WORLD INTELLECTUAL PROPERTY ORGANIZATION
(WIPO)

RECORDS
OF THE CONFERENCE OF PLENIPOTENTIARIES OF THE HAGUE UNION CONCERNING THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS
(GENEVA, 1975)

GENEVA
1976

EDITOR'S NOTE

The Records of the Conference of Plenipotentiaries of the Hague Union Concerning the International Deposit of Industrial Designs contain the most important of the documents relating to that Conference which were issued before, during and after it.

The Conference of Plenipotentiaries was held on August 28 and 29, 1975, at the headquarters of the World Intellectual Property Organization (WIPO) in Geneva.

The final text--that is, the text as adopted and signed--of the Protocol of Geneva to the Hague Agreement Concerning the International Deposit of Industrial Designs appears on the right-hand (odd number) pages of the first part of this volume (up to page 119). On the opposite, left-hand (even number) pages (up to page 118) appears the text of the draft Protocol as presented to the Conference of Plenipotentiaries. In order to facilitate the comparison between the draft text and the final text, these pages do not contain the full text of the draft but merely indicate where the final text and the draft text are identical or specify the slight differences that exist between the two texts.

The Rules of Procedure of the Conference of Plenipotentiaries appear on pages 131 to 141.

The part entitled "Conference Documents" (pages 145 to 154) contains the full text of, or other relevant indications concerning, the 11 documents issued before or during the Conference of Plenipotentiaries. These 11 documents are listed on page 145.

The part entitled "Minutes" (pages 159 to 181) contains the verbatim minutes of the Conference of Plenipotentiaries. These minutes were established in provisional form by the International Bureau of WIPO on the basis of transcripts of the tape recordings which were made of all interventions. The transcripts are preserved in the archives of the International Bureau. The provisional minutes were made available to all the speakers, with the request that they should suggest any changes they might wish to make. The final minutes published in this volume have taken such suggestions into account.

The part entitled "Participants" (pages 185 to 187) contains the list of participants of the Conference of Plenipotentiaries and a list of officers and members of subsidiary bodies of the Conference (Credentials Committee and Drafting Committee).

The part entitled "Post-Conference Document" (page 191) consists of a reference to the only document published after the Conference of Plenipotentiaries, which contained the provisional minutes referred to above.

The last part (pages 195 and 196) contains an alphabetical index of participants showing, under the name of each person, the State or organization which he or she represented as well as the place in these Records where the participant's name appears, together with that of his or her delegation, as an officer of the Conference or of one of its subsidiary bodies, as a speaker at the meetings of the Conference, or as a plenipotentiary signing the Protocol.

Geneva, 1976

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PROTOCOL OF GENEVA
TO THE HAGUE AGREEMENT CONCERNING
THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS

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TEXT OF THE PROTOCOL
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DRAFT PROTOCOL OF GENEVA
TO THE HAGUE AGREEMENT CONCERNING
THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS

Article 1

Abbreviated Expressions

[Same as in the final text.]

PROTOCOL OF GENEVA

TO THE HAGUE AGREEMENT

CONCERNING THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS

Article 1

Abbreviated Expressions

For the purposes of this Protocol:

(i) "Hague Agreement" means the Hague Agreement Concerning the International Deposit of Industrial Designs concluded on November 6, 1925;

(ii) "1934 Act" means the Act of the Hague Agreement revised at London on June 2, 1934;

(iii) "1960 Act" means the Act of the Hague Agreement revised at The Hague on November 28, 1960;

(iv) "1967 Act" means the Complementary Act of Stockholm of July 14, 1967, to the Hague Agreement;

(v) "Hague Union" means the Union established by the Hague Agreement;

(vi) "Contracting State" means any State bound by this Protocol;

(vii) "national" of any State includes also any person who, without being a national of that State, is domiciled or has a real and effective industrial or commercial establishment in the territory of the said State;

(viii) "International Bureau" means the International Bureau of the World Intellectual Property Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);

(ix) "Director General" means the Director General of the World Intellectual Property Organization.

Article 2

Deposits Made by Nationals of Contracting States Bound by the 1934 Act

(1) [Same as in the final text, except that the phrase ", which are reproduced in the Appendix," does not appear in the draft.]

(2) [Same as in the final text, except that in the draft the words "the 1960 Act be applied" appear in place of the words "the provisions of the 1960 Act be applied."]

Article 3

Deposits Made by Nationals of Contracting States Not Bound by the 1934 Act

[Same as in the final text, except that the phrase ", which are reproduced in the Appendix," does not appear in the draft.]

Article 2

Deposits Made by Nationals of Contracting States Bound by the 1934 Act

(1) In respect of any international deposit of an industrial design made by a national of a Contracting State bound by the 1934 Act, and subject to paragraph (2), Articles 1 to 14 and 17 to 21 of the 1934 Act shall be applied by Contracting States bound by the 1934 Act, whereas Articles 2 to 15 and 18 of the 1960 Act, which are reproduced in the Appendix, shall be applied by Contracting States not bound by the 1934 Act; the International Bureau shall apply the former set of Articles with respect to Contracting States bound by the 1934 Act and the latter set of Articles with respect to Contracting States not bound by the 1934 Act.

(2) At the time of making the international deposit of an industrial design, the depositor who is a national of a Contracting State bound by the 1934 Act may request that the provisions of the 1960 Act be applied with respect to any Contracting State bound by the 1934 Act; in respect of any international deposit accompanied by such a request and for the purposes of the State or States named in that request, Articles 2 to 15 and 18 of the 1960 Act shall be applied by the latter State or States and by the International Bureau.

Article 3

Deposits Made by Nationals of Contracting States Not Bound by the 1934 Act

In respect of any international deposit of an industrial design made by a national of a Contracting State not bound by the 1934 Act, Articles 2 to 15 and 18 of the 1960 Act, which are reproduced in the Appendix, shall be applied by all Contracting States and by the International Bureau.

Article 4

Regulations

(1) [Same as in the final text.]

(2) [Same as in the final text.]

Article 5

Acceptance of the 1967 Act

[Same as in the final text.]

Article 6

Membership in the Hague Union

[Same as in the final text.]

Article 4

Regulations

(1) The details of application of this Protocol shall be prescribed by Regulations adopted by the Assembly of the Hague Union not later than two months after the entry into force of this Protocol. The Regulations thus adopted shall enter into force one month after their adoption.

(2) The rules of procedure of the Assembly of the Hague Union shall regulate the right to vote in respect of the adoption of, and any amendment to, the provisions of the Regulations which concern only Contracting States.

Article 5

Acceptance of the 1967 Act

With respect to any State which has not previously ratified or acceded to the 1967 Act, ratification of, or accession to, this Protocol shall automatically entail ratification of, or accession to, the 1967 Act.

Article 6

Membership in the Hague Union

With respect to any State which is not a country of the Hague Union, ratification of, or accession to, this Protocol shall also have the effect that the said State will become a country of the Hague Union on the date on which this Protocol enters into force with respect to that State.

Article 7

Becoming Party to the Protocol

(1) [Same as in the final text.]

(2) [Same as in the final text.]

(3) [Same as in the final text.]

Article 8

Regional Groups

(1) [Same as in the final text.]

(2) [Same as in the final text.]

Article 7

Becoming Party to the Protocol

(1) This Protocol may be signed by:

(i) any State which is or which has been bound by the 1934 Act,

(ii) any other State which has deposited, not later than December 1, 1975, an instrument of ratification or accession in respect of the 1934 Act or the 1960 Act.

(2) Any State may become party to this Protocol by:

(i) the deposit of an instrument of ratification if it has signed this Protocol,

(ii) the deposit of an instrument of accession if it has not signed this Protocol,

provided that the said State, at the time of depositing its instrument of ratification or accession in respect of this Protocol, is bound by the 1934 Act or, without being bound by that Act, had deposited an instrument of ratification or accession in respect of the 1934 Act or the 1960 Act.

(3) Instruments of ratification or accession in respect of this Protocol shall be deposited with the Director General.

Article 8

Regional Groups

(1) If several States form a regional group with a common industrial designs office, each of the States forming the regional group may, at the time it deposits its instrument of ratification or accession in respect of this Protocol, or at any date subsequent to such deposit, deposit with the Director General a notification indicating the States which form the regional group and stating:

(i) that a common office shall be substituted for the national office of each of the States forming the regional group, and

(ii) that the States forming the regional group shall be deemed a single State for the purposes of the application of Articles 2 and 3 of this Protocol.

(2) Such notification shall have the effect provided for in paragraph (1) one month after the date on which the Director General has received the notifications and deposits referred to in paragraph (1) of all the States forming the regional group or, where that date is more than one month before the date of entry into force of this Protocol with respect to all the States forming the regional group, on the said date of entry into force.

Article 9

Entry Into Force

(1) [Same as in the final text, except that in the draft the words "of at least two States which are bound by the 1934 Act and of at least two States which are not bound by the 1934 Act" appear instead of the words "of two States which are bound by the 1934 Act and two States which are not bound by the 1934 Act."]

(2) [Same as in the final text.]

Article 10

Denunciation

(1) [Same as in the final text.]

(2) [Same as in the final text.]

(3) [Same as in the final text.]

Article 11

Effect of Entry Into Force of the 1960 Act

(1) [Same as in the final text.]

(2) [Same as in the final text.]

Article 9

Entry Into Force

(1) Subject to Article 11(1), this Protocol shall enter into force one month after the deposit of the instruments of ratification or accession of two States which are bound by the 1934 Act and two States which are not bound by the 1934 Act; however, no international deposit of an industrial design may be made under this Protocol before the entry into force of the Regulations referred to in Article 4.

(2) With respect to any State other than those whose instruments cause the entry into force of this Protocol by virtue of paragraph (1), this Protocol shall enter into force one month after the deposit of its instrument of ratification or accession.

Article 10

Denunciation

(1) Any State may denounce this Protocol at any time after the expiration of five years from the date on which it entered into force with respect to such State.

(2) Any denunciation of this Protocol shall be effected through a notification addressed to the Director General. It shall become effective one year after receipt of the said notification by the Director General.

(3) Denunciation of this Protocol shall not relieve any Contracting State of its obligations under this Protocol in respect of industrial designs whose date of international deposit precedes the date on which the denunciation takes effect.

Article 11

Effect of Entry Into Force of the 1960 Act

(1) This Protocol shall not enter into force if, on the date on which it would enter into force by virtue of Article 9(1), the 1960 Act is already in force.

(2)(a) This Protocol shall cease to have effect as from the date of entry into force of the 1960 Act.

(b) The fact that this Protocol ceases to have effect in accordance with subparagraph (a) shall not relieve Contracting States of their obligations under this Protocol in respect of industrial designs whose date of international deposit precedes the date of entry into force of the 1960 Act.

Article 12

Signature, Languages, Depositary Functions

(1) [Same as in the final text.]

(2) [Same as in the final text.]

(3) [Same as in the final text.]

(4) [Same as in the final text.]

(5) [Same as in the final text.]

(6) [Same as in the final text.]

Article 12

Signature, Languages, Depositary Functions

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

(2) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly of the Hague Union may designate.

(3) This Protocol shall remain open for signature until December 1, 1975.

(4) The Director General shall transmit two copies, certified by him, of this Protocol to the Governments of all States party to the Paris Convention for the Protection of Industrial Property and, on request, to the Government of any other State.

(5) The Director General shall register this Protocol with the Secretariat of the United Nations.

(6) The Director General shall notify the Governments of all States party to the Paris Convention for the Protection of Industrial Property of signatures, deposits of instruments of ratification or accession, entry into force, and all other relevant notifications.

- . -

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Geneva, this twenty-ninth day of August, one thousand nine hundred and seventy-five*.

BELGIUM (R. RAUX); FRANCE (FERNAND-LAURENT), OCTOBER 30, 1975; GERMANY (FEDERAL REPUBLIC OF) (AXEL HERBST, ELISABETH STEUP); LIECHTENSTEIN (A.F. DE GERLICZY-BURIAN); NETHERLANDS (E. TYDEMAN); SWITZERLAND (P. BRAENDLI).

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* Editor's Note: Except where otherwise indicated, all signatures were affixed on August 29, 1975.

APPENDIX *

Excerpts from the 1960 Act
(see Articles 2(1) and 3 of the Protocol)

* * *

Article 2

For the purposes of this Agreement:

" 1925 Agreement " shall mean the Hague Agreement concerning the International Deposit of Industrial Designs of November 6, 1925;

" 1934 Agreement " shall mean the Hague Agreement concerning the International Deposit of Industrial Designs of November 6, 1925, as revised at London on June 2, 1934;

" this Agreement " or " the present Agreement " shall mean the Hague Agreement concerning the International Deposit of Industrial Designs as established by the present Act;

" Regulations " shall mean the Regulations for carrying out this Agreement;

" International Bureau " shall mean the Bureau of the International Union for the Protection of Industrial Property;

" international deposit " shall mean a deposit made at the International Bureau;

" national deposit " shall mean a deposit made at the national Office of a contracting State;

" multiple deposit " shall mean a deposit including several designs;

" State of origin of an international deposit " shall mean the contracting State in which the applicant has a real and effective industrial or commercial establishment or, if the applicant has such establishments in several contracting States, the contracting State which he has indicated in his application; if the applicant has no such establishment in any contracting State, the contracting State in which he has his domicile; if he has no domicile in a contracting State, the contracting State of which he is a national;

" State having a novelty examination " shall mean a contracting State the domestic law of which provides for a system which involves a preliminary ex officio search and examination by its national Office as to the novelty of each deposited design.

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* Editor's Note: There is no Appendix to the draft Protocol.

Article 3

Nationals of contracting States and persons who, without being nationals of any contracting State, are domiciled or have a real and effective industrial or commercial establishment in the territory of a contracting State may deposit designs at the International Bureau.

Article 4

(1) International deposit may be made at the International Bureau:

1. direct, or
2. through the intermediary of the national Office of a contracting State if the law of that State so permits.

(2) The domestic law of any contracting State may require that international deposits of which it is deemed to be the State of origin shall be made through its national Office. Non-compliance with this requirement shall not prejudice the effects of the international deposit in the other contracting States.

Article 5

(1) The international deposit shall consist of an application and one or more photographs or other graphic representations of the design, and shall involve payment of the fees prescribed by the Regulations.

(2) The application shall contain:

1. a list of the contracting States in which the applicant requests that the international deposit shall have effect;
2. the designation of the article or articles in which it is intended to incorporate the design;
3. if the applicant wishes to claim the priority provided for in Article 9, an indication of the date, the State, and the number of the deposit giving rise to the right of priority;
4. such other particulars as the Regulations may prescribe.

(3) *(a)* In addition, the application may contain:

1. a short description of characteristic features of the design;
2. a declaration as to who is the true creator of the design;
3. a request for deferment of publication as provided in Article 6(4).

(b) The application may be accompanied also by samples or models of the article or articles incorporating the design.

(4) A multiple deposit may include several designs intended to be incorporated in articles included in the same class of the International Design Classification referred to in Article 21(2), item 4.

Article 6

(1) The International Bureau shall maintain the International Design Register and shall register international deposits therein.

(2) The international deposit shall be deemed to have been made on the date on which the International Bureau received the application in due form, the fees payable with the application, and the photograph or photographs or other graphic representations of the design, or, if the International Bureau received them on different dates, on the last of these dates. The registration shall bear the same date.

(3) *(a)* For each international deposit, the International Bureau shall publish in a periodical bulletin:

1. reproductions in black and white or, at the request of the applicant, in color of the deposited photographs or other graphic representations;
2. the date of the international deposit;
3. the particulars prescribed by the Regulations.

(b) The International Bureau shall send the periodical bulletin to the national Offices as soon as possible.

(4) *(a)* The publication referred to in paragraph (3)*(a)* shall, at the request of the applicant, be deferred for such period as he may request. The said period may not exceed twelve months from the date of the international deposit. However, if priority is claimed, the starting date of such period shall be the priority date.

(b) At any time during the period referred to in subparagraph *(a)*, the applicant may request immediate publication or may withdraw his deposit. Withdrawal of the deposit may be limited to one or a few only of the contracting States and, in the case of a multiple deposit, to some only of the designs included therein.

(c) If the applicant fails to pay within the proper time the fees payable before the expiration of the period referred to in subparagraph *(a)*, the International Bureau shall cancel the deposit and shall not effect the publication referred to in paragraph (3)*(a)*.

(d) Until the expiration of the period referred to in subparagraph *(a)*, the International Bureau shall keep in confidence the registration of deposits made subject to deferred publication, and the public shall have no access to any documents or articles concerning such deposits. These provisions shall apply without limitation as to time if the applicant has withdrawn his deposit before the expiration of the said period.

(5) Except as provided in paragraph (4), the Register and all documents and articles filed with the International Bureau shall be open to inspection by the public.

Article 7

(1) *(a)* A deposit registered at the International Bureau shall have the same effect in each of the contracting States designated by the applicant in his application as if all the formalities required by the domestic law for the grant of protection had been complied with by the applicant and as if all administrative acts required to that end had been accomplished by the Office of such State.

(b) Subject to the provisions of Article 11, the protection of designs the deposit of which has been registered at the International Bureau is governed in each contracting State by those provisions of the domestic law which are applicable in that State to designs for which protection has been claimed on the basis of a national deposit and in respect of which all formalities and administrative acts have been complied with and accomplished.

(2) An international deposit shall have no effect in the State of origin if the laws of that State so provide.

Article 8

(1) Notwithstanding the provisions of Article 7, the national Office of a contracting State whose domestic law provides that the national Office may, on the basis of an administrative ex officio examination or pursuant to an opposition by a third party, refuse protection shall, in case of refusal, notify the International Bureau within six months that the design does not meet the requirements of its domestic law other than the formalities and administrative acts referred to in Article 7(1). If no such refusal is notified within a period of six months the international deposit shall become effective in that State as from the date of that deposit. However, in a contracting State having a novelty examination, the international deposit, while retaining its priority, shall, if no refusal is notified within a period of six months, become effective from the expiration of the said period unless the domestic law provides for an earlier date for deposits made with its national Office.

(2) The period of six months referred to in paragraph (1) shall be computed from the date on which the national Office receives the issue of the periodical bulletin in which the registration of the international deposit has been published. The national Office shall communicate that date to any person so requesting.

(3) The applicant shall have the same remedies against the refusal of the national Office referred to in paragraph (1) as if he had deposited his design in that Office; in any case, the refusal shall be subject to a request for re-examination or appeal. Notification of such refusal shall indicate:

1. the reasons for which it has been found that the design does not meet the requirements of the domestic law;
2. the date referred to in paragraph (2);
3. the time allowed for a request for re-examination or appeal;
4. the authority to which such request or appeal may be addressed.

(4) *(a)* The national Office of a contracting State whose domestic law contains provisions of the kind referred to in paragraph (1) requiring a declaration as to who is the true creator of the design or a description of the design may provide that, upon request and within a period of not less than sixty days from the dispatch of such a request by the said Office, the applicant shall file in the language of the application filed with the International Bureau:

1. a declaration as to who is the true creator of the design;
2. a short description emphasizing the essential characteristic features of the design as shown by the photographs or other graphic representations.

(b) No fees shall be charged by a national Office in connection with the filing of such declarations or descriptions, or for their possible publication by that national Office.

(5) *(a)* Any contracting State whose domestic law contains provisions of the kind referred to in paragraph (1) shall notify the International Bureau accordingly.

(b) If, under its legislation, a contracting State has several systems for the protection of designs one of which provides for novelty examination, the provisions of this Agreement concerning States having a novelty examination shall apply only to the said system.

Article 9

If the international deposit of a design is made within six months of the first deposit of the same design in a State member of the International Union for the Protection of Industrial Property, and if priority is claimed for the international deposit, the priority date shall be that of the first deposit.

Article 10

(1) An international deposit may be renewed every five years by payment only, during the last year of each period of five years, of the renewal fees prescribed by the Regulations.

(2) Subject to the payment of a surcharge fixed by the Regulations, a period of grace of six months shall be granted for renewal of the international deposit.

(3) At the time of paying the renewal fees, the international deposit number must be indicated and also, if renewal is not to be effected for all the contracting States for which the deposit is about to expire, those of the contracting States for which the renewal is to be effected.

(4) Renewal may be limited to some only of the designs included in a multiple deposit.

(5) The International Bureau shall record and publish renewals.

Article 11

(1) *(a)* The term of protection granted by a contracting State to designs which have been the subject of an international deposit shall not be less than:

1. ten years from the date of the international deposit if the deposit has been renewed;
2. five years from the date of the international deposit in the absence of renewal.

(b) However, if, under the provisions of the domestic law of a contracting State having a novelty examination, protection commences at a date later than that of the international deposit, the minimum terms provided for in subparagraph *(a)* shall be computed from the date at which protection commences in that State. The fact that the international deposit is not renewed or is renewed only once shall in no way affect the minimum terms of protection thus defined.

(2) If the domestic law of a contracting State provides, in respect of designs which have been the subject of a national deposit, for protection whose duration, with or without renewal, is longer than ten years, protection of the same duration shall, on the basis of the international deposit and its renewals, be granted in that State to designs which have been the subject of an international deposit.

(3) A contracting State may, under its domestic law, limit the term of protection of designs which have been the subject of an international deposit to the terms provided for in paragraph (1).

(4) Subject to the provisions of paragraph (1)*(b)*, protection in a contracting State shall terminate at the date of expiration of the international deposit, unless the domestic law of that State provides that protection shall continue after the date of expiration of the international deposit.

Article 12

(1) The International Bureau shall record and publish changes affecting ownership of a design which is the subject of an international deposit in force. It is understood that transfer of ownership may be limited to the rights arising from the international deposit in one or a few only of the contracting States and, in the case of a multiple deposit, to some only of the designs included therein.

(2) The recording referred to in paragraph (1) shall have the same effect as if it had been made in the national Offices of the contracting States.

Article 13

(1) The owner of an international deposit may, by means of a declaration addressed to the International Bureau, renounce his rights in respect of all or some only of the contracting States and, in the case of a multiple deposit, in respect of some only of the designs included therein.

(2) The International Bureau shall record and publish such declaration.

Article 14

(1) No contracting State may, as a condition of recognition of the right to protection, require that the article incorporating the design bear a sign or notice concerning the deposit of the design.

(2) If the domestic law of a contracting State provides for a notice on the article for any other purpose, such State shall regard such requirement as satisfied if all the articles offered to the public with the authorization of the owner of the rights in the design, or the tags attached to such articles, bear the international design notice.

(3) The international design notice shall consist of the symbol Ⓓ (a capital D in a circle) accompanied by:

1. the year of the international deposit and the name, or the usual abbreviation of the name, of the depositor, or
2. the number of the international deposit.

(4) The mere appearance of the international design notice on the article or the tags shall in no case be interpreted as implying a waiver of protection by virtue of copyright or on any other grounds, whenever, in the absence of such notice, such protection may be claimed.

Article 15

(1) The fees prescribed by the Regulations shall consist of:

1. fees for the International Bureau;
2. fees for the contracting States designated by the applicant, namely:
   (a) a fee for each contracting State;
   (b) a fee for each contracting State having a novelty examination and requiring the payment of a fee for such examination.

(2) Any fees paid in respect of one and the same deposit for a contracting State under paragraph (1), item 2*(a)*, shall be deducted from the amount of the fee referred to in paragraph (1), item 2*(b)*, if the latter fee becomes payable for the same State.

* * *

Article 18

The provisions of this Agreement shall not preclude the making of a claim to the benefit of any greater protection which may be granted by domestic legislation in a contracting State, nor shall they affect in any way the protection accorded to works of art and works of applied art by international copyright treaties and conventions.

* * *

RULES OF PROCEDURE

ADOPTED BY THE CONFERENCE OF PLENIPOTENTIARIES

RULES OF PROCEDURE ADOPTED BY THE CONFERENCE OF PLENIPOTENTIARIES

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CHAPTER I: OBJECTIVE; COMPOSITION; SECRETARIAT

Rule 1: Objective

(1) The objective of the Conference of Plenipotentiaries (Geneva, August 28 and 29, 1975) of the Hague Union Concerning the International Deposit of Industrial Designs (hereinafter referred to as "the Conference") is to negotiate and conclude, on the basis of the draft contained in document HA/CP/3, a protocol (hereinafter referred to as "the Protocol") to the Hague Agreement Concerning the International Deposit of Industrial Designs (hereinafter referred to as "the Hague Agreement"). The main purpose of the Protocol is to establish or re-establish, in the field of the international deposit of industrial designs and until the Act of the Hague Agreement revised at The Hague on November 28, 1960 (hereinafter referred to as "the 1960 Act"), enters into force, relationships among member States of the Hague Union and such non-member States of the Hague Union as will have ratified or acceded to the 1960 Act.

(2) The Conference may also

(i) adopt any recommendation or resolution whose subject matter is germane to the Protocol,

(ii) adopt any Final Act of the Conference,

(iii) deal with all other matters referred to it by these Rules of Procedure (hereinafter referred to as "Rules") or appearing on its agenda.

Rule 2: Composition

(1) The Conference shall consist of Delegations (see Rule 4) of the States members of the International Union for the Protection of Industrial Property (hereinafter referred to as "the Paris Union") and representatives of intergovernmental organizations invited by the Director General of the World Intellectual Property Organization (WIPO).

(2) Delegations of States which are or once had been members of the Hague Union shall have the right to vote. They are referred to hereinafter as "Member Delegations."

(3) Delegations of States members of the Paris Union other than those mentioned in paragraph (2) (hereinafter referred to as "Observer Delegations") and representatives of intergovernmental organizations invited by the Director General of WIPO (hereinafter referred to as "Observer Organizations") may, as specified in these Rules, participate in the Conference.

(4) The Delegation of any State referred to in paragraph (2) may, for the purposes of the Conference, register as an observer and if it so registers it shall be treated as an Observer Delegation.

(5) The term "Delegation(s)," as hereinafter used, shall, unless otherwise expressly indicated, include both Member Delegations and Observer Delegations. It does not include the representatives of Observer Organizations.

(6) The Director General of WIPO and any other official of WIPO designated by him may participate in the discussions of the Conference as well as in any committee or working group thereof and may submit in writing statements, suggestions and observations to the Conference and any committee or working group thereof.

Rule 3: Secretariat

The Conference shall have a Secretariat provided by WIPO.

CHAPTER II: REPRESENTATION

Rule 4: Representation of Governments

(1) Each Delegation shall consist of one or more delegates and may include alternates and advisors. Each Delegation shall have a Head of Delegation.

(2) The term "delegate" or "delegates," as hereinafter used, shall, unless otherwise expressly indicated, include both member delegates and observer delegates. It does not include representatives of Observer Organizations.

(3) Each alternate or advisor may act as delegate upon designation by the Head of his Delegation.

Rule 5: Representation of Observer Organizations

Each Observer Organization may be represented by one or more representatives.

Rule 6: Credentials and Full Powers

(1) Each Member Delegation shall present credentials.

(2) Full powers shall be required for signing the Protocol adopted by the Conference. Such powers may be included in the credentials.

(3) Credentials and full powers shall be signed by the Head of State or the Head of Government or the Minister responsible for external affairs.

Rule 7: Letters of Appointment

(1) Each Observer Delegation shall present a letter or other document appointing the delegate or delegates as well as any alternate and any advisor. Such letter or document shall be signed as provided in Rule 6(3) or by the Ambassador accredited to the Government of the Swiss Confederation or the Head of Mission accredited to WIPO or to the Office of the United Nations at Geneva.

(2) The representatives of Observer Organizations shall present a letter or other document appointing them. It shall be signed by the Head (Director General, Secretary General, President) of the Organization.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 should be presented to the Secretary General of the Conference not later than at the time of the opening of the Conference.

Rule 9: Examination of Credentials, etc.

(1) The Credentials Committee shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7 and shall report to the Conference.

(2) The final decision on the said credentials, full powers, letters or other documents shall be within the competence of the Conference. Such decision shall be made as soon as possible and in any case before the vote on the adoption of the Protocol.

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and representatives shall be entitled to participate provisionally.

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

(1) The Conference shall have a Credentials Committee.

(2) The Credentials Committee shall consist of five members elected by the Conference from among the Member Delegations.

(3) The officers of the Credentials Committee shall be elected by, and from among, its members.

Rule 12: Drafting Committee

(1) The Conference shall have a Drafting Committee.

(2) The Drafting Committee shall consist of five members elected by the Conference from among the Member Delegations.

(3) The officers of the Drafting Committee shall be elected by, and from among, its members.

(4) The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Conference. It shall review the drafting of all texts provisionally adopted by the Conference and shall submit the texts so reviewed for final adoption by the Conference.

Rule 13: Working Groups

(1) The Conference may establish such working groups as it deems useful.

(2) The number of the members of any working group shall be decided by the Conference, which shall elect them from among the Member Delegations.

(3) The officers of any working group shall be elected by, and from among, its members.

CHAPTER IV: OFFICERS

Rule 14: Officers

(1) The Conference shall, in a meeting presided over by the Director General of WIPO, elect its President, and, in a meeting presided over by its President, elect two Vice-Presidents.

(2) The Credentials Committee and the Drafting Committee shall each have a Chairman and a Vice-Chairman.

(3) Precedence between the two Vice-Presidents of the Conference shall depend on the place occupied by the name of the State they represent in the list of Member Delegations established in the French alphabetical order.

Rule 15: Acting President or Acting Chairman

(1) If the President of the Conference is absent from any meeting of the Conference, such meeting shall be presided over, as Acting President, by whichever Vice-President has precedence over the other.

(2) If the Chairman of any committee or working group is absent from any meeting of the committee or working group of which he is Chairman, such meeting shall be presided over, as Acting Chairman, by the Vice-Chairman of that committee or working group.

[Rule 15, continued]

(3) If both the President and the Vice-Presidents of the Conference or both the Chairman and the Vice-Chairman of any committee or working group are absent from any meeting of the Conference or of the committee or working group of which they are President, Vice-Presidents, Chairman or Vice-Chairman, respectively, an Acting President or Acting Chairman, as the case may be, shall be elected by the Conference, committee or working group, respectively.

Rule 16: Presiding Officer Not Entitled To Vote

No Presiding Officer (President or Chairman, whether elected as such or Acting) shall vote. Another member of his Delegation may vote for his State.

CHAPTER V: SECRETARIAT

Rule 17: Secretariat

(1) The Director General of WIPO shall, from among the staff of WIPO, designate the Secretary General of the Conference, the Assistant Secretary General of the Conference, the Secretary of the Credentials Committee, the Secretary of the Drafting Committee and a Secretary for each working group.

(2) The Secretary General shall direct the staff required by the Conference.

(3) The Secretariat shall provide for the receiving, translation, reproduction and distribution of the required documents; the interpretation of oral interventions; and the general performance of all other work required for the Conference.

(4) The Director General of WIPO shall be responsible for the custody and preservation in the archives of WIPO of all documents of the Conference; the publication of the minutes (Rule 43) of the meetings of the Conference after the Conference; and the distribution of the final documents of the Conference to the participating Governments.

CHAPTER VI: CONDUCT OF BUSINESS

Rule 18: Quorum

(1) A quorum shall be required in the meetings of the Conference and shall be constituted by a majority of the Member Delegations.

(2) A quorum shall not be required in the meetings of committees and working groups.

Rule 19: General Powers of the Presiding Officer

In addition to exercising the powers conferred upon him elsewhere by these Rules, the Presiding Officer shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. He shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat. The Presiding Officer may propose the limiting of time to be allowed to speakers, the limiting of the number of times each Delegation may speak on any question, the closing of the list of speakers, or the closing of the debate. He may also propose the suspension or the adjournment of the meeting, or the adjournment of the debate on the question under discussion.

Rule 20: Speeches

(1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 21 and 22, the Presiding Officer shall call upon speakers in the order in which they signify their desire to speak.

(2) The Presiding Officer may call a speaker to order if his remarks are not relevant to the subject under discussion.

Rule 21: Precedence

(1) Member Delegations may be accorded precedence over Observer Delegations, and either may be accorded precedence over representatives of Observer Organizations.

(2) The Chairman of a committee or working group may be accorded precedence for the purpose of explaining the conclusions arrived at by his committee or working group.

(3) The Director General of WIPO or his representative may be accorded precedence for making observations or proposals relevant to the subject under discussion.

Rule 22: Points of Order

During the discussion of any matter, any Member Delegation may rise to a point of order, and the point of order shall be immediately decided by the Presiding Officer in accordance with these Rules. Any Member Delegation may appeal against the ruling of the Presiding Officer. The appeal shall be immediately put to the vote, and the Presiding Officer's ruling shall stand unless overruled by a majority of the Member Delegations present and voting. A Member Delegation rising to a point of order may not speak on the substance of the matter under discussion.

Rule 23: Time Limit on Speeches

In any meeting the Member Delegations may decide to limit the time to be allowed to each speaker and the number of times each Delegation or representative of an Observer Organization may speak on any question. When the debate is limited and a Delegation or Observer Organization has used up its allotted time, the Presiding Officer shall call it to order without delay.

Rule 24: Closing of List of Speakers

During the discussion of any matter, the Presiding Officer may announce the list of speakers and, unless the Member Delegations object, declare the list closed. He may, however, accord the right of reply to any Delegation if a speech delivered after he has declared the list closed makes it desirable.

Rule 25: Adjournment of Debate

During the discussion of any matter, any Member Delegation may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, one Member Delegation may speak in favor of the motion, and two against, after which the motion shall immediately be put to the vote. The Presiding Officer may limit the time to be allowed to speakers under this Rule.

Rule 26: Closure of Debate

Any Member Delegation may at any time move the closure of the debate on the question under discussion, whether or not any other Delegation has signified its wish to speak. Permission to speak on the motion for closure of the debate shall be accorded to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote. If the vote is in favor of closure, the Presiding Officer shall declare the debate closed. The Presiding Officer may limit the time to be allowed to Member Delegations under this Rule.

Rule 27: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Member Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote. The Presiding Officer may limit the time to be allowed to the speaker moving the suspension or adjournment.

Rule 28: Order of Procedural Motions

Subject to Rule 22, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

(a) to suspend the meeting,
(b) to adjourn the meeting,
(c) to adjourn the debate on the question under discussion,
(d) to close the debate on the question under discussion.

Rule 29: Basic Proposal and Proposals for Amendments

(1) Document HA/CP/3 shall constitute the basis of the discussions in the Conference ("basic proposal").

(2) Any Member Delegation may propose amendments.

(3) Proposals for amendments shall, as a rule, be submitted in writing and handed to the Secretary of the competent body (Conference, committee or working group). The Secretariat shall distribute copies to the participants represented on the body concerned. As a general rule, no proposal for amendment shall be discussed or put to the vote in any meeting unless copies of it have been made available not later than 30 minutes before it is called up for discussion. The Presiding Officer may, however, permit the discussion and consideration of a proposal for amendment even though copies have not been distributed or have been made available less than 30 minutes before it is called up for discussion.

Rule 30: Withdrawal of Procedural Motions and Proposals for Amendments

Any procedural motion and proposal for amendment may be withdrawn by the Member Delegation which has made it, at any time before discussion on it has commenced, provided that the motion or proposal has not been amended. Any motion or proposal which has thus been withdrawn may be reintroduced by any other Member Delegation.

Rule 31: Reconsideration of Matters Decided

When any matter has been decided by a body (Conference, committee or working group), it may not be reconsidered by that body, unless so decided by a two-thirds majority of the Member Delegations present and voting. Permission to speak on the motion to reconsider shall be accorded only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the question of reconsideration shall immediately be put to the vote.

CHAPTER VII: VOTING

Rule 32: Voting Rights

(1) Subject to paragraph (2), each Member Delegation shall have one vote in each body (Conference, committee or working group) of which it is a member. A Member Delegation may represent and vote for its own Government only.

(2) The right to vote on the adoption or amendment of these Rules shall be limited to States members of the Hague Union.

Rule 33: Required Majorities

(1) Final adoption of the Protocol shall require that no Member Delegation vote against its adoption.

(2) Subject to Rule 31, any other decisions of the Conference and all decisions in any committee or working group shall require a simple majority of the Member Delegations that are members of the committee or working group and are present and voting.

Rule 34: Meaning of the Expression "Present and Voting"

For the purpose of these Rules, references to Member Delegations "present and voting" shall be construed as references to Member Delegations present and casting an affirmative or negative vote. Member Delegations which abstain from voting shall be considered as not voting.

Rule 35: Requirement of Seconding; Method of Voting

(1) Any procedural motion and any proposal for amendment by a Member Delegation shall be put to a vote only if it is seconded by at least one other Member Delegation.

(2) Voting shall be by show of hands unless any Member Delegation, seconded by another Member Delegation, requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the French alphabetical order of the names of the States, beginning with the Member Delegation whose name is drawn by lot by the Presiding Officer.

Rule 36: Conduct During Voting

(1) After the Presiding Officer has announced the beginning of voting, the voting shall not be interrupted except on a point of order concerning the actual conduct of the voting.

(2) The Presiding Officer may permit Member Delegations to explain their votes, either before or after the voting. The Presiding Officer may limit the time to be allowed for such explanations.

Rule 37: Division of Proposals

Any Member Delegation, seconded by another Member Delegation, may move that parts of the basic proposal or of proposals for amendments be voted upon separately. If objection is made to the request for division, the motion for division shall be put to a vote. Permission to speak on the motion for division shall be given only to one Member Delegation in favor and two Member Delegations against. If the motion for division is carried, all parts separately approved shall again be put to the vote, together, as a whole.

Rule 38: Voting on Proposals for Amendment

Any proposal for amendment shall be voted upon before voting upon the text to which it relates. Proposals for amendment relating to the same text shall be put to a vote in the order in which their substance is removed from the said text, the furthest removed being put to a vote first and the least removed put to a vote last. If, however, the adoption of any proposal for amendment necessarily implies the rejection of any other proposal for amendment or of the original text, such proposal or text shall not be put to the vote. If one or more proposals for amendment relating to the same text are adopted, the text as amended shall be put to a vote. Any proposal to add to or delete from a text shall be considered a proposal for amendment.

Rule 39: Voting on Proposals on the Same Question

Subject to Rule 38, where two or more proposals relate to the same question, the body (Conference, committee or working group) concerned shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Rule 40: Elections on the Basis of Proposals Made by the President of the Conference

The President of the Conference may propose a list of candidates for all positions which are to be filled through election by the Conference.

Rule 41: Equally Divided Votes

(1) If a vote is equally divided on matters other than elections of officers, the proposal shall be regarded as rejected.

(2) If a vote is equally divided on a proposal for election of officers, the vote shall be repeated until one of the candidates receives more votes than any of the others.

CHAPTER VIII: LANGUAGES AND MINUTES

Rule 42: Languages of Oral Interventions

Oral interventions shall be in English or French and interpretation shall be provided for by the Secretariat in the other language.

Rule 43: Minutes

(1) All interventions made in the meetings of the Conference shall be transcribed verbatim by the International Bureau of WIPO.

(2) The International Bureau of WIPO shall make available the transcript of the said interventions as soon as possible after the closing of the Conference to all participants having made interventions; they shall, within two months after the making available of the said transcript, inform that Bureau of any suggestions for changes in the transcript of their interventions.

(3) The transcript, corrected where necessary on the basis of the suggestions referred to in paragraph (2), shall constitute the minutes of the meetings of the Conference. The International Bureau of WIPO shall publish the minutes in due course.

Rule 44: Languages of Documents and Minutes

(1) Any written proposal shall be presented to the Secretariat in English or French.

(2) All documents distributed during or after the Conference shall be made available in English and French.

CHAPTER IX: OPEN AND CLOSED MEETINGS

Rule 45: Meetings of the Conference

The meetings of the Conference shall be open to the public unless the Conference decides otherwise.

Rule 46: Meetings of Committees and of Working Groups

The meetings of any committee or working group shall be open only to the members of that committee or working group and the Secretariat.

CHAPTER X: OBSERVERS

Rule 47: Observers

Any Observer Delegation and any representative of any intergovernmental organization may, upon the invitation of the Presiding Officer, participate without the right to vote in the deliberations of the Conference.

CHAPTER XI: AMENDMENTS TO THE RULES OF PROCEDURE

Rule 48: Amendments to the Rules of Procedure

Subject to Rule 32(2), the Conference may amend these Rules.

CHAPTER XII: SIGNATURE OF THE FINAL ACT

Rule 49: Signature of the Final Act

If a Final Act is adopted, it shall be open for signature by any Member Delegation.

CONFERENCE DOCUMENTS

LIST OF THE CONFERENCE DOCUMENTS

HA/CP/1 to 11

Document Number	Submitted by	Subject
1	Director General of WIPO	Draft Agenda
2	Director General of WIPO	Draft Rules of Procedure
3	International Bureau of WIPO	Draft Protocol
4	Director General of WIPO	Modification of the Draft Rules of Procedure
5	Secretariat	Provisional List of Participants
6	Delegation of France	Proposal for Amendment of the Draft Protocol
7	Secretariat	Draft Protocol Submitted to the Drafting Committee
8	Secretariat	Officers
9	Credentials Committee	Report
10	Drafting Committee	Draft Protocol
11	Secretariat	States Which Signed the Protocol on August 29, 1975

TEXT OF THE CONFERENCE DOCUMENTS

HA/CP/1 March 26, 1975 (Original: English)

DIRECTOR GENERAL OF WIPO

Draft agenda

1. Opening of the Conference by the Director General of WIPO
2. Election of the President of the Conference
3. Adoption of the agenda (see the present document)
4. Adoption of the Rules of Procedure (see document HA/CP/2)
5. Election of the Vice-Presidents of the Conference
6. Election of the members of the Credentials Committee
7. Election of the members of the Drafting Committee
8. Consideration of the draft Protocol on the basis of document HA/CP/3 and any proposed amendments
9. Consideration of the report of the Credentials Committee
10. Consideration and adoption of the Protocol on the basis of the text presented by the Drafting Committee
11. Closing of the Conference by its President*

HA/CP/2 March 26, 1975 (Original: English)

DIRECTOR GENERAL OF WIPO

Draft Rules of Procedure

Editor's Note: This document is not reproduced in this volume since the draft text of the Rules of Procedure is the same as that of the final text adopted by the Conference of Plenipotentiaries (see page 131), except for Rules 17(4) and 43, which were modified in document HA/CP/4, and Rule 48, which was modified by the Conference of Plenipotentiaries. The text of these provisions, as appearing in document HA/CP/2, is reproduced below:

Rule 17: Secretariat

...

(4) The Director General of WIPO shall be responsible for the custody and preservation in the archives of WIPO of all documents of the Conference; the publication of the summary minutes (see Rule 43) of the Conference after the Conference; and the distribution of the final documents of the Conference to the participating Governments.

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* The signing ceremony will take place immediately after the closing of the Conference on August 29, 1975, or, if the Protocol is not ready in a form permitting signature by that time, it will take place on August 30, 1975.

Rule 43: Summary Minutes

(1) Provisional summary minutes of the meetings of the Conference shall be drawn up by the International Bureau of WIPO and shall be made available as soon as possible after the closing of the Conference to all participants, who shall, within two months after the making available of such minutes, inform that Bureau of any suggestions for changes in the minutes of their own interventions.

(2) The final summary minutes shall be published in due course by the said Bureau.

Rule 48: Amendments to the Rules of Procedure

The Conference may amend these Rules.

HA/CP/3 March 26, 1975 (Original: English)

INTERNATIONAL BUREAU OF WIPO

Draft Protocol

Editor's Note: Only the introduction to this document and the Notes concerning the various provisions of the draft Protocol are reproduced here. For the text of the draft Protocol itself, see pages 108, 110, 112, 114, 116 and 118, above.

Introduction to This Document

1. The Hague Agreement Concerning the International Deposit of Industrial Designs (hereinafter referred to as "the Hague Agreement") had 15 member States* until the end of 1974. With effect from January 1, 1975, two of these States, namely Belgium and the Netherlands,** denounced their membership in the Union established by the Hague Agreement (hereinafter referred to as "the Hague Union"). The reason for these denunciations lies in the fact that with the entry into force of the Benelux Uniform Designs Law on January 1, 1975, Belgium and the Netherlands are no longer in a position to apply the Act of the Hague Agreement which is at present in force, namely the Act which was signed at London on June 2, 1934 (hereinafter referred to as "the 1934 Act"). The 1934 Act can no longer be applied since the procedure established by the Benelux Uniform Designs Law is only compatible with the procedure for international deposits provided for in a more recent Act of the Hague Agreement, namely the Act signed at The Hague on November 28, 1960 (hereinafter referred to as "the 1960 Act"). However, the latter Act has not yet entered into force, the required number of ratifications or accessions not yet having been obtained. According to Article 26(1) of the 1960 Act, that Act will enter into force after the deposit of instruments of ratification or accession by ten States at least four of which are to be deposited by States which on November 28, 1960, were not members of the Hague Union. The only ratifications or accessions that have been received to date are the ratifications of France, Liechtenstein and Switzerland; all three are members of the Hague Union and were so on the relevant date.

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* Belgium, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Holy See, Indonesia, Liechtenstein, Monaco, Morocco, Netherlands, Republic of Viet-Nam, Spain, Switzerland, Tunisia.

** Except as far as Surinam and the Netherlands Antilles are concerned.

2. Belgium, Luxembourg and the Netherlands have declared their intention to ratify the 1960 Act*** but their ratifications would not suffice to bring the 1960 Act into force. Although with such ratifications the number of ratifications or accessions would rise to six, of which one would be that of a State which was not a member of the Hague Union on the relevant date (Luxembourg), four more ratifications or accessions would still be needed, of which at least three would have to be those of States which were not members of the Hague Union on the relevant date. It is unlikely, however, that the ratifications or accessions still needed to bring the 1960 Act into force will be forthcoming in the near future.

3. The departure of Belgium and the Netherlands from the Hague Union has diminished the value of international deposits under the Hague Agreement. In accordance with decisions taken by the competent bodies of WIPO in June and September, 1974, and after a detailed discussion which took place in two meetings of a Committee of Experts (on September 30 to October 1, 1974, and on February 20 to 27, 1975), the draft of a Protocol to the Hague Agreement has been prepared which is hereby submitted to the Conference of Plenipotentiaries for approval. The main purpose of the Protocol is to enable member States of the Hague Union to establish or re-establish legal relationships with non-member States of the Union which will have ratified or acceded to the 1960 Act. The latter, through acceptance of the Protocol, would become members of the Union and would have the rights and obligations under the Hague Agreement to the extent defined in the Protocol. In particular, the procedure provided for in the 1960 Act would be made applicable to a certain extent in order to allow States which cannot apply the procedure provided for in the 1934 Act to participate in the international deposit scheme. Since one of the purposes of the Protocol is to permit States which are not members of the Hague Union but will have ratified or acceded to the 1960 Act to participate in the international deposit scheme, it is proposed that the Protocol cease to have effect with the entry into force of the 1960 Act.

4. With respect to certain of the provisions of the draft Protocol, explanations are given in the Notes.

Notes Concerning Article 1

The texts of the Acts mentioned in this Article may be obtained from the International Bureau.

Notes Concerning Article 2

1. The 1960 Act differs from the 1934 Act mainly in the following respects:

(i) Whereas, under the 1934 Act, filing is always direct with the International Bureau, under the 1960 Act the applicant may file through the national office and the State of origin may require him to do so.

(ii) Whereas, under the 1934 Act, the documents accompanying international deposits are to be presented in the French language, the Regulations under the 1960 Act provide that they are to be presented either in the English or in the French language.

(iii) Whereas, under the 1934 Act, international deposit automatically results in protection in all the States bound by that Act (except in the State of origin, unless the national law of that State so provides), under the 1960 Act the applicant obtains protection only in the States he designates to that effect; under the 1960 Act the State of origin may be designated unless such designation is excluded by the law of that State.

*** See document AB/IV/22 of November 16, 1973.

(iv) Whereas, under the 1934 Act, the picture of the design is not published by the International Bureau, under the 1960 Act the applicant has to furnish photographs or other graphic representations of the design to the International Bureau, which, after registration, publishes them.

(v) Whereas, under the 1934 Act, deposit may be "secret" (that is, made under a sealed envelope or in a sealed package) and, if secret, generally will be kept secret for five years, under the 1960 Act sealed deposits are not permitted and publication of the design may be postponed for a maximum of only twelve months.

(vi) Whereas, under the 1934 Act and its Regulations, one international deposit may include up to 200 designs without any restriction as regards the kind of products to which the designs apply, such a multiple deposit is limited under the 1960 Act and its Regulations to 100 or 20 designs, depending on the question whether deferment of publication has been requested, and to one class of the International Design Classification.

(vii) Whereas, under the 1934 Act, the effects of the international deposit in a given State may not be refused by the national office (but only by the court) of that State, under the 1960 Act refusal may be pronounced by the national office of that State if such possibility is provided also for national deposits.

2. The reason for which Articles 15, 16, 22 and 23 of the 1934 Act are not referred to is that they are superseded by the Stockholm Act, which, according to Article 5 of the draft Protocol, will be applied by all States bound by the Protocol.

3. The reason for which Articles 1, 16, 17 and 19 to 33 of the 1960 Act are not referred to is that they are superseded by the Stockholm Act, which, according to Article 5 of the draft Protocol, will be applied by all States bound by the Protocol. The fact that Article 7(2) is referred to among the provisions of the 1960 Act to be applied under the Protocol means that any Contracting State may, insofar as it is a State of origin, exclude the effect of an international deposit.

4. Paragraph (2) allows the applicant to decide himself, for each Contracting State which is bound by the 1934 Act, whether the régime of the 1934 Act or the régime of the 1960 Act should apply for the purposes of that State. His decision will probably be influenced by weighing the advantages of the presumably cheaper and generally simpler procedure offered by the 1934 Act against the procedure giving generally a higher degree of legal security offered by the 1960 Act (because the public is more fully informed through publication and because the design is exposed to the risk of administrative refusal).

5. In general, if both the régime of the 1934 Act and the régime of the 1960 Act apply, it will be sufficient if the applicant observes the procedure under the 1960 Act, which in most cases covers the procedure under the 1934 Act. Of course, a secret deposit as provided for under the 1934 Act would not make much sense in such a case.

Notes Concerning Article 3

See Note 3 concerning Article 2.

Notes Concerning Article 4

1. In view of the fact that under the Protocol the régimes under both the 1934 Act and the 1960 Act would apply, the Regulations under the Protocol would have to be based on the Regulations under the 1934 Act and those under the 1960 Act. The Regulations would, among other things, fix the amount of the fees.

2. In order to have the Regulations adopted not later than two months after the entry into force of the Protocol, a session of the Assembly of the Hague Union would be convened immediately after the date of entry into force of the Protocol.

3. It is proposed to prepare one set of Regulations, covering both the procedure which applies to States bound by the 1934 Act (and not also by the Protocol) and the procedure which applies to States bound by the Protocol. As regards the provisions of the Regulations governing the latter procedure, the rules of procedure of the Assembly should provide that only States bound by the Protocol would have the right to vote.

4. In addition to adopting the Regulations, the Assembly would have the task of providing, pursuant to Article 2(2)(a)(i) of the 1967 Act, that, as far as the procedure under the 1960 Act is concerned, the international classification under the Locarno Agreement of October 8, 1968, Establishing an International Classification for Industrial Designs shall be applied with respect to international deposits.

Notes Concerning Article 5

This provision follows the precedent of Article 8(1)(b) of the 1967 Act.

Notes Concerning Article 6

The 1967 Act provides for certain rights and obligations for "countries of the special Union." Article 6 ensures that those rights and obligations will also apply to States which are not bound by the 1934 Act but are bound by the Protocol.

Notes Concerning Article 7

A State which has deposited an instrument of ratification or accession in respect of the 1934 Act and which later denounces that Act will not, of course, be in a position to invoke the last part of Article 7(2).

Notes Concerning Article 8

1. This Article is intended to cover the case of such regional industrial designs offices as the Benelux Designs Office.

2. The Regulations should provide that, where, under the regional treaty, the applicant cannot limit his application to only some of the States forming the regional group, designation of one or more of those States must be treated as designation of all the States forming the regional group.

Notes Concerning Article 9

The expression "at least" contained twice in paragraph (1) is necessary because the number of instruments deposited by States bound by the 1934 Act might reach a total higher than two before two States which are not bound by the said Act deposit their instruments, or because the number of instruments deposited by States which are not bound by the 1934 Act might reach a total higher than two before two States bound by the said Act deposit their instruments.

Notes Concerning Article 10

The five-year period corresponds to the period prescribed in treaties recently concluded under the aegis of WIPO.

Notes Concerning Article 11

The main purpose of the Protocol is to enable member States of the Hague Union to establish or re-establish legal relationships with non-member States of the Union which will have ratified or acceded to the 1960 Act. It is hoped that on the date of entry into force of the 1960 Act this purpose will be fulfilled by the fact that all Contracting States of the Protocol have become party to the 1960 Act.

Notes Concerning Article 12

The provisions of this Article correspond to those found in treaties recently concluded under the aegis of WIPO.

HA/CP/4 August 28, 1975 (Original: English)

DIRECTOR GENERAL OF WIPO

Modification of the Draft Rules of Procedure

Editor's Note: This document, which contains a modification of Rules 17(4) and 43 of the draft Rules of Procedure, is not reproduced in this volume since the text as modified in the document is the same as the text adopted by the Conference of Plenipotentiaries (see pages 136 and 140).

HA/CP/5 August 28, 1975 (Original: French/English)

SECRETARIAT

Provisional List of Participants

Editor's Note: This document is not reproduced in this volume since the final List of Participants appears on page 185 below.

HA/CP/6 August 28, 1975 (Original: French)

DELEGATION OF FRANCE

Proposal for Amendment of the Draft Protocol

The text of Articles 2 to 15 and 18 of the 1960 Act should be annexed in an appendix to the present Protocol. The choice is left to the Conference to determine how a link between the appendix and the Protocol, by an appropriate reference, should be established.

HA/CP/7 August 28, 1975 (Original: English/French)

SECRETARIAT

Draft Protocol Submitted to the Drafting Committee

Editor's Note: The text proposed in this document is not reproduced in this volume since it is essentially the same as the final text adopted by the Conference of Plenipotentiaries.

HA/CP/8 August 28, 1975 (Original: French/English)

SECRETARIAT

Officers

Editor's Note: The contents of this document are reproduced after the List of Participants (see page 187 below).

HA/CP/9 August 28, 1975 (Original: English)

CREDENTIALS COMMITTEE

Report

1. The Credentials Committee (hereinafter referred to as "the Committee"), established by the Conference of Plenipotentiaries (hereinafter referred to as "the Conference") on August 28, 1975, met twice on that same day.

Composition

2. The Committee was composed of the following States: Belgium, Germany (Federal Republic of), France, Liechtenstein, Spain. The Delegations of all of these States participated in the work of the Committee.

Opening of the Meeting

3. The Director General of WIPO, Dr. A. Bogsch, opened the meeting.

Officers

4. On the proposal of the Delegation of the Federal Republic of Germany, seconded by the Delegation of France, the Committee unanimously elected Mr. R. Raux (Belgium) as Chairman and Count A.F. de Gerliczy-Burian (Liechtenstein) as Vice-Chairman. Mr. G.A. Ledakis (WIPO) acted as Secretary of the Committee.

Examination of Credentials, etc.

5. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Conference on August 28, 1975 (hereinafter referred to as "the Rules of Procedure"), the Committee examined the credentials, full powers, letters and other documents presented for the purposes of Rules 6 and 7 by the Member Delegations, the Observer Delegation and the representative of the Observer Organization.

Member Delegations

6. The Committee found in due form, in accordance with Rule 6 of the Rules of Procedure, the credentials and the full powers presented by the Member Delegations of the following States members of the International Union for the Protection of Industrial Property (hereinafter referred to as "the Paris Union"): Germany (Federal Republic of), Liechtenstein, Spain, Switzerland.

7. The Committee found in due form, in accordance with Rule 6 of the Rules of Procedure, the credentials presented by the Member Delegations of the following States members of the Paris Union: Belgium, France, Netherlands.

8. The Committee noted that, in accordance with established practice, powers of representation in principle implied, in the absence of any express reservation, the right of signature, and that it should be left to each Member Delegation to interpret the scope of its credentials.

Observer Delegation

9. The Committee found in due form, in accordance with Rule 7(1) of the Rules of Procedure, the document of appointment presented by the Observer Delegation of the following State member of the Paris Union: Luxembourg.

Observer Organization

10. The Committee found in due form, in accordance with Rule 7(2) of the Rules of Procedure, the letter of appointment presented by the representative of the following intergovernmental organization invited to participate in the Conference: Benelux Designs Office.

Report

11. The Committee authorized the Secretariat to prepare the report of the Committee for submission to the Conference.

HA/CP/10 August 28, 1975 (Original: English/French)

DRAFTING COMMITTEE

Draft Protocol

Editor's Note: The text proposed in this document is not reproduced in this volume since it is essentially the same as the final text adopted by the Conference of Plenipotentiaries.

HA/CP/11 August 29, 1975 (Original: English/French)

SECRETARIAT

States Which Signed the Protocol on August 29, 1975

Belgium, Germany (Federal Republic of), Liechtenstein, Netherlands, Switzerland.

MINUTES

MINUTES OF THE CONFERENCE*

President: Mr. P. BRAENDLI (Switzerland)

Vice-Presidents: Mr. E. van WEEL (Netherlands)
Mr. J. DELICADO MONTERO-RIOS (Spain)

Secretary General: Mr. L. BAEUMER (WIPO)

Assistant Secretary General: Mr. L. EGGER (WIPO)

FIRST MEETING

Thursday, August 28, 1975

Dr. BOGSCH (Director General of WIPO):

1. Ladies and Gentlemen, I have the honor to declare the Conference of Plenipotentiaries of the Hague Union Concerning the International Deposit of Industrial Designs open. Please have before you document HA/CP/1, which is the draft agenda of this Conference. As you see, the second item is the election of the President of the Conference, so I now invite you to make proposals. The Delegation of the Federal Republic of Germany has the floor.

Mrs. STEUP (Federal Republic of Germany):

2. Thank you, Mr. Director General. My Delegation has the honor to propose Mr. Braendli, Delegate of Switzerland, as President of this Conference. Mr. Braendli presided over the two meetings of the Committee of Experts and we all know his outstanding capacity. I think that we could not make a better choice than Mr. Braendli. Thank you, Mr. Chairman.

Dr. BOGSCH (Director General of WIPO):

3. Thank you. The Delegation of Belgium has the floor.

Mr. RAUX (Belgium):

4. As the Delegate of the Federal Republic of Germany has just indicated, I think the choice of Mr. Braendli is a very judicious one and therefore firmly support it.

Dr. BOGSCH (Director General of WIPO):

5. Thank you, Sir. Does another Delegation wish to speak? The Delegation of France has the floor.

Mrs. BALOUS (France):

6. The Delegation of France is pleased to support the proposal of the Delegation of the Federal Republic of Germany. Thank you.

Dr. BOGSCH (Director General of WIPO):

7. Thank you, Madam. The Delegation of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

8. Thank you, Mr. Chairman. The Delegation of the Netherlands also supports wholeheartedly the proposal made by the Delegation of the Federal Republic of Germany.

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* Editor's Note: All the interventions were made in French, except those of Mrs. Steup (Federal Republic of Germany), which were made in English.

Dr. BOGSCH (Director General of WIPO):

9. Thank you, Sir. As there do not seem to be any other speakers wishing to take the floor, and as we have only one proposal supported by several delegations, I am pleased to declare Mr. Braendli, Head of the Delegation of Switzerland, unanimously elected to the post of President of the Conference of Plenipotentiaries, and I invite him to take the Chair.

Mr. BRAENDLI (President):

10. Ladies and Gentlemen, allow me first to thank you sincerely for having elected me as your President. It is a great honor for a representative of the State in which WIPO and the International Bureau have their headquarters to preside over the Conference of Plenipotentiaries of the Hague Union. I also wish to thank and congratulate Director General Bogsch, on behalf of all of us, for having accepted to convene this Conference at the headquarters of the Organization. At first sight, the purpose of this Conference--which is the acceptance of a Protocol to the Hague Agreement--would not appear to have a very great significance. Such is not the case, however. The Hague Union has lost two long-standing members, Belgium and the Netherlands, and, while the event in itself has not shaken the Union to its foundations, it nevertheless represents a serious loss, as it reduces the geographical scope of the international protection of designs, and does so to the disadvantage of the creators of such designs. The draft Protocol submitted to this Conference for consideration has been carefully prepared by a Committee of Experts and offers a suitable means of reconstituting the Union by--hopefully--bringing the lost sheep back to the fold. In 1960, the Conference of the Hague set out with great enthusiasm to give the Hague Agreement a new look based on modern principles of legal protection. Unfortunately, as we know, the aim pursued has to date still not been achieved, even though fifteen years have elapsed since then. It is fair to say, of course, that the fact that the Hague text has not entered into force has not helped the development of the Union. The draft Protocol submitted to this Conference is intended to bridge the gap, so to speak, between the principles currently in force and the new principles devised in 1960. When considered also from this angle, our Conference has a special importance in contributing to the development of the Union. Therefore, Ladies and Gentlemen, it is my hope that this Conference will achieve its aims in the short period of time available to it, which incidentally coincides with the approach of the fiftieth anniversary of the Agreement. I now declare the discussion open. Thank you.

11. Ladies and Gentlemen, let us return to the draft agenda appearing in document HA/CP/1. Item 3 is the adoption of the agenda. Are there any proposals for amendment of the agenda as proposed? I see there are not; I therefore declare the agenda unanimously adopted.

12. Item 4 of the agenda is the adoption of the Rules of Procedure. We have before us, in document HA/CP/2, draft Rules of Procedure presented by the Director General of WIPO. I now call on the Director General, Dr. Bogsch.

Dr. BOGSCH (Director General of WIPO):

13. Mr. President, I should like to draw your attention to the fact that I have modified my proposals in one respect, the modification being contained in document HA/CP/4. The only difference between document HA/CP/2 and document HA/CP/4 is that, instead of proposing abridged summary minutes, I propose that the debates be transcribed in the form of full verbatim minutes. The reason for this is that it is customary at our diplomatic conferences for the minutes taken at plenary meetings to be verbatim, and for those of meetings of main committees and other subsidiary bodies to be summary. Since this Conference will have no Main Committee, there being only plenary meetings, we are therefore proposing this solution, which will not impose a very heavy burden as the Conference will be short. Thank you, Mr. President.

Mr. BRAENDLI (President):

14. Thank you, Mr. Director General. We have before us, therefore, draft Rules of Procedure modified by document HA/CP/4. Our discussions will thus be based on two documents. I now open the debate on the draft Rules. Are there any proposals on any of these Rules? The Delegate of Spain has the floor.

Mr. DELICADO MONTERO-RIOS (Spain):

15. Thank you, Mr. President. I should like to know whether we are going to discuss the Rules one after the other or all together.

Mr. BRAENDLI (President):

16. Thank you, Sir. I thought we could discuss the Rules all together; so, if the Conference agrees, I put the following question to you: are there any proposals for the amendment of any of the Rules? The Delegation of Spain has the floor.

Mr. DELICADO MONTERO-RIOS (Spain):

17. Thank you, Mr. President. I wish to make a few small observations on the Rules. I refer first to the cover page of document HA/CP/2. The second paragraph on that page states that it is proposed that voting on the adoption of the Rules of Procedure of this Conference of Plenipotentiaries be limited to the States members of the Hague Union, and in fact Rule 32(2) establishes that the right to vote on the adoption or amendment of these Rules shall be limited to States members of the Hague Union. I notice, however, that Rule 48 of the Rules of Procedure submitted to us by the Director General says that the Conference may amend these Rules. According to Rule 2, the Conference consists of Delegations of the States members of the International Union and representatives of intergovernmental organizations invited, etc. That is why I should like to have a small explanation: can the Conference amend the Rules after it has adopted them? Also, Rule 32(1) refers to voting in the different bodies of the Conference, and it is for that reason that I propose that Rule 32(2) be included in Rule 48 and that the latter Rule be revised as follows: "These Rules shall be adopted or amended by the Member Delegations at the Conference." Thank you, Mr. President.

Mr. BRAENDLI (President):

18. Thank you, Sir. May I refer your question to the author of the draft Rules? The Director General has the floor.

Dr. BOGSCH (Director General of WIPO):

19. Mr. Chairman, according to our interpretation, the general provision in Rule 48 is subject to an exception by virtue of the principle whereby "lex specialis derogat generali," but of course Rule 48 could, for the sake of clarity, be amended to read: "Subject to Rule 32,... etc." It would then be absolutely clear that it was an exception. Thank you.

Mr. BRAENDLI (President):

20. Thank you, Mr. Director General. Does the Delegate of Spain wish to comment on this proposal? The Delegate of Spain has the floor.

Mr. DELICADO MONTERO-RIOS (Spain):

21. I agree with the Director General's proposal. If possible, I should like to make one further proposal, on Rule 18, which deals with the quorum. Paragraph (1) of this Rule reads as follows: "A quorum shall be required in the meetings of the Conference and shall be constituted by a majority of the Member Delegations." I feel that we should provide some clarification or explanation to the effect that the quorum is constituted by a majority of the Member Delegations represented at the Conference. How is the quorum constituted? Are all the Delegations represented at the Conference counted towards it? It should be a majority of the Delegations represented at or attending the Conference. It might perhaps be appropriate to add after Member Delegations the words "represented at the Conference" or "attending the Conference." Thank you, Mr. President.

Mr. BRAENDLI (President):

22. Thank you, Sir. This too is a question of interpretation. The Director General has the floor.

Dr. BOGSCH (Director General of WIPO):

23. Mr. President, the purpose of the draft has been correctly interpreted by the Delegate of Spain. We considered that Rule 2(2), which defines the concept of the Member Delegation, was clear, as it provides that the Delegations of States which are or once had been members of the Hague Union have the right to vote, and they are referred to subsequently as "Member Delegations." This means that there is in fact a twofold qualification: the States have to be members or former members of the Hague Union, and then they have to have full powers to vote. Only Delegations that have full powers are real members, so that the mere presence of a Delegation is not sufficient: it must also have full powers. I have no objection, however, to the following being said in Rule 18(1): "A quorum shall be required in the meetings of the Conference and shall be constituted by a majority of the Member Delegations having presented full powers in due form to the Conference."

Mr. BRAENDLI (President):

24. Thank you, Mr. Director General. The Delegate of Spain has the floor.

Mr. DELICADO MONTERO-RIOS (Spain):

25. Thank you, Mr. President. I believe that I have not explained myself properly. The possibility of signing the Protocol, which calls for full powers, is one thing; participation in the meetings of the Conference is another. What I am asking is whether the quorum is constituted by all the member States represented at the Conference or attending it, or whether it is in fact not necessary for them to attend.

Mr. BRAENDLI (President):

26. Thank you, Sir. If I understand you correctly, you would like to be assured that, according to the second part of the provision in paragraph (1) of Rule 18, the quorum is constituted by a majority of the Member Delegations attending the meetings mentioned in the first part of the provision. If the two parts of the provision are read together it seems clear to me, even though it is not expressly stated, that the quorum is constituted by a majority of the Member Delegations attending the meetings. The Director General has the floor.

Mr. BOGSCH (Director General of WIPO):

27. Thank you, Mr. President. First of all, I did not mean signature, but participation in discussions where voting is required. In my opinion, we cannot say that the quorum is constituted by a majority of the Member Delegations attending, as this would create a vicious circle in which there would in fact be no quorum. If two Delegations were present, the quorum would obtain. We should at least have to speak of registered Delegations, but that is not sufficient since we register even those Delegations that do not have full powers. Perhaps the expression "full powers" is not right, since it is rather a matter of "credentials." If the seven Member Delegations present credentials that are found to be in due form by the Credentials Committee, the quorum will be four. It is understood, then, that the Delegations concerned are Member Delegations having valid credentials. Thank you, Mr. President.

Mr. BRAENDLI (President):

28. Thank you, Mr. Director General. The Delegate of Spain has the floor.

Mr. DELICADO MONTERO-RIOS (Spain):

29. Thank you, Mr. President. I do not wish to delay the discussion of the Rules of Procedure; the matter was one of pure form and I agree with Dr. Bogsch's explanations. I wish to make one last remark on a formal question in relation to Rule 42 on the languages of oral interventions. The Rules state that oral interventions shall be in English or French and interpretation shall be provided for by the Secretariat in the other language. I do not wish to raise a substantive question, as I know that the experts who took part in the Committee of Experts accepted the possibility of making oral interventions in English and French. I merely wish to have the minutes state expressly that the Spanish Delegation, in view of the exceptional circumstances, accepted this solution, which should not, however, set a precedent for other diplomatic conferences. Thank you,

Dr. BOGSCH (Director General of WIPO):

30. The Delegate of Spain has asked that the minutes reflect the opinion of Spain to the effect that Rule 42 does not set a precedent for other diplomatic conferences, and that it is only because of the exceptional circumstances that Spain has accepted Rule 42. This statement will appear in the minutes. Thank you.

Mr. BRAENDLI (President):

31. Thank you, Mr. Director General. The Delegate of France has the floor.

Mrs. BALOUS (France):

32. Thank you, Mr. President. I have no desire to delay the debate in any way, but I would like to be given one very small explanation. The last of the Rules of Procedure provides that, if a Final Act is adopted, it shall be open for signature by any Member Delegation. I should like you to assure me, Mr. President, that if a Delegation does not consider itself able to sign at once it has every possibility of signing by December. Thank you, Mr. President.

Mr. BRAENDLI (President):

33. Thank you, Madam. If we consider the precedents, a Final Act is by way of being an informative document, which states that a Conference has taken place, that the Delegations indicated were present and that the Conference adopted such and such an instrument. A Final Act of that sort does not bind the members who sign it with respect to the instrument adopted by the Conference. It is no more than a record stating that a Conference has taken place for a given purpose and with a given result. The Delegate of France has the floor.

Mrs. BALOUS (France):

34. Mr. President, in the case of a record, there is of course no problem, but, in the case of the Protocol, if a Delegation does not consider itself able to sign immediately, it is, I think, still entitled to sign up to December. That is what I should like you to confirm.

Mr. BRAENDLI (President):

35. Thank you, Madam. It seems that there is a misunderstanding here because the Final Act is not the Protocol.

Mrs. BALOUS (France):

36. We shall be discussing later whether there will be a Final Act and what will be in it. Should the Final Act systematically alter the Protocol, I should ask to have the possibility of not signing it. A Final Act like that of the recent Helsinki Conference, for instance, is a Final Act in the legal sense. It is a document with the same binding character as the Protocol. Where a Final Act is purely and simply a record of a meeting, I do not think that I would be able to object to signing it; but, if it is a document that affects the substance of the Protocol, I should like to know whether its signature is compulsory. I am raising a question of principle, but I have no desire to delay the debate in any way. Thank you, Mr. President.

Mr. BRAENDLI (President):

37. Thank you, Madam. The Director General has the floor.

Dr. BOGSCH (Director General):

38. Mr. President, Article 12(3) of the Protocol provides that it may be signed up to December 1. Therefore, assuming that the Article in question is adopted, France or any other country may sign the Protocol up to December 1. As far as the Final Act is concerned, I do not intend to propose that a Final Act be established. Perhaps we could even decide now that there will be no Final Act, in which case, if that is what you decide, the discussion of the question raised by the Delegate of France will cease to be relevant.

Mrs. BALOUS (France):

39. I am satisfied. Thank you, Mr. President.

Mr. BRAENDLI (President):

40. Thank you, Mr. Director General. I should nevertheless like to point out that Rule 49 says: "If a Final Act is adopted,..." The question remains open, and the Conference may always decide at the end of its discussions whether or not it wishes to adopt a Final Act; Rule 49 obliges no one at this Conference to adopt such a Final Act. It seems to me that the decision may be adjourned for the time being. However, if the Conference wishes to take a decision now on the matter of the Final Act, I can see no objection to deciding the question in the course of the discussions. We are now still at the stage of the adoption of the Rules of Procedure, which has no bearing on the question of the adoption of a Final Act. The Delegate of France has not opposed Rule 49: she has merely made a request for clarification.

41. Are there any other proposals concerning the Rules? No. We are left, then, with one proposal, made by the Delegate of Spain, on Rule 48. It has been proposed that Rule 48 should say: "Subject to Rule 32, the Conference may amend these Rules." Is this proposal supported by another Delegation? The Delegate of Liechtenstein has the floor.

Mr. de GERLICZY-BURIAN (Liechtenstein):

42. Thank you, Mr. President. I am very pleased to support this proposal, but I should like the Rule to specify, if this meets with everybody's agreement: "Subject to Rule 32(2),..." Thank you, Mr. President.

Mr. BRAENDLI (President):

43. Thank you, Sir. Does the Delegate of Spain subscribe to this proposal amending his own? The Delegate of Spain has the floor.

Mr. DELICADO MONTERO-RIOS (Spain):

44. Thank you, Mr. President. I agree with the proposal of the Delegate of Liechtenstein. Thank you, Mr. President.

Mr. BRAENDLI (President):

45. Thank you. Two Delegations have proposed the amendment of Rule 48 in the manner indicated. Are there any counterproposals or objections to the amendment? If there are none, I take it that this proposal is adopted without a formal vote, which would delay our work. Therefore, if there are no further proposals, I submit the Rules of Procedure to you in their entirety. The Delegate of Liechtenstein has the floor.

Mr. de GERLICZY-BURIAN (Liechtenstein):

46. Excuse me, Mr. President, but I feel that there should perhaps be a formal record of the fact that document HA/CP/4 is incorporated in the Rules of Procedure, provided that everybody agrees with the amendments proposed by the Director General. Thank you, Mr. President.

Mr. BRAENDLI (President):

47. Thank you, Sir. I was reasoning on the basis of the assumption that this document was submitted to us at the outset of the discussions, so that in fact it was understood that the two documents formed a single whole. If there is no objection to the amendment of the proposal contained in document HA/CP/2 by document HA/CP/4, we have what amounts to a single document. I am not taking your remark, Sir, to mean that you have any objection to this procedure.

Mr. de GERLICZY-BURIAN (Liechtenstein):

48. It was merely a clarification. I wanted to be sure that we knew what we were adopting. Thank you, Mr. President.

Mr. BRAENDLI (President):

49. In that case, I submit to you the Rules of Procedure as proposed in document HA/CP/2 and amended by document HA/CP/4, with the amendment to Rule 48 that we have just adopted. Under Rule 32(2), only those States that are members of the Hague Union have the right to vote. May I ask you to raise your cards for the adoption of the Rules of Procedure. Are there any votes against adoption? There are not, so the Rules of Procedure are unanimously adopted.

50. Ladies and Gentlemen, we now go on to the next item on the agenda, item 5, which is the election of the Vice-Presidents of the Conference. According to the Rules of Procedure, two Vice-Presidents have to be elected. Are there any proposals? The Delegate of the Federal Republic of Germany has the floor.

Mrs. STEUP (Federal Republic of Germany):

51. Thank you, Mr. President. I have the honor to propose Mr. van Weel, Delegate of the Netherlands, and Mr. Delicado Montero-Rios, Delegate of Spain, for the posts of Vice-President. In view of the aim of the Conference, in my opinion one Vice-President should be elected from the member States of the Hague Union and the other Vice-President from those States which have left the Union but which want to re-accede to the Union. Thank you.

Mr. BRAENDLI (President):

52. Thank you, Madam. The Delegate of Belgium has the floor.

Mr. RAUX (Belgium):

53. Mr. President, I support the proposal put forward by the Delegation of the Federal Republic of Germany, that Mr. van Weel and Mr. Delicado Montero-Rios be appointed Vice-Presidents.

Mr. BRAENDLI (President):

54. Thank you. Are there any other proposals? There are not. Mr. van Weel and Mr. Delicado Montero-Rios are therefore unanimously elected Vice-Presidents.

55. Having dealt with item 5 of the agenda, Ladies and Gentlemen, we move on to item 6, which is the election of the members of the Credentials Committee. According to the Rules of Procedure, five members are required. To simplify the discussion, I submit a proposal to you. I propose that the Committee be composed of Belgium, France, the Federal Republic of Germany, Liechtenstein and Spain. Are there any other proposals? The Delegate of France has the floor.

Mrs. BALOUS (France):

56. So practically all the member States are on the Credentials Committee?

Mr. BRAENDLI (President):

57. As I mentioned earlier, Madam, we are rather like a family. As the family is not a big one, we have little alternative! Does the Conference agree with this proposal? In the absence of a counterproposal, I declare that the Credentials Committee will consist of Belgium, France, the Federal Republic of Germany, Liechtenstein and Spain.

58. Ladies and Gentlemen, we now go on to item 7 of the agenda, which is the election of the members of the Drafting Committee. Here, too, I submit a proposal to you. I propose that the Drafting Committee consist of the following five countries: Belgium, France, Federal Republic of Germany, Netherlands, Switzerland. Are there any counterproposals? There are not. I declare, therefore, that the Conference agrees with and adopts this proposal.

59. Ladies and Gentlemen, I propose to suspend the meeting for about fifteen minutes so that the Credentials Committee may meet and take a decision on the subject of credentials. Does the Conference agree with this procedure? It does, so the meeting is suspended.

[Suspension]

60. The meeting is re-opened for the continuation of the discussions. May I ask the Chairman of the Credentials Committee to report to us on the discussions that have taken place?

Mr. RAUX (Belgium):

61. Mr. President, the Credentials Committee met as planned. We noted that all the Delegations present may participate with the exception of the Delegation of Spain, which will attend the meetings but is not yet able to present documents in due form. If new documents are presented by the Delegation of Spain in the course of our work, we shall meet again to examine the situation and amend our decision regarding Spain, which is only a provisional one.

Mr. BRAENDLI (President):

62. Thank you, Sir. I declare, therefore, that the Delegate of Spain is provisionally entitled, under Rule 10 of the Rules of Procedure, to take part in the discussions and voting.

63. We now move on to item 8 of the agenda, which is the consideration of the draft Protocol on the basis of document HA/CP/3 and any proposed amendments. I open the general discussion on the Protocol, without going into the details of the Articles for the moment. Do any Delegations wish to make general statements on the Protocol? The Delegate of France has the floor.

Mrs. BALOUS (France):

64. Thank you, Mr. President. The French Delegation is pleased to announce that it has no comment to make, from a technical standpoint, on the text of the draft Protocol submitted to us today. It therefore wishes to pay tribute to the excellent work accomplished by the experts last February. The results of this work seem suitable in every respect, and my Delegation considers that any technical amendment made to them would delay the implementation of the provisions that interest us. There is no contradiction, however, in the fact that my Delegation proposes to make a slight amendment, the text of which I think has been distributed to the participants of the Conference. The French Delegation wishes to have the text of Articles 2 to 15 and 18 appended, essentially for legal reasons pertaining to publication in our "Journal officiel" and the possibility of invoking a published document vis-à-vis third parties. Subject to the adoption of this proposed amendment, my Delegation is prepared to vote in favor of the draft Protocol. Thank you, Mr. President.

Mr. BRAENDLI (President):

65. Thank you, Madam. The Delegate of Switzerland has the floor.

Mr. KÄMPF (Switzerland):

66. Thank you, Mr. President. As you have already mentioned yourself, Mr. President, we are approaching the fiftieth anniversary of the founding of the Hague Union. Should we be surprised if the effects of age are beginning to be felt? Is not the Hague Union a living organism? Why should it be in any better health than we human beings? Fortunately, we know that we can successfully combat

an ailment contracted at a relatively early age, provided that appropriate action is taken as soon as the first symptoms are detected. The Director General of WIPO has acted according to this experience of life by convening us so that we may help to restore the Hague Union to its full vigor. The Swiss Delegation wishes to express its warmest thanks to him because our country has a very special interest in keeping the International Union for the International Deposit of Industrial Designs in good condition. Since 1928, the year in which the Hague Agreement entered into force, the International Bureau has registered about 60,000 deposits. Of these, more than 28,000, almost half in other words, have come from Swiss applicants. This fact is perhaps somewhat surprising and should be explained. According to an express provision in our legislation, international deposits are immediately valid in Switzerland. Thus Swiss applicants depositing an industrial design may obtain protection in their own country by the deposit effected with WIPO. That is why the Swiss Delegation hopes that the Conference may be able, in the short period of time available to it, to meet the conditions whereby full vitality may be restored to the Hague Union as soon as possible. This aim would be achieved, in the opinion of the Swiss Delegation, by the acceptance without major changes of the draft worked out by the Committee of Experts. Thank you, Mr. President.

Mr. BRAENDLI (President):

67. Thank you, Sir. I give the floor to the Delegate of the Federal Republic of Germany.

Mrs. STEUP (Federal Republic of Germany):

68. Thank you, Mr. President. My Delegation, too, extends its appreciation and thanks to the WIPO Secretariat for the convocation of this Conference, and for the excellent preparation. We wholeheartedly support the aim of this Conference to create an intermediary Protocol, pending the coming into force of the 1960 Act, which will allow member States of the Union to re-establish or to establish relations with those States which have ratified the 1960 Act but which are at the moment not members of the Union. We think that the reduced membership of the Union is of considerable disadvantage to all interested in the protection of designs. We therefore welcome the effort to widen the membership, and we fully support the Protocol proposed for this purpose and to be approved at this Conference. Thank you, Mr. President.

Mr. BRAENDLI (President):

69. Thank you, Madam. The Delegate of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

70. Thank you, Mr. President. The Netherlands Delegation is very pleased to be here, since it is in fact on account of a Benelux initiative that this meeting is taking place. We are particularly pleased that we have made such progress, and we hope now to be able to re-establish our former relations with the old members of the Hague Union. As for the draft itself, we have very few comments to make, those few being mainly of a drafting nature. Thank you, Mr. President.

Mr. BRAENDLI (President):

71. Thank you, Sir. The Delegate of Belgium has the floor.

Mr. RAUX (Belgium):

72. Mr. President, like the Netherlands Delegation, we welcome the position that has been taken, and we thank the Assembly for the spirit of understanding it has shown up to now with a view to enabling us to rejoin this family which in fact we left somewhat against our will, and we wish also to extend our thanks to the Directorate General and staff of WIPO, who have made a very effective contribution to the achievement of this aim. Thank you, Mr. President.

Mr. BRAENDLI (President):

73. Thank you, Sir. Are there any other delegates who wish to speak in the general discussion? There are not.

74. I therefore propose that we now proceed Article by Article. The Delegate of France has submitted to us in document HA/CP/6 a proposal that in my opinion should be dealt with under Article 2, as it is Article 2 that mentions the Articles of the 1960 Act to which the French proposal refers.

75. Are there any observations or proposals on the subject of the title? There are not.

76. Article 1: "Abbreviated Expressions." Are there any observations or proposals? There are not. I therefore declare Article 1 to be adopted.

77. We now arrive at Article 2: "Deposits Made by Nationals of Contracting States Bound by the 1934 Act." We have the French proposal on this subject. I give the floor to the Director General, who wishes to speak.

Dr. BOGSCH (Director General of WIPO):

78. The Secretariat has been thinking about how the French proposal could best be satisfied. We are going to make an Appendix of the provisions concerned, but we consider that this Appendix should not be mentioned in either Article 2 or Article 3, as there are two Articles but three references in all, which would make the text particularly unwieldy. We intend to propose, perhaps to the Drafting Committee--which is the proper place for settling this matter--the addition of these texts under the following heading: "Appendix: Provisions of the 1960 Act referred to in Articles 2 and 3" and in French: "Annexe : "Dispositions de l'Acte de 1960 mentionnées aux articles 2 et 3". The text of the Articles in question will be photocopied for the text of the Protocol to be presented for signature, in order that any typing errors may be avoided. Thank you, Mr. President.

Mr. BRAENDLI (President):

79. Thank you, Sir. The Delegate of France has the floor.

Mrs. BALOUS (France):

80. Mr. President, I should like to know whether I am right in my understanding that the Drafting Committee will determine where the terms just indicated by the Director General will be located, and whether they will appear within an Article or at the foot of a page.

Mr. BRAENDLI (President):

81. Thank you. The Director General has the floor.

Dr. BOGSCH (Director General of WIPO):

82. I think this could be left to the Drafting Committee, but in fact I did not propose making any mention either inside an Article or at the foot of a page. I proposed that the Appendix be inserted after Article 12 but before the words "In witness whereof." Thus the Appendix would be an integral part of the Protocol. Thank you, Mr. President.

Mr. BRAENDLI (President):

83. Thank you. We have before us a French proposal for the addition of an Appendix to the Protocol containing the Articles of the 1960 Act that are referred to in Articles 2 and 3. Is this French proposal supported by another Delegation? The Delegation of Switzerland has the floor.

Mr. KÄMPF (Switzerland):

84. Thank you, Mr. President. Our Delegation supports in principle the proposal of the French Delegation, subject to what is submitted to us by the Drafting Committee. Thank you, Mr. President.

Mr. BRAENDLI (President):

85. Thank you, Sir. The Delegate of Liechtenstein has the floor.

Mr. de GERLICZY-BURIAN (Liechtenstein):

86. Thank you, Mr. President. I also wish to say that my Delegation supports France's proposal, because it enables us to have a clearer understanding of the provisions to which we are referring, especially since the 1960 Act has not yet entered into force. I should like to qualify my support in the same way as the Delegate of Switzerland with respect to the procedure to be envisaged by the Drafting Committee. Subject to that procedure, I am able to state that I agree with the French amendment. Thank you, Mr. President.

Mr. BRAENDLI (President):

87. Thank you, Sir. Are there any other observations on the subject of the French proposal, which has been supported by two Delegations? The Delegation of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

88. Thank you, Mr. President. I merely wish to ask a question. I am not very clear about the legal effect of this Appendix. Will it make the Articles referred to an integral part of the Protocol? Will the Appendix have to be ratified with the Protocol? I do not know of any structure like the one proposed here. Thank you, Mr. President.

Mr. BRAENDLI (President):

89. Thank you, Sir. This is indeed a fairly important legal matter. Does the Director General wish to make a statement?

Dr. BOGSCH (Director General of WIPO):

90. In my opinion, Mr. President, there is no difference, from a legal point of view, between the present text and the solution proposed by the French Delegation: it is more of a practical matter. One has to admit that the 1960 text does not appear in the Official Gazettes of most countries, and that there are some languages in which it has never been translated. A country ratifying the Protocol will find itself in a rather peculiar situation where reference is made to a text that has not been published in its Official Gazette. According to the solution proposed, it will publish the text in its Official Gazette and therefore will be obliged to translate it. I do not mean France, as the text exists in French; for other countries, however, this will have the advantage of obliging them to produce a translation. Thank you, Mr. President.

Mr. BRAENDLI (President):

91. Thank you, Mr. Director General. The Delegate of France has the floor.

Mrs. BALOUS (France):

92. Mr. President, I would simply add to what the Director General has said that the French national law has an express provision on this subject: an act that has not been published in the "Journal officiel" may not be invoked vis-à-vis third parties, and is therefore not a valid document. For us, it is of supreme importance, from a legal standpoint, that it be published, and it is for this reason that I pointed out, on presenting the amendment, that my Delegation would be obliged to abstain if the amendment was not found to be acceptable. Therefore, in order that Articles 2 to 15 and 18 may be invoked vis-à-vis third parties, they must be published in the "Journal officiel," and, to be published in the "Journal officiel," they must appear in the Protocol. Thank you, Mr. President.

Mr. BRAENDLI (President):

93. Thank you, Madam. The Delegate of the Federal Republic of Germany has the floor.

Mrs. STEUP (Federal Republic of Germany):

94. Thank you, Mr. President. We too can support the French proposal. We ourselves do not have the same problem since in our country the text has already been published in the Official Gazette, but we see the difficulties of other countries. As to the question of the juridical character of the Appendix, we fully share the opinion of the Director General. Thank you.

Mr. BRAENDLI (President):

95. Thank you, Madam. The Delegation of Belgium has the floor.

Mr. PEETERMANS (Belgium):

96. Mr. President, the Belgian Delegation sees no objection to the acceptance of the amendment proposed by France.

Mr. BRAENDLI (President):

97. Thank you. The Delegation of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

98. Thank you, Mr. President. We have no objection to accepting the French proposal, but I wonder now whether the observation made by the Delegate of France is not also applicable to the 1967 Act, which is also an Act that has not been ratified by the Netherlands, among others. The 1967 Act is referred to in Article 5, and so I wonder whether the same remarks do not apply to both Acts.

Mr. BRAENDLI (President):

99. Thank you, Sir. The Director General has the floor.

Dr. BOGSCH (Director General of WIPO):

100. Before the discussion goes any farther, I feel I should say that if you want this Conference to end tomorrow, as planned, you must not ask the Secretariat to include the 1934, 1960 and 1967 Acts! Thank you.

Mr. BRAENDLI (President):

101. Thank you, Dr. Bogsch, for your observation. The French proposal has been supported by several Delegations, and no Delegation has spoken against it. I think we can save ourselves a vote. The French proposal is unanimously adopted, then. The Drafting Committee is entrusted with the task of finding the appropriate means of incorporating these provisions of the 1960 Act in the Protocol in the form of an Appendix. Are there any other proposals on the subject of Article 2? The Delegate of Liechtenstein has the floor.

Mr. de GERLICZY-BURIAN (Liechtenstein):

102. Thank you, Mr. President. I am sorry, but there is just one small thing in paragraph (2), in the third line of the text, where it reads: "may request that the 1960 Act be applied." Perhaps I am being too punctilious, but I do have some difficulty here because the 1960 Act is not in force. I think it would be more appropriate to say "that the provisions of the 1960 Act be applied," especially since we are also planning to speak of "provisions." Thank you, Mr. President.

Mr. BRAENDLI (President):

103. Thank you, Sir. The Delegate of France wishes to speak.

Mrs. BALOUS (France):

104. My Delegation supports this proposal.

Mr. BRAENDLI (President):

105. Thank you, Madam. The Director General has the floor.

Dr. BOGSCH (Director General of WIPO):

106. I should like to point out that in that case you are going to give the Drafting Committee quite a difficult task since the Protocol is full of references to Articles. Does that mean that "the provisions of Articles" has to be said everywhere? I do not think it is necessary from the legal standpoint since the argument about not being in force is the same for Articles as for provisions of Articles.

Mr. BRAENDLI (President):

107. Thank you, Mr. Director General. If I have understood the Liechtenstein Delegate's proposal correctly, the reference in paragraph (2) is a reference to Articles 2 to 15 and 18 of the 1960 Act because it is not the entire 1960 Act that is applicable but only those provisions. There are references to the 1960 Act in other provisions, for instance in Article 7 on signature and ratification, but it is not a question of application of the provisions concerned: it is merely a reference to the 1960 Act, whereas Article 2(2) contains a direct reference to certain Articles that are applicable. The only effect of the proposal would be an amendment to Article 2(2), but I think it is more of a drafting matter which could be left to the Drafting Committee. The Delegate of the Federal Republic of Germany has the floor.

Mrs. STEUP (Federal Republic of Germany):

108. Thank you, Mr. President. I have a question to raise. I am not quite clear as to the scope of the proposed amendment. Will "provisions of the Articles" be added only where the 1960 Act is mentioned, or does the proposal relate also to references to the other Acts mentioned in the Protocol? Thank you.

Mr. BRAENDLI (President):

109. Thank you, Madam. Does the Delegate of Liechtenstein wish to speak?

Mr. de GERLICZY-BURIAN (Liechtenstein):

110. Thank you, Mr. President. I have two remarks to make. First, I feel I have been misunderstood in a sense. I asked for the wording "that the provisions of the 1960 Act be applied" and not "that the provisions of the Articles of the 1960 Act be applied." There is a subtle difference here since the Articles are provisions of the Act, in my opinion. The Act as such cannot be applied. I think it is the provisions of the Act that are applied in the form of Articles that are applicable. This, then, more or less amounts to what the President himself was saying, namely, that an indirect reference was being made to Articles that are specified later on. As for my second remark, I did not intend to establish any connection with the reproduction of the Articles as such in the Appendix. I believe the French amendment, which has been accepted, has provided for the publication, in a form to be decided upon by the Drafting Committee, of Articles 2 to 15 and 18 of the 1960 Act, but my proposal was not intended to affect this point, and I see no connection between my proposal and the proposal to publish the texts of other Articles by putting them in an Appendix to the Protocol or in the Protocol itself. However, as I said a moment ago, if the whole Conference considers that the text would become unwieldy by the insertion of the words "the provisions of the 1960 Act," I shall not insist and shall simply thank the Delegation or Delegations that were kind enough to support my proposal. Thank you, Mr. President.

Mr. BRAENDLI (President):

111. Thank you, Sir. The Director General has the floor.

Dr. BOGSCH (Director General of WIPO):

112. I apologize to the Delegate of Liechtenstein; I did indeed misunderstand your first proposal, Sir. I now understand it and I am going to repeat it because it seems to me that some other Delegates have not understood it properly either. If I understand the Delegate of Liechtenstein correctly, the only place in which he wishes an amendment to be made is in paragraph (2), which he wants to read as follows: "At the time of making the international deposit of an industrial design, the depositor who is a national of a Contracting State bound by the 1934 Act may request that the provisions of the 1960 Act etc." I agree entirely and withdraw my reservations. Thank you.

Mr. BRAENDLI (President):

113. Thank you, Mr. Director General. We are now clear on this matter. Are there any objections? There are none. I therefore declare that this amendment is unanimously adopted and that it will be left to the Drafting Committee to find the right wording.

114. Are there any other observations on Article 2? There are none, so Article 2 is adopted with the two amendments resulting from the proposals of France and Liechtenstein.

115. Article 3: "Deposits Made by Nationals of Contracting States Not Bound by the 1934 Act." Do you have any observations or proposals? There are none, so Article 3 is adopted.

116. Article 4: "Regulations." Any observations or proposals? There are none, so Article 4 is adopted.

117. Article 5: "Acceptance of the 1967 Act." If I am not mistaken, the 1967 Act is going to enter into force during September since Monaco ratified it recently. Any proposals? There are none, so Article 5 is adopted.

118. Article 6: "Membership in the Hague Union." Are there any observations or proposals? There are none, so Article 6 is adopted.

119. Article 7: "Becoming Party to the Protocol." Are there any observations or proposals? There are none, so Article 7 is adopted.

120. Article 8: "Regional Groups." The Delegate of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

121. Thank you, Mr. President. I would just like to put a question to the Secretariat. In Article 8(1)(ii) we read that the States forming the regional group are to be deemed a single State for the purposes of the application of Articles 2 and 3. I wonder whether that is not too restrictive and whether reference should not also be made, for example, to the Regulations.

Mr. BRAENDLI (President):

122. Thank you, Sir. Your observation seems to be pertinent since the case of regional groups could also arise in the Regulations. Do any of the other Delegations wish to speak on this point? Was the Delegate of the Netherlands making a proposal or just a comment? The Delegate of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

123. One could perhaps propose: "...for the purposes of the application of Articles 2, 3 and 4..."

Dr. BOGSCH (Director General of WIPO):

124. Article 4(2) says: "The rules of procedure of the Assembly of the Hague Union shall regulate the right to vote in respect of the adoption of, and any amendment to, the provisions of the Regulations..." The Netherlands would surely not want the regional group to have only one vote on this matter. I do not think that it is necessary to amend this Article. There is no danger of the Regulations coming into conflict with the Treaty; it is even a general principle that the Regulations cannot enter into conflict with the Treaty and therefore I believe that the compatibility of Article 8 with the Regulations is assured. To my mind, any other solution would be extremely dangerous and we should have to spend hours examining the rest of the draft to see whether it was really feasible. Thank you.

Mr. BRAENDLI (President):

125. Thank you, Mr. Director General. If I may refer to the text of the 1960 Act from which this provision has been taken in a modified form, Article 30 of the 1960 Act contains a similar provision which reads as follows: "they shall be deemed to be a single State for the purposes of the application of Articles 2 to 17 of this Agreement." Articles 2 to 16 are the substantive Articles and Article 17 is precisely the Article which states that the Regulations shall govern the details concerning the implementation of the Agreement. I wonder whether we should not mention Article 4, but only paragraph (1) of that Article since paragraph (2) deals with the right to vote, which in fact is irrelevant. The Delegate of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

126. Perhaps we could make a direct reference to the Regulations by saying "for the purposes of the application of Articles 2 and 3 of this Protocol and the Regulations relating thereto."

Mr. BRAENDLI (President):

127. Thank you, Sir. The Delegation of the Federal Republic of Germany has the floor.

Mrs. STEUP (Federal Republic of Germany):

128. Thank you, Mr. President. I fear this last proposal will not help us out of our difficulties, since in the rules of procedure there will also be rules on voting. Therefore, if we take up the proposal just made by the Delegate of the Netherlands we should perhaps say: "the Regulations, as far as they determine the details of the application of the said Articles." Then the reference to the Regulations would be restricted to the details of application of Articles 2 and 3 without applying to the right to vote. Thank you.

Mr. BRAENDLI (President):

129. Thank you, Madam. The problem is that the formal provisions, such as those dealing with the formalities for deposit, should also, in the opinion of the Delegate of the Netherlands, be included in this paragraph (1)(ii) with the exception of the purely administrative provisions. This is perhaps a drafting matter that we could leave to the Drafting Committee. The Delegation of France has the floor.

Mrs. BALOUS (France):

130. I am sorry, Mr. President, that I am unable to accept your view that it is purely a question of form. I consider it to be a matter of substance which we are going to be called upon to decide and I myself am not in a position to pronounce. Should the Conference take a definitive decision on this Article, I should be obliged to enter a reservation pending instructions. Thank you, Mr. President.

Mr. BRAENDLI (President):

131. Thank you, Madam. The Director General has the floor.

Dr. BOGSCH (Director General of WIPO):

132. I should like, Mr. President, to try and solve this problem without amending the text--which would cause difficulties for certain Delegations--by reiterating my interpretation and inviting the Delegations which do not agree to come forward and say so. As I interpret it, it is inconceivable, if Article 8 says that a certain group of States is to be treated as a single State for the purposes of Articles 2 and 3, which are the only Articles of substance, that the Regulations could treat that group in any other way. Thank you, Mr. President.

Mr. BRAENDLI (President):

133. Thank you, Mr. Director General. The Delegation of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

134. Thank you, Mr. President. We are happy to accept the explanation given by the Director General. If this explanation is recorded in the minutes, we shall be satisfied.

Mr. BRAENDLI (President):

135. Thank you, Sir. It will be incorporated in the minutes. The proposal is therefore considered to have been withdrawn.

136. Are there any other observations on Article 8? There are none, so Article 8 is adopted without amendment.

137. Article 9: "Entry Into Force." Are there any observations or proposals? The Delegation of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

138. I am not at all sure what the words "at least" mean in this case. If they were deleted would the text still not have the same meaning? I have tried to understand the note on page 12 but I must admit that I do not fully understand the meaning of these words in the text.

Mr. BRAENDLI (President):

139. Thank you for your observation. The Delegate of Liechtenstein has the floor.

Mr. de GERLICZY-BURIAN (Liechtenstein):

140. Mr. President, I should just like to say that I have the same difficulties as the Delegate of the Netherlands and should be most grateful if the wording here could be clarified. Thank you.

Mr. BRAENDLI (President):

141. Thank you, Sir. The Delegate of Belgium has the floor.

Mr. PEETERMANS (Belgium):

142. Mr. President, we should also like some clarification of the words "at least" since they are unusual and might make it difficult to understand the text properly.

Mr. BRAENDLI (President):

143. Thank you, Sir. As said in the note, it is a matter of making it clear that from each of the two groups of States there must be at least two deposits of instruments. It is not enough for there to be four ratifications from one group, or three from one and one from the other; there must be at least two from each group. It seems to me to be a question of drafting. Could we not leave it to the Drafting Committee to see whether the words "at least" are necessary? What we are aiming at is, in fact, quite clear. The Delegate of France has the floor.

Mrs. BALOUS (France):

144. I apologize for once more taking the floor to say that my Delegation takes the view that "at least two on each side" implies that there may be two or more. To delete the words "at least" would mean an automatic limitation to two. Here again it is therefore not a purely formal question but one of substance on which we shall obviously have to take a decision. Is it not, however, unwise to leave this task to the Drafting Committee? Thank you, Mr. President.

Mr. BRAENDLI (President):

145. Thank you, Madam. I should have thought that this kind of provision governing entry into force always stipulated the minimum number of ratifications or accessions. In my view, it is quite clear that when a convention says that five ratifications are necessary and six are deposited at the same time the convention still enters into force since it is always a minimum that is laid down. What we need to know here is whether it is necessary to have the words "at least" to express the minimum since there are two groups concerned. The Delegate of Liechtenstein has the floor.

Mr. de GERLICZY-BURIAN (Liechtenstein):

146. Thank you, Mr. President. I am not going to try to decide whether this is a matter of substance or of drafting but it would seem to me that, if the purpose is to express what is said in the note on Article 9, the words "at least" could perhaps be brought forward a little, by saying, for instance: "... including at least the instruments of two States...and of two States..." Thank you, Mr. President.

Mr. BRAENDLI (President):

147. Thank you, Sir. Since one Delegation has expressed doubts as to whether it is only a drafting matter, I am wondering whether it would do any harm to maintain the words "at least" since they do in fact express a certain notion. What we want, in fact, is to bring back to the Union the States that are now outside it and wish to rejoin it. A clear-cut condition of the Protocol's entry into force is that there should be a minimum number of ratifications on either side, and that is what is meant by the words "at least," which show that there are these two groups of countries. That is why I feel there would be no harm in maintaining the words "at least." The Delegate of Belgium has the floor.

Mr. RAUX (Belgium):

148. After the explanation you have just given, and which will be recorded in the minutes, I think these words can be left in a text which after all has already been studied at length. I have no objections to leaving the text unaltered.

Mr. BRAENDLI (President):

149. Thank you, Sir. Does the Delegate of the Netherlands wish to maintain his proposal?

Mr. van WEEL (Netherlands):

150. My sole purpose in putting this question was to obtain clarity. If the Director General can assure us that ratification by two countries on each side is sufficient, I shall be satisfied. But I am not sure that it is altogether clear since "two" is less than "at least two."

Mr. BRAENDLI (President):

151. Thank you, Sir. The Director General has the floor.

Dr. BOGSCH (Director General of WIPO):

152. Basically, the result would be the same. I can guarantee that "two plus two" will be deemed sufficient, but I also agree with the Delegate of the Netherlands that "two" is less than "at least two." Since the term is not particularly elegant in the legal context, I should prefer to delete it. It had been included in the text up to now for psychological reasons but, perhaps, when a text is signed, this kind of consideration could be dispensed with since the result is the same. My preference would be slightly towards deleting the term, but that is of absolutely no practical consequence. Thank you.

Mr. BRAENDLI (President):

153. Thank you, Mr. Director General. The Delegate of the Federal Republic of Germany has the floor.

Mrs. STEUP (Federal Republic of Germany):

154. Thank you, Mr. President. We fully share the view of the Director General. We think both texts are the same in effect. However, we have a slight preference for deleting the words "at least" because we consider them to be unusual. The only text containing difficulties for us is the commentary, which expressly states that the words "at least" are necessary. With that statement we do not agree. Thank you.

Mr. BRAENDLI (President):

155. Thank you, Madam, but the commentary will not in fact form part of the Protocol. The Director General has the floor.

Dr. BOGSCH (Director General of WIPO):

156. For the verbatim minutes, I declare that I withdraw the note in the commentary on this point. I do not feel it to be necessary; on the contrary, I feel it is quite unnecessary. Thank you.

Mr. BRAENDLI (President):

157. Thank you, Mr. Director General. The note on this question in the commentary is therefore withdrawn. The Delegate of Switzerland has the floor.

Mr. KÄMPF (Switzerland):

158. Thank you, Mr. President. The Swiss Delegation would also prefer to delete the words "at least," particularly since they are unusual and because, if they do not appear in other similar texts, it might lead to conclusions that were not intended. That is why we would also prefer the words "at least" to be deleted. Thank you.

Mr. BRAENDLI (President):

159. Thank you, Sir. I therefore note that we have a Netherlands proposal to delete the words "at least" which is supported by other delegations. In the absence of a counterproposal, I shall put to the vote the proposal to delete the two references to "at least" in Article 9. Would delegations in favor of deletion please raise their cards? The proposal to delete "at least" twice is adopted unanimously. The Delegate of France has the floor.

Mrs. BALOUS (France):

160. Permit me to explain my vote since it has raised a smile among some of the delegates. I feel it important in a conference of plenipotentiaries finalizing long-term work that the consensus should in general be reached in all cases. That is why I did not wish to express in the vote my reservation, which was inspired by the concern that the substance of the Protocol should remain unchanged. Thank you, Mr. President.

Mr. BRAENDLI (President):

161. Thank you for explaining your vote.

162. Are there any other observations or proposals concerning Article 9? Since there are none, Article 9 is adopted with the amendment to paragraph (1) that we have just decided.

163. Article 10: "Denunciation." Are there any observations or proposals? There are none, so Article 10 is adopted.

164. Article 11: "Effect of Entry Into Force of the 1960 Act." Are there any observations or proposals? There are none, so Article 11 is adopted.

165. Article 12: "Signature, Languages, Depositary Functions." Are there any observations or proposals? There being none, Article 12 is adopted.

166. The final clause. Are there any observations? To be quite clear, I should like to put a question to Dr. Bogsch. Is the Appendix containing the provisions referred to in Articles 2 and 3 of the Protocol to be reproduced before the final clause, which means that the Protocol will be signed with the Appendix, or will the Appendix be an annex which is not itself signed? To my mind, this question has not been entirely settled. Could you give us your views on this matter?

Dr. BOGSCH (Director General of WIPO):

167. Mr. President, my proposal was that the Appendix should come before the words: "In witness whereof," that is to say, between Article 12 and the signatures. I do not think that it will change the situation much. I have already said that even without the Appendix these provisions are accepted. With an Appendix that is not signed, they are accepted a little more and, with an Appendix preceding the signature, even more so. But I am joking, because in my opinion the legal result is the same for all three forms.

Mr. BRAENDLI (President):

168. Thank you, Mr. Director General. I only asked the question because there are some countries which have already ratified these provisions and would therefore be ratifying them a second time since they are part of the Protocol. The Delegate of the Federal Republic of Germany has the floor.

Mrs. STEUP (Federal Republic of Germany):

169. Thank you, Mr. President. We do not see any legal difficulties in the proposal of the Director General, but we have a preference for having the Appendix after the signatures, because signatures should follow the treaty itself. Thank you.

Mr. BRAENDLI (President):

170. Thank you, Madam. The Delegate of Switzerland has the floor.

Mr. KÄMPF (Switzerland):

171. Thank you, Mr. President. When supporting the proposal of the Delegation of France I made a reservation on the wording which concerned precisely the question whether these texts should appear before or after the signatures. Our Delegation has a slight preference for putting them after the signatures and making a reference to the Appendix in Article 2. Thank you, Mr. President.

Mr. BRAENDLI (President):

172. Thank you, Sir. The Delegate of Liechtenstein has the floor.

Mr. de GERLICZY-BURIAN (Liechtenstein):

173. Thank you, Mr. President. Since my country is one of those which have ratified the 1960 Act and bearing in mind your remarks on this matter and the reservation I expressed in the same way as the Delegate of Switzerland, my Delegation would not simply have a slight preference but would have a fairly strong preference for placing the Appendix after the signatures and, possibly, with a reference in Article 2 as proposed by the Delegate of Switzerland. Thank you, Mr. President.

Mr. BRAENDLI (President):

174. Thank you, Sir. The Delegate of Belgium has the floor.

Mr. RAUX (Belgium):

175. Mr. President, I think we could propose a compromise. In Article 2, after "the 1960 Act," the phrase "attached in the Appendix" could be added.

Mr. BRAENDLI (President):

176. Thank you, Sir.

Mrs. BALOUS (France):

177. The phrase "attached in the Appendix" would be added between commas.

Mr. BRAENDLI (President):

178. Here in fact we are going back to Article 2, which has already been adopted, but it can be argued that this is a drafting matter. The Conference is agreed that there is no legal difference in having the Appendix before or after the final clause and that it is therefore a question of form, of presentation. A number of delegations spoke in favor of the second possibility, that is to say, adding the Appendix after the signatures. It would seem to me that one possible drafting solution could be to state already in Articles 2 and 3 that there would be an Appendix. This is a purely drafting matter which could be left to the Drafting Committee. The Delegate of Liechtenstein has the floor.

Mr. de GERLICZY-BURIAN (Liechtenstein):

179. Thank you, Mr. President. I should like to thank the Delegate of Belgium for his proposal. As it happens, I had intended to propose the same thing during the discussion of the French amendment but, in view of the fact that it was said at the time that the Drafting Committee would be given the task of finding the appropriate solution, I did not do so. I should be most happy, however, to endorse the Belgian proposal if either the Conference or the Drafting Committee were prepared to accept this possibility. Thank you, Mr. President.

Mr. BRAENDLI (President):

180. Thank you, Sir. The Delegate of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

181. Thank you, Mr. President. Our Delegation supports the Belgian proposal. I feel that it makes a good impression, that it provides a link between the Protocol itself and the Appendix. Thank you, Mr. President.

Mr. BRAENDLI (President):

182. Thank you, Sir. Are there any delegations which do not support the proposal to add to Articles 2 and 3, after the mention of the 1960 Act, a reference to the Appendix and to place the Appendix after the signatures? Is the Conference agreed? In that case, we do not need to put the question to the vote.

183. We have now therefore completed our discussions on the Protocol. Before we take the final vote on the Protocol, the Drafting Committee must meet and then submit its proposals to us, and it is also possible that there will be a second meeting of the Credentials Committee to clarify the situation for the final vote on the Protocol. In view of the fact that the Drafting Committee may meet this afternoon and that the Credentials Committee might also hold a meeting, I should now like to ask the Secretariat when the Drafting Committee's document could be ready to be submitted to us for the final vote.

Dr. BOGSCH (Director General of WIPO):

184. Mr. President, we thought that the Drafting Committee might meet this afternoon and the Conference tomorrow morning, and that the signing would take place immediately afterwards. In that way we could finish tomorrow morning; otherwise, we should have to finish tomorrow afternoon. It is just as you like.

Mrs. BALOUS (France):

185. We should appreciate being able to complete our work tomorrow morning.

Dr. BOGSCH (Director General of WIPO):

186. That would be quite possible, as I said, Mr. President. The Drafting Committee would meet this afternoon and the Conference tomorrow morning, at 11 a.m., followed by the signing at 11.15.

Mr. BRAENDLI (President):

187. Thank you, Mr. Director General. The Delegate of the Federal Republic of Germany has the floor.

Mrs. STEUP (Federal Republic of Germany):

188. Thank you, Mr. President. I have a question for the Secretariat. Is it possible to start tomorrow morning at 10 o'clock, so that we can have more time before the lunch break? If we could start at 10, we would be very grateful. Thank you.

Dr. BOGSCH (Director General of WIPO):

189. Yes, of course, we could meet at 10.

190. Mr. President, the credentials of the Delegation of Spain have just arrived.

Mr. BRAENDLI (President):

191. To enable the Credentials Committee to take its decision, I hereby suspend the meeting.

[Suspension]

192. I now reopen the meeting. May I invite the Chairman of the Credentials Committee to present his report?

Mr. RAUX (Belgium):

193. Thank you, Mr. President. I confirm that we have received the necessary documents to take the participation of Spain into consideration and I therefore lift the reservation made previously; Spain is admitted in the same capacity as the other delegations.

Mr. BRAENDLI (President):

194. Thank you. It now remains to fix the time of tomorrow's meeting for the adoption of the Protocol. I propose 10 o'clock tomorrow morning. I also propose that the Drafting Committee meet at 4.30 this afternoon. Since everyone agrees, I hereby adjourn the meeting.

SECOND MEETING

Friday, August 29, 1975

Mr. BRAENDLI (President):

195. I declare today's discussions open. First I should like to thank the Secretariat for having presented us in such a short time with the documents that are necessary for the continuation and conclusion of our discussions today. If we follow the agenda, we come to item 9, which is the consideration of the report of the Credentials Committee. This report appears in document HA/CP/9, which has just been distributed. Are there any observations on the report? There are none, so I declare the report to be unanimously adopted.

196. We now go on to item 10 of the agenda, which is the consideration and adoption of the Protocol on the basis of the text presented by the Drafting Committee. This text appears in document HA/CP/10. The Drafting Committee met yesterday afternoon under the chairmanship of Mrs. Steup, the Delegate of the Federal Republic of Germany, so I ask her to make a short oral report on the Drafting Committee's work.

Mrs. STEUP (Federal Republic of Germany):

197. Thank you, Mr. President. Ladies and Gentlemen, the Drafting Committee had a very easy task. First, the Conference did not adopt many changes, and secondly the Secretariat had already kindly prepared a revised text, which greatly facilitated the debates in the Drafting Committee. I think it is only necessary to mention two main points where the draft you had before you yesterday and the new draft differ. The first change relates to Articles 2 and 3. You will remember the debates we had yesterday on whether one should mention the Appendix in the Protocol itself or not. The Drafting Committee decided that the text would be clearer with a reference to the Appendix, mentioning it twice: once in Article 2, paragraph (1), and once in Article 3. The Drafting Committee thought that it was not necessary to mention the Appendix also in the second paragraph of Article 2, since the first paragraph already contains a reference to the Appendix which seems sufficient for the whole Article. The second main point, Ladies and Gentlemen, concerns the Appendix. You will find that a heading has been added to the Appendix. The Committee was of the opinion that it would be clearer to indicate what the Appendix contains. Therefore it decided to add the title "Excerpts from the 1960 Act," and a reference to the Articles in which the Appendix is mentioned in the Protocol itself. Ladies and Gentlemen, my attention was drawn by the Secretariat to one point in the French text; in the French version of the heading, there is a slight mistake: "Article 21" is wrong; it should read "Article 2, paragraph (1)." This mistake will be corrected; the English text is correct. I think those are the two main points on which the Committee changed the draft. All the other questions had already been decided by the Conference itself and the Drafting Committee only followed the instructions given to it by the Conference. Thank you, Mr. President.

Mr. BRAENDLI (President):

198. Thank you, Madam, for your report on the work of the Drafting Committee. I now open the discussions on this report. Are there any observations on the text as modified by the Drafting Committee? The slight error on page 17 of the French text of the document, relating to the reference to Article 2(1), will of course be corrected and the page will be replaced. There are no observations, so I declare the corrections made by the Drafting Committee to be approved by the Conference.

199. We now come to the adoption of the Protocol as a whole, and I refer here to Rules 32 and 33 of the Rules of Procedure. Under Rule 32, each Member Delegation has the right to vote, and the final adoption of the Protocol, according to Rule 33(1), requires that no Member Delegation vote against its adoption. I now put the Protocol to the vote, and ask those Member Delegations that wish to adopt the Protocol to raise their cards. I see seven votes for adoption and I therefore note that the Protocol is adopted unanimously. The Delegate of Belgium has the floor.

Mr. RAUX (Belgium):

200. Mr. President, on behalf of the Benelux countries, on behalf of Belgium, the Netherlands and Luxembourg, as well as the Benelux Office, which is also present, I should like to thank you for your chairmanship, and also the members of this assembly for allowing us to rejoin the Union that we left under the circumstances you are aware of. I should like also to extend my thanks to the Director General of WIPO and his staff, who have contributed largely to facilitating the signature of this Protocol. Thank you, Mr. President.

Mr. BRAENDLI (President):

201. Thank you, Sir. I should like to raise just one more point that we ought to deal with. I refer to Rule 49 of the Rules of Procedure, which says that, if a Final Act is adopted, it shall be open for signature by any Member Delegation. So far no Delegation has proposed that there be a Final Act. Does any Delegation wish to make such a proposal? There being none, no Final Act will be drawn up.

202. In that case, Ladies and Gentlemen, Mr. Director General and the members of your staff, and those behind the glass panels who are so very dear to us and without whom we would not be able to understand each other, it remains for me not only to thank you for your very valuable collaboration in such a short Conference, but also to congratulate you for having, in the small amount of time available to us--or perhaps even because there was so little time--achieved the aim that we set ourselves at the beginning of the Conference. As the Delegate of Belgium has just said, the Protocol is a very important instrument for Belgium and the Netherlands, which are now able to restore the relations with the Union they still had only last year; but it is also important for the countries at present party to the Hague Agreement to have back inside the Union the countries that left it early this year. At the same time, we sincerely hope that the Protocol will be a turning point that will enable the Union to develop along modern lines such as those proposed in the provisions of the 1960 Act; indeed, I think this possibility exists already, with the drawing up of the Regulations, which will have to be adapted to the new situation created by the Protocol. I think, Ladies and Gentlemen, we can say that we have reached a milestone, and, if we can now draw into the Union countries that have never yet been members--apart from Luxembourg, of course, which is a member of the Benelux--we shall have even more cause for satisfaction.

203. Before closing the discussions, I give the floor to the Director General, so that he may tell us what the procedure will be for the signature of the Protocol; as far as timing is concerned, I propose that the signing begin at 11 a.m. The Director General has the floor.

Dr. BOGSCH (Director General of WIPO):

204. Mr. President, the signing can begin immediately, if you wish; everything is ready in the Salon français, which is at your disposal. The Swiss Delegation, the Swiss Government and Mr. Braendli, our President, are offering a glass of wine in honor of the occasion, for which we thank them very much. Allow me to say, Mr. President, that the merit of having achieved this task so quickly is due largely to you, as the painstaking preparation of the Protocol took place at two preparatory meetings of a Committee of Experts over which you yourself presided. On behalf of the Secretariat, I thank you most particularly. Thank you, Mr. President.

Mr. BRAENDLI (President):

205. Thank you, Mr. Director General. I am very touched by your thanks. There now remains only item 11 of the agenda, which is the closing of the Conference by its President. Ladies and Gentlemen, I declare the Conference closed.

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FRANCE

Head of Delegation

Mrs. S. BALOUS, First Secretary, Permanent Mission, Geneva

GERMANY (FEDERAL REPUBLIC OF)

Head of Delegation

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Vice-Presidents:	Mr. E. van WEEL (Netherlands)
	Mr. J. DELICADO MONTERO-RIOS (Spain)
Secretary General:	Mr. L. BAEUMER (WIPO)
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Credentials Committee

Members: Belgium, France, Germany (Federal Republic of), Liechtenstein, Spain

Chairman:	Mr. R. RAUX (Belgium)
Vice-Chairman:	Count A.F. de GERLICZY-BURIAN (Liechtenstein)
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Drafting Committee

Members: Belgium, France, Germany (Federal Republic of), Netherlands, Switzerland

Chairman:	Mrs. E. STEUP (Germany (Federal Republic of))
Vice-Chairman:	Mrs. S. BALOUS (France)
Secretary:	Mr. F. CURCHOD (WIPO)

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INTERNATIONAL BUREAU

Transcription of Speeches Made During the Meetings of the Conference of Plenipotentiaries

Editor's Note: This document has not been reproduced here since it contains the minutes of the meetings of the Conference of Plenipotentiaries which are reproduced, with a few amendments proposed by the participants, on pages 159 to 181 above.

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