

# Copyright

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# WORLD INTELLECTUAL PROPERTY ORGANIZATION

SWEDEN

## Ratification of the WIPO Convention

*Notification of the Director of BIRPI to the Governments  
of the countries invited to the Stockholm Conference*

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of . . . . and, in accordance with the provisions of the above Convention, has the honor to notify him that the Government of the Kingdom of Sweden deposited on August 12, 1969, its instrument of ratification dated June 27, 1969, of the Convention Establishing the World Intellectual Property Organization (WIPO).

The Kingdom of Sweden has fulfilled the condition set forth in Article 14(2) of the Convention by concurrently ratifying

— the Stockholm Act of the Paris Convention with the limitation provided for in Article 20(1)(b)(i) of the said Act

to the effect that the ratification shall not apply to Articles 1 to 12,

— and the Stockholm Act of the Berne Convention with the exception of Articles 1 to 20 and with a declaration admitting the application of the Protocol Regarding Developing Countries to works of which it is the country of origin.

A separate notification will be made of the entry into force of the Convention Establishing the World Intellectual Property Organization (WIPO), when the required number of ratifications or accessions is reached.

Geneva, September 8, 1969.

WIPO Notification No. 13

# INTERNATIONAL UNION

## SWEDEN

### **Ratification of the Stockholm Act of the Berne Convention (with the exception of Articles 1 to 20 and with a declaration concerning the Protocol Regarding Developing Countries)**

*Notification of the Director of BIRPI to the Governments  
of Union Countries*

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of . . . . and, in accordance with the provisions of the Stockholm Act of the above Convention, has the honor to notify him that the Government of the Kingdom of Sweden deposited on August 12, 1969, its instrument of ratification dated June 27, 1969, of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Stockholm on July 14, 1967, with the exception of Articles 1 to 20 and with the declaration provided for in Article 5(1)(b) of the

Protocol Regarding Developing Countries to the effect that Sweden admits the application of the provisions of the said Protocol to works of which it is the country of origin by countries which, on becoming bound by Articles 1 to 21 of the Stockholm Act of the said Convention and by the Protocol, or on making a declaration of application of the Protocol by virtue of the provision of its Article 5(1)(a), have made reservations permitted under the Protocol.

A separate notification will be made of the entry into force of the Stockholm Act of the said Convention when the required number of ratifications or accessions is reached.

Geneva, September 8, 1969.

Berne Notification No. 10

*CORRESPONDENCE*

**Letter from the United States**

















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Walter J. DERENBERG

## Sub-Committee of the Intergovernmental Copyright Committee (Unesco)

(Paris, June 23 to 27, 1969)

### Report

1. The Sub-Committee set up in accordance with Rule 16 of the Rules of Procedure of the Intergovernmental Copyright Committee to examine the issues raised by the proposals for the revision of Article XVII of the Universal Copyright Convention and its Appendix Declaration met at Unesco Headquarters in Paris from June 23 to 27, 1969.

2. The six States members of the Sub-Committee were represented, namely: France, Federal Republic of Germany, India, Kenya, Mexico, United States of America.

3. The Chairman of the Intergovernmental Copyright Committee, observers from Czechoslovakia, Tunisia and from two States members of the Permanent Committee of the Berne Union, namely, Denmark and Italy, and representatives of the United International Bureaux for the Protection of Intellectual Property (BIRPI) participated in the meeting.

4. A list of participants is annexed to the present report (Annex B).

5. Mr. Ribeiro, Chairman of the Intergovernmental Copyright Committee, opened the meeting of the Sub-Committee and expressed his most cordial wishes for the unqualified success of its work.

6. Mr. Saba, Assistant Director-General for International Standards and Legal Affairs, Unesco, on behalf of Mr. René Maheu, the Director-General, extended a warm welcome to the participants. He pointed out that the meeting of the Sub-Committee of the Intergovernmental Committee was part of the preparation of the revision conference to revise Article XVII of the Universal Copyright Convention and the Appendix Declaration relating thereto, a revision conference decided on in principle by the Intergovernmental Committee at the extraordinary session which it held in February 1969.

In conclusion, Mr. Saba remarked that the discussions which would take place in the Sub-Committee would reveal along what lines the governments of States parties to the Universal Convention wished that instrument to be revised.

### I. Election of officers

7. The Sub-Committee elected its Chairman. On a proposal of the delegation of France, supported by the delegations of India, the United States of America and Mexico, Mr. Ribeiro, Chairman of the Intergovernmental Copyright Committee, was unanimously elected Chairman of the Sub-Committee.

8. The drafting of the present report was entrusted to the Secretariat of the Sub-Committee, for which the United

Nations Educational, Scientific and Cultural Organization was responsible, in accordance with Rule 17 of the Rules of Procedure of the Intergovernmental Committee.

### II. Adoption of the final Agenda

9. The Committee decided to discuss its business in the following order:

1. Preparation of the revision conference to revise Article XVII of the Universal Convention
  - (i) Beneficiaries of the suspension of the safeguard clause
  - (ii) Duration of suspension of the safeguard clause
  - (iii) Status of beneficiaries of the suspension of the safeguard clause: Assimilation or reciprocity
  - (iv) Link between the Universal Convention and the Berne Convention which might be substituted for the safeguard clause; possibility and advisability of establishing such a link
  - (v) Majority required for the adoption of the revised texts
2. Other questions relating to the preparation of the revision conference.

10. Before going on to examine these various questions, the delegation of the United States of America observed that the Rules of Procedure of the Intergovernmental Committee should apply *mutatis mutandis* to the Sub-Committee. Since, however, the Sub-Committee comprised six members, four States should constitute a quorum and decisions should be made with a simple majority of the votes cast.

### III. Preparation of the conference to revise Article XVII of the Universal Convention

11. Before discussing the five questions included in this item of the Agenda, a number of delegations presented statements of a general nature concerning the revision of Article XVII of the Universal Convention and the Appendix Declaration relating thereto.

12. The representative of France stated that his delegation was convinced of the necessity to maintain two multi-lateral copyright conventions which far from being in competition with each other would be complementary. He stressed that the high level of protection guaranteed by the Berne Convention ought not to be altered and that the failure of the Stockholm Protocol had shown that, within the Berne Convention, the essential principles governing a high level of copyright protection and the needs of developing countries were incompatible. Those needs were covered by the level of

protection guaranteed by the Universal Convention, which ensured a minimum protection and at the same time allowed a wide distribution of works; further, its principle was adaptable to countries that had reached different levels of development. He noted that two levels of protection were thus offered to the international community and that each State could adopt one of them.

Consequently, he was of the view that developing countries should find a solution to their problems in the Universal Convention.

Starting from those basic principles, the French delegation considered that it was necessary to suspend the safeguard clause of the Berne Convention so that developing countries could, if they so desired, leave the Berne Union without losing the benefit of the protection offered by the Universal Convention. The revision of the Universal Convention ought to take place as soon as possible and remain independent of the work being carried out by the International Copyright Joint Study Group. Further, in order to give the developing countries the freedom to choose the system of international copyright protection to which they wished to accede, it would be advisable not to replace the safeguard clause by another sanction.

In conclusion, the French delegation wished to abide by the decisions adopted by the General Conference of Unesco at its fourteenth and fifteenth sessions, and by the Intergovernmental Copyright Committee at its extraordinary session held in February 1969, which decided to convene a conference for revision of Article XVII of the Universal Convention and the Appendix Declaration relating thereto.

13. The United States delegation endorsed the opinion that a revision of the Universal Convention ought to take place as soon as possible and considered that the amendment of the safeguard clause would be one of the main functions of the revision conference. It would be appropriate for the Sub-Committee to recommend a specific date for the convening of the conference under item 5 of its Agenda. Such a revision, however, required much prudence and it was important to set up new links between the Universal Convention and the Berne Convention, in order to avoid any breach affecting international copyright. Although this question of links is also on the Agenda of the Joint Study Group meeting to be held in Washington in September 1969, the subject must also be explored at length by the Sub-Committee in considering the consequences of removal of the safeguard clause.

14. Professor G. H. C. Bodenhausen, Director of BIRPI, drew the attention of the Committee to the extraordinary session of the Permanent Committee of the Berne Union which had just taken place in Geneva, from June 20 to 21, 1969. There were two reports from this meeting which he wished to place before the Sub-Committee. In light of the fact, however, that one of these reports — the Final Report of the Committee — had not yet been completed, he gave a general outline of the discussion which took place.

The majority view of the meeting, to which the Director of BIRPI also subscribed, was that a simple suspension of the safeguard clause would not provide a satisfactory solution to the problems of international copyright and the developing

countries. Rather, while recognizing that a revision conference of the Universal Convention should be convened by 1970-1971 — and the sooner the better — he felt it should be accompanied by a revision conference of the Berne Convention. Both revision conferences could take place together in Geneva, and subject to the approval of the appropriate committees of his Organization and of the Berne Union, he intended to extend an invitation to this effect.

The object of this joint conference for revision of the two Conventions would be as follows:

(a) for the Berne Union, to detach the Protocol from the Stockholm Act of the Berne Convention so as to allow the independent ratification and denunciation of the Stockholm Act and its Protocol respectively by Union countries. At the same time some provisions of the Protocol should be made more precise;

(b) for the Universal Convention, the limitation of a revision conference to the suspension of Article XVII and the Appendix Declaration would only have a slim chance of success because it was improbable that a majority of States of the Universal Convention could be obtained for such a limited revision and a majority of such States was even less likely for ratification. To be useful, therefore, a revision of the Universal Convention should include in the Convention some basic elements of copyright protection, including reproduction, public performance and broadcasting rights; in addition an improved version of the Stockholm Protocol should also be introduced in the Universal Convention. If the latter were achieved competition between the two Conventions would be eliminated and the régime for developing countries would be the same under both Conventions thus giving those countries a free choice as to which Convention they wished to join.

The representative of BIRPI also suggested that the preparations for such simultaneous conferences of revision of both Conventions should be made jointly by Unesco and BIRPI, and he saw no reason why this could not be accomplished and in a short period of time. For his part, he pledged the full co-operation of BIRPI for such an endeavour.

15. The representative of the Federal Republic of Germany pointed out that two bodies had been set up to deal with questions of international copyright: the present Sub-Committee of the Intergovernmental Copyright Committee and the International Copyright Joint Study Group. He recognized that the terms of reference of the Joint Study Group were wider than those of the Sub-Committee, since the said Joint Study Group would deal not only with the relationships between developed and developing countries but also with the general problems arising from the existence of two copyright conventions of universal bearing, yet he considered that the question of establishing new links between the two conventions belonged also to the terms of reference of the Sub-Committee. Therefore certain questions which did not exclusively affect the revision of Article XVII of the Universal Convention and the Appendix Declaration relating thereto, but which were connected with the question of new links, ought nevertheless to be discussed at the meeting.

16. The delegation from India stressed the urgency of the revision of Article XVII of the Universal Convention and

the Appendix Declaration relating thereto, in the case of developing countries, and stressed that question which did not closely affect the revision of Article XVII should not be considered here, particularly the statement made by the Director of BIRPI regarding the possibility of a revision conference of the Berne Convention.

17. After the general statements, the Sub-Committee proceeded to discuss the five questions which the Intergovernmental Copyright Committee had brought to its attention in Resolution No. 1 (XR) adopted at its extraordinary session held in February 1969.

#### *1. Beneficiaries of the suspension of the safeguard clause*

18. The representative of France was of the view that only developing countries ought to be able to benefit from the suspension of the safeguard clause, as it was understood that the definition of those countries would be based on the established practice of the General Assembly of the United Nations.

19. The United States delegation interpreted the results of the suspension of the safeguard clause as affecting only paragraph (a) of the Appendix Declaration relating to Article XVII of the Universal Convention and not paragraph (b). It shared the opinion of the French delegation that only developing countries should benefit from the suspension of the safeguard clause. As for the definition of developing countries, the United States delegation suggested that the criterion of "the established practice of the General Assembly of the United Nations" is subject to varying interpretations, and that an interpretation based solely on a monetary figure representing per capita income has serious disadvantages. Instead, it suggested that a system should be considered according to which the country concerned ought to be allowed to decide for itself whether it was developing or not. The country concerned, however, should renew at regular intervals (every ten years, for example) its request to benefit from the suspension of the safeguard clause, and attach thereto certain statistical data justifying its position as a developing country. For example, in addition to general economic statistics, the data might include figures on book production and trade, film and broadcasting penetration, education and literacy.

20. The representative of India considered that the reference to the established practice of the General Assembly of the United Nations constituted a clear and precise criterion.

21. The representative of Kenya agreed with the French delegation that only developing countries should benefit from the suspension of the safeguard clause. He considered that the suggestion of the United States delegation to ask the country concerned for certain statistics, would give rise to many complications and would prove inefficient in so far as nobody would be set up to examine those statistics and decide whether a country was or was not a developing country. Therefore the institution of such a body seems undesirable.

22. The representative of Mexico agreed with the delegation from India that the established practice of the General Assembly of the United Nations would constitute an acceptable criterion because, as specialized studies had shown, a

monetary figure representing per capita income reflected other social and economic factors.

23. The observer from Italy pointed out that Resolution No. 1 (XR) adopted by the Intergovernmental Copyright Committee at its extraordinary session in February 1969, did not in any way limit the revision of the safeguard clause to paragraph (a) of the Appendix Declaration relating to Article XVII of the Universal Convention. The Italian Government wished the Sub-Committee to consider the possibility of also suspending in favour of developing countries the provisions contained in paragraph (b) of the Appendix Declaration relating to Article XVII in order to prevent an exodus of developing countries that were members of the Berne Union, towards the Universal Convention.

24. The representative of Kenya pointed out that any amendment to paragraph (b) of the Appendix Declaration relating to Article XVII of the Universal Convention would result in chaos in international relationships concerning copyright.

25. The Sub-Committee decided to recommend to the Intergovernmental Committee that only the developing countries could benefit from the suspension of the safeguard clause, on condition that the definition of those countries would be based on the established practice of the General Assembly of the United Nations.

#### *2. Duration of suspension of the safeguard clause*

26. The United States delegation considered that to restrict the period of benefit from the suspension of the safeguard clause would be a mistake. It thought it advisable to provide for a system whereby that benefit would be granted for a fixed number of years (ten years for example) with automatic renewal at the discretion of the country concerned after notification to the Secretariat of Unesco.

27. The representative of France stressed that the question of the duration of the suspension of the safeguard clause would give rise to two problems. Firstly, that of knowing whether it was advisable to lay down a time-limit after which the country concerned could no longer take advantage of the said suspension. Secondly, that of knowing whether the suspension of the safeguard clause ought to be indefinite or restricted to a fixed period. The French delegation considered that all developing countries ought to be able to avail themselves of the suspension of the safeguard clause for as long as the country in question retained the status of a developing country, according to the officially established criterion.

28. The representative of Kenya thought that it would be logical to restrict the benefit from the suspension of the safeguard clause to the period of development. In view of the situation which would arise when a country was no longer considered a developing State, he wished to know: (a) from what date the benefit from the suspension of the safeguard clause would no longer be applicable to the country under consideration; (b) what works ought to be deprived after this date of the protection given by the Universal Convention: all the works by authors who were nationals of the country under consideration or only works published after the said country was no longer considered a developing country?



29. The representative of the Federal Republic of Germany expressed the view that it was not advisable to lay down a time-limit for the suspension of the safeguard clause. With regard to the expiration of the effect of the suspension of the safeguard clause once the country which had previously been regarded as "developing" was no longer considered as such, according to the established practice of the General Assembly of the United Nations, it would be the consequence of the expiration that, in order to avoid the sanctions provided for in Article XVII of the Universal Convention, the States in question would have to adhere once again to the Berne Union. A simpler solution would be that the States in question, instead of leaving the Berne Union, should only suspend their membership. However, such a solution could only be achieved by a revision of the Berne Convention.

30. The representative of Kenya considered that if the benefit derived from the suspension of the safeguard clause could no longer be granted to a State because it was considered a developed country, the sanctions provided for in Article XVII of the Universal Convention would once again become applicable.

31. The representative of France pointed out that, in the view of his delegation, at the expiration of the benefit from the suspension of the safeguard clause, the country which was previously a beneficiary ought either to renew its membership of the Berne Union or to submit to Article XVII of the Universal Convention.

### 3. Status of beneficiaries of the safeguard clause: Assimilation or reciprocity

32. The representative of Kenya considered that a developed country ought not to be in the position to adjust the level of protection which it granted to works originating from developing countries to that accepted in that country for foreign works. He thought, however, that the suppression of the safeguard clause could not be carried out without a counterpart. One solution would be to give the Universal Convention and the Berne Convention the same Protocol according to which the countries which were parties to one of the two Conventions would undertake to grant the countries which were parties to the other Convention national protection, resulting from their membership of the first Convention and vice versa. However, a country which adhered to only one of the two Conventions by protecting in accordance with the said Protocol the works of a country party to the other Convention, would be able to apply material reciprocity, in the sense that it would be entitled to protect the works of the other country only in so far as its own works would be protected in that country.

33. The representative of France stressed that the question of material reciprocity was very important and that in view of the relatively low level of protection guaranteed by the Universal Convention, the introduction into this Convention of a reciprocity provision would be advisable. He thought, however, that the question went beyond the limits of the revision of Article XVII of the Universal Convention and ought to be discussed by the International Copyright Joint Study

Group. He pointed out that in any case reciprocity ought not to apply to developing countries.

34. The representative of the Federal Republic of Germany acknowledged the usefulness of discussing the possibility of introducing into the Universal Convention the notion of material reciprocity but considered that the question came within the competence of the International Copyright Joint Study Group. He expressed the view that in the relationships between developed and developing countries, reciprocity as regards duration of protection, already provided for in the Universal Convention, was sufficient and that no additional reciprocity clause regarding these States should be established. As for the proposal of the representative of Kenya, he thought that there was a danger of developed countries members of both Conventions deserting the Universal Convention since exclusively those States which adhered to only one of the conventions would be permitted to apply material reciprocity.

35. The United States delegation considered that it would be advisable to make a careful examination of the possibility for a country which was a member of the Berne Union to apply material reciprocity, according to the Universal Convention, to works originating from countries which had benefited from the suspension of the safeguard clause. It asked for the views of the representatives of developing countries on the point, noting that reciprocity might have the effect of encouraging a country to increase its national protection, and of inducing more developed countries to ratify the revised text of the Universal Convention.

36. The observer from Tunisia pointed out that the introduction of reciprocity into the Universal Convention would be contrary to the principle "donner et retenir ne vaut" ("giving is not keeping"). He recalled the arguments of eminent experts at the time the Universal Convention was adopted, and particularly Mr. de Sanctis, who had suggested that the introduction of such a principle into a multilateral convention would mark a net setback to the development of copyright, and increase the obstacles to the free circulation of intellectual works — which is precisely a fundamental purpose of Unesco to facilitate.

37. The Indian delegation associated itself with the Tunisian view.

38. The Committee agreed to recommend to the Intergovernmental Copyright Committee not to apply the reciprocity rule to developing States.

### 4. Link between the Universal Convention and the Berne Convention which might be substituted of the safeguard clause: Possibility of establishing such a link

39. The Director of BIRPI expressed the view that to suspend the safeguard clause without establishing a substitute link would have dangers for the future of international copyright relations; suspension in such conditions would also be unlikely to be ratified by enough parties to make it of use to the developing countries. To avoid any competition between the two Conventions, he proposed:

- (i) that the treatment accorded to developing countries under the terms of both Conventions should be identical.

In that event, the two Conventions should be revised simultaneously: the Berne Convention, in order to dissociate from it the Stockholm Protocol, and to clarify certain provisions of that Protocol; and the Universal Convention, in order to introduce into it minimum rights with exceptions identical to those which would be allowed in the revised Stockholm Protocol;

- (ii) that a single secretariat should be responsible for administering the two Conventions.

40. The representative of France could not agree with the Director of BIRPI. The French delegation considered that the safeguard clause should not be replaced by another penalty which would be contrary to the principle that "giving is not keeping", and which would present a vexatious character to the developing countries, and which would be of little practical effect. Further, there was no need to replace the safeguard clause, which continued to hold good, since paragraph (a) remained in force as regards relations between developed States and paragraph (b) was not being amended. The solution which would consist in introducing minimum rights (right of reproduction, right of broadcasting, etc.) into the Universal Convention, provided that certain exceptions were recognized in favour of developing countries, did not constitute a link in the legal sense of the term, but was, rather, calculated to modify the content of the Universal Convention. The question of introducing minimum rights into the Universal Convention was a complex one which might be considered by the International Copyright Joint Study Group.

41. The representative of the Federal Republic of Germany wondered what would be the relations between developed and developing countries within the Universal Convention: in particular, would the principle of "effective protection" authorize the developing countries to accord protection identical to that provided by the Stockholm Protocol? Nobody could give a clear answer to that question. Therefore a definition of the notion of "effective protection" would be beneficial to the developing countries as well as to the developed countries. He suggested that "effective protection" should be recognized as covering in principle the protection of basic rights such as the rights of reproduction, broadcasting and public performance. Such rights should be qualified, for the benefit of the developing countries, by reservations based on those in the Stockholm Protocol, with adequate adjustments as regards Article 1(e) of the Protocol.

42. The delegation of the United States of America emphasized that the question of the links between the two Conventions was one of the most difficult and important before the Sub-Committee. While concurring in the French representative's view that no new penalties should be introduced into the Universal Copyright Convention, the delegation considered that to suspend the safeguard clause without establishing links in its place would endanger the future of international copyright. In that connexion, the delegation thought that the proposals made both by the delegation of the Federal Republic of Germany and by the delegation of Kenya deserved careful consideration.

43. The representative of the Director-General of Unesco, while recognizing that it was important to know what was

meant by "effective protection", emphasized that that was a general problem which had existed ever since the Universal Convention was adopted but was not directly connected with the suspension of the safeguard clause.

In reply to the suggestion by the Director of BIRPI that an identical system of protection should be set up in favour of developing countries in the Universal Convention and in the Berne Convention, he explained that, under the Universal Convention, no special treatment would be given to such countries, to which the Convention would apply in its entirety. The only purpose of suspending Article XVII and the Appendix Declaration relating to it would be to widen the scope of application of the Universal Convention.

As regards the establishment of a single secretariat to administer the two Conventions, he did not see how such a proposal would make it possible to establish links between the Universal Convention and the Berne Convention, i. e. to create contractual relations between the Berne Member States and the parties to the Geneva Convention.

44. On the question of the possible new links between the Universal Convention and the Berne Convention, the delegate of Kenya reminded the meeting of the proposal he had put forward during the discussion of the previous item.

45. The delegation of the United States of America referred to the very important practical and political consideration raised by the representative of Kenya; that is, if there is only a revision of Article XVII of the Universal Convention, the developed countries will wait until they see what further revision of the Universal Convention and Berne Convention will be undertaken. The delegation believed that any revision involving Article XVII alone would raise serious questions about approval of such revision not only in the United States but in many other developed countries. In other words we need practical and realistic solutions to international copyright problems which would be acceptable on a world-wide basis. The delegation recalled that the United States was committed to revising Article XVII of the Universal Convention, but was also committed to seeking new links in place of the safeguard clause without their constituting a penalty for any individual State. The delegation wished to reaffirm the desire of its government and of the United States' publishers to help developing States with their copyright problems.

46. The representative of the Federal Republic of Germany feared that the Kenyan delegate's proposal, if adopted, would in the long run lead to a situation in which developed countries would belong only to the Berne Union and developing countries only to the Universal Convention.

47. The delegation of the United States of America thought that the Kenyan proposal raised a certain number of questions:

- (i) Would the obligation of a country party to the proposed protocol be strictly one of national treatment, or would there be any obligations under the convention to which it belonged?
- (ii) Since a protocol attached to the Universal Convention would have no effect on Berne Union members, did the proposal contemplate a parallel protocol obligating Berne

Union members to protect Universal Copyright Convention works?

- (iii) Assuming that material reciprocity is an essential part of the proposal, is a "Universal Copyright Convention safeguard clause" contemplated to prevent developed States from withdrawing from the Universal Convention to obtain the advantage of material reciprocity?

48. The representative of France asked whether: (i) the contemplated protocol would be a separate one, or annexed to one only, or to both, of the Conventions; (ii) what body would be responsible for administering it.

49. The representative of the Director-General of Unesco pointed out that in public international law it was quite possible to draw up a Protocol open for signature by States parties to the Berne Convention and the Universal Convention without revising those two instruments, since the effect of such a Protocol would not be to change any prior obligations, but to create new obligations. Furthermore, he did not think that there would be any need for an organ to be responsible for administering the Protocol, observing that the latter would contain no dispositions instituting a committee to keep track of its observance. The only function which would need to be considered would be that of depositary which might be assigned either to an international organization (the United Nations or Unesco, for instance) or to the State on whose territory the diplomatic conference to adopt the Protocol was held.

50. The delegate of Kenya pointed out (i) that under the terms of the contemplated Protocol the countries parties to the Universal Convention would have to give national treatment to works originating in a State member of the Berne Union and vice versa; (ii) that a revision of the Universal Convention alone could not bind the countries in the Berne Union and it would be necessary to resort to the procedure envisaged in Article 32 of the Stockholm Act of the Berne Convention; (iii) that the introduction of a safeguard clause stipulating that any States which withdrew from the Universal Convention would waive the application of reciprocity would be likely to prevent States from denouncing that instrument; (iv) that the developing countries could be ready to accept material reciprocity in the treatment of their works by the countries of the Berne Union in order to benefit from the suspension of the safeguard clause.

51. The representative of the Federal Republic of Germany considered that the solution envisaged raised many difficulties. He associated himself with the observations of the delegation of the United States of America as regards the introduction of a safeguard clause into the Universal Convention and was of opinion that it was advisable to make a more detailed examination of the Kenyan delegate's proposal as a whole.

52. The First Deputy Director of BIRPI indicated that, as he saw it, the Protocol proposed by the delegate of Kenya would contain the following provisions: (i) Any State which is a party to the Universal Copyright Convention only must give national treatment to works originating in a State party only to the Berne Convention; (ii) any State which is a party to the Berne Convention only must give national treatment

to works originating in a State party only to the Universal Copyright Convention; (iii) in either situation, the national treatment may be cut back to the level of protection granted under the laws of the beneficiary State to works originating in that State, in other words, there may be "material reciprocity"; (iv) any State which is a party to only the Universal Copyright Convention or to only the Berne Convention may adhere to the Kenya Protocol. A State party to both Conventions may not adhere. A State which is a party to both Conventions today and which denounces the Berne Convention tomorrow will, by the fact of such denunciation, become bound by the Kenya Protocol.

The effects such a Protocol might have seemed to him to go beyond the objectives currently sought, which consisted only in solving the problems of the developing States. Furthermore, the Protocol envisaged would raise a number of difficulties and might issue in a "polarization" of the two Conventions instead of creating links between them. The representative of BIRPI considered that what was needed was a Protocol on the problems of the developing States common to the two Conventions.

53. The delegate of India shared the view that the solution envisaged by the delegate of Kenya was interesting and warranted detailed examination. In his opinion, however, the Sub-Committee should confine itself to examining those elements answering the purpose in view, viz., the liberalization of the Universal Convention. The matter of links between the Universal Convention and the Berne Convention could be studied later.

54. At this stage of the discussion, the delegations of Italy and the United States of America submitted working papers which gave rise to an exchange of views (documents IGC/SC/8 and IGC/SC/9 respectively).

55. The document submitted by the Italian delegation aims at allowing developing States either to leave the Berne Union, or to remain members of the Berne Union, "relations between countries which are members of the Berne Union and at the same time party to the Universal Convention not bound by the Stockholm Act of the Berne Union as regards Articles 1-22 and the Protocol which forms an integral part of the same Act, and the countries members of the Berne Union and also party to the Universal Convention considered as developing countries" being, in the second hypothesis, governed at the request of the developing country concerned and for the period during which the said country shall be so qualified, by the provisions of the Universal Convention instead of the provisions of the Berne Convention. In this case, however, any contracting State which is also a member of the Berne Union could reserve the right to apply, in its relations with the said developing country, instead of the principle of assimilation as between foreigners and nationals, the principle of material reciprocity.

56. The document presented by the delegation of the United States aims at leaving developed and developing countries both free to rely on either the Stockholm Protocol or the UCC in their relations with other countries, and without sanctions or penalties of any sort, either material reciprocity or withdrawal from one or both conventions. By envisaging

the severance of the Protocol from the body of the Convention, the proposal would also permit the Stockholm text of Berne to come into effect without foreclosing the possibility of adherence to the Convention by a country like the United States.

57. The Chairman pointed out that the documents submitted by the delegations mentioned, ranked only as working papers and that the Sub-Committee did not have to come to any decision or conclusion regarding them.

58. The delegate of Mexico associated himself with the Chairman's statement and requested that a line be drawn between the discussions which might take place in the Sub-Committee and the decisions which the latter was called upon to take regarding the five matters figuring on its Agenda.

59. The delegation of Italy specified:

- (i) That the draft Protocol for the amendment of the Universal Convention submitted by it was only a working paper, which could be examined by the Intergovernmental Committee and by the revision conference, but which did not call for any decision on the part of the Sub-Committee. Furthermore, that document was of interest only to the extent that it might be decided to replace the safeguard clause by some other link between the Universal Convention and the Berne Convention;
- (ii) that Article 2 of the draft provided a choice for the developing countries — either to withdraw from the Berne Union without incurring the sanctions mentioned in Article XVII, and thereby take advantage of the principle of assimilation, or to remain in the Berne Union, where "material reciprocity" could be applied only in that case in their relations with developed countries also members of the Berne Union, since the Italian delegation considers that the principle of assimilation must remain the fundamental principle of the Universal Convention.

60. The delegation of the United States of America expressed its deep concern that the Sub-Committee provide the Intergovernmental Copyright Committee with constructive help and a sense of direction. The purpose of its working paper was solely to assist this endeavour and to avoid loss of progress. The position of its government is: (i) in favour of a suspension of the safeguard clause to the extent that it permits developing countries to rely on the Universal Convention in their relations with developed countries that have not ratified the Stockholm Protocol; (ii) in favour of a revision conference to accomplish this suspension, to be held in September 1970; and (iii) opposed to any revision that does more than is necessary to benefit developing countries and that drives the two conventions further apart. The delegation emphasized that it would do nothing directly or indirectly to dishonour its commitment to the calling of a conference for revision of Article XVII, and that it supports the efforts of developing countries to suspend their obligations under the Berne Convention in favour of the Universal Convention. It indicated that it had found persuasive the arguments against material reciprocity in this context, and favoured a negative answer to the question on this point.

Noting that the basic issue involves an intricate and delicate relationship between the two conventions, the delegation

of the United States stated its view that the only satisfactory way to deal with the problem is by concurrent, co-ordinated revisions of both of them. It expressed the hope that the offer of the Director of BIRPI to co-operate in efforts toward a joint revision would be welcomed. On the issue of links between the conventions, the delegation found itself unconvinced by assurances that mere suspension of the safeguard clause would not upset the structure of international copyright. The Italian proposal, while most constructive, presents certain problems, including the difficulties in removing paragraph (b) of the Appendix Declaration, the fact that it does not meet the necessity to sever the Protocol from the main text of the Stockholm Act, and the problems raised by its effort to write minimum standards into the Universal Convention.

The delegation of the United States put forward, as a variation of the Italian proposal, a suggestion that, in addition to suspension of the safeguard clause, the Berne Convention be amended to give developing countries the opportunity to rely on the Stockholm Protocol with respect to countries that have ratified it, and, without withdrawing from the Berne Union, to rely on the Universal Convention with respect to other Berne countries. The proposal rejected any principle of material reciprocity, and involved the severance of the Stockholm Protocol from the main body of the Stockholm text.

61. The delegate of the Federal Republic of Germany thought that the papers submitted by the delegations of Italy and the United States of America were very constructive and were at one on certain points. He welcomed the possibility offered to the developing States of either leaving the Berne Union without incurring the sanctions stipulated by Article XVII of the Universal Convention or of remaining members of the Berne Union, with the proviso that the protection accorded by that instrument would apply only as regards those States which had ratified the Stockholm Act, and the relations of the developing States with the other States members of the Berne Union would be governed by the provisions of the Universal Convention. In any event, the German delegation considered that a solution on these lines implied a revision not only of the Universal Convention, but of the Berne Convention. The Federal Republic of Germany was not in favour of establishing a system of material reciprocity in the relations between developed and developing countries.

62. The observer from Czechoslovakia reserved his government's right to take a different position at the conference for revision of the Universal Convention but stated that his delegation was in favour of abrogating Article XVII of the Universal Convention and sub-paragraph (a) of the Appendix Declaration relating thereto, since their provisions ran counter to the principle of the sovereignty of States. He considered that the introduction of reciprocity in relations between developed and developing States would be unfortunate. He was of the opinion, moreover, that the suspension of the safeguard clause should not be subject to a time-limit. With regard to the new links that might be established between the Universal Convention and the Berne Convention, he preferred to reserve his government's position. In conclusion, the Czecho-

slovak observer made it known that his government did not consider that the Stockholm Protocol relating to developing States was, to date, a dead letter.

63. The observer from Denmark said that his government had consistently supported the developing countries by working actively for the acceptance of the Stockholm Protocol. It was under consideration to make the Protocol applicable to Danish works in accordance with its Article 5, but the claims for a rapid revision of the Universal Copyright Convention with the sole aim to suspend the safeguard clause had caused some anxiety in competent circles.

He did not believe that such a revision of the Convention would serve the interests of the developing countries.

It should be remembered that the Appendix Declaration has the character of "a common agreement" between the Berne Union countries, and that whatever the revision conference might decide with regard to the quorum necessary for revising Article XVII and the Declaration, the fact remained that each single Berne Union country would be perfectly free to decide if it wanted to ratify the new text or to stick to the old convention.

The suspension of the safeguard clause would be extremely dangerous without the establishment of links to replace it. Such links could be established for instance by following the suggestions made by the United States delegation. He found these suggestions very interesting and constructive, and he shared the view that it would be necessary to revise the Berne Convention concurrently with the revision of the Universal Copyright Convention. He also supported the idea to separate the Protocol from Articles 1-22 of the Stockholm text.

64. The observer from Tunisia recalled that the Sub-Committee had been set up to study the problems raised by the suspension of the safeguard clause of the Universal Convention in favour of developing countries. He was unable to concur entirely with the document submitted by Italy, which would lead to the annulment of the safeguard clause for the developed States also and would run the risk of not gaining the majority necessary for the revision and which in certain cases would give rise to a régime of material reciprocity in relations between developed and developing countries which developing countries would be unable to accept. In addition, he requested clarification of Article 4 of the Italian project, the exact significance of which did not seem to him to be clear. With regard to the document submitted by the United States delegation the observer from Tunisia acknowledged the constructive spirit shown therein but emphasized that the solutions proposed called for a revision of the Berne Convention, and as a result the revision of the Universal Convention would implicitly become subject to the rule of unanimity. Consequently, the Tunisian delegation could not accept the proposals set forth in that document. He recalled that it was the purpose of the Sub-Committee to give effect to resolution 5.122 of the General Conference of Unesco, and that all other issues were to be considered by the International Copyright Joint Study Group.

65. The delegate of Kenya considered that the document submitted by the Italian delegation could not wholly meet the needs of the developing countries. Firstly, it would entail the

complete abrogation of the Appendix Declaration relating to Article XVII of the Universal Convention, thereby implying that the developed countries would also be able to withdraw from the Berne Convention. Such a possibility, if considered, might give rise to major difficulties and fail to win the required majority at the revision conference. Secondly, material reciprocity involved certain difficulties, despite the fact that its application would be limited to relations among developed and developing countries that remained members of the Berne Union. Further, he endorsed the view of the Tunisian observer that clarification of Article 4 of the Italian project was required. He acknowledged that the working document submitted by the United States delegation was constructive but deplored the fact that the solutions put forward therein would call for a revision of the Berne Convention, and asked whether a simple revision of the Appendix Declaration relating to Article XVII of the Universal Convention might not in itself produce the same result.

66. The Indian delegation endorsed the statements of the Tunisian and Czechoslovak observers and recalled that the Sub-Committee's terms of reference were to prepare the conference for revision of Article XVII of the Universal Convention and that all other issues came within the province of the International Copyright Joint Study Group. It also held that as the draft resolution reads, the link between the Universal Copyright Convention and the Berne Convention exists. It further reiterated that the Stockholm Protocol is not a dead letter as somebody would like to describe. It is very much alive and India would try its utmost to persuade all concerned to ratify the same.

67. The representative of France recalled his government's position, namely, that there were no grounds for considering the establishment of new links between the Berne Convention and the Universal Convention, since those created by Article XVII of the Universal Convention still held. He noted that the working documents submitted to the Sub-Committee by the United States and the Italian delegations agreed with the position of the French delegation on the suspension of sub-paragraph (a) of the Appendix Declaration relating to Article XVII of the Universal Convention. In such circumstances, the French delegation questioned the need for a conference for revision of the Berne Convention, as it might hamper the revision of the Universal Convention, since any decision to revise the Berne Convention must be unanimous. The French delegation would, in any case, refrain from participating at that meeting in the discussion of the documents submitted by the different delegations.

68. The representative of Mexico pointed out that the purpose of the Sub-Committee's meeting was to discuss the problems raised by the revision of Article XVII of the Universal Convention and the Appendix Declaration relating thereto and that any other question went beyond its terms of reference. He agreed that the documents presented by the delegations of the United States and Italy were of considerable interest but thought that the examination of their content might well come within the competence of the International Copyright Joint Study Group.

69. The representative of the Director-General of Unesco pointed out that the documents presented by the delegations of the United States and Italy agreed on the essential elements, but the two delegations gave a different interpretation of the legal significance of the solutions contained therein. According to the United States delegation, it would be advisable in every case to consider a revision of the Berne Convention, whereas the Italian delegation did not consider that such a revision was indispensable. Further, the delegate of Kenya thought that a mere amendment of the Appendix Declaration to Article XVII of the Universal Convention could achieve the desired results. It might also be asked to what extent Article 20 of the Berne Convention would be applicable to the solutions in view. That Article would not in any case be applicable if it were a question of defining the relationship between States members of the Berne Union and States which were not members or which were no longer members of the Union. In those circumstances, the representative of the Director-General of Unesco thought that the matter deserved further consideration. He nevertheless pointed out to the Sub-Committee that a revision of the Berne Convention could, if it were made a condition of the revision of the Universal Convention and at the same time a "package deal", involve implicitly the application to the latter revision of the rule of unanimity which governed the revision of the Berne Convention. Such a situation had to be avoided, as the international authorities called upon to revise the Berne Convention were entirely different from those set up by the revision conference provided for in the Universal Convention; the two authorities should therefore remain independent of each other.

70. The Director of BIRPI considered that the suggestions contained in the documents presented by the delegations of the United States and Italy would imply a revision of the Berne Convention.

71. At that stage of the discussion, the observer from Tunisia presented document IGC/SC/10 which, although it took up once again a certain number of the suggestions contained in the documents presented by the delegations of the United States and Italy, would make possible the revision of Article XVII of the Universal Convention and the Appendix Declaration relating thereto, without entailing a parallel and simultaneous revision of the Berne Convention. This document in effect provides on the one hand for the suspension of the effects of the safeguard clause (sub-paragraph (a) of the Appendix Declaration relating to Article XVII of the Universal Convention), and on the other hand for an amendment of sub-paragraph (b) of the same Appendix Declaration, so as to enable any member country of the Berne Union which is considered as a developing country to have its relations with the member countries of the Berne Union who are not bound by the Protocol relating to developing countries, governed by the Universal Convention.

72. The observer from Italy expressed satisfaction that certain ideas contained in the working paper presented by the Italian delegation were taken up again in the document presented by the Tunisian delegation. Some of the suggestions presented by the Italian delegation did not, however, appear

in that document — in particular the question of material reciprocity for a determined transitory state — and the Italian delegation therefore considered that it should reserve its position. He pointed out, further, that in the opinion of the Italian delegation the solutions proposed in the Italian document did not require a revision of the Berne Convention, as the solutions in question did not clash with Article 20 of that instrument.

73. The representative of the United States considered that the suggestions in the document presented by the Tunisian delegation deserved a thorough discussion. His delegation was, nevertheless, of the opinion that the said suggestions would require a revision of the Berne Convention.

74. The Director of BIRPI also considered that the suggestions in question implied a revision of the Berne Convention.

75. The delegate of Mexico stressed that the document presented by the Tunisian delegation took up once again the suggestions presented by the delegations of the Federal Republic of Germany and Kenya concerning the country of origin of works protected within the period referred to in item 2 of the Agenda, and other viewpoints already discussed on which the delegates of the United States of America, Italy, etc. also spoke.

76. The Chairman stated that in his personal view, suppression of the safeguard clause was of considerable importance to the developing countries, both on the practical and on the psychological levels. He was of the opinion that the developing countries would not be in a position to co-operate adequately in the progress of international copyright so long as Article XVII of the Universal Convention and the Appendix Declaration relating thereto were not amended. He shared the opinion of the representative of the Director-General of Unesco on the effects which the revision of the Berne Convention could have on the revision of the Universal Convention, because of the rule of unanimity which applied to the revision of the first instrument.

77. The representative of France said he had been much struck by the Chairman's words. He thought in fact that the deletion of Article XVII of the Universal Convention and of sub-paragraph (a) of the Appendix Declaration relating thereto was a preliminary to any progress in copyright. In this regard, he wondered what the present position was. The Tunisian proposal was interesting but had it a chance of being accepted at any rate by members of those developed countries whose voice had been heard in Geneva and at the present meeting of the Sub-Committee? Further, was it possible for many developed countries to agree to apply the Universal Convention to members of the Berne Convention without a counterpart? The American proposition was certainly worthy of much consideration and appeared balanced, but it postulated a revision of the Berne Convention. Moreover, was it conceivable that the developing countries should accept it, while unanimity was essential and a single vote would be enough to paralyse everything. In either event, they reached a dead end; the representative of France thought therefore it important to reflect upon this problem before the International Copyright Joint Study Group met.

#### 5. Majority required for the adoption of the revised texts

78. At the request of the delegate of Kenya, the Chairman recalled that the decisions of the Geneva Conference which had adopted the Universal Convention had been taken, in plenary, with a two-thirds majority of the delegations present and voting and, at the meetings of the Sub-Committees of the Conference, with a simple majority of the delegations present and voting.

79. The delegate of Mexico pointed out that the two-thirds majority corresponded to the principle laid down in international law, and to the practice followed by the different international organizations: Universal Postal Union, International Civil Aviation Organization, World Health Organization, Organization of American States, etc. unless the States decided by the same majority to apply a different rule. He considered that it was the responsibility of the Intergovernmental Copyright Committee and the revision conference to decide on the majority required for the adoption of the revised text.

80. The representative of the United States agreed with the statements of the Mexican delegate but expressed the view that, as it was a question of revising a clause which concerned the States members of the Berne Union, a two-thirds majority of the States members of the said Union might also be required.

81. The delegate of France stated that although Article XVII of the Universal Convention and the Appendix Declaration relating thereto concerned the relationship of States that were also parties to the Berne Convention, they were an integral part of the Universal Convention and, for that reason, ought to be governed by the Rules of Procedure applicable to the revision of that Convention, which would be determined by the revision conference. He considered that in view of the proposals put forward by the Vienna Conference on the Law of Treaties, the rule of unanimity was not applicable in the case in question.

82. The representative of the Federal Republic of Germany expressed the opinion that the two-thirds majority was an adequate majority, but that nevertheless the final decision concerning the required majority ought to be taken by the revision conference. From the legal point of view, it seemed to him that the Appendix Declaration relating to Article XVII of the Universal Convention was a contract concluded between the States members of the Berne Union and parties to the Universal Convention, and therefore there ought also to be a majority within those States. The German delegation expressed the opinion that the amendment of Article XVII and the Appendix Declaration thereto would require a majority of all the States attending the revision conference as well as of the States members of the Berne Union and parties to the Universal Convention.

83. The Director of BIRPI agreed with the statement of the representative of the Federal Republic of Germany.

84. The representative of the Director-General of Unesco observed that the Appendix Declaration relating to Article XVII had been adopted by all the States attending the Intergovernmental Copyright Conference without a separate vote by the Member States of the Berne Union being taken and

without a majority of those States being required. He did not see why a revision of this text should be subject to different rules of procedure from those which had governed its adoption.

85. The observer from Tunisia stressed that resolution 5.122 of the General Conference of Unesco which required the revision of Article XVII of the Universal Convention and the Appendix Declaration relating thereto, had been adopted unanimously by 125 States, i. e. by the entire international community. He recalled that the said revision, requested by the fourteenth session of the General Conference of Unesco, was also proposed at the fifteenth session of that Conference, and he hoped that the work of the present Sub-Committee would enable a satisfactory solution to be reached before the sixteenth session of the General Conference of Unesco. He pointed out that the States concerned in the proposed revision, namely the developing States, were not yet parties to the Universal Convention precisely because of the provisions contained in Article XVII and the Appendix Declaration relating thereto; consequently States would not participate in the Conference for the revision of that instrument. In those circumstances, he thought that the simple majority which had been seen to be legally possible ought to be retained.

86. The representatives of India and Czechoslovakia agreed with the statements of the observer from Tunisia.

87. The delegation of the United States considered that the two-thirds majority corresponded to a principle established in international law but was of the opinion that it was the responsibility of the revision conference to decide on the majority required.

88. The representative of France also expressed the view that it would be the duty of the revision conference to decide on the majority necessary for adopting revised texts. He was struck by the arguments put forth by the Tunisian delegate and stated that the French delegation would not oppose the retention of the simple majority by the revision conference.

89. As a result of its discussions, the Sub-Committee expressed the opinion: (i) that the adoption of the revised texts would in no circumstances be subject to the rule of unanimity; (ii) that as the Universal Convention had been adopted by a two-thirds majority, a higher majority could not be required for any revision of that instrument, including that of the Appendix Declaration relating to Article XVII; (iii) that the simple majority was legally possible, but that it was the responsibility of the revision conference to decide on the majority required.

#### IV. Other questions relating to the preparation of the revision conference

90. The Sub-Committee considered that the conference for the revision of the Universal Convention should be held from September 1 to 16, 1970.

#### V. Resolution concerning the five points submitted by the Intergovernmental Copyright Committee for consideration by the Sub-Committee

91. At the close of its discussions, the Sub-Committee adopted a resolution concerning the five points submitted

for its consideration by the Intergovernmental Copyright Committee (Resolution No. 1 (IGC/SC)). The text of this resolution is annexed to the present report (Annex A).

92. On the adoption of this resolution, the French delegation reaffirmed its opinion that there was no need to establish a link between the Berne Union and the Universal Convention for the excellent reason that the link of Article XVII remained. It requested that a note be made that France did not accept the text of point 4.

93. The delegation of the Federal Republic of Germany reserved its position with regard to paragraphe 5 on the question whether one or two majorities are required for the adoption of the revised text.

## VI. Conclusion

94. At the time of adopting its report, the Sub-Committee, referring to paragraph 14, which reproduces the statement made by the Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI), did not interpret it as containing a formal invitation to hold two revision conferences in Geneva.

Certain delegates, including those of France, India, Kenya and the observer from Tunisia, pointed out that it was impossible at that stage to consider an invitation to hold two revision conferences without prejudicing the decisions of the Sub-Committee, which had not decided upon the advisability of establishing a new link between the two Conventions, the possible nature of such a link and whether it would involve a revision of the Berne Convention.

95. The representative of the United States of America spoke for all the participants when he complimented the Chairman of the Sub-Committee on his skill, authority and resource in conducting the discussions.

96. The representative of India associated himself with those words and congratulated the Secretariat whose cooperation had helped to ensure the smooth course of the proceedings.

97. The Chairman thanked the Sub-Committee for their confidence in him, and the Secretariat for their collaboration and valuable assistance.

98. The representative of the Director-General of Unesco thanked the participants for the work they had done and observed that its results augured well for the successful future of international copyright.

99. The Chairman then closed the proceedings.

## ANNEX A

### Resolution

#### *Resolution No. 1 (IGC/SC)*

The Sub-Committee of the Intergovernmental Copyright Committee, set up in conformity with Rule 16 of its Rules of Procedure to examine the issues raised by the proposals for the revision of Article XVII of the Universal Copyright Convention and its Appendix Declaration,

Having examined the five points set out in Resolution No. 1 (XR) adopted by the Intergovernmental Copyright Committee at its extraordinary session held in February 1969,

#### Considers

1. That the benefit of the suspension of Article XVII and of sub-paragraph (a) of the Appendix Declaration should be limited to developing countries, these countries being defined in accordance with the practice established by the General Assembly of the United Nations;
2. that the duration of such suspension should be a period of ten years, automatically renewable at the discretion of the country concerned. When a country shall cease to be considered as a developing country as defined above, it shall no longer be entitled to a renewal, notwithstanding the provisions of the preceding phrase. Once a country ceases to be developing, the effects of the suspension ceasing at the end of the ten-year period, or three years after the country ceasing to be developing whichever expires later;
3. that in no case should a developing country benefiting from the suspension of Article XVII and of sub-paragraph (a) of the Appendix Declaration be submitted to the rule of reciprocity;
4. that the suspension of paragraph (a) of the Appendix Declaration relating to Article XVII of the Universal Copyright Convention does not entail the cessation of the existing links between the Universal Convention and the Berne Convention, but that it is for further study, by the Intergovernmental Copyright Committee and for decision by the revision conference whether to establish new links or not, and, if so, to define their nature;
5. that the unanimous approval of the participants at the revision conference could in no case be required for the adoption of the revised terms; that, since the Universal Convention was adopted by a two-thirds majority of the delegations present and voting — which represents the established principle of international law save in cases where States decide, by the same majority, to apply a different rule — no greater majority could be required for any revision of that instrument, including the revision of the Appendix Declaration relating to Article XVII; that a simple majority would be legally possible, but that it is for the revision conference to decide upon the majority required.

The Sub-Committee also considers that the revision conference should meet from September 1 to 16, 1970.

## ANNEX B

### List of Participants

#### I. President of the Intergovernmental Copyright Committee

Mr. Jorge Carlos Ribeiro, Secretary of Embassy, Embassy of Brazil, Montevideo (Uruguay)

#### II. Members of the Committee

##### *France*

Exc. Mr. Pierre Charpentier, Ambassador  
Mr. André Kerever, Maître des requêtes, Technical Advisor, Ministry of Cultural Affairs

##### *Germany (Fed. Rep.)*

Dr. Eugen Ulmer, Professor, University of Munich  
Mrs. Elisabeth Steup, Director, Ministry of Justice, Bonn  
Dr. Manfred Günther, Counsellor

##### *India*

Mr. Kanti Cbaudhuri, Joint Secretary to the Government of India and Youth Services, Ministry of Education  
Mr. Dina N. Malhotra, President, Fédération of Publishers and Booksellers Associations in India



*Kenya*

- Mr. J. W. Ndisi, Chargé d'affaires of the Republic of Kenya in France, Permanent Delegate to Unesco  
 Mr. J. J. Isige, Commercial Attaché, Kenya Embassy in Paris  
 Mr. Georges Straschnov, Director of Legal Department of European Broadcasting Union (EBU)

*Mexico*

- Dr. Arturo González Cosío, Director General of Copyright, Ministry of Public Education

*United States of America*

- Mr. Abraham L. Kaminstein, Register of Copyrights, Copyright Office, Library of Congress  
 Miss Barbara A. Ringer, Assistant Register of Copyrights, Copyright Office, Library of Congress  
 Mr. Harvey J. Winter, Assistant Chief, Business Practices Division, Department of State  
 Mr. Richard Nobbe, Secretary of Delegation, Office of the U. S. Representative to Unesco

**III. Observers**

## (a) Representatives of other governments

*Czechoslovakia*

- Dr. Jiří Kordač, Director, Legislative Department, Ministry of Culture

*Denmark*

- Mr. Willi Weincke, Chief of Division, Ministry of Cultural Affairs

*Italy*

- Mr. Gino Galtieri, Inspector-General, Head of the Literary, Artistic and Scientific Property Office, Presidency of the Council of Ministers  
 Dr. Giuseppe Trotta, Judge at the Court of Appeal, Legal Advisor  
 Mr. Valerio de Sanctis, Legal Advisor, Italian Society of Authors and Publishers, Member of Permanent Consultative Copyright Committee

*Tunisia*

- Mr. Rafik Saïd, Minister Plenipotentiary, Deputy Permanent Delegate to Unesco

## (b) United International Bureaux for the Protection of Intellectual Property (BIRPI)

- Professor G. H. C. Bodenhausen, Director  
 Dr. Arpad Bogsch, First Deputy Director  
 Mr. Vojtech Strnad, Counsellor, Head, Copyright Division  
 Mr. Robert D. Hadl, Legal Assistant, Copyright Division

**IV. Unesco**

- Mr. H. Saba, Assistant Director-General for International Standards and Legal Affairs  
 Miss M.-C. Dock, Head, Copyright Division



**December 10 to 12, 1969 (Paris) — Intergovernmental Committee Rome Convention (Neighboring Rights) (2<sup>nd</sup> Session)**

*Object:* Consideration of various questions concerning neighboring rights — *Invitations:* Congo (Brazzaville), Czechoslovakia, Ecuador, Mexico, Sweden, United Kingdom — *Observers:* Brazil, Denmark, Germany (Fed. Rep.), Niger; Intergovernmental and international non-governmental Organizations concerned — *Note:* Meeting convened jointly by ILO, Unesco and BIRPI

**December 15 to 19, 1969 (Paris) — Permanent Committee of the Berne Union (14<sup>th</sup> Ordinary Session)**

*Object:* Consideration of various questions concerning copyright — *Invitations:* Belgium, Brazil, Denmark, France, Germany (Fed. Rep.), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom — *Observers:* All other member States of the Berne Union; Intergovernmental and international non-governmental Organizations concerned

**January 19 to 23, 1970 (Geneva) — Committee of Directors of National Industrial Property Offices of the Madrid Union (Marks)**

*Object:* Administrative questions — *Invitations:* All member States of the Madrid Agreement (Marks)

**January 26 to 30, 1970 (Geneva) — Committee of Experts for the Revision of the Madrid Agreement (Marks)**

**March 9 to 20, 1970 (Geneva) — Preparatory Study Group on PCT Regulations**

*Object:* Study of Draft PCT Regulations — *Invitations:* All member States of the Paris Union — *Observers:* Intergovernmental and international non-governmental Organizations concerned

**May 25 to June 19, 1970 — Diplomatic Conference for the adoption of the Patent Cooperation Treaty (PCT)**

*Invitations:* All member States of the Paris Union — *Observers:* Other States; Intergovernmental and international non-governmental Organizations concerned — *Note:* The exact place of the Conference will be announced later

## Meetings of Other International Organizations Concerned with Intellectual Property

**October 14 to 17, 1969 (Luxembourg) — Intergovernmental Conference for the setting up of a European system for the grant of patents — Working Group**

**November 12 to 14, 1969 (Strasbourg) — Committee of Experts on Patents of the Council of Europe**

**November 18 to 20, 1969 (The Hague) — International Patent Institute (IIB) — 102<sup>nd</sup> Session of the Administrative Council**

**November 25 to 28, 1969 (Luxembourg) — Intergovernmental Conference for the setting up of a European system for the grant of patents — Working Group**

**December 8 to 11, 1969 (The Hague) — International Association for the Protection of Industrial Property (IAPIP) — Council of Presidents**

**January 12 to 16, 1970 (Luxembourg) — Intergovernmental Conference for the setting up of a European system for the grant of patents**

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