acts of unfair competition and the payment of damages to the injured party.

Acts of Unfair Competition (Article 10bis(2)). It was at the conference of revision of 1925 (Hague) that a definition of what is "unfair" was inserted in the Paris Convention. That definition—still in the Paris Convention—reads as follows: "Any act of competition contrary to honest practices (*usages honnêtes*) in industrial or commercial matters constitutes an act of unfair competition" (Article 10bis(2)). At the same conference, two examples, and at the conference of revision of 1958 (Lisbon), a third example of acts of unfair competition—to be prohibited—were inserted in the text of the Paris Convention. The first example is constituted by "acts of such a nature as to create *confusion* by any means whatever with the establishment, the goods, or the industrial or commercial activities, *of a competitor*" (Article 10bis(3)1; emphasis added). The second example is constituted by "*false* allegations in the course of trade of such a nature as to *discredit* the establishment, the goods, or the industrial or commercial activities, *of a competitor*" (Article 10bis(3)2; emphasis added). The third example is constituted by "indications or allegations the use of which in the course of trade is liable to *mislead the public* as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods" (Article 10bis(3)3; emphasis added).

Repression of Acts of Unfair Competition (Article 10ter). At the conference of revision of 1925 (Hague), a provision was introduced in the Paris Convention which provides that the countries party to the Paris Convention undertake to assure the nationals of other countries party to the Paris Convention "appropriate legal remedies effectively to repress (*réprimer*) all the acts referred to in Articles ... 10bis" (Article 10ter(1)). The acts in question are acts of unfair competition. The required remedies are not specified in Article 10ter; they are, typically—and as already indicated—injunctions and damages. The provision also suggests, *expressis verbis*, that countries should allow "federations (*syndicats*) and associations (*associations*) representing interested industrialists, producers or merchants ... to take action in the courts or before administrative tribunals" (Article 10ter(2)).

National Industrial Property Offices

First Occurrence in the Paris Convention. The original (1883) text of the Paris Convention provided that each country party to that Convention must

establish a special industrial property service ("*service spécial de la Propriété industrielle*") and a central register ("*dépôt central*," translated, in the official English text of the 1967 (Stockholm) Act of the Paris Convention as "central office") for the communication to the public of patents, industrial designs and trademarks (see Article 12).

Revisions (Article 12(1)). The conference of revision of 1911 (Washington) added, after the reference to patents, a reference to utility models (Article 12). It follows from a provision adopted by the conference of revision of 1967 (Stockholm)—namely, Article 13(3)(b) of the 1967 (Stockholm) Act of the Paris Convention—that countries party to the Paris Convention may "group" themselves "in a common office possessing for each of them the character of a special national service of industrial property as referred to in Article 12 [emphasis added]." There were three such common offices in existence in 1983: the *Organisation africaine de la propriété intellectuelle* (African Intellectual Property Organization) and, for the purposes only of marks or industrial designs, the *Bureau Benelux des marques* (Benelux Trademark Office) and the *Bureau Benelux des dessins ou modèles* (Benelux Industrial Designs Office); the first groups twelve African countries; the second and third group Belgium, Luxembourg and the Netherlands.

"Communication to the public" seems to mean that the office must allow any member of the public to take cognizance of the patents granted—as well as of utility models, industrial designs and trademarks registered—by it.

National Industrial Property Gazettes

First Occurrence in the Paris Convention. The original (1883) text of the Paris Convention provided that the national office must, as far as possible, publish an official periodical journal (*feuille officielle périodique*; Final Protocol of 1883, paragraph (5)).

Revisions (Article 12(2)). The publication of such a gazette was made mandatory in the 1925 (Hague) Act of the Paris Convention, whereas the 1934 (London) Act added that each national office must publish regularly (and, presumably, in its gazette) "the names of the proprietors (*titulaires*) of patents granted, with a brief designation of the inventions patented" and "the reproductions of registered trademarks" (Article 12(2)).

PART II

HISTORY OF THE ADMINISTRATIVE CLAUSES AND THE ADMINISTRATION OF THE PARIS CONVENTION

The Concept of a Union and the Organs of the Union

First Occurrence in the Paris Convention. The expression "Union" was first used in the original (1883) text of the Paris Convention. Article 1 of that text provided that "The Governments of France, Belgium, Brazil, Spain, Guatemala, Italy, the Netherlands, Portugal, Salvador, Serbia and Switzerland constitute a Union (*sont constitués à l'état d'Union*) for the protection of industrial property."

Later Developments. At the conference of revision of 1911 (Washington), Article 1 was revised to read as follows: "The contracting countries constitute a Union for the protection of industrial property," whereas at the conference of revision of 1934 (London), Article 1 became paragraph (1) of Article 1 and the words "contracting countries" were replaced by the words "the countries to which this Convention applies." That wording has not been changed since, so that in the 1967 (Stockholm) Act also it reads as follows: "The countries to which this Convention applies constitute a Union for the protection of industrial property" (Article 1(1)).

Meaning of "Union." The constitution of a "Union" means that a permanent link among countries is being created. The original (1883) text of the Paris Convention expressly indicated that it is governments—namely the governments of the eleven countries identified in Article 1 of that text—that have created the Union. The later Acts make it clear that the members of the Union are countries, namely "the contracting countries" (1911 (Washington) Act, Article 1) or "the countries to which this [the Paris] Convention applies" (1934 (London) Act, Article 1(1)).

In the following parts of this article, the expressions "Union" and "Paris Union" will both be used.

Organs of the Union. The first organ of the Paris Union mentioned in the Paris Convention was the "International Bureau of the Union for the Protection of Industrial Property" (*Bureau international de l'Union pour la Protection de la propriété industrielle*). It is mentioned in Article 13 of the original (1883) text of the Paris Convention. The same Article provides for three important features of the said Bureau, namely, that its attributions shall be fixed by common agreement by the countries of the Union, that it is placed under the

“high authority of the highest government authorities (*Administration supérieure*) of the Swiss Confederation,” and that the cost (*frais*) of the Bureau shall be supported by the governments (*Administrations*) of all the member countries of the Union.

Conferences for revising the Paris Convention were also mentioned in the Paris Convention from the very beginning. The original (1883) text of the Paris Convention says that such conferences are conferences “between the delegates of the said [the contracting] States” (Article 14) and the task of such conferences is “to introduce in it [in the Convention] improvements to perfect the system of the Union” (Article 14). Those conferences, commonly called “conferences of revision,” are sometimes considered as an organ of the Paris Union although they lack the permanence that characterizes a typical organ.

The same is true in respect of the “Conferences of Representatives” instituted by the conference of revision of 1958 (Lisbon) but no longer mentioned in the 1967 (Stockholm) Act. Those conferences had—and in respect of 12 member countries (see below) still have—the task of dealing with certain questions, mainly the fixing of the maximum yearly amount of the expenses of the International Bureau of the Paris Union (see 1958 (Lisbon) Act, Article 14(5)).

On the other hand, there is no doubt that the Assembly of the Paris Union and the Executive Committee of the Paris Union are organs of that Union. They were established by the 1967 (Stockholm) Act (see Articles 13 and 14).

The same Act replaced the International Bureau of the Paris Union by the International Bureau of the World Intellectual Property Organization (WIPO)—officially called the “International Bureau of Intellectual Property” (WIPO Convention, Article 2(ii))—and declared the latter to be the continuation of the united Bureaus of the Paris and Berne Unions (see Article 15(1)(a)). The Berne Union, it is recalled, is the Union founded in 1886 by the Berne Convention for the Protection of Literary and Artistic Works.

The International Bureau of the Paris Union was headed by a director (*directeur*). The expression was used already in the original (1883) text of the Paris Convention. Although there was no provision in the Paris Convention concerning the appointment of the Director, he was appointed, in fact, by the Swiss Government, namely the Federal Council (*Conseil fédéral*, the supreme authority of the executive branch), the power for doing so being regarded as inherent in the supervisory authority functions of the Swiss Government. Since the entry into force, in 1970, of the 1967 (Stockholm) Act, the International

Bureau of WIPO has been headed by an official called in that Act “the Director General,” appointed (elected) by the General Assembly of WIPO. Such election requires a two-thirds majority also in the Assemblies of the Paris and Berne Unions (WIPO Convention, Article 6(3)(g)).

The Assembly

First Occurrence in the Paris Convention and Present Membership. As already stated, the Assembly was created by the 1967 (Stockholm) Act of the Paris Convention. It consists of those countries of the Paris Union which are bound by the administrative clauses (Articles 13 to 17) of the said Act. Out of the 92 members of the Union, there were 80 such countries on March 20, 1983, the date of the centenary of the Paris Convention. They were the following: Algeria, Argentina, Australia, Austria, Bahamas, Belgium, Benin, Brazil, Bulgaria, Burundi, Cameroon, Canada, Central African Republic, Chad, Congo, Cuba, Czechoslovakia, Democratic People’s Republic of Korea, Denmark, Egypt, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guinea, Holy See, Hungary, Indonesia, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Libya, Liechtenstein, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Philippines, Poland, Portugal, Republic of Korea, Romania, Senegal, South Africa, Soviet Union, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, United Kingdom, United States of America, Upper Volta, Uruguay, Viet Nam, Yugoslavia, Zaire, Zambia, Zimbabwe.

The other 12 countries of the Union were not members of the Assembly on the said date (March 20, 1983). They are, however, members of the Conference of Representatives (see below). Those 12 countries are the following: Cyprus, Dominican Republic, Haiti, Iceland, Iran, Lebanon, New Zealand, Nigeria, San Marino, Syria, Tanzania, Trinidad and Tobago.

Representatives and Voting. For each member country, what is represented is that country’s “Government” (Article 13(1)(b)), and each country is represented by one “delegate” (Article 13(1)(b)). Each delegate may be assisted by one or more “alternate delegates,” “advisors” and “experts.” The designation given to such possible assistants of the delegates, and the number of such assistants, are decided by each government as far as its own delegation is concerned.

A delegate may represent one country only but “countries of the Union grouped under the terms of a special agreement in a common office ... may

be jointly represented *during discussions* by one of their number [i.e., by the representative of one of the said countries]" (Article 13(3)); emphasis added); however, when it comes to *voting*, any delegate may vote in the name of one (his own) country or, in special circumstances, a delegate may also vote in the name of *one additional* country too but only if his own country and that additional country are countries grouped as indicated (see Article 13(5)).

With respect to matters which are of interest also to other Unions administered by WIPO, the Assembly must, before making a decision, hear the advice of the WIPO Coordination Committee (Article 13(2)(b)).

One half of the countries members of the Assembly constitute a quorum (Article 13(4)(b)). With two exceptions, all decisions of the Assembly require two-thirds of the votes cast (Article 13(4)(d)). One of the exceptions concerns Articles 14, 15 and 16, and paragraphs (1) and (3) of Article 17: those provisions can be amended only with a majority of three-fourths of the votes cast (Article 17(2)); the other exception concerns Article 13 and paragraph (2) of Article 17: those provisions can be amended only with a majority of four-fifths of the votes cast (Article 17(2)).

Tasks. Article 13(2)(a) of the 1967 (Stockholm) Act lists, in thirteen points, the tasks of the Assembly. They are quoted hereafter, with a few comments in each case:

"*The Assembly shall:*

"(i) deal with all matters concerning the maintenance (maintien) and development of the Union and the implementation of this Convention." These are very broad terms, and almost everything that is specified in the subsequent twelve items may be regarded as falling also under this item. "Maintenance" includes, in any case, assuring that the organs of the Union exist and function. "Development" includes the entry of countries in the Union which are not yet members, and the Assembly consistently provides activities in the program of the Union for promoting knowledge about, and accessions to, the Convention. "Implementation" of the Convention certainly means the acts required from the member countries and the acts required from the various organs of the Union. Does dealing with matters concerning the implementation of the Convention mean that the Assembly may interpret the Convention? It is believed that it certainly means just that whenever the administrative and final provisions are concerned or where the Convention speaks of tasks of a substantive nature to be performed by the International Bureau, such as, for example, the communication of State emblems, etc., under Article 6ter(3)(a)). It probably also means that the

Assembly may deal with matters concerning the implementation of the Convention by any member country, for example, expressing an opinion on the question whether "the measures necessary to ensure the application" (Article 25(1)(a)) of the Convention by a given member country have been adopted by that country. So far, however, the Assembly was not seized of a question of such a nature, so that it is not known whether the Assembly would, in fact, follow such an interpretation of the Convention. Non-governmental organizations specialized in the field of industrial property suggest, from time to time, that the conformity of the national laws of member countries with the requirements of the Convention be examined and opinions thereupon be expressed by the Director General or the Assembly. There is nothing in the Convention that would enable the Director General to do so short of a direct and precise order by the Assembly under item (iii) ("give him all necessary instructions concerning matters within the competence of the Union" (see below)), but the Assembly itself could, it would seem, express such opinions. However, as already stated, so far the matter has not been tested.

"(ii) give directives concerning the preparation for conferences of revision to the International Bureau ... due account being taken of any comments made by those countries of the Union which are not bound by Articles 13 to 17." This provision has found numerous applications since the decision, taken in 1974, to prepare the conference of revision that started in 1980 and has not yet been completed in 1983. The directions given to the International Bureau have included specifying what preparatory documents should be submitted and where and when the sessions of the conference of revision should take place. The 12 countries (see above) that are not yet bound by the administrative clauses (Articles 13 to 17) of the 1967 (Stockholm) Act of the Paris Convention were given the occasion to make comments on such directions in the Conferences of Representatives which were convened together with each session of the Assembly dealing with preparations for the said conference of revision. It is to be noted that preparing conferences of revision through directives given to the International Bureau is a procedure different from the one that was applied under the Acts earlier than the 1967 (Stockholm) Act. While the proposals for revisions are now contained in documents prepared and presented by the Director General (with the help of *ad hoc* preparatory committees of governments and non-governmental organizations convened by him and under the directives of the Assembly), the proposals for earlier revisions were prepared and presented by the Government that hosted the conference

(usually without any formal preparatory meeting but) with the assistance of the International Bureau (see Article 14 in the 1911 (Washington), 1925 (Hague), 1934 (London) and 1958 (Lisbon) Acts). In a number of cases, the host government was also inspired by studies and recommendations by the *Association internationale pour la protection de la propriété industrielle* (AIPPI), a non-governmental organization.

“(iii) review and approve the reports and activities of the Director General ... concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union.” In preparation of each session of the Assembly, the Director General writes reports on his activities undertaken since the last preceding session of the Assembly. The same reports deal also with other events of interest to the Union, whether they happened in the framework of the Union (for example, development cooperation activities organized by the International Bureau in the field of industrial property) or outside such framework (for example, activities concerning the European patent or the planned European (“Community”) trademark). The “necessary instructions” are, for the most part, consigned in the program (see item (vi), below).

“(iv) elect the members of the Executive Committee of the Assembly.” More is said about this task of the Assembly in the chapter devoted to the Executive Committee, below.

“(v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee.” The activities of the Executive Committee are generally covered in the reports of the Director General mentioned in item (iii), above. The tasks of the Executive Committee are mentioned in the section devoted to it, below.

“(vi) determine the program and adopt the triennial budget of the Union, and approve its final accounts.” The budget has, *de facto*, become biennial since a corresponding amendment to this item was adopted in 1979 albeit that amendment was not yet in force on March 20, 1983, the date of the centenary of the Paris Convention. A draft of the program and the budget of the Paris Union is prepared by the Director General in a document which also deals with the program and the budget of WIPO proper and the other Unions administered by WIPO. The expenses of the Paris Union represented, in the decade starting in 1970, with the entry into force, in that year, of the 1967 (Stockholm) Act, an average of 24 percent of the total expenditure of the International Bureau. As far as the program is concerned, its main chapters deal with the promotion of accessions to the Paris Union, with cooperation, for the development of

developing countries, in the field of industrial property, with the standardization of patent documents, with the collection and dissemination of information (publication of the monthly periodical *Industrial Property*, collection and publication of legislative texts, collection and publication of worldwide industrial property statistics, etc.) and with matters of topical interest (for example, protection of computer software, the role of industrial property in the protection of consumers). The budget allocates specific amounts for each of the corresponding activities that take different forms: meetings (usually with participants appointed by governments sitting together with participants appointed by interested non-governmental organizations), courses, seminars, individual training, study missions, surveys, publications, etc. The draft program and budget is first considered by the WIPO Budget Committee (a Committee which presently has 14 States as members and whose members are elected by the WIPO Coordination Committee), and later by the Paris Union Executive Committee and the WIPO Coordination Committee, as well as by the Paris Union Assembly, which is sovereign in determining both the program and the budget of the Paris Union. More is said about these questions, particularly, the development of the expenses and contributions, under “Finances of the Union,” below. The final accounts of the Paris Union are established by the Director General, audited by external auditors and placed by the Director General before the Assembly for approval.

“(vii) adopt the financial regulations of the Union.” The financial regulations are not those of the Paris Union alone but are common to all Unions (and WIPO proper) administered by WIPO. From time to time, they are revised to respond to changing circumstances and when they are, the changes are, as far as the Paris Union is concerned, adopted also by the Assembly.

“(viii) establish such committees of experts and working groups as it deems appropriate to achieve the objectives of the Union.” Most of these are *ad hoc*: they are established by virtue of appropriate provisions in the program, hold one or several sessions and, once their task is accomplished, go out of existence.

“(ix) determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers.” For the 1983 session of the Assembly the situation was as follows: 12 countries members of the Paris Union but not members of the Assembly of that Union (by virtue of Article 13(6)), 17 countries members of WIPO not members of the Paris Union, 12 intergovernmental organizations, and 34 interna-

tional non-governmental organizations were invited to attend the meetings of the Assembly as observers.

“(x) *adopt amendments to Articles 13 to 17.*” This power has been made use of so far once, namely in 1979, when the Assembly decided to amend Article 13(2)(a)(vi) and (7)(a) and Article 14(6)(a)(ii) and (iii), so as to make biennial, instead of triennial, its ordinary sessions and the budget of the Paris Union.

“(xi) *take any other appropriate action designed to further the objectives of the Union.*” The objectives of the Union are not stated in any detail in the Convention but Article 1(1) says that the Union, constituted by the Convention, is one “for the protection of industrial property.” The creation of means for cheaper, simpler and more efficient protection is thus doubtless among the objectives of the Union. Such objectives may be achieved, for example, by the adoption of recommendations to the member States of the Paris Union or of special agreements under Article 19, and the preparations for and the holding of diplomatic conferences for adopting such special agreements would certainly qualify as “appropriate action” under this item. The Budapest Treaty, of April 28, 1977, on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, is an example of such a special agreement.

“(xii) *perform such other functions as are appropriate under this Convention.*” Examples of such functions are the adoption of its own (the Assembly’s) rules of procedure (Article 13(8)), the establishment of the details of the rules governing the election of the members of the Executive Committee (Article 14(5)(c)), the determination, in the case where a country is in arrears in the payment of its contributions, whether that country may nevertheless exercise its right to vote on the ground that the delay in payment is due to exceptional and unavoidable circumstances (Article 16(4)(e)), the fixing of the proportion and terms of payment for each country in respect of the working capital fund (Article 16(6)(c)), and the designation of the external auditors (Article 16(8)).

“(xiii) *subject to its [the Assembly’s] acceptance, exercise such rights as are given to it in the Convention establishing the [World Intellectual Property] Organization.*” The WIPO Convention gives certain rights to the Assembly of the Paris Union in connection with the appointment of the Director General of WIPO, the assuming by WIPO of the administration of certain international agreements, any transfer of the headquarters of WIPO outside Geneva, and any amendment of the WIPO Convention (WIPO Convention, Articles 6(3)(g) and 17(2)).

Sessions. By March 20, 1983, the date of the centenary of the Paris Convention, the Assembly has held seven sessions. Five were ordinary and two were extraordinary. The ordinary sessions took place in 1970, 1973, 1976, 1979 and 1981, whereas the extraordinary sessions took place in 1980 and 1983. They were all held in Geneva.

Conferences of Representatives

First Occurrence in the Paris Convention and Present Membership. As already stated, Conferences of Representatives are first mentioned in the 1958 (Lisbon) Act of the Paris Convention, and they are no longer mentioned in the subsequent Act, that of 1967 (Stockholm). This does not mean, however, that Conferences of Representatives were not convened after the entry into force, in 1970, of the 1967 (Stockholm) Act. Conferences were convened twice before 1970, namely in 1964 and 1967, and, since the entry into force of the 1967 (Stockholm) Act, the same number of times and at the same time as the Assembly of the Paris Union. The meetings of the latter Conferences were generally joint meetings with the meetings of the various sessions of the Assembly.

The Conferences of Representatives are conferences “of all countries of the Union” (1958 (Lisbon) Act, Article 14(5)(a)), and to Conferences of Representatives held before 1970 all the countries members (at that time) of the Paris Union were, indeed, invited.

Since the existence of the Assembly, countries members of the Paris Union members of the Assembly are no longer invited to the Conferences of Representatives (but only to the sessions of the Assembly), and, consequently, only countries members of the Paris Union that are not members of the Assembly—because they have not yet accepted at least the administrative clauses of the 1967 (Stockholm) Act—are invited to the Conferences of Representatives. On March 20, 1983, the date of the centenary of the Paris Convention, there were 12 such countries, namely, Cyprus, the Dominican Republic, Haiti, Iceland, Iran, Lebanon, New Zealand, Nigeria, San Marino, Syria, Tanzania and Trinidad and Tobago. Unless those of the said countries that are bound by the 1958 (Lisbon) Act waive the application of the pertinent provision, Conferences of Representatives will have to be convened also in the future, as long as all of the said countries have not accepted at least the administrative clauses of the 1967 (Stockholm) Act.

Tasks. Conferences of Representatives were, when instituted in 1958, a bold innovation. Until then, the Union had no institutional means to fix the (maximum) amount of yearly contributions

outside a conference of revision. Any Conference of Representatives is empowered to "modify, by unanimous decision, the maximum amount of the expenditure of the International Bureau" (1958 (Lisbon) Act, Article 14(5)(b)), provided the Conference of Representatives meets as a Conference of "Plenipotentiaries" (*ibid.*). "Modify" means to modify the amount fixed in the Convention itself (120,000 + 20,000 Swiss francs per annum according to Article 13(6) and (7) of the 1958 (Lisbon) Act). Since 1970, such "modification" is made by the Conference of Representatives, meeting as a Conference of Plenipotentiaries, by reference to the amount decided upon by the Assembly of the Union.

Otherwise, each Conference of Representatives has two objectives or tasks: "to draw up a report on the foreseeable expenditure of the International Bureau for each three-year [beginning with the 1980-1981 biennium, two-year] period to come and to consider questions relating to the protection [*sauvegarde*] and development of the Union" (1958 (Lisbon) Act, Article 14(5)(a)). The first is, in practice, the same as the budget adopted by the Assembly. The second corresponds to what, in respect to the Assembly, is called dealing with "matters concerning the maintenance and development of the Union."

The Executive Committee

First Occurrence in the Paris Convention and Membership. The Executive Committee is a sub-organ of the Assembly: "The Assembly shall have an Executive Committee" says Article 14(1) of the 1967 (Stockholm) Act of the Paris Convention. Thus, it is an organ which, like the Assembly, started functioning in 1970 and had no precursor before that time.

The Executive Committee consists of countries elected by the Assembly from among countries members of the Assembly and, *ex officio*, of Switzerland (Article 14(2)(a)). The number of countries members of the Executive Committee corresponds to one-fourth of the number of countries members of the Assembly (Article 14(3)). On March 20, 1983, the date of the centenary of the Paris Convention, the Executive Committee had 20 elected members and Switzerland as *ex officio* member. The 20 elected members were Algeria, Argentina, Austria, Brazil, Cuba, Egypt, Germany (Federal Republic of), Ghana, Hungary, Italy, Japan, Kenya, Philippines, Poland, Portugal, the Soviet Union, Uganda, the United Kingdom, the United States of America and Uruguay.

Representation and Voting. As already stated, the members of the Executive Committee are countries. Each country member of the Executive

Committee has one vote (Article 14(8)(a)). Each country member of the Executive Committee is represented by one delegate, and each delegate may represent, and vote in the name of, one (namely, its own) country only (Article 14(8)(c)). One half of the members constitute a quorum, and all decisions are made by a simple majority of the votes cast (Article 14(8)(b) and (c)).

With respect to matters which are of interest also to other Unions administered by WIPO, the Executive Committee must, before making a decision, hear the advice of the WIPO Coordination Committee (Article 14(6)(b)).

Mandate and Renewal. Each member of the Executive Committee serves from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly (Article 14(5)(a)). Thus, the mandate of the 20 countries listed above expires on October 4, 1983, the last day of that next ordinary session.

The Executive Committee is renewed every two years, at the biennial ordinary session of the Assembly. Members may be re-elected but only up to a maximum of two-thirds of its members (Article 14(5)(b)).

The Executive Committee meets in ordinary session once a year (see Article 14(7)(a)).

Tasks. Article 14(6)(a) of the 1967 (Stockholm) Act lists, in six points, the tasks of the Executive Committee. They are quoted hereafter, with a few comments in each case:

"The Executive Committee shall:

"(i) prepare the draft agenda of the Assembly." In fact, what the Executive Committee has done so far is to list items, a year ahead of each ordinary session of the Assembly, that should be included in the draft agenda of that ordinary session. If, however, events between the session of the Executive Committee listing the items and the session of the Assembly make it desirable that certain items so listed not be included, or certain items not so listed be included, in the draft agenda, the Director General presents a draft agenda modified accordingly. Furthermore, the draft agendas of the extraordinary sessions of the Assembly were, at least so far, prepared by the Director General rather than by the Executive Committee.

"(ii) submit proposals to the Assembly in respect of the draft program and triennial [now, biennial] budget of the Union prepared by the Director General." In fact, and so far, this has been treated as a mere formality since the draft program and budget are presented on the same day, at the same time, to the Assembly and the Executive Committee, and the Assembly proceeds, in fact, with the consideration of the draft program and budget without any substantive proposals coming

from the Executive Committee.

“(iii) approve, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General.” This provision applied until 1979. In that year, the omission of this provision was decided and, although the corresponding amendment has not yet entered into force, the application of the provision was discontinued. As already noted, the Union now has neither a triennial budget nor yearly budgets but a biennial budget.

“(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts.” The periodical reports of the Director General were until 1979 and are still considered separately by the Executive Committee when it meets in an ordinary session in a year in which the Assembly does not meet in an ordinary session. But otherwise, and for the reasons stated in connection with item (ii), above, such reports, in fact, have so far gone direct to the Assembly. The same was true for the yearly audit reports on the accounts until 1979. Since 1979, a complete audit report is issued for the budgetary biennium only after the biennium is over.

“(v) take all the necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly.” So far, no such measures have appeared necessary and no such measures have been taken by the Executive Committee.

“(vi) perform such other functions as are allocated to it under this Convention.” There are two such functions expressly mentioned in the Convention: cooperation in the preparation of conferences of revision of the substantive provisions of the Convention, and the right to initiate amendments to the administrative clauses of the Convention (see Articles 15(7)(a) and 17(1)).

The International Bureau

First Occurrence in the Paris Convention and the Evolution of the Bureau. In the history of the Paris Union, one has to distinguish between three “International Bureaus” (a designation in vogue in the last century for the permanent secretariats of intergovernmental organizations): the International Bureau of the Paris Union, the United International Bureaus and the International Bureau of WIPO.

The first is the International Bureau of the Union for the Protection of Industrial Property (*Bureau international de l'Union pour la Protection de la propriété industrielle*), mentioned in the

original (1883) text of the Paris Convention. As already stated, that text says that “an international office (*office*) shall be organized” under the said title and that it “shall be placed under the high authority of the highest Government authorities (*Administration supérieure*) of the Swiss Confederation” (Article 13). As equally already stated, the same text also provided that the International Bureau “shall function under the supervision [*surveillance*]” of the said highest Government authority of the Swiss Confederation.

The Swiss Federal Council first entrusted the work to be carried out in the name of the International Bureau of the Paris Union to the Federal Department (Ministry) for Commerce and Agriculture (*Département fédéral du commerce et de l'agriculture*) whose head, at that time, was Numa Droz, federal councillor (minister). This provisional arrangement lasted for approximately two years (1883 and 1884) and ended when the first employee of the International Bureau, Bernard Frey-Godet—with the title of Special Secretary (*secrétaire spécial*)—was appointed early in 1885. In 1887, the Berne Convention for the Protection of Literary and Artistic Works (signed in 1886)—hereinafter referred to as “the Berne Convention”—entered into force. That Convention also provided for the constitution of a Union (the International Union for the Protection of Literary and Artistic Works, commonly called “the Berne Union”) and, also under the supervision of the Swiss Federal Government, of an International Bureau for the Berne Union, namely, the International Bureau of the Union for the Protection of Literary and Artistic Works (*Bureau international pour la Protection des Œuvres littéraires et artistiques*). The Swiss Federal Council then appointed Henri Morel, a member of the *Conseil national suisse*, as Secretary General (*secrétaire général*) of the *United Bureaus* (*Bureaux réunis*). Thus, *de facto*, the International Bureau created by the Paris Convention became united with the International Bureau created by the Berne Union.

Thereby, the second kind of International Bureau, the United Bureaus—in the plural—came into existence. Its existence was formalized when the Swiss Federal Council adopted, on November 11, 1892, a decree (*arrêté*) in which the organization of the United Bureaus was fixed. The high supervision was to be exercised by the Swiss Federal Council, whereas for the less important matters the supervision was entrusted to the Federal Department (Ministry) of External Affairs (*Département fédéral des affaires étrangères*). At the same time, Henri Morel was appointed Director—the first one to have that title—of the United Bureaus.

This kind of Bureau, the United Bureaus, was not mentioned in any of the texts or Acts of the Paris Convention, which continued to speak about the International Bureau—in the singular—of the Paris Union. There is, however, an oblique reference to the United Bureaus in the 1967 (Stockholm) Act, where that Act says, in Article 15(I)(a), that the International Bureau of *WIPO* is a continuation of the International Bureau of the Paris Union “*united with the Bureau*” of the Berne Union (emphasis added).

This, the third kind of, International Bureau, the International Bureau of *WIPO*, started functioning in 1970 when the Convention Establishing the World Intellectual Property Organization and the 1967 (Stockholm) Act of the Paris Convention entered into force. However, the first and second kinds of International Bureaus did not, at the same time, altogether stop existing. They continue, at least in theory, for the purposes of the countries members of the Paris Union that have not yet become members of *WIPO*. This idea is expressly stated in the transitional clauses of the said Act in the following terms: “As long as all the countries of the [Paris] Union have not become members of the Organization [*WIPO*], the International Bureau of the Organization [*WIPO*] shall also function as the Bureau of the [Paris] Union, and the Director General [of *WIPO*] as the Director of the said Bureau [of the Paris Union]” (Article 30(3)). In practice, however, the situation is that the Swiss Government no longer exercises, since 1970, its supervisory functions and the Director General of *WIPO* no longer uses his title of Director of the International Bureau of the Paris Union, although, as already stated, there are still some countries (twelve on March 20, 1983, the date of the centenary of the Paris Convention) that are members of the Paris Union since a date preceding the creation of *WIPO* without having yet become members of *WIPO*. However, the fact that no practical use has been made so far of the quoted transitional provision does not mean that it could not be applied if any of the interested parties wanted it to be applied.

Three more observations before leaving the topic of the three kinds of Bureaus:

One is that the International Bureau of the Paris Union has frequently been referred to, in common parlance, as the “Secretariat” of the Paris Union and that the International Bureau of *WIPO* is sometimes referred to as the “Secretariat” of *WIPO*.

The second is that, up to 1960—when the United Bureaus moved from Berne to Geneva—it was quite common to refer to it (or them) as “the Berne Bureau” or “the Berne Bureaus.” This designation was merely based on the location of the Bureaus

and resulted in the curious situation that not only the Bureau of the Berne Union but also the Bureau of the Paris Union was referred to as a *Berne Bureau*.

The third observation is that, in the nineteen-fifties and nineteen-sixties, the United Bureaus were frequently referred to as the “United International Bureaus for the Protection of Intellectual Property” or, in an abbreviated form, “BIRPI” (corresponding to the initials of the French designation *Bureaux internationaux réunis pour la protection de la propriété intellectuelle*). There was no legal basis for either this designation or its abbreviation. They were probably invented by Jacques Secretan, Director of the United Bureaus from 1953 to 1963. Until then, the full name of the United Bureaus in usage was “United International Bureaus for the Protection of Industrial, Literary and Artistic Property.” This was obviously too long. Replacing the separate references to industrial property on the one hand and literary and artistic property on the other hand by the single adjective “intellectual” was an ingenious innovation, although, in the beginning, it was sometimes misunderstood as some believed that “intellectual property” was co-terminous with copyright. In any case, the expression “intellectual property” found its official recognition in the title of the World *Intellectual Property Organization*, when the Convention establishing *WIPO* was concluded at Stockholm in 1967.

Tasks. As far as the tasks of the first kind of International Bureau are concerned, the original (1883) text of the Paris Convention mentions four, namely, that the International Bureau:

(i) “shall centralize *information* of all kinds concerning the protection of industrial property and shall compile it in the form of general statistics which shall be distributed to all the Governments (*Administrations*)” (Final Protocol of 1883, emphasis added);

(ii) “shall make general *studies* of general usefulness of interest to the Union (*ibid.*; emphasis added);

(iii) “shall *edit (rédigera) a periodical (feuille périodique)*, in the French language, covering questions concerning the objects (*l’objet*) of the Union” (*ibid.*; emphasis added);

(iv) “must at all times be at the disposal of the members of the Union, to furnish them, on questions concerning the international service of industrial property, *specialized information* that they may require” (*ibid.*; emphasis added).

The definitions of those four tasks were slightly changed by some of the conferences of revision. In the latest Act, that of 1967 (Stockholm), they are worded as follows:

(i) “The International Bureau shall assemble

and publish *information* concerning the protection of industrial property" (Article 15(2); emphasis added);

(ii) "The International Bureau shall conduct *studies*, and shall provide *services*, designed to facilitate the protection of industrial property" (Article 15(5)); emphasis added);

(iii) "The International Bureau shall publish a monthly *periodical*" (Article 15(3); emphasis added);

(iv) "The International Bureau shall, *on request*, furnish any country of the Union with *information* on matters concerning the protection of industrial property" (Article 15(4)); emphasis added).

This enumeration of specific tasks is preceded, in the 1967 (Stockholm) Act of the Paris Convention, by a general statement to the effect that "administrative tasks concerning the [Paris] Union shall be performed by the International Bureau" and that that Bureau "shall provide the Secretariat of the various organs of the [Paris] Union" (Article 15(1)(a) and (b)). The administrative tasks include the convocation and servicing of meetings and the receiving and disbursing of funds. The main organs of the Paris Union are the Assembly and the Executive Committee.

In the following paragraphs, each of the four specific tasks mentioned above will be considered separately and some of the activities of the International Bureau under each of them will be briefly indicated.

General Information. The most important information assembled by the International Bureau relates to industrial property legislation and industrial property statistics.

From the very beginning, the International Bureau has been collecting the texts of treaties, statutes and other legislative or regulatory texts concerning industrial property both in their original version, and, where the original is other than French, and where a French translation exists, also the texts of such translations. Since 1955, English translations, where available, have also been collected. The collection is constantly checked in order to make sure that it is complete, that repealed texts are treated as such and that new items are integrated promptly after their entry into force. Although the member States of the Paris Union are supposed to promptly communicate to the International Bureau all new laws and official texts concerning the protection of industrial property (see Article 15(2) of the 1967 (Stockholm) Act), the International Bureau regularly writes to the competent administrations of those States—and also to the administrations of non-member States—asking for the confirmation of information obtained from other than governmen-

tal sources or for a systematic review of the latest state of the information available in the International Bureau.

In 1983, there were over 30,000 texts, covering some 170 countries, in the collection of the International Bureau. Texts which are in force are kept separately from texts that have been repealed and which, therefore, have been put in the archives. The present collection consists exclusively of hard copies of the original texts but it is obvious that it will soon have to be converted into a collection fit for electronic data processing.

The most important texts—and these include in any case the patent laws, the trademark laws and the industrial design laws of all countries (whether members of the Paris Union or not)—have been published, in French, since 1885, in the monthly periodical *La Propriété industrielle*, and in English, between 1956 and 1961, in the *Industrial Property Quarterly*, and, since 1962, in the monthly periodical *Industrial Property*. Where no French or English translations are available, the International Bureau prepares the translations; where such translations are available from outside sources, the International Bureau generally checks their correctness. The number of legislative texts thus published before 1983 in French is estimated to be around 3,000 and that in English around 600. Some of these texts are the consolidated versions of a basic text amended several times, the consolidation being done by the International Bureau. Since 1976, the texts have been published in a form that allows their insertion in a loose-leaf collection.

The collection of yearly statistics on patents granted and trademarks registered in each country started soon after the creation of the Paris Union and the first statistics published appeared in the January 1885 issue of *La Propriété industrielle*. The statistics became gradually more detailed and covered more and more countries. By 1964, they became too voluminous for publication in the periodicals and between 1964 and 1971 they were published as special annexes, whereas since 1972 they have been published in separate volumes. By 1983, they have become very detailed indeed: they cover practically all the countries of the world (whether members of the Paris Union or not) and cover not only patents, trademarks and industrial designs, but also inventors' certificates, utility models and whatever other titles of protection exist in any country. Wherever possible, separate figures are given for applications and grants or registrations, and a breakdown by domestic and foreign (distinguishing between the various countries) applicants or beneficiaries is given. The data are furnished, once every year for the preceding year, by the industrial property office of each country, through replies to a questionnaire prepared and

sent to it by the International Bureau. The questionnaire has been improved almost every year. Since 1971, the data have been stored in computers and, since 1975, the statistics are published in two forms: a complete edition and an abridged one. For the year 1981, the first comprised 388 printed pages, whereas the second comprised 45 printed pages.

In the framework of its information tasks, the International Bureau maintains a library—essentially on legal subjects—in which it collects books dealing with industrial property law, periodicals that exclusively or frequently carry articles on industrial property law, and separate items (e.g., an article on industrial property law extracted from a periodical not subscribed to by the library). They are all catalogued, and a monthly list of new acquisitions and selected articles is widely circulated in the world (in 1982, to 200 addresses in 85 countries). The library of the International Bureau is doubtless the oldest specialized library in the field, and its collection is probably among the most complete that there is. On March 20, 1983, the date of the centenary of the Paris Convention, it contained some 35,000 volumes of books and 15,000 volumes of periodicals and it was the recipient of 900 titles of periodicals. This is about ten times more than what it had 23 years earlier (in 1960) when the library, as part of the International Bureau, was moved from Berne to Geneva. The library is also the center of the printed archives of the International Bureau. Approximately 65 percent of the holdings deal with industrial property law, whereas the rest deals with copyright law or general legal subjects. The library has a reading room open to the public, which was visited by 200 readers in 1960 and 2,100 readers in 1982.

As a tool for its information tasks, the International Bureau has prepared multilingual glossaries of terms used in industrial property law. In the late nineteen-seventies, it published them in the following versions: English-French-Spanish-Arabic, Portuguese-French-English, Chinese-English-French, Russian-English-French, German-English-French.

Studies. The International Bureau has been conducting studies in the field of the law of industrial property from the very beginning. The studies have two principal aims: one is to call attention to the desirability of changes at the national level or in international relations because of changing social, economic or technological circumstances; the other is to analyze and explain changes that have been effected in national laws and international treaties.

Changing social and economic conditions are making changes necessary particularly in the legislations of developing countries. The Interna-

tional Bureau has been studying how to meet best those needs, and among the important results of those studies are the preparation and the publication of model laws for developing countries (see below). Changing social and economic conditions prompted the International Bureau to study the impact of industrial property on the interests of consumers. Changing technological conditions made studies desirable, for example, in the field of the legal protection of microbiological inventions, computer software and integrated circuits. The studies are carried out by the staff of the International Bureau, with or without the help of meetings of specialists, governmental or non-governmental. Their results are reflected in publicly available documents, in articles in the periodicals of the International Bureau or in separate publications of that Bureau. During the past 98 years, hundreds of articles commissioned by the International Bureau and written by specialists from scores of different countries have been published in the said periodicals.

As far as the analysis and explanation of the meaning of, or changes in, national laws, including the analysis of court decisions, are concerned, they are primarily the subject of articles published in the periodicals of the International Bureau. Almost 1,000 such articles have been so published so far. They were mostly written by specialists of the countries concerned. From time to time, the International Bureau tries to give a general picture of the state of the national legislations on patents and trademarks by preparing synoptical tables which show—in a way to make comparisons easy—the solutions given to the most important questions in the different national laws at a given moment of history.

But as far as analysis and explanations are concerned, the International Bureau itself is the author of countless papers which explain proposed or existing treaties in the field of industrial property or proposed changes in such treaties or their regulations, if any. The preparatory documents of the various conferences of revision of the Paris Convention and the "Records" (*Actes*) of such conferences are among the most important examples of such published studies. They run into several thousands of pages. The establishment of proposals for new treaties administered by the International Bureau, or proposals for their revision, as well as commentaries on the texts adopted by diplomatic conferences or other assemblies sponsored by the International Bureau, are also among the studies carried out and published by that Bureau.

Services. The International Bureau provides many kinds of services and in a great volume in the field of industrial property. However, with the

exception of the services related to the communications of State emblems, etc.—provided for under Article 6*ter* of the Paris Convention—those services are not always clearly relatable to the Paris Convention. Naturally, services in the field of copyright and services under the special agreements are not relatable to the Paris Convention. By the latter, what is meant are the services rendered under the Patent Cooperation Treaty, the Madrid Agreement Concerning the International Registration of Marks and the Hague Agreement Concerning the International Deposit of Industrial Designs.

The very important services rendered in the field of development cooperation, where dealing with industrial property, may be considered as services rendered by the International Bureau under the Paris Convention and the WIPO Convention. The cost of the activities of the International Bureau in the field of development cooperation concerning industrial property is, and has been ever since such activities started 20 years ago, that is, in 1963, financed to a considerable extent from the budget of the Paris Union. The part of the expenses of the Paris Union devoted to development cooperation has been constantly increasing and by 1983 has reached over half of the total expenses of that Union. However, the development cooperation activities of the International Bureau in the field of industrial property are not only financed from the budget of the Paris Union but also from other sources. Funds from those other sources have also generally increased in the last years and, in 1983, are approaching the amount spent on development cooperation activities from the budget of the Paris Union.

Because of the considerable intellectual and financial contribution of the Paris Union, it seems to be only fair to mention, in an article dealing with the Paris Convention, the most important development cooperation activities—started 20 years ago—in the field of industrial property.

During the last ten years, the International Bureau organized the training—in industrial property law and administration, and in patent classification and information—of approximately 5,000 individuals coming from over 100 developing countries. Each trainee either received individual instruction for a few weeks in an industrial property office that has great experience in administering industrial property laws or participated in a collective training course, also of several weeks' duration. Since 1963, the year in which the first such course was organized, and before March 20, 1983, the date of the centenary of the Paris Convention, there were more than 100 courses or similar meetings, such as seminars, in the field of industrial property sponsored or co-

sponsored by the International Bureau, and they took place in the following 47 countries and three organizations: Algeria, Argentina, Australia, Austria, Barbados, Bolivia, Brazil, Cameroon, China, Colombia, Congo, Costa Rica, Cuba, Democratic People's Republic of Korea, Egypt, Fiji, France, Guinea-Bissau, Hungary, India, Indonesia, Iraq, Jamaica, Kenya, Malaysia, Mexico, Netherlands, Nicaragua, Oman, Panama, Peru, Philippines, Portugal, Qatar, Republic of Korea, Singapore, Soviet Union, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, United Arab Emirates, Venezuela, Viet Nam, Zimbabwe, *Bureau Benelux des Marques* (Brussels), *Centre d'études internationales de la propriété industrielle* (Strasbourg), the European Patent Office (The Hague).

During the same period, the International Bureau, with the help of meetings organized by it, wrote and published model laws, with commentaries, on the protection of inventions (1965 and 1980), trademarks (1967), designs (1970) and appellations of origin (1975), a Licensing Guide for Developing Countries (1977), a collection of lectures on The Importance of the Patent System to Developing Countries (1977), and an Industrial Property Glossary (1980). Most of the Model Laws were published in Arabic, English, French and Spanish, and the Licensing Guide exists so far in editions in Arabic, Chinese, English, French, Japanese, Portuguese and Spanish.

Monthly Periodicals. As already stated, *La Propriété industrielle* started as a monthly periodical with the January 1885 issue and, since then, has been published, without any interruption, even during the two world wars, so that, by the end of 1982, 1,176 issues were published. The number of printed pages was 104 in 1885, 240 in 1905, 268 in 1925, 152 in 1945, 300 in 1965, 400 in 1975 and 760 in 1982. The total number of printed pages during the 98 years between 1885 and 1982 is 25,188. *Industrial Property* started as a monthly periodical in 1962, and the total number of printed pages during the 21 years between 1962 and 1982 is 9,200. The number of subscribers, in 1982, to each of those two periodicals was 1,220 and 1,430, respectively.

Special Information on Request, Particularly Advice and Assistance to Developing Countries. Between 1963 and 1983, the International Bureau provided advice and assistance to the following countries, at the request of the Government of the country concerned, in establishing or improving their legislative and administrative infrastructures in the field of industrial property: Algeria, Angola, Argentina, Bahrain, Bangladesh, Barbados, Benin, Bolivia, Botswana, Brazil, Burma, Burundi, Cameroon,

Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Cuba, Democratic People's Republic of Korea, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Gabon, Gambia, Ghana, Grenada, Guatemala, Haiti, Honduras, Indonesia, Iraq, Ivory Coast, Jamaica, Jordan, Kenya, Lesotho, Libya, Madagascar, Malaysia, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Republic of Korea, Rwanda, Saint Lucia, Saint Vincent and The Grenadines, Saudi Arabia, Senegal, Sierra Leone, Singapore, Sri Lanka, Sudan, Suriname, Swaziland, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, Upper Volta, Uruguay, Venezuela, Viet Nam, Yemen, Zaire, Zambia, Zimbabwe. The International Bureau gave also advice in connection with the drafting of the Agreement Relating to the Creation of an African Intellectual Property Organization (OAPI), the Agreement on the Creation of an Industrial Property Organization for English-Speaking Africa (ESARIPO) and the Protocol relating to the latter and helped the said two organizations, and also the Federation of Arab Scientific Research Councils (FASRC), in establishing patent documentation and information services.

Official Languages. The original (1883) text of the Paris Convention provided that "The official language of the International Bureau shall be French" (Final Protocol of 1883, paragraph (6)). This provision was maintained until the conference of revision of 1958 (Lisbon), where it was replaced by the following text: "The French and English languages shall be used by the International Bureau in performing the tasks provided for in paragraphs (3) [general information services and the periodical] and (5) [special information on request]...[whereas] the conferences and meetings referred to in Article 14 [conferences of revision and "Conferences of Representatives"] shall be held in the French, English and Spanish languages" (1958 (Lisbon) Act, Article 13(2)(a) and (b)). The Paris Convention ceases to speak about the official languages of the International Bureau beginning with the 1967 (Stockholm) Act since, by virtue of that Act and by virtue of the WIPO Convention of 1967, the International Bureau of the Paris Union has been replaced by the International Bureau of WIPO. The WIPO Convention itself is silent on the question of official languages, presumably because of the need to allow flexible solutions. And, indeed, there has been a constant evolution since 1963: more and more languages are used in more and more fields by the International Bureau. By 1983, the situation was as follows. English and French

are generally used to the same extent by the International Bureau and in practically all its activities (correspondence, publications, working documents, interpretation in meetings, etc.). Spanish is also used in correspondence. Arabic, Russian and Spanish are used in many publications and documents and a substantial part of the meetings. Portuguese is used in an increasing number of publications. Some publications have been translated and distributed also in Chinese, German, Italian and Japanese. A voluminous commentary on one of the Conventions was translated and published in Hindi.

Finances of the Union

First Occurrence in the Paris Convention and the System of Contributions. The original (1883) text of the Paris Convention provides that the cost (*frais*) of the International Bureau of the Paris Union "shall be borne by the Governments (*Administrations*) of all the contracting States" (Article 13). In the Final Protocol of 1883, the so-called "class-and-unit system" of contributions—already in use in two other international Unions establishing Secretariats under Swiss supervision and founded a few years earlier—is also defined: there are six "classes" (I, II, III, IV, V and VI); a number of "units" are assigned to each class, namely, 25, 20, 15, 10, 5 and 3, respectively; the number of the countries belonging to each class is multiplied by the appropriate number of units, and the products of the multiplications are added; the amount of the effective expenses in each given year is divided by the total number of units and the resulting quotient is the amount of contribution to be paid per unit; the contributions were in the nature of reimbursement to the Swiss Confederation since the Swiss Confederation advanced the funds necessary for covering the expenses when they arose.

For example, the Management Report (*Rapport de gestion*) of the International Bureau of the Paris Union for 1887 shows that, the following number of countries having belonged in the classes indicated, the contributions of 29,484 Swiss francs were divided as follows:

4 countries in Class I give	4 x 25 =	100 units
1 country in Class II gives	1 x 20 =	20 units
2 countries in Class III give	2 x 15 =	30 units
1 country in Class V gives	1 x 5 =	5 units
3 countries in Class VI give	3 x 3 =	9 units
	Total	164 units

The amount of 29,484 francs divided by 164 units gives 180 francs per unit. Consequently, the amount to be paid by each country was as follows:

for a country in Class I,	180 x 25 =	4,500 francs
for a country in Class II,	180 x 20 =	3,600 francs
for a country in Class III,	180 x 15 =	2,700 francs

for a country in Class V. 180 x 5 = 900 francs
 for a country in Class VI. 180 x 3 = 540 francs

Choice of Class. For the first Contracting States, the Final Protocol of 1883 itself fixed the classes and fixed them as follows: Class I: Italy and France; Class II: Spain; Class III: Belgium, Brazil, Portugal and Switzerland; Class IV: Netherlands; Class V: Serbia; Class VI: Guatemala and Salvador.

The 1911 (Washington) Act stated for the first time the principle of free choice of class. It did so in the following terms: "Each Contracting State shall designate, at the time of its accession, the class into which it wishes to be placed (*rangé*)" (Article 13). The 1958 (Lisbon) Act stated for the first time that a country may change class. It did so in the following terms: "Each country of the Union shall designate, at the time of its accession, the class into which it wishes to be placed. However, any country of the Union may later declare that it wishes to be placed in another class" (Article 13(9)). This rule, subject to small changes in wording, was repeated in the 1967 (Stockholm) Act, but the following two sentences were added to it: "If it [a country changing class] chooses a lower class, the country must announce such change to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the said session." (Article 16(4)(b)).

The 1967 (Stockholm) Act also created a new class. In that class, contributions are the lowest: it is Class VII, and the number of units corresponding to it is one.

On March 20, 1983, the date of the centenary of the Paris Convention, the countries members of the Paris Union belonged in the following classes for the purposes of computing their contributions:

Class I: France, Germany (Federal Republic of), Japan, Soviet Union, United Kingdom, United States of America (6).

Class II: None.

Class III: Argentina, Australia, Belgium, Brazil, Canada, German Democratic Republic, Italy, Netherlands, Sweden, Switzerland (10).

Class IV: Austria, Czechoslovakia, Denmark, Finland, Ireland, Mexico, Norway, Portugal, South Africa, Spain (10).

Class V: Greece, Hungary, New Zealand, Poland, Romania, Yugoslavia (6).

Class VI: Algeria, Bulgaria, Cuba, Cyprus, Dominican Republic, Egypt, Haiti, Iceland, Indonesia, Iran, Iraq, Israel, Kenya, Lebanon, Libya, Morocco, Nigeria, Philippines, Republic of Korea, San Marino, Syria, Tanzania, Trinidad and Tobago, Tunisia, Turkey, Zaire (26).

Class VII: Bahamas, Benin, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic People's Republic of Korea, Gabon, Ghana, Guinea, Holy See, Ivory Coast, Jordan, Liechtenstein, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Monaco, Niger, Senegal, Sri Lanka, Suriname, Togo, Uganda, Upper Volta, Uruguay, Viet Nam, Zambia, Zimbabwe (34).

Amount of the Contributions. The original (1883) text of the Paris Convention said that the expenses (*fraîs*) "may not, in any case, exceed, each year, a

total amount corresponding to an average of 2,000 [Swiss] francs for each Contracting State." The 1911 (Washington) Act fixed the total amount of the expenses at a maximum of 60,000 Swiss francs per year (Article 13). The 1925 (Hague) Act doubled that amount (resulting in 120,000 Swiss francs) and added that any conference of revision may, by unanimous decision, augment the said limit (see Article 13), which meant that the new limit need not be inscribed in the text of the Convention itself. Nevertheless, the 1934 (London) and 1958 (Lisbon) Acts repeated the 120,000 Swiss francs limit in the Acts themselves (and added a yearly amount of a maximum of 20,000 Swiss francs for certain extraordinary expenses). The conference of revision of 1958 (Lisbon), however, allowed the Conference of Representatives, established in the 1958 (Lisbon) Act, to modify, if sitting as a Conference of Plenipotentiaries, the maximum amount written into the Convention, provided the decision is unanimous.

It is to be noted that, until the entry into force of the 1967 (Stockholm) Act, the system was the following: the Contracting States did not vote a budget; they left it to the Swiss Government to authorize expenses; they merely fixed a ceiling for the expenses; the expenses actually incurred were paid—advanced—by the Swiss Government; once yearly accounts were established and the actual amount of the expenses for the preceding year was known, the Contracting States reimbursed them to the Swiss Government according to the class-and-unit system.

Although the 1967 (Stockholm) Act preserved the class-and-unit system for the purposes of calculating contributions, it changed the system in all other respects (see Article 16): the Assembly of the Paris Union has to vote a budget in advance of the financial exercise; the budget shows, in the expected income, the total amount of the contributions; the contributions are payable on the first day of the financial exercise. There is no maximum but a fixed amount. The expenses are paid by the International Bureau from its own funds (not from advances of the Swiss Government), and the contributions are owed to the International Bureau (not to the Swiss Government).

Other Financial Provisions. Article 16 of the 1967 (Stockholm) Act also introduced some of the other financial provisions usual for intergovernmental organizations: the need for a budget (paragraph (1)(a)); the enumeration of the possible sources of income (paragraph (3)); the possible loss of the right to vote for a country not having paid its contributions for two full years (paragraph (4)(e)); the constitution of a working capital fund (paragraph (6)); the auditing of the

accounts (paragraph (8)).

The 1967 (Stockholm) Act squarely faces the accounting problem flowing—and existing since the International Bureau of the Paris Union was united with the International Bureau of the Berne Union in 1893—from the fact that the International Bureau (of WIPO) is working not for the Paris Union alone but for several—in 1983, ten different—Unions, each of which has financial autonomy. The said Act provides, in particular, that “Expenses not attributable exclusively to the [Paris] Union but also to one or more other Unions [e.g., the Berne Union] administered by the Organization [WIPO] shall be considered as expenses common to the Unions. The share of the [Paris] Union in such common expenses shall be in proportion to the interest the [Paris] Union has in them.” (Article 16(1)(c)).

Evolution of the Contributions and the Expenses. From the beginning, the amount of the contributions has been established and the contributions have been payable in Swiss francs. The accounts of the International Bureau are also kept in Swiss francs. The yearly amount of the expenses of the International Bureau of the Paris Union, or on account of the Paris Union, was 1,210 Swiss francs in 1884 and doubled (exceeding the following amounts for the first time) in the following years: 10,000 francs in 1886; 20,000 francs in 1889; 40,000 francs in 1899; 80,000 francs in 1923; 160,000 francs in 1949; 320,000 francs in 1959; 640,000 francs in 1962; 1,280,000 francs in 1968; 2,560,000 francs in 1973; 5,120,000 francs in 1977.

The yearly amounts, in Swiss francs, of the expenses of the Paris Union and of the contributions to the International Bureau on account of the Paris Union are shown in the following table:

Year	Expenses	Contributions	Year	Expenses	Contributions
1884	1210	7961	1909	51634	44672
1885	5596	38770	1910	50711	44047
1886	15303	29047	1911	63001	48860
1887	11836	29484	1912	54764	45477
1888	17593	39967	1913	53371	49068
1889	21903	25277	1914	55354	47425
1890	26410	39735	1915	56290	50311
1891	22327	30917	1916	55115	48332
1892	26540	31162	1917	55040	48858
1893	36052	16209	1918	64394	58090
1894	33364	19994	1919	63860	56529
1895	35223	30871	1920	60440	52358
1896	32931	38850	1921	71357	120000
1897	39794	31564	1922	73816	110749
1898	38815	34481	1923	81539	74481
1899	44077	35541	1924	93085	84241
1900	45462	37486	1925	107109	93220
1901	45046	36824	1926	106018	94587
1902	43475	37120	1927	104004	93702
1903	43655	39373	1928	102265	92138
1904	49791	42238	1929	107676	96668
1905	47794	42096	1930	102732	91302
1906	46053	41035	1931	102694	92424
1907	48626	42611	1932	102016	91017
1908	48025	39734	1933	108184	98409

1934	107811	98005	1958	258964	214200
1935	108196	99211	1959	532616	473000
1936	92542	82893	1960	592046	545000
1937	89058	79669	1961	577473	521979
1938	93333	83972	1962	641643	527584
1939	87433	79071	1963	1226943	832913
1940	93765	84043	1964	960273	823790
1941	98638	89960	1965	996341	832674
1942	96829	89587	1966	1016316	860896
1943	97513	91673	1967	1182645	861718
1944	104692	97946	1968	1437408	1200000
1945	107119	100608	1969	1976318	1400000
1946	123129	113305	1970	2329847	1600000
1947	152737	139715	1971	2157961	2000000
1948	158619	144176	1972	2334282	2200000
1949	228559	205388	1973	2568706	2400000
1950	230024	203622	1974	3038066	2772000
1951	251570	214195	1975	3856419	3360000
1952	238503	214101	1976	4628906	4160000
1953	236545	214152	1977	5525210	5155000
1954	239135	214200	1978	6549781	6140000
1955	249875	214200	1979	7778684	6459000
1956	257780	214200	1980	8699355	7926000
1957	265182	214200	1981	9025097	7937000

Because of the gradual diminution of the purchasing power of the Swiss franc (or, for that matter, any other currency) during the last one hundred years, the above figures do not give a true picture of increase “in real terms” either of the expenses or of the contributions. Taking as an example the fact that a daily issue of a newspaper—the *Journal de Genève*—cost 10 Swiss cents in 1884 and one Swiss franc in 1982—the purchasing power of the amounts concerning the years after 1884 has become gradually lower so as to become in 1983 some ten times less than it would have been in 1883.

Plans for Changing the System of Contributions. The class-and-unit system is used not only in the Paris Union, the Berne Union, all the Special Unions under the Paris Union that have a contribution system and in WIPO but also in a few other intergovernmental organizations, for example, among the United Nations specialized agencies, in the Universal Postal Union and the International Telecommunications Union. On the other hand, most other specialized agencies and the United Nations itself have a contribution system in which countries have no choice but are assessed mainly on the basis of their relative wealth.

The first, and so far only, change in the contribution system of the Paris Union was made by the conference of revision of 1967 (Stockholm), which, as already stated, added one new class (Class VII) to the six classes (I, II, III, IV, V and VI) established in, and in existence since, 1883. That new class (with one unit) raised from 1:8.33 to 1:25 the ratio between the contribution class with the highest and the contribution class with the lowest amount of contributions. Accordingly, in 1982, any of the five countries belonging to Class I paid 4.57%, and any of the 30 countries belonging to Class VII paid 0.18% of the total contributions in the Paris Union.

The difference between the highest and the lowest contributions is less than in most other intergovernmental organizations. For example, in the United Nations, it is 25 to 0.01, or two thousand five hundred-fold. Therefore the question was raised, in the Assembly of the Paris Union (and other Governing Bodies), whether some further changes should not be introduced in the system of contributions.

The matter has been under consideration since 1977 but no decisions have been reached by March 20, 1983, the date of the centenary of the Paris Convention.

Amendment of the Administrative Clauses

First Occurrence in the Paris Convention; Analysis; Applications in Practice. As already stated, the provisions on the Assembly of the Paris Union, on the Executive Committee of that Assembly, on the role of the International Bureau of WIPO and the Director General of WIPO in respect of the Paris Union, and on the finances of the Paris Union—that is, Articles 13, 14, 15 and 16 of the 1967 (Stockholm) Act—are generally referred to as “the administrative clauses.” The conference of revision of 1967 (Stockholm), conscious of the fact that revising the text of a multilateral treaty in a conference of revision is a difficult and slow task, decided that there should be a simpler method of revising the said administrative clauses. That simpler method—which should also yield results faster—is provided for in Article 17 of the 1967 (Stockholm) Act and consists of the possibility of amending the said administrative clauses, including Article 17 itself, by the Assembly of the Union. The entry into effect of any such amendment requires that three fourths of the countries members of the Assembly (members, that is, at the date of the adoption of the amendment) notify their acceptance of it to the Director General. What is interesting is that, once the amendment enters into effect, it binds also those countries of the Assembly which were members of the Assembly at the said date and which have not notified their acceptance of the amendment. There is one exception to this rule: any amendment that increases the financial obligations of countries of the Paris Union binds only those countries which have notified their acceptance of the amendment. Any country that becomes a member of the Assembly after any amendment enters into force is automatically bound by it. All this is provided for in the said Article 17.

The possibility of amendment offered by the Article under consideration was made use of for the first—and so far only—time in 1979, when the Assembly decided to replace its triennial ordinary

sessions by biennial ordinary sessions, and the triennial budget and annual budgets by a biennial budget. For that purpose, the Assembly adopted amendments to Article 13(2)(a)(vi) and (7)(a) and Article 14(6)(a)(ii) and (iii). On March 20, 1983, the date of the centenary of the Paris Convention, the amendments had not yet entered into force (since the number of acceptances notified was still under the required three fourths) but, in fact, the amendments were applied from the moment they were adopted by the Assembly, and they were so applied by virtue of a corresponding unanimous decision of the Assembly. The said decision, however, provides for the application of the amendments only until the 1985 ordinary session of the Assembly. If, by that time, the required number of acceptances—54, since the number of the members of the Assembly was 71 when the amendments were adopted—will not have reached the former number, the matter will have to be reviewed. Amendments increasing the financial obligations have not so far been adopted by the Assembly.

The Locations of the International Bureau

The International Bureau has been in Switzerland from the very beginning: first in Berne, later and now (in 1983) in Geneva.

The first independent office consisted of two rented rooms in an apartment house at the address Amtshausgasse 1. Later, it was moved to Hirschengraben 8. This lasted from 1885 to 1892. In the latter year, the Bureau moved into an apartment of ten rooms at Kanonengasse 14. This was already an office of the United Bureaus. Six rooms were used for office purposes, the other four were the apartment of the janitor and for storage. All those premises were rented.

A big change occurred in 1904 when the United Bureaus moved into the *Helvetiastrasse* in Berne. They rented most of a four-storey house. The house number was 7.

The *Helvetiastrasse* house was the home of the Bureaus for 56 years, that is, until 1960.

In 1958, the construction of the first building belonging to the Bureaus started, in Geneva, on a piece of land between the avenue Giuseppe-Motta and the chemin des Colombettes. The address of that building is 32, chemin des Colombettes. It is some hundred meters from the Place des Nations, a large square on one side of which is the main entrance to the *Palais des Nations*, the headquarters (from 1936) of the League of Nations and, since 1945, of the Geneva Office of the United Nations.

The construction of the said building of the United Bureaus was completed in 1960, and the Bureaus moved from Berne to Geneva in 1960. It

is now referred to as "the BIRPI Building." Operations started there on July 20, 1960.

The BIRPI Building, when constructed, had four floors and an unequipped conference room. The size of the building is the same in 1983 as it was in 1960 but, in 1964, the (only) conference room, with some 60 seats, was furnished with simultaneous interpretation equipment. (In 1982, the conference room was dismantled.) The first telex equipment was installed in 1965. The first electric typewriters were purchased in 1964. In 1960, the BIRPI Building was too large for the needs of the International Bureaus and one of its floors was rented—from 1959 to 1969—to the European Free Trade Association (EFTA). When the WIPO Building (see below) was completed, two floors, in the same building, were, once again, rented out and are still occupied (in 1983) by tenants: one of them is the Permanent Mission of Nigeria, the other is the Permanent Mission of Saudi Arabia. On the ground floor, office space is rented (in 1983) to a bank and to a travel agency.

The volume of the BIRPI Building is 14,720 cubic meters. It has two small elevators, a garage for two automobiles and an apartment for a janitor.

All the rest is office space. The active collections of the library and the library's reading room are (in 1983) also in the BIRPI Building.

With the growth of the staff (see below) and the increased need for conference rooms for meetings, the BIRPI Building became too small and during the nineteen-seventies part of the staff had to be located in a temporary building constructed next to the BIRPI Building (1971 to 1978) and in several rented premises in various places in Geneva (56 and 58, rue de Moillebeau from 1968 to 1971; 20, rue de Lausanne from 1974 to 1976; 31, avenue de Budé from 1975 to 1978; the headquarters of the World Health Organization (1970, 1973-1974, 1976-1978); the headquarters of the International Labour Office (1978)).

The construction of a new, much larger building, was decided in 1970. The construction was completed in 1978; it was inaugurated, for the staff, on June 16, 1978, and, in a ceremony for the delegates of Governments, on September 24, 1978.

The new building is usually referred to as "the WIPO Building." Its address is 34, chemin des Colombettes. It is next to and connected with the BIRPI Building. On its other side, it is on the edge of the *Place des Nations*. Its volume is 82,315 cubic meters. It has 19 levels: 14 above ground and five under ground. Four of the underground floors are garages for 220 automobiles. It has (in 1983) three conference rooms: one, with 270 seats, is equipped for simultaneous interpretation in four languages; a second, with 70 seats, is equipped for

simultaneous interpretation in three languages; the third, with 50 seats, is without such equipment. There are six elevators. The top floor is a cafeteria open to delegates, the staff and the general public. The view from the top floor is circular: the Alps, including the *Mont Blanc* (the highest peak in Europe), are visible towards the South; the Lake of Geneva (*Lac Léman*) is visible towards the East; the Jura mountains are visible towards the North; and parts of the city of Geneva, including the Cathedral and the *jet d'eau*, with the *Salève* mountain on the horizon, are visible towards the West and the South.

The WIPO Building was planned, including its internal decoration, and its construction was supervised, by Pierre Braillard, a Swiss architect from Geneva, who was also the architect of the BIRPI Building. The WIPO Building is an arc-shaped building, almost completely covered by glass. The glass is blue: its tint changes with the color of the sky between pale and dark blue.

The main internal decorative element is the lobby, containing a *mur fontaine* and featuring a cupola. The *mur fontaine* consists of a wall of thousands of small marble blocks (each as big as a matchbox); from invisible openings, in the upper part, water trickles down the wall, changing the marble's illumination and causing gentle sounds of splashing in the basin to which the water eventually finds its way. The top of the cupola consists of a round window through which one can see the "tower," as the building is sometimes called. The cupola carries an inscription in Latin, text of the Director General of WIPO in 1978, reading as follows: "NASCUNTUR AB HUMANO INGENIO OMNIA ARTIS INVENTORUM-QUE OPERA. QUAE OPERA DIGNAM HOMINIBUS VITAM SAEPIUNT. REIPUBLICAE STUDIO PERSPICIENDUM EST ARTES INVENTAQUE TUTARI." The English translation of this text is the following: "Human genius is the source of all works of art and invention. These works are the guarantee of a life worthy of men. It is the duty of the State to ensure with diligence the protection of the arts and inventions."

This was the situation on March 20, 1983, the date of the centenary of the Paris Convention. By that date, gifts from the Governments of the following countries and organizations decorated the lobby or other parts of the WIPO and BIRPI Buildings:

Australia: "Landscape," oil painting by David Preston, and "The Beach," oil painting by John Maudson; *Brazil*: design of the WIPO gardens by Burle-Marx; *Bulgaria*: "Scientific and Technical Creativity," tapestry by Liliana Davidova Tchaouchèva; *Cameroon*: carved wood plaque; *Canada*: "Kalamavik," Eskimo tapestry by Aqluvak; *Chile*: "Aku-Aku of the Moon," marble sculpture by Lily Garafulic; *Congo*: two wooden statuettes; *Czechoslovakia*: "Praga Caput Regni," tapestry by Josef Müller, and Bohemian crystal glasses; *Egypt*: "Island of

Birds," tapestry by Achour Messehli; *Finland*: "The Glass Blowers," wood and bronze sculpture by Armas Huirri; *France*: one wooden table (French, sixteenth century), one wooden console (French, seventeenth century), two wooden chairs (French, seventeenth century), one Sèvres vase (nineteenth century), two Sèvres vases (twentieth century) and one tapestry (Goblain, twentieth century); *German Democratic Republic*: "Im Gedanken," marble sculpture by W. Arnold; *Germany (Federal Republic of)*: sacristy wardrobe and chest, wood (seventeenth century, North Germany); *Greece*: "Aristoteles" and "Alexander the Great," marble replicas of two busts by Nicolas Perantinos; *Holy See*: "Madonna del Granduca," mosaic replica of the painting by Raphael; *Hungary*: "Bluebeard's Castle," copper and enamel frieze for the main conference room by Kornélia Bokor; *India*: bronze statue of the Goddess Saraswathi; *Indonesia*: carved wooden screen from Bali; *Iran*: Isfahan carpets; *Ireland*: "Blue X Pinstripe," metal sculpture by Brian King; *Italy*: oil painting by Ippolito Scarsella and "Paolina," bronze sculpture by Vittorio di Colbertaldo; *Japan*: cloisonné enamel vase and "Pomegranate," ceramic plate by Kakikemon XIII; *Kenya*: three tribal shields and spears; *Netherlands*: rhododendrons and roses for the WIPO gardens; *Norway*: "Setting Sun," oil painting by Thore Heramb; *New Zealand*: "Mont Egmont," oil painting; *Poland*: "Centaur et Satyr," tapestry by Stefan Gakowski; *Portugal*: "Landscape of My Garden," tapestry by Cargalciro; *Romania*: mural mosaic for the BIRPI Building; *Soviet Union*: copy of "Sputnik," the first artificial satellite, and "Moscow Rejoices," tapestry by A.A. Shmakova; *Spain*: decorative pillars for the BIRPI Building, carpet and china set; *Sri Lanka*: silver tea service; *Sudan*: "Nubian Princess Protected by Madonna and Child," copy of twelfth century Copt wall painting; *Sweden*: "The Forest," tapestry by Elisabeth Hasselberg-Olsson; *Switzerland*: two paintings by Bruno Bacriswyl; *United Kingdom*: table and chairs for the Director General's dining room, etchings by E. Bowden and C. Penny; *United States of America*: a piece of the moon (lunar rock NASA No. 15,555,766); *Yugoslavia*: tapestry by Milica Zoric-Colakovic; *Zaire*: chairs, table, bookcase and statuettes of carved wood and pictures on copper and canvas; *International Association for the Protection of Industrial Property (AIPPI)*: vase and bowl manufactured by Lalique; *International Federation of Patent Agents (FICPI)*: blown glass sculpture by Susan Kemp; *International Federation of Inventors' Associations (IFIA)*: "Ploughman," statuette by S.N. Rajashingha; *International Literary and Artistic Association (ALAI)*: painting by André Lhote; *Japan Institute of Invention and Innovation (JIII)*: stone lantern for the WIPO gardens.

The Staff of the International Bureau

The staff of the International Bureau—and by "International Bureau" is meant, from 1893 to 1970, the United International Bureaus, and, since 1970, the International Bureau of WIPO—grew from one in 1885 to some 270 in 1983. The number of 10 was reached in 1904, 20 in 1929, 50 in 1960, 100 in 1970 and 200 in 1979. Only part of the staff works for the Paris Union: today and since the mid-nineteen-twenties, when the Madrid and Hague Unions started to occupy a substantial part of the staff, approximately one quarter. Before that, the proportion of the staff working for the Paris Union was higher.

The following list shows the number of staff for each of the years from 1884 to 1983:

1884: 0; 1885: 1; 1886: 2; 1887: 2; 1888: 4; 1889: 4; 1890: 4; 1891: 4; 1892: 5; 1893: 7; 1894: 7; 1895: 7; 1896: 7; 1897: 7; 1898: 7; 1899: 8; 1900: 9; 1901: 9; 1902: 9; 1903: 9; 1904: 10; 1905: 10; 1906: 10; 1907: 10; 1908: 10; 1909: 10; 1910: 10; 1911: 11; 1912: 12; 1913: 13; 1914: 14; 1915: 14; 1916: 14; 1917: 14; 1918: 14; 1919: 12; 1920: 11; 1921: 12;

1922: 14; 1923: 14; 1924: 17; 1925: 18; 1926: 18; 1927: 18; 1928: 18; 1929: 20; 1930: 21; 1931: 21; 1932: 20; 1933: 20; 1934: 20; 1935: 20; 1936: 19; 1937: 18; 1938: 17; 1939: 17; 1940: 17; 1941: 17; 1942: 17; 1943: 18; 1944: 20; 1945: 20; 1946: 20; 1947: 20; 1948: 22; 1949: 22; 1950: 22; 1951: 22; 1952: 22; 1953: 22; 1954: 27; 1955: 27; 1956: 28; 1957: 28; 1958: 27; 1959: 45; 1960: 50; 1961: 52; 1962: 52; 1963: 61; 1964: 63; 1965: 64; 1966: 68; 1967: 73; 1968: 87; 1969: 97; 1970: 110; 1971: 114; 1972: 131; 1973: 149; 1974: 147; 1975: 158; 1976: 171; 1977: 174; 1978: 188; 1979: 200; 1980: 244; 1981: 265; 1982: 262; 1983: 270.

Complete data concerning the nationality of the staff are available since 1962, when the staff consisted of 52 persons. In that year, the staff came from five different countries, namely, from Algeria 1, from France 6, from Italy 3, from Switzerland 39, and from the United Kingdom 3. In 1983, the staff consisted of 270 persons (118 men and 152 women), and came from 53 different countries, namely, Algeria 1, Argentina 2, Australia 1, Austria 2, Belgium 6, Bolivia 2, Brazil 1, Bulgaria 1, Burma 1, Cameroon 1, Canada 2, Chile 4, China 1, Colombia 1, Denmark 1, Egypt 3, France 73, German Democratic Republic 1, Germany (Federal Republic of) 12, Ghana 2, Greece 1, Honduras 1, Hungary 1, India 2, Indonesia 1, Iran 1, Ireland 2, Israel 1, Italy 7, Jamaica 1, Japan 3, Lebanon 1, Mauritius 1, Netherlands 5, Pakistan 1, Peru 2, Philippines 3, Portugal 3, Senegal 1, Singapore 1, Somalia 1, Soviet Union 7, Spain 4, Sri Lanka 4, Sudan 1, Sweden 2, Switzerland 57, Tunisia 1, United Kingdom 23, United States of America 9, Uruguay 1, Viet Nam 1, Yugoslavia 1.

On March 20, 1983, the date of the Centenary of the Paris Convention, the Director General was Arpad Bogsch, and the staff consisted of the following persons (the name of the country indicates the person's nationality, whereas an asterisk indicates that the person is a woman):

Deputy Directors General: Pfanner, Klaus (Fed. Rep. of Germany); Porzio, Marino (Chile); Kostikov, Lev (Soviet Union);

Director of Department: Masouyé, Claude (France); *Directors of Division*: Alikhan, Shahid (India); Baeumer, Ludwig (Fed. Rep. of Germany); Claus, Paul (Belgium); Curchod, François (Switzerland); Harben, Roger (United Kingdom); Keefer, Thomas (Canada); Ledakis, Gust (USA); Thiam, Ibrahim (Senegal);

Professionals of grade P5: Balceys, François (Switzerland); Bartels, Busso (Fed. Rep. of Germany); Blumstengel, Reiner (German Dem. Rep.); Bouchez, Daniel (France); Boytha, György (Hungary); Dondenne Bernard (France); Franklin, Jordan (USA); Ge Bo (China); Hansson, Bo (Sweden); Higham, Philip (United Kingdom); Howard, Paul (USA); Jaccard, Albert (Switzerland); Kadirgamar, Lakshmanathan (Sri Lanka); Lagess, Maurice (Mauritius); Maugué, Pierre (France); Moussa, Farag (Egypt); Pareja, Enrique (Argentina); Plotnikov, Youri (Soviet Union); Quashic-Idun, James (Ghana); Scherrer, Normando (Brazil); von Schleussner, Anna* (Fed. Rep. of Germany); Stojanovic, Mihailo (Yugoslavia); Trousov, Vitaly (Soviet Union); Werkman, Casper (Netherlands);

Professionals of grade P4: Achkar, Maurice (Switzerland); Andary, Raymond (Lebanon); Davila, Andres (Colombia); Davoudi, Bernard (Iran); Eckstein, Guy (Belgium); Erstling, Jay (USA); Frammery, Gilles (France); Grab, Nicolas (Uruguay); Idris, Kamil (Sudan); Iardi, Alfredo (Italy); Keherid, Aly-Bey (Algeria); Kinder, Claude (Switzerland); Lamb, John (United Kingdom); Lewenton, Michael (Fed.

Rep. of Germany); Machado, Bruno (France); Moujjevlev, Vladimir (Soviet Union); Nakamura, Akihiro (Japan); Pike-Wanigasekara, Indrani* (Sri Lanka); Qayoom, Maqbool (Pakistan); Rezouencko, Ervenc (Soviet Union); Roslov, Vladimir (Soviet Union); Rossier, Henri (Switzerland); Sagarminaga, Antonio (Spain); Sturges, Guy (United Kingdom); Watt, Richard (United Kingdom); Yu, Geoffrey (Singapore); Zarb, Mireille* (France);

Professionals of grade P3: Andrews, Patrick (United Kingdom); Daval, Anne* (France); Espinosa, Octavio (Peru); Gascou, Pierre (France); Gattone, René (France); Hashimoto, Yasushige (Japan); Hirai, Tamotsu (Japan); Hutchins, Keith (United Kingdom); Leder, Charles (Fed. Rep. of Germany); Lom, Helen* (USA); Nguyen Quang, Hao (Viet Nam); Simon, Françoise* (France); Swaminathan, Anuradha* (India); Tagnani, Giovanni (Italy); Tran-Thi, Thu-Lang* (Switzerland); Valarino, Henry (United Kingdom); Yossifov, Vladimir (Bulgaria);

Professionals of grade P2: Di Palma, Salvatore (Italy); Geiger, Erika* (Switzerland); Graf, Henri (Switzerland); Knotts, Mary Ann* (USA); Omokolo, Hilaire (Cameroon); Perez Fernandez, Ignacio (Spain); Stuckey, Joanne* (Australia); Terbois, Vincent (Switzerland);

General Service grade G7: Fankhauser, Adèle-Edith* (Switzerland); Grassioullet, Christian (France); Kaufmann, Marc (Switzerland); Olivet, Eliane* (Switzerland); Pugin, Henri (Switzerland); Unterkircher, Rudolf (Austria);

General Service grade G6: Bartolo, Odile* (Switzerland); Baud, Christiane* (Switzerland); Diamond, Andrée* (Switzerland); Devillard, Marie-José* (France); Edgar, Rosemary* (United Kingdom); Ellert, Veronika* (Fed. Rep. of Germany); Günther, Karin* (Fed. Rep. of Germany); Haim, Patricia* (United Kingdom); Huber, Jacqueline* (Switzerland); Keist, Laura* (Switzerland); Kraft, Nicole* (Switzerland); Lévy, Nicole* (France); Maisonneuve, Gérard (France); Milner, Claire-Lise* (Switzerland); Pidoux, Chantal* (Switzerland); Porret, Solange* (Switzerland); Potyka, Edith* (Austria); Schneider, Anne* (Switzerland); Schneuwly, Gabriel (Switzerland); Schweizer, Jacques (Switzerland); Simpson, Marjorie* (United Kingdom); Vitte, Claire* (France); Wetzel, André (Switzerland); Zeender, Sylla* (Switzerland);

General Service grade G5: Albanesi, Huguette* (Switzerland); Anticevic, Jean* (USA); Bassill, Susan* (United Kingdom); Berlioz, Jean-Pierre (France); Bernillon, Andrée* (France); Boulaire, Brigitte* (France); Cassiau, Elisabeth* (France); Claa, Carlos (Argentina); Cornish, Sheila* (United Kingdom); Corvaro, Pietro (Italy); Disch, Michèle* (France); Elson, Pauline* (United Kingdom); Fraccaroli, Elfriede* (Fed. Rep. of Germany); Grare, Paulette* (France); Grguric, Danicle* (France); Hänni, Liliane* (France); Ivanovsky, Monique* (France); Jendrysiak, Irène* (France); Julien, Eliane* (Switzerland); Kiriella, Travice (Sri Lanka); Leitao, Jaime (Portugal); Lister, Susan* (United Kingdom); Luctto, Piera* (Switzerland); Mathey, Maureen* (United Kingdom); Mazel, Ginette* (France); Mermet-Burnet, Madeleine* (France); Milcent, Marie-France* (France); Moelijker, Geertje* (Netherlands); Moyné-Picard, Fleurette* (France); Python, Danielle* (France); Rabbe, Gisèle* (France); Resca, Felice (Italy); Riond, Eliane* (Switzerland); Sagiati, Jean* (Switzerland); Schwarz, Linda* (Netherlands); Skowronski, Gilbert (France); Slater, Mary* (Ireland); Stassin, Thérèse* (Belgium); Symes, Lynda* (United Kingdom); Valvo, Jeannie* (France); Walker-Arthur, Mawunu* (Ghana); Wetzel, Paul (Fed. Rep. of Germany);

General Service grade G4: Adella, Giuseppe (Italy); Baigrie, Bernadette* (United Kingdom); Barxell, Chantal* (France); Bernard, Isabelle* (Switzerland); Berthelet, Maryvonne* (Switzerland); Carrier, Ragnhild* (Denmark); Ciclet, Germaine* (France); Davis, Véra* (Belgium); de Séves Rodrigues, Frederico (Portugal); Delaune, Denise* (France); Driessens, Pascale* (France); Enz, Irmgard* (Switzerland); Foinquinos, Caroline* (Israel); Giorgi, Giorgio (Italy); Grebing, Christa* (Fed. Rep. of Germany); Guette, Marie-Thérèse* (France); Guillaume, Janine* (Switzerland); Gummy, Danielle* (Switzerland); Hudry-Prodont, Marie-Noëlle* (France); Humbert, Renée* (Switzerland); Ianna, Rita* (France); Ibarra, Liliana* (Peru); Jaczynska, Blanche* (France); Jean-Prost, Agneta* (Sweden); Keller, Jacques

(Switzerland); Khadhraoui, Mohamed (Tunisia); Kippelen, Paulette* (France); Labory, Martine* (France); Lagnieu, Michel (France); Lindecker, Françoise* (France); Massetti, Catherine* (France); Meili, Marianne* (Switzerland); Menichini, Anne Maria* (Ireland); Montasser, Farid (Egypt); Morel, Michel (France); Nallet, Anne-Marie* (France); Obez, Nicola* (United Kingdom); Pillonel, Odette* (Switzerland); Polier, Barbara* (Switzerland); Priclaida, Josette* (Switzerland); Rauser, Boris (Switzerland); Roessli, Brenda* (Switzerland); Saint-Marcel, Béatrice* (France); Sanchez, Susan* (United Kingdom); Sinner, Martine* (Switzerland); Theunissen, Marie-Paule* (Belgium); Tirador, Ramon (Spain); Utiger, Claude (Switzerland); Vorburger, Peter (Switzerland);

General Service grade G3: Baroni, Monique* (France); Bastard, Christine* (France); Belaich, Nicole* (France); Bernard-Costilhes, France* (France); Brager, Dominique* (France); Briffod, Mireille* (Switzerland); Compoint, Michèle* (France); Costa, Luis (Chile); de la Fuente, Ximena* (Chile); Deif, Nadia* (Egypt); Desmaris, Christiane* (France); Dondenne, Muriel* (France); Emelyanova, Nina* (Soviet Union); Groppi, Arlette* (Switzerland); Guillon, Marie-Noëlle* (France); Hanberk, Doris* (Fed. Rep. of Germany); Herczog, Judith* (Netherlands); Jeffery, Anne* (United Kingdom); Jones, Arlette* (USA); Kalombratsos, Alkiviadis (Greece); Kotalawala, Munidasa (Sri Lanka); Lanier, Lydie* (France); Lausenz-Gris, Joelyne* (France); Llarina, Imelda* (Philippines); Mann, Françoise* (France); Marion, Andrée* (France); Martinez, Martine* (France); Menezes, Victoria* (United Kingdom); Mezière, Audrey* (France); Monllor, Pascal (France); Navas del Monte, Francisca* (Spain); Neusser, Antoni (stateless); Ortega, Amelia* (Philippines); Panchard, Julienne* (Switzerland); Perry, Anne* (France); Repond, Josefina* (Switzerland); Robert, Paul (France); Rozensztajn, André (Switzerland); Sacchi, Patricia* (France); Smith, Lynda* (Canada); Tulloch, Anna* (Jamaica); Van der Putten, Anahid* (Netherlands); Vasquez, Rodrigo (Chile); Verdan, Rémy (Switzerland); Zollet, Dominique* (France);

General Service grade G2: Anwar, Janiza* (Indonesia); Asseff, Patrick (France); Bourdin, Ursula* (Switzerland); Leignier, Christine* (France); Leitao, Julio (Portugal); Meighan, Barbara* (Honduras); Onkelinx, Cécile* (Belgium); Pary, Lazaro (Bolivia); Pillet, Annamma* (Switzerland); Shermarke, Marian* (Somalia); Tunley, Karon* (United Kingdom); Walenda, Anny* (France); Win, Pyu Pyu* (Burma); Zarraga, Edita* (Philippines).

Directors and Directors General

During the first decade of its existence, that is, between 1883 and 1893, the International Bureau was headed by persons not yet bearing the title of Director of the International Bureau.

During the subsequent 80 years, there were six who had the title of Director, while the seventh person started with the title of Director only but later (during the last three years of his term) he also had the title of Director General of WIPO. The eighth incumbent holds the post of Director General of WIPO and is also Director of BIRPI, although the latter title is no longer used in practice.

Before the International Bureau became that of WIPO in 1973, that is, during 90 years, the heads of the International Bureau were appointed by the Federal Council (roughly equivalent to a council of ministers) of the Swiss Confederation. They were all citizens of Switzerland, with the exception of the last one.

Several of them, before becoming Directors, played an important role in the public life of Switzerland: the first (Morel), was a former

president of the Swiss federal parliament; the second (Comtesse), was a former president of the Swiss Confederation; the fourth (Ostertag) was a former president of the highest Swiss federal court. Two came from the ranks of the International Bureau itself; the third Director (Röthlisberger) had been 34 years, and the fifth (Mentha) 24 years, with the International Bureau before they were appointed Directors. The sixth (Secretan), the seventh (Bodenhausen) and the eighth (Bogsch) were private lawyers in their former professional life, two of them (Secretan and Bodenhausen) having been also professors of law, one having been also a government lawyer (Bogsch), and two of them (Secretan and Bogsch) having also worked for other specialized agencies of the United Nations system of organizations.

The Directors General of WIPO, as has been already indicated, are not appointed by the Swiss Federal Council but are elected by the member States in the General Assembly of WIPO.

In the following pages, a few lines will be devoted to each of these eight persons.

Henri Morel was born at Claye (near Paris, France) on June 13, 1838, and he died at Bex (Canton of Vaud, Switzerland) on May 18, 1912. He was a citizen of Switzerland.

Morel was a lawyer by profession, was a judge at the tribunal of La Chaux-de-Fonds (Canton of Neuchâtel) and had an important career as a politician. He was a member of the Swiss federal parliament as deputy to its lower house, and, towards the end of his political activity, he was elected president of the said house of parliament.

He entered the service of the United Bureaus on January 1, 1888, with the title of Secretary General but, since there was no Director and he headed the Bureaus, he was, from that date, *de facto* Director. He received the title of Director on January 1, 1893. He retired on March 31, 1912, six weeks before his death. Thus, he was the chief executive of the United Bureaus for 24 years, between the ages of 50 and 74.

He was the man who really started the United Bureaus. He played a very important intellectual role in the preparation of, and negotiations in, the conferences of revision of the Paris Convention held in Brussels in 1897 and 1900 and the conferences of revision of the Berne Convention held in Paris in 1896 and in Berlin in 1908. He was the *spiritus rector* behind the first two Special Agreements of the Paris Union, both concluded in the diplomatic conference held in Madrid in 1891, namely, that for the Repression of False and Deceptive Indications of Source on Goods, and that for the International Registration of Marks. The latter was the first international registration treaty; not only has it preserved its initial vitality but operations under it have increased during its—so far—90 years of

existence.

There are no longer people who knew Morel personally, so that one must turn to a necrology, published in 1912 in *La Propriété industrielle* (page 72): "In the diplomatic conferences and in the numerous congresses in which he participated, everybody appreciated the clarity of his mind, his perspicacity, his profound knowledge and his *bonhomie*, his frankness and the confidence one could place in him ... He suffered [in the last years of his life] less from the illness that slowly destroyed him than from the thought that he would have to give up working. His wish was to die in harness, in the middle of his work, since nothing was more repulsive to him than the thought that he would have to end his life in the idleness of retirement."

Robert Comtesse was born at Valangin (Canton of Neuchâtel, Switzerland) on August 14, 1847, and he died at La Tour-de-Peilz (Canton of Vaud, Switzerland) on November 17, 1922. He was a citizen of Switzerland.

Comtesse studied law at Heidelberg and Paris, practiced law in La Chaux-de-Fonds (Canton of Neuchâtel) and had a brilliant political career, particularly as deputy (*conseiller national*) in the Swiss federal parliament (from 1883 to 1899), and as minister (*conseiller fédéral*) in the Swiss federal government (from 1899 to 1912), serving two terms (1904 and 1910) as president of the Swiss Confederation.

He was Director of the United Bureaus from April 1, 1912, to December 31, 1921, that is, for nine years, from the 65th year to the 74th year of his life.

During his tenure, most of Europe was engaged in the first world war (1914-1918), and thus the period was hardly propitious for developing the Paris Union. But the Paris Union had to be saved from the ravages that the war caused to international relations. This was accomplished, to a great extent, thanks to the "Arrangement Concerning the Conservation or the Restoration of Industrial Property Rights Affected by the World War," which was negotiated and signed, under Comtesse's tenure, in Berne on June 30, 1920.

The following passage from his necrology, published in 1922 in *La Propriété industrielle* (page 172), throws some light on the eminent personality of Comtesse: "His main qualities were ... an inexhaustible kindness showing an exceptional goodness, exquisite tact due to the remarkable penetration and versatility of his mind and to the prompt and sure evaluation of the realities and possibilities of a given situation, evaluation which was the fruit of a profound knowledge of men and things."

Ernest Röthlisberger was born at Berthoud (Canton of Berne, Switzerland) in 1858, and he died

in Berne on January 29, 1926. He was a citizen of Switzerland.

Röthlisberger studied theology, languages, history and philosophy in Berne, Montauban (France) and Paris. He taught at the University of Colombia in Bogota and in 1897 wrote and published a book on Colombia entitled "El Dorado." He was professor extraordinary at the University of Berne.

He entered the services of the International Bureau at about the same time as Henri Morel, that is, in 1888, almost at the very beginning of the existence of that Bureau. He was promoted to Deputy Director in 1917, and was appointed Director on January 1, 1922. He died in active service on January 29, 1926, as already indicated. Thus, he served the United Bureaus for 38 years, for the last four of which he served as Director, between the ages of 64 and 68.

Most of the activity of Röthlisberger, before he became Deputy Director, was devoted to the Berne Union. He was the first editor, and for 29 years, of the monthly periodical *Le Droit d'auteur*. He was the main representative of the International Bureau in the conference of revision of the Berne Convention held in Berlin in 1908 in the absence of the then Director (Henri Morel). As Director, his main task was the preparation of, and participation in, the conference of revision of the Paris Convention held in The Hague in 1925.

His necrology states that Professor Röthlisberger "was an authority in the field of literary property; ... he was a man of broad perspectives, animated by a humanitarian spirit; he was a fierce internationalist; ... he was methodical and went into the minutest details of all questions" (1926 *La Propriété industrielle* 26 and 27). The necrologist—one of his younger colleagues—writes that Röthlisberger "examined every piece of paper with extreme care and did not allow any important paper to leave without controlling it himself. With such methods, one succeeds in making great things but one ruins one's health ..." (*ibid.*).

Fritz Ostertag was born at Basle on May 7, 1868, and he died in Pully (Canton of Vaud, Switzerland) on May 6, 1948. He was a citizen of Switzerland.

Ostertag was doctor of laws and a judge. His career with the judiciary was crowned by being the president of the highest Swiss court, the *Tribunal fédéral*.

He was appointed Director of the United Bureaus on April 1, 1926, at the age of 58. He retired, after 12 years of service, on April 30, 1938, at the age of 70.

He was one of the main forces behind the conference of revision of the Paris Convention held in London in 1934 and the conference of revision of the Berne Convention held in Rome in 1928. He was

a prolific legal writer, and the United Bureaus' periodicals of the era contain many excellent articles by him. He also participated in the writing of the two pamphlets which commemorated the first 50 years of the Paris Union (published in 1933) and of the Berne Union (published in 1936).

Ostertag continued to write for the periodicals even after his retirement. Some of his writings gave a real impetus to what much later led to the Rome Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

His necrologist says that Ostertag "had a remarkable gift for legal creativity ... Mr. Ostertag was first of all a practician who was interested in the future and who boldly chose new directions, directions which corresponded to the expected needs of modern life to be served by the law. His work was that of a pioneer ... events never caught him by surprise; on the contrary, he knew how to provoke them" (1938 *La Propriété industrielle* 78).

Bénigne Mentha was born at Cortaillod (Canton of Neuchâtel, Switzerland) on January 2, 1888, and he died in Thoune (Canton of Berne, Switzerland) on May 16, 1974.

Mentha was a *licencié en droit* (holder of a law degree) and entered the services of the United Bureaus at the age of 24, as translator, in 1912. He retired after 41 years of service, interrupted once for a short period to be private secretary of Gustave Ador, then president of the Swiss Confederation. In 1922, he became secretary and, in 1938, Deputy Director.

He was appointed Director on May 1, 1938, and retired on May 1, 1953. Thus, he was Director for 15 years, between the ages 50 and 65.

The period was certainly not an easy one: the worldwide recession and the second world war occupied a great part of it.

Mentha was principally a scholar and a specialist in the law of copyright. It was during his tenure that the conference of revision of the Berne Convention of 1948 took place in Brussels. It was also during his tenure that, under the auspices of Unesco, the Universal Copyright Convention was adopted in 1952. The creation of a second multilateral treaty on copyright did not help the development of the Berne Convention. The responsibility is not only that of Mentha, far from it, since the adjustment of the Berne Convention that would have been necessary to save it from losing its unique position in international copyright relations was refused by the most influential among the governments which founded the Berne Convention.

He was "modesty itself" says an article, written by his Deputy Director when he retired (1953 *La Propriété industrielle* 103). "He did not like modern

working methods which necessitate frequent trips, unfavorable—in his opinion—for mental concentration without which nothing durable can be created. He preferred the contact of ideas to the contact of persons ...” (*ibid.*).

He was an excellent jurist and the style of his legal writings, whether in French or German, is of an exceptional clarity and elegance. Many articles, mostly unsigned but unmistakably recognizable as his—because of his unique style—prove this in the issues of the periodicals *Le Droit d'auteur* and *La Propriété industrielle* of several decades.

Jacques Secretan was born on May 13, 1897, in Etoy (Canton of Vaud, Switzerland), and he died in Dardagny (Canton of Geneva) on July 25, 1964, in the year following that in which he retired from his post as Director.

Secretan was a doctor of laws, attorney-at-law, and a law professor at the University of Lausanne. He served in various capacities in the International Labour Office in Geneva from 1923 to 1940 (*attaché de cabinet* of the Director General, member of the legal staff, legal counsel).

He was appointed Director of the United Bureaus—to which he gave the designation “BIRPI”—on May 1, 1953, and retired on January 15, 1963. Thus, he was Director for almost ten years, between the ages of 58 and 67.

He came to his new post with an extremely solid background and ideas of what a modern intergovernmental organization should be. Although the major event of his tenure, as far as the Paris Convention is concerned, was the conference of revision held in Lisbon in 1958, his main interest was the modernization of the Unions and their secretariats. He had very clear ideas of what should be done. In a speech given in 1956, he summarized it in the following way: “Three years of experience in the present Union [of Paris] and 30 years of experience in other associations of States have led me to the following conclusions: (a) Intellectual rights—whether in the field of patents and trademarks or in the field of copyright—must enjoy international protection just as much as any other rights mentioned in the Universal Declaration of Human Rights. For this effect, they must benefit from the support of their own and general intergovernmental organization (b) Such organization must be given its own jurisdiction—that is, intellectual rights—and organs that can represent it, and can represent the said rights, efficiently in international relations. (c) Finally, the said organization should be part of the great family of the United Nations” (1956 *La Propriété industrielle* 149).

These were prophetic words in 1956, and it took 18 years to accomplish what Secretan proposed. He did not live long enough to see the accomplishment

of all his wishes but he certainly took many practical steps that created an atmosphere propitious for carrying out his plans. He concluded working agreements with Unesco, the World Health Organization, the Council of Europe, the Organization of American States and others, which contributed towards placing BIRPI in a legal position similar to that of those organizations. He created and convened various committees consisting of representatives of governments members of the Paris and Berne Unions, which committees, step by step, and *de facto*, started to play the role vis-à-vis BIRPI that hitherto had been played exclusively by the Government of the Swiss Confederation. He persuaded the Swiss federal authorities to authorize the transfer of the seat of BIRPI from Berne to Geneva and persuaded the authorities of Geneva to accept BIRPI on their soil. The transfer took place in 1960. It had obvious practical advantages and had a symbolic value as well: moving into the international city par excellence that Geneva is, moving into a city in which the European headquarters (as it was called then) of the United Nations was and in which five other specialized agencies of the United Nations system of organizations already were could not but favor the realization of Secretan's plans.

His tenure saw also diplomatic conferences other than the one at Lisbon already mentioned. They were the conference of Nice (1957) establishing the International Classification of Goods and Services for the Purposes of the Registration of Marks, the conference of The Hague (1960) completely revising the 1925 (Hague) Agreement for the International Deposit of Industrial Designs, the conference of Rome (1961) establishing the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, and the conference of Monaco (1961) establishing an Additional Act to the Hague Agreement of 1925.

Secretan was a man of great culture and a man of the world. He liked flamboyance and knew that a great enterprise—in which he was engaged—needed public attention, and that public attention had to be created and cultivated. He travelled much and in style, and was a generous host. The bronze bust of Secretan, placed in the lobby of the BIRPI Building on March 20, 1983, the date of the centenary of the Paris Convention, bears the following inscription: “*Jacques Secretan, 1897 - 1964, Directeur des BIRPI de 1953 à 1963, Bâtitseur du siège des BIRPI à Genève.*”

George H.C. Bodenhausen was born in Utrecht (Holland) on July 11, 1905. He is a national of the Netherlands. He enjoyed good health and was in fine form at the centenary of the Paris Convention.

Bodenhausen studied law in the Netherlands

and practiced there as an independent attorney-at-law, specialized in intellectual property from 1930 to 1962. He was also professor at the University of Utrecht, teaching intellectual property law. His specialization in the field of intellectual property and his keen interest also in the international aspects resulted in the Netherlands Government's choosing him to be a delegate at the conference of revision of the Berne Convention held in Brussels in 1948, at the conference of revision of the Paris Convention held in Lisbon in 1958, at the 1960 Hague diplomatic conference for the revision of the Hague Agreement, and at the 1957 Nice diplomatic conference adopting the Nice Agreement, and to head the Netherlands delegation at the diplomatic conference, held in Rome in 1961, that adopted the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

He was appointed Director of BIRPI on January 16, 1963, and elected Director General—the first Director General—of WIPO on September 22, 1970. He retired from both positions on November 30, 1973. Thus, he was in the service of BIRPI, or in the service of BIRPI and WIPO, for a total of almost eleven years, between the 58th and 69th years of his life.

Those eleven years saw many important events in the lives of the Paris Union and the United International Bureaus of the Paris and Berne Unions and the new International Bureau of WIPO.

The diplomatic conference of 1967 (Stockholm) not only created WIPO but also revised all the treaties then administered by BIRPI. Among those treaties, the Berne Convention was revised not only in respect of its administrative clauses but also, and profoundly, in respect of its substantive provisions. It was the first revision which introduced special provisions for the benefit of developing countries. Bodenhausen devoted special attention to the part of the Stockholm conference that dealt with the revision of the Berne Convention. The texts agreed upon in Stockholm had to be soon revised again, and the diplomatic conference which accomplished that revision, in Paris in 1971, was also masterminded by Bodenhausen.

Other diplomatic conferences held under his tenure were those of Locarno in 1968, of Washington in 1970, of Strasbourg in 1971, of Geneva in 1971, and of Vienna in 1973, adopting, respectively, the Locarno Agreement Establishing an International Classification for Industrial Designs, the Patent Cooperation Treaty, the Agreement Concerning the International Patent Classification, the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, and the three

Vienna treaties, namely, the Trademark Registration Treaty, the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks and the Vienna Agreement for the Protection of Type Faces and their International Deposit.

It was during his tenure that BIRPI started to organize fellowships and training courses for developing countries. Bodenhausen opened the first such course ever held by the International Bureau. It was a course on copyright and took place at Brazzaville in the Congo in 1963.

During his tenure, 27 developing countries joined the Paris Union. The Soviet Union joined the Paris Union in 1965, after several official visits by Bodenhausen to Moscow and by Soviet representatives to Geneva.

The staff of BIRPI/WIPO also underwent a great change during the tenure of office of Bodenhausen: it grew from 52 to 149 and from comprising employees from six countries to employees from 32 countries. The English language was raised to a level equal to that of French as a working language. The construction of the WIPO Building started in May 1973. Bodenhausen, the professor and scholar, added a *chef d'oeuvre* to the many scientific writings he was author of in his pre-BIRPI life: he wrote, in 1968, his "Guide to the Application of the Paris Convention for the Protection of Industrial Property" which was later translated and published also in French, German, Japanese, Russian and Spanish.

The period called for the respect of solid legal traditions, erudition in the field of all branches of intellectual property law and diplomatic skill. Bodenhausen had all these, and had them to an exceptionally high degree. The International Bureau was extremely fortunate to have at its head the right man at the right time.

Arpad Bogsch was born in Budapest on February 24, 1919. He was then a national of Hungary; in 1959, he became a citizen of the United States of America.

Bogsch studied law and obtained law degrees in Budapest, Paris and Washington. He was a practicing lawyer in Budapest and a member of the Washington bar. He was a legal adviser in Unesco (Copyright Division) in Paris from 1948 to 1954 and in the United States Copyright Office in Washington from 1954 to 1962. In 1961 and 1962, he also worked in—as it was then called—the United States Patent Office.

He was a member of the delegation of Hungary at the conference of revision of the Berne Convention held in Brussels in 1948; he was a member of the delegation of the United States of America at the conference of revision of the Paris Convention held in Lisbon in 1958, at the

diplomatic conference of The Hague in 1960 revising the Hague Agreement Concerning the International Deposit of Industrial Designs and at the diplomatic conference of Rome in 1961 adopting the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. He was also a delegate of the United States of America to several BIRPI meetings, and negotiations sponsored by BIRPI, in 1961 and 1962, preparing the reforms that started to be implemented in 1963.

Bogsch joined BIRPI on March 1, 1963. He had the title of special adviser until July 15 of the same year, when he was appointed, by the Federal Council of the Swiss Confederation, Deputy Director of BIRPI. When the WIPO Convention entered into force, he was appointed Deputy Director General of WIPO (on September 22, 1970).

In November 1973, Bogsch was elected Director General of WIPO, a post that he has held since then and, in particular, held on March 20, 1983, the date of the centenary of the Paris Convention.

Since this article was written by him, it is left for others and for other occasions to recall his role as an official of BIRPI and WIPO.

Relations with WIPO and the United Nations

The first formal relations with the United Nations were relations between that organization and the United International Bureaux for the Protection of Intellectual Property (BIRPI). They were fixed in an exchange of letters effected in September and October 1964 and signed by G.H.C. Bodenhausen, then Director of BIRPI, and Philippe de Seynes, then Under Secretary-General for Economic and Social Affairs of the United Nations. The agreement provided for exchange of information and documentation and mutual representation at meetings (see 1964 *La Propriété industrielle* 210).

Some three years later, the World Intellectual Property Organization (WIPO) was established by a treaty entitled "Convention Establishing the World Intellectual Property Organization" that was adopted and signed in Stockholm on July 14, 1967, and entered into force on April 26, 1970. According to the rules of procedure of the Stockholm Diplomatic Conference, at least four fifths of the members of the Paris Union and at least four fifths of the members of the Berne Union had to vote for the adoption of the WIPO Convention. In fact, they voted unanimously for the adoption of the Convention Establishing WIPO. Thus, in a sense, WIPO is the creation of the Paris and Berne Unions.

The relations between WIPO on the one hand

and the Paris and Berne Unions on the other hand are regulated in the WIPO Convention, in the 1967 (Stockholm) Acts of the Paris and Berne Conventions and in the 1971 (Paris) Act of the Berne Convention.

As far as the Paris Union is concerned, and on the level of governing bodies, those relations are characterized by the fact that all States members of the Assembly of the Paris Union which are members of WIPO are members of the General Assembly of WIPO and that all States members of the Executive Committee of the Paris Union which are members of WIPO are members of the WIPO Coordination Committee (see WIPO Convention, Articles 6(1)(a) and 8(1)(a)).

As to matters of common interest to WIPO and the Unions, the WIPO Convention provides that the WIPO Coordination Committee shall "give advice to the organs of the Unions [including the Assembly of the Paris Union and the Executive Committee of that Assembly], the [WIPO] General Assembly, the [WIPO] Conference, and the Director General [of WIPO], on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization [WIPO], and in particular on the budget of expenses common to the Unions" (WIPO Convention, Article 8(3)(i)), whereas the 1967 (Stockholm) Act of the Paris Convention provides that "with respect to matters which are of interest also to other Unions [other than the Paris Union] administered by the Organization [WIPO], the Assembly [of the Paris Union] shall make its decisions after having heard the advice of the Coordination Committee of the Organization" (Article 13(2)(b)) and that "with respect to matters which are of interest also to other Unions [other than the Paris Union] administered by the Organization [WIPO], the Executive Committee [of the Assembly of the Paris Union] shall make its decisions after having heard the advice of the Coordination Committee of the Organization" (Article 14(6)(b)). Furthermore, "the Executive Committee [of the Assembly of the Paris Union] shall meet once a year in ordinary session upon convocation of the Director General, preferably during the *same period* and at the *same place* as the Coordination Committee of the Organization [WIPO]" (1967 (Stockholm) Act of the Paris Convention, Article 14(7)(a); emphasis added).

On the level of the chief executive and the secretariat, the situation is that "the Director General of the Organization [WIPO] shall be the chief executive of the [Paris] Union and shall represent the [Paris] Union," and that the "administrative tasks concerning the [Paris] Union shall be performed by the International Bureau [of

WIPO]" (1967 (Stockholm) Act of the Paris Convention, Article 15(1)(c) and (a), respectively).

There are no direct relations between the United Nations and the Paris Union, except that representatives of the United Nations are invited to sessions of the Assembly of the Paris Union and of the Executive Committee of that Assembly. But there are indirect relations, through the Director General of WIPO and the International Bureau of WIPO, on the basis of the agreement between the United Nations and WIPO, an agreement that has been in force since December 17, 1974. (Its entry into force was noted in a Protocol dated January 21, 1975, signed by Kurt Waldheim, Secretary General of the United Nations, and Arpad Bogsch, Director General of WIPO.) As a consequence of that agreement, on December 17, 1974, WIPO became a "specialized agency" in the United Nations system of organizations. The agreement "recognizes" WIPO "as a specialized agency and as being responsible for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it [WIPO], *inter alia*, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property in order to accelerate economic, social and cultural development..." (Article I of the said Agreement). One of the treaties administered by WIPO to which that Agreement refers, probably the most important among them, is the Paris Convention. Thus the competence of the Paris Union is also recognized by the United Nations.

PART III

HISTORY OF THE FINAL CLAUSES AND THE MEMBERSHIP OF THE PARIS CONVENTION

Conferences of Revision

First Occurrence in the Paris Convention. The original (1883) text of the Paris Convention provided that "This Convention shall be submitted to periodic revisions with a view to the introduction in it of improvements (*améliorations*) designed to perfect the system of the Union (*de nature à perfectionner le système de l'Union*). For that purpose, conferences shall be held successively in one of the contracting States, between delegates of the said States." (Article 14)

Present Text. Only minimal drafting changes have been made in the quoted provisions by the various conferences of revision. In the latest, the 1967 (Stockholm) Act, the corresponding provisions read as follows: "(1) This Convention shall

be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union. (2) For that purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries." (Article 18)

Decisions on When and Where to Hold Revision Conferences. In the original (1883) text of the Paris Convention, it was stated that the first conference of revision would take place in 1885 and that it would take place in Rome (see Article 14). The conference was actually convened with one year's delay, in 1886, and adopted some texts, but those texts were never ratified by any of the member countries.

The 1886 conference decided that the next conference of revision should be in Madrid in 1889. Once more, the conference was actually convened with one year's delay, in 1890. It also met for a second session, equally in Madrid, in 1891. The first two "special agreements" were adopted at that conference, namely, the Madrid Agreement Concerning the International Registration of Marks and the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, but the text that would have revised the Paris Convention has never entered into force.

The 1890/1891 conference accepted an invitation to hold the next conference of revision in Brussels but did not fix a date for it. The conference in Brussels held two sessions, one in 1897 and one in 1900. It adopted an Additional Act (*Acte additionnel*) to the original (1883) text of the Paris Convention. This went into effect in 1902.

The 1897/1900 conference accepted an invitation of the United States of America to hold the next conference of revision in Washington. The date was not fixed, and the conference actually met in 1911. It adopted the 1911 (Washington) Act, which went into effect in 1913.

The 1911 conference accepted the invitation of the Netherlands to hold the next conference of revision in The Hague. The date was not fixed, and World War I intervened. The conference met in 1925 and adopted the 1925 (Hague) Act, which went into effect in 1928.

The 1925 conference decided to hold the next conference of revision in London in the year of the 50th anniversary of the Paris Convention, that is, in 1933, but the conference was actually held only in 1934. It adopted the 1934 (London) Act, which went into effect in 1938. At the close of the 1934 conference, two Delegations took the floor to extend invitations for the next conference of revision, namely, the Delegation of Portugal and, immediately after it, the Delegation of Austria. It was decided to accept both invitations and hold the

next conference in Lisbon and the subsequent one in Vienna. As to the dates, it was decided that they would be fixed between the International Bureau and the Government of the host country after the usual consultations. World War II intervened. The conference of revision of Lisbon took place in 1958. It adopted the 1958 (Lisbon) Act, which went into effect in 1962. The invitation of the Austrian Government was, after all, not used for a conference of revision but for a conference which adopted three new Special Agreements. It took place in Vienna in 1973.

The next conference of revision was held in Stockholm, at the invitation of the Government of Sweden, after negotiations in various fora of the Paris Union. It was held in 1967 and adopted the 1967 (Stockholm) Act, which went into effect in 1970.

The conference of revision that started in 1980 and has not yet been completed in 1983 is the first conference of revision whose convocation was decided by the Assembly of the Paris Union. The decision was made in the 1979 session of the Assembly.

Preparations of the Conferences of Revision. The original (1883) text of the Paris Convention laid down the rule according to which the work of any conference of revision is prepared by the government of the country in which the conference is to take place and that, in that work, such government is assisted by the International Bureau (see Final Protocol of 1883, paragraph (6)). The same rule is repeated in the four subsequent Acts of the Paris Convention (see Articles 14 of the 1911 (Washington), 1925 (Hague), 1934 (London) and 1958 (Lisbon) Acts). The rule was changed by the conference of revision of 1967 (Stockholm): the preparations of the conferences of revision must be made by the International Bureau of WIPO, "in accordance with the directions" of the Assembly of the Paris Union and "in cooperation with the Executive Committee of that Assembly" (1967 (Stockholm) Act, Article 15(7)(a)). Furthermore, the 1967 (Stockholm) Act also codified the past practice in that it provides that "the International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision" (Article 15(7)(b)). The conference of revision that started in 1980 and has not yet been completed in 1983 was prepared according to this new rule, and the International Bureau made ample use of the said faculty of consultations.

Participation in the Conferences of Revision. Ever since the original text (1883) of the Paris Convention, revision conferences must be, and have been, conferences "between the delegates of the said countries [that is, the contracting States]"

(Article 14) or, what amounts to the same thing, "among delegates of the said countries [that is, the countries of the Paris Union]" (1967 (Stockholm) Act, Article 18(2)).

Other States have been invited to all revision conferences. They did not have the right to vote. But in some of the revision conferences, they were allowed to participate in the discussions and to propose amendments, albeit with some limitations. For example, in the conference of revision that started in 1980 and has not yet been completed in 1983, delegations of States not members of the Paris Union but members of the World Intellectual Property Organization (WIPO) or the United Nations are invited; they are members of the three Main Committees; their delegates may be elected vice-president of the Conference and vice-chairman of the Main Committees and any working groups; any of those delegations may—together with a delegation of a State member of the Paris Union—propose amendments.

As far as international intergovernmental and non-governmental organizations are concerned, the first ones to be admitted to participate were the Economic Committee of the League of Nations and the International Chamber of Commerce, respectively, at the conference of revision of 1925 (Hague). At the conference of revision of Lisbon (1958), the number of such organizations was more than a dozen, whereas at the conference of revision that started in 1980 and has not yet been completed in 1983, the numbers of intergovernmental and international non-governmental organizations invited as observers are 21 and 20, respectively. The intergovernmental organizations are the following: United Nations, International Labour Organization, United Nations Educational, Scientific and Cultural Organization, World Health Organization, General Agreement on Tariffs and Trade, African Intellectual Property Organization, Benelux Trademark Office and Benelux Designs Office, Council of Europe, Council for Mutual Economic Assistance, European Communities, European Patent Organisation, European Space Agency, Arab Industrial Development Organization, International Olive Oil Council, Industrial Property Organization for English-Speaking Africa, International Vine and Wine Office, Latin American Free Trade Association, Organization of African Unity, Organization of American States, Permanent Secretariat of the General Treaty on Central American Economic Integration, and the Secretariat of the Interim Committee for the Community Patent. The international non-governmental organizations are the following: Asian Patent Attorneys Association, Benelux Association of Trademark and Design Agents, Center for the International Study of Industrial Property, Com-

mittee of National Institutes of Patent (non-governmental) Agents, Council of European Industrial Federations, European Federation of Agents of Industry in Industrial Property, European Industrial Research Management Association, Institute of Professional Representatives Before the European Patent Office, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Inventors' Associations, International Federation of Patent Agents, International League Against Unfair Competition, International Olympic Committee, Licensing Executives Society (International), Pacific Industrial Property Association, Union of European Practitioners in Industrial Property, Union of Industries of the European Community, and United States Trademark Association.

Role of the Head of the International Bureau. The original (1883) text of the Paris Convention provided that the Director of the International Bureau be present in the meetings of the conferences of revision and participate in the discussions without the right to vote (*sans voix délibérative*) (Final Protocol of 1883, paragraph (6)). The same rule is repeated in the four subsequent Acts of the Paris Convention (see Articles 14 of the 1911 (Washington), 1925 (Hague), 1934 (London) and 1958 (Lisbon) Acts). The 1967 (Stockholm) Act provides that "the Director General [of WIPO] and persons designated by him shall take part, without the right to vote, in the discussions of these conferences [of revision]" (Article 15(7)(c)). This provision has been made use of in all conferences of revision.

Decisions of the Conferences of Revision. In the first session (1980) of the conference of revision that started in 1980 and has not yet been completed in 1983, the question of procedure that revealed a serious difference of opinion among member countries was whether decisions to revise (amend) the Paris Convention required a unanimous decision or not. The requirement of unanimous decision means that any country, alone, may prevent any amendment ("veto right").

When the fact that the question was a controversial one became obvious during the meetings preparatory to the conference of revision, it was generally agreed that it should be resolved in the rules of procedure of the conference of revision. Among the preceding conferences of revision, the rules of procedure of only two, namely, the two most recent ones (1958 (Lisbon) and 1967 (Stockholm)) dealt with the question. The rules of procedure of the first provided that "In conformity with the custom (*usage*) of the [Paris] Union, unanimity is required for the adoption of texts in

plenary session" (Rule 4(d)), whereas those of the second provided that "Adoption of any revision ... shall require that no State party to the [Paris] Convention ... vote against the revision ... in the final vote of the ... plenary meeting" (Rule 37(1)). Those defending a veto right mainly argued that the practice of all conferences of revision had been to recognize such a right, had become unwritten law and must be followed also in the conference in question. Those arguing that decisions could be taken even if some countries objected referred to the fact that the Berne Convention—the sister Convention—contained a provision requiring unanimity (whereas the Paris Convention did not contain such a provision) and that customary treaty law, in the absence of an express provision to the contrary, was that multilateral treaties can be changed by a majority. The matter was up for decision when the rules of procedure of the conference of revision were up for adoption. Opinions differed whether the adoption itself of the rules of procedure required unanimity or whether they could be adopted by a majority. In the end, the rules of procedure were adopted, although the Delegation of one of the member countries—the United States of America—objected to their adoption and questioned whether they were properly adopted. The same Delegation objected to the rule containing a possibility for decision on revisions by other than unanimity, and reserved its position concerning the legality of any revision that might be adopted by the conference of revision by making use of that possibility. So far, the conference of revision has made no use of the said possibility, which, in the rules of procedure, reads as follows: "The Conference of Revision, meeting in Plenary Session, shall endeavor to achieve final adoption of the Revised Text by consensus. However, if consensus cannot be attained, the final adoption of the Revised Text shall require a majority of 2/3, provided that the number of States voting against its approval shall not exceed 12 (twelve) ..." (Rule 36(1)).

Special Agreements

First Occurrence in the Paris Convention; Revisions. The original (1883) text of the Paris Convention provided that "It is understood that the High Contracting Parties reserve the right to make separately between themselves special agreements for the protection of industrial property, insofar as (*en tant que*) these agreements do not contravene the provisions of this Convention" (Article 15). The expression "High Contracting Parties" was replaced in the 1911 (Washington) Act by the expression "contracting countries" (Article 15) and in the later Acts by the

expression "countries of the [Paris] Union" (see Articles 15 of the 1934 (London) and 1958 (Lisbon) Acts, and Article 19 of the 1967 (Stockholm) Act), but otherwise the provision did not undergo any change.

Analysis and Present Situation. It is because of the terminology just indicated that treaties for the protection of industrial property, other than the Paris Convention, concluded between two or more States members of the Paris Union, are traditionally referred to as "special agreements (*arrangements particuliers*)"—and, if they create Unions, those Unions are traditionally referred to as "Special Unions"—and that the Paris Convention itself is sometimes referred to as "the general convention" or the "general agreement." The significance of the provision lies not so much in the freedom to conclude treaties—since that freedom goes without saying—but in the restriction it stipulates, namely, that any special agreement must not contravene the provisions of the Paris Convention.

It is not the purpose of the present article—concerned only with the Paris Convention at its one hundredth anniversary—to deal with the special agreements. It has to be recalled, however, in order to appreciate the impact of the Paris Convention, that during those hundred years, ten multilateral special agreements in the field of industrial property—in force in 1983—were concluded in diplomatic conferences prepared by the International Bureau.

Some of those special agreements created Special Unions, and those Unions are administered by the International Bureau.

The said special agreements made and make the international protection of various kinds of industrial property rights more secure, simpler and cheaper. There were ten such special agreements in force on March 20, 1983, the date of the centenary of the Paris Convention. They are the following:

in the field of patents, the Patent Cooperation Treaty (1970) and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977);

in the field of trademarks, the Madrid Agreement Concerning the International Registration of Marks (1891) and the Trademark Registration Treaty (1973);

in the field of indications of source, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891) and the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (1958);

in the field of industrial designs, the Hague Agreement Concerning the International Deposit

of Industrial Designs (1925) and;

in the field of classifications, the Agreement Concerning the International Patent Classification (1971), the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks (1957) and the Locarno Agreement Establishing an International Classification for Industrial Designs (1968).

Those five of the said ten treaties that were concluded before 1967 have so far undergone one or several revisions, including one in Stockholm in 1967, and those revisions, in the same way as the revisions of the Paris Convention, were to a great extent prepared by the International Bureau.

There are two further special agreements but they were not yet in force on March 20, 1983, the date of the centenary of the Paris Convention. Both were adopted in 1973. One is the Vienna Agreement for the Protection of Type Faces and their International Deposit; the other is the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.

Not all special agreements, within the sense of the Paris Convention, were concluded under the aegis of the International Bureau. There are half a dozen multilateral and a greater number of bilateral treaties concluded without any statutory role being played by the International Bureau, but those treaties too, if concluded between two or more members of the Paris Union, are "special agreements" of the kind referred to in the Paris Convention and must not contravene the provisions of the Paris Convention.

Disputes

First Occurrence in the Paris Convention; Analysis; Present Situation. A provision on the settlement of disputes was considered but was not adopted by the conferences of revision of 1925 (Hague), 1934 (London) and 1958 (Lisbon). It was the conference of revision of 1967 (Stockholm), which, for the first time in the history of the Paris Convention, succeeded in adopting such a provision, albeit with the possibility for any country to make a reservation thereto.

The provision is contained in paragraph (1) of Article 28 of the 1967 (Stockholm) Act and reads as follows: "Any dispute between two or more countries of the [Paris] Union concerning the interpretation or application of this [the Paris] Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country

bringing the dispute before the Court shall inform the International Bureau [of WIPO]; the International Bureau shall bring the matter to the attention of the other countries of the [Paris] Union."

The possibility of making a reservation to the quoted provision is contained in paragraph (2) of the same Article and reads as follows: "Each country may, at the time it signs this [the 1967 (Stockholm)] Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the [Paris] Union, the provisions of paragraph (1) shall not apply."

At the time they signed the 1967 (Stockholm) Act, Algeria, Bulgaria, Indonesia, Poland, Romania and the Soviet Union made such a declaration—commonly called "reservation"—whereas the following countries made such a declaration at the time they deposited their instruments of ratification or accession: Brazil, Cuba, Czechoslovakia, Egypt, Hungary, Iraq, Libya, Malta, South Africa, Tunisia, Viet Nam. Those were the 17 countries that had made the said reservation by March 20, 1983, the date of the centenary of the Paris Convention.

The Article in question also provides for the possibility of withdrawing any reservation. This possibility is the subject matter of paragraph (3) of the said Article and reads as follows: "Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General [of WIPO]."

By the said date, no country had made use of this last mentioned possibility.

Becoming Party to the Convention

First Occurrence in the Paris Convention of the "Open" Treaty Principle. The original (1883) text of the Paris Convention provided that those countries that created it would have to exchange their ratifications, whereas any country that had not participated in its creation might accede to it (see Articles 16 and 19). In other words, the Paris Convention is a treaty open to any country, that is, a treaty to which any country that decides to do so may become a party, and there is no admission procedure. This rule also means that the ability of any country to comply with the provisions of the Convention, particularly the conformity of its national law with the requirements of the Convention, is not examined by anyone before a country adheres, except, presumably and naturally, by the government of the country itself that is

about to adhere. Also, there is no provision in the Paris Convention by virtue of which membership of a country in the Paris Union could come to an end otherwise than by denunciation of the Convention by that country.

This "open treaty" feature of the Convention was established, as already stated, from the beginning and was maintained by all the conferences of revision, including the conference of revision of 1967 (Stockholm): Article 21(1) of the 1967 (Stockholm) Act provides that "any country outside the [Paris] Union may accede to this [the 1967 (Stockholm)] Act and thereby become a member of the Union."

Nevertheless, since the conference of revision of 1958 (Lisbon), there has been a provision in the Paris Convention which, so to say, reminded countries that were about to accept the 1958 (Lisbon) Act that their law must be in conformity with that Act. That provision, appearing also in the 1967 (Stockholm) Act, reads as follows: "It is understood that, at the time a country deposits its instrument of ratification or accession, it will be in a position under its domestic law to give effect to the provisions of this Convention" (1958 (Lisbon) Act, Article 17(2), and 1967 (Stockholm) Act, Article 25(2)). That provision contrasts with a provision which was in the Paris Convention since the beginning and until the conference of revision of 1958 (Lisbon) eliminated it, a provision which allowed certain countries to fulfill their engagements contracted under the Convention not necessarily immediately but only "with as little delay as possible" (*dans le plus bref délai possible*) (original (1883) text of the Paris Convention, Article 17). In its latest version—which was then eliminated, as already stated, by the conference of revision of 1958 (Lisbon)—the full text of that provision read as follows: "The carrying out of the reciprocal obligations contained in the present Convention is subject, as far as necessary, to the observance of the formalities and rules established by the constitutional laws of those of the countries of the Union which are bound to procure their application, which they undertake to do with as little delay as possible" (1934 (London) Act, Article 17). It was implied, it is believed, in this provision that countries whose constitution did not require implementing legislation were not given the said delay. In any case, today, and since the 1958 (Lisbon) Act, there is no distinction between countries according to their constitutional requirements, and all countries accepting the 1967 (Stockholm) Act are obliged to give effect to the provisions of that Act upon accepting it. (See, however, the next chapter, entitled "Reservations.")

Acceptance. From the beginning, the Paris

Convention has differentiated between two ways of accepting it, namely, ratification (*ratification*) and accession (*adhésion*). The original (1883) text of the Paris Convention provided that the High Contracting Parties that adopted and signed that text would exchange their ratifications in Paris within one year of the date of signature, whereas any other country would have to notify its accession, by diplomatic channels, to the Government of the Swiss Confederation (see Articles 19 and 16). The 1911 (Washington) Act provided that the ratifications were to be deposited in Washington by April 1, 1913 (see Article 18), the 1925 (Hague) Act provided that the ratifications were to be deposited in The Hague by May 1, 1928 (see Article 18), the 1934 (London) Act provided that the ratifications were to be deposited in London by July 1, 1938 (see Article 18), but the 1958 (Lisbon) Act provided that the instruments of ratification were to be deposited—not in the capital of the host country of the conference of revision—but in Berne (Article 18(1)). All those Acts provided that accessions must be notified to the Government of the Swiss Confederation (see Article 16 of those Acts). The Act in force in 1983, that is, the 1967 (Stockholm) Act, provides that those countries (and those countries could be and were only countries that were members of the Paris Union at the close of the 1967 (Stockholm) conference of revision) that signed that Act would ratify it whereas all other countries that wished to accept it would have to accede to it and that both kinds of instruments—instruments of ratification and instruments of accession—have to be deposited with the Director General of WIPO (Articles 20(1) and 21(1)). Forty-six countries signed the 1967 (Stockholm) Act. By March 20, 1983, the date of the centenary of the Paris Convention, 42 of them had ratified it in its totality, two (Indonesia and the Philippines) had ratified it with the exception of the substantive provisions and two (Iceland and Iran) had ratified no part of it. (The possibility, open only to countries that were already members of the Paris Union when the 1967 (Stockholm) Act of the Convention entered into force in May 1970, to limit the effects of its acceptance to certain provisions of that Act is discussed under "Reservations," below.)

The Paris Convention also contains a provision (since the 1911 (Washington) Act) concerning its application to non-selfgoverning territories.

Closing of Earlier Acts. The 1967 (Stockholm) Act of the Paris Convention is the first Act in the history of the Paris Convention which *expressis verbis* provides for the "closing" of the earlier Acts. This is done in Article 23, which provides that after the entry into force of the said Act in its entirety "a country may not accede to earlier Acts of this Convention." The 1967 (Stockholm) Act entered

into force in its entirety on April 26 or May 19, 1970. (Two dates of entry into force are given because the views of the then member countries differed on when the required number of ratifications or accessions had been attained.) Since that date, no country may accede to the 1958 (Lisbon) Act or any other Act that preceded that Act. The reason for such closing of earlier Acts is to promote uniformity in the sense that at some date all countries members of the Paris Union be bound by the same Act, namely the 1967 (Stockholm) Act. However, it is probable that, before such uniformity can be achieved, a new Act will come into existence and a new start will have to be made towards achieving uniformity, this time on the basis of that future, new Act.

Reservations

First Occurrence in the Paris Convention. The original (1883) text of the Paris Convention provided that accession (*adhésion*) to the Paris Convention automatically entails (*emportera, de plein droit*) acceptance (*accession à*) of all the clauses and admission (*admission*) to all the advantages provided for by the Convention (see Article 16).

Revisions. The provision referred to above remained virtually unchanged until the conference of revision of 1967 (Stockholm). At that conference, the provision was redrafted to cover both ratifying and acceding States and to provide (in Article 22) for the possibility of making two exclusions ("reservations") to the 1967 (Stockholm) Act: excluding the application of the provisions on the settlement of disputes; excluding ratification of or accession to either the substantive provisions (Articles 1 to 12) or the administrative clauses (Articles 13 to 17).

The most important feature of this provision was and still is that it expressly negates (subject—since the 1967 (Stockholm) Act—to the two exceptions just stated) the possibility of making reservations. That a country is not allowed to make reservations to a multilateral treaty is not self-evident according to treaty law. This is the reason for which it was wise, from the beginning, to expressly negate the possibility of making reservations and, when, at the conference of revision of 1967 (Stockholm), the possibility was admitted, to expressly limit it to two specific cases.

Relations Among Countries Not Bound By the Same Acts

First Occurrence in the Paris Convention. Every new Act of the Paris Convention, in order to become binding for a country, requires that that

country ratify or accede to *that* Act. What is the relationship, if any, then between any two countries, one of which is bound by one Act and not by another Act and the other of which is bound only by that other Act? This is a question which was considered by every conference of revision beginning with that of 1911 (Washington) and to which every such conference of revision gave a reply. The reply, however, was not complete since it cannot be: a later Act cannot create, without their consent, obligations for countries that have not ratified it or acceded to it.

As already indicated, the first Act of the Paris Convention that gave a partial reply to the question was the 1911 (Washington) Act. Simply stated, what was provided for was that among countries which ratify the 1911 Act that Act applies, whereas the earlier Acts remain applicable between any two countries, one of which ratified only the earlier texts and the other both the earlier texts and the new (1911) Act (see Article 18). The question of what happens between two countries, one of which ratified only the earlier texts and the other of which ratified *only* the new (1911) Act, was not replied to.

Later Acts and Present Situation. The 1925 (Hague), 1934 (London) and the 1958 (Lisbon) Act, each in its Article 18, continued to pronounce—*mutatis mutandis*—the same principles and suffered from the same kind of gap as has been indicated in connection with the 1911 (Washington) Act. The 1967 (Stockholm) Act does the same but it narrows the gap: it provides that countries which become members of the Paris Union by acceding to the 1967 (Stockholm) Act—that is, countries which were never bound and which never will be able to become bound by any of the earlier Acts—must apply the 1967 (Stockholm) Act, in its totality, *vis-à-vis* any country member of the Paris Union, that is, *vis-à-vis* even those countries which are only bound by an earlier Act or are only bound by the administrative and final clauses of the 1967 (Stockholm) Act (see Article 27(3)). The same Article 27(3) of the 1967 (Stockholm) Act also contains a strong hint that the countries which are only bound by an earlier Act, or are only bound by the administrative and final clauses of the 1967 (Stockholm) Act, should, in their relations with countries which became members of the Paris Union by acceding to that Act, apply the provisions of the earlier Act (or, if they are party to several earlier Acts, they should apply the provisions of the most recent of those earlier Acts). The hint consists of the fact that the countries which became members of the Paris Union by acceding to the 1967 (Stockholm) Act must—according to Article 27(3)—suffer that earlier Acts be applied to them. But the hint remains a hint as far as the other

countries are concerned since, obviously, the 1967 (Stockholm) Act cannot create substantive obligations for countries that have not become bound by it, or have not become bound by the substantive provisions of it.

Not all the countries party to the Paris Convention have ratified or acceded to all the Acts of the Paris Convention. This fact and the fact that some of the countries of the Paris Union, making use of the possibility offered to them by Article 20(1)(b)(i) of the 1967 (Stockholm) Act, when ratifying or acceding to that Act, have excluded the effect of their ratification or accession as far as the substantive provisions (Articles 1 to 12) of that Act are concerned, whereas other countries of the Paris Union have ratified or acceded to the totality of that Act, resulted, on March 20, 1983, the date of the centenary of the Paris Convention, in the following situation:

(a) one country (Dominican Republic) was bound by the 1925 (Hague) Act as far as all (substantive, administrative and final) provisions are concerned;

(b) one country (Brazil) was bound, as far as the substantive provisions are concerned, by the 1925 (Hague) Act, and, as far as the administrative and final clauses are concerned, by the 1967 (Stockholm) Act;

(c) five countries (Iceland, Lebanon, New Zealand, San Marino, Syria) were bound by the 1934 (London) Act as far as all (substantive, administrative and final) provisions are concerned;

(d) four countries (Canada, Indonesia, Sri Lanka, Turkey) were bound, as far as the substantive provisions are concerned, by the 1934 (London) Act, and, as far as the administrative and the final clauses are concerned, by the 1967 (Stockholm) Act;

(e) six countries (Cyprus, Haiti, Iran, Nigeria, Tanzania, Trinidad and Tobago) were bound by the 1958 (Lisbon) Act as far as all (substantive, administrative and final) provisions are concerned;

(f) five countries (Argentina, Bahamas, Malta, Philippines, Zambia) were bound, as far as the substantive provisions are concerned, by the 1958 (Lisbon) Act, and, as far as the administrative and final clauses are concerned, by the 1967 (Stockholm) Act;

(g) seventy countries (Algeria, Australia, Austria, Belgium, Benin, Bulgaria, Burundi, Cameroon, Central African Republic, Chad, Congo, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guinea, Holy Sec, Hungary, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Libya, Liechtenstein, Luxembourg, Madagascar,

Malawi, Mali, Mauritania, Mauritius, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Poland, Portugal, Republic of Korea, Romania, Senegal, South Africa, Soviet Union, Spain, Suriname, Sweden, Switzerland, Togo, Tunisia, Uganda, United Kingdom, United States of America, Upper Volta, Uruguay, Viet Nam, Yugoslavia, Zaire, Zimbabwe) were bound by the 1967 (Stockholm) Act as far as all provisions (substantive, administrative or final) are concerned.

Relations as Far as the Substantive Provisions are Concerned. The substantive provisions—Articles 1 to 12—are not the same in the four (1925, 1934, 1958 and 1967) Acts that have effect, each in some, and none in all, of the countries members of the Paris Union. The question arises which set of Articles 1 to 12—that contained in the 1925 (Hague) Act, or that contained in the 1934 (London) Act, or that contained in the 1958 (Lisbon) Act, or that contained in the 1967 (Stockholm) Act—any country has to apply vis-à-vis any other country party to the Paris Convention.

There is no doubt that between those 70 countries which have accepted the substantive provisions of the 1967 (Stockholm) Act—that is, the countries listed under (g), above—Articles 1 to 12 of that Act apply.

Furthermore, it is also clear—because Article 27(3) of the 1967 (Stockholm) Act so provides—that those (there are eleven of them) of the said 70 countries that have become party to the Paris Convention by accepting the 1967 (Stockholm) Act and have not considered their accession as a continuation of previously existing links—that is, countries that have never been bound by any of the earlier Acts of the Paris Convention—must apply the 1967 (Stockholm) Act also in respect of each of the 22 countries that have not accepted the substantive provisions of that Act. The eleven countries were, on March 20, 1983, the date of the centenary of the Paris Convention, Burundi, the Democratic People's Republic of Korea, Ghana, Guinea, Iraq, Jordan, Libya, Mali, Mauritius, the Republic of Korea and Zaire.

It is less clear which Act's substantive provisions a country that is not bound by the substantive provisions of the 1967 (Stockholm) Act (there were 22 of them on the said date and any of them will hereinafter be referred to as "the former country") has to apply in respect of any of the said eleven countries (hereinafter referred to as "the latter country"). The Stockholm Act says that the latter country "recognizes" that the former country may apply (*applique*) "the most recent Act [that is, the 1925, 1934 or 1958 Act, as the case may be] to which it [the former country] is a party" (Article 27(3)) but does not say that the former country

must apply to the latter country the most recent Act to which it is a party. Could this "may" mean that no substantive provisions need to be applied by the former country in respect of the latter country? It is not thought so. Such an interpretation would lead to the curious result that certain countries party to the Paris Convention would have no obligations in respect of certain other countries party to the Paris Convention. Rather, what the provision could mean is that the former country can apply to the latter country the substantive provisions of the 1967 (Stockholm) Act—rather than those of the most recent Act to which it is a party—since the latter country could hardly complain that an Act by which it is bound is applied vis-à-vis it.

Between a country that has already been party to the Paris Convention before accepting (at least the substantive provisions of) the 1967 (Stockholm) Act (that is, any of those listed under (g), above, except the above-mentioned eleven countries) and any of the countries that has not accepted at least the substantive provisions of the 1967 (Stockholm) Act (that is, any of the 22 countries named in (a) to (f)), the substantive provisions of the most recent of the Acts (1925, 1934 or 1958, as the case may be) which both countries have accepted apply. In other words, if there is a "common Act" between the two countries—in the sense that both countries have accepted that Act, albeit one of them has since accepted also one or more recent Acts—that common Act is applicable. This follows from Article 27(2) of the 1967 (Stockholm) Act.

This "common Act" rule applies also where neither of two countries has accepted the substantive provisions of the 1967 (Stockholm) Act, that is, between any two of the 22 countries mentioned in (a) to (f), above (see Articles 18 in the 1925, 1934 and 1958 Acts), except that it is not quite clear which Act's substantive provisions are applicable where there is no "common Act" (for example, between a country that is bound by the 1925 (Hague) Act and a country that has never accepted that Act but only the 1934 Act, or only the 1958 Act, or only the 1934 and 1958 Acts). Perhaps the right answer is that either of such two countries may apply the substantive provisions of any of the Acts it, or the other country, is party to.

Relations as Far as the Administrative and Final Clauses are Concerned. In the same way as the substantive provisions, so also the administrative and final clauses are not the same in the four (1925, 1934, 1958 and 1967) Acts that have effect, each in some, and none in all, of the countries members of the Paris Union.

The main consequence of this situation is that those of the countries that are bound by all the provisions or at least by the administrative and

final clauses of the 1967 (Stockholm) Act—that is, the 80 countries referred to in paragraphs (b), (d), (f) and (g)—are members, whereas the other 12 are not members, on March 20, 1983, the date of the centenary of the Paris Convention, of the Assembly of the Paris Union. Consequently, those 12 countries cannot exercise the privileges reserved to the Assembly, in particular, the privilege of adopting the program and budget of the Paris Union and of participating in the election of the Director General of WIPO. Also, those 12 countries are precluded from choosing that class (Class VII) for the purposes of contributions in which the amount of the contributions is the lowest.

On the other hand, where the administrative and final clauses are the same or virtually the same in the various Acts, there is no difference in the position of the 92 countries members of the Paris Union. In particular, each has the same rights in the conference of revision that started in 1980 and has not yet been concluded in 1983. Also, they all have the right to conclude special agreements, provided such agreements do not contravene the provisions of the Paris Convention, namely, those provisions of the Paris Convention by which any of the countries party to a given special agreement is bound vis-à-vis any of the other countries party to the same special agreement.

Denunciation

First Occurrence in the Paris Convention. The original (1883) text of the Paris Convention already provided for the right of each country party to the Convention to denounce it and underlined that any denunciation does not affect the relations among other countries party to the Convention.

Later Acts and History of Denunciations. These principles were repeated, and regulated in some detail, in all subsequent Acts of the Paris Convention. For example, the latest Act, the 1967 (Stockholm) Act, provides that "Any country may denounce this Act [the 1967 (Stockholm) Act]. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the [Paris] Union" (Article 26(2)). However, in one respect, the 1967 (Stockholm) Act restricted the right of denunciation: any country that becomes a member of the Paris Union through acceding to that Act may not denounce the Convention during the first five years of its membership in the Paris Union (Article 26(4)).

During the first hundred years of its existence, four countries have denounced the Paris Convention: Ecuador was a member of the Paris Union

only from 1884 to 1886; Guatemala only from 1884 to 1895; Laos only from 1963 to 1968; Salvador only from 1884 to 1887.

Evolution of the Membership of the Paris Convention

Ratifications of and Accessions to the Original (1883) Text and the Later Acts. The following countries ratified or acceded to, during the first hundred years that have passed since the signature of the original (1883) text, that text and subsequent Acts (countries that have denounced the Paris Convention are not mentioned here; they are mentioned under "Denunciation," above):

Original (1883) Text and Final Protocol of 1883: Belgium, Brazil, Denmark, Dominican Republic, France, Great Britain, Italy, Japan, Netherlands, Norway, Portugal, Serbia, Spain, Sweden, Switzerland, Tunisia, United States of America (17);

1900 (Brussels) Additional Act: Austria, Belgium, Brazil, Cuba, Denmark, Dominican Republic, France, Germany, Great Britain, Hungary, Italy, Japan, Mexico, Morocco, Netherlands, Norway, Portugal, Serbia, Spain, Sweden, Switzerland, Tunisia, United States of America (23);

1911 (Washington) Act and Final Protocol of 1911: Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Cuba, Czechoslovakia, Danzig (Free City of), Denmark, Dominican Republic, Estonia, France, Finland, Germany, Great Britain, Greece, Hungary, Ireland (Free State of), Italy, Japan, Latvia, Lebanon, Luxembourg, Mexico, Morocco, Netherlands, Norway, Poland, Portugal, Rumania, Serbia-Croatia-Slovenia, Spain, Sweden, Switzerland, Syria, Tunisia, Turkey, United States of America (39);

1925 (Hague) Act: Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Cuba, Czechoslovakia, Danzig (Free City of), Denmark, Dominican Republic, France, Germany, Great Britain, Greece, Hungary, Italy, Japan, Lebanon, Liechtenstein, Mexico, Morocco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Syria, Tangier, Tunisia, Turkey, United States of America, Yugoslavia (37);

1934 (London) Act: Australia, Austria, Belgium, Bulgaria, Canada, Ceylon, Cuba, Czechoslovakia, Denmark, Finland, France, Germany, Great Britain, Greece, Haiti, Holy Sec, Hungary, Iceland, Indonesia, Iran, Ireland, Israel, Italy, Japan, Lebanon, Liechtenstein, Luxembourg, Mexico, Monaco, Morocco, Netherlands, New Zealand, Norway, Portugal, Rhodesia and Nyasaland, Romania, San Marino, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Tangier, Tunisia, Turkey, United Arab Republic, United States of America, Viet-Nam, Yugoslavia (49);

1958 (Lisbon) Act: Algeria, Argentina, Austria, Belgium, Bulgaria, Cameroon, Central African Republic, Chad, Cuba, Czechoslovakia, Cyprus, Czechoslovakia, Dahomey, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Haiti, Hungary, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Kenya, Madagascar, Malawi, Malta, Mauritania, Mexico, Monaco, Morocco, Niger, Nigeria, Norway, People's Republic of the Congo, Philippines, Rhodesia, Romania, Senegal, South Africa, Soviet Union, Switzerland, Tanzania, Togo, Trinidad and Tobago, Uganda, United Kingdom, United States of America, Upper Volta, Uruguay, Yugoslavia, Zambia (53);

Totality of the 1967 (Stockholm) Act: Algeria, Australia, Austria, Belgium, Benin, Bulgaria, Burundi, Cameroon, Central African Republic, Chad, Congo, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guinea, Holy Sec, Hungary, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Libya, Liechtenstein, Luxembourg, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Poland, Portugal, Republic of Korea, Romania, Senegal, South Africa, Soviet Union, Spain, Suriname, Sweden, Switzerland, Togo, Tunisia,

Uganda, United Kingdom, United States of America, Upper Volta, Uruguay, Viet Nam, Yugoslavia, Zaire, Zimbabwe (70); Articles 13 to 30 of the 1967 (Stockholm Act): Argentina, Bahamas, Brazil, Canada, Indonesia, Malta, Philippines, Sri Lanka, Turkey, Zambia (10).

Membership in the Paris Union. It was in the years indicated below that the countries whose names are mentioned opposite each of the first hundred years that have passed since the signature of the original (1883) text of the Paris Convention, became members of the Paris Union (countries that were members of, but later left, the Paris Union are not mentioned here; they are mentioned under "Denunciation," above).

1884 Belgium, Brazil, France, Italy, Netherlands, Portugal, Spain, Switzerland, Tunisia, United Kingdom
 1885 Norway, Sweden
 1886 —
 1887 United States of America
 1888 & 1889 —
 1890 Dominican Republic
 1891 to 1893 —
 1894 Denmark
 1895 to 1898 —
 1899 Japan
 1900 to 1902 —
 1903 Germany (now, Federal Republic of Germany and German Democratic Republic), Mexico
 1904 Cuba
 1905 to 1908 —
 1909 Austria and Hungary
 1910 to 1916 —
 1917 Morocco
 1918 —
 1919 Czechoslovakia, Poland
 1920 Romania
 1921 Yugoslavia, Bulgaria, Finland
 1922 Luxembourg
 1923 —

1924 Lebanon, Syria, Greece
 1925 Australia, Turkey, Canada, Ireland
 1926 to 1930 —
 1931 New Zealand
 1932 —
 1933 Liechtenstein
 1934 to 1946 —
 1947 South Africa
 1948 —
 1949 Viet Nam
 1950 Israel, Indonesia
 1951 Egypt
 1952 Sri Lanka (then called Ceylon)
 1953 to 1955 —
 1956 Monaco
 1957 —
 1958 Haiti
 1959 Iran
 1960 San Marino, Holy See
 1961 —
 1962 Iceland
 1963 Tanzania, Congo, Nigeria, Ivory Coast, Central African Republic, Chad, Upper Volta, Madagascar, Senegal
 1964 Gabon, Cameroon, Niger, Malawi, Trinidad and Tobago
 1965 Zambia, Mauritania, Kenya, Uganda, Soviet Union, Philippines
 1966 Cyprus, Algeria
 1967 Benin, Argentina, Uruguay, Togo, Malta
 1968 to 1971 —
 1972 Jordan
 1973 Bahamas
 1974 —
 1975 Zaire, Suriname
 1976 Iraq, Ghana, Mauritius, Libya
 1977 Burundi
 1978 & 1979 —
 1980 Zimbabwe, Republic of Korea, Democratic People's Republic of Korea
 1981 —
 1982 Guinea
 1983 Mali