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**ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE  
WORLD INTELLECTUAL PROPERTY ORGANIZATION  
ORGANIZACIÓN MUNDIAL DE LA PROPIEDAD INTELECTUAL**  
GENÈVE / GENEVA / GINEBRA

**CONFÉRENCE DIPLOMATIQUE SUR CERTAINES QUESTIONS  
DE DROIT D'AUTEUR ET DE DROITS VOISINS**

**Genève, 2 - 20 décembre 1996**

**DIPLOMATIC CONFERENCE ON CERTAIN  
COPYRIGHT AND NEIGHBORING RIGHTS QUESTIONS**

**Geneva, December 2 to 20, 1996**

**CONFERENCIA DIPLOMÁTICA  
SOBRE CIERTAS CUESTIONES DE DERECHO DE AUTOR  
Y DERECHOS CONEXOS**

**Ginebra, 2 a 20 de diciembre de 1996**

COMPTES RENDUS ANALYTIQUES (SÉANCES PLÉNIÈRES)

SUMMARY MINUTES, PLENARY

ACTAS RESUMIDAS (SESIONES PLENARIAS)

*établis par le Bureau international  
prepared by the International Bureau  
preparadas por la Oficina Internacional*

*President:* Mrs. Esther Mshai Tolle (Kenya)

*Secretary:* Mr. Mihály Ficsor (WIPO)

*First Meeting*

*Monday, December 2, 1996*

*Morning*

*Item 1 of the Agenda: Opening of the Conference by the Director General of WIPO*

1. Mr. BOGSCH (Director General of WIPO) opened the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, and expressed optimism for its success. He noted that, as agreed upon at the meetings of the Preparatory Committee and the competent WIPO Governing Bodies in May 1996, the first three questions of the draft Agenda, namely, the opening of the Conference, consideration and adoption of the Rules of Procedure, and election of the President of the Conference, would be chaired by the Director General of WIPO, and that the draft Rules of Procedure, included in document CRNR/DC/2, would apply provisionally.

*Item 2 of the Agenda: Consideration and adoption of the Rules of Procedure*

2. Mr. BOGSCH (Director General of WIPO) opened the floor for a rule-by-rule discussion of the Rules of Procedure, beginning with *Rule 1 (Objective and Competence of the Conference)*.

3. El Sr. SILVA SOARES (Brazil) expresa el deseo de que se ponga en plural la expresión adopción de un tratado o de tratados, en los párrafos 1) y 2) del Artículo 1.

4. La Sra. RETONDO (Argentina) apoya la propuesta presentada por la Delegación de Brasil de que se haga referencia a la adopción de un tratado o tratados.

5. *Rule 1 (Objective and Competence of the Conference) was adopted with the amendment, proposed by the Delegation of Brazil.*

6. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion of *Rule 2 (Composition of the Conference)* and announced that three intergovernmental organizations, namely the World Meteorological Organization, the International Telecommunication Union and the International Maritime Organization had requested to be admitted as observer organizations.

7. *The Diplomatic Conference decided to admit the World Meteorological Organization, the International Telecommunication Union and the International Maritime Organization as observer organizations.*

8. La Sra. RODRIGUEZ-TOQUERO (España) solicita que sea invitada a asistir en la Conferencia Diplomática, en calidad de observadora, la organización no gubernamental internacional Comité de Seguimiento, integrada por 24 organizaciones de actores e intérpretes de 12 países iberoamericanos. Dicha organización cuyo objeto consiste en asegurar un mayor equilibrio entre titulares de derechos así como entre las diferentes regiones, está codirigida por la entidad de gestión de España Actores Intérpretes (AISGE).

9. Mr. BOGSCH (Director General of WIPO) asked whether the name of the organization, in English, would be the Follow-up Committee, and whether it was an international non-governmental organization.

10. La Sra. RODRIGUEZ-TOQUERO (España) aprueba la traducción propuesta por el Director General de la OMPI, y confirma que se trata de una organización no gubernamental con personalidad jurídica y estatutos propios integrada por actores.

11. Mr. BOGSCH (Director General of WIPO) asked whether any Delegation wished to support that proposal.

12. El Sr. PORZIO (Chile) apoya la solicitud presentada por la Delegación de España de incluir al organismo no gubernamental Comité de Seguimiento.

13. *The Diplomatic Conference decided to admit the Follow-up Committee as an observer organization.*

14. Mr. LEHMAN (United States of America) proposed the admission of the United States Telephone Association as an observer organization.

15. Mrs. BOUVET (Canada) supported the proposal.

16. *The Diplomatic Conference decided to admit the United States Telephone Association as an observer organization.*

17. Mr. BENJELLOUN-TOUIMI (Morocco) noted that the list of delegations included that of Yugoslavia, and recalled the decision of the General Assembly of the United Nations at its 47th Session that the Republic and Socialist Federation of Yugoslavia no longer existed. He queried to whom the invitation to participate in the Diplomatic Conference had been sent.

18. Mr. BOGSCH (Director General of WIPO) said that the WIPO Governing Bodies had made the decision to invite Yugoslavia, which was consistent with current United Nations practice.

19. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, stated that the European Community did not accept that the Federal Republic of Yugoslavia was the automatic continuation of the Socialist Federative Republic of Yugoslavia, and that any decisions adopted at this Diplomatic Conference were without prejudice to the legal consequences of the fact that the Socialist Federative Republic of Yugoslavia had ceased to exist.

20. Mr. BENJELLOUN-TOUIMI (Morocco) supported the statement made by the Delegation of Ireland on behalf of the European Community and its Member States, and stated that international organizations should end dealing with non-existent countries.

21. Mr. LEHMAN (United States of America) supported the statement of the Delegation of Ireland on behalf of the European Community and its Member States, and stated that, as there was no single successor to, or continuation of, the former Republic of Yugoslavia, the Federal Republic of Yugoslavia could not continue automatically to receive invitations to meetings of WIPO, nor occupy a seat in international organizations without applying for membership in its own name. He noted that he did not recollect that the question of the status of the former Yugoslavia had been addressed at the Governing Bodies.

22. Mr. BOGSCH (Director General of WIPO) stated that the question had been placed before the meeting of the Preparatory Committee, in document CRNR/PM/4, and that the Committee's endorsement of inviting Yugoslavia was reflected by the Report of the meeting (document CRNR/PM/8).

23. Mr. MARKOTIĆ (Croatia) expressed the support of his Delegation for the previous statements, and expressed its reservations regarding the invitation of Yugoslavia. His Delegation had the position that the invitation extended to Yugoslavia did not constitute a precedent regarding the legal status of the Federal Republic of Yugoslavia in the United Nations system.

24. M. M'DOUR (Sénégal) appuie fortement la déclaration de la Délégation du Maroc. Il indique que son pays considère que la Yougoslavie n'existe plus et qu'elle ne saurait donc figurer sur la liste des participants de la conférence diplomatique.

25. Mr. BOGSCH (Director General of WIPO) declared that the previous statements would be reflected in the Records of the Diplomatic Conference.

26. Mr. KHLESTOV (Russian Federation) expressed the opinion that the matter of the legal status of the former Yugoslavia had already been resolved, and urged that the Conference move on to its substantive agenda.

27. Mr. GRČAR (Slovenia) expressed his Delegation's support for the statement of the Delegation of Ireland on behalf of the European Community and its Member States and of the United States of America, and stated that the matter of the legal status of the former Yugoslavia should be reviewed so that it would not be repeated on every occasion.

28. Mr. FADZAN (Bosnia and Herzegovina) stated that the Socialist Federal Republic of Yugoslavia had ceased to exist as an international legal person, and that none of the successor states, including the Federal Republic of Yugoslavia—Serbia and Montenegro—had legal competence to dissolve the former Socialist Federal Republic of Yugoslavia. He recalled the fundamental principle of the equality of rights and duties of successor states in respect of treaties under international law, and hoped for a definitive resolution of the international legal status of the former Socialist Federal Republic of Yugoslavia.

29. Mr. BOGSCH (Director General of WIPO) repeated that all these statements would be reflected in the Records of the Conference. He asked whether there were any other comments regarding Rule 2.

30. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, wished to place a reservation on final adoption of Rule 2(2), pending the outcome of deliberations on Rule 33.

31. Mr. BOGSCH (Director General of WIPO) asked whether any Delegation wished to support the proposal that the adoption of Rule 2(2) be suspended until Rule 33 had been discussed.

32. Mr. KHLESTOV (Russian Federation) asked for an explanation of the reservation expressed by the Delegation of Ireland.

33. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, stated that Rule 2(2) made a specific reference to Rule 33, which was still under discussion among the various groups of countries, and, therefore, no final position on Rule 2(2) should be reached until a final position on Rule 33 had emerged.

34. Mr. BOGSCH (Director General of WIPO) stated that it was logical that references to other Rules in Rule 2(2) must be considered as subject to the outcome of discussions on such other Rules.

35. Mr. SCHÄFERS (Germany) expressed his Delegation's support for the statement of the Delegation of Ireland on behalf of the European Community and its Member States.

36. Mr. BOGSCH (Director General of WIPO) said that, if there was no objection, the references to Rule 33 in Rule 2(2) would be reconsidered once all Rules had been discussed.

37. Mr. KHLESTOV (Russian Federation) stated that his Delegation reserved the right to return to Rule 2 when it fully understood the reservation made by the Delegation of Ireland.

38. *The Diplomatic Conference decided that Rule 2(2) would not be adopted until decision had been taken on Rules 11(2), 33, 34, 35(2) and 36(2).*

39. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Rule 3 (Secretariat of the Conference)* and noted that no Delegation asked for the floor.

40. *The Diplomatic Conference adopted Rule 3 (Secretariat of the Conference).*

41. Mr. BOGSCH (Director General of WIPO) opened the floor for observations on *Rule 4 (Delegations)*, and noted that no Delegation asked for the floor.

42. *The Diplomatic Conference adopted Rule 4 (Delegations).*

43. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Rules 5 (Observer Organizations), 6 (Credentials and Full Powers), 7 (Letters of Appointment),*

8 (*Presentation of Credentials*), 9 (*Examination of Credentials, etc.*), and 10 (*Provisional Participation*), and noted that no Delegation asked for the floor.

44. *The Diplomatic Conference adopted Rules 5 (Observer Organizations), 6 (Credentials and Full Powers), 7 (Letters of Appointment), 8 (Presentation of Credentials), 9 (Examination of Credentials, etc.), and 10 (Provisional Participation).*

45. Mr. BOGSCH (Director General of WIPO) opened the floor for observations on *Rule 11 (Credentials Committee)*, and noted that no Delegation asked for the floor.

46. *The Diplomatic Conference adopted Rule 11 (Credentials Committee).*

47. Mr. BOGSCH (Director General of WIPO) opened the floor for observations on *Rule 12 (Main Committees and Their Working Groups)*, and noted that no Delegation asked for the floor.

48. *The Diplomatic Conference adopted Rule 12 (Main Committees and Their Working Groups).*

49. Mr. BOGSCH (Director General of WIPO) opened the floor for observations on *Rule 13 (Drafting Committee)*.

50. Mr. ABEYSEKERA (Sri Lanka), on behalf of the Asian Group, proposed an amendment to Rule 13. He stated that, at present, the Drafting Committee would consist of 10 elected members and two *ex-officio* members. The Asian Group proposed that this number be increased to 21, of which 19 members would be elected.

51. Mr. TIWARI (Singapore) expressed his Delegation's support for the proposal of the Delegation of Sri Lanka on behalf of the Asian Group. As an alternative, he proposed that Member Delegations be allowed to attend meetings of the Drafting Committee as observers, for purposes of transparency and to facilitate smooth action on texts returned to the Plenary.

52. M. SÉRY (Côte d'Ivoire) est de l'avis que le Comité de rédaction se compose d'un nombre restreint de personnes afin de faciliter son fonctionnement. Il pense que le nombre proposé par la Délégation de Sri Lanka est trop élevé. Il propose que le nombre soit fixé à 15 de sorte que le continent africain, par exemple, qui connaît trois groupes linguistiques puisse être représenté en conséquence.

53. Mr. BOGSCH (Director General of WIPO) stated that the discussions should first be limited to the question regarding the number of elected members of the Drafting Committee.

54. Mr. KUSHAN (United States of America) stated that the purpose of the Drafting Committee was to ensure the linguistic accuracy of the texts of the treaties which were negotiated, and sought clarification from the Delegation of Sri Lanka, on behalf of the Asian Group, as to the need for an increase in the size of the Drafting Committee. Given that the number of languages of the treaty was to be six, he expressed the view that the Committee should have only enough members to perform the straightforward technical purpose of checking languages.

55. Mr. VERGNE SABOIA (Brazil) expressed support for the proposal, made by the Delegation of Sri Lanka on behalf of the Asian Group. He said that his Delegation believed that, even if the Drafting Committee would mainly be occupied with the linguistic accuracy of the texts, the number proposed by the Delegation of Sri Lanka would not be unreasonable, considering the number of Delegations, represented at the Conference. Issues of form might often be difficult to separate from issues of substance, and the proposed composition might make it easier to solve such problems.
56. Mr. ABBASI (Pakistan) expressed support for the proposal of the Delegation of Sri Lanka on behalf of the Asian Group.
57. Mr. SHEN (China) expressed support for the proposal of the Delegation of Sri Lanka on behalf of the Asian Group, but expressed the willingness of his Delegation to discuss a different number.
58. Mr. KIM (Republic of Korea) stated that his Delegation agreed with the statement of the Delegation of the United States of America that the work of the Drafting Committee was a technical process of verifying the accuracy of texts, which could best be accomplished in small groups.
59. Mr. BOGSCH (Director General of WIPO) stated that the proposal by the Delegation of Sri Lanka on behalf of the Asian Group was supported by Brazil, Pakistan and China, but that the Delegation of China would be willing to accept another number. He noted that there was a division of views in that, while the Delegation of the United States of America did not formally oppose the proposal, its question to the Delegation of Sri Lanka indicated that it did not support the proposal, and the Delegations of the Republic of Korea and Côte d'Ivoire had opposed the proposal.
60. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, proposed that no decision on Rule 13 be taken until election of officers under Rule 15 had taken place.
61. Mr. BOGSCH (Director General of WIPO) stated that it was not Rule 15 which was under discussion. The election of officers was to take place under another item. He asked the Delegate of Sri Lanka whether he wished to wait for the election of the officers, or for the adoption on the rule on the election (Rule 15).
62. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, stated that he had intended to refer to the election of the officers. If Rule 13 were to be adopted now, the Asian Group would want to come back to that question later, because, informally, the questions had to be discussed together.
63. Mr. BOGSCH (Director General of WIPO) stated that it would be difficult to hold informal discussions on the posts to be filled without knowing in advance how many posts there were.
64. M. SÉRY (Côte d'Ivoire) réaffirme son accord sur le principe d'un accroissement du nombre de membres et son souhait de voir le nombre porté à 15 et non 21 personnes.

65. Mr. BOGSCH (Director General of WIPO) stated that the Delegation of Senegal had proposed that the Drafting Committee be composed of 15 members, that the proposal had not been seconded, but the statement of the Delegation of China could be interpreted as being in agreement.
66. Mme YOUM DIABE SIBY (Sénégal) appuie la proposition de la Délégation de la Côte d'Ivoire.
67. Mme BOUVET (Canada) indique que, compte tenu du caractère technique du Comité de rédaction, sa délégation n'est pas opposée à un accroissement du nombre de membres au sein de ce comité. Elle propose que le numéro des membres élus soit 13.
68. M. SÉRY (Côte d'Ivoire) est d'accord avec le chiffre de 13 membres auquel s'ajoutent les deux membre *ex officio*, les présidents des Commissions I et II, car ceci porterait à 15 l'ensemble des membres du Comité de rédaction.
69. Mr. KUSHAN (United States of America) asked for clarification on the structure of the Drafting Committee. He pointed out that, since there were six official languages of the Diplomatic Conference, it would seem reasonable to increase the number of elected members to 12, so that there would be two representatives for each official language, plus the two *ex officio* members, for a total of 14. His Delegation thus proposed the number 14 in total.
70. Mr. BOGSCH (Director General of WIPO) noted that, with the above proposal, the Conference was close to a compromise on this question.
71. Mr. VERGNE SABOIA (Brazil) pointed out that the aspect of languages was only one of the factors to be considered for election to the Drafting Committee and that any Delegation could be elected to the Drafting Committee.
72. Mr. BOGSCH (Director General of WIPO) agreed with the preceding intervention, noting that the members of the Drafting Committee would not be limited to countries whose mother tongue was one of the six languages of the Diplomatic Conference.
73. Mr. PHUANGRACH (Thailand) supported the proposal of the Delegation of Sri Lanka to increase the number of elected members to the Drafting Committee to 19, noting that that number was still only a small percentage of the total number of WIPO Member States invited to the Diplomatic Conference.
74. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, drew attention to another Diplomatic Conference in 1994 in which there were 14 members of the Drafting Committee, and noted that several new countries had joined WIPO, and that the international trading environment had changed. His Delegation would agree to change its proposal to 13 elected members and two *ex officio* members, meaning a total of 15 members of the Drafting Committee.
75. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, drew attention to the fact that the increase in the number of elected members of the Drafting Committee was of particular interest to the European Community, and that this item and Rule 14, regarding the Steering Committee, were very much related.



76. Mr. BOGSCH (Director General of WIPO) asked the Conference to consider the proposal by the Delegation of Canada that the Drafting Committee have 13 elected members and two *ex officio* members, for a total of 15.
77. Mr. SHEN (China) expressed his support for the proposal by the Delegation of Canada.
78. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, agreed to compromise on this question, and supported the proposal by the Delegation of Canada.
79. Mr. BOGSCH (Director General of WIPO) thanked the Delegate from Sri Lanka for his spirit of compromise. He consulted the Conference on the proposal by the Delegation of Canada, that the Drafting Committee should have 13 elected members and two *ex officio* members, resulting in a total of 15.
80. *Rule 13 (Drafting Committee) was adopted with the amendment proposed by the Delegation of Canada.*
81. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion of *Rule 14 (Steering Committee)*.
82. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, proposed that the regional coordinators also be included as members of the Steering Committee, if they were not elected members of that Committee.
83. Mr. BOGSCH (Director General of WIPO) drew attention to the fact that the office of regional coordinators was an informal office, not contemplated by the Rules of Procedure. Also, it was not clear how coordinators were appointed, exactly which countries they represented, and whether there were countries which had no coordinator. He said that that proposal might be unnecessary, since, in practice, the groups in question would be deciding which of their members should be members of which committees.
84. Mr. TIWARI (Singapore) referred back to the discussions on Rule 13, and noted that, irrespective of the number of members of the Drafting Committee, he had suggested that Delegations from Member States who were not members of the Drafting Committee should be allowed to participate in its meetings as observers. He cited the need for transparency of that Committee's meetings, as well as the fact that it would expedite the work of the Conference as more Delegates would be aware of the various texts, which would facilitate the adoption process.
85. Mr. BOGSCH (Director General of WIPO) indicated that he had not forgotten the above proposal. He pointed out that it had not been supported by any other Delegation, and moreover, had been presented as a secondary possibility. He asked the Conference if any Delegation wished to reopen the discussion on Rule 13.
86. Mr. KIM (Republic of Korea) supported the proposal by the Delegation of Singapore, as well as the reopening of the discussion on Rule 13.

87. M. SÉRY (Côte d'Ivoire) fait observer que le choix d'une variante engendre implicitement dans le cas présent le rejet de l'autre et qu'il est donc inutile de d'ouvrir le débat à nouveau.

88. M. BOGSCH (Directeur général de l'OMPI) déclare qu'il est de cet avis. Toutefois, il constate que deux délégations demandent la réouverture du débat.

89. Mr. TIWARI (Singapore) clarified that he was not asking for the discussion on Rule 13 to be reopened, but rather seeking an understanding of the Conference that non-members of the Drafting Committee could attend that Committee's sessions as observers.

90. Mr. BOGSCH (Director General of WIPO) expressed his opinion that the Delegation of Singapore was in fact proposing to reopen the discussion on Rule 13, since the Conference had already agreed on the composition of the Drafting Committee. He noted that a Drafting Committee by definition should be small. If all participants were admitted as observers to its meetings, there would be no need for such a Committee, since its work could be done in the Plenary. In any case, the question was a substantive question which could not be resolved through an "understanding."

91. Mr. KAUBAB (Pakistan) indicated that he had supported the proposal by the Delegation of Singapore, and so had the Delegation of the Republic of Korea. He stressed that the proposal by the Delegation of Singapore was based on transparency, an important element which should be maintained in this process.

92. Mr. BOGSCH (Director General of WIPO) stressed that the proposal by the Delegation of Singapore initially was subsidiary. If a vote on the reopening of the discussion were requested, the decision would require a two-thirds majority of those voting.

93. Mr. AUER (Austria) pointed out that the issue should be considered in conjunction with Rule 45, according to which meetings of the Drafting Committee were open only to members of the Committee, and the Secretariat.

94. Mr. BOGSCH (Director General of WIPO) reiterated that the issue at hand was now about reopening the discussion, not about substance; if the discussion were reopened, then it would be on substance.

95. Mr. KHLESTOV (Russian Federation) referred to the above intervention by the Delegation of Côte d'Ivoire, and stated that a decision on this issue had already been taken, and that there was no point in resuming the debate now.

96. Mrs. GHOSE (India) pointed out that that question could be discussed when Rule 45 would be considered.

97. Mr. BOGSCH (Director General of WIPO) asked the Delegation of Singapore if it agreed to take up its question when the Conference discussed Rule 45.

98. Mr. TIWARI (Singapore) agreed with the suggestion of the Director General of WIPO.

99. Mr. BOGSCH (Director General of WIPO) opened the discussion on *Rule 14 (Steering Committee)* noting that there had been an intervention requesting that spokesmen of various groups be added as members of the Steering Committee, and asked if other Delegations wished to speak.

100. Mme BOUVET (Canada) demande une suspension de séance au vu de l'importance que revêt l'article 14 du règlement intérieur de la conférence diplomatique.

101. Mr. KUSHAN (United States of America) offered his Delegation's support for the proposal by the Delegation of Canada.

102. M. SÉRY (Côte d'Ivoire) souhaite obtenir des éclaircissements sur la demande de suspension de séance.

103. Mme BOUVET (Canada) répond qu'une concertation permettrait de dégager plus facilement une position commune des États membres. En conséquence, elle demande une suspension de séance.

104. M. BOGSCH (Directeur général de l'OMPI) suspend la séance.

[*Suspension*]

105. Mr. BOGSCH (Director General of WIPO) reopened the floor for discussion on *Rule 14 (Steering Committee)*.

106. Mr. SINHA (India) noted that the just completed suspension was requested for the purpose of private consultations relative to Rule 14, and requested that the Conference be informed as to the outcome, if any, of those private consultations.

107. Mr. BOGSCH (Director General of WIPO) offered the floor to the Delegation of Canada, which had made the request for the suspension, to respond to the above request by the Delegation of India.

108. Mme BOUVET (Canada) informe que le groupe B souhaite un accroissement du nombre de vice-présidents de la conférence. Elle explique que le choix de 14 vice-présidents portait le Comité directeur dans son ensemble à un nombre impair. Compte tenu à la fois de la diversité des intérêts représentés au sein du groupe B et de l'ampleur des travaux à mener, il conviendrait d'élargir ainsi à 19 le nombre des membres du Comité directeur.

109. M. BOGSCH (Directeur général de l'OMPI) fait remarquer que la proposition de la Délégation du Canada concerne l'article 15 du projet de règlement intérieur de la conférence diplomatique et a un effet direct sur l'article 14. Il relève qu'il n'est pas nécessaire de modifier l'article 14, cependant demande si des propositions existent dans ce sens.

110. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, referred to the proposal by the Delegation of Canada to increase the number of Vice-Presidents of the Conference, from 10 to 15, and suggested that the adoption of Rule 14 would therefore depend on the resolution of the proposal from the Delegation of Canada. He sought to reserve the right to come back to Rule 14 after the consideration of Rule 15 in conjunction with the proposal from the Delegation of Canada..

111. Mr. BOGSCH (Director General of WIPO) pointed out that Rule 14(2) merely referred to the “Vice-Presidents,” without specifying their number, so it would not be necessary to come back to that provision, as the Delegation of Sri Lanka had requested.

112. Mr. KAUKAB (Pakistan) recalled that, in regard to Rule 14, the Asian Group had proposed that the regional coordinators should be members of the Steering Committee. He pointed out that there was a connection between the proposal by the Delegation of Canada to increase the number of Vice-Presidents in the Conference from 10 to 15, and the possibility that the regional groups who so wished could use one of those seats for that purpose. He noted that that was the reason why the Delegation of Sri Lanka, as coordinator for the Asian Group, had suggested that Rule 14 and Rule 15 be considered together.

113. Mr. BOGSCH (Director General of WIPO) suggested that Rule 14 be adopted as currently drafted, with the understanding that, if the number of Vice-Presidents of the Conference, in Rule 15, would ultimately be decided to be less than 15 in number, then the Conference could come back to Rule 14 for re-consideration.

114. Mr. KHLESTOV (Russian Federation) thanked the Director General of WIPO for his clarification, and suggested that the Conference could adopt Rule 14, and then consider the number of Vice-Presidents of the Conference in conjunction with the discussion on Rule 15. He felt that the increased number of Vice-Presidents should satisfy the concerns of the Asian Group.

115. Mr. BOGSCH (Director General of WIPO) noted that there was no objection to the proposal by the Delegation of Canada, according to which there would be 14 Vice-Presidents of the Conference, and a President, for a total of 15 officers of the Conference.

116. *The Diplomatic Conference adopted Rule 14 (Steering Committee) with the amendment proposed by the Delegation of Canada.*

117. Mr. BOGSCH (Director General of WIPO) opened the floor for interventions on the entire *Rule 15 (Officers and Their Election; Precedence Among Vice-Presidents and Vice-Chairmen), paragraphs (2) to (6) inclusive.*

118. *The Diplomatic Conference adopted Rule 15 (Officers and Their Election; Precedence Among Vice-Presidents and Vice-Chairmen), as amended.*

119. Mr. BOGSCH (Director General of WIPO) opened the floor for consideration and adoption of *Rules 16 (Acting President; Acting Chairman), 17 (Replacement of the President or the Chairman) and 18 (Vote by the Presiding Officer).*

120. Mr. KHLESTOV (Russian Federation) asked the Director General of WIPO for clarification of the terms “Acting President” and “Acting Chairman,” as specified in Rule 16.

121. Mr. BOGSCH (Director General of WIPO) clarified that a Vice-President would have a second title, which would be “Acting President,” but only for the period when, for the reasons indicated in Rule 16(1), he was to act instead of the President. He stated that no Delegation wished to take the floor on the three Rules.

122. *The Diplomatic Conference adopted Rules 16 (Acting President; Acting Chairman), 17 (Replacement of the President or the Chairman), and 18 (Vote by the Presiding Officer).*

123. Mr. BOGSCH (Director General of WIPO) opened the floor for consideration of *Rule 19 (Quorum)* and stated that no Delegation wished to take the floor.

124. *The Diplomatic Conference adopted Rule 19 (Quorum).*

125. Mr. BOGSCH (Director General of WIPO) opened the floor for consideration of *Rules 20 (General Powers of the Presiding Officer), 21 (Speeches), 22 (Precedence in Receiving the Floor), 23 (Points of Order), 24 (Limit on Speeches), 25 (Closing of List of Speakers), 26 (Adjournment or Closure of Debate), 27 (Suspension or Adjournment of the Meeting), 28 (Order of Procedural Motions; Content of Interventions on Such Motions), 29 (Basic Proposal; Proposals for Amendment), 30 (Decisions on the Competence of the Conference), 31 (Withdrawal of Procedural Motions and Proposals for Amendment), and 32 (Reconsideration of Matters Decided)*, and stated that no Delegation requested the floor regarding those Rules.

126. *The Diplomatic Conference adopted Rules 20 (General Powers of the Presiding Officer), 21 (Speeches), 22 (Precedence in Receiving the Floor), 23 (Points of Order), 24 (Limit on Speeches), 25 (Closing of List of Speakers), 26 (Adjournment or Closure of Debate), 27 (Suspension or Adjournment of the Meeting), 28 (Order of Procedural Motions; Content of Interventions on Such Motions), 29 (Basic Proposal; Proposals for Amendment), 30 (Decisions on the Competence of the Conference), 31 (Withdrawal of Procedural Motions and Proposals for Amendment), and 32 (Reconsideration of Matters Decided).*

127. Mr. BOGSCH (Director General of WIPO) opened the floor for consideration of *Rule 33 (Right to Vote)*.

128. Mme BOUVET (Canada) demande un ajournement de séance.

129. Mr. BOGSCH (Director General of WIPO) asked if any Delegation supported the proposal.

130. El Sr. ROGERS (Chile) apoya la propuesta de la Delegación de Canadá de suspender la sesión.

131. M. SÉRY (Côte d’Ivoire) appuie la demande et souhaite que tous les points en suspens soient réglés pour éviter les suspensions répétées.

132. Mr. SINHA (India) asked the Director General of WIPO for clarification as to the nature and purpose of the proposed adjournment; exactly what issues would be considered during the proposed adjournment. He strongly supported the proposal by the Delegation of Côte d'Ivoire, and noted that there were several issues to be resolved in and among the various regional groups.

133. Mr. BOGSCH (Director General of WIPO) suggested that the adjournment would be for the purpose of discussing and clarifying all issues and questions with respect to the balance of the Rules of Procedure. He also suggested that it might be possible to discuss nominations to posts of the various officers of the Conference, including who might be the President of the Conference.

134. Mr. KAUKAB (Pakistan) supported the proposed adjournment of the session.

135. Mr. NÁRAY (Hungary) supported the proposal by the Delegation of Canada for adjournment of the session.

136. M. BOGSCH (Director General of WIPO) adjourned the session.

*Second Meeting*

*Monday, December 2, 1996*

*Afternoon*

*Item 2 of the Agenda: Consideration and adoption of the Rules of Procedure (continuation)*

137. Mr. BOGSCH (Director General of WIPO) opened the meeting.

138. Mme BOUVET (Canada) demande une suspension de séance jusqu'à 10 heures le lendemain matin.

139. M. SÉRY (Côte d'Ivoire) appuie la demande.

140. Mr. SHEN (China) stated that his Delegation supported the proposal of the Delegation of Canada to adjourn the meeting until 10.00 the following morning, but it hoped that the coordination among the different groups would be carried out faster to avoid any further suspension, or adjournment.

141. Mr. KHLESTOV (Russian Federation) stated that he had no particular problem with the proposal to adjourn the meeting. He appealed to all coordinators and the regional groups to show flexibility so that agreement could be reached quickly.

142. Mr. BOGSCH (Director General of WIPO) adjourned the session until 10.00 the following morning.

*Third Meeting*

*Tuesday, December 3, 1996*

*Morning*

*Item 2 of the Agenda: Consideration and adoption of the Rules of Procedure (continuation)*

143. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion regarding *Rule 33 (Right to Vote)*, and stated that the Delegation of the United States of America had handed to the Secretariat a written proposal for that Rule, which was being translated and would be ready soon.

144. Mr. KUSHAN (United States of America) stated that his Delegation sought to ensure a transparent and functional voting provision that addressed concerns expressed in previous meetings. He stated that that desire for transparency could be achieved through a fairly straightforward modification of the draft Rules of Procedure. He proposed an amendment to paragraph (1) of Rule 33, namely, deletion of references to Articles 35(2) and 36(2), and offered a replacement text for paragraph (3), which would read as follows:

“The Special Delegation, may under the authority of the European Community, exercise the rights to vote of the Member States of the European Community, which are represented at the Diplomatic Conference provided that:

(i) the Special Delegation shall not exercise the rights to vote of the Member States of the European Community if the Member States exercise their rights to vote and vice versa, and

(ii) the number of votes cast by the Special Delegation shall in no case exceed the number of Member States of the European Community that are represented at the Diplomatic Conference and that are present at and entitled to participate in the vote.”

He also proposed a modification to Rule 2(2) that would make references only to Rules 11(2), 33, and 34.

145. M. SÉRY (Côte d’Ivoire) signale que le groupe africain sera amené à demander une suspension de séance car certains membres du groupe ne prendront connaissance de la version française du document que dès sa distribution.

146. Mr. BOGSCH (Director General of WIPO) asked whether any Delegations wished to raise any questions regarding the proposal by the Delegation of the United States of America, which they had had the opportunity to hear interpreted into the languages of the Conference.

147. Mr. TAKAHASHI (Japan) expressed support for the proposal of the Delegation of the United States of America.

148. Mr. TIWARI (Singapore) asked for clarification of the “are present” language in subparagraph (ii) of the proposed Rule.

149. Mr. KUSHAN (United States of America) stated that the requirement for presence was necessary, because the Special Delegation of the European Community was being given authority to cast votes on matters both within and outside the competence of the European Community. He stated that, on matters outside the competence of the European Community, the failure to require the presence of the individual Member State entitled to vote on the topic would permit proxy voting in WIPO, which was unprecedented.

150. Mr. AYYAR (India) stated that the issue had been discussed briefly in the Preparatory Committee Meeting in May, and asked for clarification of the past practice of WIPO concerning the rights of the Special Delegation of the European Community.

151. Mr. BOGSCH (Director General of WIPO) stated that proxy voting was unknown in WIPO. The practice of WIPO was that a delegation had the right to vote in its own name and its own name only.

152. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, stated that the European Community could not accept the principle expressed in the last paragraph of the proposal of the United States of America concerning Rule 33 which would require a Community “presence.” He added that the European Community had not accepted the “presence” condition in a number of other fora, and would not be willing to accept it in this context. He noted the existence of the arrangements in the World Trade Organization and the Energy Charter where there was no “presence” requirement in respect of the European Community when it voted on behalf of its Member States. He proposed an alternative text for Rule 33(3), which would read as follows:

“The number of votes cast by the Special Delegation shall in no case exceed the number of Member States of the European Community that are represented at the Diplomatic Conference.”

153. Mr. BOGSCH (Director General of WIPO) asked whether the word “represented” in the proposal of the Delegation of Ireland on behalf of the European Community and its Member States meant “registered,” in the sense that, once a Delegation of a Member State of the European Community had deposited its credentials to participate in the Conference—at which time it would be considered a “registered” country—the Delegation would not need to be present when a given vote took place, allowing the Special Delegation of the European Community to cast as many votes as there were “registered” Member States of the European Community, that is, States having filed their credentials.

154. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, answered that the Director General’s understanding was correct.

155. Mr. BOGSCH (Director General of WIPO) stated that, in recent Diplomatic Conferences in which a Delegation of the European Community was participating, namely the Diplomatic Conferences, the Patent Law Treaty, the Trademark Law Treaty, the UPOV Treaty and the Integrated Circuits Treaty, the Delegation of the European Community had no right to vote either in its own name or in the name of any of its Member States. He noted that the Diplomatic Conference which adopted the Protocol to the Madrid Agreement conferred a right on the European Community to vote in the Assembly.



156. The Director General of WIPO asked whether any Delegations supported the proposal by the Delegation of Côte d'Ivoire that the meeting should be suspended.

157. M. SÉRY (Côte d'Ivoire) indique que son intervention est faite au nom du groupe africain ce qui suppose que tous les États membres de ce groupe la soutiennent.

158. Mr. PALENFO (Burkina Faso) appuie la proposition de la Délégation de la Côte d'Ivoire.

159. Mr. AYYAR (India) asked for further clarification concerning the competence of the European Community to vote for its Member States on issues in respect of which it did not have competence.

160. M. SÉRY (Côte d'Ivoire) dit que sa délégation accepte de différer sa proposition de suspension de séance et d'entendre au préalable la réponse de la Communauté européenne.

161. Mr. STOODLEY (European Communities) stated that the status which the European Community was seeking in this Conference reflected the existing state of authority and the development of binding rules within the European Community concerning the subject matter of this Conference. He stated that that law was in a state of evolution, and that, at the time of earlier Conferences on different subject matter, the circumstances were different. Concerning the question as to the authority of the Community to exercise the Member States' right to vote, he stated that no question of competence arose here, since such competence could only exist under the internal rules of the European Community.

162. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, suggested that the proposal of the Delegation of the United States of America be accepted in respect of Rules 33(1), 33(2), 33(3)(i), but not in respect of Rule 33(3)(ii). He proposed that the text should read "the number of votes cast by the Special Delegation shall in no case exceed the number of Member States of the European Community that are represented at the Diplomatic Conference."

163. Mr. BOGSCH (Director General of WIPO) stated that the difference between the proposal of the Delegation of the United States of America and the proposal made by the Delegation of Ireland on behalf of the European Community and its Member States related to the last 12 words of draft Rule 33(3)(ii).

164. Mr. SCHÄFERS (Germany) expressed the support of his Delegation for the proposal of the Delegation of Ireland on behalf of the European Community and its Member States.

165. Mr. GYERTYÁNFY (Hungary) expressed the support of his Delegation for the proposal of the Delegation of Ireland on behalf of the European Community and its Member States.

166. El Sr. PORZIO (Chile) considera que el orden de los párrafos 1) y 2) del Artículo 33 debería ser invertido para tratar primero de la situación de los Estados miembros y luego prever el caso de la Delegación especial.

167. Mr. KHLESTOV (Russian Federation) expressed the support of his Delegation for the proposal of the Delegation of the United States of America, but stated that there were certain valid ideas in the statements of the Delegation of the European Community.

168. Mr. LIM (Republic of Korea) asked for clarification of the proposal of the United States of America as to whether, under the proposal, the European Community could exercise its right to vote when one or some of its Member States were present.

169. Mr. BOGSCH (Director General of WIPO) stated that, in his understanding, the proposal of the United States of America intended that the Special Delegation should not exercise the right to vote of any Member State of the European Community if such a Member State were to exercise its own vote.

170. Mr. KUSHAN (United States of America) stated that the understanding of the Director General of WIPO was correct.

171. El Sr. EMERY (Argentina) apoya la propuesta de enmienda presentada por la Delegación de Chile.

172. M. GOVONI (Suisse) dit que sa délégation appuie la proposition d'amendement présentée par la Délégation des États-Unis d'Amérique telle que modifiée par la proposition présentée par la Délégation de l'Irlande au nom de la Communauté européenne. Il estime que la présence physique des délégués ne lui paraît pas indispensable dans ce contexte.

173. Mr. BOGSCH (Director General of WIPO) suspended the session.

[*Suspension*]

174. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion of the written proposal by the United States of America under consideration, and the modification to that proposal suggested by the Delegation of Ireland on behalf of the European Community and its Member States, namely that the last 12 words in English should be omitted from the proposal.

175. Mr. KUSHAN (United States of America) asked the Director General of WIPO for clarification as to the scope of the discussions. He stated that his Delegation accepted reversing the order of paragraphs (1) and (2) in Rule 33, as had been suggested by the Delegation of Chile. However, he objected to the proposal by the Delegation of Ireland on behalf of the European Community and its Member States to delete the last 12 words of the proposal. His Delegation could accept the proposal, in respect to the language contained in Rule 33(3)(i), to eliminate the second "the" in line two of that subparagraph, and insert the words "any of" in its place.

176. M. SÉRY (Délégation de la Côte d'Ivoire), intervenant au nom du groupe africain, souhaite savoir la raison du désaccord de la Délégation de la Communauté européenne avec l'exigence d'être présent dans la salle au moment d'un vote.

177. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, expressed the opinion that the authority of the European Community to exercise the voting rights of its Member States in the Conference was clear from the text of the proposal under consideration. He stressed that it was only necessary for the Delegation which was exercising a voting right to be present, and that no further legal requirements were necessary or appropriate, other than that the Delegation with the due authority was present to exercise the relevant voting rights.

178. Mr. BOGSCH (Director General of WIPO) added that, depending on the outcome of the consideration of Rule 33, it might be necessary to re-examine Rule 34(2), which specified the decisions requiring a majority of two-thirds of the delegations present and voting.

179. Mr. TIWARI (Singapore) asked the Delegation of the United States of America for clarification in its proposal with regard to Rule 33(3)(ii), line 3. He wondered whether the motivation for including this provision was merely caution, or whether it was intended to cover any particular problem area, or perhaps some other objective.

180. Mr. KUSHAN (United States of America) stated that the provision referred to by the Delegation of Singapore applied to a situation where there would be a limited number of participants in a voting situation at the Conference. As an example, he mentioned that, should there be a Working Group, the number of votes to be cast by the European Community would be only the number of Member States of the European Community that were actually in the Working Group, rather than all the 15 Member States of the European Community.

181. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, said that the earlier proposal to insert the word "any" in Rule 33(3)(i) in the written proposal by the United States of America was not acceptable to the European Community and its Member States. The Delegation expressed its belief that the current wording of that subparagraph in the proposal by the Delegation of the United States of America was taken from the UPOV Treaty, which was acceptable, and formed an agreeable precedent. The Delegation proposed to delete the three words "present at and" before the word "entitled" in Rule 33(3)(ii) in the written proposal by the Delegation of the United States of America.

182. El Sr. PORZIO (Chile) aporta una aclaración relativa a la intervención de la Delegación de Irlanda que le atribuyó a Chile la paternidad de la propuesta de agregar la palabra "any" (cualquier) y repite que la propuesta presentada por la Delegación de Chile fue la de reversar el orden de los párrafos 1 y 2 de la propuesta de los Estados Unidos de América.

183. Mr. CRESWELL (Australia) expressed the support of his Delegation for the written proposal by the Delegation of the United States of America. He noted with appreciation that the European Community and its Member States and the European Commission had striven to accommodate the concerns of other countries about the conditions of participation by the European Community, drawing attention to the unique status of the European Community reflected in its designation as a Special Delegation. He noted that the EC had pointed out that

the competence of the European Community was still evolving. The conditions upon which any country's vote could be exercised were a matter of special concern, and he noted the Director General's advice that there were no precedents for proxy voting in WIPO conferences to this point. He felt, therefore, that the certainty and clarity of the proposal by the Delegation of the United States of America was to be preferred.

184. Mr. BOGSCH (Director General of WIPO) drew attention to the clear division of opinion which existed on the question under discussion. He indicated that he would come back to the minor proposals concerning the word "any" and the order of paragraphs, after the main question had been decided, if not by compromise, then by vote.

185. Mr. GYERTYÁNFY (Hungary), speaking on behalf of Delegations of Central European countries and the Baltic States, supported the proposal by the United States of America as amended by the proposal by the Delegation of Ireland, explaining that the words "present at and" in subparagraph (ii) would be deleted. He also supported the proposal to reverse the order of paragraphs (1) and (2) in Rule 33.

186. Mr. EKPO (Nigeria) asked the Delegation of the European Community if there was a particular problem about delegates being present.

187. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, stated that that was something that had never been accepted before, and which would form a precedent that the European Community and its Member States would not like to see happen.

188. M. SÉRY (Côte d'Ivoire) déclare que le groupe africain ne souhaite pas l'instauration d'un vote par procuration et appuie donc la proposition de la Délégation des États-Unis d'Amérique.

189. Mr. KIM (Republic of Korea) expressed his Delegation's support for the written proposal made by the Delegation of the United States of America, and asked the Director General of WIPO for clarification as to the proposed change in subparagraph (3)(i) of that proposal.

190. Mr. BOGSCH (Director General of WIPO) indicated his preference to come back to the question posed by the Delegation of the Republic of Korea after the main question had been settled.

191. Mr. KHLESTOV (Russian Federation) stated that it would be better to find a compromise to the question, and preferably without a vote. Regarding the presence of representatives of the Member States of the European Community, he proposed that physical presence might be necessary when the number of places in a given body was limited, and, if there were no such limited number of places, physical presence would not be necessary so that the European Community could vote on behalf of all of the Member States of the European Community.

192. Mr. STOODLEY (European Communities) offered to clarify the question under consideration. He noted that the Conference would be creating certain bodies in which participation was limited or restricted. It was his understanding that, in bodies with limited or

restricted participation, only those who were elected to the bodies concerned would be able to participate or vote therein; in such bodies, the European Community and its Member States would not expect to upset the political balance in relation to membership. He also stated that there would be no question of some Member States voting, and the European Community exercising the rights of the other Member States. Either the Member States would act individually by exercising their own rights to vote, or the European Community would exercise the rights to vote of all of its Member States, as the European Community only represented all of its Member States collectively. In the plenary, the European Community would represent all of its Member States.

193. Mr. BOGSCH (Director General of WIPO) sought clarification on the question under consideration, namely, that voting in the name of the Member States applied only in bodies where all Delegations had the right to participate, namely, the Plenary, and in Main Committee I and Main Committee II. Whereas, in the Drafting Committee, the Credentials Committee, in possible working groups, and in the Steering Committee, voting in the name of Member States would not be possible.

194. Mr. STOODLEY (European Communities) made the clarification that voting in bodies where there was a restricted number of participants would reflect the number of members elected to those bodies; any representation of the European Community in those bodies would not disturb the political balance, reflected on the basis that each member had a vote in that body, and that those who were not members of that body could not have their votes exercised in that body.

195. Mr. BOGSCH (Director General of WIPO) stated the understanding that the European Community would have 15 votes in the Plenary of the Conference, and in the two Main Committees, while, in the other bodies, it would have as many votes as the number of Member States of the European Community elected to those bodies.

196. Mr. KUSHAN (United States of America) expressed appreciation for the earlier intervention by the Delegation of the Russian Federation, which sought to achieve a compromise on this question. His Delegation was not able to reconcile a distinction between bodies with limited participation, on the one hand, and the Plenary or the Main Committees, on the other, and he, therefore, suggested that the question be resolved as the Director General of WIPO had suggested prior to the said intervention by the Delegation of the Russian Federation.

197. Mr. BOGSCH (Director General of WIPO) asked the Conference if there was any objection to taking a vote. Seeing none, he asked those Delegations in favor of the proposal by the Delegation of Ireland on behalf of the European Community and its Member States, that is, to delete the words "present at and" in subparagraph (ii) of the written proposal by the Delegation of the United States of America, to vote *for* this amendment, and those Delegations who wished to maintain the said three words to vote *against* this amendment.

198. *The Diplomatic Conference rejected the proposal by the Delegation of Ireland with 27 votes in favor, 40 votes against, and with 8 abstentions.*

199. *The Diplomatic Conference adopted Rule 33(3)(ii), as proposed by the Delegation of the United States of America (document CRNR/DC/8).*

200. Mr. BOGSCH (Director General of WIPO) suggested that the Conference consider subparagraph (i) of the proposal by the Delegation of the United States of America (document CRNR/DC/8), and asked whether it should read “the Special Delegation shall not exercise the rights to vote of the Member States of the European Community if the Member States exercise the rights to vote and vice versa,” or, “the Special Delegation shall not exercise the rights to vote of the Member States of the European Community if any Member State exercises its right to vote and vice versa.” He asked the Delegation of the European Communities for clarification on the question whether, if one of the Member States exercised the vote, the European Community would have the right to vote in the name of the others.

201. Mr. STOODLEY (European Communities) confirmed that, if any one Member State exercised the right to vote, the European Community would not have the right to vote for the remaining Member States.

202. Mr. BOGSCH (Director General of WIPO) asked the Delegation of the European Communities if it could accept the language in subparagraph (i) of the written proposal by the Delegation of the United States of America, with the insertion of the word “any” before the words “Member States” in line two.

203. Mr. STOODLEY (European Communities) indicated that the suggested change was not acceptable, and that he wished to maintain the proposal as initially presented by the Delegation of the United States of America, without further amendment.

204. Mr. BOGSCH (Director General of WIPO) asked what was the wish of the Delegation of the United States of America with respect to the proposed amendment to subparagraph (i) of its written proposal.

205. Mr. KUSHAN (United States of America) supported the amendment to the written proposal of his Delegation, to insert the word “any” in subparagraph (i), as described by the Director General of WIPO.

206. Mr. BOGSCH (Director General of WIPO) asked the Conference if it wished to vote on this question.

207. Mr. SCHÄFERS (Germany) drew attention to the importance of the feeling of “togetherness” shared by the Member States of the European Community, in that they would like to be looked upon as a real community. He also noted that the representation of the European Community was of the totality of the Member States, and that that spirit was reflected in the current text of the written proposal by the Delegation of the the United States of America.

208. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Members States, supported the intervention by the Delegation of Germany. He emphasized that the current language of this proposal was the same as was included in the UPOV Treaty, and that the new language would be an unacceptable precedent.

209. Mr. LEHMAN (United States of America) declared that—for the sake of moving the proceedings along, and in view of the assurances given by the European Community that it

would under no circumstances exercise the remaining votes of the Member States if any Member State cast its own vote—the Delegation of the United States of America would accept the original language of its written proposal without amendment.

210. Mr. BOGSCH (Director General of WIPO) thanked the Delegation of the United States of America.

211. *The Diplomatic Conference adopted Rule 33(3)(i), as proposed by the Delegation of the United States of America (document CRNR/DC/8).*

212. Mr. BOGSCH (Director General of WIPO) suggested consideration of the proposal by the Delegation of Chile that paragraphs (1) and (2) of Rule 33 in the written proposal by the Delegation of the United States of America (document CRNR/DC/8) be reversed in their order, so that the new paragraph (1) would start with the words “Each Member Delegation,” and the new paragraph (2) would start with the words “The Special Delegation.” He noted that, with this change, the Rule would start with the general rule on Member Delegations, and then bring together the two provisions which dealt with the Special Delegation. He saw no objection.

213. *The Diplomatic Conference adopted the remainder of Rule 33 (Right to Vote), as proposed by the Delegation of the United States of America (document CRNR/DC/8) and as amended by the Delegation of Chile.*

214. Mr. STOODLEY (European Communities) thanked the other Delegations now that the European Community had been given the right to vote in the Conference. He expressed regret at the inclusion of the physical presence requirement, noting that it was based on a wrong perception of the development and nature of the European Community and its functioning. He hoped that this would not be a precedent for the consideration of the draft Final and Administrative Clauses of the treaty or treaties which his Delegation was aiming to conclude at this Conference. He hoped to use the time for deliberations on substantive issues.

215. Mr. BOGSCH (Director General of WIPO) introduced *Rules 34 (Required Majorities), 35 (Requirement of Seconding), 36 (Conduct During Voting), 37 (Division of Proposals), 38 (Voting on Proposals for Amendment), 39 (Voting on Proposals for Amendment on the Same Question), 40 (Equally Divided Votes), 41(Languages of Oral Interventions), 42 (Summary Minutes), and 43 (Languages of Documents and Summary Minutes)*, and stated that no Delegation wished to ask for the floor.

216. *The Diplomatic Conference adopted Rules 34 (Required Majorities), 35 (Requirement of Seconding), 36 (Conduct During Voting), 37 (Division of Proposals), 38 (Voting on Proposals for Amendment), 39 (Voting on Proposals for Amendment on the Same Question), 40 (Equally Divided Votes), 41(Languages of Oral Interventions), 42 (Summary Minutes), and 43 (Languages of Documents and Summary Minutes).*

217. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Rules 44 (Meetings of the Conference and of the Main Committees) and 45 (Meetings of Other Committees and of Working Groups).*

218. Mr. TIWARI (Singapore) proposed that the sessions of the Drafting Committee be open to non-members from the various Delegations who should be able to be present as observers. He referred to expressed concerns that, if the Drafting Committee were too large, its work would be impeded. In his experience from other conferences, that would not be the case. He explained that allowing interested Delegations to be present during such deliberations, and to listen, would provide transparency, which was an important requirement of the Conference, and would also expedite the work of the Conference. He noted that it had been said that the purpose of the Drafting Committee was merely to harmonize languages, but he felt that sometimes such activities would affect substantive matters.

219. Mr. BOGSCH (Director General of WIPO) explained that observers had the right to speak under the present Rules. He stated his understanding that the proposal was that Rule 45 would be modified to reflect that, in the Drafting Committee, non-members from Member Delegations could participate, but that Observer Delegations and Observer Organizations could not participate.

220. Mr. AYYAR (India), on behalf of the Asian Group, stated that the Asian Group supported the proposal by the Delegation of Singapore, and the proposal that Member Delegations be allowed to be present, but not to speak, as observers in the meetings of the Drafting Committee.

221. M. SÉRY (Côte d'Ivoire) s'interroge sur l'intérêt d'élargir le Comité de rédaction en incluant des observateurs sans droit de parole. Il est de l'avis que l'aspect transparence est pris en compte dans la mesure où les délégués membres du Comité de rédaction seront des représentants de leur groupe. Au nom du groupe africain, il émet des réserves quant à la participation d'observateurs au Comité de rédaction.

222. Mr. SCHÄFERS (Germany) supported the statement of the Delegation of Côte d'Ivoire, but stated that his Delegation did not favor the right of others than the members of the Drafting Committee to intervene during the meetings of the Committee, because such interventions would negatively affect the concentrated climate of discussion among Committee members. He added that his Delegation hesitated to accept the presence of observers, but that, in the interest of transparency, it could agree, provided the observers had no right to speak.

223. El Sr. ROGERS (Chile), en representación del Grupo Latinoamericano y del Caribe, considera que las discusiones y negociaciones sustantivas se llevarán a cabo en las dos Comisiones Principales y en los eventuales grupos de trabajo. Dada la función técnica del Comité de Redacción, los países de América Latina y del Caribe prefieren conservar el artículo 45 en su forma actual.

224. Mr. AYYAR (India) noted that one purpose of the Drafting Committee was to ensure the accuracy of the presentation of the text adopted at the Main Committees' debates into the six official languages of the Conference, and that an advantage of allowing Member Delegations to attend meetings of the Drafting Committee as non-speaking observers would be that observers from the various regional groups could approve the translated texts informally through the member or members of the Drafting Committee representing their group, thus avoiding the need to suspend Drafting Committee meetings to seek approval of such texts from the regional groups.



225. Mr. BOGSCH (Director General of WIPO) stated that there was a difference between the spokesman, or so-called representative or coordinator, of a regional group, on the one hand, and, on the other hand, a member of the Drafting Committee from a particular region. The former could act on behalf of a group of countries, whereas the latter could only act for himself.

226. Mr. TIWARI (Singapore) supported the clarification of the Delegation of India, and stated that the difference between substance and language could impose limitations in certain circumstances, and pointed out that the presence of non-speaking observers in the meetings of the Drafting Committee would be good for the Conference as a whole.

227. Mr. KUSHAN (United States of America) asked for clarification concerning the specific language of the proposal.

228. Mr. BOGSCH (Director General of WIPO) stated that the proposal was whether to state, in Rule 45, that in addition to the members of the Drafting Committee also any Member Delegation could be present in the meetings of the Committee without the right to speak.

229. Mr. AYYAR (India) requested suspension of the session in order that the Asian Group might consult.

230. Mr. BOGSCH (Director General of WIPO) said that he saw signs of support for the proposal and suspended the meeting.

[*Suspension*]

231. Mr. AYYAR (India) requested a further suspension until after the lunch break, since the Asian Group needed more time to discuss the matter.

232. Mr. TIWARI (Singapore) supported the request of the Delegation of India on behalf of the Asian Group, with two clarifications, namely, that the proposal to admit non-speaking observers to meetings of the Drafting Committee did not include Observer Delegations and Observer Organizations, and that the proposal was not intended to impede the work of the Committee.

233. Mr. SHEN (China) stated that his Delegation did not oppose a suspension, and that it could accept the proposal to admit Member Delegations as non-speaking observers in meetings of the Drafting Committee.

234. Mr. BOGSCH (Director General of WIPO) stated that an improved version of the proposal would be read.

235. Mr. GURRY (Secretariat) read out the proposal as follows:

“The existing text of Rule 45 would become paragraph 1. From that text, the words “the Drafting Committee” would be removed. A new paragraph 2 would be added, which would read as follows:

“ “The meetings of the Drafting Committee shall be open to Member Delegations that are not members of the Drafting Committee provided that any such Member Delegation may not make oral or written statements’.”

236. Mr. BOGSCH (Director General of WIPO) stated that the proposal was not made by the Secretariat, but by the Delegations of the Asian Group. He suspended the meeting.

[*Suspension*]

237. Mr. BOGSCH (Director General of WIPO) declared the meeting reopened.

238. Mr. TIWARI (Singapore) stated that there was a suggestion to add language to the end of Rule 45 clarifying that the presence of observers should not impede the work of the Drafting Committee. He read out the proposed text as a whole, as follows:

“The meetings of the Drafting Committee shall be open to Member Delegations that are not members of the Drafting Committee provided that any such Member Delegation may not make oral or written statements, and their presence or lack thereof in the proceedings of the Drafting Committee, shall in no way prevent the parallel operation of the Drafting Committee with any other Committee or Working Group.”

He stated that this addition had been requested by a major country present in the room, and that, in the interest of compromise, his Delegation could accept it.

239. Mr. AYYAR (India) expressed his Delegation’s support for the proposal by the Delegation of Singapore.

240. M. SÉRY (Côte d’Ivoire) précise qu’il n’a pas encore consulté le groupe africain et qu’il souhaite des éclaircissements sur le fait que la présence ou l’absence d’observateurs soit de nature à gêner le fonctionnement du groupe.

241. M. BOGSCH (Directeur general de l’OMPI) fait remarquer que le parallélisme des groupes de travail ou comités va de soi.

242. Mr. TIWARI (Singapore) stated that his Delegation agreed that the schedules of the work of each Committee should be established by the Committee itself, and noted that the proposed text stated the obvious, that the presence or absence of observers should not hold up the work of the Committee.

243. Mr. BOGSCH (Director General of WIPO) stated that the text must be interpreted as a proposal of the Delegation of Singapore, because the unnamed “major country” did not make a proposal.

244. El Sr. ROGERS (Chile), en nombre del Grupo Latinoamericano y del Caribe, considera que el Comité de Redacción es un órgano con la necesaria representatividad tanto respecto a idiomas como a grupos regionales, y que la presencia de observadores, inclusive sin derecho a voz, podría afectar su eficacia. Por consiguiente, el Grupo aboga en favor del mantenimiento del artículo 45 en su forma original.

245. Mr. BOGSCH (Director General of WIPO) stated that there was a proposal to amend Rule 45 and an objection to the proposal. He asked whether there were objections to a vote on the proposal. Seeing none, he put the proposal of the Delegation of Singapore to a vote.

*246. The Diplomatic Conference rejected the proposal of the Delegation of Singapore with 14 votes in favor, 27 votes against and with 42 abstentions.*

*247. The Diplomatic Conference adopted Rules 44 (Meetings of the Conference and of the Main Committees) and 45 (Meetings of Other Committees and of Working Groups), as proposed in document CRNR/DC/2.*

248. Mr. TIWARI (Singapore) expressed thanks to all Delegations which had supported his Delegation’s proposal and also other Delegations which had given the proposal careful consideration.

249. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Rule 46 (Status of Observers)*, and stated that there was no Delegation to ask for the floor.

*250. The Diplomatic Conference adopted Rule 46 (Status of Observers).*

251. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Rule 47 (Possibility of Amending the Rules of Procedure)*, and stated that there was no observation.

*252. The Diplomatic Conference adopted Rule 47 (Possibility of Amending the Rules of Procedure).*

253. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Rule 48 (Signing the Final Act)*, and stated that there was no intervention.

*254. The Diplomatic Conference adopted Rule 48 (Signing the Final Act).*

255. Mr. BOGSCH (Director General of WIPO) reopened the discussion on *Rule 2(2) (Composition of the Conference)*, where references in parentheses were reserved. He stated his view that it followed from the adoption of the proposal of the Delegation of the United States of America in the morning session, that Rule 2(2), as proposed by that Delegation in document CRNR/DC/8, should read as follows:

“References in these Rules of Procedure to Member Delegations shall be considered, except as otherwise provided (see Rules 11(2), 33 and 34) as references also to the Special Delegation.”

He stated that the change was consequential, and that there was no request for the floor.

256. *The Diplomatic Conference adopted Rule 2(2) (Composition of the Conference), with the amendment suggested by the Director General of WIPO.*

257. Mr. BOGSCH (Director General of WIPO) asked whether any further Delegation wished to take the floor on the Agenda item concerning the Rules of Procedure, and stated that there was none.

258. *The Diplomatic Conference adopted the Rules of Procedure, as amended.*

*Item 3 of the Agenda: Election of the President of the Conference.*

259. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Item 3 of the Agenda (Election of the President of the Conference)*.

260. M. SÉRY (Côte d’Ivoire) demande au nom du Groupe africain un ajournement de séance pour des consultations.

261. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, seconded the proposal of the Delegation of Côte d’Ivoire.

262. Mr. BOGSCH (Director General of WIPO) asked if there were any objections to the proposal. Seeing none, he adjourned the meeting.

*Third Meeting*

*Tuesday, December 3, 1996*

*Afternoon*

*Item 3 of the Agenda: Election of the President of the Conference (continuation)*

263. Mr. BOGSCH (Director General of WIPO) reopened the floor for discussion on *Item 3 of the Agenda (Election of the President of the Conference)*.

264. M. SÉRY (Côte d’Ivoire) demande une suspension de séance afin que les coordinateurs de groupes puissent se concerter au sujet de la Présidence et des Bureaux.

265. Mr. BOGSCH (Director General of WIPO) asked the Conference if there was any opposition to the motion by the Delegation of Côte d’Ivoire to suspend the meeting.

266. Mme BOUVET (Canada) appuie la demande de la Délégation de la Côte d'Ivoire.

267. Mr. BOGSCH (Director General of WIPO) asked the Delegation of Côte d'Ivoire whether an adjournment, until 10.00 a.m., the next morning, would be acceptable.

268. M. SERY (Côte d'Ivoire) approuve la suggestion du directeur général de l'OMPI.

269. Mr. BOGSCH (Director General of WIPO) asked again if there was any objection to adjourning the meeting. Since there was no such objection, he adjourned the meeting until Wednesday, December 4, 1996, at 10.00 a.m.

*Fourth Meeting*

*Wednesday, December 4, 1996*

*Morning*

*Item 3 of the Agenda: Election of the President of the Conference (continuation)*

270. Mr. BOGSCH (Director General of WIPO) reopened the floor for discussion on *Item 3 of the Agenda (Election of the President of the Conference)*.

271. El Sr. ROGERS (Chile) solicita que se suspenda la sesión, a fin de que sigan las consultas informales.

272. Mme BOUVET (Canada) appuie la proposition de la Délégation du Chili.

273. M. SÉRY (Côte d'Ivoire) appuie également la proposition de la Délégation du Chili.

274. Mr. BOGSCH (Director General of WIPO) suspended the meeting.

[*Suspension*]

275. Mr. BOGSCH (Director General of WIPO) reopened the meeting.

276. Mr. KUSHAN (United States of America) announced that the private consultations had not yet reached a conclusion with regard to the question of the officers of the Conference. He asked that the meeting be adjourned for further consultations on this question.

277. M. SÉRY (Côte d'Ivoire) appuie la proposition de la Délégation des États-Unis d'Amérique.

278. Mr. BOGSCH (Director General of WIPO) adjourned the meeting.

*Fifth Meeting*

*Wednesday, December 4, 1996*

*Afternoon*

*Item 3 of the Agenda: Election of the President of the Conference (continuation)*

279. Mr. BOGSCH (Director General of WIPO) opened the meeting, and asked if any Delegation wished to take the floor. Seeing none, he suggested to the Conference that it elect the President of the Conference, so that the substantive work could start, and the Conference could come back later to the question of the election of the other officers. Seeing no objection, and seeing no Delegation asking for the floor on this suggestion, he adjourned the meeting until Thursday, December 5, 1996, at 10.00 a.m.

*Sixth Meeting*

*Thursday, December 5, 1996*

*Morning*

*Item 3 of the Agenda: Election of the President of the Conference (continuation)*

280. Mr. BOGSCH (Director General of WIPO) opened the meeting, and restated his proposal of the previous day, namely, that the election of the President take place; then the general declarations could begin simultaneously with negotiations concerning the election of the other officers of the Conference.

281. Mme BOUVET (Canada), au nom du groupe B, souhaite présenter une proposition globale de nature à permettre à l'ensemble des délégations de se prononcer sur les différents postes des bureaux, commissions et comités.

282. Mr. BOGSCH (Director General of WIPO) stated that, according to the Rules of Procedure, he was in the Chair only until the President of the Conference was elected, but that there was not objection to hearing the proposal for the information of the Conference.

283. M. SÉRY (Côte d'Ivoire) déclare être d'accord avec cette approche à la condition que cela permette aux groupes de se réunir pour examiner la proposition.

284. M. BOGSCH (Directeur général de l'OMPI) invite la Délégation du Canada à présenter sa proposition, au nom du groupe B.

285. Mme BOUVET (Canada), s'exprimant au nom du groupe B, propose que la présidence de la conférence soit accordée à un pays africain : le Kenya. Elle propose aussi d'accroître le nombre des vice-présidents de 14 à 18, ce qui nécessite un amendement de l'article 15.1) du

Règlement intérieur de la conférence diplomatique. Elle indique la répartition des vice-présidences : deux vice-présidents pour le groupe africain; trois pour le groupe asiatique, trois pour le groupe GRULAC; un pour la Fédération de Russie; un pour les pays de l'Europe orientale et centrale et pays Baltes, un pour la Chine. S'agissant du groupe B, elle ajoute que des vice-présidences pourraient être données à la France, à l'Irlande, au Danemark, aux États-Unis d'Amérique, au Japon, à la Suisse et au Canada. Quant à la Commission de vérification des pouvoirs, la présidence serait accordée à un représentant de l'Afrique, et le groupe des pays de l'Europe orientale et centrale et des pays Baltes, le groupe GRULAC, le groupe B, le groupe asiatique, le groupe des pays de la CEI et la Chine auraient chacun un siège. Quant à la Commission principale I, la présidence serait dévolue à M. Jukka Liedes de la Finlande, et les trois vice-présidences seraient données à un représentant du Groupe asiatique, un du groupe africain et un du groupe des pays de l'Europe orientale et centrale et pays Baltes. Quant à la Commission principale II, la présidence serait accordée à un représentant du Brésil et les trois vice-présidences seraient données à un représentant du groupe des pays de l'Europe orientale et centrale et pays Baltes, un du groupe B et un du groupe africain ou du groupe asiatique. Quant au Comité de rédaction, la déléguée précise qu'un amendement serait nécessaire à l'article 13.2) du Règlement intérieur de la conférence diplomatique afin de porter le nombre des membres de ce comité à 15. Sur cette base, la présidence serait attribuée à un représentant du groupe asiatique et les autres sièges reviendraient aux groupes africain et asiatique avec un siège chacun, deux sièges pour le GRULAC, un pour la Chine, un pour les pays de l'Europe orientale et centrale et pays Baltes, et le groupe B serait représenté par l'Australie, la Belgique, l'Espagne, les États-Unis d'Amérique et le Royaume Uni. La déléguée indique que le groupe africain pourrait demander un autre siège dans le Comité de rédaction.

286. Mr. KUSHAN (United States of America) expressed the support of his Delegation for the views of the representative of Group B, and stated that the "package" represented a balanced and appropriate representation.

287. El Sr. ROGERS (Chile) apoya la propuesta formulada por la Delegación de Canadá relativa a la repartición de los cargos, e identifica los países de América Latina y del Caribe que ocuparían cada uno de ellos. Los tres cargos de Vicepresidentes de la Conferencia corresponderían a México, Uruguay y Chile; Trinidad y Tobago representaría la región en el Comité de Credenciales; Brazil asumiría la Presidencia de la Comisión Principal II y, finalmente, Argentina y Colombia representarían la región en el Comité de Redacción.

288. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, stated that the Asian Group had difficulties with the proposal of the Delegation of Canada, which it found unbalanced and unreasonable, particularly in respect of the composition of the Drafting Committee. There would be five representatives of Group B among the Vice-Presidents, while the other groups would not have such a large representation. He sought clarification from the Delegation of Canada as to the basis of the Canadian proposal made on behalf of Group B.

289. Mr. KHLESTOV (Russian Federation) stated that his Delegation preferred to elect the President and settle other matters later. He stated that, overall, his Delegation could accept the proposal of the Delegation of Canada, in that it represented a fragile consensus.

290. Mr. GYERTYÁNFY (Hungary), speaking on behalf of the group of Eastern and Central European Countries and the Baltic States, supported the statement of the Delegation of the Russian Federation that the election of the President of the Conference should take place as

soon as possible. He stated that the proposal of the Delegation of Canada was acceptable to his group in respect of the distribution of posts. He stated that the representatives of the group would be as follows: Hungary would have the post of a Vice-President of the Conference; Croatia would be a member of the Credentials Committee; Slovenia would have a Vice-Chairman of Main Committee I; Romania a Vice-Chairman of Main Committee II; and Bulgaria a member of the Drafting Committee.

291. Mme BOUVET (Canada) propose une suspension de séance afin que les différents coordinateurs de groupes puissent se réunir, et exprime le souhait que le Directeur général de l'OMPI soit présent à cette réunion.

292. M. BOGSCH (Directeur général de l'OMPI) déclare qu'il est à la disposition des groupes pour essayer de trouver une solution satisfaisante pour tout le monde.

293. M. SÉRY (Côte d'Ivoire) appuie la proposition de suspension de séance ainsi que celle de voir la réunion du groupe des coordinateurs présidé par le Directeur général de l'OMPI. Toutefois, au vu de certains éléments qu'il vient de recevoir, il souhaite consulter le groupe africain avant ladite réunion.

294. Mr. ABEYSEKERA (Sri Lanka), on behalf of the Asian Group, stated that the Asian Group was prepared to accept the proposal of the Delegation of Canada, on the understanding that a half-hour would be allowed for group meetings prior to consultations among the group coordinators.

295. El Sr. ROGERS (Chile) apoya la proposición de suspender la sesión emitida por las Delegaciones de Côte d'Ivoire y de Canadá.

296. M. SÉRY (Côte d'Ivoire) précise que, si la réunion des coordinateurs n'aboutit pas, il est favorable à l'élection seule du président de conférence car il souhaite que les travaux sur le fond puissent commencer.

297. Mr. BOGSCH (Director General of WIPO) stated that, if there was no agreement by noon, the election of the President of the Conference would be held, but not the elections of any other officers. He then declared the meeting suspended.

[*Suspension*]

#### *Amendment to the Rules of Procedure*

298. Mr. BOGSCH (Director General of WIPO) reopened the meeting, and announced that the spokesmen or coordinators had reached agreement on the questions outstanding to that point. He stated that this agreement would require two small changes to the Rules of Procedure, namely, that in Rule 15, paragraph (1), instead of 14 Vice-Presidents, the new Rule would state 18 Vice-Presidents; and in Rule 13, paragraph (2), instead of 13 elected members, the new Rule would state 18 elected members. He saw no objection to this.



299. *The Diplomatic Conference amended the Rules of Procedure, with the amendments announced by the Director General of WIPO.*

*Item 3 of the Agenda: Election of the President of the Conference (continuation)*

300. Mr. BOGSCH (Director General of WIPO) suggested that the next item to be considered would be the Election of the President of the Conference, and after that, the meeting could review the agreement concerning the officers of the Conference and its bodies. He asked if any Delegation wished to take the floor on the Election of the President of the Conference.

301. M. SÉRY (Côte d'Ivoire) propose que la présidence de la conférence soit donnée à l'Ambassadeur, Mme Esther Mshai Tolle, représentant permanent, mission permanente du Kenya auprès des Nations Unies à Genève. Il rappelle que Mme Tolle compte parmi les quatre femmes ambassadeurs africaines à Genève, qui font l'honneur et la dignité de l'Afrique. Il évoque la brillante carrière, l'expérience et la compétence de Mme l'Ambassadeur à plus d'un titre. En 1975, elle était secrétaire adjointe au Ministère des affaires étrangères du Kenya; de 1981 à 1986, elle fut troisième puis premier secrétaire auprès de l'ambassade du Kenya, respectivement à Paris et à Rome; de 1987 à 1990, elle fut secrétaire générale adjointe au Ministère des affaires étrangères et de la coopération internationale chargée des Amériques et de l'Asie ainsi que des organisations internationales; de 1991 à 1994, elle fut directrice de l'organisation internationale et des conférences au Ministère des affaires étrangères de son pays; de 1994 à 1995, directrice des Amériques au sein de ce même ministère. En 1995, elle est nommée Ambassadeur, représentant permanent du Kenya auprès de l'Office européen des Nations Unies à Genève, ainsi que des organisations internationales en Suisse et à Vienne. A l'OMPI, elle a présidé, en juin 1996, la 17<sup>ème</sup> session du Programme de coopération pour le développement en matière de propriété industrielle. Elle a également représenté son pays à de nombreuses réunions et son esprit de conciliation, son expérience, son efficacité et sa pondération sont des atouts très appréciables pour concilier nos vues divergentes. Par cette candidature, il souligne le désir de rendre hommage à toutes les femmes présentes à cette conférence diplomatique. Il conclue en invitant les délégations à appuyer cette proposition.

302. Mme BOUVET (Canada), s'exprimant au nom du groupe B, appuie la proposition de la délégation de la Côte d'Ivoire, présentée au nom du groupe africain.

303. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, expressed his pleasure to endorse the nomination of the Ambassador of Kenya for the position of President of the Conference.

304. El Sr. ROGERS (Chile) apoya, en nombre del Grupo Latinoamericano y del Caribe, la candidatura de Kenya a la Presidencia de la Conferencia.

305. Mr. SHEN (China) supported the candidate of Kenya for the post of President of the Diplomatic Conference.

306. Mr. GYERTYÁNFY (Hungary), speaking on behalf of the group of the Central and Eastern European Countries and the Baltic States, supported the candidature of the Ambassador of Kenya to the post of President of the Conference.

307. *The Diplomatic Conference elected, unanimously and by acclamation, the Head of the Delegation of Kenya, Mrs. Ester Mshai Tolle, as its President.*

308. Mr. BOGSCH (Director General of WIPO) invited the President to occupy the chair of the Chairman.

309. The PRESIDENT thanked the Delegates for the honor accorded to Africa, and to her country, Kenya, by electing her President of the WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions. She said that the confidence placed in her was a privilege which she humbly accepted.

310. She took the opportunity to thank the Director General of WIPO, and the staff of the International Bureau, for the excellent arrangements made for this Conference. She also thanked the Chairman of the Committees of Experts for the preparatory work of the Diplomatic Conference, whom she said had ably produced clear and rigorous texts of the substantive provisions of the basic proposals of the draft treaties to be considered by the Conference.

311. The President noted that the Diplomatic Conference was an event of pre-eminent importance. It was taking place at a time when information technology was undergoing profound development which was transforming the means of communicating in general, and of communicating literary and artistic works in particular. Each of the various stages in the existence of literary and artistic works, their creation, their diffusion, their performance, their reproduction and their exploitation, were affected by this transformation. She emphasized that there was an apparent and urgent need to adjust the protection for literary and artistic works that was developed in response to earlier technologies, to the new means of exploitation that resulted from digital technology and global information networks.

312. She drew attention to the fact that a feature of the new technologies was the internationalization of exploitation of literary and artistic works that they have brought about. That internationalization required that the adjustment of the protection necessitated by the new technologies, if it were to be effective, take place on an international level. The new technologies knew no national boundaries. Appropriate protection for works, the content that they carried, had accordingly to be internationally based.

313. The President stated that it would only be fitting that the work of achieving international agreement on the adjustment of the protection of literary and artistic works to digital networks should take place under the auspices of WIPO. As guardian of the Berne Convention, which had throughout the 20th century provided the framework for past adjustments to new means of exploitation of literary and artistic works, WIPO, with its widespread basis of 161 Member States, was perfectly placed to oversee the secure entrance of such works into the 21st century.

314. She pointed out that much work lay ahead of the Delegates, and it had only just begun. The Conference's ability to progress and to achieve the ambitious task that lay before it would

depend on sheer determination to succeed, and on the cooperation among Delegations, and that would be essential to such success. She thanked the Delegates for their confidence, and looked forward to working with them to achieve the successful conclusion of the Diplomatic Conference.

*Item 5 of the Agenda: Election of the Vice-Presidents of the Conference; Item 6 of the Agenda: Election of the members of the Credentials Committee; Item 7 of the Agenda: Election of the members of the Drafting Committee; Item 8 of the Agenda: Election of the Officers of the Credentials Committee, the Main Committees and the Drafting Committee*

315. The PRESIDENT invited the Delegations to turn to the next item of the Agenda, namely the election of the office bearers. She invited the Secretariat to provide the necessary information.

316. Mr. FICSOR (Assistant Director General of WIPO) reviewed the agreement reached by the regional coordinators concerning the posts of Vice-Presidents of the Plenary of the Conference. Certain countries had not been identified yet, but it had been agreed upon how many Vice-President posts the various groups of countries would have. Africa would have two Vice-President posts. Asia would have three Vice-President posts. The GRULAC would have three Vice-President posts, and they had been identified as far as the countries were concerned, namely Chile, Mexico and Uruguay. From the CIS countries, the Russian Federation would have a Vice-President post. From the group of Central and Eastern European Countries and the Baltic States, Hungary would have a Vice-President post. China would have one Vice-President post. From Group B, the following countries would each have a Vice-President post: Canada, Denmark, France, Ireland, Japan, Switzerland and the United States of America.

317. Regarding the Credentials Committee, it had been agreed upon that the Chairman of this Committee would be from Africa, but the country had not yet been identified. There would be a member from Asia, but the country had not yet been identified. From the GRULAC, there would be a member, namely from Trinidad and Tobago. From the Central and Eastern European Countries and the Baltic States, Croatia would give a member. From the CIS countries, there would be a member from Azerbaijan. From Group B, there would be a member from Italy.

318. It had been decided that the Chairman of Main Committee I would be Mr. Jukka Liedes from Finland, and that as far as the Vice-Chairmen of Main Committee I were concerned, there would be one from Africa, and the country had been identified, namely Algeria; there would be one from Asia, but the country had not yet been identified; and there would be one from the Central and Eastern European countries, namely from Slovenia.

319. Regarding Main Committee II, a representative of Brazil, Mr. Guido Suarez would be the Chairman; the three Vice-Chairmen of Main Committee II would be a representative from each of Romania, Portugal, and from a country of Asia still to be identified.

320. Regarding the Drafting Committee, the Chairman would be from India. The name of the Chairman had not yet been identified. There would be four representatives from Africa, one of which would be a Vice-Chairman, namely a representative of South Africa. There would be

two representatives from Asia in addition to the Chairman, but the countries had not yet been identified. There would be three representatives from the GRULAC, two of them having been already identified as Argentina and Colombia. From the Eastern and Central European countries and the Baltic States, there would be a representative from Bulgaria. From the CIS countries, there would be a representative from Armenia. There would be one representative from China. Furthermore, there would be one representative from each of the following five countries: the United States of America, Australia, Belgium, Spain and the United Kingdom.

321. The PRESIDENT thanked the Secretariat for the foregoing information, which, she indicated, she believed to be accurate. She encouraged all Delegations to provide the Secretariat with the names of the office holders as soon as possible so that the Conference could move into the substantive work expeditiously.

322. M. SÉRY (Côte d'Ivoire) remercie, au nom du groupe africain, toutes les délégations qui ont soutenu l'élection de Mme l'ambassadeur du Kenya. Il indique que les deux sièges de vice-présidents pour le Groupe africain seront occupés par des représentants du Ghana et du Malawi, et que le Comité de vérification des pouvoirs sera présidé par un représentant du Sénégal.

323. Mr. BOGSCH (Director General of WIPO) suggested that all necessary data on the office holders should be given to the International Bureau directly, so that an official document containing all of the information could be prepared and distributed without delay.

324. The PRESIDENT asked the Conference if there was any objection to the suggestion made by the Director General of WIPO, and, seeing no such objection, declared that it was so decided. [The full list of the officers is included in document CRNR/DC/INF. 5.]

*Item 4 of the Agenda: Consideration and adoption of the Agenda*

325. The PRESIDENT opened the floor for comments on *the Agenda of the Conference (CRNR/DC/1)*.

326. Mr. SOARES (Brazil) suggested that the wording of item 13 of the Agenda be "Adoption of the Treaty or the Treaties."

327. The PRESIDENT asked the Delegations if there were any comments on the proposal made by the Delegation of Brazil.

328. *The Diplomatic Conference adopted the amendment proposed by the Delegation of Brazil.*

329. The PRESIDENT asked the Delegations if there were any other comments on the Agenda, and stated that there was none.

330. *The Diplomatic Conference adopted the Agenda, as amended.*

*Item 10 of the Agenda: Opening declarations by Delegations and by representatives of Observer Organizations*

331. The PRESIDENT opened the floor for opening declarations.

332. Mr. LEHMAN (United States of America) congratulated the President on her election, and said that his Delegation looked forward to her leadership in guiding the Conference to a successful conclusion.

333. He noted that the efforts of the President would be greatly facilitated by the draft texts prepared by the Chairman of the Committees of Experts, Mr. Jukka Liedes of Finland, which the Delegation believed, would form an excellent basis for discussions in the Conference. Mr. Liedes had succeeded in the overwhelming task of incorporating proposals and comments made by numerous delegations into well-integrated and unified documents. He felt that the issues involved in the treaties being considered were of vital importance as countries moved into the 21st century.

334. He stated that the Delegation of the United States of America looked forward to working together over the coming weeks to further the common understanding of these issues, with the goal of forging agreements that would ensure meaningful and balanced protection for copyright and neighboring rights in the global information society.

335. El Sr. PORZIO (Chile) felicita a la Sra. Presidenta por su elección. Expresa su pleno apoyo a las propuestas elaboradas por el Presidente de los Comités de Expertos, considerando que constituyen una buena base para una protección eficaz del derecho de autor y de los derechos conexos, y añade que esta posición es coherente con la posición común alcanzada, como resultado de una serie de encuentros, por el Grupo Latinoamericano y del Caribe. Expresa el deseo de estudiar con prioridad las propuestas relativas al derecho de autor y a los derechos conexos.

336. Expone su opinión sobre las diversas cuestiones en estudio y empieza refiriéndose a la propuesta básica para un Tratado sobre ciertas cuestiones relativas a la protección de las obras literarias y artísticas. Apoya la incorporación de los programas de ordenador protegidos como obras literarias así como la protección de las bases de datos originales. Asimismo, aboga en favor de la abolición de las licencias no voluntarias para las grabaciones sonoras de obras musicales y la radiodifusión primaria, tal como está consagrado en la legislación interna de su país. Se pronuncia en favor de la extensión del derecho de reproducción tanto a la reproducción directa como a la indirecta, y a la permanente como a la provisional, lo cual permite resolver toda duda respecto de las reproducciones digitales, así como en favor del derecho de distribución en el ámbito de las copias tangibles, del derecho de alquiler sin limitaciones y del derecho de comunicación pública que cubra las transmisiones digitales interactivas. Expresa su apoyo acerca de la ampliación del plazo de protección de las obras fotográficas, de la inclusión de obligaciones relativas a medidas tecnológicas de protección de los derechos y de la incorporación de obligaciones relativas a información electrónica para la gestión de derechos.

337. Se refiere a la propuesta básica para la protección de los derechos de los artistas intérpretes o ejecutantes y los productores de fonogramas, apoyando la adopción de un nuevo instrumento para su protección, la inclusión de una cláusula de salvaguardia de los derechos de

autor en los términos del artículo 1 de la Convención de Roma y de una disposición relativa al trato nacional en los términos de la propuesta básica. Apoya igualmente la consagración de derechos morales para los artistas intérpretes o ejecutantes, los derechos exclusivos de fijación, de radiodifusión y comunicación al público sobre sus interpretaciones o ejecuciones no fijadas, el derecho exclusivo de reproducción sobre sus interpretaciones fijadas, el derecho exclusivo de modificación y el de alquiler sin limitaciones, el derecho exclusivo de puesta a disposición de las interpretaciones fijadas, es decir la transmisión digital interactiva, así como el derecho de remuneración para la radiodifusión y comunicación al público de sus interpretaciones fijadas en fonogramas. En lo que atañe a los productores de fonogramas, opina que se les debe reconocer los derechos exclusivos de reproducción, de modificación, de distribución, de alquiler y de puesta a disposición de sus fonogramas, en los términos contenidos en la propuesta básica, así como un derecho de remuneración por su radiodifusión y comunicación al público. Finalmente, aboga en favor de la inclusión de obligaciones relativas a las medidas y dispositivos tecnológicos y expresa el deseo que se encuentre una solución adecuada para la protección de los artistas del sector audiovisual.

338. Expresa, sin embargo, su inquietud con respecto a algunos puntos. Le parece necesario que los Tratados en estudio mantengan una estrecha relación con el Convenio de Berna en el sentido que sea requisito para su ratificación ser miembro de la Unión de Berna, y propone se modifique de tal forma el artículo 1 del proyecto de tratado sobre derecho de autor. Igualmente, sugiere se reconsidere el alcance del artículo 12 del mismo proyecto de Tratado, de manera que se impida la incorporación de limitaciones o excepciones a los derechos de autor distintas de las previstas en el Convenio de Berna.

339. Concluye expresando el interés de su país en avanzar en el estudio de la protección *sui generis* de las bases de datos considerando, sin embargo, que este tema necesita mayor análisis.

340. M. OKAMOTO (Japon) adresse ses félicitations, au nom de sa délégation, à Mme le Président pour son élection. Il précise que son pays a contribué, depuis 1991, positivement aux travaux qui ont conduit aux nouveaux projets de traités internationaux sur la protection de droit d'auteur et de droits voisins. La présente conférence diplomatique est le résultat d'efforts réalisés par beaucoup de pays et s'inscrit comme une étape historique 25 ans après l'Acte de Paris (1971) de la Convention de Berne. Depuis lors, de nombreux changements sont intervenus dans les domaines économique, culturel et surtout technologique, et il convenait que de nouveaux traités sur le droit d'auteur et les droits voisins viennent appréhender ces nouveaux développements technologiques. Il indique que son pays accorde une importance toute particulière à certains articles des trois projets de traités qui seront examinés article par article, à savoir les systèmes de demande interactive par réseaux numériques tels qu'Internet. Il est de l'avis que ces développements technologiques vont s'intensifier dans les cinq années à venir et qu'ils constituent un point plus important que les autres dans le domaine de la protection de droit d'auteur. Il ajoute que les fonctions et la validité des systèmes de protection internationale de droit d'auteur dans l'ère de la technique numérique et des réseaux de communication au XXIème siècle dépendront des résultats de la présente conférence diplomatique. Il est convaincu d'un aboutissement positif.

341. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, congratulated the President and all the other officers of the Diplomatic Conference. He expressed the hope that, under the President's expert guidance, the Conference would agree on the texts of new international instruments by December 20, 1996.

He noted that, since the outset of the intensive and fruitful work on the matters before the Diplomatic Conference, which had been initiated by the distinguished Director General of WIPO to whom he expressed their heartfelt thanks, the European Community and its Member States had participated actively towards the adoption of these new treaties by putting forward positive suggestions and by proposing constructive texts.

342. It was the opinion of the European Community and its Member States that the proposed treaties were absolutely necessary in order to complement the existing international norms or to establish new norms where, under the present text of international conventions, doubts might exist as to the extent to which those conventions applied with regard to the development of the information society. He stressed that the Conference should ensure that the rights of authors, performers in all media, and producers of phonograms and databases be fully protected, and that the right balance be maintained between the various categories of rightsholders as well as between those rightsholders and users.

343. He drew attention to the fact that the European Community itself had adopted Directives harmonizing the laws of its Member States on a number of issues covered by the proposed treaties, such as the term of protection, computer programs, databases and the rights of performers and phonogram producers. With regard to performers, those Directives provided a high level of protection in respect of both audio and audiovisual performances, and the European Community and its Member States strongly believed that that high level of protection should be reflected in the texts which would emerge from the Conference.

344. The European Community and its Member States firmly believed that the Basic Proposals presented by the Chairman of the Committees of Experts formed an excellent basis for the negotiations and for the successful completion of the work of the Conference. He said that the basic proposals were modest but essential improvements to existing international conventions, and should enable Member States of the World Intellectual Property Organization, which the European Community and its Member States believed was the proper forum, to become party to the new treaties.

345. He stated that Mr. Lieder, in his wisdom, had provided balanced texts which took into account the interests of authors, performers and other affected parties. He stated that the rights were qualified by the ability of Member States to provide for reasonable exceptions, and in that respect, the European Community and its Member States felt that the texts formed a good point of departure for reaching an agreement which would enjoy widespread support amongst all concerned. He pointed out that there was no doubt that the digital age was upon us. He emphasized the importance of traditional aspects of copyright and neighboring rights, but said that the Delegations could not afford to delay an international response to the issues that were raised by the new technologies.

346. The European Community and its Member States believed that the Conference had to be successful in the coming weeks as there might not be a second opportunity to tackle the questions under consideration for many years. He assured the President that the European Community and its Member States would do all in their power to assist her in achieving that goal.

347. As a first step in that process, the European Community and its Member States were of the view that general opening statements should be kept to a minimum to enable rapid

advancement towards the substantive items for negotiation before the Conference, and to this end had decided that this would be the only general statement made on behalf of the European Community and its 15 Member States. He stressed that the adoption of the treaties had to be the central focus of the work and that they had to be completed as quickly as possible.

348. If the Conference was to facilitate the orderly development of the worldwide information society and bring copyright and neighboring rights into the new millennium, thus promoting creativity and the dissemination of the resulting works, whilst respecting cultural diversity. The European Community and its Member States were aware of the need for the work to continue in Main Committee I and Main Committee II as a matter of urgency, and therefore chose not to address in their general statement specific items concerning the texts. He reaffirmed the support of the European Community and its Member States for the successful completion of the work on hand, and their willingness to undertake, at the President's direction, whatever tasks were necessary to achieve that goal.

349. Mr. GYERTYÁNFY (Hungary) congratulated the President and wished her success. He stated that his Delegation was pleased that the long-lasting preparations had resulted in the convening of the Diplomatic Conference. He said that the basic proposal on copyright issues was generally acceptable to his Delegation, because it would facilitate the creation and dissemination of works in a new technical and changing economic environment with the same effectiveness as the Berne Convention. His Delegation also supported the proposals concerning so-called digital uses, but stated that exceptions to the right of reproduction might need further study, while the provision on the communication to the public seemed a successful approach to meeting the digital challenge.

350. He stressed that the existing structure of exclusive rights in the Berne Convention and the difference between material and immaterial distribution, respectively, should not be disrupted. His Delegation also supported an increase in the level of protection represented by abolition of certain non-voluntary licences, but urged that the existing balance of interests between the different right owners to the detriment of consumers' interests should not be upset. Accordingly, he expressed reservations concerning the suggested changes in Article 13 of the Berne Convention. As regards the right of distribution, the Delegation of Hungary favored the firm maintenance of the territorial nature of copyright, and accordingly supported the principle of national or regional exhaustion of distribution rights.

351. He stated that his Delegation also welcomed the Chairman's proposals on the rights of performers and producers of phonograms, and stressed that new rights granted should not prejudice the rights of authors and successors in title. He stated that the treaty dealing with the rights of performers and producers of phonograms could not meet the urgent needs of present cultural markets, that is, to increase levels of protection and answer the digital challenge, if the rights of performers in respect of audiovisual works, in general, and actors in particular, were left out. He said that an exclusive right of making fixed performances available to the public was a well-founded innovation, but that it should be restricted to on-demand services.

352. Finally, he stressed that, while the Basic Proposal on the intellectual property protection of non-original databases had not been ripened enough in WIPO-level debates, it had the advantage of being based on valid regional and international norms. His Delegation would like to see further discussions concerning the nature of the rights concerned, that is, the possibilities of a copyright-type and an unfair competition-type protection.



353. Mr. EKPO (Nigeria) congratulated the President on her election, which bestowed honor on the African continent, to which the issues to be discussed during the Conference were of great importance. He stated that the Delegation of Nigeria hoped to contribute conscientiously to the work of the Conference. He said that the draft treaties in which Mr. Jukka Liedes, Chairman of the Committees of Experts, had summed up the results of the preparatory work provided an excellent basis for discussion. He expressed confidence concerning a successful conclusion of the copyright and neighboring rights treaties, and hoped that a timetable could be set for further discussions concerning the proposed treaty on the *sui generis* protection of databases. He also expressed the hope that the proposed international forum on folklore in Thailand next year would provide good basis for discussion on the international protection of folklore.

354. Mr. ABEYSEKERA (Sri Lanka), on behalf of the Asian Group, congratulated the President on her election. He noted that the collective work which had led to the convening of the Diplomatic Conference provided a firm foundation for the work ahead, and in that respect congratulated Mr. Jukka Liedes who had presented the results of that work. He expressed the view of the Asian Group that flexibility and a spirit of compromise could lead to a successful outcome, and cautioned against narrow, inward-looking approaches which could jeopardize the process.

355. He stated that the Asian Group would entertain all proposals seriously, regardless of the group which would make them, and would be guided by what it perceived as good for the entire international community, and in particular for developing countries. He said that, in the interest of time, he had requested that the Secretariat circulate the Asian Group's common position on the proposed treaties, which had emerged from the WIPO Regional Consultation Meeting, held in Chiang Mai, Thailand.

356. He expressed the gratitude of the Asian Group to Dr. Arpad Bogsch, Director General of WIPO, and to his staff, for their efficiency and courtesy to all Delegations. He also thanked WIPO for its financial assistance extended to developing country members of the Asian Group enabling them to participate in the Regional Consultation Meeting, which was an example to other United Nations organizations.

357. In closing, he noted that a few Member Delegations from the Asian Group would make individual opening statements.

358. Mr. KHLESTOV (Russian Federation) congratulated the President on her election. He stated that, in the stage of the creation of a Global Information Infrastructure on the eve of the 21st Century, the Diplomatic Conference was not merely of the purpose of agreeing to additions to the Berne Convention, but rather a qualitative development of copyright and neighbouring rights and international cooperation. As such, he said, the new treaties were to be the basis for future development of international law in the field, and would have great significance for future legal management of the free circulation of information for the benefit of education and culture, and for the progress of science under new conditions of fundamental technological developments.

359. He stressed that the international community expected effective, real, meaningful measures from the Diplomatic Conference, without undue delay, and urged having parallel meetings of commissions and committees in order to proceed as quickly as possible.

360. M. GOVONI (Suisse) félicite Madame le Président de la conférence diplomatique pour son élection. Il adresse des remerciements à M. Jukka Liedes pour son travail rédactionnel des différentes propositions de traités, lesquelles constituent une excellente base de discussion. Il dit que sa délégation est convaincue de la nécessité d'améliorer et d'harmoniser la protection de propriété intellectuelle face à l'avènement de la société de l'information, et se déclare prête à s'engager pour un niveau de protection élevée et à participer activement à l'élaboration des normes internationales destinées à relever le défi des nouvelles technologies.

361. Bien que les documents de base tiennent compte des propositions faites par les délégations lors des réunions des comités d'experts sur un éventuel protocole à la Convention de Berne et sur un éventuel nouvel instrument pour la protection des artistes, interprètes ou exécutants et des producteurs de phonogrammes, il souligne que des améliorations pourront être apportées et sa délégation interviendra dans ce sens de manière constructive au débat et à la mise au point de certains articles.

362. Il constate que le programme de la conférence est ambitieux et chargé et qu'il devrait permettre l'adoption de plusieurs traités. Il estime que l'option proposée de trois traités différents est pertinente et doit être maintenue, et qu'il convient de les examiner tous les trois pour essayer d'atteindre les objectifs fixés. Ainsi, il sera possible de se pencher, dans les années à venir, aussi sur d'autres questions, telles que celles de la protection du folklore ou celle des radiodiffuseurs, et il félicite l'OMPI d'y consacrer son programme.

363. The PRESIDENT adjourned the meeting.

*Seventh Meeting  
Thursday, December 5, 1996  
Afternoon*

*Item 10 of the Agenda: Opening declarations by Delegations and by representatives of Observer Organizations (continuation)*

364. The PRESIDENT reopened the floor for continuation of opening declarations under Agenda Item 10.

365. Mr. CRESWELL (Australia) congratulated the President on her election. He stated that the Delegation of Australia was committed to a successful outcome of the Diplomatic Conference, noting that Australia had actively participated in the negotiations preceding the preparation of the texts in the Basic Proposal on copyright and on neighboring rights. He stressed that effective rights for authors and producers of sound recordings in transmissions via the new communication networks were an important part of the Basic Proposal, adding that, in the negotiations preceding the Conference, the Delegation of Australia had identified the need

to extend the right of communication to the public in the Berne Convention, which was now widely regarded as one of the key elements of the Basic Proposal.

366. He stated that the Basic Proposal contained other important advances in copyright protection, including clarification of the right of reproduction and sanctions to support technological measures against unauthorized use of copyright materials. There were important additions to traditional protection of copyright and neighbouring rights, including a distribution right, a rental right and strengthening of existing rights by reduction of non-voluntary licenses. He said that, because of its responsibility for education, broadcasting and other public access to information, the Australian Government sought an outcome that addressed not only the legitimate desire of authors, performers and producers of sound recordings for effective protection, but also the reasonable need for access to works and sound recordings by the public and user interests. He stated that his Delegation believed that regard must be had to the balancing of protection and access in the consideration of any extension of existing rights and new rights. This was particularly so in considering any proposal for reduction of existing access to protected materials or any proposal that might restrict access to public domain materials.

367. He stated that, in light of the magnitude and importance of some of the proposals in the draft treaties, big issues remained on which agreement would have to be reached. His Delegation was grateful to Mr. Jukka Liedes of Finland for the preparation of the Basic Proposal. The Australian Delegation was not only committed to a successful outcome of the Conference, but also believed that it was attainable.

368. Mr. VERGNE SABOIA (Brazil) congratulated the President on her election, and expressed thanks for the support given to Brazil to chair Main Committee II. He noted that Brazil was party to the Berne Convention and the Rome Convention, and stressed that the Delegation of Brazil favored a balanced legal regime for the protection of the rights of authors, performers and producers of phonograms, as well as broadcasting organizations. He expressed support for the WIPO symposium on broadcasting to be held in Manila early the following year, and hoped that the establishment of a Committee of Experts to deal with the rights of broadcasting organizations would be formed thereafter.

369. He congratulated Mr. Jukka Liedes of Finland on the preparatory work which had taken place under his chairmanship. He stated that the Delegation of Brazil supported the positions of the Latin American Group during the Closed Consultation Meeting held the previous week in Geneva, particular in respect of the draft Treaty on the Rights of Performers and Producers of Phonograms, adding that his Delegation would submit concrete proposals on certain points, considering the need for a balance of rights and obligations under the treaties to be negotiated. His Delegation took the view that the treaty concerning copyright should be independent of the treaty concerning neighboring rights, and that both should be independent of existing international conventions that deal with the subject matter. He stated that this position reflected his Government's support for conclusion, in 1998, of a Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property.

370. M. KANDIL (Maroc) félicite Madame le Président pour son élection à la présidence de la conférence diplomatique, ainsi que les autres membres des comités et commissions. Il souligne que la présente conférence diplomatique constitue un pas très important dans l'histoire de la promotion et de la protection des droits de la propriété intellectuelle.

L'évolution des nouvelles techniques d'information et de communication impose la recherche de solutions adéquates et équilibrées et à établir au besoin des nouvelles règles pour protéger les droits des auteurs d'oeuvres littéraires et artistiques, des artistes interprètes ou exécutants et des producteurs de phonogrammes. L'harmonisation recherchée doit se faire non seulement dans le cadre d'une exploitation traditionnelle des oeuvres, mais aussi dans la perspective des utilisations nouvelles liées à la société de l'information. Les intérêts des pays en développement doivent être pris en considération. Le renforcement de l'équilibre entre les intérêts des titulaires de droit d'auteur et le libre accès du public aux oeuvres constitue la base de toute harmonisation dans ce domaine.

371. Il indique que les pays africains, réunis à Casablanca du 7 au 9 novembre 1996, ont examiné les propositions de base concernant les dispositions de fond du traité sur certaines questions relatives à la protection des oeuvres littéraires et artistiques ainsi que celles relatives à la protection des artistes interprètes ou exécutants et des producteurs de phonogrammes et ont relevé la nécessité d'examiner certaines questions de manière approfondie pour améliorer la protection de droit d'auteur et de droits voisins, notamment celle de la relation du nouveau traité envisagé et la Convention de Berne, celle de l'abolition de certaines licences non volontaires, celle de définitions, par exemple, celle de la location. Il ajoute que les pays réunis à Casablanca sont de l'avis qu'il n'est pas nécessaire que le nouvel instrument sur les droits des artistes interprètes ou exécutants et des producteurs de phonogrammes soit lié aussi étroitement à la Convention de Rome que ce n'est le cas du traité sur certaines questions relatives à la protection des oeuvres littéraires et artistiques avec la Convention de Berne.

372. S'agissant du traité sur les bases de données, il dit que sa délégation n'y est pas opposé, car cela encouragera l'investissement et assurera une utilisation universelle des bases de données. Il souhaite néanmoins que la protection permette à chaque pays de choisir son régime de protection, et aussi que des exceptions devraient être prévues pour l'enseignement, la recherche scientifique et d'autres domaines. Il s'interroge sur la notion "d'investissement substantiel" qui figure à l'article 2 du projet de traité sur les bases de données, sur les limites des droits des titulaires et du contenu des bases de données et se réfère aux expressions du folklore qui figurent dans ces bases. Il souhaite un examen approfondi de ces questions avant d'adhérer à un consensus en cette matière.

373. The PRESIDENT stated that she intended the opening statements to end by the end of the day, to enable the Committees to begin their substantive work. She requested that Observer Organizations, particularly those representing non-governmental organizations, do not take the floor, but rather make available written statements.

374. Mr. SHEN (China) congratulated the President on her election, and expressed great appreciation to the Director General of WIPO and his staff, as well as Mr. Jukka Liedes, the Chairman of the Committees of Experts, for the preparation of the Diplomatic Conference.

375. He noted that the Chinese texts of the three draft treaties had been widely distributed to interested government and private sector circles in China, including the judiciary, in order to solicit a wide range of views. He stated that the copyright management bodies in the provinces, municipalities and autonomous regions throughout China, except Taiwan, had been asked to organize consultation meetings, while the National Copyright Administration of China had held seminars in the capital to debate the issues. These consultations and discussions had

contributed to the better understanding of the impact of new technologies on copyright for the authors and other people concerned as well as to the revision of copyright law in China.

376. He stated that his Delegation felt that the establishment of new international treaties to deal with copyright problems arising out of new technology was a very important, a very difficult and a complex task, which required friendly consultations in the spirit and principle of mutual respect, equality and a wish for common development. He said that developed, as well as developing, countries should take into consideration one another's different levels of economic, cultural and technological development.

377. He noted that, in 1948, the UN General Assembly adopted the International Declaration of Human Rights, Article 27 of which stipulated that: "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancements and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic productions of which he is the author." He stated that the Delegation of China took the view that this was a basic principle for domestic as well as international law in the matter of copyright, which should not be forgotten in the present context, especially for people living in developing countries where underdevelopment still existed.

378. Mrs. AGGREY-ORLEANS (Ghana) congratulated the President on her election, and stated that her Delegation commended the two Committees of Experts for the excellent work done in elaborating the substantive provisions of the draft treaties, as well as the International Bureau of WIPO for its support, including by facilitating Ghana's active participation in the work of the Committees, and in the regional consultations which were held as part of the preparations for this Diplomatic Conference.

379. She stated that the importance of adapting the international legal protection of copyright and neighboring rights to the realities of our time could not be overemphasized, because technological and commercial developments had profoundly affected the way in which artistic and literary works are created, used and disseminated. She stated that there had been, in recent years, a growing awareness of the importance of copyright protection in the new global trading system. While acknowledging that the TRIPS Agreement provided for the inclusion of computer programs and the compilation of data in the list of works protected under the Berne Convention, she said that there was still a need to update and modernize the international copyright and neighbouring rights protection provided under the Berne and Rome Conventions, in order to respond fully to technological advancement and, in particular, to the convergence of computer and communications technologies as well as the effects of the digital revolution.

380. She stated that the Delegation of Ghana wished to commend WIPO for the initiative it had taken in this area, which was a measure of the Organization's diligence and commitment to norm-setting activities and to serving the needs of its member States. Her Delegation also welcomed the basic proposals for the Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works and the Treaty on the Rights of Performers and Producers of Phonograms. She expressed the hope that certain provisions of the draft treaties, which merited further discussion and refinement, would be duly amended in the course of the Conference to reflect the concerns and special circumstances of countries with budding intellectual property systems.

381. She noted that the question of a *sui generis* protection system for databases had been raised during the past meetings of the Committees of Experts, and said that her Delegation took the view that the basic proposals for that treaty required further discussion in order to clarify and resolve major problems with the substantive provisions.

382. She concluded by stating that her Delegation was committed to ensuring effective copyright protection for all artistic and literary works, which would be an important prerequisite for the enjoyment of culture and entertainment, the exchange of information and technology transfer, as the 21st Century drew near. In adhering to international treaties on copyright and neighboring rights, she hoped to lay the appropriate foundation in this field, in order to attract foreign investment in other vital sectors of the economy of her country.

383. Mr. ZHRAN (Egypt) congratulated the President on her election, and thanked the Director General of WIPO for the preparation of the Conference. He also congratulated Mr. Jukka Liedes of Finland, who had chaired the Committees of Experts preparing the draft treaties.

384. He said that his Government had taken steps to raise the level of intellectual property protection, including by amending the 1954 copyright legislation of his country to protect computer programs and databases. He said that his Delegation looked forward to discussions of the proposed treaty on certain copyright questions and the treaty for protection of performers and producers of phonograms, and stressed the need for a balance between the owners of rights and users, taking into account the interests of developing countries and their need for access to new technologies.

385. Mr. HERMANSEN (Norway) congratulated the President on her election, and thanked Mr. Jukka Liedes of Finland for his role in the preparatory work. He stated that his Delegation regarded the proposal as a totality, and that copyright legislation was about striking balances between various interests, including authors, holders of neighboring rights, users, and society at large. He said that the successful development of the information society depended on finding international solutions to solve critical questions, striking the appropriate balance, while at the same time giving the national legislator both sufficient leeway and sufficient guidance concerning, in particular, limitations on exclusive rights in areas such as education, scientific research and library uses.

386. He stressed that there should be a way for a user to access documents on the Internet without infringing copyright, and that incidental electronic copying resulting from necessary technical operations should fall outside the scope of protection. He said that an outcome in which some performers received protection while others did not, was not acceptable, especially not within a framework of national treatment.

387. Mr. OPHIR (Israel) congratulated the President on her election, and thanked the International Bureau of WIPO and Mr. Jukka Liedes, the Chairman of the Committees of Experts, for their preparatory work. His Delegation attached importance to updating and clarification of international norms in order to take account of new cultural and technological developments with maximum uniformity. He said that the Basic Proposals offered a good foundation for the discussions to follow.

388. He emphasized the need to strike an appropriate balance between high levels of protection for owners of rights, on the one hand, and the public need for access to information and technology, fair use, and the social values of education and research, on the other. He stated that his Delegation would make other remarks at the appropriate time, but highlighted the following areas of concern: the notion and place of publication; the right of reproduction; the question of reservations to the proposed treaties; and the right of distribution. Concerning the proposals regarding technological measures, he said that the language in the Basic Proposals was overly broad, and suggested consideration of a separate treaty dealing solely with the question of technological measures of protection. Finally, while his Delegation supported the development of three separate treaties, he suggested that provisions common to two or more of the Basic Proposals be discussed together.

389. Mr. KESOWO (Indonesia) congratulated the President on her election, and thanked the Director General of WIPO and his staff and Mr. Jukka Liedes for their preparatory work. He stated that technological developments were changing the way of life and creating unexpected problems, and that his Delegation realized that more time must be spent addressing them. He said that his Delegation supported agreed international solutions to, in particular, the problems posed by information technologies, in order to strike an appropriate balance between the needs of developed and developing countries, which existed in different socio-economic conditions. He stressed the need for flexibility and fairness in addressing common problems.

390. In regard to the draft copyright treaty, he indicated the following concerns: the notion of reproduction should include temporary reproductions which have a wide impact, and should take into account the concept of fair use; the relationship between the right of distribution and the exhaustion of such right should not affect the ability of countries to import freely without risk of infringement; the question of elimination of non-voluntary licenses should be studied further, as should the proposal concerning technological measures for protection; the provision of rental rights should mirror the TRIPS Agreement; and there should be provision for a transition period for implementation.

391. In regard to the draft treaty on the rights of performers and producers of phonograms, the right of adaptation should be studied further; inclusion of the rights of broadcasters should be given attention; and the scope of limitations and exceptions should be consistent with the Rome Convention.

392. In regard to the proposed treaty on databases, his Delegation saw no need to create a *sui generis* form of protection, since databases were already protected under the aegis of the Berne Convention.

393. Mr. MICHIE (South Africa) congratulated the President on her election. He stated that his Government had carefully studied the basic proposals prepared by the Chairman of the Committees of Experts, and had consulted with a wide range of interested parties. His Government welcomed the proposals and looked forward to studying and discussing them at the Conference.

394. He said that, in formulating its position, his Government had been guided by two principles. First, copyright owners and holders of neighboring rights should be given sufficient and effective protection to reward them for their enriching contribution to the cultural and scientific well-being of society. Second, certain stakeholders in society had an interest in

access to information, and in the free flow of information. He pointed out that initially, those two principles seemed to be in opposition, but upon closer analysis, they were in fact complimentary. A vibrant society needs constant intellectual stimulation and new information. At the same time, new works and information would be forthcoming only if the financial reward made the physical and intellectual effort worthwhile. He expressed the hope that the confluence of interests would guide the deliberations of the Conference.

395. He felt that some of the proposals under consideration by the Conference were little more than a restatement of his country's current legal position, but that other proposals represented an opportunity for South Africa to make amendments to its laws and to deal with the issues on the digital agenda. He felt that those issues should be dealt with as soon as possible, given the increasing number of South Africans who were users of global networks such as the Internet, both as consumers and producers of material. He also noted that those networks presented exciting and needed opportunities for users in the developing countries, who were often deprived of academic and scientific resources and materials.

396. He said that it was crucial to realize that the exercise of the right of reproduction, as an example, might often involve a transaction which took place across national frontiers, and that, therefore, the legal solution could not lie in national legislation, often backed up by obscure principles of conflict of laws, but rather in a uniform solution from which countries might not deviate.

397. He noted that during his Government's consultations with the interested parties, there had been general enthusiasm for the proposals under consideration by the Conference. However, the performers groups insisted that audiovisual fixations be included within the scope of the proposed "New Instrument." He also said that the database proposal met with almost unanimous opposition from a wide range of interested parties, and that that fact reinforced his Delegation's view that the adoption of the proposal at the given stage might be premature, and that further study and consultation were required.

398. Ms. DALEY (Jamaica) congratulated the President on her election. She expressed her appreciation for the work of WIPO and its International Bureau for bringing the discussions on questions of copyright and neighboring rights to the present advanced stage. She also expressed appreciation to Mr. Jukka Liedes, Chairman of the Committees of Experts, for his contribution to the development of the comprehensive basic drafts to guide the discussions at the Conference.

399. She noted her Delegation's continued interest and support for the work on copyright and neighboring rights questions before the Conference, as indicated in the framework of the group of countries from the Latin American and Caribbean region. She felt that the issue of the *sui generis* protection of databases required further study, in terms of what impact the implementation of such a regime would have on the developing countries, and expressed her hope that WIPO would facilitate such further study. She also expressed her Delegation's commitment to the recognition of well founded rights in the subjects of the expression of folklore and the rights of broadcasting organizations.

400. Mr. WIERZBICKI (New Zealand) congratulated the President on her election. He commended the Chairman of the Committees of Experts, Mr. Jukka Liedes, for the significant work done by him in amalgamating the participants' proposals from the Committees of Experts



into the draft treaties. He noted that the draft treaties raised important issues concerning the extent of copyright in the era of digital technology. They were important both internationally and for New Zealand, where new technology issues had already been addressed.

401. He said that his Delegation was aware that the draft treaties did not completely address the interests of all participants, and mentioned as examples the protection of folklore and broadcasters' rights. He particularly supported the forthcoming UNESCO-WIPO World Forum on the Protection of Folklore planned for April 1997, and asked that that meeting consider three themes: (i) there should be an exploration of views on traditional knowledge/folklore and indigenous intellectual property rights, and the nature of current intellectual property regimes, noting as an example that there were overlaps between the proposed moral rights for performers and issues in relation to indigenous performers' performances; (ii) ways should be found in which WIPO could promote consistency in discussions of indigenous intellectual property rights in international fora by, for example, promoting consistent definitions which could aid discussion among States on this issue; and (iii) countries should be encouraged to provide information on developments which addressed indigenous intellectual property rights issues.

402. Mr. TIWARI (Singapore) congratulated the President on her election, and wished her the best in her endeavors to lead the Conference to accomplish the demanding tasks set forth in the Agenda. He stated that the Diplomatic Conference was an important event, meeting to consider a variety of issues of copyright and neighboring rights. Some of those issues involved the updating of the Berne and Rome Conventions, while others arose out of the need to adapt the international regime of copyright to the Information Age, the latter having been referred to as the "digital agenda."

403. He said that his Delegation supported the need to make changes to international legal norms in the intellectual property area, if such changes were felt to be necessary by the international community to take account of changed circumstances, such as technological developments. He pointed out that any such changes, however, should not lose sight of the original aims of copyright, which were to promote the progress of science and the arts. He highlighted that one could not ignore the growing trend towards copyright protection for purely economic reasons, and pointed out that at the same time it would be a serious mistake to ignore the fact that an unrestricted flow of information was vital for education, trade, industry and culture. He emphasized that it was absolutely necessary to ensure that users had access to information and knowledge, that it was critical that the balance between the protection of right owners and the public interest not be upset, and that it was crucial that the rights of fair use and private use were not eroded or undermined in any way.

404. Regarding Article 7 (Scope of the Right of Reproduction) of the draft Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works, he stated that the inclusion of temporary reproduction in the reproduction right had far reaching consequences, in that fair use rights in the areas of researchers, libraries and private use were in danger of being curtailed. He gave the example that browsing on the Internet, which was an important activity, would be affected by that. He felt that the digital environment did not require such a broad extension of the right. He felt that it should be made clear that temporary reproduction of works should be permissible when the reproduction merely made perceptible works which would otherwise be imperceptible, when it was of a transient or incidental nature, or when it

facilitated transmission of a work and had no economic value independent from facilitating transmission.

405. Regarding Article 8 (Right of Distribution and Right of Importation) of that draft Treaty, he said that the right of importation clearly affected free trade, in that it would result in rightholders dividing the world into different market segments and practicing price discrimination. He noted that this was an issue which had been debated at great length in the negotiations in the Uruguay Round which led to the TRIPS Agreement, and, after exhaustive consideration, the world community agreed to leave it to national legislation to deal with the issue of parallel imports. He stressed that his Delegation strongly opposed any change in respect of that issue, and supported Alternative B of Article 8, noting that in the interest of free trade, parallel imports should be allowed.

406. Concerning Article 9 (Right of Rental) of that draft Treaty, he drew attention to the fact that that Article extended the rental right to all categories of works, and thus went beyond the TRIPS Agreement. He said that the question was whether it was too early to expand that right across the board without having seen how it would work under the TRIPS Agreement. He felt that any rental right should be clearly confined to commercial rental, and should not affect public lending by libraries and similar non-profit lending.

407. Referring to Article 10 (Right of Communication) of the same draft Treaty, he said that his Delegation looked forward to discussing this Article with other Delegations who were concerned about it. He felt that it needed to be reviewed to ensure that the interests of all concerned parties were accommodated. As regards Article 12 (Limitations and Exceptions), he noted that this Article had an impact on the other provisions of the draft Treaty, and that the language of the provision should be consistent with the Berne Convention and the TRIPS Agreement. He suggested that the word "only" in paragraph (1) of that Article be deleted to avoid any unintended consequences, and, regarding paragraph (2), he said that his Delegation looked forward to studying it with other Delegations who had expressed similar concerns.

408. He agreed with the principle behind Article 13 (Obligations concerning Technological Measures). However, he felt that the provision, as drafted, could prohibit a protection defeating device for *bona fide* use, and referred to the terminology used in the EC Software Directive and in case law of the United States of America as being more in line with the needs of industry. He stated that Article 14 (Obligations concerning Rights Management Information) was too broad and required further work during the Conference. He noted the differing views expressed in relation to Article 16 (Special Provisions on Enforcement of Rights), and felt that the provision required further consideration during the Conference.

409. He drew attention to the draft Treaty for the Protection of the Rights of Performers and Producers of Phonograms, and stated that the views of his Delegation on those parts of the draft Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works, which were similar to the provisions of that Treaty, applied *mutatis mutandis*. He suggested that there was no need to extend moral rights to performers as proposed in Article 5 (Moral Rights of Performers), and said that, in respect of Articles 6 (Economic Rights of Performers in their Unfixed Performances) and 11 (Right of Making Available of Fixed Performances), his Delegation believed that those rights should be restricted to authorization of musical performances and to fixations of musical performances in phonograms.

410. Regarding Articles 8 (Right of Modification) and 15 (Right of Modification), he expressed his Delegation's opinion that there was no justification for those provisions. As regards the other provisions in this draft Treaty, he stated that his Delegation would work together with other Delegations to find mutually acceptable solutions.

411. Turning lastly to the draft Treaty on Intellectual Property in Respect of Databases, he said that further work was required, and how and when such further work would take place would have to be considered during the Conference. He concluded by stating that his Delegation would participate actively in the deliberations of the Conference to ensure a generally acceptable outcome.

412. Mme BOUVET (Canada) félicite la présidente pour son élection et offre sa collaboration eu vue du succès de la conférence. Elle s'associe aux délégations précédentes pour féliciter également M. Jukka Liedes pour son travail de rédaction des propositions de base soumises à la conférence diplomatique. Elle dit que son pays, fort de son expérience récente avec la révision de sa législation sur le droit d'auteur, apportera sa contribution active à l'élaboration de nouvelles normes internationales. Elle estime que l'adoption de nouvelles obligations internationales devrait conduire à une plus grande sécurité juridique tant pour les titulaires de droit d'auteur que pour les utilisateurs. Ce facteur est très important pour le développement de l'économie mondiale et, plus spécialement, des industries traditionnelles et celles fondées sur les nouveaux médias. Il conviendra de faire preuve d'une certaine souplesse pour répondre aux défis des changements technologiques. Elle rappelle tout l'intérêt que porte son pays aux secteurs de la culture, des arts et spectacles et de l'information, et que dans le domaine des logiciels et des télécommunications, la vitalité des secteurs industriels de son pays est reconnue à l'échelle mondiale. Elle souligne que pour toutes ces raisons, sa délégation souhaite la réussite de la présente conférence diplomatique.

413. M. HENNEBERG (Croatie) félicite la présidente pour son élection ainsi que M. Jukka Liedes pour ses travaux qui ont conduit à l'élaboration des propositions de traités soumis à la conférence. Il précise qu'en raison de la hiérarchie des normes qui existent dans son pays, où les dispositions internationales priment le droit national, les résultats de cette conférence revêtiront une importance considérable pour la Croatie. Il ajoute que les produits émanant des industries culturelles ont une double nature juridique, relevant des règles de droit civil mais aussi de celles de propriété intellectuelle, et que la protection internationale est donc indispensable face aux nouveaux développements technologiques.

414. Mr. YAMBAO (Philippines) congratulated the President on her election. He also expressed his Delegation's appreciation to the Director General of WIPO and to his staff for the preparations for the Conference, and for the assistance given to the Philippines to ensure the participation of its experts in the process culminating with this Diplomatic Conference. He noted that the Conference had generated a great deal of interest, as it touched two critical aspects of the world, namely intellectual property and the new technologies. His Delegation renewed its commitment to the protection of intellectual property rights, a task essential to stimulating creativity and productivity in every society. New technologies represented great leaps in human progress, and had facilitated access to, and flow of, information, which had always been crucial to the development of individuals and society. He suggested that the stimulation of creativity and the encouragement of the flow of information were the ultimate values that should prevail in the Conference.

415. He observed that the process of revising intellectual property rights had been greatly brought about by the apprehension that the new technologies made infringement of those rights easy, and one approach had been to enlarge the control of the rightholder over copyrighted material. He said that his Delegation considered the basic draft treaties as an excellent basis for starting the work. It was concerned, however, that certain provisions could make service and conduit providers of information liable for carrying infringing material. It felt that the efforts at safeguarding intellectual property rights should be more focused on the initiator of the infringement, and should not unnecessarily impede the flow of information and inconvenience and hold liable service providers and legitimate users.

416. He stressed that new technologies had been a principal factor for the development known as globalization of human society to the extent that individuals and countries could afford the machines bearing them. He valued the work of schools, public libraries and broadcasters, as they were the means on which a great many people depended for learning and information. He urged that the Conference not lose sight of the situation of developing countries, and that its efforts not result in hampering and discouraging the flow of learning and information, and not contribute to the marginalization of people from progress and its benefits. He associated his Delegation with the position of the Asian Group.

417. He referred to the draft Treaty on Intellectual Property in Respect of Databases, and said that databases were already protected under the Berne Convention and the TRIPS Agreement, and stated that his Delegation was not convinced of the need to extend protection of databases. It believed that what was sought to be protected was financial investment, which it felt was already covered under contract law. It also felt that protection for databases could be perpetual, with a higher level of protection than databases were given under the Berne Convention and the TRIPS Agreement.

418. He urged that the next step in the modernization of intellectual property rights should be the examination of the rights of broadcasters *vis-à-vis* the new communications technologies, and drew attention to the proposed WIPO Symposium on Broadcasting, New Communications Technologies and Intellectual Property, to be held in the Philippines in April 1997. He invited the countries and Observer Organizations at the Conference to send representatives to the Symposium.

419. Mr. AKRAM (Pakistan) congratulated the President on her election, and the Chairmen, Vice Chairmen and Members of the Committees of the Conference. He assured the Conference of the fullest cooperation from Pakistan. He thanked the Director General of WIPO and his staff for the arrangements for the Conference, including the WIPO Regional Consultation Meetings. He stated that his Delegation recognized the need for new treaties in the area of copyright and neighboring rights. Arrangements between Member States should keep pace with developments in information and communication technologies. He referred to the existing instruments in the area, the Berne Convention and the Rome Convention, and thought that they would remain valid even in the digital age. However, he felt that the evolution which had taken place necessitated new norms, and stated that Pakistan would participate actively and constructively in the deliberations.

420. In order to facilitate the task of the Conference, he asked the Delegates to bear in mind that: (i) the developing countries were far behind the developed countries; the level of understanding and general awareness in the developing countries was limited and, in some

cases, barely at the threshold of the digital revolution; it would be desirable to help the developing countries bridge the gap; (ii) transfer of technology and access to the “information superhighway” was crucial for the development of the developing countries; as such, the norms which were to be set at the Conference should not deprive the developing countries of their right to transfer of technology and access to information; and (iii) the Berne Convention and the Rome Convention maintained a delicate balance between the rights of the rightholders and the interest of users, a balance which was important and should be maintained in the new treaties.

421. He endorsed the position of the Asian Group and urged that no new rights should be created unless it was absolutely essential and the interests of all parties were taken into consideration. The specific problems relating to the obligations concerning technological measures and rights management information should be addressed in a clear and balanced manner, so that no unintended consequences would result. Limitations and exceptions should follow the practices of the Berne and Rome Conventions. Special provisions on enforcement of rights should not have any link to the TRIPS Agreement. There should be a substantial number of ratifications from both developed and developing countries for the treaty or treaties to come into force, and the developing countries should be allowed reservations and transitional periods for the application of certain provisions.

422. Regarding the draft Treaty on Intellectual Property in Respect of Databases, he noted that that was a new area, and that not enough work had been carried out on it in the Committee of Experts, and that, therefore, his Delegation was not in a position to negotiate such a new Treaty during this Conference. He urged all Delegates to participate with an open mind and to take into account the differences in the circumstances of various countries, especially the developing countries.

[*Suspension*]

423. Mr. CHRISTOV (Bulgaria) congratulated the President on her election, and stated that the Diplomatic Conference represented a major event in the history and the development of WIPO. A positive outcome of the forthcoming deliberations would establish valuable new norms in the field of copyright and neighboring rights protection, particularly in the context of the global information society. He pointed out that the work of the Director General of WIPO, of the International Bureau, in particular of Mr. Mihály Ficsor, of Mr. Jukka Liedes of Finland, and of the preparatory bodies of the Conference, had made that task attainable. He stated that the Basic Proposals were an excellent basis for the work ahead, and that his Delegation was determined to contribute to the successful conclusion of the Conference and it would present its proposals and remarks at appropriate times and in the appropriate Committees.

424. Mr. KIM (Republic of Korea) congratulated the President on her election. He stated that the existing treaties in the field of copyright and neighboring rights, such as the Berne Convention and the Rome Convention, would have to evolve in order to keep pace with technological change, in the particular context of the global information society, which was

effecting radical change in the business and personal spheres. He expressed appreciation to WIPO for convening Committees of Experts since 1991 to develop means to protect the legal interests of authors and beneficiaries of neighboring rights in the new digital universe.

425. He said that, in the view of his Delegation, the new treaties should respect the following principles: the delicate balance between copyright and neighboring rights should be maintained, particularly in respect of the balance between exclusive rights and public-interest limitations placed upon them; universal access to information and cultural products should not be inhibited by the new treaties; the right of reproduction should not prejudice the interests of users and on-line service providers; technological measures such as copy-protection devices could be useful, but should not be over-employed to prohibit manufacture, importation or distribution of protection-defeating devices used within the permitted range of limitations on rights or in respect of non-copyrightable or public-domain materials; the rights of holders of neighboring rights should not be expanded beyond present levels, and limitations on such rights should be kept at the level provided in the Rome Convention.

426. In addition, he pointed out that his Delegation found that the new treaties should enter into force with the maximum possible number of required ratifications; the scope of a right of importation should be left to national law, including whether to adopt the principle of national or international exhaustion; Article 18 of the Berne Convention should apply to the rights of performers and producers of phonograms; development of a treaty of the *sui generis* protection of databases was at a premature stage, and the implications of such protection on the free flow of information should be examined.

427. He stated that his Delegation supported the general direction of the two treaties, but felt that substantial work had yet to be done in order to bridge the gaps between countries.

428. M. KATEB (Algérie) exprime ses félicitations à Madame le Président pour son élection. Il dit que sa délégation se félicite du consensus qui a prévalu au sein de cette conférence diplomatique pour accorder tout ce crédit, à travers l'investiture de Madame le Président, au continent africain, et il félicite également l'ensemble des membres des bureaux qui ont été investis de la confiance de cette assemblée.

429. Il est de l'avis que cette conférence se tient à un moment privilégié de l'histoire de la propriété intellectuelle. L'intense développement induit des nouvelles techniques a rendu nécessaire une codification à l'échelle internationale. Il convient de permettre aux différents utilisateurs des œuvres de l'esprit et autres prestations de bénéficier d'instruments internationaux qui régulent les différents droits et offrent un équilibre harmonieux entre les titulaires des droits d'une part, et les utilisateurs, d'autre part. Il se réjouit d'autant plus de la tenue de cette conférence que l'immense travail accompli au sein des différents comités d'experts a été l'occasion de constater le rapprochement des points de vue fort éloignés au départ. Grâce au travail remarquable effectué par l'ex-Président des ex-Comités d'experts, investi de nouveau de la confiance issue du consensus de cette assemblée, la tâche de la Commission principale I de mener à bien les travaux de codification en sera facilitée pour aboutir à un résultat positif.

430. Il informe les délégations que le législateur de son pays est en train d'examiner un document portant modification des droits d'auteur et des droits voisins prenant en considération nombre de préoccupations qui sont au centre de deux au moins des traités

internationaux soumis à la présente assemblée. Il dit que sa délégation œuvrera de façon constructive, pour la réussite des travaux de cette conférence, et ne manquera pas à ce sujet de faire des propositions écrites sur certains aspects. Il souligne qu'il est indéniable que la spectaculaire avancée enregistrée dans le monde de la communication a eu de grandes répercussions sur l'évolution du droit de la propriété littéraire et artistique. Il est donc opportun de mettre l'accent sur les vertus de la codification qui sera entreprise au sein des auspices de cette conférence.

431. Il relève qu'il est nécessaire de trouver un fondement juridique international de la protection de la transmission électronique, et de la protection numérique des données par voie électronique. Il est également nécessaire d'envisager sous un éclairage nouveau les renforcements des droits exclusifs des auteurs et autres titulaires des droits et de voir la protection des programmes d'ordinateurs et des bases de données trouver une consécration logique.

432. Il est de l'avis que la tendance prononcée à l'internationalisation ne peut manquer cependant aboutir à une tentative d'uniformisation des concepts au plan international. Il convient de prendre garde au décalage qui pourrait exister entre les textes des projets de traités en discussion et les réalités et besoins de beaucoup d'États en développement. Il n'est pas évident que la suppression des licences non volontaires telle qu'envisagée par les dispositions de fond de l'un des traités, puisse s'accommoder du renforcement du droit exclusif de l'auteur. Il n'est pas également évident que la codification de nouveaux droits, tels que le droit de location, qui ne s'accompagne pas d'une définition précise de ce concept, soit toujours d'une interprétation aisée pour les législateurs nationaux.

433. A travers les nouveaux instruments la mise en concurrence des droits exclusifs des auteurs, des producteurs de phonogrammes et des artistes interprètes ou exécutants pose la question de savoir comment les sociétés de gestion collective des droits d'auteur pourront, à la lumière des différends qui ne manqueront pas de naître, se prononcer valablement. Il estime qu'un effort de maturation supplémentaire est nécessaire pour le troisième traité proposé au débat.

434. Il souhaite que les États en développement profitent de la tenue de cette conférence pour mieux expliquer les situations qui sont les leurs en matière de propriété intellectuelle. Il pense qu'il est urgent que des initiatives soient prises au niveau régional afin d'élaborer une véritable stratégie en la matière, notamment pour toutes les disciplines indispensables à la promotion de l'enseignement en la matière et au renforcement de la culture, celle-ci devant être considérée comme un patrimoine commun à l'ensemble des États et, au-delà des États, à l'ensemble de l'humanité.

435. Mr. AYYAR (India) congratulated the President on her election, and thanked the other Delegations for entrusting the Delegation of India with the chairmanship of the Drafting Committee. He stated that an open mind and an appreciation of the diversity of interests represented at the Conference would facilitate successful conclusion of the copyright and neighboring rights treaties. His Delegation entertained no hope for conclusion of the proposed treaty on the protection of databases, which required further study, particularly of the notion that "investment" gave rise to an intellectual property right.

436. He set out guiding principles for successful conclusion of the Diplomatic Conference. Where obligations under the TRIPS Agreement were proposed to be incorporated in the treaties under consideration, verbatim language of the TRIPS Agreement should be employed. Such obligations should stand alone and should not be cross-referenced to the corresponding provisions of the TRIPS Agreement. In no case should rights guaranteed in the TRIPS Agreement, such as rental, be expanded. The international regime of protection could not be too far ahead of national laws, in light of the wide diversity of market structures and technological dissemination around the world. A gradualist approach should be taken to the creation of rights in respect of digital technologies, the long-term impact of which on human life could only be guessed at for the time being, and a careful balance should be maintained between the interests of content providers, on-line service providers, electronic hardware manufacturers, the academic community and the general public.

437. He stated that balance was the ethos of intellectual property rights, such as the rights of reproduction and communication to the public, and that fair use should not be allowed to be whittled away by the new treaties, diluting the applicability of all the limitations and exceptions contemplated by the Berne Convention. The proposed measures on technological protections were driven by techno-pessimism, in light of ever-shortening technology and business cycles. The new treaties should not impede the flow of international trade, and the proposal for a right of importation was such an impediment.

438. He concluded by stating the understanding of his Delegation that the treaties were to be stand-alone instruments and would be implemented as such.

439. El Sr. ROGERS (Chile), en nombre de los países de América Latina y del Caribe, felicita a la Sra. Presidenta por su elección y expresa su deseo de colaborar al éxito de esta Conferencia. Señala que el Grupo Latinoamericano y del Caribe luego de una serie de encuentros en los que estudió detenidamente los documentos preparatorios elaborados por la Oficina Internacional, las propuestas presentadas por las diferentes delegaciones y los proyectos de Tratados preparados por el Presidente de los Comités de Expertos, alcanzó puntos de acuerdo que giran alrededor de dos principios fundamentales.

440. En primer lugar, que los objetivos de los Tratados responden a la necesidad de mejorar la protección de los titulares de los derechos de autor y derechos conexos desarrollando un marco jurídico que contemple el impacto de los avances de la tecnología. En segundo lugar, que el contenido de los Tratados debe conservar un equilibrio entre los intereses de quienes participan en la creación, difusión y consumo de los bienes culturales, tomando en cuenta, además, los intereses generales relativos al fomento de la creatividad, la educación y la cultura. Con base en estos dos principios generales, el Grupo Latinoamericano y del Caribe ha logrado ya un satisfactorio consenso en un gran número de aspectos básicos y se muestra optimista acerca del pleno éxito de la Conferencia.

441. Mr. OMONDI-MBAGO (Kenya) congratulated the President on her election, as an African and as a woman. He stated that the Diplomatic Conference came at a pivotal moment in world history, given the need to create a new international framework for protection of the rights of authors, performers and producers of phonograms in the new digital environment. He thanked Mr. Jukka Liedes, Chairman of the Committees of Experts, for his contributions to the preparatory work. He stated that, consistent with the common position of the African Group taken at the WIPO Regional Consultation meeting in Casablanca, his Delegation felt that



further discussions were necessary in respect of the proposed treaty on the protection of databases.

442. M. ETRANNY (Côte d'Ivoire) joint sa parole aux éloges et félicitations adressés à Madame le Président. Il indique que son pays s'est doté en 1978 d'une loi portant protection des œuvres de l'esprit qui, depuis lors, doit s'adapter aux pas de l'évolution. Une mise à jour de cette loi avec la prise en compte des droits voisins ont donné naissance à une nouvelle loi votée récemment par le Parlement. Concernant les propositions de base, il se réserve le droit de faire part de ses observations au cours des travaux en commission. Du reste, la plupart de ses observations sont confinées dans un document distribué par le groupe africain. Un penseur français a dit que les causes qui se meurent sont celles pour lesquelles on ne sait pas mourir. La mobilisation observée depuis 1991 autour des questions qui interpellent cette assemblée, pousse à penser que la protection des auteurs et des créateurs a des motifs réels de survivre malgré les inévitables, mais surmontables, divergences.

443. Mlle METOHU (Albanie) félicite Madame le Président de son élection. La notion de l'œuvre comme expression de la personnalité de l'auteur et celle de l'auteur comme propriétaire de son œuvre sont des notions qui, même si elles ne sont pas récentes, ont commencé à prendre forme aussi en Albanie au seuil de la création d'une nouvelle société de troisième millénaire. Les bases de l'ancien concept du droit d'auteur se sont bouleversées dans les deux dernières décennies par l'extraordinaire explosion de la technologie. L'évolution des techniques de diffusion et de reproduction constituent à la fois un motif de satisfaction et de préoccupation. La satisfaction vient du fait que jamais le créateur n'a disposé de possibilités comparables pour faire connaître son œuvre au niveau national, européen et même mondial à une vitesse qui ne cesse pas de s'accélérer.

444. En même temps, la situation est préoccupante parce que les technologies nouvelles rendent difficile, ou même impossible, le contrôle de l'exploitation ou de l'usage des œuvres. La créativité intellectuelle et artistique qui est un bien précieux, représente une source essentielle de richesse économique et d'influence dans le monde. Cette créativité qui doit être protégée, a besoin d'être revalorisée et stimulée. Elle remercie les auteurs des propositions de base des trois traités et précise que sa délégation se réserve le droit d'intervenir pour présenter des remarques à propos de certains articles des traités.

445. Mr. MTETEWAUNGA (Tanzania) congratulated the President on her election, which was an honor to the African continent, and the Director General and the International Bureau of WIPO for the preparatory work. He noted that Tanzania had become a member of the Berne Union and had ratified the Treaty Establishing the World Trade Organization within the past three years. He stated that modernization of copyright legislation was being undertaken in his country, as well as legislation on fair trade practices. He hoped that at least two of the treaties could be concluded by the end of the Diplomatic Conference.

446. Mr. HONGTHONG (Thailand) congratulated the President on her election. He stated that his Delegation was aware of the need to introduce new international rules in the field of copyright and neighboring rights in light of technological change, and that the proper question was not whether, but how, to do so. He stated that it was the duty of governments to provide adequate and effective intellectual property protection, and that his Government had undertaken a program of legislative reform and strengthening of intellectual property administration, including the establishment of a special intellectual property court.

447. He added that government was also responsible for ensuring that such protection did not hamper national development. Striking a proper balance between the interests of right holders and of the public was the major task of this Conference, and should be kept in mind when addressing substantive issues such as the right of reproduction, the rights of rental, distribution and importation.

448. Mr. MBEWE (Malawi) congratulated the President on her election, and expressed the gratitude of his Delegation to the Director General and staff of WIPO for the preparatory work for the Diplomatic Conference. He stated that his Delegation was aware of the need to resolve ambiguities in the interpretation of the Berne and Rome Conventions particularly now with the proliferation of new technologies. He hoped that the final provisions of the new treaties would also take into account the great socio-economic diversity among Member States of WIPO.

449. M. MIRCEA (Roumanie) adresse ses félicitations à Madame le Président pour son élection à la présidence de la conférence diplomatique, ainsi qu'aux autres membres du Bureau de la conférence. Il se réfère à la déclaration faite par la délégation de l'Irlande au nom des pays membres de l'Union européenne et indique que son pays étant associé à cette importante organisation en partage les considérations de principe qui ont été exprimées. Il souligne que son pays s'est doté récemment d'une loi moderne sur le droit d'auteur et les droits voisins, en s'inspirant notamment des législations et des pratiques des autres pays européens. La conférence diplomatique se présente comme une occasion de vérifier les options fondamentales prises par son pays en la matière, et de combler les lacunes éventuelles.

450. Il est de l'avis que les résultats des travaux préparatoires de la conférence sont encourageants pour l'adoption d'importants instruments internationaux et il en remercie les contributeurs. Il relève que la participation de son pays aux travaux préparatoires et à la présente conférence a été et reste animée du désir d'apporter une contribution constructive au développement progressif des normes internationales dans le domaine de la protection du droit d'auteur. Il espère vivement que les instruments qui seront adoptés par la conférence, reflèteront les pratiques positives vérifiées en différentes régions du monde et contribueront à une harmonisation accrue des législations et des pratiques nationales.

451. Mr. MIKDADI (Jordan) congratulated the President on her election, and thanked the International Bureau of WIPO and Mr. Jukka Liedes, Chairman of the Committees of Experts, for the preparatory work. He noted that the convening of the Diplomatic Conference coincided with the submission of intellectual property revision legislation to the Parliament of his country, one of the objectives of which was to harmonize the 1992 Copyright Law on a number of issues covered by the proposed treaties, such as databases and the rights of performers and phonogram producers and broadcasting organizations. He emphasized that Jordan supported, in principle, the draft treaties under consideration, due to the fact that there was an apparent need to update and modernize the international copyright and neighboring rights norms in order to respond fully to the technological developments. He stressed the need for a balance between the rightholders and the users, taking into account the interests of the developing countries and their need to access to new technologies, and expressed the hope that the new treaties would find solutions to accommodate technological progress into the intellectual property framework. He stated that his Delegation supported the statement of the Delegation of Sri Lanka on behalf of the Asian Group.

452. Mme M'KADDEM (Tunisie) présente ses félicitations à Madame le Président pour son élection à la présidence de cette conférence diplomatique. Les traités soumis à examen, dont on remercie les élaborateurs, ne peuvent être que l'expression du niveau de protection que l'OMPI et ses États membres cherchent à garantir aux auteurs et aux autres titulaires de droits eu égard au développement de la société internationale de l'information. Des règles mondiales sont nécessaires pour assurer la protection des oeuvres dans le nouvel environnement numérique, mais il n'en demeure pas moins qu'il faut toujours tenir compte des capacités et des besoins des pays en développement. Elle souligne que son pays, membre fondateur de la Convention de Berne, s'est engagé depuis quelques années à prendre les mesures nécessaires pour garantir la meilleure protection des auteurs et autres détenteurs de droits par l'adoption d'une nouvelle législation sur le droit d'auteur et, en oeuvrant avec l'appui de l'OMPI, par la mise en place de l'organisme tunisien de gestion collective des droits d'auteur. Elle dit que son pays a également contribué aux différentes réunions régionales de consultation sur certaines questions de droit d'auteur et de droits voisins dont celle de Casablanca du 7 au 9 novembre 1996, et entend apporter sa contribution afin d'assurer le meilleur succès des travaux de cette conférence.

453. Mr. SHINAVENE (Namibia) congratulated the President on her election, and stated that his Delegation believed in the protection of creativity of intellectual property. He welcomed the efforts by WIPO in protecting the creators of the works of the mind in the context of the new information technology environment. He expressed support for the holding of the UNESCO-WIPO World Forum on the protection of folklore and the WIPO World Symposium on the rights of broadcasting organizations, in 1997. His Delegation took the view that the question of legal protection of databases required further study.

454. Mme YOUM DIABE SIBY (Sénégal) adresse ses félicitations à Madame le Président à l'occasion de son élection à la présidence de la conférence diplomatique. Devant un certain vide juridique, l'OMPI, à qui un hommage appuyé doit être rendu, a senti l'impérieuse nécessité d'élaborer des normes juridiques appropriées pour assurer à la fois tant aux catégories de titulaires de droits protégés par la Convention de Berne, qu'à celles protégées par la Convention de Rome, à l'exclusion toutefois des organismes de radiodiffusion, la protection la plus adéquate. Elle remercie l'ensemble des délégations, et plus particulièrement celles appartenant au groupe africain, pour son élection à la présidence de la Commission de vérification des pouvoirs, et déclare s'engager à apporter, comme par le passé, sa modeste contribution pour le plein succès de cette conférence. Elle se réserve le droit de se prononcer sur les trois traités soumis à notre examen, au moment opportun.

455. Mrs. DROZDOWSKA (Poland) congratulated the President on her election, and thanked the International Bureau of WIPO and Mr. Jukka Liedes, the Chairman of the Committees of Experts, for the preparatory work. She stated that harmonization of international intellectual property laws was vital to accommodate the protection of works in digital form and enable an unrestricted flow of information. She added that it was important to consider the solution to the problems digital technology might cause to copyright owners.

456. She expressed the view of her Delegation that a strong link should be established between the proposed Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works and the Berne Convention. Generally, her Delegation expressed reservations concerning the definition of publication in Article 3, and to the abolition of certain non-voluntary licences in Article 6 of the proposed copyright treaty. She stated that there was

a need to maintain the general possibility of non-voluntary licensing under Article 11*bis*(2) of the Berne Convention, which entitled national legislators to determine the conditions under which the broadcasting and cable distribution rights of authors might be exercised.

457. She stated that it had always been understood that non-voluntary licensing would only be introduced if necessary and only in exceptional cases, and that the author's right to obtain equitable remuneration in such cases was expressly guaranteed. As regards the proposal for *sui generis* rights for databases, her Delegation was of the view that further study was required, as there were differences in the proposal and the already-adopted Directive of the European Community.

458. M. MBON MEKOMPOMB (Cameroun) adresse ses félicitations à Madame le Président pour son élection à la tête de cette importante conférence diplomatique, élection qui fait honneur à toute l'Afrique. Il adresse également ses félicitations à tous les autres membres élus des différents comités et commissions. Il exprime toute son appréciation pour le volumineux travail par le Bureau international de l'OMPI et par les comités d'experts présidés par Monsieur Jukka Liedes, travail qui a abouti à la production des propositions de base soumises à l'examen de la présente conférence.

459. Il fait part de la préoccupation de la communauté des artistes de son pays regroupés au sein de la Société Civile Nationale du Droit d'Auteur (SOCINADA) sur la nécessité de prendre en compte les productions audiovisuelles dans le cadre des présentes assises. Il fait part de l'espoir que les artistes camerounais placent dans des consultations futures liées à la protection des expressions du folklore, l'accent étant mis sur la nécessité d'harmonisation des traitements et les approches, ceci pour éviter de regrettables cloisonnements, qui, à terme, pourraient être préjudiciables aux artistes, surtout avec l'essor du numérique. Il dit partager le souci de certaines délégations sur la nécessité d'adopter un traité sur la protection *sui generis* des bases de données ainsi que la nécessité, déjà exprimée, d'approfondir préalablement la réflexion sur ce sujet.

460. El Sr. ESPINOSA PAO (Nicaragua) felicita a la Sra. Presidenta por su elección, haciendo un paralelo con su país que tiene a una mujer a la cabeza del Gobierno. Sugiere que, en lo relativo a las bases de datos, se forme una comisión mixta entre países desarrollados y en vía de desarrollo, con el fin de estudiar más a fondo este tema y lograr un equilibrio entre los intereses de los derecho habientes y los de los usuarios de las bases de datos. Asimismo, hace hincapié en la necesidad de adoptar tratados separados.

461. M. ABADA (Unesco) présente les félicitations de son organisation à Madame le Président pour son élection à la présidence de la conférence diplomatique. Il relève que les propositions de base visent à adapter la protection des droits des auteurs, des artistes interprètes ou exécutants et des producteurs des phonogrammes aux nouvelles conditions d'exploitation des oeuvres et prestations dans le contexte de la communication numérique multimédia. Elles intègrent aussi une nouvelle protection spécifique de l'investissement en charge de la collecte et de la présentation des données informatiques sous forme de base de données sur support analogique et numérique.

462. Les propositions relatives au droit d'auteur apportent une amélioration de la protection du droit légitimement demandée par les auteurs et autres titulaires de droits dans le monde eu égard au développement des moyens techniques de création et d'exploitation publique des

oeuvres dans le contexte de la vie sociale moderne. Il se demande cependant si, dans le souci de mieux insérer la protection de ces droits dans le tissu de la vie sociale, toutes les propositions avancées sont en concordance avec les exigences de la communication sociale des oeuvres dans l'environnement des réseaux de transmission numérique. Et dans certains cas si ces propositions vont aboutir en dernier ressort à l'amélioration escomptée, ou sont à même d'être appliquées avec harmonie par tous les États engagés dans le consensus international de protection du droit d'auteur.

463. Il dit que le droit exclusif de communication au public prévu par l'article 10 du projet du Traité sur certaines questions relatives à la protection des œuvres littéraires et artistiques, pourrait être accompagné de la possibilité laissée aux législations nationales, notamment des pays les moins avancés, de prévoir un droit à rémunération équitable quand la communication des oeuvres à travers les réseaux numériques est effectuée dans le cadre de l'éducation à distance, accomplie sans but lucratif par des services publics, et quand cette communication est liée à des échanges entre les bibliothèques publiques. Il est de l'avis que la suppression, au niveau de l'article 6 du projet, du système de licences obligatoires en matière d'enregistrements d'oeuvres musicales prévu par l'article 13 de la Convention de Berne, est satisfaisante sur le plan de l'orthodoxie juridique. Mais, va-t-elle forcément aboutir à l'amélioration de la propriété du droit d'auteur de ces oeuvres en pratique? Les praticiens de la gestion des droits connaissent bien des cas où cette suppression pourrait avoir des effets inverses sur la protection des droits légitimes de ces auteurs. La suppression de la licence obligatoire en matière de droit de radiodiffusion, en l'absence de gestion collective des droits, porte aussi en elle des germes de difficultés réelles d'exercice des droits reconnus.

464. Quant aux propositions concernant les artistes interprètes ou exécutants et les producteurs de phonogrammes, elles apportent des améliorations légitimes à la protection des producteurs de phonogrammes qui constituent l'industrie culturelle nécessaire à la production et à la diffusion du produit musical. Il indique que ces propositions intègrent toutefois des dispositions apparaissant comme une régression au niveau de la protection des droits légitimes des artistes interprètes ou exécutants. La variante C de l'article 25 du projet de traité, rendrait pratiquement sans effet les droits exclusifs reconnus par le projet de traité. L'équité, dans la protection des droits voisins appelle à un plus grand équilibre envers la protection des droits des artistes interprètes ou exécutants. Il dit que le droit d'importation prévu au titre du droit d'auteur comme des droits voisins présente plus d'inconvénients pour la liberté des échanges en matière de produits culturels licites qu'il n'apporte d'amélioration à la protection des droits. Les variantes qui prévoient sa suppression au niveau de l'article 8, variante B de la proposition de base relative au droit d'auteur, et de l'article 9, variante F, et de l'article 16, variante B de la proposition relative aux droits des artistes interprètes et des producteurs de phonogrammes, paraissent plus appropriées. La protection des artistes interprètes ou exécutants devrait par ailleurs comprendre la protection de leurs prestations audiovisuelles.

465. Il ajoute que la proposition relative aux bases de données vise notamment à établir un nouveau statut du traitement des données informatiques, jusqu'à présent libres de toute obligation au regard du droit de propriété intellectuelle. Le statut proposé place sous le monopole d'un droit exclusif discrétionnaire, très étendu, le traitement de toute donnée informative, habituellement de libre usage, dès lors qu'elle est intégrée dans un ensemble général qui nécessite un investissement important. Les droits reconnus aux producteurs de bases de données, sur la collecte et la présentation des données informatives sont des plus étendus. Le droit d'extraction et le droit d'utilisation sont définis de telle manière qu'ils

recouper toutes les situations qu'impliquent le droit de reproduction et le droit de communication au public dans les contextes analogique et numérique. Les limitations et exceptions à ces droits sont strictement retenues dans les conditions exceptionnelles prévues par l'article 9.2) de la Convention de Berne, alors que les droits des auteurs portant sur la création originale ont toujours été accompagnés de limitations que justifient les exigences de la vie sociale. Le régime de la durée de protection est formellement limité de 15 à 20 ans; mais avec la souplesse que prévoit l'article 8.3) du projet, il peut aisément conduire à une protection perpétuelle. Il dit que la perspective de cette évolution du statut international des données informatives inquiète tous ceux qui les utilisent dans leurs activités et notamment la communauté scientifique en contact avec l'Unesco. Il souhaite que le débat actuel sur cette question importante pour le devenir de la société de l'information ne soit qu'une première étape d'un processus de maturation consensuelle plus large. La communauté scientifique devrait notamment avoir l'opportunité de faire connaître ses préoccupations et ses besoins légitimes et la communauté internationale devrait les prendre en charge comme il se doit. C'est sur la base d'un tel consensus que le statut devant régir les relations internationales en matière d'exploitation des données informatives pourra le mieux protéger les intérêts légitimes en présence et constituer un acte important dans la dynamique de la construction de l'infrastructure mondiale de l'information. Il indique que l'Unesco souhaite que les représentants des États s'engagent dans cette direction et est disposée à apporter sa contribution à la concrétisation d'une telle démarche.

466. Mrs. HERBERT (International Labour Organization) congratulated the President on her election. She noted that her Organization had followed the debates in regard to the proposed neighboring rights treaty with great interest over the past three years, and that the need for increased protection was growing due to the impact of digitalization. She stated that 45 years ago, an ILO report on Rights of Performers in Broadcasting, Television and the Mechanical Reproduction of Sound had concluded that performers should be granted certain rights, some of which were provided by the Rome Convention adopted in 1961. Even so, she said, the Rome Convention contained certain gaps, such as the unbalanced treatment of audiovisual performers as a result of Article 19.

467. She stated that the draft Treaty for the Protection of the Rights of Performers and Producers of Phonograms provided a positive response to long-expressed needs, including moral rights for performers, and provision of exclusive rights of performers in parallel with certain exclusive rights of producers of phonograms. She stated, however, that the exclusion of audiovisual fixations from the coverage of the Treaty was anachronistic in the digital age, and for all of the reasons expressed in the draft Preamble to the proposed Treaty. Accordingly, she expressed support for a comprehensive instrument which would include audiovisual performances.

468. The PRESIDENT noted that no Delegations or Observer Organizations asked for the floor, and adjourned the meeting.

*Eighth Meeting**Wednesday, December 11, 1996**Afternoon**Item 9 of the Agenda: Consideration of the first report of the Credentials Committee*

469. The PRESIDENT opened the meeting and gave the floor to the Chairman of the Credentials Committee.

470. Mme YOUM DIABE SIBY (Sénégal) remercie, au nom des membres de la commission, tous les délégués pour la confiance qu'ils ont placé dans le comité de vérification des pouvoirs et donne lecture du rapport de celui-ci, tel que contenu dans le document CRNR/DC/17.

471. The PRESIDENT thanked the Chairman of the Credentials Committee for her report and invited Delegations to put questions.

472. Mr. CRESWELL (Australia) said that his Delegation queried the classification of the credentials attributed to it as being without full powers and announced that it would take up the matter with the Committee.

473. El Sr. GLANTSCHNIG (Austria) informa que su Delegación ya entregó el documento con los plenos poderes y que tomará contacto con la Secretaría al respecto.

474. Mr. STOODLEY (European Communities) said that his Delegation, not having yet seen the written version of the report, assumed that the report did recognize the credentials and full powers of the European Community as agreed in the procedural rules of this Conference and, therefore, recognized the authority of the European Community to act according to the status granted to it at the Conference.

475. The PRESIDENT noted that the report of the Credentials Committee had been circulated the day before. She proposed that the Conference adopt the report with the comments that had been made.

476. *The Conference adopted by consensus the report of the Credentials Committee, as contained in document CRNR/DC/17.*

*Work program*

477. The PRESIDENT then informed the meeting that the Steering Committee, in its first meeting on the same day, had decided that the Chairman of Main Committee I would produce consolidated texts of the substantive provisions of the two treaties, reflecting points of convergence and divergence. Those texts would be available in the six languages the afternoon of the next day. In a meeting of Main Committee I immediately following, the Chairman of that Committee would present those consolidated texts, give explanations and answer questions about them. Meanwhile, informal consultations would be held on the subject matters of Main Committee II, pending a decision on a convocation of that Committee and in order to

prepare the ground for a formal meeting. She asked the Conference whether it accepted to proceed alike.

478. *The Conference agreed to that procedure.*

479. The PRESIDENT adjourned the meeting.

*Ninth Meeting*

*Friday, December 20, 1996*

*Evening*

*Item 12 of the Agenda: Consideration of the second report of the Credentials Committee*

480. The CHAIRMAN opened the meeting. She noted that the Conference was now coming to the last phase of its work, the adoption of the documents that had come from the Committee. She proposed the reports of the Credentials Committee for adoption.

481. *The Diplomatic Conference adopted by consensus the three reports of the Credentials Committee, as contained in documents CRNR/DC/17, CRNR/DC/80 and CRNR/DC/86.*

*Item 13 of the Agenda: Adoption of the Treaty or Treaties*

*Adoption of the WIPO Copyright Treaty*

482. The PRESIDENT invited the Conference to adopt the draft WIPO Copyright Treaty.

483. *The Diplomatic Conference adopted by consensus the WIPO Copyright Treaty, as contained in document CRNR/DC/89.*

*Adoption of the WIPO Performances and Phonograms Treaty*

484. The PRESIDENT proposed the draft WIPO Performances and Phonograms Treaty for adoption.

485. *The Diplomatic Conference adopted by consensus the WIPO Performances and Phonograms Treaty, as contained in document CRNR/DC/90.*



*Item 14 of the Agenda: Adoption of any recommendation, resolution, statement or final act*

*Adoption of the Final Act of the Diplomatic Conference*

486. The PRESIDENT drew the attention of the Conference to the draft Final Act, and proposed its adoption.

487. *The Diplomatic Conference adopted by consensus the Final Act, as contained in document CRNR/DC/91.*

*Adoption of agreed statements concerning the WIPO Copyright Treaty*

488. The PRESIDENT gave the floor to the Secretariat on document CRNR/DC/92, containing the draft agreed statements concerning Treaty No. 1.

489. Mr. BOGSCH (Director General of WIPO) proposed the consideration of document CRNR/DC/92 as containing also the additional statement (concerning the reproduction right) that had just been approved by Main Committee I and, consequently, to have only one vote on all statements concerning Treaty No. 1.

490. Mr. SILVA SOARES (Brazil) proposed a separate vote on the above-mentioned statement.

491. Mr. KIM (Republic of Korea) supported the proposal.

492. The PRESIDENT, taking account of the lack of agreement on a joint vote, proposed document CRNR/DC/92, as not containing the additional statement just approved by Main Committee I, for adoption.

493. *The Diplomatic Conference adopted by consensus the agreed statements concerning the WIPO Copyright Treaty, as contained in document CRNR/DC/92.*

494. The PRESIDENT then put the above-mentioned additional statement to vote.

495. Mr. YAMBAO (Philippines), taking the floor on a point of order, said that his Delegation did not object to the additional statement being a statement of the Conference, but would like to place on record that nevertheless that statement could not be dealt with as an agreement of all the parties in accordance with Article 31(2)(a) of the Vienna Convention on the Law of Treaties.

496. The PRESIDENT said that the statement made by the Delegation of the Philippines had been noted, and she proceeded to the vote.

497. *The Diplomatic Conference adopted, with 51 votes in favor, 5 votes against, and with 30 abstentions, the additional statement on the reproduction right in the WIPO Copyright Treaty, as approved by Main Committee I.*

498. The PRESIDENT invited those Delegations which wanted to give an explanation of their votes to take the floor.

499. Mr. SILVA SOARES (Brazil) declared that his Delegation had voted against the adoption of the proposed statement because no consensus had been reached in the Conference on the definition of storage. His Delegation understood that neither the access to make a work perceptible by browsing nor the transmission of a work through a computer network in the occurrence of a temporary or non-temporary storage resulting from a technical procedure infringed the exclusive right of reproduction within the meaning of the Berne Convention. He also referred to the statements made by his Delegation at the meeting of Main Committee I which indicated the reasons for its negative vote in respect of the second sentence of the statement.

500. Mr. AYYAR (India) referred to his intervention made in Main Committee I and stated that that intervention reflected the position of his Delegation.

501. Mr. KIM (Republic of Korea) explained the opposition of his Delegation to the adopted statement. In its view, reproductions which were not relevant in economic terms should not be considered as reproductions all the time. The acts of browsing or providing telecommunication facilities had an economic value in a number of cases. It was, however, difficult to distinguish acts which had an economic significance from those which had not. In that context his Delegation believed that acts of browsing should not be covered by the exclusive right of reproduction without exceptions.

502. Mr. SHEN (China) said that his Delegation wished to make a statement on the statement under discussion as well as on the two treaties. Referring to Articles 6 and 11 of the WIPO Copyright Treaty and Articles 8, 10, 12, 14 and 18 of the WIPO Performances and Phonograms Treaty, as well as to the statement just adopted, his Delegation wished to register its reservation. Taking into account the domestic legislation, as well as the cultural, educational, scientific and technological development level, his Government needed further study of those matters.

503. Mr. AYYAR (India) requested, for the purpose of clarifying the records, that a reference be included in the records to the observations made by the Secretariat and the Chairman of Main Committee I before the statement under consideration had been put to vote in that Committee. He added that his Delegation supported those observations.

*Adoption of agreed statements concerning the WIPO Performances and Phonograms Treaty*

504. The PRESIDENT said that all interventions had been duly noted and the Secretariat would do the necessary. She then proposed the draft agreed statements concerning Treaty No. 2 for adoption.

505. *The Diplomatic Conference adopted by consensus the agreed statements concerning the WIPO Performances and Phonograms Treaty, as contained in document CRNR/DC/93.*

506. M. DEBRULLE (Belgique) rappelle que, lors de la réunion de la Commission principale I, une déclaration concertée a été laissée de côté: celle présentée par sa délégation sur

la notion de fixation. Après s'être entretenu avec la délégation du Royaume-Uni, et avoir consulté les milieux intéressés, un accord a pu être trouvé. Ainsi la déclaration concertée serait la suivante: "Article 3: Aux fins d'application de l'Article 3.2, il est entendu que la fixation désigne la réalisation finale de la bande mère".

507. Mr. FICSOR (Assistant Director General of WIPO) explained that the proposal had been already put forward orally in the informal consultation group as well as in Main Committee I.

508. M. SERFATY (France) appuie la demande de la délégation de Belgique. Il s'agit d'une déclaration qui a été discutée et présentée de manière informelle.

509. Mr. STARTUP (United Kingdom) asked the Delegation of Belgium to read the proposed statement again slowly. He added that his Delegation might be in a position to lift the reservation which it had expressed in Main Committee I.

510. M. DEBRULLE (Belgique) indique que le texte a été lu lors de la réunion de la Commission principale. Il en redonne lecture.

511. The PRESIDENT noted that there was no objection to the proposal made by the Delegation of Belgium.

512. *The Diplomatic Conference adopted by consensus the agreed statement proposed by the Delegation of Belgium.*

513. The PRESIDENT then put to vote the additional draft agreed statement concerning the reproduction right in the WIPO Performances and Phonograms Treaty, explaining that that statement paralleled the corresponding additional agreed statement concerning the WIPO Copyright Treaty that had just been approved by the Conference.

514. *The Diplomatic Conference adopted, with 47 voted in favor, 4 votes against, and with 31 abstentions, the agreed statement on the reproduction right in the WIPO Performances and Phonograms Treaty, as approved by Main Committee I.*

515. Mr. SILVA SOARES (Brazil), explaining the opposition of his Delegation, referred to his explanation of vote made earlier in respect of the corresponding statement regarding the WIPO Copyright Treaty.

#### *Adoption of a resolution and a recommendation*

516. The PRESIDENT submitted the draft Resolution concerning audiovisual performances contained in document CRNR/DC/87 and the draft Recommendation concerning databases contained in document CRNR/DC/88 as proposed by her.

517. *The Diplomatic Conference adopted by consensus both the Resolution and the Recommendation, one after the other.*

518. Mr. STOODLEY (European Communities) said that, on behalf of the European Community, he wished, in connection with the Articles in both treaties dealing with the

Contracting Party status of the European Community, to make the statement for the records of the Conference that the European Community was competent in respect of, and had its own legislation binding on all of its Member States, on matters covered by the treaties. Moreover, the European Community had the capacity to become party to the treaties.

*Item 15 of the Agenda: Closing declarations by Delegations and by representatives of Observer Organizations*

519. The PRESIDENT, noting that the Conference had concluded its work, invited those Delegations which wished to make any concluding remarks to be extremely brief.

520. Mr. TIWARI (Singapore) noted that the Conference had achieved many of the objectives with which it had started. He had instructions from his Government to make a statement on the distribution right in the two Treaties. Any action which impeded trade or restricted it was an important issue for Singapore. It was for that reason that Singapore was against any right of importation as it would affect free trade. Singapore's policy had been to allow parallel imports in the interests of free trade. His Delegation could go along with the provisions relating to the right of distribution in the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty on the basis that they did not affect Singapore's parallel import regime in any way, as it would continue to allow for parallel imports. The provisions in the two Treaties made it clear that Contracting Parties had the freedom to decide how the notion of the right of distribution applied after the first sale or transfer of ownership of the original or a copy of the work without authorization of the author. The provisions were consistent with the maintenance of a regime of international exhaustion. In concluding his intervention, he wished to express his gratitude to all those who had worked hard to finalize the two Treaties.

521. Mr. EKPO (Nigeria) said that his Delegation was happy to have been involved from the beginning in the work of the Committees of Experts that led to the conclusion of the two Treaties. His only regret had been that the second treaty had not taken off properly. His Delegation was consoled, however, in the fact that concrete steps would be taken shortly to ensure that parts of that Treaty would come aboard. He also wished to thank everybody that had contributed towards making the Conference successful. He hoped that the spirit of compromise would continue in WIPO. The time had come when all the countries had to work towards the recognition of all nations on an equal basis.

522. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, joined on this occasion by the *ad hoc* group of Central and Eastern European Countries and the Baltic States, namely Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Latvia, Lithuania, The former Yugoslav Republic of Macedonia, Poland, Romania, Slovakia and Slovenia, wished to take the opportunity to congratulate the officers of the Conference and all Delegations on the completion of the Conference, as well as to thank the Director General of WIPO and the Secretariat for the excellent support. The European Community and its Member States joined by the *ad hoc* group appreciated the outcome of the difficult deliberations. However, they knew that the work done did not complete the exercise initiated seven years before; it had to continue and the momentum generated by the Conference should not be lost. They would expect an early adoption and initiation of a concrete and comprehensive program which would facilitate the completion of the work on neighboring rights and on the *sui generis* protection of databases. The European

Community and its Member States and the countries of the *ad hoc* group adhered fully to the terms of the resolutions adopted on the future work, and looked forward to participating in this process in a constructive and positive manner.

523. El Sr. SERRANO MIGALLÓN (México) expresa su reconocimiento y aprecio por la sabiduría y la sensibilidad con la que la Presidenta de la Conferencia ha sabido conducir los difíciles y delicados trabajos de la Conferencia Diplomática. Reitera la voluntad de su país de apoyar y proteger el derecho de autor y los derechos conexos, voluntad que se encuentra plasmada en la nueva Ley Federal de derechos de autor aprobada hace una semana por el Congreso, que amplía los derechos y la protección a los creadores mexicanos, incorpora medidas y procedimientos para el ejercicio de los derechos y contiene elementos innovadores tales como la protección a la cultura popular, o a las bases de datos no originales y establece el trato nacional a los autores extranjeros en base al Acuerdo de la misma ley. No obstante, los retos toman una nueva dimensión en el ámbito internacional por los efectos de la globalización y se manifiestan en un creciente mercado de bienes y servicios culturales y en una actividad que requiere de mayor protección. El Delegado de México destaca la importancia de esta Conferencia Diplomática en búsqueda de la actualización de las normas de protección al derecho de autor y derechos conexos necesaria para preservar y ampliar la protección a los creadores ante el impacto del avance tecnológico. Lamenta la exclusión del segundo Tratado de los derechos de los artistas intérpretes o ejecutantes del sector audiovisual pero destaca la importancia de seguir insistiendo en ese proceso de armonización.

524. Mr. LEHMAN (United States of America) praised the leadership that the President had given to the Conference. He noted that this was the time of WIPO coming of age. After many discussions on intellectual property around the world in the past few years, that sometimes had been associated with acrimony and even with threats of retaliation, the success of the Conference was a historic event in which participants had been able to come together without any kind of revenge or threat and with the common objectives that mattered to serve the interests of the world's creative community. He wished to thank not only the President, but also every single colleague of the other Delegations.

525. Mr. SILVA SOARES (Brazil) also renounced reading out the final statement of his Delegation. He said that he would give it to the Secretariat in order to be put in the records. The statement would express that his Delegation regretted the outcome of recognition of moral rights of performers, but welcomed the convocation of the WIPO Governing Bodies for the first quarter of 1997 for a Possible Protocol to the WIPO Performances and Phonograms Treaty and finally considered the question of discussing a treaty on databases and intellectual property.

526. El Sr. ROGERS (Chile) expresa su satisfacción por haberse obtenido el consenso necesario que haya permitido la aprobación de los Tratados de la OMPI sobre derecho de autor y sobre interpretaciones o ejecuciones y fonogramas. Sin embargo, lamenta que los textos aprobados, si bien constituyen un avance no alcanzan a cumplir todas las expectativas que tenían las delegaciones al inicio de la Conferencia después de cinco años de labor intensa. Sin embargo, teniendo presente las concesiones y los esfuerzos de conciliación realizados por muchas Delegaciones, la Delegación de Chile expresa su confianza que los Tratados sean firmados y ratificados en un breve plazo a fin de que su pronta entrada en vigencia permita el ejercicio efectivo de los derechos en ellos consignados. En nombre del grupo Latinoamericano y del Caribe, felicita a la Presidenta por su labor desarrollada y expresa un especial

reconocimiento a los Señores Jukka Liedes y Mihály Ficsor, principales artífices de los Tratados adoptados. Finalmente, expresa el agradecimiento del Grupo Latinoamericano y del Caribe a la Oficina Internacional por la excelente organización de la Conferencia Diplomática, a los miembros de la Secretaría y a los intérpretes quienes contribuyeron en gran medida al éxito alcanzado.

527. Mr. ABEYSEKARA (Sri Lanka), speaking also on behalf of the Asian Group of countries, thanked the President for her excellent leadership stressing that her diplomatic skill and experience had immensely contributed to the success of the Diplomatic Conference. He extended his profound gratitude to the Director General of WIPO for his excellent support and hospitality. The efficiency and conscientiousness of his staff were deeply appreciated. He also thanked all others who, behind the scene, had made their contribution to the success of the Conference.

528. Mr. SHIMOTORI (Japan) congratulated the President on the adoption of the two Treaties which was a historical event for all those who were engaged in or related to copyright which meant virtually all human beings. He especially wished to express his deepest appreciation to Mr. Liedes who had been the Chairman of the Committees of Experts always taking initiative and leadership for this difficult task and who, during the Diplomatic Conference, had played a major role in managing effective and efficient discussion as the Chairman of the Main Committee I. He also expressed his gratitude for the remarkable work carried out by the Secretariat. The two Treaties, especially the new rights of communication to the public and of making available to the public, were a most important achievement. They made the international copyright framework capable to cope with the advent of the information society. However, an agreement on some extremely important issues had not been reached. That seemed to be due to the rather tight time frame for the preparation of the Conference. He suggested that schedules for the future work be set with sufficient time for the preparation.

529. Ms. KALLINIKOU (Grèce), au nom de sa délégation, considérant que le droit moral constitue un élément essentiel de la protection des artistes interprètes ou exécutants, et reconnaissant la nécessité de pallier les divergences entre les systèmes juridiques existants, accepte dans un esprit de consensus la reconnaissance, dans le cadre de ce traité du droit pour chaque artiste d'exiger le respect de son interprétation sonore vivante ou fixée sur phonogramme, ainsi que la paternité sur celle-ci, et souhaite le renforcement international du droit moral des artistes interprètes ou exécutants, notamment dans le monde numérique.

530. M. SÉRY (Côte d'Ivoire) exprime la fierté du groupe africain de voir les travaux de la conférence se conclure avec deux traités. Fierté égoïste certes, mais venant du fait que Madame le Président appartient à l'Afrique et que son intelligence et son expérience avisée ont contribué à ces résultats probants qui permettront à l'OMPI et à la communauté internationale d'étoffer son catalogue normatif. Il adresse également de chaleureux remerciements au Directeur général de l'OMPI pour son assistance au Groupe africain, et souligne que depuis longtemps le nom du Directeur général est associé à l'évolution de la protection et de la promotion des droits de propriété intellectuelle en Afrique. Sa délégation remercie aussi le personnel du Bureau international de l'OMPI pour toute la logistique apportée et la qualité du travail accompli, les membres du bureau de la conférence ainsi que les traducteurs et les interprètes. Il exprime encore au nom du groupe africain ses félicitations aux présidents des différentes commissions et, particulièrement à Monsieur Jukka Liedes, pour son travail et sa disponibilité lors des réunions de consultation régionales qui ont précédé la Conférence

diplomatique et ont permis à chaque groupe de pays concernés d'avoir une réflexion plus approfondie et d'avoir abouti à des solutions de compromis. Malgré l'adoption de deux traités, il fait part d'une certaine amertume du groupe africain qui aurait souhaité une plus large obtention de droits dans certains cas et il espère que les engagements pris par les uns et les autres pour discuter la question de l'audiovisuel et celle du folklore, sujet cher aux pays en développement et à l'Afrique en particulier, seront tenus. Il formule enfin le souhait que le rayonnement de cette conférence, et surtout celui de Madame le Président permettent aux autorités politiques en Afrique de prendre conscience de l'importance de la propriété intellectuelle afin que ce continent qui représente pratiquement 2% du commerce mondial, puisse dans cette aide "post-ADPIC" occuper la place qui lui revient dans le concert des Nations.

531. Mr. SHEN (China) extended his congratulations, thanks and best wishes to the President of the Conference, the two Chairmen of the Main Committees, the Director General of WIPO and his staff as well as the interpreters.

532. El Sr. ZAPATA LÓPEZ (Colombia) se asocia a los agradecimientos expresados por las demás delegaciones, y en particular los expresados por la Delegación de Chile en nombre del Grupo Latinoamericano y del Caribe. Considera que sólo el tiempo permitirá determinar si se logró cumplir el mandato que consistía en precisar las normas del Convenio de Berna respecto de las cuales existían dudas, y de crear nuevas que respondan a los desafíos planteados por las nuevas realidades tecnológicas. Mientras tanto, la Delegación de Colombia considera importante recordar cuáles son las tareas que falta emprender para sacar adelante el compromiso que los ha convocado en este foro durante tanto tiempo. El primer pilar básico es la observancia de los derechos. El segundo aspecto concierne la capacitación sobre los derechos, actividad de suma importancia entre las muchas emprendidas por la OMPI, empezando por los círculos interesados, los mismos titulares de los derechos, los usuarios, los jueces y las demás autoridades encargadas de aplicar las normas. Finalmente, destaca la imperiosa necesidad de un fortalecimiento profesional y técnico de la gestión colectiva, sin el cual se puede temer que las nuevas normas adoptadas no contribuyan a un reconocimiento de los derechos de los autores y otros titulares de derechos. En el entorno digital, sólo la gestión colectiva permitirá que esos derechos sean una realidad.

533. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, made the following statement to be recorded in the minutes of the Conference: "The European Community and its Member States hereby indicate their intention, when acceding, to deposit their instruments of ratification or accession simultaneously."

534. Ms. DALEY (Jamaica), endorsing the congratulations and thanks put forward by the Delegation of Chile on behalf of the group of countries of Latin America and the Caribbean, added that her Delegation hoped that rights in the audiovisual area would be addressed in a manner that balance of rights and interests in intellectual property would be achieved.

535. Mr. BOGSCH (Director General of WIPO) made the following concluding remarks:

"The International Bureau of the World Intellectual Property Organization is proud that its member States chose WIPO for preparing and serving this Diplomatic Conference.

“The two Treaties adopted by the Conference will have an immense impact on the future development of copyright and neighboring rights.

“The success is due to you, Madam President. At all difficult moments, your advice and leadership were indispensable and successful.

“The success is due also to the Chairmen of the Committees, Madam Youm, Mr. Lieder, Mr. Silva Soares and Mr. Ayyar. Mr. Lieder was also the sole author of the Basic Proposal of the substantive clauses and, therefore, his role was important on two accounts.

“The International Bureau is grateful to these five officers and all the delegates and other participants for their patience and work through which they enriched in a most important way the treaty system of WIPO.

“This Diplomatic Conference did not solve all the questions that await international norm making in the field of intellectual property. But the Conference itself adopted recommendations on the work to be undertaken by WIPO for the protection of audiovisual performances and of databases. WIPO is expected to deal in the near future also with the protection of expressions of folklore and of broadcasters’ rights and with the specific copyright and trademark problems of global information systems, like the Internet.

“The International Bureau of WIPO will do its best that those questions be studied and possible answers to them be found in the foreseeable future.

“In the meetings that will deal with those questions, the non-governmental organizations will have their important role, as usual in WIPO committees of experts and other WIPO meetings.

“Madam President, allow me please to end this statement by expressing my thanks first of all to Assistant Director General Mihály Ficsor, Secretary of the Diplomatic Conference. His deep knowledge and his perfect diplomacy were once again and particularly brilliantly demonstrated.

“My thanks go also to my colleague Francis Gurry, the Secretary of Main Committee II and of the Credentials Committee, for his outstanding work. And my appreciation goes also to my colleague Carlos Claa and all my other colleagues—dozens of them—who served this Conference with utmost efficiency in various capacities, all indispensable for the Conference.

“They certainly deserve warm applause.”



536. The PRESIDENT considered that this had not been an easy diplomatic conference. The Delegations, confronted with a range of complex issues and a great diversity of interests, had had to find a balance, not which satisfied all interests which would have been rather impossible but which accommodated as many interests as possible in their fairest way, ensuring that creators and producers would be encouraged to continue to add to the world's cultural stock, that performers and artists would be rewarded for enriching life, that business would be encouraged to make the investments necessary to make these creations and performances available to the widest public possible. They had had to find this difficult balance in the context of rapidly changing technology and in a way that did not act as a break on the development of the technology. She believed that the Delegations had succeeded in this almost superhuman task, and she thanked all those who had worked indefatigably, patiently and tolerantly over the past three weeks at finding this balance, in a spirit of cooperation and with a willingness to find compromises on the most difficult points. She also expressed her appreciation and gratitude to the officers of the Conference and of its Committees, in particular, the Chairmen of the Committees for their skillful stewardship throughout the whole of the Conference. This Conference had been a WIPO Conference and the two treaties it had adopted were WIPO treaties. Therefore, she turned to the Director General of WIPO and his staff to express, as President of the Conference and on behalf of all participants, the gratitude of the Conference for his sure guidance and for giving participants the benefit of his wisdom and experience. The enormous workload of the Conference could not have been carried without the magnificent efforts of the interpreters, the translators, the printing and document services. It had been an honor to her to have had the privilege of being the President of the Conference, and she thanked all participants for the trust that they had placed in her. She extended to everyone present her good wish for a safe journey back home, a happy holiday season and a fruitful 1997.

*Item 16 of the Agenda: Closing of the Conference by the President*

537. The PRESIDENT declared the Conference closed.

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