

**VERBATIM
and
SUMMARY MINUTES**

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Assistant Secretary General for Administration: Mr. William T. KEOUGH
 (U.S. Department of State)

FIRST MEETING

Monday, May 25, 1970, morning

Mr. BODENHAUSEN (Director of BIRPI):

1.1 Ladies and Gentlemen I declare the Washington Diplomatic Conference on the Patent Cooperation Treaty open and call it to order.

1.2 The Conference is honored by the presence of the Secretary, Mr. Stans, who will now address the Conference.

Mr. Stans (Secretary of Commerce of the United States of America):

2.1 Professor Bodenhausen and distinguished Gentlemen, on behalf of President Nixon I am honored to welcome you here to the United States of America for the Diplomatic Conference. We are pleased that you are holding this Conference on the Patent Cooperation Treaty in Washington, because not since May 1911 has the United States been host to a conference of the members of the International Union created by the Convention of Paris in 1883.

2.2 Looking back on the records of the 1911 meeting, I note that they contain a reference to an apology for the extremely warm weather in Washington. I suspect that history may repeat itself in the record of this Conference. The Weather Bureau, however, is part of the Department of Commerce in the United States, so I have instructed them to do their best to give you a perfect time while you are here. And if that does not work, then I remind you that since 1911 we have had the development of air conditioning, which came about since that time

because of the incentives that the patent system gives for innovation and invention.

2.3 Members of the International Union justly take pride in the distinguished record of the Paris Convention. Its members have been successful through the years in transcending political differences in order to establish and maintain relationships within the framework of the Union. Not only has the Paris Union continued, without interruption, for almost a century, but it is one of the oldest multilateral treaties in force today. Moreover, it has grown in size until there are now nearly 80 nation-members. Significant evidence of its strength is the fact that representatives of so many Union countries are assembled here this morning, more than twice as many as the member States which attended the Washington Conference of 1911. In addition, there are observer delegations from many Governments, intergovernmental organizations and non-governmental organizations here today, which indicates the international importance of this Conference.

2.4 So, with all that as background, again I repeat on behalf of President Nixon and the Government of the United States, we welcome all of you here.

2.5 A major reason for the success of the Paris Union is that it was founded on the principle of assuring the same treatment for all applicants both foreign and domestic. This principle of national treatment has made it possible for member countries to adhere to the Union despite the fact that there are national variations in the availability, the duration and the kinds of protection granted. If every State adhering to the Union were forced to conform its

* In the alphabetical order of the names of the States.

national law to that of an international standard, we might very well wonder how many of them would be able to accede to the Treaty today. The fact that you are determined that the Patent Cooperation Treaty should follow this principle of the Paris Convention, leaving each State with control over its own substantive patent law, is a major indication that the Treaty will enjoy a similar success.

2.6 Now, at the time of the 1911 Conference in Washington, the United States Patent Office was under the jurisdiction of the Department of the Interior; today the Patent Office is an agency of major importance in the Department of Commerce, which we think is a very fitting place for it. The Department of Commerce has broad international interests as well as domestic ones, and in a sense the transfer of responsibility for the Patent Office to us highlights two important aspects of our patent system.

2.7 First, it is no longer possible to view the patent system of any nation solely as an internal matter. In 1969, for example, our Patent Office received 99,000 applications for patents. Of these, about 29,000 were filed by inventors residing outside the United States. Between 1959 and 1969, filings by foreign applicants doubled. These foreign applications contain valuable disclosures of advanced technology, which, when it is made available in this country, enrich our own store of scientific and technical information. For this reason we welcome the increased tendency of inventors from all nations to seek patents in the United States.

2.8 The statistics for most other countries tell the same story. In many cases, the number of patent applications received from other nations exceeds the number that are filed domestically. This is because inventors the world over are no longer satisfied with securing protection for inventions only in their own countries. Increasingly, the inventor seeks protection commensurate with the market potential of his invention; and this means filing patent applications in three or four and sometimes in many more countries. The result of this multinational filing phenomenon is that much of the administrative work performed in the Patent Office of one country is duplicated throughout the world. Each national patent system must process applications independently. So there is a serious question whether some existing national systems can endure this constantly increasing volume of patent applications. Today the situation has become so critical that we no longer can afford to rely on purely national measures to combat the problems.

2.9 Recognizing the necessity of international cooperation to combat this truly international problem, the United States, in 1966, proposed that the Executive Committee of the Paris Union request a study of the problem by the United International Bureaux for the Protection of Intellectual Property, with a view to reducing the duplication of efforts for national Patent Offices.

2.10 As I mentioned earlier, there is a second significant reason in the transfer of the United States Patent Office to the Department of Commerce. After all, it is the businessman, the entrepreneur, who makes

the results of research available to the public. Any patent systems, national or international, must be judged by how well it responds to the legitimate needs of the business community. In the United States, as an integral part of the Department of Commerce, the Patent Office performs its functions within the framework of the Department's broad mission, which is to serve the domestic and international needs of the American enterprise system.

2.11 In the Patent Cooperation Treaty before you we see advantages for inventors, for businessmen and for Patent Offices. We hope this Treaty will serve to reduce duplication of effort on the part of both applicants and Patent Offices, thereby making it easier to secure the protections needed in the commercial markets where inventions are valuable and will be utilized.

2.12 Because the Treaty will facilitate worldwide availability of protection for intellectual property, it will also contribute significantly to further development of international trade, which our Government is pursuing diligently, and which, of course, many of your Governments are as well.

2.13 Drafters of the original Paris Convention wisely allowed for the possibility of special agreements, such as the Patent Cooperation Treaty proposal, as well as other arrangements recently proposed in Europe, which we are following with great interest.

2.14 Participating Governments need the flexibility they have under this Convention to cooperate in meeting new challenges as they arise, limited, of course, by the principle of national treatment, which, as I have said earlier, lies at the very foundation of the Convention.

2.15 The third version of the proposed Treaty that you have before you represents a magnificent job in producing a negotiating draft which responds to the wishes of many States and which meets the legitimate desires of those representing the patent applicants of the world. A few significant issues remain to be resolved at this Conference, and I am confident that they can be resolved. Although your task will not be an easy one, the ultimate goals are worthy of your efforts.

2.16 So, Ladies and Gentlemen, Members, Delegates to the Washington Diplomatic Conference, I extend my sincere wishes for the successful completion of your work and repeat again the greetings and good wishes of President Nixon as well for your efforts. And in doing so may I express the hope that you will carry back to your own countries a memory of this occasion which will convey in a small way the warm feelings of the United States towards the Governments and the nations which you represent. My best wishes for success in this meeting. Thank you very much.

Mr. BODENHAUSEN (Director of BIRPI):

3.1 Your Excellencies, Ladies and Gentlemen, the Diplomatic Conference inaugurated in this session has been convened for the purpose of negotiating and concluding a Patent Cooperation Treaty and

Regulations relating to that Treaty. At the opening of this Conference, it is only natural that one should wish to look back, for a moment, on the past before looking forward to the future.

3.2 As far as the past is concerned, it is interesting to recall that this is not the first diplomatic conference on industrial property to meet in Washington. In 1911, an important revision of the basic Treaty, the Paris Convention for the Protection of Industrial Property, took place here and in 1929 Washington was the meeting place for the Pan-American Trade Mark Conference, which established a General Inter-American Convention for Trade Mark and Commercial Protection, as well as a Protocol on the Inter-American Registration of Trade Marks. However, these Conferences were held in a context and with a membership and purpose which differed widely from those of the present Conference. It can therefore truly be said that this Conference is in many respects a "first," particularly in that for the first time it will try to achieve, on a worldwide scale, substantial international collaboration in one of the most important fields of industrial property, namely, that of applications for patents or inventors' certificates, the search for their novelty, and possibly their examination as to other criteria of patentability or grant.

3.3 Looking back to the more recent past, we note that the preparations for this Conference started three and a half years ago, after the unanimous adoption by the Executive Committee of the Paris Union for the Protection of Industrial Property, on September 29, 1966, of a recommendation to that effect, proposed by the Delegation of the United States of America. That recommendation requested the Director of BIRPI to "undertake urgently a study on solutions tending to reduce the duplication of effort both for applicants and national Patent Offices, in consultation with outside experts to be invited by him and giving due regard to the efforts of other international organizations and groups of States to solve similar problems, with a view to making specific recommendations for further action, including the conclusion of special agreements within the framework of the Paris Union."

3.4 This was certainly a clear mandate, but little did we know, at that time, exactly where the requested studies would lead us, or even what would be the most appropriate procedure for carrying them out and what efforts would be necessary. We believe we are somewhat wiser now and we are confident that, after three and a half years of preparatory work, we have formulated proposals with a view – as the recommendation referred to has indicated – to the conclusion of a special agreement within the framework of the Paris Union, and that these proposals can face the scrutiny of this Conference with a reasonable chance of success.

3.5 However, we certainly did not arrive at this basis for final discussion solely by our own work – particularly that of our PCT team under the dynamic and inspiring leadership of Deputy Director Bogisch. As already suggested in the recommendation referred

to earlier, we have turned for advice to many outside our Organization. During the years of preparatory work, no fewer than five intergovernmental Committees of Experts of different composition, to two of which all member States of the Paris Union were invited, have met in Geneva in order to express their opinions on drafts and make counterproposals and suggestions. Between these meetings, we have worked in frequent contact with consultants both from those States which seemed to have the greatest interest in the preparation of the Treaty and from the International Patent Institute in The Hague, as well as with delegates of numerous international and even national organizations of inventors, private industry and the patent profession. Altogether, thousands of man/hours must have been spent on the subject by experts who were already entrusted with many other important duties but who, nevertheless, gave us unhesitatingly the full benefit of their knowledge and experience. We are deeply grateful for this guidance and assistance without which our work could not have reached the stage at which it is presented now.

3.6 However, all these efforts must still be crowned by final success, and this would not be possible if the United States Government had not followed up its original initiative by an invitation to hold this negotiating Conference here, in this magnificent capital and in the extremely suitable premises of the State Department. It gives me great pleasure to express, first in the name of BIRPI and also, I am sure, on behalf of all participants in this Conference, our heartfelt thanks to the United States Government for its initiative, generosity and hospitality.

3.7 But we must also look to the future. All present here will probably share my sincere hope that from this Conference a Patent Cooperation Treaty will emerge that will be signed, and later ratified or acceded to, by a great number of States, including those where patents or inventors' certificates play the greatest role. But even then the future of the Treaty will not yet be secure because a vast program of implementation must still be carried out with a view to achieving, among other things, the necessary technical cooperation between the envisaged International Searching Authorities. Moreover, in order to make the Treaty a living reality, inventors and industrial enterprises will have to use it.

3.8 The advantages of the Treaty for national Patent Offices on the one hand, and for inventors and industrial enterprises on the other hand, and particularly also for developing countries, have been spelled out so many times that I shall not refer to them here again. But some hesitation may still be felt and some national administrations, or even delegations present here, may be tempted to give great weight to concepts and practices to which they have been accustomed in the past and be reluctant to change them in the interests of international cooperation.

3.9 It may therefore be permissible to emphasize that the general salutary effect of a Patent Cooperation Treaty, as envisaged, may be much greater than that of simply facilitating the international filing of patent

applications and their processing by national Offices. Even now, it can already be said that the plans for the establishment of a Patent Cooperation Treaty have triggered, as a side effect, a revival of interest in the creation of a European patent, a device which will probably be important not only for the participating countries of Western Europe but also for others. Furthermore, the close collaboration between national Patent Offices envisaged in the Patent Cooperation Treaty will undoubtedly lead to further and continuous harmonization of national concepts and procedures, and even of law, in the field of patents; this is clearly in the interests of all concerned. It may very well be that in this way we will finally reach a stage where a much closer collaboration between States or groups of States, and even the granting of patents for wide areas of the world, will appear feasible and will ultimately be achieved.

3.10 We may therefore hope that, when in the future people look back to this Conference of Washington, they will find in it a modest but courageous first step toward far-reaching international harmonization of patent law and practice, and that this Conference will be marked as a historical milestone in the development of international protection of industrial property. That is why so much depends on the success of this Conference, for which I offer my warmest good wishes.

3.11 The Conference is now invited to elect its President. Are there any proposals? The Delegation of France has the floor.

Mr. SAVIGNON (France):

4. Mr. Chairman, the Delegation of France has the honor to propose as President of the Conference Mr. Braderman, Co-Chairman of the Delegation of the United States of America. Thank you, Mr. Chairman.

Mr. BODENHAUSEN (Director of BIRPI):

5. Does any other delegation wish to speak on this subject? The Delegation of the Soviet Union has the floor.

Mr. ARTEMIEV (Soviet Union):

6. Mr. Chairman, Ladies and Gentlemen, the Delegation of the Soviet Union seconds the proposal made by the distinguished French Delegate, Mr. Savignon, to elect Mr. Braderman President of the Washington Diplomatic Conference.

Mr. BODENHAUSEN (Director of BIRPI):

7. Does any other delegation wish to speak? The Delegation of Argentina has the floor.

Mr. VILLALBA (Argentina):

8. Our Delegation also supports the proposal of the Delegation of France.

Mr. BODENHAUSEN (Director of BIRPI):

9. Does any other delegation wish to speak? The Delegation of Japan has the floor.

Mr. OTANI (Japan):

10. Thank you, Mr. Chairman. We also support the proposal of the Delegation of France. Thank you, Mr. Chairman.

Mr. BODENHAUSEN (Director of BIRPI):

11. Thank you. The Delegation of the Philippines wishes to speak.

Mr. GARCIA (Philippines):

12. Thank you, Mr. Chairman. The Delegation of the Philippines warmly seconds the nomination of Mr. Braderman as Chairman. To us who know him, who recognize his clear, logical mind, his sense of fairness, his patience, his equanimity, we have no doubt at all that he will prove to be a skillful and able Chairman of this Conference. Thank you.

Mr. BODENHAUSEN (Director of BIRPI):

13. Thank you very much. I call upon the Delegation of Iran.

Mr. NARAGHI (Iran):

14. We also support the proposal of the Delegation of France.

Mr. BODENHAUSEN (Director of BIRPI):

15. The Delegation of Mexico wishes to speak.

Mr. PALENCIA (Mexico):

16. We also support the proposal to nominate Mr. Braderman.

Mr. BODENHAUSEN (Director of BIRPI):

17. Any other proposals? The Delegation of Algeria has the floor.

Mr. DAHMOUCHE (Algeria):

18. I'm sorry, Mr. Chairman, I do not intend to propose anyone else. I simply wanted to say that the Delegation of Algeria also supports the candidature of Mr. Braderman as President.

Mr. BODENHAUSEN (Director of BIRPI):

19.1 Thank you very much. I repeat the question: Are there any other proposals?

19.2 There do not seem to be any other proposals. The proposal by the Delegation of France to elect Mr. Braderman Chairman of this Conference has been supported by many other delegations. Are there any objections?

19.3 There are no objections. I declare Mr. Braderman elected President of this Conference. I congratulate him very warmly on his election and I invite him to take the Chair.

Mr. BRADERMAN (President of the Conference):

20.1 Ladies and Delegates, Ladies and Gentlemen, and Fellow Delegates and Lady Delegates who are also colleagues of ours; my Government is highly honored that you have elected me as Chairman of this Diplomatic Conference to negotiate a patent

cooperation treaty, and I am personally deeply appreciative of this honor.

20.2 The project now before us, which has come to be known as the Patent Cooperation Treaty, was conceived a long time ago, but while there were some soundings over the years – some public disclosure, as we would say – the initiative and drive that was required to carry the idea forward was lacking. In the meantime, the problems grew and the need for a solution became more and more apparent. It was in this setting that our present undertaking was begun with affirmative action by the Paris Union Executive Committee In September 1966. I do not believe anyone then was bold enough to try to predict where the road we had embarked on would lead or when we would arrive at the end of the road. It is now May 1970, some three and a half years later, and I am happy to observe that the goal has been defined and its attainment is in sight. We all know well the courage and imagination displayed by BIRPI under the dynamic leadership of Professor Bodenhausen and Dr. Bogsch, and their associates.

20.3 While initially only a few Paris Union member States contributed to this project, it was not long before some 40 Paris Union countries were actively participating in the development of the Patent Cooperation Treaty. In addition, the International Patent Institute at The Hague and numerous intergovernmental and non-governmental organizations became involved. Out of these deliberations has come the present draft treaty, which we are to consider at this Conference. I might add, parenthetically, that I have rarely seen in my country as much discussion and interest among concerned parties in any project as I have seen in this one. And I think that is all to the good.

20.4 We would probably all agree that the PCT does not meet all our needs nor does it satisfy everyone. There are those who believe we are going too far too fast; they would settle for the goal of an extension of the priority period or no change at all. Others believe that we are not going far enough; they would like to see a harmonization of laws and the establishment of a single international search center. Would that man had the creativity to devise procedures or institutions that would satisfy everyone! We need only look about us to know that such achievement in this field, as in others, is not yet within our grasp. All of us here from government, from industry, from the patent bar, independent inventors or patent agents, know that we must deal with the art of the possible. I believe it is important that we bear this in mind as we deliberate together.

20.5 It has been my pleasure to be part of this effort since its beginnings in 1966. Many of you here have been similarly involved. Others have added their knowledge and experience more recently, but no less importantly. In any event, I believe we can all take pride in what has been accomplished today. We know we are embarked on a pioneer project. I am sure that with the same spirit of goodwill that has characterized their earlier meetings we will accomplish the purpose of this Washington Conference, the successful

negotiation of the first worldwide treaty on patent cooperation; and I look forward to working with all of you in the weeks ahead.

20.6 And now, with your permission, we will move to item 4 on the draft agenda, which is contained in document PCT/DC/MISC/2 (MISC stands for miscellaneous);, which is the adoption of the agenda itself.

20.7 Are there any motions with respect to the question of the agenda? I call on the Delegate of the United Kingdom.

Mr. ARMITAGE (United Kingdom):

21. Mr. Chairman, I have pleasure in moving the adoption of this agenda.

Mr. BRADERMAN (President of the Conference):

22. Thank you, Sir. Is there a second? The Delegate of Hungary has the floor.

Mr. TASNÁDI (Hungary):

23. Mr. President, we agree with the Delegation of the United Kingdom and wish to second this proposal.

Mr. BRADERMAN (President of the Conference):

24. Thank you very much. The Delegate of Zambia wishes to speak.

Mr. AKPONOR (Zambia):

25. We support the proposal by the British Delegation.

Mr. BRADERMAN (President of the Conference):

26.1 Thank you kindly. If there are no other comments, then we will consider that the draft agenda is now the firm, fixed agenda for the Conference.

26.2 Before we move to the next item of the agenda, I would like to call your attention to PCT/DC/INF/1-A. You are going to be here a good long time and we want you to know what facilities are available, and that particular document, to which I just called your attention, indicates the services and facilities which are available in this building for your use. For those of you who wish to have lunch here, for example, there is a cafeteria; it is not as fancy as some of the restaurants we have about town, but it will permit you to do your work here and get your meals quite easily; the information bulletin spells out the hours, and so on. There are also automatic vending machines for those of you who would like a snack now and then; we have health services available, I hope no one will find need to use them but they are here in the building. The Delegates' Lounge, I think you all know, is across the hall from this conference room. And the document goes on to define the various facilities and arrangements with respect to mail and messages and things of this sort. One thing it does not do, I believe, is to call attention to the fact that we have two conference rooms that will seat as many as 20 or 30 people. In case any of you wish to caucus with your own delegation or groups of delegations those rooms are available for that purpose,

and they are on this side of the building. Just let the Secretariat know what your wishes are, so that they can reserve a time for you.

26.3 I would also like to call your attention to this little bulletin, the Calendar of Social Events. A great many people in my country wanted to see to it that your visit here was not only mentally stimulating – the mental stimulation, I hope, will come through our meetings here in this room and in the Committee sessions – but also to take care of your needs for a good many of the evenings. There are also special events for the ladies, and I hope that a good many of you men here have brought your wives with you so that they can participate in that program. There will also, of course, be other events that others will wish to have; in those cases where you wish to reserve a date, please see the Secretary General or the appropriate member of his staff.

26.4 If we may then move to the next item of the agenda, which deals with the adoption of the Rules of Procedure. The Rules of Procedure are in document PCT/DC/MISC/1. It was distributed, I think, along with the original invitation. It is dated 11 February, 1970, so that all the delegations have had a chance to review it. Draft Rules of Procedure are, as customary, proposed by the Host Government; they are contained in this document. The main features of the Rules are the following. It is proposed that there will be two Main Committees; Main Committee I would examine Chapters 1, 2 and 3 of the Draft Treaty and all the Draft Rules relating to those Chapters; Main Committee II would examine Chapters 4 and 5 of the Draft Treaty and all the Draft Rules relating to those Chapters. There would be, as usual, a Credentials Committee; and there would be three Drafting Committees: one for Main Committee I, one for Main Committee II, and one for coordinating the draft texts established by the former two Drafting Committees. This will also be called the General Drafting Committee. There will also be a Steering Committee, mainly for the purpose of coordinating the work program of the various committees, for setting the time at which they will meet, etc. It would consist of the President of the Conference, the Chairmen of the two Main Committees, the Credentials Committee and the General Drafting Committee.

26.5 Otherwise, I think the proposed Rules are routine. They deal with credentials, and the credentials, as you may remember from the Rules proposed, it was hoped could be deposited today, if you have not already done so, with the Secretary General. They relate to Officers, the Secretariat, the conduct of business, voting, languages, and the other usual topics. They are very similar to the Rules of the two most recent Diplomatic Conferences, which were sponsored by BIRPI, namely, the Stockholm Conference of 1967 and the Locarno Conference in 1968. They proved to be highly satisfactory in those Conferences and there is no reason to believe they will not be the same in this meeting. Consequently, it is hoped that the proposed Rules will meet with the unanimous approval of the Plenary and that they will require little or no discussion.

26.6 So much for the Rules of Procedure. Since I see no objections, the Rules of Procedure may be considered as adopted. Thank you very much.

26.7 The next agenda item relates to the election of the Officers of the Conference, other than myself; it relates to the Vice-Presidents of the Conference; the members of the Credentials Committee, the General Drafting Committee and the two Drafting Committees; the Chairmen and the Vice-Chairmen of the two Main Committees and of each of the four other Committees referred to in the preceding item.

26.8 I have had a proposal which, in accordance with Rule 43 of the Rules of Procedure, I was to lay before the Conference for your approval, your consideration. The, Rule itself provides that the President of the Conference may propose a list of candidates for all positions to which election is to be voted upon by the Plenary. And so, after consultation with the heads of delegations or members of delegations of everyone I could reach thus far, and with the Director of BIRPI, we have a list of candidates to propose. This document will be circulated. I think it might be useful. But why do I not read the proposals to all of you.

26.9 According to the Rules, there will be 16 Vice-Presidents of the Conference, and so I propose – as I say, after consultation – the following 16 Vice-Presidents of the Conference:

Argentina	Italy
Australia	Japan
Brazil	Philippines
Cameroon	Soviet Union
Ceylon	Spain
France	Sweden
Federal Republic of Germany	United Arab Republic
Hungary	United Kingdom

26.10 Why do I not, while the document is being distributed, read the remainder of the Officers which we are proposing. In Main Committee I: (which will meet in this room, incidentally, as we do not expect there will be simultaneous meetings of the Plenary and Main Committee I):

Chairman: United States of America
Vice-Chairman: Federal Republic of Germany
Second Vice-Chairman: Indonesia

It should be made clear that Main Committee I is the important substantive committee of this Conference and all member delegations are members and participants in Main Committee I. I am just speaking on the question of Officers in that Committee.

26.11 Now, the Officers of Main Committee II – and here again all delegations are members of Main Committee II. We propose as

Chairman: Netherlands
Vice-Chairmen: Yugoslavia and Zambia

26.12 For the Credentials Committee we would propose as

Chairman: Japan
Vice-Chairmen: Austria and Malagasy
Republic

The Credentials Committee is to have 12 members and the other 9 members would be:

Denmark
Dominican Republic
Iran
Ireland
Israel
Poland
Portugal
Uganda
United States of America

26.13 Then, for the General Drafting Committee we propose as

Chairman: Soviet Union
Vice-Chairmen: Canada and Switzerland

For the additional members of the Committee we propose:

France
Federal Republic of Germany
Italy
Japan
Monaco
Sweden
United Kingdom
United States of America

26.14 Then, for the two Drafting Committees for each of our Main Committees. For Main Committee I:

Chairman: United Kingdom
Vice-Chairmen: Australia and Belgium

And then, again according to the Rules, there are to be 7 additional members and we would propose:

Finland
France
Federal Republic of Germany
Japan
Romania
Soviet Union
United States of America

26.15 Finally, the Drafting Committee of Main Committee II. We propose as

Chairman: France
Vice-Chairmen: Algeria and Nigeria

And the seven further members:

Federal Republic of Germany
Japan
Norway
Soviet Union
United Kingdom
United States of America
Yugoslavia

26.16 These, Ladies and Gentlemen, are the proposals we wish to present to you for Officers of this Conference. I think we might take a moment or two while the document is distributed so that you may have a chance to look at it.

26.17 Well, Ladies and Gentlemen, now you had a chance to look at the proposals before you; is there a second? The Delegate of Germany.

Mr HAERTEL (Germany (Federal Republic)):

27. Mr. President, the Delegation of the Federal Republic of Germany wishes to express its agreement with the proposals you have just made. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

28. Thank you, Sir. The Delegate of Indonesia wishes to speak.

Mr. IBRAHIM (Indonesia):

29. We feel very honored that Indonesia has been proposed as one of the Officers of Main Committee I, but since Indonesia has only one delegate, we would like to be excused from being nominated as Officer of Main Committee I. Thank you.

Mr. BRADERMAN (President of the Conference):

30.1 May I, before you decline, indicate that as it is the United States which, as proposed, supplies the Chairman of Main Committee I in the person of the co-Chairman of my Delegation, Mr. Schuyler, he expects to be here for most of the meetings of Main Committee I with perhaps a rare exception, so that we would like you to accept the honor because you will still be free to do the other tasks which you have before you. Would that be all right? Thank you.

30.2 The Delegate of Brazil wishes to speak.

Mr. NEVES (Brazil):

31. Mr. President, we agree in general with your proposal. We think that it represents a fairly good distribution of different areas in the different Committees, but we wish to indicate that in the General Drafting Committee we would like to see some representative of the so-called under-developed world. We see here a very competent group of countries, of course, but we feel that in this very fundamental Committee at least one representative of the group of under-developed countries should sit. We do have special interests that we want to see clearly stated in the final drafts, and in that sense I would like to make a suggestion that this Committee should be enlarged, so as to encompass a member of that group of countries. Thank you, Sir.

Mr. BRADERMAN (President of the Conference):

32. Thank you. I know that you did not mean to suggest that the Delegation of Brazil integrate this Committee, but may I ask if you would be willing to have your name added to the list?

Mr. NEVES (Brazil):

33. Of course, we would be very honored and ready to work with the colleagues already indicated.

Mr. BRADERMAN (President of the Conference):

34.1 Thank you. Without objection, then, we will add Brazil to the list of the General Drafting Committee.

34.2 Are there any other comments? Is there any other delegation that would like to be listed as a member of the Committee? I should remind the group

that any delegation is privileged to participate in the meetings of these Committees. We tried to suggest a small group because a small group can work better than a larger group, but any delegation feeling it has an interest in a particular item should, by all means, participate in the work of any of these Committees. Are there any other delegations that would wish to be named to sit on them – aside from the general knowledge that you can if you wish.

34.3 Well then, the proposal has been made and has been seconded by Germany, and, if there are no objections, we will consider the proposals for elections as adopted. Thank you all very much.

34.4 I would like to make one comment. In discussing this, as I had said, with a number of delegations, the German Delegation indicated, with respect to one of the vice-chairmanships of Main Committee I, that it had a problem, not the same problem as the Delegation of Indonesia, but another problem: that the Head of the Delegation would probably designate Dr. Haertel to sit as Vice-Chairman. Dr. Haertel is an expert in this field, as you know, but he feels more comfortable in dealing with technical subjects in his native tongue. So, on that rare occasion when he might take the Chair from Mr. Schuyler I trust that there is no objection if he presides and speaks German. Is there any problem with that? There will, of course, be simultaneous translation into all of the languages of the Conference. Thank you very much.

34.5 Dr. Bogsch has a statement to make, an observation.

Mr. BOGSCH (Secretary General of the Conference):

35. Mr. Chairman, as Secretary General of this Conference, I have received a letter from the Delegation of Hungary protesting against the non-invitation of the German Democratic Republic to this Conference, and requesting that this protest be included in the Conference documents of this meeting. As Secretary General, I propose to do so and if any other country wishes to associate itself with this declaration, it can do so by simply seeking me out after the meeting and the minutes will reflect their viewpoint.*

Mr. BRADERMAN (President of the Conference):

36.1 And I also, as President of this Conference, wish to assure the Delegation of Hungary and any other delegations who wish to indicate their views on this subject that it will be fully recorded in the minutes of the meeting.

36.2 May we then move to item 7 of the agenda, which is the introduction of the Draft Patent Cooperation Treaty by the Secretary General of the Conference, Dr. Bogsch.

Mr. BOGSCH (Secretary General of the Conference):

37. Mr. Chairman, Ladies and Gentlemen, I have the honor to present to the Diplomatic Conference the Draft of the Patent Cooperation Treaty and Regulations under that Treaty. These Drafts were first published in July of last year, as BIRPI documents PCT/DC/4 and 5. Exactly the same texts were republished in documents PCT/DC/11 and 12, and they have been distributed to you in the hard-cover folders today. In addition to reproducing the July 1969 Drafts, documents PCT/DC/11 and 12 also contain possible alternative suggestions. Most of these suggestions are based on the work of the Study Group on the Regulations, which met two months ago in Geneva. Some of the possible alternative suggestions have other sources, as explained in the introduction of documents PCT/DC/11 and 12. The basis of the work of this Conference remains the 1969 Draft. Whether you prefer to take the alternative suggestions as a basis is a matter which I suppose will be decided in each case by the competent Main Committee. I shall not go into any details now, but when each Article and Rule is called up for discussion in Main Committee I or in Main Committee II, two Committees of which all countries are members and to the discussions of which all observers are admitted, the Secretaries of those Committees – Mr. Pfanner for Committee I and Mr. Voyame for Main Committee II, respectively – or I myself will be at your disposal to give any explanations the Committees may wish to have. That is all, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

38.1 Thank you very much. It is proposed that the Steering Committee will decide on the hours that we would meet and so on, but in the meantime I would like to make an initial suggestion so that you can know what your plans might be.

38.2 The next item of the agenda, as you will see, relates to introductory and general observations by Member Delegations. It was our feeling, as the Host Government, that perhaps this morning we might adjourn a little early so that those of you who arrived late or have not had a chance to really get together with your Delegations might have a little more time to do so. What we would do is adjourn shortly for lunch and then reconvene the Plenary this afternoon, when we would hear introductory and general observations by Member Delegations, as listed in item 8. And when we had concluded with item 8 we would then end the initial Plenary Session and start our Committee meetings tomorrow, on the assumption that we finished with all of the general statements that countries wish to make today.

38.3 I note that general observations and introductory statements are invited by Member Delegations. The Observer Organizations and the Observer Delegations will be welcome to make any statements they wish, in writing or orally, in line with the rulings of the Chairmen of those Committees in the Committees, but all Member Delegations are invited to make any statements which they wish to make when we resume this afternoon.

* The Delegations of Bulgaria, Soviet Union, Yugoslavia, People's Republic of the Congo, and Poland indicated the wish to be associated with the Delegation of Hungary in their declaration.

38.4 I would propose that our general working hours, subject to approval by the Steering Committee, be from 9:00 in the morning until 12:30, and from 2:00 in the afternoon to 5:30. This will give delegations an hour and a half for lunch, which should be adequate here. You know, unlike the tradition in other countries (I am not so sure we are right); we do not take as much time for lunch; people are accustomed to serving much more rapidly than we do in other countries. I sometimes think this is one of the ways in which the United States is less developed and we ought to learn from other countries how to enjoy the luncheon period. But that would also permit us to adjourn in time to take part in the other functions which have been arranged. The one exception – assuming again that we finish this afternoon – will be the convening of Committee I tomorrow morning and we would propose that that would be convened at 10 o'clock, which would be the one deviation from the 9 o'clock beginning.

38.5 It has also been proposed – and again subject to the Steering Committee, but I throw this out so that you can be thinking about it – that Committee II would not meet this week. This is suggested for several reasons. One, some of the delegations are small and to the extent possible we want to avoid having meetings simultaneously. There will have to be some, of course, and particularly when we get into the drafting, but at least we want to start on a note where everyone who wishes can be sitting and meeting and participating in the sessions as they develop. A second reason would be that many of the things that will be done in Committee II will depend upon actions and decisions taken in Committee I. So, we thought after a week we would have the flavor of discussions in Committee I and this would facilitate the work of Committee II. The third is that Committee II does not have as many Articles or as many Rules to take up and the expectation is that perhaps one week of meetings of Committee II could probably resolve those issues.

38.6 So, this would be my general proposal with respect to our meeting times, but these will be confirmed by the decisions that are taken by the Steering Committee.

38.7 Now, before we break for luncheon, I would like to share with you an action which gives me special pleasure – and I am taking advantage of you being here, in one sense, but I know you are all interested in any event. As many of you know, I served as Chairman of the United States Delegation at the Stockholm Intellectual Property Conference in 1967, and on behalf of my Government I signed the World Intellectual Property Convention and the Stockholm revisions of the Paris Convention, subject to our ratification procedures. I am now happy to say that, in accordance with our constitutional provisions, the Senate of the United States has given its advice and consent to ratification, and President Nixon has ratified and confirmed these instruments, that is, the World Intellectual Property Organization Convention and the Stockholm revisions of the Paris Convention, except for Articles 1 to 12. The ratification of these Articles is awaiting enactment of implementing

legislation, which we are presenting to the Congress. Now, since Professor Bodenhausen is here and not in Geneva, it gives me great honor and pleasure to deposit these instruments on behalf of the United States with Professor Bodenhausen, the Director of BIRPI.

38.8 Now, I will call the Conference adjourned for lunch and we will reconvene at 2 o'clock.

38.9 One moment, the Delegate of Algeria wishes to speak.

Mr. DAHMOUCHE (Algeria):

39.1 Mr. President, I should like to thank you very briefly for what you have said on the subject of the meetings of Main Committee II. It had not escaped our notice that some delegations will find it physically impossible to take part in meetings of both Committees when they are held at the same time. That is why I wanted to thank you for the initiative you have taken in delaying the sessions of Main Committee II by one week.

39.2 And now, Mr. President, may I have some information on the Steering Committee (Comité directeur);, which you have mentioned several times. I should like to know, if possible, the names of the persons from countries which are participating in the said Committee. May I also ask you to see to it that when this Steering Committee makes decisions it shall, as far as possible, be able to make them sufficiently flexible to be amended later, if necessary, by the Conference. Thank you.

Mr. BRADERMAN (President of the Conference):

40.1 Thank you very much. According to Rule 15, the Steering Committee shall consist of the President of the Conference, the Chairmen of the Main Committees, of the Credentials Committee, and of the General Drafting Committee. These are the members of the Steering Committee. In any event, the proposals of the Steering Committee will, I am sure, be flexible and take into account the needs of the delegates, and if there is any problem the Conference will make suggestions regarding the proposals of the Steering Committee.

40.2 Are there any other comments before we adjourn for lunch? If not, we will reassemble at 2 o'clock in this room. Thank you.

End of the First Meeting

SECOND MEETING

Monday, May 25, 1970, afternoon

Mr. BRADERMAN (President of the Conference):

41.1 Ladies and Gentlemen, would you be good enough to take your seats. I hope all of you had a pleasant luncheon.

41.2 We now move to agenda item 8, introductory and general observations by Member Delegations. I call your attention to the fact, as I indicated this morning, that this item was placed on the agenda to give member countries of the Paris Union an

opportunity to make any general statements that they may wish to make. Member States as well as Observer Delegations, of course, are welcome to comment or submit statements in each of the Main Committees. It will be the practice of the Chair to call on delegates in the order in which they indicate a desire to speak; that is in accordance with the Rules of Procedure. If I, and my colleagues here from the Secretariat, fail to notice anyone at a particular moment, we apologize in advance; I can assure you it will have been inadvertent. We will try, as I say, to keep that order. The floor is now open for any introductory statements and general observations that delegates may wish to make.

41.3 I call upon the Delegate of Australia.

Mr. PETERSSON (Australia):

42.1 Thank you, Mr. President. The Australian Government wishes to express its thanks to the Host Government for its invitation to take part in the Washington Diplomatic Conference, which it is hoped will formulate and finalize a Patent Cooperation Treaty. Despite the great distance that separates Canberra from Geneva, Australia has been represented at the earlier meetings of governmental experts and thereby demonstrated its real interest in the outcome of this Treaty. It has been a matter of regret that an Australian expert could not take part in the earlier and intermediate drafting committees, as it is felt that representation at this level would have been a distinct advantage.

42.2 At the same time, the Australian Government wishes to compliment BIRPI and its Officers, particularly the Director and Dr. Bogsch, and also those delegates who have taken a prominent part in formulating the Draft Treaty. The energy and enthusiasm that has carried the Treaty so far in such a short time is to be applauded and has earned our admiration. Nevertheless, it is realized that much still remains to be done and this Conference will undoubtedly be a busy one and we trust, Mr. President, a rewarding one.

42.3 The Patent Cooperation Treaty is seen by Australia not only as a possible means of saving time, effort and money but as a treaty between countries which, on the one hand, are exporters of inventions and countries which, on the other hand, are importers of inventions. From the viewpoint of applicants in exporting countries, simplification and uniformity of procedures and cheaper patents would have an obvious appeal; whilst individual applicants in an importing country may also view the Treaty with the same approval. When these are numbered not in thousands but in tens or hundreds, the appeal to that country as a whole cannot be very great unless there is some other attraction, some quid pro quo. The attraction which Australia perceives is that it may have its searching done for it, that foreign applications, which arrive in ever increasing numbers, will arrive complete with short and accurate lists of the prior art, and in some cases opinions on patentability. Countries which export inventions will see no advantage in a patent cooperation treaty that has few members. Countries which import inventions

will see little advantage in a treaty that does not provide them with an adequate search which preferably has included their own documentation, or at least makes provision in the future to include that documentation.

42.4 To achieve a treaty that will be attractive to all will need a spirit of compromise. An applicant will want freedom of amendment, but if that same freedom destroys the validity of a completed search, the attractiveness for countries which are going to depend on that search is lost. To make this Treaty a working reality will require some give and take and a willingness to amend the national laws if necessary. It would not necessarily be an argument against the provisions of the Treaty to say: our laws will not allow it. On the other hand, for every national law that has to be changed, so will the operation of the Treaty be delayed. The Australian Government is concerned with the complexity of the plan yet realizes that rights must be preserved and broad terms cannot spell out specific procedures. Australia is also concerned, like some other countries, about the possible cost of the PCT and the savings that may be made from the incomes of its patent attorneys. It notes that this problem is peculiar to those countries which are principally importers of inventions.

42.5 I have taken this opportunity, Mr. President, to express these ideas not because I think they are particularly novel, but mainly because it is against this background that we will wish to express some opinions during the course of the Conference. Once again, Mr. President, I want to express thanks on behalf of the Government of Australia for the invitation to participate, and I join with other delegations which, I am sure, will be wishing success to our deliberations. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

43. Thank you very kindly. May I call on the Delegate of the Federal Republic of Germany.

Mr. GROEPPER (Germany (Federal Republic)):

44.1 Mr. President, the Delegation of the Federal Republic of Germany is gratified to note that all the years of preparation for worldwide cooperation in the patent field have now reached the decisive stage with the beginning of this Conference. Our thanks on this occasion are due first and foremost to the Host Government of the United States of America. It was that Government which was the instigator of the recommendation, made on September 29, 1966, by the Executive Committee of the Paris Union for the Protection of Industrial Property, to the effect that BIRPI should undertake a study on solutions tending to reduce the duplication of efforts in the filing and examination of applications for patents, both for the applicants and for the national Patent Offices. When, in July 1969, the Draft Patent Cooperation Treaty was completed, it was again the United States Government which commendably took the initiative and expressed its willingness to invite the Diplomatic Conference on this Treaty to be held in Washington.

44.2 As we have already seen from the first few hours here, the preparations for this Conference by our American hosts have been excellent. I have no doubt that, as participants, our indebtedness towards the United States Government will continue to grow throughout the whole of the Conference.

44.3 Our special thanks are also due, however, on this occasion to the Director of BIRPI and his extremely competent associates. Anyone considering the elaborate system of the PCT plan in all its details would scarcely find it possible to believe that so much work could be done in barely three years, especially since in the same relatively short period BIRPI has held several full-scale consultations in meetings with experts from its member States and from many international organizations in the patent field, and as far as possible, has taken into account in its work on the Treaty the proposals for amendment put forward on those occasions. Such an extraordinary performance is deserving of our respect and appreciation.

44.4 As the Government of the Federal Republic of Germany has already stated in the introduction to its written comments on the Patent Cooperation Treaty, the Draft which is now before us seems on the whole to be a balanced and well thought-out text. It offers considerable advantages to the applicants, lightens the task of the Patent Offices, creates central authorities for the assembling of prior art, and represents a first step towards the achievement of a strong, worldwide protection for inventions. The Delegation of the Federal Republic of Germany is firmly convinced that, on the basis of such excellent preparations, it ought to be possible to bring our deliberations on the creation of an international patent cooperation treaty to a successful conclusion. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

45. Thank you, Sir, very very much. Are there other delegations that wish to make general observations? The Delegate of Japan wishes to speak.

Mr. OTANI (Japan):

46.1 Thank you, Mr. President. Ladies and Gentlemen, we have come to the final stage in the deliberations of the Patent Cooperation Treaty, the work having started three years ago in 1967 and chiefly been carried out by BIRPI.

46.2 At the current Conference, the last session of discussions will take place, each country making clear its final stand. Japan has participated in many of the PCT meetings in the past and has devoted herself to the study of the draft. Our basic attitude, as has always been indicated before, is in agreement with the principles of the PCT. At the moment, our common problem is inherent in the patent systems of the world, and its solution, on an international basis, is urgently required. In other words, the increased number of applications as well as more advanced and more complex inventions contained in the applications make the task of examining work more difficult for the countries that examine the applications before

granting patents. Further, in filing applications for the same inventions in many countries, the current system of filing individually with each country is not compatible with the demands of the present day, when technical intercourse among countries is very prevalent.

46.3 In the light of the above, Japan agrees in principle to the PCT Draft which is proposed in order to solve this problem on an international level. However, as the PCT is a multilateral agreement, the effect it will have on each participating country will vary. We wish to emphasize particularly that the burden, both in manpower and material resources, will be heavy for countries that become International Searching Authorities or International Preliminary Examining Authorities. Our Office is now studying the problem that may arise with the implementation of the PCT and we feel that an effective international cooperation is required especially in the field of documentation for the purpose of carrying out the PCT as envisaged. Therefore, we discussed this problem at the last meeting in Geneva and would now like to draw your attention again to the following in connection with the problem of documentation.

46.4 One problem is that of putting the IPC on the national patent literature. Most countries now classify their patent literature in accordance with a classification system of their own, but by the enforcement of the PCT the necessity increases of mutual searching of the patent literature of different countries. The quantity of documents to be searched is already large and is growing all the time. Such mutual searching should benefit from the establishment of the IPC Agreement and we consider that the putting of the IPC on patent literature by each issuing country, or at least on the documents designated for minimum documentation, should become mandatory. We consider this a primary condition for international cooperation in the field of documentation. Thus, we strongly advocate this course of action and request you to consider the matter of the use of the IPC by issuing countries on documents designated for minimum documentation and of the international exchange of information.

46.5 Next, we wish to come to the problem of families of patents, which is now being studied by the World Patent Index program and ICIREPAT. Eliminating duplication of patent documents in the world is a basic problem for simplifying work in the field of documentation for each country, and it should be studied without delay along definite lines established on an international level. And, further, all of us should be furnished with information concerning the problem, as we consider that elimination of duplication is vital for minimum documentation.

46.6 As stated above, Japan is in perfect agreement with the basic principles of the PCT Draft, but we think that in reality there are many problems that must be solved for its implementation, and what remains to be done is the solution by international cooperation of such problems as are likely to appear in the actual application of the Treaty.

46.7 Lastly, we agree that the PCT is epoch-making in that it will facilitate international filing procedures and make examination efficient in the world. To make the implementation of the PCT successful, we believe that each country must overcome its own international problem, step by step, dealing with the faults it is possible to solve. Needless to say, Japan is ready to spare no trouble to promote international cooperation by participating in the PCT and at the same time we shall endeavor to devise our patent registration so as to conform to the unity of formalities provided by the PCT. Thank you very much, Mr. President.

Mr. BRADERMAN (President of the Conference):

47. Thank you very much, Sir. I call now on the Delegate of the Soviet Union.

Mr. ARTEMIEV (Soviet Union):

48.1 Mr. President, Ladies and Gentlemen, I should like to acknowledge the deep interest of most States in the promotion of scientific and technological progress. In this connection, it is important to recall the active and useful work of experts of member States of the Paris Union on problems connected with the promotion of inventive activity throughout the world. Today, we have gathered together, thanks to BIRPI's efforts and to the invitation extended by the United States Government, to discuss the Draft which, for three years, has been under consideration both at the national level and within the framework of international meetings. The present text of the Draft is a good basis for discussion because to a certain degree it takes into consideration the particularities of the legal protection of inventions as applied in the different countries.

48.2 Without mentioning the advantages and disadvantages of the Draft embodying the ideal of patent cooperation, I should like to emphasize that the work done by the experts over a period of years has achieved its purpose. Besides the Draft Treaty, which will be discussed in detail during the Conference, experts in the course of preparatory meetings have been able to acquaint themselves with the patent legislation of different countries and with the practice of patenting and patent examination. It is now quite clear, for instance, that in most countries experts during the prosecution of applications apply in general, to a certain extent, the same criteria, which sometimes are interpreted, in practice, in different ways. It should be noted with satisfaction that, owing to this cooperation in the work on the proposed Treaty, a successful result has been achieved as to the unification of some very important concepts in the field of patent practice, such as unity of invention, structure of claims, and so on. However, we are faced with a number of very serious problems, which must be discussed because they have not been resolved during previous meetings. We hope that in the course of their consideration States will show the necessary flexibility and spirit of cooperation.

48.3 In this connection, difficulties may be expected during the discussions, particularly on problems the solving of which may greatly influence

the further fate of the Patent Cooperation Treaty. The mutual understanding which we expect to see here must be based on the existence of different forms of legal protection of inventions, such as patents, inventors' certificates and other forms of protection of inventions. Such an approach to this problem will create an opportunity for participation in the Patent Cooperation Treaty by the maximum number of countries, and will allow, to the greatest extent possible, the fulfillment of the ideal of patent cooperation. In the opinion of the Delegation of the Soviet Union, the Alternative Draft of BIRPI is the first step in this direction.

48.4 A spirit of cooperation permeated the Stockholm Conference throughout the discussions on all the questions relating to the protection of industrial property. The Delegation of the Soviet Union hopes that during the Washington Diplomatic Conference further progress will be made towards the achievement of cooperation and that it will be possible to bring our task to a successful conclusion. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

49. Thank you very much, Sir. I now have the pleasure of calling on the Delegate of Yugoslavia.

Mr. PRETNAR (Yugoslavia):

50.1 Thank you, Mr. President. Ladies and Gentlemen, among the 11 signatory States of the Paris Convention in March 1883 was included Serbia, which later, after the First World War, became part of Yugoslavia. It was anxious at that time to associate itself with the civilized world on achieving its independence after hundreds of years as a dependent territory. If Serbia was unable subsequently to keep up with the progress made by the industrialized countries, it was because – to use a modern expression – it was a developing country. The Yugoslav Government, in sending its Delegation to the Washington Conference, is fully conscious of the fact that the PCT plan and the Treaty that will emerge from it represent a step towards a formal framework for something that already exists: universal technology.

50.2 The rapid explosion, both quantitative and qualitative, in the field of science and the application of technology demands appropriate measures to cope with such progress.

50.3 From this point of view, one can only welcome all the efforts that have been expended in preparing the texts that will be discussed at this Conference. In view of the importance of the PCT plan, we must take into account not only the developed countries for whose benefit the new instruments issuing from the Conference will primarily have been made, but also the effects they may have on the developing countries. Although, officially, those countries may also benefit from the outcome of our Conference, the Delegation of Yugoslavia does not entirely share BIRPI's optimism on this subject. The legal issues are valid for developing countries only in the last resort. A legal

instrument is not in itself capable of solving the problems of our age among which one of the most striking is the separation which exists between the world of the industrialized countries and that of the poor and backward countries.

50.4 The intellectual potential of developing nations is no less than that of highly civilized countries. What the former need is the material conditions for educating their infrastructure, so that their intellectual potential can become the moving force of progress in their respective countries and of humanity as a whole, as it is already in the industrialized countries.

50.5 In the view of the Delegation of Yugoslavia, we shall not achieve the objectives of the PCT plan unless, after the close of the Conference, we give serious consideration to the problem of creating such material and effective conditions in developing countries as to enable them to share in the universal progress created by man's intelligence, the materialization of which is the main source of wealth in our time.

50.6 We cannot speak seriously about the universality of the Paris Union until the deep gulf which divides the world has been bridged. In preparing the text of the PCT as well as in other work in recent years, BIRPI has shown its ability to accomplish an enormous amount of work. The Paris Union, as represented here today, ought, in the view of the Delegation of Yugoslavia, to expend all its energies in the coming years on assisting the developing countries to achieve the aims proposed by the PCT in order to solve the major problems of mankind and its future.

50.7 I should like to finish this short statement by thanking the Host Government most particularly for its work and its generous hospitality. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

51. Thank you, Sir. May I now call on the Delegation of the United Kingdom.

Mr. ARMITAGE (United Kingdom):

52.1 Mr. Chairman, may I first express the thanks of the United Kingdom Delegation to the United States Government for the hospitality which we are enjoying at this Conference. And, secondly, may I pay a word of tribute to BIRPI, for all the spade work, the enormous spade work, which has gone into the preparation of this Treaty, to Professor Bodenhausen, to Dr. Bogsch, Dr. Pfanner, and all their men who from time to time have worked on this. It would be invidious to mention any more names – people have come and gone – but I know very well what an enormous amount of work has been involved in this.

52.2 The United Kingdom has supported the PCT proposal and has participated actively in its development from the earliest times, three and a half years ago, when this was first proposed on the initiative of the United States Government. I think it is well known that we support the PCT because of its interest both to our administration and our industry.

We are interested both in Part 1 and in Part 2 of this proposal; Part 1, for both our administration and our industry, equally firmly and forcibly; Part 2, perhaps rather more at present, as we see it, in the interests of our administration, though maybe the interests of industry will swing into the picture more if, in fact, Part 2 is activated and we can see just how it works.

52.3 We should not be modest about what we are now doing. This is the biggest breakthrough in patents since 1883. It is the first real exercise in cooperation at the working procedural level on patent processing. I think we should not expect perfection immediately. It is really quite important that we should approach this, as the Soviet Delegate has said, in a spirit of compromise. The first and really almost the last objective is to emerge with a workable treaty and that is what we should all direct our minds to here.

52.4 Once the Treaty is in operation, the way lies open to international harmonization in all sorts of directions which do not exist at the moment, procedurally, in terms of retrieval methods and so on, but first of all we have got to have the mechanics, we have got to have the base from which this harmonization can operate.

52.5 In sum, therefore, the United Kingdom Government hopes that this Conference will reach a successful conclusion and that a large number of States will become members of this Treaty, States both developing and developed, so that this paper plan can be converted into a living reality. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

53. Thank you very much. I now call on the Delegate of the Netherlands.

Mr. VAN BENTHEM (Netherlands):

54.1 Mr. Chairman, the preceding delegations have expressed their high esteem for the energetic and highly qualified work of BIRPI as to the preparation of this Treaty and, equally, for the hospitality of the United States Government. We would like, Mr. Chairman, to join wholeheartedly in their thanks.

54.2 As to the scope of the Treaty, the Director General has said, in his introductory speech, that this Treaty is more or less a new starting point for a substantive cooperation in the field of filing patent applications and, even more than that, it goes even relatively far in harmonizing national laws.

54.3 The Netherlands Government, Mr. Chairman, shares this view and we shall therefore cooperate wholeheartedly in the realization of this Patent Cooperation Treaty. In so saying, Mr. Chairman, may I add that we hope that the few modest observations we have made in writing could be met by the Conference. May I finally say that the Netherlands Government attaches the highest importance to the efforts made to make this Treaty compatible with the preparations for regional patents, like the European Patent. Thank you very much.

Mr. BRADERMAN (President of the Conference):

55. Thank you, Sir. I now call on the Delegate of Finland.

Mr. TUULI (Finland):

56.1 Mr. Chairman, Finland took part in the meetings of experts at which the plan was prepared, and approved the aim of the Treaty to provide a quick and uniform procedure in searching the novelty and patentability of inventions. Finland, however, wishes to stress the fact that it will participate in this development only as long as the final right and power of granting patents rests with the national Offices, as the present Draft Treaty presupposes. Considering that a common system must be adaptable to the legislation of all countries, and these often differ considerably, the Finnish Delegation wishes to express its high regard for the remarkable and competent work of BIRPI resulting in a Draft Treaty which, in the main, fills the requirements of all the member States and still attains the said important objectives.

56.2 The advantages of the plan for small and remote States, their industry, inventors, and patent authorities are not, however, quite clear. As regards Finland, there are questions which still need to be studied and settled before final adherence to the Treaty is possible; for instance, the languages of the majority, which completely differ from other languages, the projections from the planned Searching Authorities, and the fact that heretofore it has been impossible to calculate with satisfaction the cost of the PCT plan to member States and inventors.

56.3 However, in principle we are in favor of accepting the Treaty. Changes in the Treaty text have been proposed in writing by the various delegations; we are going to support some of these proposed changes as they form improvements and clarification of the text. For our part, we have expressed our anxiety, for the text lacks a definite statement that every participating country shall have the right referred to in Article 16 to make an agreement with some International Searching Authorities. The Offices which, it is planned, will act as such Searching Authorities are already overburdened with work and they may therefore be unwilling to accept new clients. The said right must, however, be guaranteed to small countries, even if the final aim and ideal solution may perhaps be one International Searching Authority only, or as few such Authorities as possible. During the transitional period, there must obviously be more of them than the Treaty provides for. Already, from the language point of view, the situation in the Nordic countries is such that we need an International Searching Authority of our own. We therefore support the proposal and attempt to nominate a Scandinavian Office as International Searching Authority. It may well be that the need for such Authorities is felt in other parts also.

56.4 To conclude, the Finnish Delegation regards the PCT plan as a form of cooperation in which all nations can participate and cooperate. This is a view of such importance that already it is most desirable

that the PCT Treaty should be agreed upon at this Conference. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

57. Thank you, Sir, and I have the pleasure of calling on the Delegate of Hungary.

Mr. TASNÁDI (Hungary):

58.1 Mr. Chairman, first of all, I should like, on my own behalf and on behalf of my Delegation, to offer my congratulations on your election as Chairman of this Conference. Your well-known and outstanding background and your great international experience will undoubtedly contribute to a large extent to the success of our Conference in solving, in a spirit of cooperation, the great and important tasks confronting us. Moreover, I should like to take this opportunity to express the gratitude of my Government to the United States Government for the work involved in convening this Conference.

58.2 Mr. Chairman, I believe that, thanks to the Patent Cooperation Treaty, a new page is being turned in the history of international patent cooperation. My Government has, from the very start, strongly supported the conception of this Treaty. Experts from my country took an active part in working out the Draft of the Treaty.

58.3 Let me now express my gratitude to the Directors and staff of BIRPI, who have performed such remarkable work without counting their time and effort. I am convinced that this Conference, which has been so thoroughly prepared, will be characterized by aspirations towards an understanding of mutual interests and readiness to reach an agreement. As for myself and my Delegation, I can assure you, Mr. Chairman, that we will strive in that direction. In concluding, I wish you, Mr. Chairman, Ladies and Gentlemen, success in your work. Thank you.

Mr. BRADERMAN (President of the Conference):

59. Thank you very much, Sir. I now call on the Delegate of Switzerland.

Mr. STAMM (Switzerland):

60.1 Mr. President, Ladies and Gentlemen, right from the start, the PCT plan has been a source of great interest in Switzerland, both among the competent authorities themselves and in industrial circles. This is scarcely surprising since it represents the first concrete attempt at achieving a worldwide cooperation by means of which national Offices and applicants will at last be able to spare themselves some of the innumerable tasks that at present complicate the filing of applications for national patents and the obtaining of those patents. Some of those concerned find that the PCT plan does not go far enough; they would have preferred that it aim higher. But, are they not forgetting the familiar adage "Grasp all, lose all"?

60.2 For our part, we can only congratulate BIRPI on its attempt, within the limits of what is at present possible, to make the first move, albeit a very modest one when compared with the final objective of the optimists, which is the unification of substantive law

on patents, and even the grant of a universal patent by one single world office. The Delegation of Switzerland is convinced that the PCT plan, as outlined in the BIRPI Draft, offers tremendous advantages compared with the present situation. Not the least of its merits is to take as much account of the needs of industrialized States as of the problems of developing countries. It is of course not easy, and in fact probably impossible, to satisfy everybody. Switzerland, for its part, regrets sincerely that it is apparently not possible at this stage to satisfy such wishes as the centralization of search. The Delegation of Switzerland admits that a decentralized search would have advantages during the lead period, but it wishes to repeat here, on behalf of its Government, the principle which it has often maintained, namely, that the final goal can only be a centralized search entrusted to one single, supranational authority. We note with satisfaction that the Draft to be discussed does not exclude *a priori* the possibility of a development in this direction.

60.3 The Draft we are about to study bears the promising title: "Cooperation Treaty". The Delegation of Switzerland hopes that this spirit of cooperation will already prevail throughout the present Conference. Cooperation necessarily presupposes searching for and facilitating compromise solutions and refraining from defending positions that are too individualistic. It would in any case be most regrettable if the Treaty were to be burdened with exceptions arising from the peculiarities inherent in national systems. The Delegation of Switzerland accepts the essentials of the Draft in its present form. It looks forward to seeing this work of international scope achieve the results that all are hoping for. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

61. Thank you very much. I now call on the Delegate of Sweden.

Mr. BORGGÅRD (Sweden):

62.1 Mr. Chairman, allow me, on behalf of my Government, to associate myself with the previous delegates who have expressed their gratitude to the United States Government for the invitation to this Conference, and for the hospitality we are enjoying. Let me also express my Government's congratulations to Professor Bodenhausen and to Dr. Bogsch, and their collaborators in BIRPI, for the splendid preparatory work that is now presented before this Conference.

62.2 In the view of my Government, the Treaty as now proposed presents a most valuable foundation for international patent cooperation on a worldwide basis. We think it a great advantage that the plan has been drawn up with considerable flexibility to allow further examination of applications which have passed the international stage to take place on the national level. It is of great importance for the widest possible adherence to the plan that countries should be able to accede to the Treaty without risking a binding decision on the international level which may lead to patent rights which are unacceptable from a national

point of view. On the other hand, countries can utilize the potential economies of the plan as the PCT search and examination gradually gain confidence.

62.3 As we see it, Mr. Chairman, the real effect of the PCT plan can best be achieved if both phases are adopted and if the majority of the big industrial countries accede to both of these phases.

62.4 Once again, Mr. Chairman, our warm thanks to the United States Government for sponsoring this Conference of paramount importance to the international patent system. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

63. Thank you, Sir. I have now the pleasure of calling on the Delegate of France.

Mr. SAVIGNON (France):

64.1 Thank you, Mr. President. Mr. President, in the name of the French Government, I should like first of all to associate myself with all the previous speakers who have thanked the United States Government and BIRPI, particularly Dr. Bogsch, both of whom have been mainly responsible for the preparatory work on the Draft Treaty before us today – a Draft Treaty one of whose greatest merits in our eyes is that it has put new life into the idea of international patent cooperation and opened the way to progress and internationalism in this field. It is, in fact, well known that this Draft has awakened from its slumber the dormant plan for a European patent, and perhaps other projects for regional patents, less ambitious in substance and less far-reaching in geographical scope.

64.2 We very much hope that consideration will be given in the course of this Conference to a number of recommendations, which I shall not list here, the Delegation of France reserving the right to return to them when the Articles are discussed in one or other of the Main Committees. You will not, however, be surprised if I say here and now that I wish to associate myself with what the Delegation of Finland and the Delegation of Switzerland have said regarding the trend towards a centralized search, an idea which France has already defended in the course of the preparatory meetings.

64.3 We are therefore persuaded that, provided we are able to make some progress thanks to the cooperation of all concerned, the Governments will succeed in establishing a truly useful diplomatic instrument. I should like, however, to draw attention to the fact that in the last resort it is not the Governments who will be the judge of the usefulness of the PCT plan and who will make it a success, but the users, the applicants themselves. It is therefore most important that we should hear their opinions and thereafter give our Draft a form and the sort of requirements for applications that will satisfy the wishes of the applicants.

64.4 It would seem to be equally important that we should realize that the work done here by this Diplomatic Conference on the Patent Cooperation Treaty should not stop in mid-career. Indeed, if the

purpose of the Treaty is achieved, that is to say, if the conditions for obtaining protection for the same invention in a number of countries are facilitated and made less costly, it is certain that there will be an increase in the tendency already observed in the case of the system of protection at the national level where one and the same invention will be protected in a greater number of countries. This fact has repercussions on the transfer of technology and considerable financial implications. It was doubtless no part of the PCT plan to deal with such repercussions but the fact remains that when one touches on any legal field economic repercussions are inevitably involved, repercussions affecting in particular the developing countries which must also be taken into account at the international level.

64.5 This is therefore an extremely important step we are about to take – and I think we are all aware of the fact – in a field where all past attempts to break through the too rigid barrier of national protection have failed. It is thus in a reasonably optimistic mood that the Delegation of France approaches this international Conference and wishes it every success. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

65. Thank you, Sir. I now call on the Delegate of Israel.

Mr. GABAY (Israel):

66. Thank you, Mr. Chairman. It gives me great pleasure to take the floor at this advanced stage of the thorough preparations of what might become a milestone in international patent cooperation.

66.2 I should like here to pay a tribute to the Host Government and to BIRPI, especially to Professor Bodenhausen and Dr. Bogsch and Dr. Pfanner, who for some time have been trying to mobilize support for an effective institutional system which would alleviate the present difficulties in patent administration faced by the larger and the smaller countries alike.

66.3 While we shall have a number of comments on specific items and specific provisions of the Treaty, we should like at this stage to indicate the support, in principle, of the Government of Israel to the Treaty in its two parts. The Government of Israel supports the underlying idea of a reorientation of the search and examination of patent applications on an international basis. Indeed, the difficulty lies in the embarrassment of wealth caused by the constant rise in the rate of innovation and the number and variety of processes and new products. The capacity for examination at the disposal of most countries, industrialized as well as developing, is already stretched to the point of collapse. It is therefore apparent that international arrangements and coordination are essential. However, an effective international system would call for an adjusted machinery of international search and examination by a centralized system, which would be generally international in character. While the present difficulties in establishing such a system are understood, it would be essential in the final analysis to strive in that direction, possibly through

strengthening the operations machinery of the Hague Institute.

66.4 The other point of a general nature concerns the cost, and here I should like to refer to the problem of the cost especially for the smaller and developing countries. It is our feeling that sufficient attention has not been given to this problem, which merits further analysis and evaluation. The establishment of an international system of search and examination is an important step forward, but it would still require some further work towards harmonization of legislation in the area of patents.

66.5 In principle, we should think that this Treaty would improve the national and the international role of the patent system in the context of technological and economic development. We shall follow with great interest the deliberations of this Conference and should like to attempt to contribute as much as we can of our own experience. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

67. Thank you, Sir. I now call on the Delegate of the United States of America.

Mr. SCHUYLER (United States of America):

68.1 Thank you, Mr. Chairman. Speaking on behalf of the Delegation of the United States, I would like to add our welcome to each of you and to supplement the welcome expressed by Secretary Stans this morning in the name of President Nixon. It is our sincere wish that you find your stay in the United States, during this Conference, an enjoyable one and, to assist towards that end, the Delegation of the United States stands at your service to do anything we can to help you enjoy your visit to our country.

68.2 Other delegates have already mentioned the interest of the United States in the Patent Cooperation Treaty and I need not repeat the manifestations of that interest that we have shown since the deliberations began. We agree with those who say that the results of our deliberations here must find acceptance among applicants in order that the Treaty be used to a maximum extent and in order that it finds acceptance by a maximum number of nations. It is a Treaty designed to assist applicants who seek patent protection in many nations. Its effort to facilitate the desires of such applicants should be recognized but not confused with other matters of substantive law, which must remain within the power of each Contracting State.

68.3 The Government of the United States wishes to align itself with the views expressed by other delegations in commending the outstanding efforts of BIRPI, the Director General, and the entire staff in providing us in documents PCT/DC/4 and 5 with an instrument which offers the flexibility necessary to accommodate the varying viewpoints and substantive laws which are represented by the countries here today.

68.4 We certainly hope that this Conference continues its deliberations in the atmosphere of minimizing the changes in national law which may be necessary in order for States to adopt the Treaty. And

we certainly agree completely with the Director General and others who recognize this Treaty as a first step, certainly a giant step, but nonetheless only a first step, towards more complete cooperation and even harmonization. We most sincerely join those who have expressed the wish for a successful conclusion of the deliberations. Thank you Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

69. Thank you, Sir. I now call on the Delegate of Spain.

Mr. FERNÁNDEZ-MAZARAMBROZ (Spain):

70.1 Mr. President, the Spanish Delegation wishes to endorse the declarations made by other delegations which have expressed their gratitude to the United States Government for the invitation extended to us to take part in this Conference, and for the hospitality offered to us. It must be remembered that it was this country which, at a meeting of the Executive Committee of the Paris Union on September 26, 1966, took the initiative of proposing that BIRPI should assume the task of preparing the documents which now, after much study, have become the working document of this Conference.

70.2 I should also like to endorse the expressions of thanks addressed to BIRPI for the arduous task which it has taken on and carried out with such perseverance, in between the attendance and organization of numerous meetings, and for its achievement in providing us with these documents, which are really of extraordinarily high quality and eminently suitable for the task which we have set ourselves.

70.3 Indeed, in the opinion of the Spanish Delegation, there is one exceptional quality of the documents which has come to light during the discussions, namely, their flexibility. The same principle is also a feature of the Paris Convention, another instrument of international cooperation in the field of industrial property, which has shown over the years that it is the principle of flexibility that has been the reason for its success. Indeed, we consider such flexibility to be absolutely essential in view of the fact that, as many have already said and as other delegations are now repeating, not all countries party to these conventions are equal: there are industrialized countries, countries with examining offices, countries with official languages, and others in totally different circumstances. For that very reason we consider that the principle of flexibility is a most necessary feature of the Treaty and the Regulations, and we hope that the progress achieved in the preparation of these documents will continue and improve in the actual cases in which improvement is necessary.

70.4 We consider, as we have already said, that this principle of flexibility will make the Washington Conference a mile-stone in the history of international cooperation in the field of industrial property. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

71. Thank you very much. I now call on the Delegate of Italy.

Mr. RANZI (Italy):

72.1 Mr. President, the Italian Government would like, first and foremost, to express its thanks to the United States Government for organizing this Diplomatic Conference and for its generous hospitality. The Delegation and Government of Italy would also like to express their appreciation to BIRPI, and in particular to its Director General, Professor Bodenhausen, and to Dr. Bogsch, for the excellent work they have done and also for the remarkable speed with which the preparations leading to this Conference have been completed.

72.2 In principle, the Delegation of Italy is in favor of the Patent Cooperation Treaty. It would, however, like to reaffirm its marked preference for a centralized search but, as it realizes that this would not be possible at the very start, it hopes at least that a statement of principle in this connection will be inserted in the Treaty.

72.3 The Italian Government wishes this Conference every success. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

73. Thank you very much. I now call on the Delegate of Austria.

Mr. LORENZ (Austria):

74.1 Mr. President, Ladies and Gentlemen, in my general opening remarks I shall confine myself to what, in our view, seem to be the essentials – the fundamentals.

74.2 The origin of these meetings – and the main objective of the PCT plan – is to avoid duplication of effort in Offices effecting examination. The plan itself bears the title: “Plan for a Patent Cooperation Treaty.” Several delegations have stressed the importance of such cooperation. My country is greatly interested in achieving this objective and will, in a general way, be prepared to contribute towards its attainment.

74.3 May I take this opportunity to express our sincere thanks for the invitation extended to us by the United States Government and our appreciation to the Host Government and to BIRPI for the excellent preparations for this Conference.

74.4 It is our hope that the objective which I have already mentioned should not be lost sight of in the course of the Conference and that our work should be directed, above all, to the achievement of this objective, so that our country may play its part in carrying out the envisaged project. May I add our best wishes for the success of the Conference. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

75. Thank you. I now call on the Delegate of Zambia.

Mr. AKPONOR (Zambia):

76.1 The Government of the Republic of Zambia wishes to thank both the Government of the United States and the Director and staff of BIRPI for making possible this important, if not the most important, meeting on patent cooperation since the founding of the Paris Union in 1883.

76.2 So much has been said about the advantages of this Organization in the field and the annals of patent administration and cooperation, but much more should be done as regards the attitude of this new Organization towards developing countries. Owing to the scarcity of qualified men and the inadequate resources available to most developing countries, they are faced with the dilemma of granting such patent rights without adequate means of patent examination. This fact has also led most developing countries to abandon the desirable idea of establishing Patent Offices.

76.3 It is against this background that the importance of the PCT Treaty as regards developing countries should be emphasized and appreciated. It is therefore the wish of the Government of the Republic of Zambia that this Organization should harmonize patent administration between the developed and developing members of the Organization. The task before us is great, but I am convinced that in a spirit of cooperation this meeting will be a great success. Once more, Mr. President, I thank you and all those that have made this meeting possible today. Thank you.

Mr. BRADERMAN (President of the Conference):

77. Thank you very much. I now call on the Delegate of Canada.

Mr. LAIDLAW (Canada):

78.1 Thank you, Mr. President. Canada is interested in any international proposal designed to reduce the duplication of searching work now experienced in all countries conducting any novelty examination of patent applications, and to improve the quality of searches, in this way furthering the object of limiting the grant of patents to developments that are really new and truly inventive. We are also prepared to play our part in an international arrangement which will simplify and hence reduce the expense of obtaining patent protection for any such developments in a number of countries, even though at present we would not, because of the relatively few domestic patents issued compared to the number issued to non-residents, be substantial beneficiaries of such an arrangement. Finally, we appreciate the usefulness of an international arrangement designed to provide a convenient central international publication of new inventions, of which the existing publications are scattered and hence not always readily and generally available. The Draft Patent Cooperation Treaty that we have come together to consider, which appears to be directed to all of these three objectives, is thus worthy of a most careful and cooperative consideration by all of us, because I am sure there is no disagreement on the desirability of these objectives.

78.2 In our view, by far the most important of these objectives is the reduction of search duplication and the improvement of search quality. From the point of view of ultimate efficiency and quality of result there can be little doubt that the ideal searching organization would be a single international one. It could have the maximum documentation with minimum duplication. We in Canada recognize of course that practical realities appear to preclude this solution at present and that we must, for the time being, make the best use of searching facilities now available, with the result that, as an interim measure, the solution of having a limited number of examining national Patent Offices and the International Patent Institute act as International Searching Authorities may well be the only practical one. We are, however, somewhat concerned that the Draft Treaty, though it does not exclude the ideal solution, contains no provisions calculated to bring it about. Without them, inertia is likely to lead to apathy, and the interim solution to become the permanent one. As the French saying goes: "*Il n'y a rien qui dure comme le provisoire*". Canada's interest in becoming a Contracting State would be greater if the Treaty appeared designed to lead in a reasonable time to the ideal solution of a single Searching Authority, and as a Contracting State Canada would be prepared to play its part toward that end.

78.3 Canada is one of a number of countries represented here which conduct a novelty search, essentially directed, in our case, to Canadian patents, but are not equipped to be International Searching Authorities. For such countries the benefits of the Treaty with respect to applications originating from other member countries would be greatly increased if the search conducted by the International Searching Authority or Authorities extended to their own domestic – originating patents. Thus, in the case of Canada, we would like the search to extend to Canadian patents which have no foreign counterparts. We would hope that some provision might be made in the Treaty for including patents of this kind in the International Searching Authority documentation, these to be selected and provided by the countries concerned. The inclusion of those patents in that documentation would improve the scope and hence the quality of the search.

78.4 The principal benefit of the Draft Treaty for applicants is to have the results of a thorough international search in time for consideration before they have to incur substantial expenses for applications in all the countries where, if the invention is really novel, they would want protection. It will consequently be of capital importance that the time limits in the Treaty for making the international search are definite and that they are adhered to, unless the Treaty includes a provision, undesirable from other points of view, that a delay in the search report will extend the period for paying national fees and supplying translations in the designated countries. Otherwise, the use of the PCT route, and hence the whole value of the scheme, is likely to be substantially reduced.

78.5 The Draft Treaty and Regulations which we have before us are elaborate documents containing many provisions which, it appears from comments already circulated, give rise to disagreement. It is noteworthy that the areas of apparent disagreement relate mainly to provisions which are not necessarily essential to the concept of an international search. In Canada's view, the other two objectives that I mentioned at the outset are not necessarily linked with the objective of solving search problems. We think it most important that this be borne in mind in considering the Draft and that complexities and expense connected with these other objectives be carefully scrutinized. There is nothing and there could be nothing in this proposed Treaty compelling applicants to use the route it offers for multi-country patenting. The Treaty will be of value only to the extent that the route it offers has clear advantages to applicants over present procedures, so that it is, in fact, used by applicants for patents. If the Treaty route is too complex and involves disadvantages by comparison with the present route, while offering substantial savings only where protection in a relatively large number of countries is involved, the Treaty is unlikely to be used to such an extent as to go far in solving the search problem, which in Canada's view is the primary objective.

78.6 Thus, if we find that we may not be able to solve the difficulties and disagreements concerning the international application and international publication aspects of the draft, let us not go home empty-handed but try to solve at least the search problem to a simplified system not involving these other features, perhaps one basing the international search on a national application and extending a priority period for corresponding applications in pre-designated countries, which are accompanied by an international search report when they are filed.

78.7 In conclusion, we would like to join the other delegations in thanking the host country and BIRPI for making this Conference possible. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

79. Thank you, Sir. I now call on the Delegate of Brazil.

Mr. NEVES (Brazil):

80.1 Mr. President, I shall start by expressing my Delegation's gratitude for the warm reception given us by our host country, the United States of America. Allow me also to join with the previous speakers in expressing my congratulations on your election. Under your experienced guidance we feel sure that this Conference will be able to achieve a positive step forward in the field of patents; and, I must add, we also hope that the results of our endeavors will facilitate the international transfer of technology to the underdeveloped countries of the world.

80.2 In fact, Mr. President, the Brazilian Government views this Conference as an extremely important landmark in the crucial problem of economic development. We want to see more than a

mere coincidence in the fact that we are assembled here to approve a treaty on patents on the very threshold of the second United Nations Development Decade. This Conference is a first concrete indication of the satisfaction on the part of the international community with the present state of the institutions that regulate the wider Rule of patents and the transfer of technology. We have come to it with the hope that the serious concern of both the developed and underdeveloped countries will be given adequate consideration.

80.3 It is also no coincidence that the institutions that discipline the international concession of patents aim at joining the United Nations as a new specialized agency. This fact in itself could be sufficient to indicate the willingness of all parties concerned to expand the conceptual framework for the examination of patents so as to encompass their full significance in the field of the adequate protection not only of the rights of the patent holder but also of the rights of the developing nations to innovate, at their respective historical stages, without undue hindrance or overburdening costs.

80.4 As we all know, the United Nations and its Specialized Agencies have already taken great steps forward in the realization of the necessary changes of the international institutional framework required to accelerate the economic development of three-fourths of mankind. The Brazilian Government believes that this Conference offers a great opportunity for practical steps in the crucial field of the role of patents in the transfer of technology and that this should be done under the philosophy set forth by the United Nations. It is in this spirit that the Brazilian Government welcomes the convening of this Conference to negotiate the Patent Cooperation Treaty. Mr. President, as you are fully aware, the Secretary-General of the United Nations has singled out technology as the most powerful force in the world for the achievement of higher standards of living. In fact, no additional amount of financing or of foreign exchange earnings, however substantial, can be adequate substitutes for the full availability of modern technology; and few of the underdeveloped countries are able to devise through their own unhindered research the technological solutions that most adequately fill their specific needs. They will depend almost exclusively on an increasing volume of imported technology. The process of economic development has a logic of its own which follows such a narrow path that it would be almost impossible for the laggards in development to devise entirely new and unhindered technological solutions for their problems. Being thus basically precluded from *bona fide* innovation, they should not be overburdened by limitations in the use of well-proven technology. Their treading of beaten paths in the technological field should not bring about a disquieting disequilibrium in their balance of payments nor add to the process of development an international burden that was not applied to the countries in the vanguard of development.

80.5 Having made these basic points as a necessary background for the consideration of our

problem, permit me, Sir, to elaborate in a general way on my Delegation's understanding of the role of patents in the transfer of technology. Mr. President, the patent is much more than a mere legal protection for industrial property. Its most important function is, in actual fact, economic in nature, since it is the instrument through which technical knowledge ceases to be a closely guarded secret and becomes an economic good. Knowledge is thus sold in the market place and is subject to economic laws. In this sense, the patent is itself a necessary condition of relative scarcity. It is paramount, however, that it should not give the technological knowledge the characteristic of a full, worldwide monopoly. It should not give its owner all the advantages of a monopolistic situation while, on the other hand, confronting the prospective international buyers of technology with the all-encompassing disadvantages of a total lack of alternatives: both the impossibility of legitimating reinvention of the industrial process and the absence of competition on the supply side of the market. Under conditions where buyer and seller frequently switch places and in addition have comparable purchasing power, such a monopoly situation might be tolerable, since it would impose no unilateral sacrifice on either one. The truth, however, is that we are dealing with a world market for technology where there is a striking discrepancy between the purchasing and bargaining powers of developed and developing countries, where the former are usually the sellers and the latter tend to be the buyers. Under these market conditions, Mr. President, to treat the subject of patents exclusively from the standpoint of the legal protection of the inventor's rights, while abstracting the internationally accepted right of underdeveloped countries to the full access within their means to the necessary development media, would run against the United Nations Charter and would run against the long-term interests of world prosperity, equilibrium and peace. It would be tantamount to discriminating against those very countries whose need to absorb technology as a necessary condition for their development is the greatest and whose capacity to incur the high costs of absorbing it is admittedly the smallest.

80.6 The Brazilian Government firmly believes that it is up to the international community to set in motion the wheels of cooperation with a view to compensating for this unfair economic situation. The conditions I have outlined require an economic approach which would contemplate special measures tailored to the specific needs of the developing countries among us and, to go about this task, there is no better moment than when the countries of the world get together to negotiate a Patent Cooperation Treaty.

80.7 Along with the invitation to attend this Conference, we received a Draft of the proposed Treaty as well as its Regulations. It is a formidable, commendable and, for the non-initiated, a forbidding piece of international legislation. This Draft aims at obtaining an economy of time and effort and a reduction of costs for the applicant for an international patent, while simultaneously increasing the solidity of the monopolistic legal protection implied by

international patents. No thought has been given, at least at this drafting stage, to any possibility of reducing the costs of the transfer of technology to its international buyers or of decreasing the imbalance in the relative positions of sellers and buyers of international technology. Extrapolations from intellectual property to patented technology are clearly discernible, regardless of the fact that the normal client of intellectual property, at least in underdeveloped countries, is a highly developed intellectual minority, while the international client of industrial know-how is basically the whole population of the underdeveloped communities.

80.8 The analysis of the Draft Treaty shows that, even though much thought has been given to it, the result is still the increase of rather narrow monopolistic goals without any compensatory balancing elements. Mr. President, I hope that I have made abundantly clear that my Government feels that the time has come when the problem of patents, as an important determinant of the volume of technology transferable to developing countries, should be viewed not only through its traditional, legalistic aspects but also in its economic perspective. It is necessary to consider, in relation to this problem, both the legal micro-problem of the great majority of patent holders and the macro-problem of national development. In other words, my Government thinks that trade in patents should be directly related to the economic development of developing nations; that trade in patents should be approached by the international community in the same manner as trade in other goods; that, consequently, developing nations should be granted the same special treatment they are given in all other economic forums today, that is, that they should not be expected to offer full reciprocity in their relations with the highly industrialized nations.

80.9 I fully realize, Mr. President, that all this prolegomena would have been a waste of your valuable time if I did not end this intervention by indicating what could be useful lines of change in the Draft. In his recent visit to Brazil, Dr. Bodenhausen encouraged us by stating that, if means could be found to improve the system of operation of the Paris Convention in order to further facilitate the transfer of technology, these means could be explored and put into practice as soon as possible. It is thus now incumbent upon my Delegation to draw the attention of the Conference to some of the directions in which the Draft Treaty could be improved, with a view to making it satisfactory to developing countries like my own.

80.10 The common thread of this discussion, Sir, is to render the Treaty less one-sided by expanding its scope to include provisions of interest to the developing countries. I will consider these changes from a broad standpoint in this general debate. My Delegation may be in a position to elaborate further on any one of them at the appropriate committee stage of our work.

80.11 The first of the changes that seem to be necessary encompasses measures that will reduce the degree of protection for technology that has already

lost its significance through the appearance of new developments in developed countries, while still representing adequate technological levels for developing nations.

80.12 Another point of great importance to developing countries is the expansion of the information content of the patent and of the international report. It seems fundamental to transform the patent from an instrument that contains the absolute minimum of information necessary to secure for its owner a virtual monopoly into an instrument which, while guaranteeing the protection of the rights of the inventor or of the patent holder, will transmit enough information to give the prospective clients in underdeveloped countries a clear notion of technological availabilities and alternatives.

80.13 It is also necessary to secure, internationally, measures that will provide, at adequate intervals, complete worldwide lists of patents that have fallen into the public domain and these lists should be fully informative, so as to permit a rapid choice of the new means thus made available.

80.14 And, as a fourth point, it is necessary to obtain much greater assistance for underdeveloped countries in the establishment of Patent Offices that will respond more fully to their specific needs and, especially, to their needs for the ample absorption of technology at low costs.

80.15 At this juncture it also seems convenient and desirable that both the developed and developing international communities arrive at a consensus on the need for taking, in their respective areas of interest, the necessary measures – physical, monetary or otherwise – to reduce the total amount of royalties presently being exacted from underdeveloped countries.

80.16 As may be seen, Sir, some of these suggestions aim at increasing the degree of competition on the suppliers' side of the international market, so that developing countries are offered a wider choice of more appropriate technology at costs more compatible with their possibilities and means. Competition would tend to reduce the increasing costs of the transfer of patented technology, thereby allowing for its absorption on a larger scale with mutual benefits to both developing and developed countries. Others relate to measures or commitments that would entail operational activities by the International Patent Cooperation Union or by the Governments that will have subscribed to this Treaty.

80.17 In conclusion, Sir, I must once more make it very clear that the Brazilian Delegation comes to this Conference with one basic attitude, namely, to cooperate in the improvement of the institutional framework relating to patents so as to obtain for it an appropriate balance. This may permit many underdeveloped countries to reduce or eliminate their misgivings in relation to the Draft as it now stands, and, we hope, allow the desirable accession of a greater number of countries to the Treaty and, at a later stage, to the Paris Union. If our general position is acceptable to other delegations, we shall be ready to work with them at a more concrete level. Whatever

we say or do, Sir, must not be construed as an attack against the world patent system or against the institutions that manage this system; on the contrary, we feel that the patent is a fundamentally necessary instrument in the transfer of technology to developing countries, but we also feel that a better balance between the positions of sellers and buyers of technology through patents would work to the benefit of both parties and, in the long run, would work in favor of a better balanced world economy. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

81. Thank you, Sir. Let us see how much more time we should allow for this session. I have one more delegation that wishes to speak. Now I see a second. I would suggest that, since there are a number of delegations that wish to speak, we adjourn for coffee. It is now about thirteen minutes of four; suppose we reconvene at 4:15. Now, before we break, I would like to speak to the members of the Steering Committee, which will comprise, in accordance with Rule 15 of the Rules of Procedure, the President of the Conference, the Chairmen of the Main Committees, the Chairman of the Credentials Committee, and the Chairman of the General Drafting Committee, that is, the United States of America, the Netherlands, France, Japan, and the Soviet Union. Would the members of the Steering Committee be good enough to meet now, as we adjourn, in Dr. Bodenhausen's office, which is Room 1212. As you go out, go to the right and it is one of the first doors on the other side of that aisle. The general Plenary will reconvene at 4:15. Thank you.

* * *

Mr. BRADERMAN (President of the Conference):

82. Ladies and Gentlemen, may we resume our session, please. I would like to request once again the delegates who wish to speak to raise their cards. I have Algeria, Ireland, Denmark, Norway, Belgium, and South Africa. Have I missed anyone? All right, thank you. May I now call on the Delegate of Algeria.

Mr. DAHMOUCHE (Algeria):

83.1 Thank you, Mr. President. Mr. President, I was greatly impressed, a few moments ago, by the stirring and extremely sensible speech made by the distinguished Delegate of Brazil, and I should like, if I may, very briefly to philosophize on the subject for perhaps two or three minutes.

83.2 But first of all I want to say that I am not taking this opportunity to congratulate you on your election as President in view of the extremely ancient ties that bind Algeria and the United States. If I remember rightly, no later than last century the United States Government was accustomed to pay fees to the Government of Algeria to enter the Mediterranean, which shows how much relationships between forces has changed since then – I am now being philosophical, of course. What I mean is that in the field of economic power nothing is eternal.

83.3 I say this with some regret, Mr. President, because I have the impression that this Conference is

becoming more and more a technical conference. Of course, the subject of our discussions is technical. Nevertheless, this is a diplomatic conference attended by representatives of governments, representatives of States, who are bound to take into consideration not only the immediate interests, the so-to-speak financial interests of each country, but also a gradual development in the international community. And this development, by definition, means that things never remain as they are and that as far as our Conference is concerned we should avoid institutionalizing and freezing the present state of international relations and international institutions, particularly in the patent field, and that we should pay a little more attention to what international relations and international society could be in a few decades.

83.4 You have witnessed in the last ten or twenty years the emergence of a very large number of African, Asian and Latin American nations, and you have seen that they are extremely anxious to be given the chance of developing and that they will be able to do so only if a certain amount of assistance is afforded to at least a great many of them on an international scale. One of the obstacles to this development is the extremely high cost of transferring technology by means of patents. To be practical and express the matter clearly, there are in this room perhaps 15 or at most 20 countries – 20 representatives of 20 countries – capable of exporting technology to the entire international community, that is to say, those countries which contribute to inventive activity. All the rest – and I don't mean to be pejorative – form a host, to which we belong, of countries that are simply the clients of the major inventor countries. I shall not name any of the latter but it is certain, Mr. President, that the country to which you belong is undoubtedly one of the best known in this connection.

83.5 That is why, Mr. President, I believe we are witnessing a gradual transformation of international political geography and international relations, and that it would be very realistic to take this evolution into account and realize that we are not here today to inaugurate a meeting of experts, who have come only to work out some mechanism for the benefit of certain professional categories at a corporate conference. We are not here for that purpose.

83.6 I think we are here to see what we, as representatives of our States, can best do for the international community in this particular field. Nor are we the first to act in this manner. I believe that some bodies, such as the United Nations Conference on Trade and Development, have already been concerned with the transfer of such benefits and, according to the majority of the participants at these conferences, there should be no question of any such transfer being based on the reciprocity principle.

83.7 Mr. President, I said I would be brief and I shall keep my word. I want simply, in conclusion, to recall that when one speaks of patents one is always concerned with know-how, a know-how which has to be made available to the international community, a know-how which belongs, in the narrow sense of the word, to someone who has perhaps invented some

technical or technological process, but at the same time forms part of the whole sum of knowledge of the entire international community and – to put it strongly – of humanity itself, so that we cannot meet here simply to discuss mechanisms, centralization, and decentralization. There will, of course, be opportunities here for making practical improvements to certain existing mechanisms, but I think we should rise a little above that limited objective.

83.8 I believe it was the Delegate of Finland who said just now that when he read the Treaty it seemed to him that it would benefit both the industrialized and the developing countries. I am by no means as optimistic as he. I am trying vainly to reach a better understanding of this document and I can only hope that in the course of the proceedings – and despite the fact that it is not the exact purpose of our work – advantage will be taken in the coming days of the thousand and one opportunities there will be of reorientating our work a little to make it slightly more acceptable to the developing countries, which are in process of becoming the majority, at least as far as numbers are concerned, and to enable them to view the future with more confidence.

83.9 Mr. President, before concluding I should like to say that in a very general way – on matters of principle, at least – our Delegation strongly supports what has just been said by the distinguished Delegate of Brazil.

83.10 There is just one small final point, a matter of secondary importance. This morning we rather hastily adopted a number of documents on the agenda: the elections of the Chairman and Vice-Chairmen. Now, I know that this was done correctly – I should not like to be misinterpreted on this point – and that the Governments had been informed beforehand. But you know as well as I do, Mr. President, that often when delegations arrive here they are a little lost and are not always very sure what documents have been received by their Governments, and that delegates of a number of developing countries are frequently not informed at all. So I shall tell you quite frankly that when our Delegation learned this morning that there were already 40 appointments we did not of course want to make any objections – and we are still not protesting – but we know that some of these committees are very important. I referred this morning to the Steering Committee, for example. Now that we have been able to study these documents a little, we see a number of things that displease us. We see, for example, that this Steering Committee copies to some extent the structure of the Security Council, where there are permanent members, big powers, industrialized countries – perhaps not all of them, but we note the regular absence of the developing countries. This, Mr. President, does not seem to me to be a good thing because it tends to sanction the idea that this Conference is in fact reserved for some 15 countries. I believe that it is of interest to all of us, that it is perhaps of more special interest to the developing countries, and that they should be given the physical possibility to take part in all its proceedings. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

84.1 Thank you, Sir. I might just comment with respect to your last remark that I had not thought of the way in which the membership of the Steering Committee had worked out in that sense until you mentioned it. It was certainly not the intention of the Host Government to have it come out that way. When I announce the kinds of conclusions that we have reached at our first meeting in a moment, I do not think you will be at all concerned that you or any other countries, developed or developing, were not there. The matters are purely procedural and of no substantive consequence. I do certainly wish to say that, as far as the Host Government is concerned – and I am sure I speak for everyone – we want every Government, regardless of its size, regardless of its importance in any particular or no particular scale of measurements, to participate fully in all the work of this meeting.

84.2 May I now call on the Delegate of Ireland.

Mr. QUINN (Ireland):

85.1 Thank you, Mr. Chairman. I merely wished to add my voice and the voice of my Government to the thanks which have been expressed by other delegations for the invitation to participate in this Conference.

85.2 I also wish to express the hopes which have already been expressed by other delegations for the success of the Conference. We have welcomed and applauded the initiative of the United States Government in 1966 in making the original suggestion for this exercise in international cooperation in the field of patents. With others we have admired the skill, energy and dynamism with which BIRPI has developed this project and our papers to the stage at which we now have them. We hope that the Draft Convention and Regulations which are before us represent a consensus which now has a good chance of being accepted. My Government hopes that this Conference will fulfill the high hopes of the Host Government and of all those who have contributed to the development of this great project. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

86. Thank you kindly. I call now on the Delegate of Denmark.

Mr. TUXEN (Denmark):

87.1 Thank you, Mr. Chairman. I would like to add the thanks of my Government to those expressed by previous speakers to the Host Government and to BIRPI, and my congratulations to you personally, Mr. President.

87.2 Then I would like, on behalf of the Danish Delegation and the Danish Government, to say that we highly appreciate the work done by and within BIRPI on the preparation of this Conference. We find that a convention along the lines of the proposed text of the Treaty and the Regulations will be of great advantage for our industry and for our inventors. And we think that if Chapter II, Phase 2, of the proposed text is

accepted by a considerable part of the most industrialized countries and used by applicants from these countries it should solve some of the problems of our Patent Office too. Therefore we hope for the widest possible acceptance of the Treaty. We ourselves will be able to accept the Treaty and the Regulations as proposed with only a few amendments. Thank you very much.

Mr. BRADERMAN (President of the Conference):

88. Thank you, Sir. I now call on the Delegate of Norway.

Mr. NORDSTRAND (Norway):

89.1 Mr. Chairman. I would like to join the previous speakers who have expressed their thanks to the United States Government for undertaking the arrangements of this Conference, and to BIRPI for the excellent work they have performed in presenting the Draft in its present form.

89.2 For the Norwegian Patent Office, the most important feature of the PCT plan is the expected reduction of the search work, since more than 80% of our patent applications come from foreign countries. We also note and are pleased that the PCT plan will have some impact in the direction of harmonizing the patent laws all over the world. As a whole, we find the PCT plan of such importance that I, on behalf of my Delegation, express my sincere hopes that the Conference will achieve a positive result. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

90. Thank you, Sir. I now call on the Delegate of Belgium.

Mr. SCHURMANS (Belgium):

91.1 I need hardly say, Mr. President, that the Delegation of Belgium joins in the tributes and thanks which have been so rightly expressed to all those, including our hosts and the authors of the PCT plan, who have assumed the heavy task of organizing this Conference.

91.2 The Delegation of Belgium has heard with particular interest certain statements of principle; in particular those of the Delegations of Italy, Canada and Switzerland concerning centralized search, and agrees with them fully, in the belief that the final success of the Treaty depends on this principle.

91.3 The Delegation of Belgium has also listened with as much – if not more – interest and a certain emotion to the statement of the Delegate of Brazil and, a few moments ago, to that of the Delegate of Algeria. Speaking personally, I must say that I endorse entirely all that the latter has said.

91.4 If the PCT is to have its full significance not only now but also in the future, it will only be on condition that it is truly an instrument of worldwide cooperation, ensuring to all, and particularly to the countries which seek to break through the technological barrier, the benefits of an ever expanding store of knowledge, because (while this is not the place to say it): a patent is not, or is not only, a

legal instrument. It must, above all, be a source of progress and a stimulus to civilization. If such is the result of our work, the Conference will have achieved its purpose. This, in any case, is what I am hoping for. Thank you.

Mr. BRADERMAN (President of the Conference):

92. Thank you, Sir. I now call on the Delegate of South Africa.

Mr. SCHOEMAN (South Africa):

93.1 Thank you, Mr. Chairman. Mr. Chairman, Ladies and Gentlemen, our Delegation, on behalf of the Government of South Africa, wishes to take this opportunity of thanking the Government of the United States for extending this invitation to attend the PCT Conference here in Washington; and I also wish to congratulate you, Mr. Chairman, on your election for this Conference.

93.2 Whilst we do not encounter the same patent examination problems as the highly developed countries, we do benefit from the great number of patent applications and registrations made in South Africa. We will be pleased to cooperate with all countries in the development of the patents plan, and in the solving of the problems faced by examining Offices. Although our examination system may be confined to formalities, we feel we could benefit from the large store of knowledge which would be made available to us through the PCT. Such information, properly used, would be of great benefit to us and, if I may say so, to every other country passing through the stages of development. We hope to derive many benefits from the PCT if the procedures do not become too cumbersome and onerous for the applicants, who in the final stage must pay the price for the protection of their inventiveness. I trust that these discussions here will lead to acceptable solutions which will result in the general acceptance of the PCT by all member States of the Paris Convention.

93.3 In conclusion, Mr. Chairman, I want to congratulate BIRPI, and in particular Dr. Bodenhausen and Dr. Bogesch and the PCT staff, on the presentation of the documents and the arrangements made for this and all the previous meetings that we have had on the PCT. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

94.1 Thank you, Sir. Well, that now concludes the list of Member Delegation spokesmen, but I would like to ask whether there are any other Member Delegations that have not yet spoken who would wish to speak.

94.2 Now, in order to make it possible for non-member countries to make some general observations – and I note one has already so indicated – it has been proposed, in order that we should not violate the rules which we adopted this morning yet make that possible, it has been proposed to you by the Steering Committee that in a moment or two we adjourn the Plenary and reconvene immediately, without a break, as Committee I for the purpose of hearing Observer

Organizations and Observer Delegations make general comments. So that will be our procedure to handle the statements which others may wish to make. Our Secretary General has a comment that he would like to make.

Mr. BOGSCH (Secretary General of the Conference):

95.1 Mr. Chairman, I think that it may be useful if, after this very interesting discussion, BIRPI makes comments on two points, two points of a non-legal nature, which have been brought up and for the discussion of which this Plenary seems to be particularly appropriate.

95.2 One of these questions is the matter of documentation, information, *connaissance* – as the distinguished Delegate of Algeria has put it – which is implicit in all patent documentation and is a prerequisite of effective transfer of technology to the developing countries. The Delegation of Japan has called our attention to the fact that much has yet to be done in order to make cooperation in the field of documentation really effective and efficient between the Searching Authorities and between the Searching Authorities and the cooperating countries.

95.3 The Delegations of Yugoslavia, Zambia, Spain, Brazil, and Algeria – and maybe other delegations too – all have insisted on the importance of the technical information aspect. We consider in BIRPI that the PCT is the vehicle, the framework, the preliminary condition, for creating this possibility of closer cooperation in the technical information field, in the technical transfer of technology field and other aspects which both the developing and the developed countries desire but which should be particularly beneficial to the developing countries. We cannot guarantee today, before it is in operation, how efficient this will be, but in order to test it, it is necessary to create the framework and this is the main objective of the search and preliminary examination aspects of the PCT. So, help us to create a framework, and with the same energy and devotion as in working out the legal framework we shall try to make it a really useful instrument in practice.

95.4 The other point on which I would like to make a brief observation is the point concerning the centralization of the search, particularly mentioned by the distinguished Delegates of France, Switzerland, the Netherlands, Canada, and Belgium. Some of the speakers very kindly remembered that the PCT was instrumental in awakening from its slumber and sleep the European Patent Treaty, and we are very glad that it is so, and we consider that the IIB, the International Patent Institute, which today has a very limited membership, will find in the PCT the opportunity and the challenge to affirm itself more than ever before. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

96.1 Thank you, Sir. Before I conclude this session of the Plenary, let me just suggest to the Conference the recommendations of your Steering Committee as to our meeting times and the conduct of our work. It is suggested that Committee I – and only

Committee I – meet this week. Committee II will begin its deliberations next Monday morning, so that small delegations will have only one committee to participate in this week.

96.2 It is proposed that the hours be from 9 to 12.30 in the morning, except tomorrow morning when the meeting will begin at 10; and the afternoons will run from 2 to 6, unless an earlier adjournment is necessary because of a reception or some other event. So, to repeat, the hours will be normally 9 to 12.30, except tomorrow morning, and 2 to 6, unless an earlier adjournment is necessary. That concludes the report I have to make to you on the deliberations of the Steering Committee.

96.3 With that, I want to thank you all for your superb cooperation. I think the fact that people said only what was necessary to say, things that carry forward both the practical and the philosophical bases of our deliberations here, and did not engage in polemics or any unnecessary work is a good augury for getting our work going rapidly so that hopefully we will not have to spend all our weekends and evenings in meetings in order to conclude this meeting.

96.4 I want to thank you all for your personal expressions of appreciation on my own election as President. I am very happy to serve as Chairman at this Conference. I now adjourn the first meeting of the Plenary Session and it will be reconvened in a moment as Committee I.

End of the Second Meeting

THIRD MEETING

Wednesday, June 17, 1970, afternoon

Mr. BRADERMAN (President of the Conference):

97.1 I do not know whether anyone is very happy to be in the Chair, or to be back in the Chair, but at any rate I am your servant this afternoon. We have several items, actually, before us as we reconvene this Plenary Session, and I thought that I would note them for all of you so that you can be sure you all have the documents before you. As I have it, there are five items that we are going to take up this afternoon.

97.2 The first is an approval of changes in the list of Officers, and I will come to this in a moment and explain why. Second, the report of the Credentials Committee, which is a document PCT/DC/122. The third item is that very small matter of the adoption of the Treaty and the Regulations. The fourth item deals with the adoption of the Final Act, that is, document PCT/DC/125. And the fifth item is a resolution which has been recently presented to you concerning preparatory measures for the entry into force of the PCT, which was submitted by several delegations; it is document PCT/DC/126.

97.3 The first item deals with the Officers of the Conference and Committees. The reason we must take this up at this late stage is that two countries that planned to be here with us and who were proposed by the Host Government and then accepted by all of you

as Officers of the Conference found at the last minute that they could not come. Those countries were Ceylon and Nigeria. I might say, incidentally, that we have had word from Ceylon that part of the problem was that they were in the throes of an election. In the case of Nigeria, they planned to come and were willing to come late in the Conference, but decided against it at the last minute. Both of these countries had been designated Officers of the Conference. As a result, I would like to propose to the Plenary Session that we replace these Officers by others who have been with us during the Conference. First, as Vice-President of the Conference, to replace Ceylon, I would like to suggest the Ivory Coast. Is there any objection to this suggestion, that the Delegate of the Ivory Coast be the Vice-Chairman? I call on the Delegate of the Ivory Coast.

Mr. COULIBALY (Ivory Coast):

98. Personally, I have no objection.

Mr. BRADERMAN (President of the Conference):

99.1 Is that agreeable to the Plenary Session? Thank you.

99.2 The other Officer we need to replace is in the case of Nigeria, Vice-President of the Drafting Committee, Main Committee II. I would suggest that we replace Nigeria by Iran. Is this satisfactory to the Delegate of Iran? Thank you.

99.3 Is this agreeable to the Plenary Session? All right. Then, with those substitutions, the remainder of the list of Officers remains as you have it in the original document which was circulated; and I call to your attention that it was PCT/DC/MISC/8 that listed the Officers of Committees of the Conference. Thank you.

99.4 The next item on our agenda is the report of the Credentials Committee, and I would like to call on Mr. Yoshino, the Head of the Delegation of Japan, to present the report of the Credentials Committee.

Mr. YOSHINO (Japan):

100.1 Thank you, Mr. Chairman. As Chairman of the Credentials Committee, I am very glad to state that the task of the Committee is now completed. During the period of this Conference, the Credentials Committee has met three times in order to examine the credentials and full powers shown by the delegations, according to the Rules of Procedure adopted by the Plenary. Yesterday, in our last session, we adopted our final report, which is now before you, Mr. Chairman, for the consideration of this Plenary Meeting. The document is PCT/DC/122.

100.2 Please allow me, Mr. Chairman, to take this opportunity to express my gratitude to all the delegates who participated in the work of the Credentials Committee for their friendly cooperation. I must report to you, Mr. Chairman, that most of the members were present in the meeting of yesterday, although yesterday was generally understood to be holiday of the Conference. Furthermore, I should like to extend my deep appreciation to Mr. Lorenz, the Delegate of Austria, who took the trouble of presiding

at the meeting when I was absent; and also to Mr. Voyame, the Secretary of the Committee, whose kind assistance has contributed so much to the accomplishment of the task of the Committee. Thank you Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

101.1 Thank you very much, Minister Yoshino. You all have before you then the report of the Credentials Committee, document PCT/DC/122. May we consider the report adopted? I see no dissent; then we shall consider the report of the Credentials Committee adopted. Thank you.

101.2 We now come to the Treaty and the Regulations. Our countries have come a long way, starting back in 1966. We have drafted, we have re-drafted many, many times over. There have been compromises, there have been all kinds of solutions to difficult problems. We have consulted together over the years and then, at this Diplomatic Conference, we have again reviewed all of the work that we have performed. We have debated the issues. We have made many changes in our working groups, and we have given consideration to the results of these efforts in Main Committees I and II under our very able Chairmen, and in the Drafting Committees. We have also taken a final look at the details and the wording, as you have just done at the last meeting of the General Drafting Committee.

101.3 Now, the Chair recognizes that while most of the Treaty is probably acceptable to all who are assembled here, without qualification, there are sections which some have accepted by making concessions to others, and that is one reason why several delegations have told me this morning – and have emphasized the fact – that it is important to deal with the Treaty as a whole because it does represent those compromises and suggestions by one delegation to another. After all, this process which we have gone through is the essence of international cooperation and in this particular case, as we are dealing with a Patent Cooperation Treaty, that is exactly what we mean by it.

101.4 So, then, my fellow delegates, we now have the Treaty and the Regulations before us, and, in accordance with Rule 36(1): of the Rules of Procedure, I would like to call for a vote on adoption of the Treaty and the Regulations. May I ask for a show of hands, because according to that Rule a majority of two-thirds of the Member Delegations present and voting in the final vote is required for adoption of the Treaty. May I have a show of hands? Thank you. Are there any opposed to adoption? Are there any abstentions? Well, it looks like a unanimous motion. May I congratulate all of you on a tremendous job well done!

101.5 May I now turn to item 4 on our agenda, the Final Act. This is, as I have noted, PCT/DC/125, the Final Act of the Conference. Is there any objection to adoption of the Final Act? I see none, then we will consider the Final Act as adopted.

101.6 The last item on our agenda this afternoon is the resolution to which I have referred, PCT/DC/126.

This item, as you will notice, was submitted by a number of delegations – Algeria, the Federal Republic of Germany, Japan, the Soviet Union, and Sweden. It was, however, submitted at a late hour and I do not know how much time you have had to consider it. May I call first on the Secretary General with respect to it.

Mr. BOGSCH (Secretary General of the Conference):

102. Mr. Chairman, the Secretariat tried to contact several delegations in addition to those who are the sponsors of this resolution, but because of the excursion to Cape Kennedy we were unable to reach many. This resolution, in the view of the Secretariat, is most desirable, particularly because of its paragraph 2(a):, which speaks about the interim institution of the Committee for Technical Assistance. Some delegations, in private conversations, asked the Secretariat whether this resolution would entail any financial burden additional to what is contemplated in the framework of the voluntary contribution system, which has been in effect for the last three years and which is expected to be in effect for the next years until the Treaty comes into effect. I would like to give public assurance that there will be no change in this respect. In other words, the Secretariat is not going to propose any additional measures for voluntary contributions, which are outside the framework of the Paris Union, if this resolution is adopted. We see a great encouragement, particularly for Chapter IV of the Treaty, which, as you know, deals with Technical Assistance, if we do not have to wait four years or three years or two years, or whatever time it will take for the Treaty to come into effect, before we can study the possibilities of implementing the important decisions which you have taken in connection with Chapter IV. Thank you Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

103. Thank you. Is there a discussion? I call on the Delegate of the Soviet Union.

Mr. ARTEMIEV (Soviet Union):

104.1 Mr. President, Ladies and Gentlemen, in connection with the discussion of the resolution in document PCT/DC/126, the Delegation of the Soviet Union considers it advisable to draw the attention of the Conference to the question concerning the prospective International Searching Authorities.

104.2 As you are aware, International Searching Authorities are appointed by the Assembly. However, since the establishment of a single International Searching Authority for PCT purposes in the near future is practically impossible but, at the same time, too great a number of such Authorities could adversely affect uniformity and the value of international search, it seems to us advisable at this time to know what preliminary opinions are on this problem. These preliminary opinions concerning the question which International Searching Authorities are going to carry out international searches when the PCT procedure is first used are very important ones. It is necessary that they be known in order that the great means deployed and efforts made so far by

certain national Offices will not be wasted or frozen for a long time to come.

104.3 In this connection, the Delegation of the Soviet Union would like to emphasize that the appointment of one or other national Office will probably depend on a number of factors, including considerations of an economic, social or geographical character. A recommendation in the records of the present high-level Conference on the subject of the prospective International Searching Authorities could allow a number of countries to begin already preparations for carrying out the international search and to start talks on the conclusion of regional agreements regarding mutual aid for completing the necessary search files to meet PCT requirements. It might help prospective member States to choose one or other of the International Searching Authorities, and would be useful in many other respects.

104.4 The Delegation of the Soviet Union proposes to insert in the records a note to the effect that the Committee for Inventions and Discoveries of the USSR is able to assume the tasks of an International Searching Authority after signature of the PCT and its ratification by the USSR. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

105. Thank you. Are there other delegates who wish to speak? I call on the Delegate of Argentina.

Mr. VILLALBA (Argentina):

106. Thank you very much, Mr. President. With regard to the resolution under discussion, which was presented by Algeria, Germany and other countries, we are not opposed to it, bearing in mind the statement made by the Secretary General. What the Deputy Director of WIPO has said would be in accordance with the position held by the developing countries, which during the meeting of the Executive Committee last year objected to the fact that the costs of the PCT, ICIREPAT, the International Classification and other minor tasks would be borne by all the countries of the Paris Union, even those which were not directly interested in them. That is why, if the Organization considers that the costs will be maintained within the limits of the program of voluntary contributions, we have no objections, That is all, Mr. President.

Mr. BRADERMAN (President of the Conference):

107. Thank you. Are there other delegates who wish to speak? I think it might be advisable to have a vote on this proposal. Again I call your attention to Rule 36(1): of the Rules of Procedure, which provides that what we adopt is by a two-thirds majority. Will all those in favor of adopting this proposal please raise your hands. The Delegate of the United States wishes to speak.

Mr. SCHUYLER (United States of America):

108. I question the need for a two-thirds vote on this.

Mr. BRADERMAN (President of the Conference):

109.1 The Delegate of the United States is technically correct. I was just trying to seek an

expression of use. In view of the point of order that has been raised, I will ask whether there is any objection to the resolution as proposed. Is there any objection to the proposal? I see that there is.

109.2 I call on the Delegate of the Netherlands. Thank you.

Mr. PHAF (Netherlands):

110. Mr. Chairman, it is not because I want to make an objection, but I am not quite clear what the proposal is that we should vote upon now. Could you give some clarification?

Mr. BRADERMAN (President of the Conference):

111. We now have before us the proposal by the Delegations of Algeria, Germany, Japan, the Soviet Union and Sweden, in document PCT/DC/126. It is a resolution concerning preparatory measures for the entry into force of the Patent Cooperation Treaty, and it is in essence a recommendation of this Conference to the Assembly and the Executive Committee of the Paris Union and the Director of the World Intellectual Property Organization.

Mr. PHAF (Netherlands):

112. I have no objection at all.

Mr. BRADERMAN (President of the Conference):

113.1 Thank you.

113.2 Is there any objection? I call upon the Delegate of Brazil.

Mr. DINIZ (Brazil):

114.1 Mr. Chairman, the Brazilian Delegation is in full sympathy with the goals of the sponsors of this resolution. I am not going to express an objection to it, but just the fact that we had this text for the last three hours only and we are not able to work up in our minds the full significance of the paragraphs as they now stand.

114.2 For instance, we do not see very clearly the relationship of the last paragraph, No. 3, with subparagraph 2(b):. In other words, we feel that, even though the intentions are desirable, the document having reached us at the last moment, we have not been able to really work up exactly the full meaning of it; and in that sense my Delegation, the Brazilian Delegation, will have to abstain from voting. Thank you, Sir.

Mr. BRADERMAN (President of the Conference):

115.1 Thank you. Is there any other delegation that wishes to make a statement? Is there any objection to the adoption of this proposal?

115.2 With the understandings of the statements that have been made by the Secretary General and the observations thereon by the Delegate of Argentina and the other observations that have been recorded, there is no objection and this resolution is adopted.

115.3 Our next and final session will be held at 10:30 on Friday morning. Tomorrow will be used by the Secretariat, as well as this afternoon and tonight, I am sure, to get all the documents before us in final

working order. I would hope that we could meet promptly at 10:30 on Friday in this room. Let us decide that we will meet here in this room at 10:30 on Friday. Some of you had indicated that you wanted to catch planes to various points and so we would, at that time, try to move as rapidly as possible.

115.4 In order to facilitate the proceedings and particularly the signing ceremonies, if delegations could indicate to the Secretariat beforehand whether or not they plan to sign the Treaty and the Regulations as well as the Final Act, or the Final Act, preferably by tomorrow or no later than early Friday morning, it would be very helpful in facilitating the proceedings that we are planning to arrange for the signing ceremony. We would also plan to have whatever closing statements the delegations may wish to make on Friday morning, so that we would utilize that perhaps one hour or one and a half hours for closing statements by delegations and the signing ceremony.

115.5 If there is no objection, then I propose that this session of the Plenary Session be considered as adjourned until Friday morning. Thank you all very much.

End of the Third Meeting

FOURTH MEETING

Friday, June 19, 1970, morning

Mr. BRADERMAN (President of the Conference):

116.1 Ladies and Gentlemen, good morning. We are sorry that we did not have better weather for you yesterday, since that was your only full day off during this long Conference. I will try to do better another time, but we are happy that some of you were able to get around and see something of our lovely city.

116.2 This is our final Plenary Session. We have adopted the Treaty and its Regulations, and a Final Act. We will have our signing ceremony shortly and we will have a few words to say about our procedures.

116.3 At this time I would like to call on someone who, as a lawyer and as Secretary of State, has followed our deliberations with great interest. I am indeed pleased to present to you the Hon. William P. Rogers, Secretary of State.

Mr. ROGERS (Secretary of State of the United States of America):

117.1 Your Excellencies, Ladies and Gentlemen, the achievement of a new treaty among sovereign states is always an important event. I am pleased to be here to pay my respects to all of you whose patient and skillful work has led to the successful negotiation of the Treaty on Patent Cooperation.

117.2 As a lawyer, I know the important role of patents in economic life. The new Treaty will facilitate the protection of industrial property and will foster the inventiveness and innovative spirit that is necessary for economic progress. It will contribute to international trade and investment, and it will bring benefits to the citizens of all of our nations.

117.3 In its technical aspects the Treaty, doubtless, will be of principal interest to those concerned with the protection of industrial property around the world. But the Treaty is more than a document to preserve the rights of inventors and to simplify the work of specialists in patent law and procedure. It represents another strand in the growing web of international understandings and contracts that is slowly but surely making our world a more civilized place and our relationships more productive of good for our peoples.

117.4 I note that parties to this Conference have come from all the major regions of the world – the Americas, Africa, Western Europe, Eastern Europe, the Middle East and the Far East. It is no small accomplishment to have reached agreement among nations with such varying legal systems and differing economic philosophies. I can only think that it is an encouraging result for us all, and I am happy and proud that my own Government was able to act as your host for this most successful gathering. Thank you very much and best wishes.

Mr. BRADERMAN (President of the Conference):

118. I would now, Ladies and Gentlemen, call on Dr. Bogsch, Secretary General of the Conference, for a few observations.

Mr. BOGSCH (Secretary General of the Conference):

119.1 Mr. Chairman, Ladies and Gentlemen, the Washington Diplomatic Conference on the Patent Cooperation Treaty, which will close in a few minutes, was attended by some 300 delegates. Seventy-seven States were represented; 55 are members of the Paris Union for the Protection of Industrial Property, and 22 are not members of that Union. They belong, as the Secretary of State has just said, to all parts of the world. This, in my view, is the really sensational fact about this Conference. The number of international organizations represented was 22; 11 of them are inter-governmental, and 11 are non-governmental.

119.2 The deliberations lasted four weeks. They took place in 2 Main Committees, 8 Working Groups, 3 Drafting Committees and a Credentials Committee. A Steering Committee coordinated the work of the various bodies. These Deliberations were based on a Draft Treaty and annexed Regulations prepared by the United International Bureaux for the Protection of Intellectual Property, BIRPI. The Drafts were the fruit of four years of consultations and meetings both with representatives of governments and with representatives of inventors, industries and the patent profession. The present Conference has further improved these Drafts.

119.3 Among the many improvements effected by the distinguished Delegates attending this Conference, perhaps the most significant is the writing into the Treaty of a new Chapter – Chapter IV – which goes beyond the original goals of the Treaty, and provides the framework for technical assistance to developing countries. Assistance to developing countries is the main preoccupation of our times and the most difficult of the tasks of international organizations. The

technical assistance connected with the new Treaty will be in two fields: technological information and improvement of the national and regional patent systems. The task is an enormous one. Through your decision, the World Intellectual Property Organization has received a new mandate. The International Bureau will do its best to be worthy of the confidence you have placed in it.

119.4 As to the original goals of the Treaty, you have found, honorable Delegates, a most felicitous wording in which to express them, in a preamble which is also a new element in the Treaty, and one which was created by this Conference. The words in question are "contribution to the progress of science and technology," "perfecting the legal protection of inventions," and, finally, "rendering more economical the obtaining of protection for inventions where protection is sought in several countries."

119.5 In the body of the Treaty itself, you have rewritten the article on definitions by giving due emphasis to the notion of inventors' certificates. You have found an elegant solution to the old problem of naming the inventor in the application. You have established closer ties between the Treaty and the Paris Convention, by making membership in the Paris Union a condition for becoming party to the Treaty. You have solved the problem that exists because of the diversity of national laws in respect of the date of the prior art effects of applications.

119.6 You have given a completely new dimension to the concept of an international-type search. The Treaty itself now provides that countries may require such a search on purely national applications. Here is another feature of the Treaty which is capable of being useful to developing countries.

119.7 You have written into the Treaty the name of the International Patent Institute. The Treaty constitutes a unique opportunity for that Institute to expand.

119.8 You have written into the Treaty the right of any applicant and any national Office concerned in the application to obtain copies of the documents cited in the search report. This is a feature which will doubtless facilitate rapid documentary information.

119.9 The articles on the amendments in the application in the national Phase have been improved in a way which gives further assurances both to national Offices and to the applicants.

119.10 The Conference has fundamentally modified the article on regional patents. A certain interlocking effect has thus been established between international and regional applications which, it is hoped, will be beneficial to both.

119.11 As far as the Regulations are concerned, you have further perfected the two key rules concerning the form of description, and the form of claiming, in applications. You have also placed these rules among those whose future amendment requires unanimity, at least during the early stages of the Treaty. You have also perfected the rules on the time limits for search and for amendment of the application in the national phase.

119.12 As far as the administrative provisions are concerned you decided to write an article on an Executive Committee, and one on disputes. You have changed the provisions concerning the number and qualifications of the countries whose ratifications will bring the Treaty into force. Finally, in a true spirit of mutual understanding, you have found a solution to the question of the Treaty's applicability to certain territories.

119.13 This, Mr. Chairman, is of course only an incomplete list of the many improvements which, as the result of almost 100 written proposals by Delegations, have been effected in the Treaty and the Regulations which, in a few minutes, will be opened for signature.

119.14 The fact that so much has been accomplished in such a short time is also due to the merit of those persons who have assisted us, both now and in the course of the preparatory work. The Secretariat has been helped most efficiently and most graciously by the men and women who were put at the disposal of the Conference by the State Department or the Commerce Department. Their tireless efforts and their dedication have made this Conference a success also in the purely technical sense. I would like to mention a hundred names at least but since time does not permit me to do so, I shall mention only two, Mr. William Keough, Assistant Secretary General for Administration of the Conference, and Miss Irene Piechowicz, the Documents Officer of the Conference. May I here publicly thank them and, through them, all their collaborators for the wonderful work they have done. The same goes for the interpreters. They are charming, willing and absolutely accurate in their work.

119.15 Finally, I ask for your permission, Mr. Chairman, to name a few of my collaborators so that the record should show the names of the individuals whose intelligence and devotion were indispensable elements in the preparation of the Treaty. Professor Bodenhausen, the Director of BIRPI, would, I am sure, welcome this, had his health permitted him to be with us today. Here, too, the list cannot be complete. But those who were with us during this Conference are: the Second Deputy Director of BIRPI and Assistant Secretary General of this Conference, Joseph Voyame; the Head of the Industrial Property Division of BIRPI, Klaus Pfanner; the Head of the PCT Section of BIRPI, Ivan Morozov; the Head of the General Section for Industrial Property in BIRPI, Richard Wipf; the Head of the Languages Services of BIRPI, Mrs. Grandchamp; the Head of the Documents Services of BIRPI, Henri Rossier; our administrative Officer, Magbool Quayoom; and our secretaries, Rosemary Bourgeois, Andrée Bernillon and Karin Wachs. Mr. Chairman, honorable Delegates, they too, like myself, have been proud to serve you in this Conference, and wish you a happy return to your respective countries. Thank you.

Mr. BRADERMAN (President of the Conference):

120.1 Thanks very much to you, Mr. Secretary General. Before calling on other delegations, I find we have one item of unfinished business; the

Credentials Committee met this morning and held its fourth session, under the chairmanship of Minister Yoshino, of Japan; and the Committee decided to make the following additions to its final report. The report we had before us on Wednesday was PCT/DC/122; this is PCT/DC/131. The additions are to add Cameroon to paragraph 5 and to add Peru to paragraph 7.

120.2 Is there any objection? I see none. Then we will regard that final report of the Credentials Committee as accepted.

120.3 I now invite any delegations who wish to comment to do so. Are there any that wish to comment? I call upon the Delegate of France.

Mr. RASTOIN (France):

121.1 Mr. President, Ladies and Gentlemen, on behalf of the Delegation of France, I should like at the close of the proceedings of this Conference, to thank the Government of the United States of America for its hospitality, which has been true to tradition. I should also like to thank most particularly the President of the Conference, Mr. Braderman, and, at the same time, all the staff for the excellent organization, which has, I believe, enabled us to do a good job.

121.2 The Draft Patent Cooperation Treaty, whose principles we have unanimously approved, is important. Its implementation may represent a considerable step forward compared with the situation as it stands. Indeed, the 1970s, like former decades, will be marked by further developments in the field of science and technology, and these developments are essential if members of the international community are to fulfill the twofold purpose they must keep in view. This purpose is, on the one hand, to increase world production to meet the needs of an expanding population still largely suffering from the ills attendant upon retarded development, and, on the other hand, to protect or restore our natural and social background, so gravely threatened today by the fall-out of developed industrial societies. The worldwide expansion of new technology will continue and that is why a treaty facilitating both the spread and the protection of inventions and innovations comes, I believe, in good time.

121.3 Apart from the substance of the provisions adopted, it is also encouraging to note that the proceedings of this Conference have provided the opportunity for a display of the spirit of true international cooperation, the spirit which already motivated our predecessors on the occasion of the conclusion of the Paris Convention in 1883. It was this spirit of cooperation that prompted the American proposal of September 1966. The same spirit has been the constant source of inspiration behind the work of the experts and the BIRPI team and its leader, the Secretary General of this Conference. And, finally, it is this spirit of cooperation that has made it possible to improve upon the initial Draft by adding new provisions enabling all States, particularly the developing countries, to benefit from the concrete

advantages of this cooperation which they so rightly aspired to.

121.4 Tomorrow, this same spirit of cooperation will have to ensure the harmonious coordination of the new Treaty with other diplomatic instruments, including the treaty on regional patents, to which France attaches special importance. It will have to help us, as it has done during this Conference, to overcome the inevitable differences of opinion and facilitate the solution of the problems connected with implementation.

121.5 Although, in view of its instructions, the Delegation of France will not be signing this Draft Treaty in a few moments, I can assure you that it will report faithfully to its Government on the atmosphere of moderation and mutual understanding that has prevailed throughout this Conference. We have reasonable hopes that the combined efforts of all will make the Patent Cooperation Treaty a daily living reality of international practice.

Mr. BRADERMAN (President of the Conference):

122. Thank you very kindly. I now call on the distinguished Representative of Germany.

Mr. HAERTEL (Germany (Federal Republic)):

123.1 Mr. President, Ladies and Gentlemen, the German Delegation is satisfied with the outcome of this Conference. It regards the conclusion of the Patent Cooperation Treaty as the most important event in the field of international patent law since the founding of the Paris Union in 1883. The Treaty has not of course fulfilled all our hopes. As our President has said, it is a compromise, but every workable international treaty must be a compromise.

123.2 In the view of the German Delegation, special importance attaches to the reservation provided for in Article 64(4):. We trust that those States – if any – which avail themselves of this reservation will do so with moderation and prudence, to avoid prejudicing the international application.

123.3 The uncertainty which still exists with regard to the future effects of the Treaty on certain States may influence the attitude of the Government of the Federal Republic of Germany when the Treaty is to be ratified. We are all the more pleased that the acceptance by the Conference of the resolution contained in document PCT/DC/130 makes it possible, irrespective of the date of entry into force of the Treaty, to start immediately to take measures concerning the cooperation provided for in the Treaty, in particular the technical assistance to be afforded to developing countries. The German Delegation reiterates the willingness of the Government of the Federal Republic of Germany to do whatever it can to make this technical assistance as effective as possible.

123.4 The successful conclusion of the Patent Cooperation Treaty today in Washington will give new impetus to the preparations for a European patent system, on which 17 European States are at present working and the aim of which is the creation of a European patent. We are convinced that the PCT and the proposed European patent system are not only

compatible with each other but will successfully complement each other.

123.5 The German Delegation will sign the Patent Cooperation Treaty here today in the hope that it will be another step towards a better understanding among nations.

123.6 In conclusion, may I associate myself with the thanks already expressed by the Head of the Delegation of France to our hosts and to BIRPI. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

124. Thank you, Sir, very much. I now call on the Delegate of Algeria.

Mr. DAHMOUCHE (Algeria):

125.1 Thank you, Mr. President. Mr. President, as pointed out a few minutes ago, a new Chapter has been inserted in the Treaty and adopted. Obviously, the International Bureau was not prepared to adopt this new chapter. In the circumstances, we are all the more grateful to the BIRPI team for the efforts they have made and to the delegations present here for their comprehension in adopting this new Chapter on cooperation between developed and developing countries. We can well understand the difficulties which a conference of this sort may have encountered in inserting this new Chapter in the Treaty. I am not speaking at the moment on behalf of all the developing countries but perhaps they will allow me to say, in their name, that we are satisfied with the results of this Conference. Speaking for the Delegation of Algeria, I wish to say that we shall be signing the Treaty in a few minutes.

125.2 I should not like to conclude without also congratulating all those who contributed to the success of this Conference, particularly and above all Mr. Braderman, Mr. Schuyler, Professor Bodenhausen, and Dr. Bogsch and all his team, without forgetting the staff and especially the Delegation of the United States of America and the United States Government, which once again has done justice to its traditional hospitality.

125.3 In conclusion, Mr. President, may I draw special attention to the remarkable qualities of someone who is absent – Mr. van Benthem, Chairman of Main Committee II. I had the pleasure of finding myself often on his right and I should like to ask you, Mr. President to convey to him, through the Delegation of the Netherlands, our appreciation of his competence, his kindness – and his cigars! Thank you.

Mr. BRADERMAN (President of the Conference):

126. I now call on the Delegate of the Netherlands.

Mr. PHAF (Netherlands):

127. Mr. Chairman, Ladies and Gentlemen, just a short declaration. In a few minutes, as you have said, we will begin the signing ceremony. At that moment, all delegations will sign the Final Act of this Conference. We shall not sign the Treaty, but we should like our reason for not doing so to go on record. It is not, Mr. Chairman, that we still have any

serious misgivings about certain provisions of the Treaty. We think it is a good, overall compromise treaty, as we have achieved it here at this Conference. The only reason is that, as a matter of general policy, our Government likes to brood a bit on the results of any diplomatic conference before taking the final decision to sign. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

128. Thank you very much. We understand the position of the Netherlands. I call on the Delegate of Japan.

Mr. ARATAMA (Japan):

129.1 Mr. Chairman, we are very glad to see that the Patent Cooperation Treaty has been unanimously adopted by this Diplomatic Conference and that the Treaty is now open for signature.

129.2 This Treaty is the result of continuous efforts on the part of a number of people from all the continents of the world. It is true that in the course of the preparation and also during this Conference we sometimes had difficulties, but nothing gives me greater pleasure than the fact that all the difficulties were overcome by the spirit of cooperation shown by all the participants. I am convinced, Mr. Chairman, that this Treaty, when it enters into force, will open up a new era of international cooperation in the field of patents and will contribute greatly to the development of technology. Also, it should not be forgotten, Mr. Chairman, that the discussion on the problems of the developing countries was one of the main issues of this Conference, and I welcome the fact that a solution has been found which is acceptable to all delegates.

129.3 Let me take this opportunity, Mr. Chairman, to express our deep appreciation for the work that has been done by everyone in the hard-working team of BIRPI.

129.4 Last, but not least, I should like to express my heartfelt gratitude, on behalf of the Japanese Delegation and all the other delegations, to our colleagues from the United States for their efforts in arranging such a successful conference, and for their hospitality, which has made our stay in Washington a most enjoyable one. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

130. Thank you very much. I now call on the Representative of the Malagasy Republic.

Mr. RAZAFIMBAHINY (Malagasy Republic):

131.1 Mr. President, Ladies and Gentlemen, the Delegation of Madagascar would like to express its satisfaction with this Treaty which is shortly to be signed. We believe that the very fact that the fundamental question – the question of the developing countries – has been largely taken into account can only give cause for satisfaction. The developing countries themselves have, at the same time, raised a number of problems, which have been taken into consideration in the text of the Treaty, and again we have every reason to be satisfied. It is not possible, of course, in any treaty or any convention to give full

satisfaction. Full satisfaction is not of this world. If you do obtain it, you are already in another world!

131.2 Now, Mr. President, as the Treaty is about to be signed we should like to explain why the Delegation of Madagascar and the Delegations of the Member States of the African and Malagasy Industrial Property Office, which is a specialized body of the joint African and Malagasy Organization, will not be able to sign it today. Our Office – OAMPI – and we ourselves take this opportunity to thank you for inviting the Director General of this organization to attend the Conference in an observer capacity. Ours is a regional organization, however, which has its own rules and its own structure by which we are bound. We must first present the text of the Treaty to our respective Governments, like a number of other delegations here, and then the Council of Ministers of the African and Malagasy Industrial Property Organization will see it and, within the time limits prescribed by that Organization, each of our Member States will sign it, with great pride, great satisfaction, and great pleasure, now that the spirit of international cooperation shines through the lines of the Treaty for all to see.

131.3 Before concluding, Mr. President, I should like, on behalf of the Delegation of Madagascar, to thank all those who have organized this Conference, from the top to the bottom of the ladder, and especially those who are usually forgotten, those who work in the background, behind the scenes, in Offices, and who have added their stone to the structure, and played their part in bringing the Treaty to a successful conclusion, those whose contribution to international solidarity we can be justly proud of. Thank you very much, Mr. President.

Mr. BRADERMAN (President of the Conference):

132. Thank you very much. I now call on the Delegate of Sweden.

Mr. BORGGÅRD (Sweden):

133.1 Mr. Chairman, on behalf of the Delegations of Denmark, Finland, Norway and Sweden, I want to express our satisfaction with the results which have been achieved at this Conference. The Scandinavian countries have, from the time of the adoption of the Paris Convention, actively engaged in efforts to improve the patent system through international cooperation. In conformity with this general attitude it was natural for our countries to welcome an international system such as the PCT system for the simplification of the procedure for obtaining patents in several countries, and for facilitating the task of national Patent Offices. We consider it a privilege to have been able to actively participate in the preparatory work for the PCT, and we hope that some benefits have been derived from our experience with the recently introduced common Scandinavian patent legislation.

133.2 The preparatory work has now resulted in a Treaty, which should greatly aid inventors and industry in the exploitation of improved technology. At the same time, the implementation of the Treaty

promises to relieve overburdened national Patent Offices and to assist administrations now lacking resources for the search and examination of patent applications. Moreover, by economizing the resources needed for the mere administration of patent applications, the plan should enable national Patent Offices to engage more actively in the diffusion of knowledge and use of modern technology, which is one of the paramount aims of the patent system.

133.3 We are particularly pleased that the benefits which developing countries may derive from the Treaty have been largely improved. However, much work remains to be done before this plan becomes effective. It is of great importance that during the period preceding the entry into force of the Treaty efforts should be pursued to make the Treaty a working instrument which will effectively serve the purposes for which it is intended. It should be emphasized that the success of the PCT plan depends, to a very large extent, on the loyalty of the Contracting States to the aims and purposes of the plan, and on the manner in which these States respect each other's interest in connection with the PCT.

133.4 The results of this Conference could not have been accomplished without the concerted efforts of a great number of people, from both government and private circles. The untiring efforts and the admirable work performed by the leadership of BIRPI have been a necessary prerequisite for these achievements. On this occasion, our particular thanks go to the Government of the United States of America, which took the original initiative to establish the Treaty and which through its splendid hospitality has made possible the success of this Conference. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

134. Thank you very much. I now call on the Delegate of Israel.

Mr. SHER (Israel):

135.1 Thank you, Mr. Chairman. Mr. Chairman, Ladies and Gentlemen, in its comments on the Draft Treaty, the Government of Israel stated that, although it served as a basis for discussion, the Treaty should be amended in order to meet the special needs of developing countries. We are happy to say now, at the close of the Conference, that our wishes have been fulfilled, and we are glad that we are able to sign this Treaty in the form it has acquired. The Treaty, once it enters into force, will not only be a useful tool for cooperation in the patent field, aiding both applicants and Patent Offices but also a means for development, offering new possibilities to developing countries for progress and advancement in the patent field and its administration.

135.2 It is our sincere belief that the information service, once established, and the Committee for developing countries, to which we hope to be able to contribute, will, when making their first recommendation – which we hope will be as soon as possible – enhance development and aid the

“developing Patent Offices” to become equally useful members of the family of Patent Offices.

135.3 The time has not come to assess the future impact of the Treaty or to evaluate its provisions, but I must make one comment. While harmonization of patent laws would appear useful in the long run, at this stage the principle of the Treaty in preserving national laws is essential and we are happy that we were able to assist in preserving this principle, in connection, for example, with the special reservation concerning prior art.

135.4 One last remark, but not the least important: this Conference has once again demonstrated that when dealing with cooperation political differences have not been set aside and each nation has been able to contribute to the best of its ability and to have its say in the course of reconciling positions. May I add, on behalf of our Delegation, some words of thanks to the Chairman of the Conference and the Main Committees, the Secretariat and, of course, the Host Government, who have all contributed to the success of our labors. Thank you very much, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

136. Thank you, Sir. I now call on the Delegate of the Soviet Union.

Mr. ARTEMIEV (Soviet Union):

137.1 Mr. President, Ladies and Gentlemen, on the occasion of our final meeting of the Diplomatic Conference, I want to make only a short statement.

137.2 The Soviet Union has always attached and still attaches great importance to international cooperation in all spheres of State activity. The present Diplomatic Conference is an excellent example of taking account, in a complete manner, of the interests of the various countries of the world in the field of international cooperation on the patenting of inventions. I should like to express the hope that the spirit of cooperation which prevailed at the Conference will spread to other spheres of relations among the different countries of the world.

137.3 Mr. President, on behalf of the Delegation of the Soviet Union – and I hope the other delegations will join me – I should like to express my great gratitude to you as President of our Conference for the capable and diligent manner in which you have presided over the meetings of the Diplomatic Conference.

137.4 I should like to express my gratitude to the organizers of the Diplomatic Conference for their fine organization of the work of the Conference, as a result of which much in the field of the protection of industrial property has been achieved. We believe, in fact, that this Conference will go down in history. I should also like to render BIRPI its due for its excellent organization of the work and for the tremendous efforts which have been made by the Secretariat to help produce the fruitful results of the Conference. Finally, I have great pleasure in expressing my gratitude to the technical personnel of our Conference, and especially to the interpreters of the Russian language who have helped the Delegation

of the Soviet Union very much in its work. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

138. Thank you, Sir. I now call on the Delegate of Italy.

Mr. RANZI (Italy):

139.1 Mr. President, I should simply like to say that the Patent Cooperation Treaty is not only the best one could have hoped for at the present time but, above all, it shows fair and reasonable promise for the future. It is in this spirit that the Delegation of Italy is preparing to sign the Treaty.

139.2 May I take this opportunity to express the thanks of the Delegation of Italy to the United States Government, to BIRPI, and to all those who have done so much to contribute to the success of this Conference, and done it so well. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

140. Thank you, Sir. I call on the Delegate of Romania.

Mr. IONITA (Romania):

141.1 Mr. Chairman, fellow Delegates, the Delegation of the Socialist Republic of Romania would like to join the other delegations in expressing its appreciation for the work done by the Diplomatic Conference on the Patent Cooperation Treaty. We believe that the Treaty and the Regulations, approved in the Plenary the day before yesterday, offer the possibility of serving better the advancement of science and technology in the world, the legal protection of inventions, and social and economic progress, in the only way possible today, through international cooperation among States on the basis of the unanimously recognized principle of international law, sovereignty, equality of rights, and mutual advantages.

141.2 Guided by the above considerations, the Romanian Delegation has tried to make its contribution to the Conference and we wish to express our satisfaction that some of our proposals and suggestions – many of them similar in letter and spirit with the proposals of other delegations – have found their place in the final text of documents PCT/DC/128 and 129. At the same time, of course, we regret that some of our proposals, which in our view would have enhanced the efficiency of the new Treaty, were not accepted. I am specifically referring to Rule 88, which we would have preferred to be in accordance with the spirit of the Treaty, namely, that any amendment to the Regulations as well as any amendment to the provisions of the Treaty would bind only the States accepting the relevant amendments.

141.3 On behalf of the Romanian Delegation, I would like to thank you personally, Mr. Chairman, for the manner in which you have conducted the proceedings of our Conference. I would like to thank the Government and the Delegation of the United States, who have served with traditional hospitality

and efficiency as the hosts of this Conference; as well as the other delegations for their cooperation and contributions to the positive results of the Conference. It goes without saying that our thanks are extended to the distinguished Secretary General, to the whole staff of the Secretariat, and to all the technical staff, whose smooth and tireless work greatly contributed to the successful completion of our work. I thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

142. Thank you, Sir. I now call on the Delegate of Togo.

Mr. OHIN (Togo):

143.1 Honorable Delegates, the spirit of comprehension which has prevailed throughout the four weeks of this Conference has produced a masterpiece of compromise. The major developed countries, with their interminable lists of inventions and their technological capacities, and the developing countries, like my own, which are only starting in this field, have both been given satisfaction. If the Delegation of Togo does not sign the Treaty today, it is not because there is any opposition on our part; it is simply a question of procedure, all the more important since the Ministers of the countries of OCAM, of which Togo is a member, will be meeting very shortly. Apart from this question of a general nature, it is of course understood that OCAM will give its full support to the declaration made here and I should like to add that I share entirely the views of my friend and colleague, the Ambassador of the Malagasy Republic, who, as former Secretary General of our Organization, has already confirmed that OCAM would not raise the slightest objection to signing the Treaty.

143.2 Mr. President, may I, in conclusion, offer my warmest congratulations to all the organizers of this Conference, to BIRPI, and, of course, to the United States Government for its untiring efforts to reflect on this occasion the well-known, traditional hospitality of its country. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

144. Thank you very much. I now call on the Delegate of Brazil.

Mr. DINIZ (Brazil):

145.1 Mr. Chairman, the Brazilian Delegation is going to sign the Patent Cooperation Treaty today. In so doing, we are convinced that we are associating ourselves with an important instrument for the economic development of the Contracting States and, especially, of the developing countries. In so doing today, we want to show our gratitude to all the delegations who have unanimously given their support to the special provisions contained in Chapter IV. Permit me to express our confidence in the efficient implementation by governments of the provisions of this Chapter, under the inspired leadership of Dr. Bodenhausen and Dr. Bogsch.

145.2 Our thanks go to you and to your Government, Sir, for the warm hospitality offered to us during this Conference. Thank you very much.

Mr. BRADERMAN (President of the Conference):

146. Thank you, Sir. I now call on the Delegate of Austria.

Mr. LORENZ (Austria):

147.1 Mr. President, Ladies and Gentlemen, you know as well as I do that we came here with a mixture of grave anxiety and great confidence. You also know that our confidence has been more than justified. That is why, unreservedly and without repeating everything in detail, I can associate myself with all the compliments and all the words of gratitude that have been expressed here today to the Host Government, to the Secretariat, and to all the delegates who have so loyally and so diligently contributed to the truly satisfactory results that have been achieved.

147.2 Unfortunately, I am in the same position as those delegations whose countries have what I might call "technical provisions" (in the broad sense of the term): which prevent them from signing here today the Treaty which is the outcome of all this splendid work. I must say that it is particularly painful for me to be unable to express in this way the gratitude which, I repeat, would be so entirely justified. All that I have been able to obtain – at the last moment – is the possibility of making a very small gesture of gratitude, by signing the Final Act. But, before leaving, I can assure you, with all my heart, that the efforts of the Delegation of Austria will not stop here and now, at this Conference. We shall continue our efforts, in order to make our gratitude as complete as possible, first of all by signing within the prescribed limits the Treaty which has emerged from this Conference in the hope of being able to take an active part in building up the system we have created. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

148. Thank you very much. I call on the Delegate of Australia.

Mr. PETERSSON (Australia):

149.1 Thank you, Mr. President. Mr. President, Ladies and Gentlemen, Australia has asked for the floor not because it feels it can say what has been so well said already but because it thinks that it should be heard for a number of special reasons.

149.2 Firstly, because Australia is placed in a remote situation on the globe and our neighbors, our Paris Union neighbors, are not closely related and, indeed, do not fall into a natural group; we feel that we would like to have our voice heard. Secondly, because Australia's admiration for the preparation and conduct of this Conference, which has resulted in a historic Treaty, is unbounded. And, Mr. President, if I may couple these two previous thoughts I would say that I think that our admiration is directly proportional to the distance we have travelled to come to this lovely city. I think that the Conference must have created a new standard in hospitality. We shall always remember the generosity and kindness of our most wonderful hosts.

149.3 The other reason, Mr. President, why I specially wanted to speak concerns the signature of this Treaty. We shall sign the Final Act, but we do not propose to sign the Treaty. This is not to be construed in the sense that Australia is not interested in this Treaty. It is interested, it is vitally interested and, indeed, I think our record would show how much we are interested in this Treaty. But, as a matter of policy, Mr. President, we would prefer to consider the question of the Treaty deeply, and consider it possibly for some time, as well as the question of our accession.

149.4 Mr. President, thank you once again for giving me this opportunity of saying publicly how much we have appreciated all that you have done, all that the Host Government has done, and of saying it with great sincerity. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

150. Thank you. I now call on the Delegate of the United States of America.

Mr. SCHUYLER (United States of America):

151.1 Mr. Chairman, speaking on behalf of the Government of the United States, it has been our pleasure to have the delegates of 77 nations and 22 organizations to visit our nation's capital on the occasion of this Diplomatic Conference. I think I may also speak on behalf of private circles in the United States in extending to you their pleasure in having you participate in this Conference, because it was their generosity which made possible the hospitality which so many delegates have indicated they have enjoyed. We are happy that the United States will be among those nations which will sign the Treaty today.

151.2 As has been indicated, our efforts cannot stop with the application of signatures to the document which is the Treaty. The true test of the Treaty, and the true test of the work that has been put into this Conference and into the preparation for it, lies ahead. The test is a twofold one: first, for the Treaty to become an effective international document it must be ratified, as provided in the text; and it is my personal hope that the United States may be among the first nations to ratify it, although, as I have previously indicated, it must undergo some legislative processes which require time. But the second test of this Treaty, and perhaps an even more important one, will be its use by the applicants from those nations which adhere to the Treaty. And again it is my personal hope that applicants from the United States will be among the first to utilize the avenues provided by this Treaty and to reap the benefits which we see in it.

151.3 Beyond that, I would like to say also that the United States looks on this Treaty as a beginning. While it is a giant step since the Paris Convention came into being, we hope that many other steps will follow, and that we will have further cooperative progress toward harmonization of the national requirements which are applied to protection of inventions internationally. It has been our pleasure to have you here and we hope that you will return soon again. Thank you. Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

152. Thank you, Sir. I now call on the Delegate of Uruguay.

Mr. CAPURRO-AVELLANEDA (Uruguay):

153.1 The Delegation of Uruguay is honored to have been able to participate in this international forum and wishes to express its gratitude to the United States of America for its hospitality and to BIRPI and the other organizations that have taken part in the proceedings for their cooperation. We believe that it is the position of the Delegation of Brazil, leading to the inclusion of a paragraph in the preamble and the creation of Chapter IV, that has in the end made the Treaty acceptable to many developing countries and created a real possibility for them to accede to it.

153.2 The Treaty will, of course, be studied by the Government of our country and it is for that reason that we are not signing it today; but we would like to offer our best wishes for a really effective international cooperation in the future in this connection. Thank you very much, Mr. President.

Mr. BRADERMAN (President of the Conference):

154. Thank you, Sir. I now call on the Delegate of the United Kingdom.

Mr. ARMITAGE (United Kingdom):

155.1 Mr. Chairman, I said at the beginning of this Conference that I regarded this Treaty as potentially, at that stage, a major breakthrough in industrial property development. We still think that and we are very glad that the Conference has resulted in the Treaty that we now have before us. I think all delegations here should congratulate themselves and each other on the spirit of compromise that they have adopted towards this Treaty. There can hardly be one delegation here that has not made some concession at some time to enable a final, acceptable Treaty to be here in front of us for signature. It is really quite remarkable, it may be almost unique to have this unanimous adoption by the Conference of the text of a treaty here at the end of the Conference.

155.2 The United Kingdom will sign this Treaty, but I should like to endorse the remarks of Commissioner Schuyler in this sense that we think that signature is only the beginning of the road. We do hope that the Treaty will enter into force rapidly, or as rapidly as it is practicable, and that, when it has entered into force, it will be operated by countries in such a way that it will enable applicants to use it to their advantage and that it will also benefit all the member countries.

155.3 Finally, Mr. Chairman, I should like to add my few words of thanks to those which have already been expressed to all those who have participated in the organization of this Conference, particularly, of course, to the Host Government, to the members of the State Department, and especially to the Patent Office, for making our life so enjoyable in the few hours that we have had out of the Conference, and for showing us around the Patent Office and taking us around on the social programs. It has all worked extremely well,

extremely efficiently and very pleasurably. We would like to thank you, Mr. Chairman, and the Chairmen of the Committees and Working Parties, for making this a success. We are very interested to hear that Mr. van Benthem has started already his own private program of assistance to developing countries with Dutch cigars, and I hope that this is an augury of things to come. So, Mr. Chairman, thank you very much to the Host Government, to all those who have organized this Conference, to the interpreters, and of course to the Secretariat, to BIRPI, who have worked as always, enormously hard. Thank you very much.

Mr. BRADERMAN (President of the Conference):

156.1 Thank you. Well, your Excellencies, Ladies and Gentlemen, I think almost everything that should be said has been said by those who have already spoken. The Patent Cooperation Treaty, which has been in preparation for more than three and a half years is now a reality. We have achieved the goal of the first successful negotiation of a worldwide treaty for patent cooperation and, as has been noted, all delegations that have participated in this Conference are to be complimented and should take pride in this significant accomplishment. You have also noted that we here in Washington have taken the first step down the road of international patent cooperation. On the other side of the Atlantic, 17 nations are presently involved in the negotiation of the convention to establish a European system for the granting of patents. These, and other regional and international efforts, may well make the decade of the seventies an outstanding one for cooperation in the patent field.

156.2 Before closing, as your Chairman, I want to take particular note of the outstanding work of the Secretariat, BIRPI, which has contributed so much to the success of this Conference. I know that you join me in expressing appreciation to Professor Bodenhausen, who unfortunately cannot be with us; to Dr. Bogsch and to all of the BIRPI staff who have worked so long and so hard on this project.

156.3 I now formally close the Washington Diplomatic Conference on the Patent Cooperation Treaty.

End of the Fourth Meeting

SIGNING CEREMONY

Friday, June 19, 1970, morning

Mr. BRADERMAN (President of the Conference):

157.1 Your Excellencies, Ladies and Gentlemen, we now open for signature the Patent Cooperation Treaty and the Final Act of the Conference.

157.2 Dr. Bogsch, the Secretary General of the Conference, and Mr. Charles Bevans, Assistant Legal Advisor, at the Department of State, for Treaty Affairs, will assist the delegations in signing the Treaty and the Final Act. Mr. Bevans and Dr. Bogsch have a few comments to make regarding the signing of the two documents. I first call on Mr. Bevans.

Mr. BEVANS (Assistant Legal Advisor for Treaty Affairs, Department of State of the United States of America):

158.1 In signing the Treaty or the Final Act, or both, the delegate may simply sign his name. There is no need to write in any date following his signature, because the Treaty is dated 19 June 1970 and all signatures affixed today will be considered as affixed on that date. There is also no need to write "subject to ratification" or "*ad referendum*," because the Treaty provides that it is subject to ratification.

158.2 The Final Act merely states that this Conference was held and that it adopted the Patent Cooperation Treaty. Signature of the Final Act does not, in any manner, constitute signature of the Treaty or imply any commitment whatsoever. Thank you.

Mr. BRADERMAN (President of the Conference):

159. Now I call on Dr. Bogsch.

Mr. BOGSCH (Secretary General of the Conference):

160.1 I am going to call the delegations in the English alphabetical order of the names of their countries. We shall ask them to come to this table, where the documents are placed. It is not difficult to differentiate between the Treaty, which has 400 pages, and the Final Act, which has one page. The name plate of the country is going to be placed on the table at the same time for the purpose of taking photographs, and the delegates who are signing for any country are requested to sit in this chair, whereas the other members of the delegation are invited to stand behind, so that pictures can be taken of the delegation as a whole.

160.2 We shall now proceed with the signatures.

161. *The following persons on behalf of the following States signed the Treaty:*

<i>Algeria</i>	<i>Holy See</i>
Mr. DAHMOUCHE	Mgr. PERESSIN
<i>Brazil</i>	<i>Hungary</i>
Mr. ALMEIDA	Mr. TASNÁDI
<i>Canada</i>	<i>Ireland</i>
Mr. LAIDLAW	Mr. QUINN
<i>Denmark</i>	<i>Israel</i>
Mr. TUXEN	Mr. SHER
	Mr. GABAY
<i>Finland</i>	<i>Italy</i>
Mr. TUULI	Mr. RANZI
<i>Germany (Federal Republic)</i>	<i>Japan</i>
Mr. VON KELLER	Mr. YOSHINO
Mr. HAERTEL	Mr. ARATAMA
<i>Norway</i>	<i>United Arab Republic</i>
Mr. NORDSTRAND	Mr. SALAM
<i>Philippines</i>	<i>United Kingdom</i>
Mr. SUAREZ	Mr. ARMITAGE
	Mr. FERGUSSON
<i>Sweden</i>	<i>United States of America</i>
Mr. BORGGÅRD	Mr. BRADERMAN
	Mr. SCHUYLER

<i>Switzerland</i> Mr. STAMM	<i>Yugoslavia</i> Mr. PRETNAR	<i>Central African Republic</i> Mr. GALLIN- DOUATHE	<i>Poland</i> Mr. MICHALOWSKI
162. <i>All the above persons on behalf of the above States and the following persons on behalf of the following States signed the Final Act:</i>			
<i>Argentina</i> Mr. REAL	<i>Malta</i> Mr. MERCIECA	<i>France</i> Mr. RASTOIN	<i>Romania</i> Mr. BOGDAN
<i>Australia</i> Mr. PETERSSON	<i>Monaco</i> Mr. SCHERTENLEIB	<i>Indonesia</i> Mr. IBRAHIM	<i>South Africa</i> Mr. SCHOEMAN
<i>Austria</i> Mr. LORENZ	<i>Netherlands</i> Mr. PHAF	<i>Iran</i> Mr. AFSHAR	<i>Soviet Union</i> Mr. ARTEMIEV
<i>Belgium</i> Mr. LORIDAN	<i>Niger</i> Mr. AMINA	<i>Ivory Coast</i> Mr. COULIBALY	<i>Spain</i> Mr. CARRERAS
<i>Cameroon</i> Mr. EPANGUE	<i>People's Republic of the Congo</i> Mr. EKANI	<i>Luxembourg</i> Mr. WAGNER	<i>Togo</i> Mr. OHIN
		<i>Madagascar</i> Mr. RAZAFIMBAHINY	<i>Uruguay</i> Mr. CAPURRO- AVELLANEDA

MAIN COMMITTEE I*

<i>Chairman:</i>	Mr. William E. SCHUYLER, Jr. (United States of America)
<i>Vice-Chairmen:</i>	Mr. Kurt HAERTEL (Germany (Federal Republic)) Mr. A. D. IBRAHIM (Indonesia)
<i>Secretary:</i>	Mr. Klaus PFANNER (BIRPI)

FIRST MEETING

Monday, May 25, 1970, afternoon

General Discussion

163.1 The CHAIRMAN stated that the Main Committee would consider Chapter I of the Draft Treaty, article by article, together with the rules related to those articles. Thereafter, the Main Committee would consider the Articles of Chapter II and the rules related thereto. But first, representatives of observer States, intergovernmental organizations and non-governmental organizations were invited to make general observations, if they so desired. Representatives of States members of the Paris Union made such observations in the Plenary of the Conference.

163.2 The CHAIRMAN noted that no observer government had asked for the floor.

164.1 Mr. FINNISS (International Patent Institute) said that particular attention should be paid to the needs of developing countries. Most of them did not have institutions capable of making novelty searches. They would be well advised to pool their efforts and participate in an existing international organization like the International Patent Institute in which their representatives would have the same rights as those of the other member States.

164.2 The speaker added that when Article 16 of the Draft was discussed he would suggest that the objective of having a single International Searching Authority should be expressed with more clarity.

165.1 Mr. EKANI (African and Malagasy Industrial Property Office) said that the Draft Treaty under consideration was of great potential interest to developing countries. It would allow them to benefit from the high-quality novelty searches which, without outside help, most of them were unable to perform. It was most important that the Treaty should be so drafted that it be compatible with the regional arrangements of developing countries. Without such

compatibility, those countries could hardly benefit from it.

165.2 His Office had every reason to believe that the Treaty would achieve the said compatibility and, consequently, would fully cooperate in this Conference for whose success it expressed its sincere wishes.

166. Mr. LEE (Korea) said that his Observer Delegation was generally in agreement with the Draft Treaty. Although Korea was not a Paris Union member, it hoped to become one in the future.

167.1 Mr. MATHYS (International Chamber of Commerce (ICC)) said that industrialists were unanimous in supporting the proposed Treaty. After many proposals made in other circles without success – mainly because they had been too complicated – the PCT was an act of genius. It provided for a system which was simple and practical.

167.2 Industrialists welcomed the PCT because they generally favored international cooperation, because they recognized the vital role patents played in increasing international trade, and because the PCT would make it easier for industry to make sound and rapid decisions in the face of an overwhelming deluge of technical information and technical literature. Each and every day one thousand new technical documents were published by the Patent Offices alone.

167.3 The International Chamber of Commerce saw in the PCT a plan for international cooperation which would reduce duplication or, rather, multiplication, in the work of preparing applications; which would speed the processing of patent applications and the granting of patents; and which would achieve all this without calling on the nations to make that impossible or very difficult step of changing substantially their respective laws and philosophy. Furthermore, it would effectively assist the less developed countries, which cannot afford the costs of a full-scale patent office search.

167.4 The speaker expressed the hope that the Conference would be able to reach agreement since the Treaty would contribute to the raising of living standards everywhere and would reduce the tensions between the rich and the less rich.

168.1 Mr. LADAS (International Association for the Protection of Industrial Property (AIPPI), further to the comments of the Association to be found in PCT/DC/9, outlined the history of the growth of AIPPI over the last three-quarters of a century and the role that the Association has played in the promotion of international cooperation in the industrial property field. Since the members of the Association were

* Note: In these summary minutes of Main Committee I:

(i) "Main Committee" means "Main Committee I";
(ii) "Chairman" means Mr. William E. SCHUYLER, Jr. (United States of America) except in the case of the 12th, part of the 13th (from paragraphs 875 to 921), and the 27th meetings where it means Mr. Kurt HAERTEL (Germany (Federal Republic));
(iii) "Secretary" means Mr. Klaus PFANNER (BIRPI);
(iv) "Draft" means the drafts of the Treaty and the Regulations as appearing in documents PCT/DC/4 and 5;
(v) "Alternative Draft" means the drafts of the Treaty and the Regulations as appearing in documents PCT/DC/11 and 12;
(vi) unless otherwise indicated, the numbers and titles of Articles and Rules are those used in the Draft.

deeply involved in the problems of the international protection of inventions, they were greatly interested in the PCT and hopeful of its success. They had, however, some reservations about the Draft in that it provided for a plurality of International Searching Authorities and not a single central searching organization; that the time schedule for the issuance of international search reports, amendments, etc., might present serious difficulties; and that the principal advantage of giving applicants an appreciably longer time to decide to file in foreign countries might be more than offset by very limited possibilities of amending the specification originally filed.

168.2 The speaker acknowledged that the Draft was being favorably accepted by a number of national Patent Offices and government representatives but emphasized that acceptance and use of the Treaty in lieu of the conventional route by the inventor and applicant for foreign patents should be the paramount consideration. He stated that, while the PCT at best was not an ideal system, it was a step toward the desirable goal of international cooperation to be supplemented by further efforts at harmonization of law. AIPPI pleaded for efforts to minimize the danger of the PCT's floundering under the weight of its own complications and of its built-in international bureaucracy superimposed on national bureaucracy. The Treaty should allow private individuals to handle certain phases of the procedure.

169.1 Mr. SWABEY (Inter-American Association of Industrial Property (ASIPI)) stated that his Association comprised patent practitioners in North, Central and South America. As many developing countries were involved, ASIPI considered itself in the forefront of those earnestly looking for international patent cooperation. He fully agreed with the Delegations of Algeria, Belgium and Brazil that patents were not just monopoly grants but were also an important basis, if not the most important basis, for the transfer of technology from industrially developed countries to developing countries. This basis was recognized in the report of the Secretary General of the United Nations entitled "The Role of Patents in the Transfer of Technology to Developing Countries" and by many statements made by BIRPI in connection with the PCT Drafts and otherwise.

169.2 At the last meeting of ASIPI, held in Bogota in December 1969, ASIPI approved, in principle, the concept of standard requirements for the international application and centralized documentation. At the same time, it expressed the wish for the inclusion in such documentation of patents of all member countries, for the inclusion of Spanish and Portuguese as official languages, for the assurance that the multiplicity of International Searching Authorities was only temporary and would be replaced with the minimum delay by a single International Searching Authority, for simplification of the procedure by reducing the steps that would have to be taken by the different Authorities while giving the applicant the option of transmitting – himself or through his chosen patent attorney or agent – his application to the various national Offices, and for the assurance that the

traditional route, including the right to claim Paris Convention priorities, would remain open.

170. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)) observed that during the preparatory work his Federation had called to the attention of BIRPI and the governmental delegations all those points which, in the various drafts, presented problems for the inventors and their potential competitors. The Federation's observations had always been carefully considered by BIRPI and the governmental delegations. His Federation was grateful for having been given a full opportunity to participate in the preparatory work. He felt that most of the problems had been solved in the course of that work and hoped for a successful conclusion of the Conference and for early implementation of the Treaty.

End of the First Meeting

SECOND MEETING

Tuesday, May 26, 1970, morning

171. The CHAIRMAN opened the discussion on the Treaty as appearing in documents PCT/DC/4 and 11.

In the Signed Text, Preamble (no provision in the Drafts)

172. Mr. ARTEMIEV (Soviet Union) introduced his Delegation's proposal for a preamble contained in document PCT/DC/18. He said that a preamble would be useful because it would allow the objectives of the Treaty to be identified at a glance. Furthermore, it should state that the Treaty came under the Stockholm Act of the Paris Convention.

173. The CHAIRMAN suggested that discussion of this important matter be deferred since the document containing the proposal of the Delegation of the Soviet Union had only been distributed that same day.

174. Mr. ARTEMIEV (Soviet Union) agreed with the Chairman's suggestion.

175. *Discussion on a possible preamble was deferred.* (Continued at 1597.)

Article 1: Establishment of a Union

176. The CHAIRMAN said that a number of delegations had made proposals concerning this Article but, as the documents containing them had been distributed only that same day, it would seem advisable to postpone discussion in order to allow delegations to study them.

177. *Discussion on Article 1 was deferred.* (Continued at 234.)

Article 2: Definitions

178. Mr. BOGSCH (Secretary General of the Conference) suggested that the definitions contained in the Alternative Draft be accepted as a mere working hypothesis since, obviously, all the definitions would

have to be revised towards the end of the discussion when their implications in the context in which they were used became clear.

179. Mr. ARTEMIEV (Soviet Union) stated that inventors' certificates rather than patents were the main form of Protection in the Soviet Union. Consequently, it was of decisive importance for his country that Article 2 as well as any other provision of the Treaty deal with patents and inventors' certificates on the same footing.

180. Mr. VAN BENTHEM (Netherlands) said that "regional" should not be defined as it was in item (x), namely, "effective in more than one State" because a regional patent – for example, a European patent – may, if the applicant so chooses, be effective only in one State. Consequently, "regional patent" should rather be defined as "a patent granted by an international authority."

181. The CHAIRMAN said that the suggestions of the Delegations of the Soviet Union and the Netherlands would be kept in mind and reverted to, if necessary, when Article 2 was considered again.

182. *Further discussion on Article 2 was deferred.* (Continued at 1540.)

Article 3: The International Application

183. Mr. CLARK (United States of America) said that his Delegation supported Article 3 as it appeared in the Alternative Draft. However, it might be preferable to speak about "technical information" rather than simply "information" since the purpose of the abstract was to enable Patent Offices and the public to determine quickly, on the basis of a cursory inspection, the nature and gist of the technical disclosure.

184. The CHAIRMAN said that the proposal would be referred to the Drafting Committee.

185. Mr. SAVIGNON (France) said that his Delegation supported the Article as it appeared in the Alternative Draft but suggested that in paragraph (3) the words "for any other purpose, particularly not" should be deleted. What was important in this paragraph was to state that the abstract could not be taken into account for the purpose of interpreting the scope of the protection. Whether, subject to this limitation, it could be used also for purposes other than information was irrelevant.

186. Mr. NEVES (Brazil) said that it would be preferable to allow applicants to file international applications in the language of their own countries in order to avoid the cost of translation. Furthermore, it should be provided that the fees could be paid in the currency of the country of the applicant since many countries had difficulty in procuring certain foreign currencies.

187.1 Mr. BOGSCH (Secretary General of the Conference) said that in some cases it would be necessary to draft the international application in a language other than the applicant's own language. That, however, seemed to be unavoidable since any one International Searching Authority could handle only a limited number of languages. It was to be

hoped that the International Patent Institute, as International Searching Authority, would be able to handle languages in addition to those which it handled today. In any case, the applicant would have to make only one translation at the outset and not several, as he had to today, when he filed in various national Offices.

187.2 As far as the fees were concerned, one must distinguish between those which remained in the country of the applicant and those which were paid for services to be performed in other countries. The first could always be paid in local currency. The latter would have to be convertible into the currency of the country in which the services were performed.

188.1 Mr. FINNISS (International Patent Institute) said that there were plans to establish agencies of his Institute in Rome and later in Madrid. These would allow the use of the Italian and Spanish languages. Although there were no immediate plans for the Portuguese language, its global importance was recognized and he had no doubt that sooner or later efforts would be made to equip the Institute also to deal with that language.

188.2 The speaker added that, because of the particularly important role of his Institute in that and other respects, he would later come forward with a suggestion that it be expressly referred to by name in the text of the Treaty.

189. Mr. PETERSSON (Australia) said that it might be better to deal with item (iv) of paragraph (3) ("be subject to the payment of the prescribed fees") separately and simply say that fees were payable.

190. *Subject to consideration by the Drafting Committee of the observations of the Delegations of the United States of America, France and Australia, Article 3 was adopted as appearing in the Alternative Draft.* (Continued at 1741.)

Article 4: The Request

191. Mr. ARMITAGE (United Kingdom) said that those words which would allow an applicant to ask by means of a separate, later notice that he be granted in respect of certain countries a regional rather than a national patent should be deleted. In fact, if such a possibility were maintained it could lead to the following situation. An applicant could designate one of the European Common Market countries and ask for a national patent. Later he would state that he wished to obtain a regional patent. Under the European Convention to be concluded among the Common Market countries, designation of one State implied designation of all States of the Common Market. Thus, through the proposed provision of the PCT, an applicant could extend the effect of his application to countries originally not designated (namely, to those Common Market countries which were not named in his original PCT application). That would be an unacceptable result.

192. Mr. VAN BENTHEM (Netherlands) agreed with the suggestion of the Delegation of the United Kingdom. In any case, the choice between a national

and regional patent was a matter of such importance that it should be made at the time of filing.

193. Mr. BRENNAN (United States of America) said that paragraph (1)(ii) as it appeared in the Alternative Draft should expressly speak about the availability of regional patents and not only about the applicant's wish.

194.1 Mr. HAERTEL (Germany (Federal Republic)) suggested that in paragraph (1)(ii) language should be used which left it to the regional treaty to decide whether the designation of one of the member States had the effect of designation of all the member States of the regional treaty.

194.2 The speaker said that he did not share the opinion of the Delegations of the United Kingdom and the Netherlands since he was in favor of a more flexible solution, that is, a solution which allowed the applicant to opt for a regional patent even after he had filed his international application.

195. Mr. BRENNAN (United States of America) said that he saw some difficulties with the proposal of the Delegation of Germany (Federal Republic). The question of the effect of any designation under the PCT should be clarified in the PCT itself. The applicant should not be required to refer to the regional treaty in order to know what the effect of designation under the PCT was.

196. Mr. EKANI (African and Malagasy Industrial Property Office) expressed his Delegation's full support for the text of paragraph (1)(ii) as appearing in the Alternative Draft since it adequately covered both the case where national patents, whether granted by a national Office or by a regional Office, were sought and the case where regional patents were sought. His Office was the only regional Office in actual operation and the requirements of the system under which that Office was working were satisfactorily covered by the said draft provision.

197. Mr. HAERTEL (Germany (Federal Republic)) said that the text proposed in the Alternative Draft was fully compatible with the contemplated Common Market Treaty for a European Patent and that his Delegation's proposal was directed towards other possible regional treaties. Since no country seemed to be interested in the proposal, and the Common Market countries did not need it, he would not insist.

198. Mr. ARTEMIEV (Soviet Union) referred to document PCT/DC/18 in which his Delegation proposed that paragraph (4) read as follows: "The name and other data concerning the inventor shall be indicated in the request in any case." The Draft before the Main Committee provided that the request must contain the name of the inventor. However, paragraph (4) of the Draft excused the failure to indicate the inventor in respect of those countries whose national laws did not require an indication of the inventor. His Delegation was opposed to such qualification of the rule since it was important to know the identity of the inventor and it should always be required, even if the international application designated only those countries whose national law

did not require an indication of the name of the inventor.

199. Mr. SAVIGNON (France) referred to the proposal of his Delegation contained in document PCT/DC/19. Contrary to what the Delegation of the Soviet Union proposed, the Delegation of France believed that naming the inventor in the international application should not be mandatory. His Delegation, however, would be ready to accept a provision which would allow each country to require the naming of the inventor when the international application reached the national Office of such country. The proposal was made because the naming of the inventor was sometimes practically impossible or undesirable. That was why many national laws did not make it an obligation to indicate the name of the inventor.

200. Mr. SCHURMANS (Belgium) expressed support for the proposal of the Delegation of France. The matter of naming the inventor was a question more appropriate for laws regulating social relationships – relationships between employer and employee – than patent laws.

201. Mr. VAN BENTHEM (Netherlands) said that his Delegation had presented, in document PCT/DC/8, a proposal similar to that of the Delegation of France. Consequently, he supported the proposal of the Delegation of France. That proposal took into account the fact that the laws of many countries did not require the naming of the inventor. For those countries where it was required, it should suffice that the inventor be named in the national phase.

202. Mr. HAERTEL (Germany (Federal Republic)) expressed his Delegation's support for the proposal of the Delegation of France. It was in harmony with the general principles of the PCT that special requirements of national laws were to be fulfilled only in the national phase.

203. Mr. BORGGÅRD (Sweden) said that Scandinavian legislations gave a very dominant position to the person of the inventor. The naming of the inventor was therefore of the utmost importance to them and they wished him to be identified at the earliest possible moment, that is, when the international application was filed. Consequently, in principle, he fully agreed with the proposal of the Delegation of the Soviet Union. In practice, however, he would also be ready to accept the solution contained in the Draft since it took account of the legislation of countries which did not provide for the naming of the inventor. In any case, he could not accept the proposal of the Delegation of France under which the inventor could be named 20 months after filing or not at all.

204. Mr. LORENZ (Austria) expressed his Delegation's support for the proposal of the Delegation of France.

205. Mr. BRENNAN (United States of America) said that his Delegation shared the views expressed by the Delegation of Sweden. The naming of the inventor was a matter of the utmost importance also in the United States patent law. However, as that was not the position in the laws of some other countries,

the compromise formula suggested in the Draft would be acceptable.

206. Mr. BENÁRD (Hungary) said that in the Hungarian law indication of the name of the inventor was obligatory. Consequently, his Delegation agreed with the proposal of the Delegation of the Soviet Union as well as with those of the Delegations of Sweden and the United States.

207. Mr. TROTTA (Italy) expressed his Delegation's support for the proposal of the Delegation of France.

208. Mr. GIERCZAK (Poland) expressed his Delegation's support for the proposal of the Delegation of the Soviet Union since it was in harmony with the patent law of Poland.

209. Mr. OTANI (Japan) said that his Delegation agreed with the Delegations of Sweden and the United States in supporting the Draft.

210. Mr. NORDSTRAND (Norway) expressed his Delegation's agreement with the view of the Delegation of Sweden and opposition to the proposal of the Delegation of France.

211. Mr. VANTCHEV (Bulgaria) expressed his Delegation's support for the proposal of the Delegation of the Soviet Union.

212. Mr. SHER (Israel) said that the Draft represented a reasonable compromise and his Delegation supported it.

213. Mr. ARMITAGE (United Kingdom) said that his Delegation could, in principle, go along with the proposal of the Delegation of France since it was a fact that it might be very difficult to identify the inventor of some inventions, and the definition of who the inventor was might also vary from country to country. Nevertheless, as a practical matter, it must be recognized that in some countries the naming of the inventor from the outset was a matter of principle and an absolute requirement. Consequently, the compromise solution contained in the Draft seemed to be the only practical solution. His Delegation supported it.

214. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that the legislation of Spain required that the name of the inventor be indicated in the application whenever he was a person other than the applicant. Consequently, his Delegation supported the formula contained in the Draft.

215. The CHAIRMAN said that, since there were no other government delegations wishing to speak, observers would be welcome to take the floor.

216. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) said that the Paris Convention itself recognized the fundamental right of the inventor to be named. In view of the fact that patent applications were confidential during the first 18 months after their filing, it might be too late, when the application was published, for the inventor to protest against the filing of an application for an invention of which he was the inventor. Consequently, it was important that the inventor be named in the application from the outset. Naming of

the inventor was not a mere formality: it was the corollary of a fundamental right of a creative person.

217.1 Mr. PANEL (European Industrial Research Management Association (EIRMA)) said that, whereas it was true that in some countries the naming of the inventor from the outset was an obligation, it was equally true that in the majority of the countries such obligation did not exist. Consequently, he was astonished that the minority wanted to impose its system on the PCT.

217.2 The so-called compromise solution contained in the Draft implied a high degree of legal insecurity for applicants who did not indicate the inventor. Under the national laws of some countries it would be possible to accept the naming of the inventor in the national phase but only if such naming occurred before any publication. In such countries, naming the inventor in the national phase would not prevent a fatal mistake since international publication would occur before the national phase started. For all those reasons, his Association fully supported the proposal of the Delegation of France.

218. Mr. HESS (Pacific Industrial Property Association (PIPA)) expressed the view that the naming of the inventor was extremely important since it constituted a potent incentive for invention. On the other hand, his Association recognized that the greatest flexibility in the Treaty was desirable so that countries would accede to it without having to change their national laws. The Draft provided for such flexibility and its adoption seemed to be desirable.

219. Mr. HAZELZET (Union of Industries of the European Community) expressed his Union's full support for the proposal of the Delegation of France. The arguments for such a proposal were ably put forward in the comments of the Government of the Netherlands contained in document PCT/DC/8. His Union also endorsed those arguments.

220. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) expressed his Council's support for the proposal of the Delegation of France. Although it was true that an international application had, from the very beginning, the effect of a national application in each designated State, it was equally true that some requirements of the national law, such as possible translations and the payment of the national fees, were required to be effected only when the national phase started. The naming of the inventor should belong to the same category of obligations.

221. Mr. ARTEMIEV (Soviet Union), on a question from the Chairman, stated that since most delegations favored the compromise solution contained in the Draft he would not insist on the proposal contained in document PCT/DC/18.

222.1 Mr. SAVIGNON (France), on a question from the Chairman, said that his Delegation wished its proposal to be put to a vote.

222.2 He added that the proposal of his Delegation in no way prejudiced the right of the inventor to be named. It merely provided that the national law should apply in the national phase as the Draft provided, for example, in the case of the payment of

the national fees. Haste in naming the inventor might be prejudicial to the interest of the real inventor since in some cases the identification of the inventor was difficult and if it had to be done in a hurry mistakes might occur. Consequently, the requirement of naming the inventor in the national phase would be in the interest of the real inventor.

223. Mr. DAHMOUCHE (Algeria) said that he had not heard the Delegation of France ask formally for a vote on its proposal. As a matter of fact, it would be premature to take votes on any issues. It would be more useful to continue the discussion on the other provisions of the Draft so that a general picture could emerge showing what compromise solutions seemed to be possible on other points.

224. Mr. NARAGHI (Iran) expressed his Delegation's support for the views of the Delegation of Algeria.

225. Mr. HAERTEL (Germany (Federal Republic)) said that it would be preferable to avoid a vote and continue to seek a compromise solution. The question being of great importance and touching upon fundamental principles of national laws, there would be a risk that any extreme solution would make the Treaty unacceptable for countries which lost the vote. His Delegation found the compromise solution of the Draft flexible enough; however, it might be possible to make it even more flexible, and no effort should be spared to explore such a possibility. (Continued at 226.)

End of the Second Meeting

THIRD MEETING

Tuesday, May 26, 1970, afternoon

Article 4: The Request (Continued from 225.)

226. Mr. VILLALBA (Argentina) said that it was one of the fundamental moral rights of the inventor to be named as such. National laws had different solutions for recognizing this right. The Draft had the merit of respecting the diversity of the national laws. His Delegation therefore supported the Draft and opposed the proposal of the Delegation of France.

227. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) wished to clarify a detail in the provisions of the Spanish patent law concerning the naming of the inventor. According to that law, the fact that the inventor was not named in the application was a correctable mistake. If the indication was given within the prescribed time limit, the application was valid.

228.1 Mr. SAVIGNON (France) said that there were three kinds of solutions. One provided that the inventor must be named if he so desired, and could not be named if he did not so desire. France had adopted this solution. The second solution was that the inventor must be named in the national phase. The third was that he must be named at the time of filing the international application. The second and the third solutions had this much in common that the inventor

had to be named in any case. They differed from each other in that the point in time was different. But even where the naming occurred only in the national phase, the fundamental principle was fully respected.

228.2 The solution of the French law should be treated in the PCT as a normal condition in the same manner that naming the inventor was treated as a normal condition because a requirement to name the inventor would have no consequences in countries having laws like that of France.

228.3 He wished to have the Treaty deal with the two possibilities not as a rule versus an exception, but in the form of two equivalent rules.

229. Mr. PRETNAR (Yugoslavia) proposed that a working group be established to try to find a compromise solution. The establishment of working groups was provided for in the Rules of Procedure. It would be an appropriate occasion to make use of such a possibility.

230. Mr. AKPONOR (Zambia) expressed the view that the solution contained in the Draft was a compromise under which no country would have to change its law. He supported the Draft.

231. Mr. BRENNAN (United States of America) shared the view expressed by the Delegation of Zambia.

232. The CHAIRMAN said that it seemed preferable to defer discussion on this issue to allow delegations to have informal contacts on a possible compromise. The establishment of a working group would be premature.

233. *It was decided to defer further discussion on the question of naming the inventor. Otherwise, Article 4 was adopted as appearing in the Alternative Draft.* (Continued at 701.)

Article 1: Establishment of a Union (Continued from 177.)

In the signed text, Article 50: Patent Information Services (no provision in the Drafts)

In the signed text, Article 51: Technical Assistance (no provision in the Drafts)

In the signed text, Article 52: Relations with Other Provisions of the Treaty (no provision in the Drafts)

234. Mr. ARTEMIEV (Soviet Union), referring to his Delegation's proposal contained in document PCT/DC/18, proposed that paragraph (1) speak about "applications for the protection of inventions" rather than "patent applications." Thus, applications for inventors' certificates and for patents would have the same status in the terminology of the Treaty.

235. Mr. BENÁRD (Hungary) supported the proposal of the Delegation of the Soviet Union.

236. Mr. BOGSCH (Secretary General of the Conference) said that the proposal of the Delegation of the Soviet Union was logical and he saw no difficulty in accepting it provided the title of the Treaty continued to feature the word "Patent."

237. Mr. ARTEMIEV (Soviet Union) said that his Delegation had no objection to giving the instrument under discussion the title of "Patent Cooperation Treaty."

238. Mr. CLARK (United States of America) said that the proposal of the Delegation of the Soviet Union affected also Article 2 on definitions. Consequently, he proposed that discussion of the proposal be deferred until Article 2 was discussed.

239. Mr. VILLALBA (Argentina) expressed the view that, since the Treaty would not deal with just any inventions but only with patentable inventions, "patents for inventions" would perhaps be the right expression to use.

240. Mr. VAN BENTHEM (Netherlands), while recognizing the logic of the proposal of the Delegation of the Soviet Union, seconded the proposal of the Delegation of the United States of America to defer discussion until Article 2 was reached.

241. Mr. SAVIGNON (France) said that if Article 1 used the expression "invention" it might be necessary to define that expression in Article 2, and define it as meaning only patentable inventions.

242. *It was decided to defer further consideration of the proposal of the Delegation of the Soviet Union concerning Article 1 until Article 2 was discussed. (See 1591.)*

243.1 Mr. SHER (Israel) referred to his Delegation's proposal contained in document PCT/DC/20 according to which paragraph (1) should provide that one of the objectives of the Treaty was to give information about patents and about the technical information patents contain.

243.2 Without such an extension of its scope, the Treaty would not sufficiently serve the interests of developing countries.

243.3 The PCT would create various documentation centers whose resources should be specially tapped for the benefit of developing countries. Some at least of the Searching Authorities should be able to furnish information on questions such as which patents are maintained in which countries, what patents relate to a certain technical problem, who is the owner of any given patent.

243.4 Since his Delegation's proposal introduced a new matter, it would be better to set up a working group to study it. The working group should include developing countries and countries whose national Offices were expected to serve as Searching Authorities. The details of the proposal of the Delegation of Israel were contained in a proposed new Chapter III*bis*, the text of which also appeared in document PCT/DC/20.

244. The CHAIRMAN said that he would later announce the composition of a working group.

245. Mr. PETERSSON (Australia) said that not all countries fell clearly under the notion "developed" or "developing." His country, for example, was developed in a certain sense and developing in another. Such countries should also be represented in the Working Group.

246. Mr. ARMITAGE (United Kingdom) said that the proposal of the Delegation of Israel dealt with an entirely new problem not discussed in the course of the preparatory work for the present Conference. It had many difficult aspects. Perhaps the best way to deal with it would be in a protocol annexed to the Treaty.

247. Mr. HAERTEL (Germany (Federal Republic)) said that the proposal of the Delegation of Israel for a Chapter III*bis* called for the establishment of a service very similar to what was called, in BIRPI circles, the World Patent Index. For several years, the possibility of setting up such a service had been studied but its practical realization had not been found possible. It was unrealistic to think that in the few days of the Conference all those difficulties could be solved. It might be better, as the Delegation of the United Kingdom had suggested, merely to attach a declaration or a protocol to the PCT urging the establishment of services of the kind suggested in the proposal of the Delegation of Israel.

248. Mr. OTANI (Japan) said that his Delegation shared the views expressed by the previous speaker.

249. Mr. FINNISS (International Patent Institute) said that he doubted whether the present Conference could deal with the new problems raised by the proposal of the Delegation of Israel. The proposal should be reserved for a later occasion and no working group should be set up. However, if one were set up, he hoped that representatives of his Institute would be able to participate in its discussions since the Institute, as a prospective International Searching Authority, would be directly affected by the proposal.

250. *Subject to further consideration of the proposals of the Delegations of the Soviet Union and Israel, Article 1 was adopted as appearing in the Draft. (Continued at 328.)*

Article 5: The Description

251. Mr. PETERSSON (Australia) said that it was a matter of concern to his Delegation that some important questions were dealt with in the Draft Treaty only in a general way, leaving details to the Draft Regulations. The Regulations would be subject to modification without a diplomatic conference and without ratification, so that countries accepting the Treaty might later find that the Regulations had been modified in a way which they did not approve of. He did not wish to make any proposal but merely wanted to call the attention of the Conference to the importance of the distribution of the provisions between the Treaty and the Regulations.

252. The CHAIRMAN said that the matter raised by the Delegation of Australia had bothered many of those who had participated in the preparation of the Drafts. He was sure that the Conference would bear in mind the advice of the Delegation of Australia.

253. *Article 5 was adopted as appearing in the Draft. (Continued at 1743.)*

Article 6: The Claims

254. Mr. PETERSSON (Australia) introduced a proposal by his Delegation, contained in document PCT/DC/22, to strike the words "subject to later amendments" appearing in the Draft. The meaning of the four words in question was not clear and could be interpreted as an invitation to the applicant to defer an accurate definition of the invention until some later date.

255. Mr. LEWIN (Sweden) said that his Delegation supported the proposal of the Delegation of Australia.

256. Mr. BOGSCH (Secretary General of the Conference), on a question from the Delegation of Germany (Federal Republic), said that the words "subject to later amendments" were not necessary for legal purposes since the right to amend the claims later was clearly provided for in other articles. The words were inserted in the Draft merely as a reminder of that right. They could be stricken from the text without changing the sense of the Treaty.

257. Mr. VAN DAM (Netherlands) said that his Delegation supported the proposal of the Delegation of Australia.

258. Mr. SAVIGNON (France) said that his Delegation also supported the proposal of the Delegation of Australia.

259. Mr. LORENZ (Austria) said that his Delegation also supported the proposal of the Delegation of Australia.

260. *The proposal to delete the words "subject to later amendments" was adopted.*

261. Mr. NORDSTRAND (Norway) said that, in order to maintain the sense of the note, in document PCT/DC/4, accompanying the Article under consideration, the Drafting Committee should consider whether the words "including the drawings" should not be added at the end of the Article.

262. *Subject to the deletion of the words "subject to later amendments," Article 6 was adopted as appearing in the Draft. (Continued at 1744.)*

Article 7: The Drawings

263. *Article 7 was adopted as appearing in the Draft, without discussion. (Continued at 1745.)*

Article 8: Claiming Priority

264. *Paragraph (1) was adopted as appearing in the Alternative Draft, without discussion.*

265. Mr. BRENNAN (United States of America) presented his Delegation's proposal appearing in document PCT/DC/16. It was proposed to omit, in the Draft, the introductory clause of paragraph (2)(a) consisting of the words: "Subject to the provisions of subparagraphs (b) and (c)" and to insert the following introductory clause at the beginning of subparagraphs (b) and (c): "Subject to the provisions of paragraph (2)(a)." The proposal would make it clear that it was the Paris Convention which governed the PCT and not the other way around.

266. Mr. VAN BENTHEM (Netherlands) said that his Delegation supported the proposal of the Delegation of the United States of America.

267. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation supported the proposal of the Delegation of the United States of America but wished to know whether the proposal related to the Draft or the Alternative Draft.

268. Mr. BRENNAN (United States of America) replied that the proposal related to the Draft.

269. Mr. BOGSCH (Secretary General of the Conference) called the attention of the meeting to difference between the Draft and the Alternative Draft. Whereas the Draft spoke about the right of priority under the Paris Convention, the Alternative Draft referred to the right of priority under the Stockholm Act of the Paris Convention. The difference was important because it meant that, under the Alternative, countries accepting the PCT would have to recognize inventors' certificates as a basis for priority since the Stockholm Act expressly recognized inventors' certificates for the said purpose.

270. Mr. BRENNAN (United States of America) said that his Delegation agreed to the reference to the Stockholm Act. The proposal of the United States of America contained in document PCT/DC/16 was equally applicable to the Alternative Draft.

271. Mr. HAERTEL (Germany (Federal Republic)) wished to ask the Secretary General of the Conference two questions

What would be the position of countries which acceded to the PCT without having accepted the Stockholm Act of the Paris Convention?

What would happen if a future revision conference of the Paris Union modified Article 4 of the Paris Convention concerning the right of priority?

272.1 Mr. BOGSCH (Secretary General of the Conference) said that it was not necessary for a country accepting the PCT to have accepted the Stockholm Act of the Paris Convention but such a country would have to recognize inventors' certificates as a basis for priority in the case of international applications.

272.2 On the second question, the speaker expressed the view that it was unlikely that any future revision of the Paris Convention would modify Article 4 of the Paris Convention in a way which would require revision of the PCT.

273. Mr. ARMITAGE (United Kingdom) agreed with the Alternative Draft as far as the reference to the Stockholm Act was concerned. That reference, in fact, was merely a shorthand expression of the obligation of each State accepting the PCT to recognize inventors' certificates as a basis for priority. He did not think any country would have difficulties in accepting this principle, which had been adopted without opposition in 1967 by the Stockholm Conference revising the Paris Convention.

274. Mr. VILLALBA (Argentina) expressed doubt concerning the wisdom of referring to the Paris Convention in the PCT since that Convention might

undergo in the future changes which were unacceptable to certain countries.

275. Mr. BOGSCH (Secretary General of the Conference) said that the issue was a much narrower one. It related only to the question of the right of priority as specifically contained in the Stockholm Act of the Paris Convention. By the very fact of referring to the Stockholm Act, it did not prejudice the attitude of any countries in respect of future revisions of the Paris Convention.

276. Mr. VAN BENTHEM (Netherlands) said that a country which did not ratify the Stockholm Act of the Paris Convention but ratified the PCT would have to recognize inventors' certificates as a basis for priority only if they were invoked in international applications.

277. Mr. BOGSCH (Secretary General of the Conference) suggested that for the other questions concerning paragraph (2), and in particular the proposal of the Delegation of the United States of America, the establishment of a working group might be desirable, since the matter involved rather complex questions of drafting.

278. *Paragraph (2) was adopted as appearing in the Alternative Draft, except that the proposal of the Delegation of the United States of America was referred to a working group whose composition would be announced later by the Chairman. (Continued at 327.)*

Article 9: The Applicant

279. Mr. GIERCZAK (Poland) called the attention of the Conference to a proposal by his Delegation concerning paragraph (1), contained in document PCT/DC/23.

280. The CHAIRMAN said that since the proposal had just been distributed it would seem to be preferable to postpone discussion on the said paragraph.

281. *Discussion on paragraph (1) was deferred. (See 332.)*

282. Mr. BOGSCH (Secretary General of the Conference) said that the Alternative Draft of paragraph (2) differed from the Draft of the same paragraph in that it limited the scope of the power of the Assembly to decide to allow residents or nationals of countries not party to the PCT to file international applications to countries members of the Paris Union.

283.1 Mr. BENÁRD (Hungary), referring to the observations of his Government contained in document PCT/DC/8, proposed that nationals of any country member of the Paris Union should be allowed to file international applications if they were entitled under the Paris Convention to file national applications in the Contracting State. In the present situation, any country could provide that its own nationals would be able to file abroad only under certain circumstances. Under the Draft, nationals of any country party to the PCT or authorized by the Assembly would have a right to file an international application even in situations in which they could not file national applications abroad.

283.2 Whereas the Alternative Draft was too generous on the said point, there was another point on which it was not sufficiently generous, namely, where it did not give nationals of all Paris Union countries the right to use the PCT route but only nationals of those Paris Union countries not party to the PCT which were authorized by the Assembly to use the PCT route. Such a restriction was unwarranted and contrary to the spirit of the Paris Convention. The European Patent Conventions were expected to allow nationals of any Paris Union country to use the European route; the PCT should do the same as far as the PCT route was concerned.

284.1 Mr. OTANI (Japan), referring to the observations of his Government contained in document PCT/DC/7, supported paragraph (2) as appearing in the Alternative Draft. Limiting the scope of the powers of the Assembly to Paris Union countries was logical since the PCT would be a Special Agreement under the Paris Convention.

284.2 The right of priority under the Paris Convention was recognized as operating between member States because it secured reciprocal treatment. Extending, through the PCT, the benefits of the Paris Convention to nationals of countries not members of the Paris Union would be contrary to the principle of reciprocal treatment.

285. Mr. ALMEIDA (Brazil) said that either paragraph (2) should be removed altogether or, if removal could not be agreed upon, the Alternative Draft should be adopted since it limited the scope of the powers of the Assembly to members of the Paris Union.

286. Mr. CLARK (United States of America) said that his Delegation supported the position of the Delegation of Japan. Furthermore, one should take into account the administrative difficulties that might be caused by paragraph (2) of the Draft with reference to Article 53 (5) relating to financial considerations.

287. Mr. ARMITAGE (United Kingdom) said that his Delegation supported paragraph (2) as appearing in the Alternative Draft.

288. Mr. PRETNAR (Yugoslavia) wished to ask two questions. What would be the criteria which the Assembly would adopt in permitting the residents and nationals of certain Paris Union countries not party to the PCT to file international applications? Would such permission not take away the incentive to accede to the PCT?

289. Mr. BOGSCH (Secretary General of the Conference) replied that no criteria were fixed in the Treaty. It was to be hoped that the Assembly would use its powers wisely, that is, only when the element of incentive to accede was of little relevance and when the financial implications for the administration of the PCT, if any, would be minimal.

290.1 Mr. HAERTEL (Germany (Federal Republic)) said that the proposal of the Delegation of Hungary could lead to the manifestly inequitable result, when the PCT entered into force after acceptance by five countries, nationals of all Paris Union member States could use the PCT in the five

countries but nationals of the five countries could not use the PCT in the 70 or more Paris Union countries not party to the PCT.

290.2 His Delegation did not share the views of the Delegation of Hungary according to which the Paris Convention would be violated by allowing only nationals of countries party to the PCT to file international applications. The predominant view in that respect was the following. If a treaty was open for acceptance to any State party to the Paris Convention, the use of the treaty could be restricted to nationals and residents of countries party to that treaty. On the other hand, if a special treaty concluded between certain members of the Paris Union was open for acceptance only to certain States, it must be permissible for nationals and residents of all Paris Union countries to use it. The PCT was in the first category, whereas the proposed European Conventions were in the second category. That was why the latter proposed to allow the filing of applications for European patents by nationals of any Paris Union country.

291. Mr. VILLALBA (Argentina) said that the matter had great importance in connection with the financing of the administrative organs which would process international applications. He presumed that such financing would be assumed by the countries party to the PCT and would be proportionate to the number of international applications emanating from each of them. Allowing nationals of countries not party to the PCT to file international applications would be incompatible with such a system of financing since the governments of such countries could not be asked to pay contributions in view of the fact that they were not party to the PCT.

292. Mr. SAVIGNON (France) asked whether paragraph (2) dealt only with residents or also with nationals.

293. Mr. BOGSCH (Secretary General of the Conference) replied that the intent was clearly that the paragraph should deal with both residents and nationals. The French translation of the Draft was defective.

294.1 Mr. BODENHAUSEN (Director of BIRPI) said that the limitation contained in paragraph (2) of the Alternative Draft to members of the Paris Union raised two questions whether such a limitation was compatible with the Paris Convention, and whether it was desirable.

294.2 The speaker had no doubt that the Alternative Draft was compatible with the Paris Convention and shared, in this respect, the views expressed by the Delegation of Germany (Federal Republic). Furthermore, there were precedents such as the Madrid Agreement Concerning the International Registration of Marks and the Hague Agreement Concerning the International Deposit of Industrial Designs. The PCT would follow the same system as those two Agreements, whose compatibility with the Paris Convention had never been questioned.

294.3 Moreover, he was convinced that it was wise to limit paragraph (2) to countries members of the Paris Union and not to extend it to countries outside

the Paris Union. It would be very illogical to admit nationals or residents of countries outside the Paris Union to the benefits of the PCT since the said countries might be countries which did not recognize even the most elementary rules for the protection of industrial property.

295. Mr. VILLALBA (Argentina) said that, whereas the financial considerations might lead to one decision, other, more general considerations might lead to another decision. There might be countries which, because of their general economic situation or other reasons, did not wish to accede to the Paris Convention. Nationals and residents of such countries would, under the Alternative Draft, be precluded from using the PCT.

295.2 His Delegation would abstain from voting on paragraph (2).

296. The CHAIRMAN said that the proposal of the Delegation of Hungary related, or related also, to paragraph (1), discussion of which had been deferred. The Delegation of Hungary would therefore have the right to revert to its proposal when discussion on paragraph (1) was reopened.

297. *Paragraph (2) was adopted as appearing in the Alternative Draft.*

298. *Paragraph (3) was adopted as appearing in the Draft, without discussion. (Continued at 332.)*

Article 10: The Receiving Office

299. Mr. PETERSSON (Australia) said that the observations made by his Delegation in connection with Article 5 were applicable also in connection with the Article under discussion.

300. *Article 10 was adopted as appearing in the Draft. (Continued at 1748.)*

Article 11: Filing Date and Effects of the International Application

301. Mr. VILLALBA (Argentina) reserved the position of his Delegation as far as the languages in which the international application had to be written until such time as the corresponding rule of the Draft Regulations would be discussed.

302. Mr. ARMITAGE (United Kingdom) referring to the proposal of his Delegation, contained in document PCT/DC/25, which was submitted but not yet distributed, suggested that the Drafting Committee should examine whether the words "fulfilling the requirements of paragraph (1)" appearing in paragraph (3) were necessary.

303. Mr. LIPS (Switzerland) referred to the proposal of his Delegation contained in document PCT/DC/17, to the effect that the said paragraph should specify that the international filing date was equivalent to the effective national filing date in each designated State. However, since the proposal was connected with Article 27(5), last sentence, his Delegation would be satisfied if the proposal were taken up after Article 27(5) had been disposed of.

304. Mr. VILLALBA (Argentina) said that he assumed that when the international application

reached the designated Office, such Office would require that the application be completed according to the requirements of the national law.

305. Mr. VAN BENTHEM (Netherlands), referring to the observations of his Government contained in document PCT/DC/8, suggested that paragraph (3) be clarified to make it clear that the international filing date was to be considered the actual filing date in each designated State. The proposal had the same aim as that of the Delegation of Switzerland. He too was ready to postpone discussion on the proposal until Article 27(5) had been disposed of.

306. Mr. EKANI (African and Malagasy Industrial Property Office) said that his Office was in agreement with the suggestions made by the Delegations of Switzerland and the Netherlands. The matter was also important from the viewpoint of the fees to be paid to the designated Offices. He would come back to the matter when the fees were to be discussed.

307.1 Mr. BOGSCH (Secretary General of the Conference) suggested that the proposal of the Delegation of the United Kingdom be considered by the Drafting Committee.

307.2 As far as the observations of the Delegation of Argentina and the Representative of the African and Malagasy Industrial Property Office were concerned, if they related to the right of each designated Office to require the payment of the national fees – and he assumed that both interventions had dealt with this point and this point only – there was no doubt that such right existed. Article 22 expressly referred to the obligation of the applicant to pay the national fees. The renewal fees, due only after the national patent had been granted and thus falling entirely within a phase not regulated by the PCT, were also among those fees, payment of which any designated Office would continue to have the right to require.

308. The CHAIRMAN said that the proposal of the Delegation of the United Kingdom would be referred to the Drafting Committee.

309. Mr. ALMEIDA (Brazil) said that his Delegation preferred paragraph (4) as appearing in the Alternative Draft to the text appearing in the Draft.

310. Mrs. MATLASZEK (Poland) said that her Delegation too preferred the Alternative Draft of paragraph (4).

311. *Article 11 was adopted as appearing in the Alternative Draft, it being understood that the proposal of the Delegation of the United Kingdom was referred to the Drafting Committee and that discussions on paragraph (3) would be resumed after Article 27(5) had been disposed of.* (Continued at 756.)

Article 12: Transmittal of the International Application to the International Bureau and the International Searching Authority

312. Mr. PRETNAR (Yugoslavia) said that the applicant should have the right, if he so wished, to forward himself the record copy to the International

Bureau, and the copies meant for the designated Offices to those Offices. This proposal was similar to a proposal made by the International Association for the Protection of Industrial Property.

313. Mr. SHER (Israel) said that his Delegation agreed with the proposal made by the Delegation of Yugoslavia.

314. Mr. EKANI (African and Malagasy Industrial Property Office) said that it was essential that every designated Office receive a copy of the international application at the same time as such application was filed so that there should be tangible evidence of the application in each of the said Offices. He asked that the Drafting Committee be requested to look into the matter.

315.1 Mr. BOGSCH (Secretary General of the Conference) said that the proposal of the Delegation of Yugoslavia raised a question which had been under the most careful consideration from the very beginning of the preparatory work for the PCT. In any case, the proposal seemed to relate more to Article 20 than to Article 12.

315.2 As far as the observation of the Representative of the African and Malagasy Industrial Property Office was concerned, it should be noted that Article 13 gave to each designated Office the right to require the transmittal of a copy of the international application prior to the communication provided for in Article 20, communication which would normally occur 20 months after the priority date.

316. Mr. EKANI (African and Malagasy Industrial Property Office) said that it would be desirable that, under Article 13, any designated Office should be able to make a permanent arrangement with the International Bureau to receive copies of the international applications promptly. He would therefore come back to the matter in connection with Article 13.

317. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that his Association was primarily interested in the applicant's right to transmit himself, if he so wished, copies of his application to the designated Offices. As far as the transmittal of the record copy to the International Bureau was concerned, the same desire had been expressed by the International Association for the Protection of Industrial Property.

318. Mr. BOGSCH (Secretary General of the Conference) said that the only change in paragraph (3) between the Draft and the Alternative Draft was the omission of subparagraph (b). This was identical with the proposal of the Delegation of the United Kingdom contained in document PCT/DC/25.

319. *Article 12 was adopted as appearing in the Alternative Draft.* (Continued at 1750.)

Article 13: Availability of Copy of the International Application to Designated Offices

320. Mr. VILLALBA (Argentina) said that his Delegation might wish to present a written proposal in connection with the Article under discussion.

321. Mr. SAVIGNON (France) said that his Delegation had presented a proposal which was contained in document PCT/DC/19 but since it was merely a drafting proposal it could be referred to the Drafting Committee.

322. Mr. ARMITAGE (United Kingdom) said that his Delegation agreed with the proposal of the Delegation of France.

323. The SECRETARY said that in his view the proposal of the Delegation of France limited the scope of the Article because it would prevent countries from making a general request for copies. Under the proposal of the Delegation of France, specific requests would have to be made in the case of each international application.

324. Mr. ARMITAGE (United Kingdom) said that what his Delegation saw in the proposal of the Delegation of France was that it made it clear that any designated Office could place either a general order for copies or *ad hoc* orders in the case of specific applications.

325. Mr. CLARK (United States of America) wished to know whether the proposals of the Delegations of France and the United Kingdom would give any national Office the right to ask for copies even if it was not a designated Office.

326. Mr. YUASA (Asian Patent Attorneys Association (APAA)) said that the cost of sending copies under Article 13 should be borne by the designated Offices requesting such copies rather than by the applicant since the designated Office would receive a copy under Article 20 anyway. (Continued at 346.)

End of the Third Meeting

FOURTH MEETING

Wednesday, May 27, 1970, morning

Article 8: Claiming Priority (Continued from 278.)

327. The CHAIRMAN announced that the Working Party which had been requested to examine the reserved parts of Article 8 would consist of the Delegations of the following countries: France, Germany (Federal Republic), Netherlands, Soviet Union, Togo, United Arab Republic, United Kingdom, United States of America, Uruguay, Zambia. Any other country wishing to participate could attend the meeting of the Working Party. (Continued at 656.)

Article 1: Establishment of a Union (Continued from 250.)

In the signed text, Article 50: Patent Information Services (no provision in the Drafts) (Continued from 250.)

In the signed text, Article 51: Technical Assistance (no provision in the Drafts) (Continued from 250.)

In the signed text, Article 52: Relations with Other Provisions of the Treaty (no provision in the Drafts) (Continued from 250.)

328. The CHAIRMAN said that the Working Party to deal with a new Chapter III*bis* would consist of the Delegations of Algeria, Argentina, Brazil, Germany (Federal Republic), Israel, Japan, France, Soviet Union, United States of America, and of the Representatives of the International Patent Institute. Any other country interested in the Working Party could attend its meetings.

329.1 Mr. DAHMOUCHE (Algeria) said that he did not know who had made the decision to set up working parties. His Delegation had not been consulted in any case. The procedure surprised him because the Conference as such had not been consulted and had not made any decision on the question of setting up working parties.

329.2 He expressed the most emphatic reservations concerning such working parties. His Delegation would not participate in the Working Party for which it had been designated.

329.3 In any case, if in the future working parties were to be established, the Delegations to be appointed should first be asked whether they wished to participate in them or not.

330. The CHAIRMAN said that when Article 8 and Chapter III*bis* were discussed he had indicated that working parties would be established and that their membership would be announced by him. Because of the limited time only some of the Delegations could be consulted before the appointments were announced.

331. Mr. DAHMOUCHE (Algeria) said that he wished to underline that what was involved was a general principle. Initiatives must come from the countries members of the Conference. They were perfectly capable of establishing contacts among themselves and making suggestions to the Conference. It was not up to the Steering Committee or any individual to establish working groups and designate their members. Only in this way could diplomatic incidents be avoided. (Continued at 350.)

Article 9: The Applicant (Continued from 298.)

332. Mr. GIERCZAK (Poland), referring to the proposal of his Delegation contained in document PCT/DC/23, suggested that paragraph (1) of Article 9 be redrafted as follows: "The international application may be filed by any resident or national of a Contracting State who, according to the provisions of the Paris Convention and the national law of the Contracting State of his nationality or residence, has the right to file an application in any of the Contracting States." The proposal had two objectives: (i) to make sure that the applicant had the same rights as under the Paris Convention, (ii) to ensure that, if the national law of the country of the applicant permitted filing abroad only after he had filed in his own country, such applicant should be allowed to file an international application also only if he had first filed in his home country.

333. Mr. TASNÁDI (Hungary) said that as the proposal of the Delegation of Poland was similar to that of his own Delegation, presented in document PCT/DC/8, he withdrew the latter and supported the former.

334. Mr. HAERTEL (Germany (Federal Republic)) asked the Delegation of Poland to illustrate by examples its proposal since it was not clear to him whether there was any difference between the proposal of the Delegation of Poland and the Alternative Draft.

335. Mr. LABRY (France) also asked the Delegation of Poland to explain its proposal. He said that his country like many others had written into its national law certain conditions which nationals and residents had to fulfill before they were entitled to file applications in foreign countries. It was desirable that the PCT should not require those countries to modify their national laws. That was why Article 9(1) should refer to national laws as well as to the Paris Convention.

336.1 Mr. BOGSCH (Secretary General of the Conference) said that the proposal of the Delegation of Poland, supported by the Delegation of Hungary, seemed to relate to the security provision to be found in the legislation of most countries. Certain inventions important for national defense could not be filed abroad or could be filed only with the special authorization of the competent authorities of the country of the applicant. In some countries, all applications had to undergo a security clearance before they could be filed in foreign countries.

336.2 He was of the opinion, however, that the objective of the proposal of the Delegation of Poland had already been achieved by Article 27(7) of the Draft Treaty and Rule 22 of the Draft Regulations.

337. Mr. ARTEMIEV (Soviet Union) supported the proposal of the Delegation of Poland since under Soviet law too an applicant wishing to file abroad had to obtain the authorization of the competent Soviet authorities.

338.1 Mr. LABRY (France) said that the situation was the same in France as far as the national law was concerned.

338.2 He wished, however, to have further explanations on the reason for which a reference to the Paris Convention was desired.

339. Mr. GIERCZAK (Poland) said that reference to the national law was necessary not only because of defense considerations but also for economic considerations. A country might prohibit the filing of applications abroad even for those latter considerations. Article 27(7) of the Draft did not cover that point.

340. Mr. HAERTEL (Germany (Federal Republic)) said that the goal of the proposal of the Delegation of Poland was justified. However, Article 9(1) did not seem to be the right place in which to deal with it. It would seem to be preferable to extend the scope of Article 27(7) of the Draft so as to cover all situations in which the national law limits the

right of its nationals to file patent applications in foreign countries.

341. Mr. ARMITAGE (United Kingdom) agreed with the objective of the proposal of the Delegation of Poland and with the solution to be given to it suggested by the Delegation of Germany (Federal Republic).

342. Mr. LABRY (France) said that he agreed with both the Delegations of the United Kingdom and of Germany (Federal Republic).

343. Mr. LULE (Uganda) asked at what stage a security clearance for international applications would take place.

344. Mr. BOGSCH (Secretary General of the Conference) replied that, since it was the national Office of the country of the applicant which was the receiving Office, such Office would have both the opportunity and the right to stop the application if it was against national security or necessary for economic considerations. Such application would, for all practical purposes, never become an international application and even its existence would remain unknown other than to the receiving Office and the applicant.

345. *It was decided to refer the proposal of the Delegation of Poland to the Drafting Committee in order to take it into account either in Article 9(1) or in Article 27(7) of the Draft. (Continued at 1747.)*

Article 13: Availability of Copy of the International Application to Designated Offices (Continued from 326.)

346. Mr. LABRY (France), in reply to a question asked by the Delegation of the United States of America, said that only designated Offices should be entitled to make use of Article 13. The proposal of his Delegation, contained in document PCT/DC/19, aimed at making requests for copies possible in a general way, that is, in such a way that it should not be necessary to repeat the request separately for each international application.

347. *The proposal of the Delegation of France was referred to the Drafting Committee.*

348. Mr. VILLALBA (Argentina), referring to his Delegation's proposal contained in document PCT/DC/33, suggested that the words "after the expiration of one year from the priority date," appearing in paragraph (2) of the Draft, be omitted. He saw no reason to wait until the end of the priority year for the transmittal of copies to the designated Offices. Such transmittal should be effected as soon as possible even if the priority year had not yet expired.

349. Mr. ALMEIDA (Brazil) supported the proposal of the Delegation of Argentina. (Continued at 351.)

Article 1: Establishment of a Union (Continued from 331.)

In the signed text, Article 50: Patent Information Services (no provision in the Drafts) (Continued from 331.)

In the signed text, Article 51: Technical Assistance (no provision in the Drafts) (Continued from 331.)

In the signed text, Article 52: Relations with Other Provisions of the Treaty (no provision in the Drafts) (Continued from 331.)

350. The CHAIRMAN said that, after consultation with the Delegations concerned, the Delegations of Yugoslavia and Zambia had been added to the members of the Working Party set up to deal with Chapter IIIbis. (Article 1 continued at 1591, other provisions at 1690.)

Article 13: Availability of Copy of the International Application to Designated Offices (Continued from 349.)

351. *On the proposal of the Delegation of Brazil, it was decided to defer discussion of this Article.* (Continued at 526.)

Article 14: Certain Defects in the International Application

352. *Paragraph (1), as appearing in the Alternative Draft, was adopted without discussion.*

353. Mr. ALMEIDA (Brazil), referring to the proposal of his Delegation contained in document PCT/DC/34, suggested that paragraph (2) be modified to the effect that if the applicant furnished the missing drawings within the prescribed time limit then the original filing date should be preserved.

354. Mr. VILLALBA (Argentina) supported the proposal of the Delegation of Brazil.

355. Mr. BOGSCH (Secretary General of the Conference) said that drawings filed later might contain new matter. Preserving the original filing date could then have the effect of extending the priority period to include the time elapsing between the filing date given to the international application and the actual date on which the missing drawings were later filed.

356. Mr. HAERTEL (Germany (Federal Republic)) said that one had to distinguish between two cases, namely, whether the drawings were necessary for the understanding of the application or not. In the former case, maintaining the date notwithstanding the fact that the drawings were only filed later would give an international filing date to an application which could not be understood. Only if the drawings were not necessary for the understanding of the application could one, perhaps, regard the proposal of the Delegation of Brazil as acceptable.

357. Mr. SAVIGNON (France) said that his Delegation could not accept the proposal of the Delegation of Brazil for the reasons stated by the Delegation of Germany (Federal Republic).

358. Mr. LIPS (Switzerland) said that his Delegation was decidedly against the proposal of the

Delegation of Brazil for the reasons stated by the Delegation of Germany (Federal Republic). Furthermore, his Delegation was also opposed to the said proposal even if it were limited to drawings which were not necessary for the understanding of the application because such drawings could contain new matter, i.e., matter not contained in the other parts of the application. Such new matter would then, under the proposal, be antedated, and such antedating would run against all the generally accepted principles of patent law.

359. Mr. ARMITAGE (United Kingdom) said that his Delegation shared the views of the Delegations of Germany (Federal Republic), France and Switzerland. It also considered that the proposal of the Delegation of Brazil was difficult to apply in practice because drawings would have to be checked by technically qualified persons and, at the stage of filing in the receiving Offices, the system did not provide for intervention by such persons.

360. Mr. OTANI (Japan) said that his Delegation opposed the proposal of the Delegation of Brazil for the reasons stated by the Delegations who had spoken against it.

361. Mr. VAN BENTHEM (Netherlands) said that it was a fundamental rule of the patent laws of most countries that, in filing amendments or later documents concerning the patent application, the applicant was not allowed to go beyond the original disclosure for which the filing date had been certified. The proposal of the Delegation of Brazil would contravene this rule. Consequently, his Delegation opposed it.

362. Mr. BRENNAN (United States of America) said that his Delegation shared the views of the Delegations of Germany (Federal Republic), France, Switzerland, the United Kingdom, Japan, and the Netherlands.

363. Mr. ALMEIDA (Brazil) said that in view of the explanations given by the Secretary General of the Conference and the opposition of the majority of the delegations, he withdrew his Delegation's proposal.

364. The CHAIRMAN thanked the Delegation of Brazil for its cooperation and noted that the Delegation of Argentina had no objection to the withdrawal of the proposal.

365. *Paragraph (2) was adopted as appearing in the Alternative Draft.*

366. *Paragraph (3) was adopted without discussion as appearing in the Draft.*

367. Mr. PETERSSON (Australia), referring to his Delegation's proposal contained in document PCT/DC/28, said that paragraph (4) of the Draft was unduly harsh. Once the international filing date had been accorded, the international application should be processed even if the receiving Office had overlooked certain defects.

368. Mr. SHER (Israel) supported the proposal of the Delegation of Australia.

369. Mr. LORENZ (Austria) supported the proposal of the Delegation of Australia on the

understanding that it meant that, where certain defects were discovered later in the international application, that application would no longer be processed internationally but it would be processed nationally if it complied with the national requirements of the designated States.

370. Mr. BOGSCH (Secretary General of the Conference) said that it was not clear to him whether the proposal of the Delegation of Australia meant that further processing of the international application would be required in the international phase. For example, could it mean that an international application written in a language not admitted for an international application should be searched by the International Searching Authority and published by the International Bureau?

371. Mr. ARMITAGE (United Kingdom) said that the proposal of the Delegation of Australia would also mean that the lack of description and the lack of claims in the international application would be correctable defects. Such permissiveness would not be tolerable. Furthermore, the proposal of the Delegation of Australia would mean that an international filing date already granted would be taken away. This would also not be tolerable since, however defective, an application should be able to be the basis of a priority. Of course, how useful and effective such priority would be would depend on the degree of the defects of the application.

372. Mr. PETERSSON (Australia) said that his Delegation would be agreeable to reviewing its proposal in order to meet some of the objections made by certain delegations.

373. Mr. BRENNAN (United States of America) said that he agreed with the observations of the Delegation of the United Kingdom. The defects involved were fundamental defects which should prevent international processing. Applications having such fundamental defects should be refiled after correction.

374. Mr. ARMITAGE (United Kingdom) said that there were certain fundamental defects – and those referred to in Article 11(1) were of that kind – which should not be correctable.

375. Mr. MAST (Germany (Federal Republic)) agreed with the position taken by the Delegations of the United Kingdom and the United States of America and urged that paragraph (4) be maintained in the form in which it was proposed in the Draft.

376. Mr. GABAY (Israel) said that, once the international application had left the receiving Office, that Office should not be able to influence its fate.

377. Mr. LABRY (France) said that his Delegation was in full agreement with the view of the Delegation of Germany (Federal Republic).

378. Mr. PETERSSON (Australia) wished to know what would happen if the errors referred to in paragraph (4) were discovered later than the time limit mentioned in paragraph (4).

379. Mr. BOGSCH (Secretary General of the Conference) said that if the error was detected after the six-month time limit referred to in paragraph (4)

the international application would continue to be processed internationally. It was, however, highly unlikely that during those six months the very grave defects in question would remain undetected. In most cases, during that period the international application would reach the International Bureau and the competent International Searching Authority. Both could bring the defects that had not been detected by the receiving Office to the latter's attention.

380. The CHAIRMAN said that the Drafting Committee should look at paragraph (4) to see whether its language needed any clarification.

381. *Paragraph (4) was adopted as appearing in the Draft. (Continued at 548.)*

End of the Fourth Meeting

FIFTH MEETING

Wednesday, May 27, 1970, afternoon

Article 15: The International Search

382. Mr. SAVIGNON (France) presented the proposal of his Delegation contained in document PCT/DC/21. The main objective of the proposal was to ensure that the International Searching Authorities would be under an obligation to search not only the minimum documentation but also any additional material which they might have in their search files.

383. The CHAIRMAN noted that there was no opposition to the proposal of the Delegation of France. The Drafting Committee would find the proper wording.

384. Mr. VAN BENTHEM (Netherlands) said that as he understood the proposal of the Delegation of France it related only to documents which were classified for search purposes and not also to documents which were merely in the archives of the International Searching Authority.

385. Mr. SAVIGNON (France) replied that he agreed with the interpretation of the previous speaker.

386. Mr. PETERSSON (Australia) said that the last words (“with due regard to the description and the drawings (if any)”) of paragraph (3) were not entirely clear. The Drafting Committee should try to clarify the question whether the international search would be made on the basis of the claims only or also cover the description and the drawings. It was extremely important to know what the search was exactly covering since the claims might be amended after the search had been carried out and, if the search was exclusively based on the claims, it might be insufficient with regard to the amended claims.

387. Mr. ASCENSÃO (Portugal) presented the proposal which his Delegation, together with the Delegation of Argentina, has presented in document PCT/DC/42. It was proposed that a search similar to an international search (“an international-type search”) should be available in the case of any national application filed with the national Office of a Contracting State. The International Searching Authority competent to carry out the search would be

the same Authority as that which was competent in the case of international applications filed with the said national Office. International-type search would be carried out either at the request of the national Office or at the request of the applicant.

387.2 The main difference between paragraph (5) of the Draft and the proposal was that the international-type search would be carried out not only at the request of the applicant but also at the request of the national Office. The proposed measure should contribute to the harmonization of national laws and practices.

388. Mr. LORENZ (Austria) supported the proposal of the Delegations of Argentina and Portugal.

389. Mr. BORGGÅRD (Sweden) also supported the proposal of the Delegations of Argentina and Portugal. If adopted, that proposal would have the beneficial effect that there would be no difference, in a country making use of the proposal, between the treatment given to national applications and that given to international applications. Both kinds would be searched, and would be searched by the same Authority.

390. Mr. ARMITAGE (United Kingdom) said that the proposal had far-reaching practical consequences for the International Searching Authorities. Their work load could very considerably increase if countries receiving many national applications had to extend the obligation of search also to national applications. He would, therefore, like to hear the opinion of the prospective International Searching Authorities, particularly that of the International Patent Institute.

391. Mr. FINNISS (International Patent Institute) said that the proposal of the Delegations of Argentina and Portugal raised not only the question of increased work load but also the question of languages. Notwithstanding his Institute's efforts to extend its capabilities to the searching of applications in additional languages, it was a practical impossibility to cover all, or even most, of the languages of the world. For both those reasons, the proposal in question would be acceptable only if it were understood that its application would depend, in every case, on a freely negotiated contract between the International Searching Authority and the interested national Office.

392. Mr. BOGSCH (Secretary General of the Conference) wished to draw the attention of the meeting to the fact that the proposal in question dealt with purely national applications which might never become international applications and with searches which would be carried out at the sole request of the national Office, even if the applicants did not desire such a search.

393. Mr. BRENNAN (United States of America) said that the proposal called for great caution on the part of the prospective International Searching Authorities since it could very considerably increase their work load.

394. Mr. VAN BENTHEM (Netherlands) expressed the view that the proposal was outside the

scope of the PCT. Paragraph (5) in the Draft envisaged the situation in which the applicant intended to file an international application but, before doing so, he wanted to have an international-type search on his national application. Thus, there was some link with the international application and, hence, paragraph (5) had its proper place in the PCT. However, any such link was missing in the proposal of the Delegations of Argentina and Portugal as it envisaged the international-type search of purely national applications that were never intended to become international applications.

395. Mr. MAST (Germany (Federal Republic)) said that his Delegation had no objection to the proposal of the Delegations of Argentina and Portugal although it had only a very loose connection with the PCT.

396. Mr. VILLALBA (Argentina) said that he did not see any fundamental difference between paragraph (5) of the Draft and the proposal presented by his Delegation together with the Delegation of Portugal. After all, the Draft itself provided for the international-type searching of purely national applications. The proposal did the same, except that it extended it somewhat by allowing not only the applicant but also the national Office to ask for an international-type search. Consequently, the proposal seemed to be falling within the scope of the PCT.

397. Mr. ALMEIDA (Brazil) said that his Delegation favored the proposal of the Delegations of Argentina and Portugal. The underlying reason was to allow countries not having sufficient documentation to make searches themselves to use the services of the International Searching Authorities. There was nothing shocking in allowing the national Offices themselves to ask for international-type searches since the proposal expressly provided that they could do so only if their national laws so permitted.

398.1 Mr. LORENZ (Austria) said that he supported the proposal of the Delegations of Argentina and Portugal mainly for the reason that, as had been pointed out by the Delegation of Sweden, it would remove any difference in treatment between national and international applications from the point of view of searching in all countries which did not desire to have such a difference.

398.2 The proposal would not affect the International Searching Authorities which were national Offices since they made a search on all national applications in any case. It would affect only the International Patent Institute, whose work load it might increase. However, the proposal was perfectly compatible with paragraph (5) of the Draft. Nothing in the Draft guaranteed that a national application would, eventually, become an international application. Furthermore, any country could, under its national law, oblige the applicants to ask for an international-type search, and, if it did so, paragraph (5) of the Draft would already cover the situation.

399. The CHAIRMAN said that the proposal of the Delegations of Argentina and Portugal had great intrinsic merit. The only question before the

Conference was to decide whether the measure envisaged by the proposal was one for an international treaty, like the PCT, or merely for the national law of the various countries. The French law, for example, already provided, in fact, what the proposal aimed at: all applications filed in France were subjected to a search in the International Patent Institute.

400. Mr. EKANI (African and Malagasy Industrial Property Office) said that he was not convinced that the proposal in question was outside the scope of the PCT. On the contrary, as the Delegation of Austria had pointed out, the possibility for each national Office to ask for international-type searches on national applications was already implicit in paragraph (5) of the Draft. There was no good reason not to make that possibility explicit in the text of the Treaty.

401. Mr. VAN BENTHEM (Netherlands) wished to know the view of the Secretary General of the Conference on the question whether the proposal of the Delegations of Argentina and Portugal would oblige the International Patent Institute to search all the national applications which a national Office wished to be searched.

402.1 Mr. BOGSCH (Secretary General of the Conference) said that the reply was in the negative since the International Patent Institute would be obliged to make searches only to the extent that that obligation would be written into the agreement to be concluded between the Institute and the International Bureau. The agreement would be freely negotiated and could therefore be concluded only if both parties agreed to its terms.

402.2 The speaker wondered whether the proposal had its place in the PCT for the following reasons: the PCT was conceived in the spirit that it was an alternative route to the traditional route for filing national applications, and the choice between the two possibilities would always be a matter for the applicant to decide. The proposal deprived the applicant of the possibility of making a choice since he could be forced to obtain an international-type search even if he, himself, did not want it.

403. The CHAIRMAN suggested that the discussion on the proposal of the Delegations of Argentina and Portugal should be interrupted to allow delegations to further reflect upon it, and should be resumed a few days later.

404. *Article 15 was adopted as appearing in the Alternative Draft, with the exception of paragraph (5). Decision on the latter was deferred. (Continued at 551.)*

Article 16: The International Searching Authority

405. *Paragraph (1), as appearing in the Draft, was adopted without discussion. (See 1415.)*

406. Mr. ROBINSON (Canada) introduced his Delegation's proposal as contained in document PCT/DC/31. It was desirable that the PCT make it clear that the multiplicity of International Searching Authorities was merely a temporary solution and that

the ultimate goal was to have only one such Authority. It was therefore proposed that paragraph (2) be introduced by the following words: "Pending the establishment of a single International Searching Authority." Furthermore, Article 52(3) should provide that one of the tasks of the Committee for Technical Cooperation was to contribute, by advice and recommendations, to the establishment of a single International Searching Authority.

407. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that, in the view of his Association, it was indispensable that the PCT system eventually operate with a single International Searching Authority. The reasons for those views were technical and political. On the technical level, it was most unlikely that the various International Searching Authorities would make searches with the same degree of accuracy. On the political level, it would be found that it was much easier for any country to accept the searches made by an international authority than by national Offices since the objectivity of the search was guaranteed when it was done by an international authority.

407.2 For all those reasons, the Association would welcome the acceptance of the proposal made by the Delegation of Canada.

408.1 Mr. PRETNAR (Yugoslavia) said that his Delegation favored a system with one International Searching Authority as distinguished from a system with several International Searching Authorities since the uniformity of the results could be assured only if there was a single International Searching Authority. However, his Delegation was ready to recognize that, for a transitory period, several International Searching Authorities would be needed for practical reasons. It was nevertheless essential that the Treaty expressly provide that a multiplicity of International Searching Authorities was a temporary solution and that the ultimate goal was to have a single International Searching Authority.

408.2 Furthermore, it was the wish of his Delegation that, during the transitory period, each applicant should have the right to have his application searched by the International Patent Institute if he so desired, that is, if he preferred that it be searched by that Institute rather than by any other International Searching Authority.

409. The CHAIRMAN said that there was no written proposal before the Conference as far as the second point in the intervention of the Delegation of Yugoslavia was concerned.

410. Mr. CLARK (United States) said that his Delegation would agree to the inclusion in the Preamble of the Treaty of the ideas expressed in the proposal of the Delegation of Canada.

411. Mr. SHER (Israel) said that his Delegation favored the proposal of the Delegation of Canada. It would not be sufficient, however, to express the idea contained in that proposal in the Preamble. It should be expressed in the text of Article 16.

412. Mr. SAVIGNON (France) said that his Delegation fully supported the proposal of the

Delegation of Canada. It was extremely important that Treaty itself indicate, in clear terms, that the ultimate goal was the creation of a single International Searching Authority. Centralized search was in the interest of most of the applicants and the States since only an international authority could offer the guarantees implied in international control and supervision, and the centralization of all the modern methods of documentation retrieval.

413. Mr. PETERSSON (Australia) supported the proposal of the Delegation of Canada. The idea expressed should appear in the text of the Treaty rather than merely in the Preamble.

414. Mr. BORGGÅRD (Sweden) said that the text of the Draft was the result of a carefully negotiated compromise. His Delegation, therefore, supported the Draft rather than the proposal of the Delegation of Canada.

415. Mr. STAMM (Switzerland) said that the Government of Switzerland had always been in favor of a centralized search system. Consequently, it supported the idea expressed in the proposal of the Delegation of Canada. It would be satisfied if that idea were expressed in the Preamble.

416. Mr. CASELLI (Italy) said that his Government had always been in favor of centralized search and therefore supported the proposal of the Delegation of Canada.

417. Mr. LABRY (France) said that insertion in the Preamble of the idea expressed in the proposal of the Delegation of Canada would be insufficient and unacceptable. It must be expressed in the Treaty itself. Although the Government of France recognized that, in a transitory period, it would be unavoidable to have several International Searching Authorities, the ultimate goal – the single International Searching Authority – must find expression in the text of the Treaty itself. Rejection of that proposal would jeopardize the success of the Diplomatic Conference itself.

418. Mr. HAERTEL (Germany (Federal Republic)) said that, even if written into text of the Treaty itself, the proposal of the Delegation of Canada would be merely a wish rather than a contractual obligation. Consequently, it would be more logical to write that wish into the Preamble. His Delegation, therefore, proposed that the Preamble provide expressly that the ultimate goal was the creation of a single International Searching Authority, a goal which the Delegation of Germany (Federal Republic) had always been in favor of.

419. Mr. ROBINSON (Canada) said that his Delegation's proposal concerned not only Article 16 but also Article 52. Although the question whether the proposal would be written into the Preamble or into the Treaty itself was not of capital importance, it would be more fitting to put it in the Treaty if for no other reason than because it affected two articles.

420. Mr. ASCENSÃO (Portugal) said that he agreed with the proposal of the Delegation of Canada.

421. Mr. TRUONG (Ivory Coast) said that his Delegation supported the proposal of the Delegation of Canada.

422. Mr. BRAUN (Belgium) said that his Delegation agreed not only with the proposal of the Delegation of Canada but also with the declaration made by the Delegation of France. Consequently, the text proposed should appear in the text of the Treaty itself so that no one could say later that, because it was merely in the Preamble, it had no binding force.

423. Mr. OTANI (Japan) said that his Delegation had no objection to inserting the proposal of the Delegation of Canada in the Preamble.

424. Mr. ARTEMIEV (Soviet Union) said that his Delegation was not opposed to inserting the proposal of the Delegation of Canada in the Preamble.

425. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that his Association had always favored the idea that, eventually, there should be only one International Searching Authority. He would welcome it if the proposal of the Delegation of Canada were to be inserted both in the Preamble and in Article 16.

426. Mr. MATHYS (International Chamber of Commerce (ICC)) said that industrial circles would be happy to see an ideal written into the Treaty. However, neither in their own business nor in the matter of obtaining patents did they expect to obtain the ideal solution. Consequently, they would be very sorry indeed if the Conference foundered only because an attempt was made to write an ideal into the Treaty.

427. Mr. HAZELZET (Union of Industries of the European Community) said that his Union had no confidence in a system with several International Searching Authorities. Consequently, he would welcome it very much if the proposal of the Delegation of Canada were written into Article 16 itself, rather than merely into the Preamble.

428. Mr. ALMEIDA (Brazil) said that it might very well happen that in practice decentralized searching worked better than centralized searching. Even if there was only one International Searching Authority, it was probably going to be necessary that it have several branches in different parts of the globe. In any case, his Delegation preferred to see the proposal of the Delegation of Canada appear in the Preamble.

429. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)), said that his Federation fully agreed with the opinion expressed by the Representative of the Union of Industries of the European Community and the Inter-American Association of Industrial Property.

430. Mr. PANEL (European Industrial Research Management Association (EIRMA)) said that his Association had always been strongly in favor of centralized search. Consequently, it was of fundamental importance that the proposal of the Delegation of Canada appear in the text of the Treaty itself rather than merely in the Preamble. It was essential that the steps leading to a centralized search be taken right from the outset and that the principle of

a single International Searching Authority be incorporated in Article 16. As the Delegation of Brazil had intimated, limitation to a single International Searching Authority did not exclude the creation of several branches throughout the world as long as instructions and supervision came from a central point, because it was only in that way that uniform search results could be obtained.

431. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) said that he fully agreed with the declaration of the previous speaker.

432. *Sixteen Delegations voted for including the proposal of the Delegation of Canada in Article 16, paragraph (2).*

433. *Eighteen Delegations voted for including the proposal of the Delegation of Canada in the Preamble.*

434. Mr. DAHMOUCHE (Algeria) said that he did not consider the voting procedure entirely convincing. One should have asked for an expression of opinion not only in favor of each solution but also against it.

435. Mr. VILLALBA (Argentina) shared the views expressed by the Delegation of Algeria.

436. Mr. VAN BENTHEM (Netherlands), agreeing with the previous speakers, proposed that the proposal of the Delegation of Canada be put to the vote again and that votes both for and against the proposal be asked for.

437. *The proposal of the Delegation of Canada concerning paragraph (2), contained in document PCT/DC/31, was adopted by 18 votes in favor to 14 against, with 5 abstentions.*

438. *Subject to the decision reported on in paragraph 437, above, paragraph (2) was adopted as appearing in the Alternative Draft. (Continued at 439.)*

End of the Fifth Meeting

SIXTH MEETING

Thursday, May 28, 1970, morning

Article 16: The International Searching Authority (Continued from 438.)

439. Mr. SAVIGNON (France) moved the proposal of his Delegation contained in document PCT/DC/21 concerning paragraph (3)(e) to the effect that, before the Assembly made a decision on the appointment of any International Searching Authority, it should hear not only the interested national Office or international organization but should also seek the advice of the Committee for Technical Cooperation provided for in Article 52.

440. Mr. VAN BENTHEM (Netherlands) supported the proposal of the Delegation of France.

441. *The proposal of the Delegation of France concerning paragraph (3)(e), contained in document PCT/DC/21, was adopted.*

442. Mr. FINNE (Finland) said that Article 16 provided that each receiving Office had the right to

specify the International Searching Authority competent for the searching of international applications filed with such Office. On the other hand, the same Article provided that appointment of International Searching Authorities required an agreement between the national Office or the international organization which was a candidate for appointment and the International Bureau. He found no guarantee in the Article that every national Office would be able to specify which International Searching Authority it wished to be competent for the international applications filed with that Office.

443. Mr. BOGSCH (Secretary General of the Conference) said that, while it was true that any national Office could choose only an International Searching Authority which was willing to serve it, it was extremely unlikely that the International Patent Institute, which had been created for the purpose of making searches, should not agree to its being specified by any national Office. It was to be assumed – although the Treaty could not say so and although the International Patent Institute, which was not party to the Treaty, could not accept the obligation there and then – that the International Patent Institute would be available for all countries wishing to use its services.

444. Mr. ALMEIDA (Brazil) said that his Delegation had presented a proposal concerning Article 16, which was contained in document PCT/DC/34.Rev. But, since the document had been distributed only a few hours earlier, it might be premature to discuss it. He proposed that further discussion on Article 16 be deferred until a later time.

445. Mr. HAERTEL (Germany (Federal Republic)) said that, since document PCT/DC/34.Rev. differed only slightly from document PCT/DC/34, which had been distributed the previous day, he saw no difficulty in bringing it up for discussion.

446.1 Mr. ALMEIDA (Brazil) moved his Delegation's proposal, which consisted of the insertion of a new subparagraph in paragraph (3), reading as follows: "Any contracting party whose national Office fulfills the minimum requirements, especially as to manpower and documentation, may be designated as the seat of an International Searching Authority.

446.2 It would be a great asset for any country or region to have within its boundaries an International Searching Authority. The advantages were evident from the technological, administrative and language viewpoints. Although at the present time only a few underdeveloped countries could qualify, their aim was to improve their Offices so that they would be able to qualify. The proposal aimed at keeping the door open for such possibilities.

447. Mr. BRENNAN (United States of America) said that the wording of paragraph (3)(c) of the Draft already covered the situation referred to by the Delegation of Brazil. Furthermore, the proposal of the said Delegation, speaking as it did only about national Offices, would disqualify the International Patent Institute from becoming an International Searching Authority.

448. Mr. DAHMOUCHE (Algeria) said that there was a considerable difference of approach between paragraph (3)(c) of the Draft and the proposal of the Delegation of Brazil. The formula of the Draft was, in a sense, negative since it spoke of the obstacles which a national Office had to overcome before it could be considered qualified to become an International Searching Authority. The proposal of the Delegation of Brazil, on the other hand, stated in a positive way the right of any national Office, fulfilling certain conditions, to become an International Searching Authority.

449. Mr. HAERTEL (Germany (Federal Republic)) said that the proposal of the Delegation of Brazil was not necessary since what it stated was already implicit in Article 16. Furthermore, the proposal was in contradiction to the decision taken the previous day to the effect that the aim was to have a single International Searching Authority. The proposal of the Delegation of Brazil would rather give the impression that the number of International Searching Authorities was unlimited and would normally grow whenever a national Office assembled the documentation qualifying it to become an International Searching Authority.

450. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that his Delegation supported the proposal of the Delegation of Brazil because it made it clear that any national Office fulfilling the stated requirements had the right to become an International Searching Authority.

451. Mr. CAPURRO-AVELLANEDA (Uruguay) said that his Delegation supported the proposal of the Delegation of Brazil.

452. Mr. PETERSSON (Australia) asked for clarification of the meaning of the words "as a seat of."

453.1 Mr. ALMEIDA (Brazil) said that the proposal of his Delegation had spoken not of a national Office but of a contracting party, that is, a State. A State could not become an International Searching Authority, but it could become the seat of an International Searching Authority.

453.2 The request to become an International Searching Authority was, in a certain sense, a political matter since it was in the interest of the State or the region in question to have an International Searching Authority within its boundaries. The intention of the proposal was that, if there was a national Office or a regional Office on the territory of any Contracting State, then, on the request of that State, the said Office would become an International Searching Authority, provided it fulfilled the requirements as to minimum documentation and qualified staff.

453.3 The proposal did not use the words "right" or "entitlement"; it used the word "may." It was therefore merely a presumption that, if the minimum requirements were met, the request would be granted without, however, depriving the Assembly of the right to make a decision on the request.

454. Mr. CLARK (United States of America) said that his Delegation supported the observations made

by the Delegation of Germany (Federal Republic). It appeared that the question of centralized search was being argued again but with a seemingly different alignment of the same groups.

455. Mr. GABAY (Israel) said that his Delegation fully supported the proposal of the Delegation of Brazil. Centralization of the search was a far distance away. In the meantime, it was important, especially in the context of regional groupings of developing countries, to have the right to become the seat of an International Searching Authority. For example, as long as the Spanish and Portuguese languages could not be handled by the International Patent Institute, the Latin American countries might wish to institute their own regional Searching Authorities. His Delegation preferred to emphasize the possibility of setting up regional Searching Authorities, and would therefore welcome it if the proposal of the Delegation of Brazil spoke of "any national regional Patent Office" instead of "Contracting States."

456. Mr. ARMITAGE (United Kingdom) said that his Delegation shared the views of the Delegations of Germany (Federal Republic) and the United States of America. The proposal was unnecessary because the Draft, as it stood, already implied it. On the other hand, the proposal carried with it a strong indication that one should move towards the setting up of regional Searching Authorities and, hence, to a fractioning and proliferation of the searching machinery. It carried the implication that, whenever possible, one should set up a new Searching Authority.

457. Mr. SAVIGNON (France) said that he was convinced that the proposal of the Delegation of Brazil was not intended to encourage a proliferation of the International Searching Authorities. He also did not see any reason why one should not assert that those who qualified might become International Searching Authorities. There was no contradiction between the decision of the previous day and the proposal under discussion. In any case, it was necessary to revise the language of both the proposal of the Delegation of Brazil and the amendment proposed by the Delegation of Israel so that they did not exclude the International Patent Institute from becoming an International Searching Authority.

458. Mr. VAN BENTHEM (Netherlands) said that he shared the views expressed by the Delegation of France.

459. Mr. ALMEIDA (Brazil) said that the proposal of his Delegation was not intended to exclude the International Patent Institute.

460. Mr. LEWIN (Sweden) supported the views expressed by the Delegations of France and the Netherlands.

461. Mr. LORENZ (Austria) said that his Delegation also agreed with the proposal made by the Delegation of Brazil, provided that it covered also the International Patent Institute.

462. Mr. FINNISS (International Patent Institute) said that any reference in Article 16 to intergovernmental organizations should be so drafted

that it left no doubt that the International Patent Institute was included. Alternatively, one could mention the International Patent Institute by name. The countries members of the International Patent Institute would present a proposal to that effect unless the proposal was agreed upon there and then and referred to the Drafting Committee to work out the best formula.

463. Mr. SCHURMANS (Belgium) said that his Delegation agreed with the views expressed by the Representative of the International Patent Institute and that his Delegation proposed, for the reasons contained in document PCT/DC/24, that a reference to the International Patent Institute should be made in the text of the Treaty.

464. Mr. CASELLI (Italy) said that he fully supported the observations made by the Delegation of Belgium. The kind of search which was provided for in the PCT was the same as the searches carried out by the International Patent Institute. Consequently, it seemed to be appropriate that the Treaty mention that Institute *expressis verbis*.

465. Mr. SAVIGNON (France) said that he fully shared the views of the Delegation of Belgium.

466. Mr. KÄMPF (Switzerland) said that his Delegation, too, wished the Treaty to define more clearly what was meant by “intergovernmental organizations entrusted with international search.”

467. Mr. VAN BENTHEM (Netherlands) said that it might facilitate discussions if the Delegations which agreed with the proposal of the Delegation of Belgium presented a written proposal. His Delegation was ready to do so.

468. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation, also, wished the concept of “intergovernmental organizations” to be defined more clearly in the Article under discussion.

469. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that his Delegation supported the proposal of the Delegation of Belgium.

470. Mr. ARMITAGE (United Kingdom) said that he was also in sympathy with the proposal of the Delegation of Belgium and would be ready either to leave the matter to the Drafting Committee or wait for a written proposal by the original proponents of the idea.

471. Mr. QUINN (Ireland) suggested that the following words be added to paragraph (1): “which shall be a national Office or an intergovernmental organization”. This would make paragraph (1) clearer and its link with paragraph (3) smoother.

472. *Subject to the decision recorded under paragraph 441, above, paragraph (3) as appearing in the Draft, was adopted.* (Continued at 1415.)

Article 17: Procedure Before the International Searching Authority

473. Mr. BOGSCH (Secretary General of the Conference) introduced document PCT/DC/14 containing the possible alternative for paragraph (3) and Rules 40 and 43.7. The proposal had been

discussed at length in the Committee of Experts of March 1970. It would allow the International Searching Authority, if it was of the opinion that there was no unity of invention, to invite the applicant to pay an additional search fee and not proceed with searching until fee was paid, or, alternatively, it could immediately proceed with the searching of the main invention and, at the same time, invite the applicant to pay an additional search fee.

474. Mr. BRENNAN (United States of America) said that his Delegation supported the proposal of the Secretariat. The matter was entirely of a technical nature. It would allow more flexibility to suit the preferences of each International Searching Authority. It would facilitate the meeting of time limits set for completing the international search report.

475. Mr. FERGUSSON (United Kingdom) said that his Delegation would prefer to maintain paragraph (3) as it appeared in the Draft since the Draft gave more flexibility to the applicant: it allowed him to restrict the claims if he so desired.

476. Mr. SAVIGNON (France) said that he shared the view expressed by the Delegation of the United Kingdom.

477. Mr. LIPS (Switzerland) expressed support for the paragraph as it appeared in the Draft for the reasons mentioned by the Delegation of the United Kingdom.

478. Mr. ARTEMIEV (Soviet Union) said that his Delegation supported the proposal appearing in document PCT/DC/14 since it improved the procedure.

479. Mr. HAERTEL (Germany (Federal Republic)) said that whereas it was true that the proposal of the Secretariat contained in document PCT/DC/14 streamlined the procedure it was also true that it took away from the applicant the possibility of restricting the claims. The overriding consideration should be what served best the interest of the applicant. Consequently, the representatives of private circles should be heard on the matter.

480. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)) said that the main merit of the proposal of the Secretariat was that it made it possible to speed up the procedure. That was an extremely important consideration for the applicant and therefore the proposal should be adopted.

481. Mr. HAZELZET (Union of Industries of the European Community) said that he fully agreed with the previous speaker. It was in the interest of the applicant to receive the search report at the earliest possible date.

482. Mr. ADAMS (Pacific Industrial Property Association (PIPA)) said that his Association agreed with the two previous speakers.

483. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that his Association also agreed with the speakers for the private organizations.

484. Mr. HAERTEL (Germany (Federal Republic)) said that, in view of the declarations of the representatives of the private organizations, his Delegation supported the proposal of the Secretariat.

485. Mr. VAN BENTHEM (Netherlands) agreed with the declaration of the Delegation of Germany (Federal Republic).

486. Mr. BOGSCH (Secretary General of the Conference) said that, whereas it was true that the suggestion of the Secretariat formally deprived the applicant of the possibility of restricting his claims, in fact that possibility continued to exist since, if he was content with having only his main invention searched – and that he could achieve by not paying any additional fee – then, in effect, he had restricted his application to the main invention.

487. Mr. GIERCZAK (Poland) said that, for the reasons expressed by the Delegation of Germany (Federal Republic), his Delegation was also in a position to support the proposal of the Secretariat.

488. Mr. BORGGÅRD (Sweden) supported the proposal of the Secretariat.

489. Mr. SAVIGNON (France) said that, after having heard the explanations of the private organizations, his Delegation had no longer any objections to the adoption of the proposal of the Secretariat.

490. Mr. ARMITAGE (United Kingdom) said that, in view of the unanimous opinion of the private organizations, his Delegation would now also accept the proposal of the Secretariat.

491. *Article 17 was adopted as appearing in the Draft and, as far as paragraph (3) was concerned, as modified by document PCT/DC/14. (Continued at 1761.)*

Article 18: The International Search Report

492. Mr. CLARK (United States of America) said that paragraph (1) should speak of the “preparation” rather than the “establishment” of the international search report.

493. Mr. VILLALBA (Argentina), referring to the proposal of his Delegation contained in document PCT/DC/33, proposed that a new paragraph be added to Article 18, reading as follows: “The designated Offices may require a translation from the applicant and legislate on the responsibilities which originate from the mistakes that it may contain.”

494. Mr. ALMEIDA (Brazil) supported the proposal of the Delegation of Argentina.

495. Mr. BOGSCH (Secretary General of the Conference) said that the main reasons why the Draft did not provide for the translation of the international search report into the languages of all the designated States was that the international search report consisted, almost exclusively, of numbers, namely, the numbers of the cited documents. It was true that the international search report might also contain the title of an article or of a book, but it made very little sense to translate either since the article or the book could be consulted only in the language in which it was written.

Thus, there would be very little that would remain for translation, namely, the words “international search report” or “international application.” The translation would mainly consist of copying the numbers, a process which would easily produce errors. That was another reason why translations should not be required.

496. Mr. ARMITAGE (United Kingdom) said that his Delegation agreed with the explanation given by the Secretary General of the Conference.

497. Mr. CLARK (United States of America) said that his Delegation, too, agreed with the explanation of the Secretary General.

498. Mr. ALMEIDA (Brazil) said that his Delegation would propose, when the Rules were discussed, that the international search report should “also contain the relevant transcripts of the cited documents.” Should this proposal be adopted, then, of course, there would be quite a lot of text matter in the international search report and its translation would become very important.

499. Mr. VILLALBA (Argentina) said that it was extremely important for the designated Offices that they should receive the international search report in their own language. The Draft itself provided for the translation of the international search report into English whenever it was not originally prepared in English.

500. Mr. BOGSCH (Secretary General of the Conference) said that, as he had explained earlier, there were a few words in every search report, such as its title, “search report.” If that title appeared in Japanese or in Russian only, some Offices would not realize that the document was a search report. This was why it was proposed, in the Draft, that a translation into English should be required.

501. Mr. ALMEIDA (Brazil), on a question from the Chair, declared that he was ready to accept deferment of the discussion of the proposal of his Delegation until it had been decided whether the international search report would contain excerpts from the cited documents.

502. Mr. VILLALBA (Argentina) agreed with the proposal of the Delegation of Brazil.

503. *Article 18 was adopted as appearing in the Alternative Draft, it being understood that further discussion of the proposal of the Delegation of Brazil and the proposal of the Delegation of Argentina was deferred. (Continued at 1191.)*

Article 19: Amendment of the Claims Before the International Bureau

504. Mr. BOGSCH (Secretary General of the Conference) said that the change found in the Alternative Draft was mainly one of drafting. It was intended to make it clear that the claims could be amended only once before the International Bureau.

505. Mr. PETERSSON (Australia), referring to the proposal of his Delegation appearing in document PCT/DC/35, said that the word “amended” appearing at the beginning of paragraph (1) should be changed to

“proposed to amend” since amendments were allowed only by the national Office in the national phase. An applicant could not amend his application except with the consent of the Office granting the patent. All the applicant was entitled to do was to propose amendments which were either accepted or rejected.

506. Mr. BOGSCH (Secretary General of the Conference) said that any application, by its very nature, was merely a proposal or request for a patent. So, anything done by the applicant before the patent was granted was merely in the nature of a proposal or request. Even an original claim was merely a proposed claim and the same was true as far as any amendment was concerned.

507. The CHAIRMAN said that the proposal of the Delegation of Australia would be referred to the Drafting Committee.

508. Mr. VILLALBA (Argentina), referring to the proposal of his Delegation as contained in document PCT/DC/33, proposed that the following sentence be added to paragraph (2): “The amendment shall not go beyond the disclosure of the international application as filed in accordance with the legislation of the designated Office.”

509. Mr. ASCENSÃO (Portugal) supported the proposal of the Delegation of Argentina.

510. Mr. ALMEIDA (Brazil) also supported the proposal of the Delegation of Argentina.

511. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) likewise supported the proposal made by the Delegation of Argentina.

512. Mr. LIPS (Switzerland) said that he foresaw some difficulties with the last part of the proposal of the Delegation of Argentina, which referred to the legislation of the designated States. The laws of the designated States might differ considerably and it would be extremely difficult for the applicant to respect them all in the same amendment.

513. Mr. BOGSCH (Secretary General of the Conference) said that one had to distinguish between amendments made in the international phase – which the Article under consideration dealt with – and amendments made in the national phase. In the international phase, the applicant could be required to comply with only one objective criterion, namely, that the amendment should not go beyond the disclosure. That, by the way, was a principle generally recognized by national laws. It was not practical, in such a case, to require compliance with all the laws since they were different. There was a second opportunity for the applicant to amend his claims, namely, the opportunity given to him before each of the designated Offices.

514. Mr. VILLALBA (Argentina) asked what would be the consequence if the applicant did not respect the prohibition contained in paragraph (2) of the Draft, namely, that the amendment must remain within the scope of the disclosure.

515. Mr. BOGSCH (Secretary General of the Conference) replied that there was indeed no immediate sanction for the violation of paragraph (2) because the International Bureau, before which the

amendment would be made, would not examine whether that amendment complied with paragraph (2). However, the sanction was merely deferred to a later stage, the stage of examination by the national Office. Any national Office could deny the grant of a patent if the amendment made before the International Bureau went beyond the disclosure.

516. Mr. HAERTEL (Germany (Federal Republic)) said that it was to be noted that Article 28 provided that amendments made in the national phase could go beyond the disclosure if the national law permitted them to do so. Perhaps the Drafting Committee should look into the matter and see whether a certain harmonization between Articles 19 and 28 was possible.

517. Mr. VILLALBA (Argentina) said that he desired that the text should clearly indicate that the decision on whether the claims had exceeded the disclosure was to be made by the national Offices.

518. Mr. LIPS (Switzerland) said that the main reason for allowing the applicant to amend his claims in the international phase was to permit him to see his claims published by the International Bureau in a form with which he was in agreement after having seen the international search report. Whether the claims were within the scope of the disclosure would be decided by each national Office as provided for in Article 28. Consequently, there was an important difference between the two Articles.

519. Mr. VILLALBA (Argentina) said that he agreed with the fundamental idea behind paragraph (2) but he wished to be sure that, if the national law allowed for amendments going beyond the disclosure contained in the application as filed, such law would remain applicable.

520. Mr. SAVIGNON (France) said that perhaps Article 19 should refer to Article 28 in order to satisfy the concern of the Delegation of Argentina.

521. Mr. ARMITAGE (United Kingdom) said that paragraph (2) was important because it gave assurance to the applicant that, as long as his claims remained within the scope of the original disclosure, they would be accepted. He thought that Article 27 took adequate care of the problem.

522. Mr. VAN BENTHEM (Netherlands) said that he shared the views expressed by the Delegation of the United Kingdom.

523. Mr. BOGSCH (Secretary General of the Conference) said that perhaps one could take care of the problem by providing, in Articles 27 or 29, that it was the national law of each designated State that applied in determining whether or not any claims went beyond the scope of the disclosure.

524. Mr. VILLALBA (Argentina) said that it made no difference to him whether the matter was regulated in Article 19 or some other article as long as it was made clear that the national law applied.

525. The CHAIRMAN said that the Drafting Committee would be invited to try to find adequate wording to express, in Articles 27 or 28, the applicability of the national law. (Continued at 556.)

*End of the Sixth Meeting***SEVENTH MEETING**

Thursday, May 28, 1970, afternoon

Article 13: Availability of Copy of the International Application to Designated Offices
(Continued from 351.)

526.1 Mr. VILLALBA (Argentina) withdrew his Delegation's proposal contained in document PCT/DC/33 and introduced, instead, the proposal contained in document PCT/DC/46, sponsored by the Delegations of the following ten countries Algeria, Argentina, Brazil, Ivory Coast, Madagascar, Togo, Uganda, United Arab Republic, Uruguay, Yugoslavia. The proposal differed from the Draft mainly in so far as the designated Office could require transmittal of the copy of the international application before the expiration of one year from the priority date. There was no reason to wait for the expiration of the said date.

526.2 Another difference was that the copy could be transmitted direct by the applicant as well as by the International Bureau.

527.1 Mr. BOGSCH (Secretary General of the Conference) said that it was up to the delegations to decide whether their national Offices would recognize as authentic copies, copies which had not been certified by the International Bureau.

527.2 He also noted that the proposal seemed to allow designated Offices to ask for copies without any time limit, that is, even if the applicant did not want to have copies communicated before the expiration of one year from the priority date.

528. Mr. ARMITAGE (United Kingdom) said that, where the international application was filed at the end of the priority year, copies could not be sent until after the expiration of that year. Furthermore, he called attention to the fact that designations were not firm before the expiration of the said time limit because the designation fees were due only at the end of the priority year.

529. Mr. VAN BENTHEM (Netherlands) agreed with the observations made by the previous speaker.

530. Mr. PRETNAR (Yugoslavia) said that another difference between the proposal and the Draft was that the former put the emphasis on transmittal by the applicant. That would be the rule; transmittal by the International Bureau would be the exception.

531. Mr. MAST (Germany (Federal Republic)) said that many national Offices, and his country's Patent Office was one of them, would prefer not to receive such early copies since they could not be regarded as part of the prior art and therefore could serve no useful purpose.

532. Mr. VILLALBA (Argentina) said that he could accept the time limit of one year for requests by the designated Offices provided the applicant had the right to transmit a copy before the expiration of the time limit.

533. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that it might be in the interest of the applicant to transmit a copy as early as possible, for example, where a conflicting Application might be pending with the designated Office.

534. Mr. ONIGA (Brazil) agreed with the previous speaker.

535.1 Mr. BOGSCH (Secretary General of the Conference) said that, whatever was written into the Treaty, no national Office could prevent an applicant from mailing a copy of his application to it. Of course, the International Bureau could be prohibited from transmitting copies to national Offices not wishing to receive them.

535.2 As to the main question, there seemed to be agreement: the time limit would apply to requests by the designated Offices but would not apply to spontaneous transmittals by applicants.

536. Mr. MAST (Germany (Federal Republic)) wanted to know whether the proponents of the proposal had an objection to the time limit for transmittals by the applicant as distinguished from transmittals by the International Bureau.

537. Mr. VILLALBA (Argentina) replied that he had no objection to such a limitation.

538. Mr. MAST (Germany (Federal Republic)) wanted to know whether any designated Office could prohibit transmittals, before the expiration of the time limit, by or at the request of the applicant.

539. Mr. BRENNAN (United States of America) said that his Delegation favored Article 13 as appearing in the Draft.

540. Mr. FERGUSSON (United Kingdom) said that the position of his Delegation was the same as that of the Delegation of the United States of America. The proposal of the Delegations of the ten countries was not clear.

541. Mr. BOGSCH (Secretary General of the Conference) said that the Article could be made clearer if its first paragraph dealt only with requests by the designated Offices, and its second paragraph only with transmittals by or at the request of the applicant. The time limit would apply only in the case of paragraph (1). The prohibition by the designated Office could apply only in the case of paragraph (2).

542. Mr. VILLALBA (Argentina) said that he could agree to the presentation proposed by the Secretary General of the Conference.

543. Mr. VAN BENTHEM (Netherlands) said that the suggestion of the Secretary General of the Conference would mean that designated Offices could receive copies even when they did not wish to receive them. He would then prefer the Article appearing in the Draft.

544. Mr. ARMITAGE (United Kingdom) said that it would increase the expenses of the International Bureau if it had to transmit copies at the request of the applicant and that such increase would be totally unjustified if the designated Office did not wish to receive copies.

545. Mr. BOGSCH (Secretary General of the Conference) said that requests of the kind mentioned by the previous speaker would probably be so rare that the danger of increasing costs would be minimal.

546. Mr. VILLALBA (Argentina) said that he was not opposed to the Treaty's providing that designated Offices might indicate that they did not wish to receive copies under the Article being discussed.

547. The CHAIRMAN said that agreement had now been virtually reached and the Drafting Committee was requested to propose a wording. (Continued at 1751.)

Article 14: Certain Defects in the International Application (Continued from 381.)

548. Mr. VILLALBA (Argentina), referring to his Delegation's proposal contained in document PCT/DC/33, proposed that Article 14 be completed by a new paragraph (paragraph (5)) reading as follows: "The withdrawal of the application forfeits the filing of the international deposit." This was a principle which some might consider went without saying but it would be preferable to state it *expressis verbis*.

549. Mr. BOGSCH (Secretary General of the Conference) said that, in his view, Article 24(1) of the Alternative Draft went as far as one should go in that matter. It provided that the consequences of the withdrawal of an international application were the same as the consequences of the withdrawal of a national application. If, in the proposal of the Delegation of Argentina, "forfeiture" related also to the filing date, it would be contrary to the Paris Convention, under which a withdrawn application might still be the basis of a priority claim.

550. *It was decided to defer further discussion on the proposal of the Delegation of Argentina until after Article 24 had been disposed of, at which time that Delegation could ask for further discussion if necessary.* (Continued at 1752.)

Article 15: The International Search (Continued from 404.)

551.1 Mr. ASCENSÃO (Portugal) said that he was ready to resume discussion of the proposal which his Delegation, together with that of Argentina, had introduced as document PCT/DC/42.

551.2 The proposal differed from the Draft only in one respect, namely, that international-type searches might be required by any national Office rather than only by the applicant. That difference caused no new problems as to form, languages and ability of the International Patent Institute or others mentioned when the proposal was first debated. It was not even sure whether the said difference was a difference in fact or only one of emphasis, since any national Office could, even under the Draft, require that the applicant ask for an international-type search.

551.3 If necessary, one could stipulate that international-type searches at the request of national Offices would have to be carried out only after a certain time, to allow the International Bureau to equip itself for handling them.

551.4 It should also be clearly understood that as to form and language the national applications subject to international-type search would have to obey the same rules as the international applications.

552. Mr. BOGSCH (Secretary General of the Conference) said that the proposal under discussion would have to be redrafted to express the latest, very important clarifications made by the previous speaker.

553. Mr. FINNISS (International Patent Institute) said that any International Searching Authority would have to get organized to be able to handle any additional number of applications. It would therefore be necessary that the Treaty state that the agreement of the interested International Searching Authority was required to its being named for the purposes of international-type searches to be carried out on the orders of a national Office.

554. Mr. ASCENSÃO (Portugal) said that the Article dealing with the gradual application of the Treaty could take care of the preoccupations of the previous speaker.

555. *On the proposal of the Delegation of Argentina, it was decided that further discussion would be deferred until the Delegations of Argentina and Portugal prepared, with the assistance of the Secretary General, a revised proposal.* (Continued at 1401.)

Article 19: Amendment of the Claims Before the International Bureau (Continued from 525.)

556. Mr. PETERSSON (Australia) moved the second of the amendments proposed in document PCT/DC/35. A new paragraph should be added to the Article under discussion reading as follows: "Where proposed amendments have the effect of broadening the scope of the claims so that the result of the search no longer represents a true statement of the prior art, any designated State shall have the right to charge a fee for carrying out a fresh search."

557. Mr. BOGSCH (Secretary General of the Conference) said that the proposed provision cast doubt on a basic principle of the PCT according to which the PCT did not touch the national fee structure of any Contracting State. National fees remained under the control of the Contracting States. The Treaty need say nothing about national fees.

558. Mr. DAHMOUCHE (Algeria) seconded the proposal of the Delegation of Australia.

559. Mr. VAN DAM (Netherlands) agreed with the observations of the Secretary General of the Conference. The proposal was superfluous. It was also dangerous because it would mean, *a contrario*, that if the claims were narrowed Contracting States had no right to ask for fees.

560. Mr. BRENNAN (United States of America) agreed with the observations of the previous speaker.

561. Mr. LIPS (Switzerland) also agreed with the observations of the Delegation of the Netherlands.

562. Mr. FERGUSSON (United Kingdom) agreed with the observations of the Delegations of the

Netherlands, the United States of America, and Switzerland.

563. Mr. VILLALBA (Argentina) said that the proposal of the Delegation of Australia should be broadened in order to allow for the freedom of Contracting States to ask for fees in any circumstances.

564.1 Mr. PETERSSON (Australia) said that he had no objection to broadening his proposal so that it should apply whenever the international search no longer covered the claims. It might be that Contracting States had the freedom to charge fees; but it was better to say so *expressis verbis* in the Treaty.

564.2 He would not ask for a vote, however, if there was not sufficient support for the proposed amendment. The record would show that the freedom in question existed without its being mentioned in the text of the Treaty. (Continued at 1763.)

Article 20: Communication to Designated Offices

565. *Paragraphs (1) and (2) were adopted as appearing in the Alternative Draft, without discussion.*

566.1 Mr. ASCENSÃO (Portugal), referring to the proposal that his Delegation made together with the Delegation of Argentina and which was contained in document PCT/DC/42, proposed that a new paragraph be added to the Article under discussion reading as follows: "At the request of the designated Office, the International Searching Authority shall send copies of the publications cited in the search report."

566.2 The proposal was essential to national Offices not having an adequate collection of documents. Without having copies sent to them, they could not intelligently use the international search report.

567. Mr. GABAY (Israel) supported the proposal of the Delegations of Argentina and Portugal for the reasons expounded by the Delegation of Portugal.

568. Mr. HAERTEL (Germany (Federal Republic)) wanted to know who would pay for the preparation of the copies in question.

569. Mr. OTANI (Japan) suggested that the proposal be discussed in connection with Rule 44.3 in the Alternative Draft providing for copies for the applicant.

570. Mr. GIERCZAK (Poland) supported the proposal of the Delegations of Argentina and Portugal as being similar to that presented by his own Delegation in document PCT/DC/23.

571. Mr. VAN BENTHEM (Netherlands) said that, if the proposal were to be adopted, it should be provided, for practical reasons, that a copy of the cited documents be sent by the International Searching Authority to the International Bureau. The latter would then send copies to whomever wanted to have them: any designated Office and the applicant.

572. Mr. AKPONOR (Zambia) supported the proposal under discussion.

573. Mr. LORENZ (Austria) also supported the proposal under discussion but wanted to know what the cost of preparing copies would be.

574. Mr. SHER (Israel) expressed the opinion that the cost would not be excessive in view of the rapid and simple means of reproduction now in use.

575. Mr. VAN WAASBERGEN (International Patent Institute) said that it was indispensable for the International Searching Authority to know in advance whether copies were desired since such copies would have to be made when the international search was made and the documents were in hand, and since it would be a waste to make copies when none was desired. Furthermore, it should be noted that no copies could be prepared of Articles and books under copyright protection, unless the owner of the copyright agreed. The International Searching Authority could not undertake the task of contracting with copyright owners.

576. *It was decided to defer further discussion on the proposal of the Delegations of Argentina and Portugal until Rule 44.3 had been reached.* (Continued at 1333.)

Article 21: International Publication

577. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

578. Mr. KÄMPF (Switzerland), referring to the observations of his Government contained in document PCT/DC/8, suggested that the reference in paragraph (2) to Article 60(3), and Article 60(3) itself, be stricken. The result would be that all international applications not withdrawn would be published after 18 months from the priority date. The system would thus be considerably simplified.

579. *It was decided to defer discussion on the proposal of the Delegation of Switzerland until Article 60 had been reached.* (See 2400.)

580. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) called the attention of the Conference to the observations of his Association contained in document PCT/DC/15, urging that the more flexible rule contained in Article 21(2) of the 1968 Draft of the PCT be adopted.

581. *Paragraphs (2) to (6) were adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1768.)

Article 22: Copy, Translation, and Fee, to Designated Offices

582. Mr. VAN BENTHEM (Netherlands) asked that the Drafting Committee clarify the meaning of the words "as required" in paragraph (1).

583. Mr. BOGSCH (Secretary General of the Conference) said that those words meant "as specified in the Regulations."

584. Mr. ARMITAGE (United Kingdom) suggested that the Drafting Committee clarify that the words "international application" in paragraph (1) covered also any amendments, and that the words "Contracting State" in paragraph (3) covered also the intergovernmental organizations, as suggested in the proposal of his Delegation, contained in document PCT/DC/25. The latter observation applied also to all

other analogous passages of the Draft and Alternative Draft.

585. *Article 22 was adopted as appearing in the Alternative Draft, on the understanding that the suggestions of the Delegations of the Netherlands and the United Kingdom would be referred to the Drafting Committee and that the proposal of the Delegation of France was deferred until discussion on Article 4 had been completed.* (Continued at 709.)

Article 23: Delaying of National Procedure

586. *Article 23 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1770.)

Article 24: Possible Loss of Effect in Designated States

587. *Article 24 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1771.)

Article 25: Review by Designated Offices

588. *Article 25 was adopted as appearing in the Draft, without discussion.* (Continued at 1772.)

Article 26: Opportunity To Correct Before Designated Offices

589. *Article 26 was adopted as appearing in the Draft, without discussion.* (Continued at 1773.)

Article 27: National Requirements

590. *Discussion on Article 27 was deferred.* (Continued at 743.)

Article 28: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices

591. Mr. FERGUSON (United Kingdom) said that his Delegation withdrew its proposals contained in document PCT/DC/25 concerning Articles 28(2) and 41(2) as the Alternative Draft had already met the points raised by those proposals.

592. *Further discussion on Article 28 was deferred.* (Continued at 670.)

Article 29: Effects of the International Publication

593.1 Mr. HASHIMOTO (Japan), referring to his Delegation's proposal contained in document PCT/DC/27, proposed that the following sentence be inserted in paragraph (1): "A State which does not provide for a reservation under Article 60(3)(a) must guarantee to the applicant a right to provisional protection by stipulating it in its national law."

593.2 A State which did not desire international publication had the right to make a reservation under Article 60(3) of the Draft. If it did not make such a reservation, the State might be the cause of international publication. Such State should bear the consequences, that is, it should be obliged to grant

provisional protection. All countries whose national law provided for publication by the 18th month provided for provisional protection. Those countries would not make the reservation under Article 60(3).

594. Mr. BOGSCH (Secretary General of the Conference) said that there were two reasons for which the Draft did not follow the proposal under discussion. One was that "provisional protection" was a notion too vague to be written into a treaty without definition, and an attempt at defining it would be fruitless since countries meant very different things when they used the expression. The other reason was that the existing situation would be not worsened by the PCT. Today, if an application was published after 18 months in a country whose law provided for such publication, that application became known even in countries which did not provide for publication and did not give any provisional protection. Some might reply that the PCT should change and improve that situation. However, such an innovation would be too ambitious since it would require profound changes in national laws.

595. Mr. BRENNAN (United States of America) said that the proposal of the Delegation of Japan should be given serious consideration. Countries which provided for publication after 18 months should provide for provisional protection. The Delegation of the United States would probably make a reservation under Article 60(3) of the Draft.

596. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation was in sympathy with the proposal of the Delegation of Japan because it defended a just principle. Nevertheless, it could not support it for practical reasons. Requiring all Contracting States not providing for a reservation to grant provisional protection would mean asking for fundamental changes in the laws of some of them. Such changes would probably hinder acceptance of the PCT.

597. Mr. DAHMOUCHE (Algeria) expressed the view that the words "must guarantee" in the proposal of the Delegation of Japan did not seem precise enough to constitute an enforceable international obligation.

598. Mr. LORENZ (Austria) said that, subject to the possibility of improving the language, his Delegation supported the proposal of the Delegation of Japan.

599. Mr. VILLALBA (Argentina) said that, if the proposal under discussion implied – as it appeared to do – that the PCT would require States to assume obligations, in the field of substantive patent law, which the Paris Convention did not require them to assume, his Delegation would not approve it.

600. Mr. ASCENSÃO (Portugal) expressed agreement with the views of the previous speaker. (Continued at 601.)

End of the Seventh Meeting

EIGHTH MEETING

Friday, May 29, 1970, morning

Article 29: Effects of the International Publication (Continued from 600.)

601. Mr. HAERTEL (Germany (Federal Republic)) said that, whereas the proposal of the Delegation of Japan contained in document PCT/DC/27, pursued a laudable objective, it would be extremely difficult, for many States, to accept it since only Germany (Federal Republic), the Netherlands, the Scandinavian countries and perhaps one or two others had provisions in their national laws for provisional protection.

602. Mr. BRENNAN (United States of America), referring to his Delegation's proposal contained in document PCT/DC/30, proposed that paragraphs (2) and (3), as well as the reference to those paragraphs in paragraph (1), should be deleted. That proposal would complement the proposal of the Delegation of Japan, and both should be adopted. The proposal of the Delegation of the United States of America would mean that each Contracting State would apply its national law to international applications as far as provisional protection was concerned.

603. Mr. GABAY (Israel), referring to his Delegation's proposal contained in document PCT/DC/41, proposed that paragraph (1) speak about "*first compulsory national publication of national applications whether examined or not.*" The Draft spoke of compulsory publication of unexamined applications. The changes would bring the PCT into line with the national legislations.

604.1 Mr. VAN BENTHEM (Netherlands) said that there was a difference between the starting time of the provisional protection under the Draft and that under the proposal of the Delegation of the United States of America. Under the former, the protection would start when the international application was available in the language of the country giving the provisional protection; under the latter, when the international publication was made even if it was made in a language other than the language of the said country. He did not see why the Delegation of the United States of America did not wish to wait until the translations were available. In most cases the difference in time would be small, namely, the time elapsing between the 18th and the 20th month from the priority date.

604.2 The criterion – non-use of the faculty of making a reservation under Article 60(3) of the Draft – in the proposal of the Delegation of Japan was arbitrary. It was to be hoped that the idea of provisional protection would gradually be adopted by more and more countries when the PCT would cause most applications to be published within 18 months from the priority date.

605. Mr. PETERSSON (Australia) moved his Delegation's proposal contained in document PCT/DC/35 to the effect that a new paragraph be added to the Article under discussion reading as follows: "The national law of any designated State

may provide that the effects provided for in paragraph (1) shall be applicable only from such time as the international publication in the prescribed form is received in that State." The proposal, said the speaker, was a logical extension of the principle that third parties should not be responsible as long as the document describing the invention was unavailable to them.

606.1 Mr. ARMITAGE (United Kingdom) said that he, too, was of the opinion that, if the Treaty provided for compulsory provisional protection, it should, at the same time, exempt from the obligation to grant such protection States which made a reservation under Article 60(3) of the Draft. But, even more important, the introduction of the principle of compulsory provisional protection did not seem to be realistic since it would require changing the domestic laws of most countries. The United Kingdom probably could accept changing its law, the more so as it would be required to do so under the draft European Conventions, but, even there delays might occur. For those reasons, he would not counsel the adoption of the proposal of the Delegation of Japan.

606.2 The proposal of the Delegation of the United States of America seemed to be unfair because it would require that countries give protection to applications published in a foreign language. It was misleading to state that the said proposal would not require any change in the national laws. It would require the very important change that publications in a foreign language would have to be treated in the same way as publications in the national language.

606.3 The proposal of the Delegation of Israel would also be unacceptable because it made a great difference whether provisional protection was triggered by the publication of an examined or an unexamined application.

606.4 The proposal of the Delegation of Australia was fair and equitable since easy access to the publications containing the invention enjoying provisional protection should, logically, be a condition for making third parties responsible. It had the disadvantage, however, that the date from which the protection would start would be difficult to ascertain or prove and would vary from country to country. That was why the proposals contained in the Draft seemed to be more practical.

607. Mr. SAVIGNON (France) said that the proposal of the Delegation of the United States of America was unacceptable because it would require the granting of provisional protection on the basis of a document which might be in a language not understood in the country in which the granting of the protection would be required.

608.1 Mr. BRENNAN (United States of America) said that countries which did not make a reservation under Article 60(3) of the Draft caused the international publication of the international application. It was only logical that, as a consequence, they should give provisional protection. The language problem existed in many areas, not only in that of the Article under discussion.

608.2 What was important was that, in a country giving provisional protection, applicants using the PCT should receive the same treatment as those using the traditional route.

608.3 The proposal of the Delegation of Israel might be acceptable to the Delegation of the United Kingdom if it spoke of “first compulsory national publication before grant.”

609. Mr. LEWIN (Sweden) said that the proposal of the Delegation of the United States of America was unacceptable also for the following reason. If an applicant did not maintain – by complying with the requirements of translation, etc., of Article 22 – his application in a given country, that country would still have to grant provisional protection *ad infinitum* and even if the application, for the stated reasons, was never translated into the language of the said country. Such a situation would probably arise quite frequently in smaller countries. Thus the proposal would be particularly prejudicial to such countries.

610. Mr. GABAY (Israel) said that he was ready to accept the amendment to his Delegation’s proposal proposed by the Delegation of the United States of America.

611. Mr. ARMITAGE (United Kingdom) said that the said amendment would not help since, in the United Kingdom, publication was before grant. He could not accept the proposal of the Delegation of Israel even as amended by the Delegation of the United States of America. The Draft, as it stood, was the only acceptable formula.

612. Mr. HAERTEL (Germany (Federal Republic)), on a question from the Chairman, said that under the proposed European Patent Convention each member State would grant provisional protection to applications published after 18 months from the priority date, and the said Convention did provide for such publication. However, the claims must be published in English, French and German, and the rest of the application in one of those three languages. Furthermore, in countries of other languages, the application, to enjoy provisional protection, must either be published in the language of the interested country or must be made available in such language to the infringer or potential infringer. Consequently, paragraph (2) of the Draft was indispensable and to strike it out, as proposed by the Delegation of the United States of America, was unacceptable both under the proposed European Convention and under the national law of Germany (Federal Republic).

613.1 Mr. OTANI (Japan) said that, in view of the opposition of several delegations, he would not insist on his Delegation’s proposal.

613.2 He found the proposal of the Delegation of the United States of America unacceptable for the same reasons as those expounded by the delegations which had opposed it.

614. Mr. FINNE (Finland) said that his Delegation shared the views expressed by the Delegation of Sweden and opposed the proposal of the Delegation of the United States of America.

615. Mr. KÄMPF (Switzerland) said that his Delegation could not agree to the striking of paragraph (2) of the Draft. It would mean that Switzerland would have to grant provisional protection to applications that practically nobody could understand in Switzerland because they were written in Japanese or other foreign languages. It was unthinkable that the Swiss law could ever be modified to admit of a system such as that proposed by the Delegation of the United States of America.

616.1 Mr. PETERSSON (Australia) said that, after having heard the arguments, he withdrew his Delegation’s support for the proposal of the Delegation of Israel. The amendment proposed to that proposal by the Delegation of the United States of America made things even worse, so that his Delegation could not support the said proposal even in its amended form.

616.2 As far as his own Delegation’s proposal was concerned, he had no fear that there would be any uncertainty as to the date on which the international publication was received in any given State. The courts of that State would, if necessary, determine the date.

617.1 Mr. VILLALBA (Argentina) said that the proposal of the Delegation of Japan would require certain States to assume obligations in the field of substantive patent law which, today, under the Paris Convention, they did not have. The PCT should not establish such new requirements.

617.2 For the same reasons, the proposal of the Delegation of the United States of America was unacceptable.

617.3 On the other hand, the proposal of the Delegation of Australia, which was respectful of local needs, was acceptable.

618. Mr. TUXEN (Denmark) said that, for the reasons stated by previous speakers, the proposal of the Delegation of the United States of America was unacceptable. The Article under discussion should remain as it was in the Draft.

619. Mr. BOGSCH (Secretary General of the Conference) said that it did not seem to be logical to assimilate the requirements of provisional protection to those of prior Art. It was generally admitted that a document which was published destroyed novelty irrespective of the language and the place in which it was published or was available. If that were not so, “novelty” would become a farce. On the other hand, obliging third parties to respect the rights of the inventor when the document describing the invention was in a language which they could not understand was generally regarded as impractical and national laws provided accordingly.

620. Mr. BRENNAN (United States of America) suggested the establishment of a working group whose mandate would be to try to reconcile the differing opinions.

621. Mr. DAHMOUCHE (Algeria) opposed the establishment of a working group since that would carry with it the implication that the majority desired a change in the Draft. On the other hand, he had no

objection to deferring further discussion in order to allow those delegations which desired an amendment to agree among themselves and come forward with a consolidated proposal.

622. Mr. HAERTEL (Germany (Federal Republic)) thought that the discussion had been exhaustive and the issues were ripe for decision. Most delegations seemed to oppose the proposals of the Delegations of the United States of America and Israel.

623. Mr. VAN BENTHEM (Netherlands) agreed with the previous speaker.

624. Mr. GABAY (Israel) withdrew the proposal of his Delegation.

625. Mr. BRENNAN (United States of America) said that his Delegation would not insist on its proposal. He added that the view of the delegations opposing the proposal of his Delegation was a derogation of Article 11(3) and meant that those delegations went on record as saying that, where Article 11(3) was inconvenient because of national laws, exceptions to that Article were in order.

626. Mr. ARMITAGE (United Kingdom) said that he disagreed completely with the views of the previous speaker. There was absolutely nothing in Article 29, as it stood in the Draft, that would be a derogation of Article 11(3). So, if there was anybody on record in that respect, it was the Delegation of the United States of America and certainly not the delegations which had opposed the proposal of that Delegation.

627. The CHAIRMAN said that the opinion was merely an opinion of the Delegation of the United States of America.

628. Mr. BRENNAN (United States of America) asked that the Delegation of Japan be asked to state whether it did not agree with the opinion of his Delegation.

629. Mr. MCKIE (United States of America) withdrew the proposal of his Delegation contained in document PCT/DC/30.

630. *Paragraphs (1) to (3) were adopted as appearing in the Draft.*

631. Mr. PETERSSON (Australia) said that the proposal of his Delegation for a new paragraph was a logical extension of the principles laid down in paragraphs (2) and (3).

632. Mr. HAERTEL (Germany (Federal Republic)) asked the Secretary General of the Conference how BIRPI planned to distribute the published international applications, particularly, how much time it would take for them to get from Geneva to, say, Australia.

633. Mr. BOGSCH (Secretary General of the Conference) replied that the copies would be airmailed on the day they were published. They should reach even the most distant national Offices within a week.

634. Mr. VAN BENTHEM (Netherlands) said that, the time between publication and receipt being only a few days, the proposal appeared to be

unnecessary. Furthermore, the exact date of receipt would be extremely difficult to verify.

635. Mr. ARMITAGE (United Kingdom) agreed with the view of the previous speaker.

636. Mr. SAVIGNON (France) said that fixing a definite date from which provisional protection started was important for reasons of legal security.

637. Mr. PETERSSON (Australia) said that documents sent by mail might get lost or substantially delayed so that the one week delay referred to by the Secretary General of the Conference would not always apply.

638. Mr. BRENNAN (United States of America) supported the proposal of the Delegation of Australia.

639. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation could accept the proposal of the Delegation of Australia. Such a position, however, did not by any means imply agreement with the view that it prejudiced the position on other articles, as had been suggested by one of the speakers earlier in the debate.

640. The CHAIRMAN said that it was not necessary to observe that anyone had prejudiced his position by making any comment on the Article under consideration. The sole matter of concern at that point was that Article.

641. Mr. ALMEIDA (Brazil) supported the proposal of the Delegation of Australia.

642. Mr. HAERTEL (Germany (Federal Republic)) asked whether the Delegation of Australia would agree that its proposal be so modified as to require the publication of the date of receipt of the published copy of each international application. That would remove any uncertainty as to the starting date of the provisional protection, which would be the same as the published date of receipt.

643. Mr. PETERSSON (Australia) said that his Delegation was ready to accept the suggestion of the previous speaker. The date would be published in the official gazettes of the national Offices.

644. *The proposal of the Delegation of Australia, as contained in document PCT/DC/35 and as orally amended, was adopted. (Continued at 1781.)*

Article 30: Confidential Nature of the International Application

645. Mr. BOGSCH (Secretary General of the Conference) called attention to the addendum contained in document PCT/DC/11/Add. 1.

646. Mr. KÄMPF (Switzerland) asked that discussion be deferred on paragraph (2) since his Delegation was about to present a written proposal.

647. *Subject to later consideration of the proposal of the Delegation of Switzerland, paragraphs (1) to (3) were adopted without discussion.*

648. Mr. VILLALBA (Argentina) opposed the proviso appearing in paragraph (4) of the Alternative Draft. Any national Office, he said, should have the right to publish an application at any time.

649. Mr. BOGSCH (Secretary General of the Conference) said that it was an important principle of the PCT that applications should not be published – except at the applicant's request – before the applicant received the international search report. On the basis of that report, he might decide to withdraw his application. Naturally, if the report was not completed by the time the national procedure started, national publication could, and international publication would, take place. However, such a delay should not and normally would not, occur.

650. Mr. ALMEIDA (Brazil) expressed agreement with the position of the Delegation of Argentina.

651. *Paragraph (4), as appearing in the Alternative Draft and as corrected in document PCT/DC/11/ Add. 1, was adopted by 16 votes in favor to 4 against. (Continued at 714.)*

652. Mr. DAHMOUCHE (Algeria) said that, in future, abstentions should also be asked for and counted.

653. The CHAIRMAN said that, although the Rules of Procedure did not call for it, he would, in future, ask also for abstentions.

654. Mr. VILLALBA (Argentina) said that Rule 37 of the Rules of Procedure provided that delegations which abstained should be considered as not voting. Consequently, the Regulations did provide for the possibility of abstaining. Delegations could avail themselves of such a possibility only if the Chair afforded them the opportunity of manifesting their abstention.

655. The CHAIRMAN said that the Rule required the counting of the votes only of those delegations which were present and cast a vote since theirs were the only votes to decide an issue.

Article 8: Claiming Priority (Continued from 327.)

656. Mr. ARMITAGE (United Kingdom), as Chairman of the Working Group to which the study of Article 8 had been entrusted, introduced document PCT/DC/47 containing that Group's proposal for the amendment of Article 8 of the Alternative Draft which was based on that Group's consideration of the Draft, the Alternative Draft, and the proposals contained in documents PCT/DC/16, PCT/DC/19, and PCT/DC/40.

657. Mr. ALMEIDA (Brazil) asked whether the priority of several applications filed in different countries could be invoked.

658. Mr. MESSEROTTI-BENVENUTI (Italy) replied in the affirmative.

659. Mr. LORENZ (Austria) asked whether the text proposed was in conformity with such a possibility.

660. Mr. ARMITAGE (United Kingdom) replied that he believed the text provided for that possibility as it had to since the Paris Convention so required. The Drafting Committee could make sure that the text was clear on that point.

661. The SECRETARY, on a question from the Delegation of Argentina, said that the priority claim

remained valid even if the application invoked was later withdrawn. The Paris Convention required that it be so.

662. Mr. BOGSCH (Secretary General of the Conference) said that reference to the Stockholm Act in paragraph (2)(a) had already been adopted by the Main Committee.

663. Mr. ARMITAGE (United Kingdom) said that the quotation marks around the words "subject to drafting," in point 3(c) of document PCT/DC/47, should not be around those words but around the last sentence.

664. Mr. VAN BENTHEM (Netherlands), Mr. HAERTEL (Germany (Federal Republic)), Mr. SAVIGNON (France), Mr. ARMITAGE (United Kingdom), and Mr. ASCENSÃO (Portugal), declared that, although they would have preferred the solution contained in the Alternative Draft, as far as paragraph (2)(b) was concerned, they were ready to accept the proposal of the majority of the Working Group as contained in point 3(c) of document PCT/DC/47.

665. *Subject to the possibility of the Drafting Committee's improving the language used, the recommendations of the majority of the Working Group concerning Article 8(1), (2)(a) and (b), contained in document PCT/DC/47, were adopted. (Continued at 666.)*

End of the Eighth Meeting

NINTH MEETING

Friday, May 29, 1970, afternoon

Article 8: Claiming Priority (Continued from 665.)

666. Mr. HAERTEL (Germany (Federal Republic)) suggested that the Drafting Committee be asked to examine whether paragraph (2)(c) was necessary at all or whether it could be taken care of by a modification in paragraph (2)(b).

667. Mr. VAN BENTHEM (Netherlands) supported the remarks of the previous speaker.

668. Mr. CLARK (United States of America) said that the contents of paragraph (2)(c) were needed since they represented important safeguards for the applicant. However, he had no objection to the substance of paragraph (2)(c) being written into paragraph (2)(b).

669. *It was decided that the Drafting Committee would transfer the substance of paragraph (2)(c) to paragraph (2)(b). (Continued at 1746.)*

Article 28: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices (Continued from 592.)

670. Mr. BOGSCH (Secretary General of the Conference) said that the difference between the Draft and the Alternative Draft as far as paragraph (1) was concerned was dictated by the desire that no

designated Office should, even if it fully accepted the application, be able to grant a patent immediately because it might happen that the applicant would wish to amend his application in the country of the designated Office for some special reasons.

671. Mr. VILLALBA (Argentina) said that his Delegation had proposed, in document PCT/DC/51, that paragraph (1) read as follows: "The designated Office has the authority to give the applicant the opportunity to amend the claims."

672. Mr. ONIGA (Brazil) supported the proposal of the Delegation of Argentina because he saw in it a means whereby the national Offices could avoid delaying tactics by the applicant.

673. Mr. BOGSCH (Secretary General of the Conference) said that the difference between the proposal of the Delegation of Argentina and the Alternative Draft was that, whereas the former left it to the national law of the designated State to permit or not to permit amendments to be made, the Alternative Draft gave to the applicant the right to amend his application in the national phase, i.e., before each designated Office. The reason for the system of the Alternative Draft was that some of the representatives of private circles found it extremely important that the applicant be able to change his application in each designated State so as to "tailor" it to the traditions and idiosyncrasies of that State.

674. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation could not accept the proposal of the Delegation of Argentina, which would leave it to the discretion of each national Office to decide whether or not the applicant should have an opportunity to amend his application in the national phase. It was a fundamental principle of the PCT that the applicant should have the right to make amendments in his application in the national phase so as to obtain the maximum degree of protection in each designated State.

675. Mr. CLARK (United States of America) said that he agreed with the position of the previous speaker.

676. Mr. VILLALBA (Argentina) said that the proposal of his Delegation was not intended to negate the rights of the applicant to amend his application in the national phase but that any amendments would have to conform with the national law of each designated State for the purposes of which the amendments were made. In that respect, both the Draft and the Alternative Draft were ambiguous because they simply stated that an applicant had the right to amend his application but did not stipulate that such right had to be exercised within the limits of the applicable national law.

677. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that perhaps the objection of the Delegation of Argentina could be met if the Treaty stated that any designated Office would have the right to refuse an amendment which went beyond the scope covered by the international search or that any designated Office could, in such a case, require an additional fee in

respect of any additional matter resulting from the amendments.

678. Mr. GILLIES (International Chamber of Commerce (ICC)) said that it was extremely important for applicants to have the right to amend their applications in the national phase. He thought that the Alternative Draft adequately covered that right and it was also compatible with the desire of the Delegation of Argentina. He said that it was important that the applicant should have the right to amend his application before each designated Office. However, the applicant should not be allowed to make such amendments as would leave the designated Office without a useful international search report.

679. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)) said that it was of fundamental importance to the applicant to have the right to amend his application before each designated Office. If the amendment resulted in a situation in which the international search report would no longer be useful, he had no objection to requiring that the applicant pay a certain fee to the designated Office.

680. Mr. HAZELZET (Union of Industries of the European Community) supported the views expressed by the Representatives of the International Chamber of Commerce and FICPI.

681. Mr. VAN BENTHEM (Netherlands) said that his Delegation agreed with paragraph (1) as appearing in the Alternative Draft. That paragraph was not so important in designated States where the national law provides for examination since in such States the applicant would in any case be engaged in a dialogue with the Patent Office, but it was very important in so-called "registration countries" in which, without the proposed provision, a patent could issue before the applicant had had time to amend his application.

682. Mr. ASCENSÃO (Portugal) said that the designated Offices should have safeguards for the situation where the applicant amends his claims to claim an invention which has not been searched.

683. Mr. OTANI (Japan) expressed agreement with the point of view of the Delegation of the Netherlands.

684. Mr. VILLALBA (Argentina) said that he would not insist on acceptance of the wording of the proposal of his Delegation. What was important was that it be made clear that the amendments made before a designated Office must be in conformity with the national law applicable in that Office.

685. Mr. BOGSCH (Secretary General of the Conference) said that the main purpose of the provision was to enable applicants to exploit the possibilities in designated States which existed under their national laws and of which the applicants might not have been made aware until after they had received an international search report. Now, if in such a situation the amendments resulted in an international search report which did not fully cover the amended application, the need for an additional search would arise. It was thought, however, during the preliminary work that such situations would be rare, the more so as it was already provided in the

Regulations that the International Searching Authorities would have to try to anticipate possible amendments and cover them in the international search report. It was not necessary to provide for a special fee to be paid in the national phase to cover the expenses of any search where an additional search had to be made by the national Office. The Treaty did not provide for any limitation on the national fees and they would apply irrespective of the extent to which, in any particular case, the international search report was useful.

686. Mr. GILLIES (International Chamber of Commerce (ICC)) said that the amendments in the national phase would probably, in most cases, be in the nature of restrictions based on information obtained through the international search report or from other sources before the national phase started. In such cases, naturally, the international search report would still be entirely useful.

687. Mr. FERGUSSON (United Kingdom) supported the Alternative Draft. The proposal of the Delegation of Argentina only spoke about amending the claims. That was clearly insufficient. The Alternative Draft also permitted amending the description and the drawings. The need for a supplementary search report would probably be very rare and it was not necessary that the Treaty provide for such exceptional situations.

688. Mr. PETERSSON (Australia) said that the real difficulty might lie in the fact that it would not always be clear what had been searched by the International Searching Authority. He would come back to that point in connection with the relevant Rule of the Regulations.

689. Mr. PRETNAR (Yugoslavia) said that perhaps the way out of the difficulty was to add in the Alternative Draft a phrase to the effect that “the amendment would have to be according to the procedure described in the national Office.”

690. Mr. BOGSCH (Secretary General of the Conference) said that the proposal of the Delegation of Yugoslavia would be inapplicable in so-called “registration countries” because in such countries there was no procedure for amendments. Furthermore, he did not think that a reference to national laws was necessary. It went without saying that in the national phase the procedure was governed by the national law. To say it in the case under discussion would mean that it would have to be said also in many other places in the Treaty.

691. Mr. VILLALBA (Argentina) said that the proposal of his Delegation should be understood as referring not only to the amendment of the claims but also to that of the description and the drawings.

692. Mr. TUXEN (Denmark) said that the right of any applicant to amend his application before each designated Office was so important that, if that right were not guaranteed to them, applicants might simply decide not to use the PCT. As had been said by previous speakers, guaranteeing that right was particularly important with regard to the so-called registration countries because in examining countries

the opportunity to amend would, in practice, exist in any case.

693. Mr. VILLALBA (Argentina) said that he was ready to modify his Delegation’s proposal to provide that each designated Office must give an opportunity to the applicant to modify the claims, the description and the drawings in order to adapt them to the national requirements and practices.

694. Mr. ARMITAGE (United Kingdom) said that, although he preferred paragraph (1) as it appeared in the Alternative Draft, perhaps the way out of the difficulty would consist in leaving it to the national law of the so-called registration countries to allow or not to allow amendments in the national phase. Countries which would not allow amendments would probably be designated only infrequently. That would make the PCT much less attractive.

695. Mr. BOGSCH (Secretary General of the Conference) said that he thought it would be a real calamity to the PCT if the possibility of amending were lost in the case of the so-called registration country. Furthermore, he did not think that the proposal of the Delegation of the United Kingdom would mean anything to Argentina and Brazil, which were both examining countries. He suggested that the compromise be sought in the following direction. The Article could provide that the amendments must be “in accordance with the national law of the designated State, and subject to the provisions of this Treaty.” In other words, the national law would apply as long as it was not in conflict with the Treaty. In the case of the so-called registration countries, this would mean that although their national laws did not allow amendments after the application had been filed they would have to allow such amendments in the case of the international application because the Treaty so provided and the Treaty would override the national law.

696. Mr. ARMITAGE (United Kingdom) said that his Delegation’s proposal was not intended to refer to the national laws in every respect but only where national laws did not provide for amendments. Such countries could be allowed not to admit amendments in the national phase. But otherwise no reference should be made to the national law.

697. Mr. BODENHAUSEN (Director of BIRPI) said that his impression was that the Delegation of Argentina was not opposed to the idea that the Treaty would oblige every country, including so-called registration countries, to allow amendments in the national phase, but since such countries did not provide for amendments it was necessary to say – as the Secretary General of the Conference had proposed – that in such countries the opportunity guaranteed by the Treaty would apply even though the national law did not provide for such opportunity.

698. Mr. ONIGA (Brazil) indicated that his Delegation agreed with the compromise proposal of the Secretary General of the Conference.

699. *Subject to drafting by the Drafting Committee, the compromise proposed by the Secretary General of the Conference was adopted.*

700. *Subject to the foregoing, Article 28 was adopted as appearing in the Alternative Draft.* (Continued at 1780.)

Article 4: The Request (Continued from 233.)

701. Mr. SAVIGNON (France) introduced the proposal of his Delegation concerning the question of the naming of the inventor, contained in document PCT/DC/50. He said that, on that question, his Delegation would have preferred to maintain its original proposal. However, in a spirit of compromise it had now redrafted its proposal with the effect that countries requiring, and those not requiring, the naming of the inventor were treated on the same footing.

702. Mr. ARTEMIEV (Soviet Union) said that his Delegation agreed with the compromise proposal of the Delegation of France.

703. Mr. LIPS (Switzerland) supported the proposal of the Delegation of France.

704. Mr. VAN BENTHEM (Netherlands) said that his Delegation also agreed with the proposal of the Delegation of France except that the words "and if required" should be inserted after the words "in other cases" in the second paragraph of item (iv) so that in the case of any country in which an indication of the name of the inventor was not required the applicant could dispense completely with such indication.

705. The CHAIRMAN said that the proposal of the Delegation of the Netherlands would be referred to the Drafting Committee.

706. Mr. SCHURMANS (Belgium) supported the proposal of the Delegation of France.

707. Mr. ARMITAGE (United Kingdom) said that the Drafting Committee should be authorized to examine whether the provision should allow the applicant to include the data concerning the inventor in the request even in respect of designated States where the communication of such data would suffice if done in the national phase.

708. *Subject to the proposal by the Drafting Committee of language taking into account the proposals of the Delegations of the Netherlands and the United Kingdom, the proposal of France contained in document PCT/DC/50 was adopted.* (Continued at 1742.)

Article 22: Copy, Translation, and Fee, to Designated Offices (Continued from 585.)

709. Mr. SAVIGNON (France) moved the proposal of his Delegation concerning paragraph (1), contained in document PCT/DC/50. That proposal amended his Delegation's proposal contained in document PCT/DC/19. He said that the new proposal was a logical consequence of the proposal just adopted concerning Article 4(1).

710. *The proposal of the Delegation of France was adopted as contained in document PCT/DC/50, without discussion.*

711.1 Mr. VILLALBA (Argentina) moved the proposal of his Delegation concerning paragraph (1), contained in document PCT/DC/54.

711.2 The proposal was that the time limit of 20 months appearing in paragraph (1) should be reduced to 12 months. Reducing the time limit to 12 months would maintain the principle of the Paris Convention according to which an applicant wishing to obtain a patent in any given country with the priority of an earlier application filed in another country must file his application within 12 months. The speaker saw no reason to extend that period. Such an extension would not seem to be in conformity with the spirit of the Paris Convention and would increase the obligations of the member States in a way that was not provided for in the Paris Convention. The international search could start early during the priority year and could be completed before its expiration.

712. The CHAIRMAN said that Article 22 had already been approved by the Main Committee subject to the reserving of one point and one point only, namely, the proposal of the Delegation of France on the question of naming the inventor. The proposal of the Delegation of Argentina could therefore be ruled out of order. Nevertheless, he was ready to consult the Main Committee on the question whether the proposal of the Delegation of Argentina should be discussed.

713. *By 7 votes in favor to 15 against, with 9 abstentions, it was decided not to reopen discussion in order to consider the proposal of the Delegation of Argentina.* (Continued at 1769.)

Article 30: Confidential Nature of the International Application (Continued from 651.)

714. Mr. KÄMPF (Switzerland) introduced the proposal of his Delegation concerning paragraph (2)(a), contained in document PCT/DC/55. The proposal was that paragraph (2)(a) be completed by the following sentence: "The provision of the national law regarding legal assistance to the judicial authorities shall be reserved." The purpose of the proposal was to allow access to the international application throughout the period during which that application was otherwise confidential, where such access was necessary in court proceedings.

715. Mr. LORENZ (Austria) supported the proposal of the Delegation of Switzerland.

716. Mr. VAN BENTHEM (Netherlands) said that his Delegation was not opposed to the proposal of the Delegation of Switzerland.

717. Mr. SAVIGNON (France) also supported the proposal of the Delegation of Switzerland.

718. Mr. PRETNAR (Yugoslavia) also supported the proposal of the Delegation of Switzerland.

719. Mr. ARMITAGE (United Kingdom) said that in his view the proposal of the Delegation of Switzerland was not necessary. The Draft provided that access would be given to the international application when the applicant so requested or authorized. If the applicant was the plaintiff, he would

naturally so request or authorize. If he was the defendant, he could be ordered by the court to request or authorize access.

720. *The proposal of the Delegation of Switzerland contained in document PCT/DC/55 was adopted.*

721.1 Mr. LORENZ (Austria) moved the proposal of his Delegation contained in document PCT/DC/56. The proposal was to the effect that paragraph (2)(b) should allow the publication not only of the name of the receiving Office, the name of the applicant, the international filing date and the international application number, but also of the title of the invention.

721.2 Although his Delegation had not reserved the right to propose an amendment when Article 30 was discussed, he thought that its proposal might be in order in view of the fact that discussion on this Article had been reopened because of the proposal of the Delegation of Switzerland.

722. The CHAIRMAN said that, as in the case of the Delegation of Argentina on Article 22, he would consult the Main Committee on the question whether it wished to discuss the proposal of the Delegation of Austria.

723. *It was decided on the results of a vote, taken without counting, that the proposal of the Delegation of Austria would be open for discussion.*

724. Mr. BORGGÅRD (Sweden) seconded the proposal of the Delegation of Austria. An indication of the title of the invention would facilitate the task of identifying the Application for third parties without harming the applicant's interests.

725. Mr. VILLALBA (Argentina) supported the proposal of the Delegation of Austria.

726. Mr. TASNÁDI (Hungary), Mr. PETERSSON (Austria), Mr. MESSEROTTI-BENVENUTI (Italy), Mr. GIERCZAK (Poland), Mr. LIPS (Switzerland), and Mr. FERNÁNDEZ-MAZARAMBROZ (Spain), supported the proposal of the Delegation of Austria.

727. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation could not support the proposal of the Delegation of Austria because it was in conflict with the present German law. However, his Delegation would like to hear whether the representatives of the private organizations were of the opinion that an indication of the title of the invention would harm the interests of the applicant.

728. Mr. VAN BENTHEM (Netherlands) supported the suggestion of the Delegation of Germany (Federal Republic).

729. Mr. ASCENSÃO (Portugal) supported the proposal of the Delegation of Austria.

730. Mr. GABAY (Israel) supported the proposal of the Delegation of Austria and the suggestion made by the Delegation of Germany (Federal Republic).

731. Mr. DAHMOUCHE (Algeria) supported the proposal of the Delegation of Austria.

732. Mr. ONIGA (Brazil) supported the proposal of the Delegation of Austria. He did not think that the title would give away any secrets that the applicant

would wish to keep before the time for publishing his application came.

733. Mr. OTANI (Japan) said that his Delegation was not in favor of the proposal of the Delegation of Austria.

734. Mr. CLARK (United States of America) said that his Delegation found itself in the same position as the Delegations of Germany (Federal Republic), and Japan. Furthermore, the proposal might result in the applicant's using meaningless titles. He too would like to hear the representatives of the private organizations on the question.

735. Mr. VILLALBA (Argentina) said that he did not understand how the proposal could be contrary to the legislation of any of the countries since it did not ask them to do anything. The provision was a mere authorization, not an obligation. Furthermore, the publication would be effected by the International Bureau, not by the national Offices.

736. Mr. DAHMOUCHE (Algeria) said that he agreed with the observations of the Delegation of Argentina.

737. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) said that if the title given meant anything it would certainly facilitate industrial espionage so that it probably would be indicated in a way which would be meaningless. In such a case, indication of the title would be of no use either to the Patent Offices or to the general public.

738. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)) said that he saw no likelihood of endangering the interests of the applicant if the title was indicated. Titles were published in many countries in the present system and experience had shown that such a system had no drawbacks for anybody. Therefore his Federation could support the proposal of the Delegation of Austria.

739. Mr. GILLIES (International Chamber of Commerce (ICC)) said that his Organization had no objection to revealing the title of the invention as provided in the proposal of the Delegation of Austria.

740. Mr. CLARK (United States of America) said that, if it was understood that national Offices would not be obligated but would merely have the right to publish titles, his Delegation would have no objection to the proposal of the Delegation of Austria.

741. Mr. HAERTEL (Germany (Federal Republic)) said that, if the interpretation given by the Delegation of Argentina was accepted, his Delegation was ready to withdraw its opposition to the proposal of the Delegation of Austria, particularly in view of the declarations just made by the representatives of the private organizations.

742. *The proposal of the Delegation of Austria was adopted as appearing in document PCT/DC/56. (Continued at 1782.)*

End of the Ninth Meeting

TENTH MEETING

Saturday, May 30, 1970, morning

Article 27: National Requirements (Continued from 590.)

743. Mr. ROBINSON (Canada) said that paragraph (1) in the English spoke about the "form and contents" of the international application, whereas the word "contents" in the French was translated by "*contenu*". He wondered whether the translation was a correct one. Was the intent to cover everything in the application from the point of view of substance, or simply to refer to matters that were, so to speak, treated in the application?

744. Mr. BOGSCH (Secretary General of the Conference) replied that only the latter was intended.

745. Mr. VILLALBA (Argentina) asked whether the substantive question what amendments in the claims may be effected was covered by the paragraph under consideration.

746. Mr. BOGSCH (Secretary General of the Conference) replied that the substantive law applying to amendments was regulated by Article 28. The paragraph under consideration only dealt with the form of the international application and the elements it had to contain.

747. Mr. ROBINSON (Canada) said that the word "*contenu*" in the French had a double meaning. It could refer both to the form and the substance. The Drafting Committee should be asked to examine whether it could not find an expression corresponding more closely to the English word "contents."

748. Mr. VILLALBA (Argentina) said that, in view of the preceding interventions, the paragraph should be adopted on the basis of the English rather than the French text.

749. *Paragraph (1) was adopted on the understanding that the Drafting Committee would examine the question whether a better word than "contenu" could be found for the French text to translate the English word "contents."*

750. Mr. BOGSCH (Secretary General of the Conference) said that item (i) in paragraph (2) of the Alternative Draft was new. It was intended to cover those national laws which, in the case of legal entities, required that the name of a responsible natural person be indicated in the application as well, such as the chief executive, or a member of the board of directors, of a corporation. The Japanese patent law was one of such laws.

751. Mr. VAN BENTHEM (Netherlands) said that in paragraph (2), as well as in all other places where they appeared in the Article under discussion, the words "it is understood" should be deleted. These words were unusual in a treaty and unnecessary from a legal point of view.

752. Mr. DAHMOUCHE (Algeria) and Mr. SAVIGNON (France) supported the proposal of the Delegation of the Netherlands.

753. *Paragraph (2) was adopted as appearing in the Alternative Draft on the understanding that the words "it is understood" contained in that paragraph and in all other paragraphs of Article 27 would be deleted.*

754. *Paragraph (3) was adopted as appearing in the Alternative Draft, without discussion.*

755. *Paragraph (4) was adopted as appearing in the Draft, without discussion.*

756.1 The CHAIRMAN called the attention of the meeting to the fact that the proposals contained in documents PCT/DC/17, PCT/DC/21 and PCT/DC/23, presented respectively by the Delegation of Switzerland, the Delegation of France and the Delegation of Poland, as well as the proposal contained in document PCT/DC/32, presented jointly by the Delegations of Austria, Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom, all asked for the deletion of the last sentence of paragraph (5).

756.2 That sentence read as follows: "Thus it is also understood that the effective date of any international application for prior art purposes (as distinguished from priority purposes) in each Contracting State is governed by the national law of that State and not by the provisions of Article 11(3) or any other provision of this Treaty."

757. Mr. LIPS (Switzerland) said that Article 11(3) was the most important provision of the Treaty because it contained a fundamental principle. The sentence in question was in contradiction to that principle. Consequently, it was proposed to delete the sentence under discussion and, in order to remove any possible misunderstanding, to complete Article 11(3) by adding wording to the effect that the international filing date was to be regarded as the actual filing date of national applications.

758.1 Mr. SINGER (Germany (Federal Republic)) said that the aim of the Treaty was to give the applicant a new and better possibility of obtaining protection abroad than he had under the present system. The sentence in question, however, could lead to a less advantageous situation for the applicant. Presently, an applicant claiming a foreign priority date when filing an application in some states did not receive the priority date but was instead given the actual filing date in that state as the date from which his application was considered to be prior Art. This date might be as much as 12 months after his first or priority filing, whereas the applicant filing first in that state was given as the effective prior art date, the date of his first filing. This prejudicial delay of up to 12 months in the awarding of an effective date for prior art purposes after a first filing could be increased to 20 months under the PCT as the PCT would allow applications to reach the designated States 20 months after the priority date.

758.2 His delegation agreed with the principle that the PCT should not require the modification of the substantive patent law of any country. Neither, however, should the PCT, in an attempt to preserve any country's substantive patent law, operate in such a

manner as to place the foreign priority claiming applicant in a more disadvantageous position than he was in presently. The success of the PCT would be seriously jeopardized if either many States or even one major State would avail itself of the possibility now offered by the Treaty of further deferring the awarding of the effective prior art date.

759. Mr. VILLALBA (Argentina) said that, as he had repeatedly stated, the PCT should not increase the obligations of any of the Contracting States assumed under the Paris Convention. If paragraph (5), without the last sentence, were to increase such obligations, then the last sentence should be maintained.

760.1 Mr. CLARK (United States of America) said that it was a fundamental principle invoked frequently both during the preparatory work for the PCT and in the present Conference that the PCT should not require major or significant changes in the national laws of Contracting States. He took issue with those speakers who decried the last sentence of Article 27(5) as being "an unfortunate departure" from the spirit of Article 11(3) and suggested that, to the extent Art. 11(3) requires a change in any State's national law, it is an unfortunate departure from the spirit of PCT.

760.2 He pointed out the dilemma faced by U.S. patent owners and applicants because of conflicting pressures in the U.S. system. In the United States of America, the Supreme Court demanded in its decisions that the Patent Office should increase the reliability of the patents it granted, and the Congress insisted that the Patent Office must speed up the issuing of patents. Legislative proposals were pending which required that patent applications should normally be disposed of within 18 months from their filing date. Under Article 11(3), however, this speed-up would result in patents being issued before the U.S. Patent Office had even received all the pertinent prior art.

760.3 The concepts of priority and prior art were two completely different concepts. There was no doubt that, under Section 119 of the US patent law and under Article 11(3) of the PCT, the United States of America would be obliged to accord the right of priority to the applicant as from the international filing date of his application.

760.4 The prior art effect was a completely different question. It had nothing to do with the right of the applicant in obtaining a patent under the PCT. Rather it was part of the substantive law dealing with the criteria to be considered in determining whether an invention had been made in the light of what others had been done before. For prior art purposes, the governing date was the date of filing in the United States of America. This was the law as laid down by the Supreme Court in the Davis-Bournonville case of 1926. It was codified in the US Patent Statute in 1952. The Hilmer decision of 1966 merely straightened out a temporary aberration in the law, restating what the law had been for four decades.

760.5 The question was not whether the law of the United States of America was right or wrong. There were some persons in the United States of America

who thought that the law, as restated in the Hilmer decision, should be changed but the question now under consideration was whether the PCT should be an instrumentality for necessitating a change. On the basis of the principle recalled earlier in his speech, the reply to the latter question should be in the negative.

761.1 Mr. ARMITAGE (United Kingdom) said that, if he understood the interpretation of the Delegation of the United States of America correctly, it was that Delegation's understanding that, upon ratifying the PCT, the US law must and should give priority effect as from the filing date abroad. That certainly did remove one part of the problem.

761.2 However, there remained the problem of the prior art effect. Just as in the case of the priority effect, so also in the case of the prior art effect, it was indispensable for the success of the PCT that it should not put the applicant in a situation worse than that in which he found himself without using the PCT.

761.3 The view that the Hilmer decision had corrected a temporary aberration could be regarded by some as an unfortunate return to an earlier aberration. Opinions might very well differ on whether the correct interpretation was that prevailing just before the Hilmer decision or the one which the Hilmer decision had put on the US Patent Statute.

761.4 In the speaker's view, the PCT created a new situation, which was not governed by the Hilmer decision. It would be most reassuring for the delegations opposing the last sentence of paragraph (5) if they could hear some declaration to the effect that, in order to provide for the new situation, the United States of America intended to consider the international filing date as the effective date also for prior art purposes. In other words, the authors of the proposals under discussion did not want to change national laws but to implement the PCT in a certain way in a new situation created by the PCT.

761.5 Whereas a distinction between prior art effect and priority effect might very well be possible in the United States of America, such distinction just did not mean anything in most of the other countries since they did not distinguish between the two effects. An American applicant filing in Europe could use his priority dates both for defending himself against other applicants and also for attacking other applicants.

762.1 Mr. VAN BENTHEM (Netherlands) said that the basic understanding underlying the PCT was that an international filing had the same effect as filing national applications in each of the designated States. That principle should suffer no exceptions; otherwise it could place the applicant in a worse situation than that in which he would be if he did not use the PCT but made a separate filing in each of the States which he would designate under the PCT. It was not proposed that the United States of America change its present law, which did not deal with international applications. What was urged was that the United States of America give full effect to the principle of equivalence of the international filing with national filings.

762.2 It would help if the Delegation of the United States of America would reply to the question of the

Delegation of the United Kingdom concerning the intentions of the United States of America in using the last sentence of paragraph (5) if such sentence were to be maintained.

763. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that the distinction between prior art effect and priority effect simply did not exist in European countries. In any case, the last sentence of paragraph (5) was so broad that it could accommodate not only the Hilmer doctrine but also national laws which would make the situation of the applicant even more disadvantageous than under the said doctrine. What his Association was concerned with was more what use other countries would make of the last sentence of paragraph (5) than the maintaining of the Hilmer decision in the United States of America.

764. Mr. GABAY (Israel) said that some way should be found to reconcile the opposing views. It would be useful if a working group were set up to look into the possibilities of a compromise solution.

765. Mr. ARMITAGE (United Kingdom) said that it would be very useful if the views of the Chairman could be ascertained on the question raised by him earlier, namely, the foreseeable intentions of the United States of America in using the possibilities offered by the last sentence of paragraph (5), should that sentence be maintained.

766. Mr. HAERTEL (Germany (Federal Republic)) also asked the Chairman to reply to the question raised by the Delegation of the United Kingdom.

767.1 The CHAIRMAN said that, since he had been invited to do so and since no objection had been made, he would reply to the question asked not as the Chairman of the meeting but as Commissioner of Patents of the United States of America. According to his interpretation of Articles 11(3) and 27(5) as appearing in the Draft, the one-year grace period established by the Patent Statute of the United States of America would precede the international filing date. There was nothing in the PCT that would permit the United States of America not to apply the one-year grace period in the case of international applications in the same way as it now did in the case of applications filed under the Paris Convention.

Consequently, all applicants in all countries would have a period of one year of public use of an invention before the international filing date; so it was possible that they could use inventions for 32 months before the application reached the United States.

767.2 As far as contests between conflicting applications for the same invention were concerned, the reservation of the last sentence of Article 27(5) did not apply to pending applications. The US Patent Statute did not give prior art effect to a pending application but only to an issued patent, so that the reservation of the last sentence of paragraph (5) would, if used under the present US Statute, apply only to patents that issued in the United States of America and not to pending applications. As to the last specific question of the Delegation of the United Kingdom, it should be noted that before a treaty which

was not a self-executing treaty was ratified in the United States of America – and the PCT was to be considered a non-self-executing treaty – the Patent Statute would have to be modified. The implementing legislation could adopt either of two extremes or any intermediate solution between such extremes. It could sustain or continue the present law or it could consider the filing date abroad, whether under the Paris Convention or the PCT, to be the effective date also for prior art purposes. One of the intermediate solutions would be that the date of filing abroad would be recognized for prior art purposes only in the case of international applications. Another possibility would be to consider the date on which an English translation reached the US Patent Office as the date from which the prior art effects would start. It was, of course, not possible to predict what decision the US Congress would take on the matter; it was under active consideration by both government and private circles in the United States of America. The only assurance that could be given was that the prior art date would be some specific date. Before the President of the United States of America deposited the instrument of ratification of the PCT, the US Patent Statute would specify the date from which the prior art effect would start.

768. Mr. ARMITAGE (United Kingdom) thanked the Chairman for his explanation. If he understood him correctly, assurance was given that for priority purposes the United States of America would recognize the international filing date but for prior art purposes no assurances could be given other than that there would be some specific date indicated in the US Statute before the instrument of ratification was deposited.

769. The CHAIRMAN, still speaking as the US Commissioner of Patents, replied that he could give no absolute assurances in any respects but his Delegation was substantially unanimous that the Treaty did not give any alternative but to accord the international filing date the same effect as a filing date in the United States of America so far as the grace period and the priority effect were concerned. It was his Delegation's interpretation that the one-year grace period under the present provisions of the Draft would precede the international filing date just as it preceded at that time the US filing date.

770. Mr. CLARK (United States of America) said that the Delegation of the United States of America merely wished to support the statement made by the US Commissioner of Patents.

771. Mr. VAN BENTHEM (Netherlands) said that the international filing date had effects also in fields other than the field of priority and prior art. For example, it had effect as a possible starting point for computing the term of protection, at least in countries in which that term was counted from the date of filing. It should be understood that for such and any other purposes, with the possible exception of the prior art effect – which was still an open question – the international filing date had the same effect as a national filing date. That was why his Delegation had suggested in document PCT/DC/29 that Article 11(3)

be completed by the words "which shall be considered to be the actual filing date in each designated State."

772. Mr. BOGSCH (Secretary General of the Conference) said that it had always been his understanding that the only question at issue was the question of the prior art effect. For all other purposes, Article 11(3) applied. The fact that the last sentence in paragraph (5) contained, between parentheses, the words "as distinguished from priority purposes" was merely intended to bring out the difference between prior art and priority and should not be understood as an indication that the Treaty dealt only with these two problems.

773.1 Mr. LORENZ (Austria) said that there were three dates which were important in connection with every patent application: the priority date, the filing date, and the date of grant.

773.2 The PCT instituted a special procedure for filing and assimilated the international filing to national filing. Such assimilation should be complete, that is, it should also relate to the date of filing.

773.3 Rules concerning priority and grant were not affected by the PCT and required no new regulation by the national laws. However, as far as filing was concerned, the PCT created a new situation for which present national laws provided nothing. The void was filled by Article 11(3), which, by way of an irrefutable presumption, stated that an international filing was a national filing.

774. Mr. HAERTEL (Germany (Federal Republic)) said that he would appreciate it if the Delegation of the United States of America would answer the following question. Could the last sentence of paragraph (5) mean that the disadvantages which a foreign applicant already had under the present US law as stated in the Hilmer decision would be increased under that sentence? Under the present law, in the case of an applicant filing in the US Patent Office an application invoking the priority of an earlier application filed abroad 12 months before the filing of the US application, the prior art effect would start 12 months later than the priority effect. If, under the PCT, the copy of the international application reached the US Patent Office 20 months after the priority date, would the prior art effect not start eight months later than it would without using the PCT?

775. Mr. ARTEMIEV (Soviet Union) said that his Delegation's position was similar to that of those delegations which had asked for the deletion of the last sentence of paragraph (5). Whatever happened in the United States of America, that sentence might encourage other countries to make use of the faculty provided under that sentence and thereby place the applicant in a worse position than he would be in without the PCT.

776. Mr. PETERSSON (Australia) said that his Delegation was worried by the last sentence of paragraph (5) because it might result in putting international applications in a different, less favorable position than applications not using the PCT route. It was to be hoped that a compromise solution could be found.

777. Mr. ONIGA (Brazil) said that he favored maintaining the last sentence of paragraph (5) not for the specific reasons invoked by the Delegation of the United States of America but for the general reason that the greatest flexibility was needed so as to give the greatest possible freedom to national laws.

778.1 Mr. ROBINSON (Canada) said that, whereas it was very important for practical purposes that it be made crystal clear in the PCT that the international filing date would have the same effect as a national filing date for the purposes of obtaining patents, that is, as far as the United States of America was concerned, in respect of the statutory bar and being inside the priority year, an exception to the principle in Article 11(3) in the case of prior art purposes was, from a practical point of view, of much less importance. As a practitioner, he was convinced that the cases would be extremely rare in which the latter question would have any practical importance in the sense that it would cause any harm to the applicant. For that reason, his Delegation would be willing to accept a provision which would allow the United States of America to legislate on the matter as it wished.

778.2 The provision allowing such an exception would, however, probably have to be drafted somewhat differently and should probably not be placed in Article 27(5). That was a question to be looked into after there was agreement on the substance of the matter.

779. The CHAIRMAN proposed that discussion should continue after the lunch break.

780. Mr. VAN BENTHEM (Netherlands) said that he wished to remind the meeting that the Delegation of Germany (Federal Republic) had asked a very clear question from the Delegation of the United States of America and that his Delegation would very much appreciate it if in the afternoon meeting the Delegation of the United States of America could give a reply to that question. (Continued at 781.)

End of the Tenth Meeting

ELEVENTH MEETING

Saturday, May 30, 1970, afternoon

Article 27: National Requirements (Continued from 780.)

781. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that the last sentence of paragraph (5) served the purpose of ensuring not only that the United States could maintain its present law if it so desired but also that other countries could adopt in complete freedom whatever solutions they wished in connection with the date of the prior art effect of applications. It was because of similar flexibility that the Paris Convention was attractive to so many countries. It was to be hoped that the PCT would also maintain a high degree of flexibility.

782. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)) said that his Federation would prefer it if the last sentence of paragraph (5) were omitted. On the other hand, one should not exaggerate the practical importance of that sentence as far as its use by the United States of America was concerned. It was to be hoped that the United States would find a solution which would be clear and equitable to foreign applicants. However, what was important was to find a more precise formulation of the exception if it was to be maintained.

783. Mr. GILLIES (International Chamber of Commerce (ICC)) said that the last sentence was not really necessary. Without it, countries could put an interpretation on Article 11(3) which would allow even the present US Statute to be maintained.

784. Mr. HAZELZET (Union of Industries of the European Community) said that his Union was very much concerned about the last sentence of paragraph (5). While it might be true that the cases were rare in which the delaying of the prior art effect would hurt an applicant, those rare cases might be very important ones. Furthermore, what was involved was not only the present US law but also the unlimited freedom of any country to choose any date it wished for prior art purposes. Such misuse and such freedom could become very harmful to applicants.

785. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) said that the last sentence of paragraph (5) would put the applicant in a less favorable position than he would be without using the PCT. Furthermore, his organization regretted that the sentence in question was not limited to the situation existing in the US law.

786. Mr. BRENNAN (United States of America) said that the last sentence of paragraph (5) did not affect the foreign applicant's right to obtain a patent, or to sue any infringer of his patent, in the United States of America.

787. Mr. VILLALBA (Argentina) said that the more flexible the PCT was, the more freedom it allowed to Contracting States to legislate in patent matters and the more adherents to the Treaty there would be.

788. Mr. HAERTEL (Germany (Federal Republic)) said that he wanted to record that the Delegation of the United States of America had not replied to the question he had asked.

789. Mr. BRENNAN (United States of America) said that, in connection with Article 29, the Main Committee had put aside the principle laid down in Article 11(3). Trying to maintain that principle in connection with paragraph (5) of the Article under discussion was in contradiction to the attitude adopted in connection with Article 29. An exception to Article 11(3) in Article 27(5) was just as important to some countries as the exception to Article 11(3) in Article 29 was to others.

790. Mr. HAERTEL (Germany (Federal Republic)) said that the question to which he had asked the Delegation of the United States of America

to reply was whether paragraph (5) of the Article under discussion would or would not place an applicant in a worse position than that in which he would be if he did not use the PCT.

791. Mr. BRENNAN (United States of America) said that the question was one which each applicant would have to answer for himself. If he felt that the PCT route would put him in a worse position, he could choose not to use that route. The position was similar to that under Article 29: if the applicant felt that delay in the provisional protection under that Article would put him in a less favorable position, he would have to forgo the PCT route.

792. Mr. SAVIGNON (France) said that, in his view, the analogy was a false one. Provisional protection did not depend on the filing date dealt with in Article 11(3). It depended on publication, with which Article 11(3) did not deal.

793. Mr. VILLALBA (Argentina) said that the whole problem would never have arisen had the Conference followed his suggestion that the international phase should end on the expiration of the priority year.

794. Mr. VAN BENTHEM (Netherlands) said that he fully agreed with the views of the Delegation of France.

795. Mr. CLARK (United States of America) said that, by looking at the effect upon the applicant as an applicant and then confusing the issue by turning to the effect of the issued patent as prior art, discussion on the last sentence of paragraph (5) was being unnecessarily prolonged. Unless the concepts of priority and prior art were kept apart, one got into a labyrinth from which there was no extricating oneself. As far as the question of priority was concerned, there was no harmful effect to the applicant *qua* applicant under the last sentence of paragraph (5).

796. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) agreed with the last part of the intervention of the previous speaker.

797. Mr. ARMITAGE (United Kingdom) said that as far as the prior art effect was concerned – as distinguished from the priority effect – the last sentence of paragraph (5) did put the applicant in a less favorable position than he would be in if he did not use the PCT. The difference was a small one but there was a difference.

798. The CHAIRMAN said that the setting up of a working group to try and find a compromise solution would be desirable at this point of the discussion.

799. Mr. ARMITAGE (United Kingdom) agreed with the Chairman.

800. Mr. SHER (Israel) expressed the hope that the working group would come up with a solution which would be somewhere between the two extreme positions expressed in the discussion.

801. Mr. SAVIGNON (France) said that although he did not see on what basis the working group would try to solve the problem he had no objection to the setting up of such a group.

802. Mr. LIPS (Switzerland) agreed with the previous speaker.

803. The CHAIRMAN proposed that a working group be set up and that it comprise the Delegations of Germany (Federal Republic), the United States of America, the Netherlands, the Soviet Union, the United Kingdom, Argentina, Australia, Israel, Zambia, and Canada.

804. Mr. SAVIGNON (France) said that his Delegation wished to be a member of the working group.

805. The CHAIRMAN said that the Delegation of France and that of Switzerland – the latter having also indicated its desire to be a member of the working group – would be added to the list of members of the working group.

806. Mr. ROBINSON (Canada) suggested that the terms of reference of the working group include Article 11(3) as well as Article 27(5), last sentence.

807. The CHAIRMAN indicated that the working group could deal with any question related to the last sentence of Article 27(5).

808. Mr. VAN BENTHEM (Netherlands) said that his Delegation's proposal for clarifying Article 11(3) might not be regarded as strictly related to Article 27(5), last sentence. Nevertheless, the working group should have the right to deal with it because it was only if Article 11(3) was crystal clear that one could usefully discuss any exceptions to it.

809. *It was decided that the members of the Working Group would be the Delegations named by the Chairman, and that it would deal both with Article 27(5), last sentence, and with the proposal of the Delegation of the Netherlands concerning Article 11(3) contained in document PCT/DC/29.*

810. *On a question from Mr. CLARK (United States of America) and a reply by Mr. VAN BENTHEM (Netherlands), it was understood that the proposal of the Delegation of the Netherlands would come under the mandate of the Working Group without prejudice to the question whether the last sentence of Article 27(5) would be omitted, modified, or maintained. (See 1604.)*

811. *Paragraph (5), with the exception of the last sentence thereof, was adopted as appearing in the Draft.*

812. *Paragraph (6) was adopted as appearing in the Draft, without discussion.*

813. *Paragraph (7) was adopted as appearing in the Alternative Draft without discussion.*

814. *Paragraph (8) was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1604.)*

End of the Eleventh Meeting

TWELFTH MEETING

Monday, June 1, 1970, morning

Rule 1: Abbreviated Expressions

815. *It was decided to defer discussion on this rule. (Continued at 1621.)*

Rule 2: Interpretation of Certain Words

816. *It was decided to defer discussion on this rule. (Continued at 1622.)*

Rule 3: The Request (Form)

817. *Rule 3 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1817.)*

Rule 4: The Request (Contents)

818. Mr. GAJAC (France) said that the proposals of his Delegation concerning the naming of the inventor, contained in document PCT/DC/19, had been superseded by the fact that Article 4 of the Treaty had been modified on the same point. The Delegation of France would present a new proposal for amending Rule 4 in order to bring it into harmony with the decisions concerning Article 4.

819. *It was decided that the consequential proposals referred to by the Delegation of France would be transmitted direct to the Drafting Committee.*

820. Mr. HADDRICK (Australia) suggested that the Drafting Committee should look into the question whether the title of Rule 4.1: "Mandatory and Optional Contents" was correct since what was described as optional was, under certain circumstances, becoming mandatory.

821. *It was decided to refer the suggestion of the Delegation of Australia to the Drafting Committee.*

822. Mr. FERGUSSON (United Kingdom) said that Rule 4.3 contained a clause introduced by the word "preferably." Since the use of such, or similar, expressions deprived the provision of any binding force and made it simply a recommendation, the question arose whether it should be maintained in the Regulations or included in an agreed explanatory memorandum.

823. Mr. BOGSCH (Secretary General of the Conference) said that, although the Delegation of the United Kingdom was right in its interpretation of the legal nature of the provision in question, it would still be preferable to leave the provision in the Regulations, even though it was in the nature of a recommendation. It constituted a very useful guide for the applicant. Putting it into a separate instrument would complicate the task of everyone wishing to consult the provisions of the PCT, which would then be contained not in three documents (Treaty, Regulations, Administrative Instructions) but in four documents (the said three plus an explanatory memorandum).

824. Mr. ONIGA (Brazil) said that Rule 4.3 should either speak of ten rather than seven words, or should not specify the number of words which the title of the invention should not exceed.

825. The CHAIRMAN said that, in his view, Rule 4.3 was merely a recommendation as far as the number of words was concerned and therefore if a title

consisted of, say, 15 words and could not express the content of the invention precisely by fewer words, 15 words would still be compatible with the Rule in question.

826. Mr. FERGUSSON (United Kingdom) said that his Delegation would not insist on establishing an explanatory memorandum to which the provisions which were in the nature of recommendations would be transferred.

827. Mr. GIERCZAK (Poland) referring to this Delegation's proposal contained in document PCT/DC/23, proposed that Rule 4.6(c) be deleted. The question who was the inventor was a question of fact and did not depend on any legislation. It was unthinkable that, in different countries, different persons would be inventors of the same invention.

828. Mr. BOGSCH (Secretary General of the Conference) said that the provision would probably be rarely applied. Nevertheless, it was a fact that the national laws of several countries contained presumptions on the question who the inventor of an invention was. Those presumptions were not the same in all such countries. Consequently, there would be cases in which the inventor would not be the same for the purposes of all countries.

829. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)), referring to the observations presented by his Federation in document PCT/DC/15, said that he shared the view expressed by the Delegation of Poland. His Federation would welcome it if Rule 4.6(c) were deleted.

830. Mr. BEESTON (Committee of National Institutes of Patent Agents (CNIPA)) said that it would be most undesirable to eliminate Rule 4.6(c) since, for example, it could happen that in one country only one inventor was to be indicated, whereas in another country several had to be indicated.

831. Mr. GIERCZAK (Poland) said that he wished to maintain his proposal. Perhaps another way of achieving the desired result would be to refer to the national legislations involved.

832. Mr. BOGSCH (Secretary General of the Conference) said that the last suggestion of the Delegation of Poland might solve the problem. One could indeed refer, in Rule 4.6(c), to the national legislations in the sense that different persons could be named as inventors when such differences were caused by differences in the national laws of the various designated States.

833. Mr. MORTON (United States of America) supported the suggestion made by the Secretary General of the Conference.

834.1 Mr. CASELLI (Italy) said that if the claims were restricted, or if the application was divided in one country but not in the others, some of the inventors named in the former country might no longer be named in the latter countries.

834.2 If the last suggestion of the Delegation of Poland as expounded by the Secretary General of the Conference could take care of such situations, his Delegation would be in favor of the said suggestion.

835. Mr. GIERCZAK (Poland) said that, if an invention was made by an employee, and according to the national law, the employer was to be presumed to be the inventor, then the employee rather than the employer should be indicated as the inventor in the international application. In other words, a reference to the national law should be qualified by the said restriction.

836. Mr. BOGSCH (Secretary General of the Conference) said that he saw no possibility of accepting the said restriction. It was in contradiction to the principle that national laws must be respected.

837. Mr. ARMITAGE (United Kingdom) said that the question under discussion was not a question of principle, but merely a question of what was practical. It was a fact that national laws differed in certain cases as to defining who the inventor was. The PCT could not ignore those differences; neither could it pretend to harmonize the laws of the various countries on the point in question.

838. Mr. ASCENSÃO (Portugal) said that his Delegation supported the proposal of Poland as expounded in the last instance.

839. Mr. HAZELZET (Union of Industries of the European Community) said that another reason for which it was essential to be able to name different persons as inventors for different countries was the following: according to the law of some countries, the application could name as inventor only the person who had invented the gist of the invention; according to the laws of other countries, persons who contributed, to a certain extent, to the act of inventing were also considered to be inventors. In such cases, for some countries only one person could be named as inventor, whereas for others several persons would have to be named as inventors.

840. Mr. DAHMOUCHE (Algeria) said that his Delegation supported the proposal of the Delegation of Poland and the Secretary General of the Conference. One could perhaps further refine the provision by stating that one person must be named for all countries, whereas additional persons could be mentioned for certain countries.

841. Mr. HADDRICK (Australia) said that his Delegation supported the suggestion made by the Secretary General of the Conference. The language of the Draft as it stood might very well be regarded as too permissive. Reference to the requirements of national laws would make it clear that the applicant had no discretion of his own in naming different persons for different countries, but all that he was allowed to do was to conform to the various national laws.

842. Mr. ASCENSÃO (Portugal) supported the suggestion made by the Delegation of Algeria.

843. The CHAIRMAN said that it was not necessarily the case that at least one person would have to be considered the inventor in all designated States.

844. The SECRETARY, in order to illustrate the statement made by the Chairman, said that if, for example, an international application related to a

process and to a product which were invented by different persons, then, in countries in which only the product was patentable, the inventor would be necessarily different from the inventor in countries in which only the product was patentable.

845. Mr. MCKIE (United States of America) said that his Delegation supported the penultimate proposal of the Delegation of Poland as expounded by the Secretary General of the Conference.

846. Mr. SINGER (Germany (Federal Republic)) said that the provision concerning different inventors for different countries was necessary also because, according to the laws of some countries, only natural persons could be designated as inventors whereas, under the laws of other countries, legal entities could also be designated as inventors. His Delegation, therefore, supported the penultimate proposal of the Delegation of Poland as worded by the Secretary General of the Conference.

847. Mr. VILLALBA (Argentina) said that what might have been irritating in the Draft was that it seemed to leave it to the whim of the applicant to name different persons as inventors in different countries. This undesirable element of the Draft would be removed by a reference to national laws. He thus supported the penultimate proposal of the Delegation of Poland as worded by the Secretary General of the Conference.

848. The CHAIRMAN said that there seemed to be agreement in the Main Committee that Rule 4.6(c) should refer to the requirements of national laws. What was still under discussion was whether it should also state that at least one person must be identical for each country.

849. Mr. BENÁRD (Hungary) said that his Delegation would be ready to accept the penultimate proposal of the Delegation of Poland but would like to see a small change in the wording proposed by the Secretary General of the Conference. The change would be that the provision should speak of persons "deemed" to be inventors under the various national laws.

850. Mr. FINNE (Finland) said that his Delegation strongly supported the wording suggested by the Secretary General of the Conference. There could be abuse in naming the inventor whatever the wording of the Rule might be.

851. Mr. GIERCZAK (Poland) said that he would agree to transmit the proposal, as worded by the Secretary General of the Conference, to the Drafting Committee. He would, however, maintain the right of his Delegation to revert to the matter if the Drafting Committee did not report back a text with which it could agree.

852. *Rule 4.6(c) was adopted as appearing in the Draft, subject to a reference to the requirements of national laws.*

853.1 Mr. GIERCZAK (Poland), referring to the proposal of his Delegation concerning Rule 4.10, said that the proposal being moved was the proposal contained in document PCT/DC/59 and not the

proposal in document PCT/DC/23, which had been superseded by the former.

853.2 The proposal was that a new paragraph be added to Rule 4.10 reading as follows: "If the priorities of several earlier applications are claimed, it is strongly recommended that requests contain a statement indicating the consecutive numbers of the patent claims of the international application for which the particular priority dates are claimed in the international application." In other words, wherever the priority dates were not the same for all the claims, it should clearly appear from the international application which priority dates were claimed for which claims.

854. Mr. LORENZ (Austria) said that he supported the proposal of the Delegation of Poland and wished to call attention to the fact that the proposal was not a mandatory rule but merely a recommendation.

855. Mr. GABAY (Israel) said that he also supported the proposal of the Delegation of Poland. He would even prefer it if it were made a mandatory rule rather than a mere recommendation.

856. Mr. GYRDYMOV (Soviet Union) said that his Delegation, too, supported the proposal of the Delegation of Poland.

857. Mr. LIPS (Switzerland) said that his Delegation shared the views of the Delegation of Israel.

858. Mr. BENÁRD (Hungary) also supported the proposal of the Delegation of Poland.

859. Mr. VAN DAM (Netherlands) said that his Delegation would prefer it if the proposal of the Delegation of Poland were not adopted. However, it could also accept the proposal provided it remained in the nature of a recommendation.

860. Mr. MCKIE (United States of America) said that his Delegation shared the views of the previous speaker. If the proposal were to be changed to make it mandatory, his Delegation would have to oppose it.

861. Mr. FERGUSSON (United Kingdom) said that his Delegation's position was the same as that of the Delegation of the United States of America. The proposal presented a difficulty in that it was incomplete because, even where only one priority document was invoked, it was possible that it might relate to only one rather than to all the claims or to only part of a certain claim.

862. Mr. SAVIGNON (France) said that his Delegation was of the same opinion as the Delegation of the United States of America.

863. Mr. LEWIN (Sweden) said that he doubted whether the proposal of the Delegation of Poland was in conformity with the Paris Convention. Furthermore, he also foresaw a difficulty, namely, that whatever statement was made in the application as filed, it could be that it was no longer correct after the application had been amended.

864. Mr. PETERSSON (Australia) said that a similar requirement in his country's law had been abandoned since it was found to be impractical. The

statement made in the Application as filed might be of no relevance after the Application had been amended.

865. Mr. ARMITAGE (United Kingdom) said that he entirely shared the view expressed by the Delegation of Australia and would prefer it if the proposal of the Delegation of Poland were not adopted. In the national phase, each designated Office could ask the applicant to specify what priorities related to what claims once the final form of the claims was about to be established.

866. Mr. GIERCZAK (Poland) said that he did not share the views of the Delegations of Australia and the United Kingdom. Nor was he of the opinion that the proposal violated the Paris Convention.

867. Mr. GABAY (Israel) said that the advantages of the proposal of the Delegation of Poland outweighed any difficulties which it might cause. Consequently, his Delegation continued to support the proposal.

868. Mr. LORENZ (Austria) said that, since the provision would be in the nature of a recommendation, the applicant who did not follow it would not suffer any prejudice. Consequently, the proposal of the Delegation of Poland should be accepted.

869. Mr. TUXEN (Denmark) said that his Delegation could accept the proposal of the Delegation of Poland provided that it would be completed by a provision to the effect that the non-observance of the recommendation would not affect the priority right of the applicant.

870. Mr. SINGER (Germany (Federal Republic)) said that his Delegation shared the views expressed by the Delegation of the United Kingdom. The proposal of the Delegation of Poland was dangerous for the applicant. Any statement made by the applicant pursuant to the proposal of the Delegation of Poland might, in the national phase, be held against him. For example, where the applicant made an error, under some national laws he might not, in the national phase, plead error but would have to stand by the declaration made in the international application.

871. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation would prefer not to accept the proposal of the Delegation of Poland.

872. Mr. OTANI (Japan) said that his Delegation shared the views expressed by the Delegation of the United Kingdom.

873. *The proposal of the Delegation of Poland was rejected by 10 votes against to 9 in favor, with 10 abstentions.*

874. *It was decided to defer discussion on Rules 4.12(a) and 4.13, last sentence, until Article 2 had been disposed of, and to defer discussion on Rule 4.2(b) until Article 45(2) had been disposed of. (Continued at 875.)*

End of the Twelfth Meeting

THIRTEENTH MEETING

Monday, June 1, 1970, afternoon

Rule 4: The Request (Contents) (Continued from 874.)

875. Mr. GYRDYMOV (Soviet Union) said that, although his Delegation would have preferred that tasks of transliteration and translation referred to in Rule 4.16 in the Alternative Draft be carried out by the International Bureau, it would now, in a spirit of compromise, be ready to accept the Draft as proposed.

876. *Subject to the decisions referred to in 819, 821, and 852, and to the harmonization of Rules 4.12(a) and (b) and 4.13 with Article 2, Rule 4 was adopted as appearing in the Alternative Draft. (Continued at 1623.)*

Rule 5: The Description

877. Mr. GIERCZAK (Poland), referring to the proposal of his Delegation contained in document PCT/DC/23, proposed that Rule 5.1(a) be completed by requiring the inclusion of two further elements in the description, namely, that the description "contain a critical analysis of the background and define, on that base, the aim of the invention" and "define the technical problem which is solved by the invention."

878. Mr. LIPS (Switzerland) said that it was dangerous to ask that the description should contain a critical analysis of the background because such analysis might degenerate into criticizing competitors, and patent documents were not the right place to do so. Furthermore, the technical problem to be solved was in some cases entirely obvious through the statement of the subject of the invention so that it would not be necessary specifically to state the problem as such.

879. Mr. ARMITAGE (United Kingdom) said that his Delegation preferred the Draft to the proposal of the Delegation of Poland. The main problem to be solved would always appear, implicitly or explicitly, in the description. However, once the applicant received the search report and changed his claims, the application might encompass problems which were not clearly indicated in the international application as filed. Rules 5.6 and 13 were among those which had been the most carefully prepared, which represented a compromise negotiated over a period of years among conflicting views, and which should be disturbed only if absolutely necessary.

880. Mr. CLARK (United States of America) said that his Delegation shared the views expressed by the previous speaker.

881. Mr. LEWIN (Sweden) also shared the views of the Delegation of the United Kingdom. In the great majority of cases, the Rule as it was in the Draft already satisfied all the wishes of the Delegation of Poland.

882. Mr. CASELLI (Italy) said that his Delegation wished the provision to be as it was in the Draft.

883. Mr. PETERSSON (Australia) said that the provisions on the description should not be made stricter and therefore the Draft was preferable to the proposal of the Delegation of Poland.

884. Mr. SIMONS (Canada) said that in his Delegation's view the Draft should be maintained as it was.

885. Mr. GIERCZAK (Poland) said that he was not convinced by the arguments invoked against his proposal.

886. Mr. ONIGA (Brazil) said that the proposal of the Delegation of Poland could be qualified by saying that the Application should contain a critical analysis "where such analysis was necessary" or "where such analysis contributed to clarifying the matter."

887. *The proposal of the Delegation of Poland for a new item (iii) for Rule 5.1(a), as contained in document PCT/DC/23, was rejected by 16 votes against to 4 in favor, with 7 abstentions.*

888. *The proposal of the Delegation of Poland concerning a new item (iv) for Rule 5.1(a), as contained in document PCT/DC/23, was rejected by 17 votes against to 3 in favor, with 7 abstentions.*

889. The SECRETARY, on a question from Mr. VILLALBA (Argentina), said that it was the disclosure in the international application, including the description, beyond which the amendments could not go.

890.1 The CHAIRMAN said that if the Delegation of Brazil wanted to maintain the suggestion made for amending the proposal of the Delegation of Poland it had the right to do so but would have to file its proposal in writing.

890.2 The CHAIRMAN said that the proposal of the Delegation of Poland concerning a change in item (iii) of Rule 5.1(a) contained in document PCT/DC/23, had been disposed of by the last two votes since the change in question depended on the proposals which had been rejected.

891. Mr. SIMONS (Canada) proposed that in item (v) the words "best mode contemplated" be changed to "best mode known".

892. Mr. BOGSCH (Secretary General of the Conference) said that the language appearing in the Draft followed closely the language used in the US law. At the time when the Application was made the applicant could only speculate on what the best mode was. What did "know" mean? Did it mean "know for sure" or merely "know it was possible"?

893. Mr. SIMONS (Canada) suggested that the matter be left to the Drafting Committee.

894. Mr. MCKIE (United States of America) agreed with the view expressed by the Secretary General of the Conference.

895. The CHAIRMAN said that the matter would be referred to the Drafting Committee.

896. Mr. LIPS (Switzerland) moved the proposal of his Delegation concerning item (vi), contained in document PCT/DC/17. In most cases, the use or industrial manufacture of an invention was obvious and required no special explanation such as that envisaged in item (vi) of the Draft. Consequently, item (vi) should read as follows: "indicate the way in which the subject of the invention can be made and used in industry, if such indications cannot be implied

from those indications mentioned in the preceding items of paragraph (a)." In 99 percent of the cases, the said implication would be possible and no specific statement would be necessary.

897. Mr. GAJAC (France), referring to the proposal of his Delegation contained in document PCT/DC/21, said that item (vi) should be made entirely optional and should refer only to the general notion of "industrial applications" without providing any exact and restricted definition. The industrial character or industrial application of the invention was in most cases so obvious from the general description of the invention that it required no special explanation. Consequently, item (vi) could read as follows: "possibly indicate the possibilities of industrial application of the invention."

898. Mr. SIMONS (Canada) said that an invention might be patentable "even if it was not used in industry" but was used only by doctors or musicians.

899. Mr. BOGSCH (Secretary General of the Conference) said that the word "industry" should be interpreted in the same extremely broad manner as that in which it was used in the Paris Convention.

900. Mr. FERGUSSON (United Kingdom) said that perhaps it would be clearer to stipulate that the description had to "indicate explicitly or implicitly the way in which the subject of the invention can be made or used in industry."

901.1 Mr. MCKIE (United States of America) said that it was his Delegation's understanding that Rules 3 to 13 set out the minimum standards with which all international applications would have to comply. As far as the United States of America was concerned, a statement on the utility of the invention was a minimum requirement.

901.2 He was of the opinion that the word "industry" had been adequately dealt with. Consequently, his Delegation preferred the text of item (vi) as appearing in the Alternative Draft. He said that the point made by the Delegation of Canada was correct: a scalpel used in surgery, for example, could not be "used" in industry but it could be industrially produced – and thus it could be "made" in industry – and it could also be "exploited" by industry. Consequently, item (vi) should use the expression "to be made or used" rather than "to be made and used"; alternatively one could use the word "exploited" rather than "used."

902. Mr. MESSEROTTI-BENVENUTI (Italy) said that the text should say "made and/or used" since there were certain products, for example, consumer goods, which were made in industry but which were not used in industry.

903. Mr. PRETNAR (Yugoslavia) said that Article 33(4) of the Draft Treaty defined "industry." Perhaps it would be the best thing to postpone discussion until the said Article was discussed.

904. Mr. GIERCZAK (Poland) said that it was indispensable for the complete understanding of an invention that its usefulness in industry should be stated in the application. Consequently, his Delegation opposed the proposals of the Delegations

of France and Switzerland and supported the proposal as appearing in the Alternative Draft.

905. Mr. LIPS (Switzerland) said that the designation of an invention could be so clearly indicated in the title or in other parts of the description that it was quite superfluous to indicate it in a separate special passage of the application. For example, if the title of an application was "insecticide," it would be wholly unnecessary to have a separate paragraph in the description saying that the invention was useful for the extermination of insects.

906. Mr. MCKIE (United States of America) said that the US patent law would not require that an insecticide disclosed as such be further disclosed as being useful in killing insects. However, under the US law, if a chemical which was usable as an insecticide was disclosed, it must be stated expressly that it was usable for that purpose. He insisted that the text as appearing in the Alternative Draft be adopted.

907. Mr. VILLALBA (Argentina) said that, as he understood it, the international application had to conform with certain rules only in order to make the international search possible. Whether any subject matter was patentable or not depended on the national law of each Contracting State. The Paris Convention contained no obligation to grant patents for everything that could be made and/or used in industry. Any country had complete liberty to decide what it regarded as being industrially usable and to grant patents only for those inventions which it regarded as being so usable.

908.1 Mr. BOGSCH (Secretary General of the Conference) said that an international application served not only the purpose of international search but also the purpose of being an application in each of the designated States. Therefore, it was extremely important that the international application should contain all the elements which made it possible for the Contracting States to regard it as an equivalent of a national application. It was for that reason, and mainly for that reason, that the PCT defined with precision the formalities and the minimum contents of international applications. From the viewpoint of some of the Contracting States, those minimum requirements were stricter than the national law. Nevertheless, it was necessary to adopt such stricter requirements so that the international application should be acceptable also in Contracting States whose national laws contained those stricter requirements. If any of the Contracting States was satisfied with less strict requirements, it could apply them, as indicated in Article 27(4).

908.2 On the other hand, the PCT did not prescribe what subject matters were patentable and what were not. Therefore, a State which did not consider that foods or drugs or pesticides or any other categories of inventions were patentable could continue to do so under the PCT. Nevertheless, international applications might be filed for such subject matters and, unless excluded by Rule 39, they would be internationally searched. If an applicant had been well informed that his invention related to a subject matter which was not patentable in certain Contracting

States, he would not designate such States – for example, if he designated in an international application relating to drugs a State which did not grant patents for drugs – then when the application reached the national Office the grant of the patent would be denied.

909. Mr. SIMONS (Canada) said that, after having heard the explanations of the Secretary General of the Conference and the Delegation of the United States of America, it had become evident that, for the purposes of the United States of America, specifying the utility was mandatory – as it was for the purposes of Canada – and, consequently, that situation should be borne in mind when the Drafting Committee dealt with item (vi).

910. Mr. FERGUSSON (United Kingdom) said that he fully agreed with the explanation given by the Secretary General of the Conference. Since the Delegation of the United States of America had indicated that any broadening of the provision under discussion would put the applicant in jeopardy in the United States of America, it would be extremely difficult to accept the proposals of the Delegations of Switzerland and France. It would be best to leave the text as it appeared in the Alternative Draft.

911. Mr. VAN DAM (Netherlands) said that the trouble with item (vi) was that it was stricter than the US law or any national law. It was therefore quite unnecessarily strict. For example, if the invention related to a chair, the description would describe the newly invented chair and the difference between it and other chairs. No patent law in the world, however, would require that it also describe the way in which the chair was made in industry. The making was obvious, contained nothing new, and followed traditional methods. He was convinced that even in the United States of America it was not required in respect of a new chair to state how it was made and used since everybody knew what purposes a chair could be used for.

912. Mr. GAJAC (France) said that, in the overwhelming majority of cases, compliance with item (vi) as appearing in the Alternative Draft was completely superfluous. It was probably only in some types of chemical inventions that the statements required by the Draft would be useful.

913. Mr. LIPS (Switzerland) said that his Delegation was ready to withdraw its proposal in favor of the proposal of the Delegation of France.

914.1 Mr. MCKIE (United States of America) said that Section 112 of the US Patent Statute required the specification to contain "a written description of the invention and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains or with which it is most nearly connected to make and use the same." Naturally, in the case of a chair, both the method of making it and the purpose for which it was used were so obvious, particularly to a person skilled in the art, that a statement on neither point would be required. However, the verb "indicate" in the Alternative Draft took care of the problem since the indication could

take many forms; for example, in the case of a chair, it could take the form of merely showing the chair.

914.2 It was in view of Article 27(1) – which provided that no Contracting State had the right to require compliance with requirements relating to the form or contents of the international application different from or additional to those which were provided for in the PCT – that it was essential that the Rules concerning the description be such that they did not require a change in the US patent law which the United States of America could not effectuate.

915. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that he fully agreed with the remarks made by the Delegation of the Netherlands. He would like to take another example, that of a doll. If a doll was invented which could move its arms, and the description and the drawings clearly showed the mechanism used for moving the arms, it was completely unnecessary to state how the mechanism would be made and for what purposes the doll would be used.

916. *The proposal of the Delegation of France was rejected by 15 votes against to 8 in favor, with 7 abstentions.*

917. Mr. FERGUSSON (United Kingdom) said that he was agreeable to item (vi) as appearing in the Alternative Draft but wished the Drafting Committee to look into the question whether the disjunctive and conjunctive “or” and “and” should not be used in a clearer fashion.

918. Mr. LEWIN (Sweden) agreed with the previous speaker. In that respect, the Draft, as distinguished from the Alternative Draft, might have been clearer.

919. Mr. BOGSCH (Secretary General of the Conference) said that in his view what the Drafting Committee should make sure of was that the text covered all the logically possible situations and that it should not refer to situations which did not exist in practice.

920. *Rule 5.1(a)(vi) was adopted as appearing in the Alternative Draft, subject to the refining of its language by the Drafting Committee.*

921. *The other provisions of Rule 5.1(a) were adopted as appearing in the Alternative Draft.*

922. Mr. VAN DAM (Netherlands) said that paragraph (c) carried with it a strong indication that the elements described in the six items of paragraph (a) would have to appear separately in each international application. On the other hand, paragraph (b) indicated that it was permissible not always to follow paragraph (a). Furthermore, since it had been stated during the discussion of item (vi) that the indications required by that item did not always have to appear in the form of a separate statement, paragraph (b) should be modified to indicate that fact.

923. The CHAIRMAN said that in his view the question was one for the Drafting Committee.

924. Mr. GAJAC (France) wished to express his full agreement with the proposal of the Delegation of the Netherlands.

925. *Rule 5.1(b) was adopted as appearing in the Draft, it being understood that the Drafting Committee would examine the proposal made by the Delegation of the Netherlands.*

926. *Rule 5.1(c) was adopted as appearing in the Draft, without discussion. (Continued at 1825.)*

Rule 6: The Claims

927. *Rule 6.1 was adopted as appearing in the Draft, without discussion.*

928. *Rule 6.2 was adopted as appearing in the Alternative Draft, without discussion.*

929. *Rule 6.3 was adopted as appearing in the Alternative Draft, without discussion.*

930.1 Mr. LIPS (Switzerland) moved the proposal of his Delegation concerning Rule 6.4 as appearing in document PCT/DC/17.

930.2 Paragraph (a) of the Alternative Draft provided that any claims which included all the features of more than one claim must contain a reference to the other claims. Paragraph (b) provided that any dependent claim which referred to more than one other claim must refer to such claims in the alternative only. There was a contradiction between the two paragraphs since paragraph (a) permitted multiple subordination in the form of an addition, whereas paragraph (b) permitted subordination only in the form of an alternative. Consequently, the Rule should be modified so as to remove the contradiction.

931. Mr. TROTTA (Italy) supported the proposal of the Delegation of Switzerland.

932. Mr. VAN DAM (Netherlands) said that he would like to know whether the Delegation of Switzerland would agree to broaden somewhat its proposal by changing the words “*the preceding claim*” to “*a preceding claim*.”

933. Mr. LEWIN (Sweden) said that the proposed text in the Alternative Draft contained no contradiction and was clearer than the proposal made by the Delegation of Switzerland. He therefore supported the Alternative Draft.

934. Mr. FERGUSSON (United Kingdom) said that in the view of his Delegation the Alternative Draft did not contain any contradiction. Of course, it could also be worded in other ways, for example, by changing somewhat the order of the paragraphs, but in essence it was correct and preferable to the proposal of the Delegation of Switzerland.

935. Mr. MCKIE (United States of America) agreed with the observations made by the previous speaker.

936. Mr. VAN DAM (Netherlands) said that the use of the definite article “*the*” in the proposal of the Delegation of Switzerland would indicate that one could refer only to the claim immediately preceding. Such a result would exclude a so-called “*branching arrangement*” and such limitation was undesirable.

937. Mr. LIPS (Switzerland) said that the Delegation of the Netherlands had misunderstood his proposal, which did not exclude a “*branching arrangement*.” The reference might be to any

preceding claim and not only to the one immediately preceding. He would accept the substitution of the definite article by the indefinite article.

938. Mr. SINGER (Germany (Federal Republic)) suggested that the matter be referred to the Drafting Committee since the proposal of the Delegation of Switzerland was, in substance, the same as the text in the Alternative Draft.

939. Mr. BOGSCH (Secretary General of the Conference) said that he was not sure that the two proposals were the same as to their substance. Only if they were the same was the matter one for the Drafting Committee.

940. Mr. LORENZ (Austria) said that his Delegation hesitated to accept the proposal of the Delegation of Switzerland if it meant that no cumulative references were permitted under it.

941. Mr. FERGUSSON (United Kingdom) said that the Drafting Committee would need very clear instructions on whether it was or was not supposed to exclude dependent claims referring cumulatively to more than one previous claim.

942. Mr. LIPS (Switzerland) said that the proposal of his Delegation was to the effect that a certain cumulative referring back should be allowed, albeit in a form which was implicit or indirect. He said that the Alternative Draft, which used the word "and," was not clear as to whether a cumulative or an alternative reference was meant. Perhaps the Alternative Draft might be clarified by inserting the word "directly" between the word "shall" and the word "refer" in paragraph (d).

943. *Rule 6.4(a) was adopted as appearing in the Alternative Draft, on the understanding that the Drafting Committee would attempt to improve the language used.*

944. Mr. FERGUSSON (United Kingdom) said that the proposal of his Delegation concerning Rule 6.4(b), contained in document PCT/DC/26, was of a drafting nature.

945. *Rule 6.4(b) was adopted as appearing in the Draft, with the understanding that the proposal of the United Kingdom would be examined by the Drafting Committee.*

946. Mr. BOGSCH (Secretary General of the Conference) said that Rule 6.5 concerning utility models was intended to take care of a point which was extremely important for Japan. It had been found acceptable in the Committee of Experts of March 1970.

947. *Rule 6.5 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1826.)*

Rule 7: The Drawings

948. *Rule 7 was adopted as appearing in the Draft, without discussion. (Continued at 1830.)*

Rule 8: The Abstract

949. *Rule 8.1(a) was adopted as appearing in the Alternative Draft, without discussion.*

950. Mr. LIPS (Switzerland) said that recommending length (50 to 150 words in English) in terms of numbers of words and with reference to a particular language, in Rule 8.1(b), was not a good method. His Delegation would prefer it if the length were expressed with reference to the size of a page. It should be between one-half and one page long. The suggestion, which had already been presented by his Delegation, was contained in document PCT/DC/17.

951. Mr. VILLALBA (Argentina) supported the proposal of the Delegation of Switzerland.

952. Mr. BOGSCH (Secretary General of the Conference) said that expressing the length of the abstract in terms of one-half to one page was uncertain because there were so many different kinds of typewriting machines, different ways of spacing between lines, and different widths of margins. If the applicant could not make a correct estimate of how many words his abstract would contain in English, no harmful consequence would follow because the provision was merely in the nature of a recommendation.

953. Mr. DAHMOUCHE (Algeria), referring to the solution which had been adopted in connection with the length of the title of the invention, suggested that the provision in question should be placed within parentheses in order to emphasize its limited importance.

954. The CHAIRMAN said that, since the Draft provided that the number of words should "normally" be 50 to 150 words, it was quite clear that the provision did not constitute a mandatory rule.

955. Mr. LIPS (Switzerland) said that his Delegation would not insist on maintaining its proposal.

956. *Rule 8.1(b) was adopted as appearing in the Alternative Draft.*

957. *Rules 8.1(c) and (d), as well as Rules 8.2 and 8.3, were adopted as appearing in the Alternative Draft, without discussion. (Continued at 1831.)*

Rule 9: Expressions, Etc., Not To Be Used

958. *Rule 9 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1832.)*

Rule 10: Terminology and Signs

959. *Rule 10 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1833.)*

Rule 11: Physical Requirements of the International Application

960. *Rules 11.1 to 11.6 were adopted as appearing in the Alternative Draft, without discussion.*

961. Mr. LIPS (Switzerland), referring to the proposal of his Delegation contained in document PCT/DC/60, moved that Rule 11.7(b) provide that the figures numbering each sheet of the application should be placed at the top rather than at the bottom of each sheet.

962. *The proposal of the Delegation of Switzerland was put to the vote and adopted without counting the votes.*

963. Mr. LIPS (Switzerland), referring to his Delegation's proposal contained in document PCT/DC/60 moved that Rule 11.8, which "recommended" the numbering of every fifth line of each sheet, should be changed so as to make the recommendation a rule.

964. Mr. DAHMOUCHE (Algeria) supported the proposal of the Delegation of Switzerland.

965. Mr. GAJAC (France) said that, although his Delegation had no strong opposition to the proposal of the Delegation of Switzerland, it was disturbed by the fact that the European Convention Relating to the Formalities Required for Patent Applications did not require any numbering of the lines.

966. *The proposal of the Delegation of Switzerland was rejected by 8 votes against to 6 in favor, with 18 abstentions.*

967. *Rules 11.7 to 11.15 were approved as appearing in the Alternative Draft. (Continued at 1834.)*

Rule 12: Language of the International Application

968. *Rule 12 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1028.)*

End of the Thirteenth Meeting

FOURTEENTH MEETING

Tuesday, June 2, 1970, morning

Rule 13: Unity of Invention

969. *Rule 13.1 was adopted as appearing in the Alternative Draft, without discussion.*

970. Mr. FERGUSSON (United Kingdom), referring to the proposal presented by his Delegation which appeared in document PCT/DC/26, proposed that, in the opening sentence of Rule 13.2 as appearing in the Alternative Draft, the brackets around the words "in particular" be removed.

971. Mr. LIPS (Switzerland) presented the proposal of his Delegation contained in document PCT/DC/60.

972. Mr. CASELLI (Italy) presented the proposal of his Delegation contained in document PCT/DC/74.

973. Mr. BOGSCH (Secretary General of the Conference) said that in the preparatory negotiations it had always been clearly understood that the substantive provision was contained in Rule 13.1 and that Rule 13.2 was merely in the nature of an interpretation of Rule 13.1. Rule 13.2 provided that certain things were expressly permitted under Rule 13.1. Additional possibilities also existed. That would be made quite clear if the words "in particular" were maintained. Should they be maintained, there

would probably be no need for the amendments proposed by the Delegations of Switzerland and Italy.

974. Mr. CLARK (United States of America) and Mr. VAN DAM (Netherlands) supported the proposal of the Delegation of the United Kingdom.

975.1 Mr. HAERTEL (Germany (Federal Republic)) wished to comment on the consequences of the removal of the brackets in question.

975.2 In such a case, the provisions in Rule 13.2 were merely minimum requirements. If the application complied with them, it could not be rejected in any of the Contracting States. However, any Contracting State could be more liberal than the provisions of Rule 13.2. If the words "in particular" were deleted, it would be doubtful whether countries *could* be more liberal.

976. The CHAIRMAN said that it was his understanding that the Rule was provided in Rule 13.1 and the minimum requirements in Rule 13.2, and that any nation might enlarge upon the minimum.

977. Mr. ASHER (Canada) wanted clarification of the word "use" appearing in item (i). Under Canadian law, "use" as such was not patentable unless it was expressed as a process or a composition or some apparatus.

978. The CHAIRMAN said that the matter was reserved for the national law of each country and the rule had merely to do with the possibility of submitting the claim without violating the rule of unity of invention.

979. Mr. VAN DAM (Netherlands) asked whether Rule 13.2(i) should not be subject to Rule 13.3 since although the former Rule spoke about "one claim" it followed from the latter Rule that the number of claims might be more than one.

980. The SECRETARY said that, whereas Rule 13.2 dealt with claims of different categories, Rule 13.3 dealt with claims of one and the same category. Both in the former and in the latter case there could be several claims, in the former case of different categories and in the latter case of one and the same category.

981. *The proposals of the Delegations of Switzerland (PCT/DC/60) and Italy (PCT/DC/74) were withdrawn.*

982. *Rule 13.2 was adopted as appearing in the Alternative Draft, subject to omitting the brackets and maintaining the words "in particular."*

983. *Rules 13.3 and 13.5 were adopted as appearing in the Alternative Draft, without discussion. (Continued at 1836.)*

Rule 14: The Transmittal Fee

984. *Rule 14 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1837.)*

Rule 15: The International Fee

985. *Rule 15.1 was adopted as appearing in the Alternative Draft, without discussion.*

986. Mr. VAN DAM (Netherlands) suggested that any fee that had to be paid in a given country should be expressed in the currency of that country. For example, the amount of the fees to be paid to the International Bureau should be expressed only in Swiss francs and not also in US dollars.

987. Mr. HASHIMOTO (Japan) asked what would happen if the exchange rate between Swiss francs and US dollars changed.

988. Mr. BOGSCH (Secretary General of the Conference) replied that originally the Draft had expressed the amounts of the fees only in US dollars since that currency was better known in the world than the value of the Swiss franc. If the exchange rate underwent changes and such changes were important, then the Rules would doubtless be amended to take account of the disparity.

989. Mr. HASHIMOTO (Japan) said that his Delegation did not wish to propose any amendment.

990. Mr. VAN DAM (Netherlands) formally proposed the deletion of the reference to US currency.

991. Mr. GAJAC (France) seconded the proposal of the Delegation of the Netherlands.

992. Mr. VILLALBA (Argentina) said that his Delegation opposed the proposal of the Delegation of the Netherlands. Indicating both currencies was more flexible and therefore preferable.

993. Mr. CLARK (United States of America) said that his Delegation would prefer the text of the Alternative Draft. It would allow US applicants to pay by checks issued against their dollar accounts.

994. Mr. SIMONS (Canada) said that his Delegation was of the same opinion as the Delegation of the United States of America.

995. *The proposal of the Delegation of the Netherlands was rejected by 10 votes against to 3 in favor, with 17 abstentions.*

996. *Rules 15.2 to 15.6 were adopted as appearing in the Alternative Draft. (Continued at 1838.)*

Rule 16: The Search Fee

997. Mr. ARMITAGE (United Kingdom) said that he would like to know whether the Rule was satisfactory to the International Patent Institute.

998. Mr. VAN WAASBERGEN (International Patent Institute) replied in the affirmative.

999. *Rules 16.1 and 16.2 were adopted as appearing in the Alternative Draft.*

1000. Mr. OTANI (Japan), referring to a proposal by his Delegation appearing in document PCT/DC/43, moved that Rule 16.3 concerning partial refund should either be deleted or should be made permissive rather than mandatory. The matter was one which should be left to the discretion and practical possibilities of each International Searching Authority.

1001. Mr. CLARK (United States of America) entirely shared the view of the Delegation of Japan.

1002. Mr. HAERTEL (Germany (Federal Republic)) said that since the Alternative Draft provided that the partial refund would take place as

regulated in the agreement under Article 16(3)(b) it seemed unnecessary to make any stipulation on the question in the Regulations. The agreement between the International Searching Authority and the International Bureau would take care of the matter. He also said that the question under consideration equally concerned Rule 14.1 on the international-type search. There, a similar provision provided – logically it would seem – for a refund when an international-type search was made on a national application and then an application with a similar content was later filed as an international application. In the Rule under consideration the situation was similar, the only difference being that the first application was an international application. Whether the Rule used the word “shall” or the word “may,” it left a fair amount of discretion to the International Searching Authority, which alone would be able to say to what extent it used the results of the first search in the course of the second search.

1003. Mr. LEWIN (Sweden) said that using an international-type search only made sense if there were strong hopes of a partial refund of the search fee when the same application was filed later as an international application.

1004. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that the principle of a refund in the situation under consideration should be maintained. It did not make much difference whether the provision was drafted in a mandatory or a permissive form since the real extent of the refund would be stipulated in the agreement between the International Bureau and the International Searching Authority.

1005. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation preferred the text as appearing in the Alternative Draft. Furthermore, he wondered whether there was not a loophole in the Regulations since similar provision would be needed also for the case where an applicant filed two practically identical international applications. He might wish to do so for purely formal reasons, one of which would be more satisfactory for one group of designated States and the other for another group of designated States.

1006. Mr. CLARK (United States of America) said that his Delegation would prefer to see the provision cast as permissive rather than mandatory. That would be consistent with Article 15(5), which left it to national legislation to admit or not to admit international-type searches on national applications.

1007. Mr. BRAUN (Belgium) said that his Delegation agreed with the declaration made by the Delegation of Spain.

1008. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation considered Rule 16.3 to be superfluous but would not vote against it. However, the word “shall” could hardly be changed to “may” since once a refund was stipulated in the agreement between the International Searching Authority and the International Bureau it was no longer a matter of discretion for the International Searching Authority to make a refund or not, but rather an obligation to make a refund to the extent stipulated in the agreement. Consequently, his

Delegation could not support the proposal of the Delegation of Japan.

1009. *Rule 16.3 was adopted as appearing in the Alternative Draft, by 19 votes in favor to 2 against, with 7 abstentions.*

1010. *The proposal of the Delegation of Japan to change the word "shall" appearing in Rule 16.3 to "may" was rejected by 18 votes against to 2 in favor, with 8 abstentions. (Continued at 1839.)*

Rule 17: The Priority Document

1011. Mr. VILLALBA (Argentina), referring to the proposal of his Delegation contained in document PCT/DC/71, moved that the 16 months time limit appearing in Rule 17.1(a) be reduced to 12 months. In that case, as in other cases, his Delegation proposed shorter terms than those appearing in the Draft. Consequently, the matter could be regarded as a question of general principle and could be discussed as such in connection either with the Rule under discussion or with any other appropriate Rule.

1012. The CHAIRMAN said that the Delegation of Argentina would be welcome to make a general declaration at that point if it so desired.

1013. Mr. VILLALBA (Argentina) said that all time limits in the Treaty and the Regulations which were longer than 12 months and therefore did not enable the designated Offices to start national processing until after the expiration of the priority year should be reduced to 12 months from the priority date. Particularly for countries in which most of the applications came from abroad, it was more important to be able to dispose of those applications at the same rate as that at which national applications were disposed of. It was more important to speed up the processing of international applications than to give additional time to applicants. With the cooperation of the applicant the international search could be completed within the priority year and national processing could consequently be started, with the international search report, immediately after the expiration of the priority year all that the applicant would have to do was file his international application as a first application, or immediately after having filed the national application whose priority the international application invoked.

1014.1 Mr. ONIGA (Brazil) said that in most branches of technology development was so rapid and inventions became so rapidly obsolete that it was essential that the processing of patent applications should take the shortest possible time. Consequently, his Delegation supported the proposal made by the Delegation of Argentina to reduce all time limits which, under the Draft, would expire after the expiration of the priority year, so that they expired at the same time as the priority year.

1014.2 For the same reason it would also be desirable to reduce the term of patent protection as fixed today in the legislation of most countries at least for those sectors (e.g. electronics) which are in rapid evolution.

1015.1 Mr. BOGSCH (Secretary General of the Conference) said that it was one of the basic

assumptions of the PCT that an international application could be filed right up to the end of the priority year. If it had to be filed earlier, then it would have to be filed earlier than an application not using the PCT route, and thus the PCT route would cease to be attractive. A further basic assumption of the PCT was that it would be fully useful both to the applicant and to the designated Offices only if there was an international search report before national proceedings started.

1015.2 The said two factors had some practical consequences, particularly in that the international processing, including the preparation of the international search report, would normally take place after the priority year had expired. Consequently, the time limit in question would have to expire later than one year counted from the priority date.

1015.3 As far as Rule 17.1 was concerned, an additional reason for a time limit longer than the priority year was that Article 4 D(3) of the Paris Convention provided that a priority document could be filed within 15 months or later if the national law so permitted. The Draft provided for a time limit one month longer than the 15 months because of the practical necessity of communications to the International Bureau rather than to the national Office. However, there would probably be no opposition to reducing the time limit from 16 to 15 months.

1015.4 A further proposal by the Delegation of Argentina was to the effect that copies of the international application and of the international search report should be communicated to each designated Office within the priority year. For the reasons stated, that was not possible because it left no time for the preparation of an international search report and other international processing.

1015.5 There was yet another proposal by the Delegation of Argentina, which asked that the record copy should reach the International Bureau within the priority year. That too was not possible in practice because there had to be some time left between the filing of the international application, which could occur at the very end of the priority year, and the making and forwarding of copies to the International Bureau.

1015.6 The whole system was based on a *quid pro quo*: the national Offices must wait a little longer; in exchange they would receive an international search report which would facilitate their work.

1015.7 As for the observations of the Delegation of Brazil to the effect that the duration of patents was generally too long, it should be noted that that was not a question for the PCT. Neither the PCT nor the Paris Convention contained proposals on the duration of patent protection.

1016. Mr. FERGUSSON (United Kingdom) said that his Delegation fully agreed with the statement by the Secretary General of the Conference. However, it would prefer to maintain the time limit under consideration at 16 months and not to reduce it to 15 months. The 16 months time limit had been arrived at after carefully considering what could be realistically hoped for. In order to file a certified

priority document, the national Office where the earlier application had been filed had to prepare a copy. That required time. It might be that in many cases even the 16 months would be very difficult to comply with.

1017. Mr. VAN DAM (Netherlands) said that his Delegation agreed with the statement made by the Delegation of the United Kingdom.

1018. Mr. ASHER (Canada) also agreed with the statement by the Delegation of the United Kingdom.

1019. Mr. PRETNAR (Yugoslavia) said that, whereas it was true that the development of technology was faster than it used to be, it was equally true that the inventions were much more complex and the applications more complicated than they used to be. Consequently their processing required more time than a few decades ago. The time limits proposed in the Draft were not too long; if anything, in most cases they were on the short side.

1020. Mr. PETERSSON (Australia) said that private circles in his country were of the opinion that the time limits provided in the Draft were generally too short as it would be very difficult to respect them. Consequently, his Delegation would be opposed to any reduction of any of the time limits. As to the particular point of the discussion, the proposed 16 months time limit should under no circumstances be reduced.

1021. Mr. VILLALBA (Argentina) said that his Delegation was not convinced by the arguments of the Delegations which had spoken against its proposal. If having an international search report was advantageous to the applicant, he should be prepared to pay for that advantage by not using the priority year to its full extent and by filing his international application early in the priority year.

1022. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that in the Netherlands the time limit for filing the priority document was 18 months and even that was found in practice to be too short. Consequently, he hoped that the 16 months time limit under discussion would not be shortened.

1023. Mr. HAZELZET (Union of Industries of the European Community) said that he fully supported the statement of the previous speaker.

1024. Mr. BEESTON (Committee of National Institutes of Patent Agents (CNIPA)) shared the views of the two previous speakers. CNIPA had carefully examined all the provisions on time limits in the Drafts and found them to be a reasonable compromise.

1025. *The proposal of Argentina as appearing in document PCT/DC/71 was rejected by 19 votes against to 9 in favor, with 7 abstentions.*

1026. *Rule 17.1 was adopted as appearing in the Alternative Draft.*

1027. *Rule 17.2 was adopted as appearing in the Draft, without discussion. (Continued at 1840.)*

Rule 12: Language of the International Application (Continued from 968.)

1028. Mr. BOGSCH (Secretary General of the Conference) said that the Secretariat had just noticed that there was a regrettable error in the French version of the document containing the Alternative Draft. The last part (some six lines in the English text) of Rule 12.1 had been omitted. The part in question – which appeared only in the English version of the Alternative Draft – provided in practice that international applications could always be filed in English if the competent International Searching Authority was the International Patent Institute.

1029. Mr. DEGAVRE (Belgium) said that the provision in question was totally unacceptable for his Delegation because, if the national Office of Belgium was a receiving Office, it would have to apply the Belgian law concerning official languages and could not accept an international application filed in English.

1030. Mr. KÄMPF (Switzerland) said that his Delegation was in exactly the same position as that of Belgium.

1031. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) supported the view expressed by the Delegations of Belgium and Switzerland.

1032. Mr. ASCENSÃO (Portugal) agreed with the view of the Delegation of Belgium.

1033.1 Mr. BOGSCH (Secretary General of the Conference) said that the provision under consideration would not allow the filing of international applications in Spanish or Portuguese because the International Patent Institute was not yet able to handle those languages. Consequently, international applications filed in Spain or Portugal would have to be in languages other than Spanish and Portuguese, namely, in one of the languages which the International Patent Institute could handle.

1033.2 However, since there seemed to be no support for the provision in question, it might be best to drop it.

1033.3 Finally, he said that the Secretariat withdrew the provision under discussion.

1034. *It was decided that Rule 12 was to be considered adopted by the Main Committee as appearing in the French version of the Alternative Draft rather than in the English version. (Continued at 1835.)*

Rule 18: The Applicant

1035. *Rules 18.1 and 18.2 were adopted as appearing in the Draft, without discussion.*

1036.1 Mr. HASHIMOTO (Japan) moved the proposal of his Delegation as appearing in document PCT/DC/44. It was proposed that the following words be added at the end of Rule 18.3: “and all the applicants are nationals of a Paris Union country or countries or nationals having their domicile or establishment in a Paris Union country or countries.”

1036.2 According to the Draft, an international application in which several persons were named as applicants was receivable even if some of them were not residents of a country entitled to file international applications. That would mean that nationals of

countries which were not even members of the Paris Union could benefit from the PCT as long as they associated themselves with at least one person who was entitled to use the PCT. That result would be contrary to the spirit of the Paris Convention, which extended its benefits on a reciprocal basis.

1036.3 A further disadvantage would be that whereas such permissiveness did not exist under the national laws of certain countries it would exist under the PCT, so that by using the PCT applicants could circumvent national laws. Finally, since an international application might be the basis of a priority claim, countries which did not recognize original claims based on applications where some of the applicants were nationals or residents of countries outside the Paris Union would now benefit from such priority.

1037. Mr. SINGER (Germany (Federal Republic)) supported the proposal of the Delegation of Japan.

1038. Mr. BOGSCH (Secretary General of the Conference) said that BIRPI, as guardian of the Paris Convention, wanted to go on record as saying that although it had no objection to adopting the Japanese proposal it did not necessarily accept the interpretation which the Delegation of Japan placed on the Paris Convention.

1039. Mr. GYRDYMOV (Soviet Union) said that his Delegation supported the Draft on the question under discussion. In any case, the proposal of the Delegation of Japan would not be very effective in practice since the international application could always be assigned to a person who had no right to file an international application.

1040. Mr. CLARK (United States of America) supported the proposal of the Delegation of Japan.

1041. Mr. PRETNAR (Yugoslavia) also supported the proposal of the Delegation of Japan.

1042.1 Mr. ARMITAGE (United Kingdom) said that his Delegation did not have very strong feelings about the matter at issue. The United Kingdom law allowed the filing of applications invoking priority based on the Paris Convention even if one or more of several applicants were not residents or nationals of a Paris Union country as long as at least one of the applicants was a resident or national of a Paris Union country.

1042.2 If any restriction was desired, logically it should consist in providing that all applicants must be qualified to file international applications. He did not see any logical reason to provide – as the proposal of the Delegation of Japan would do – that as long as one of the applicants was qualified to file an international application the others must be residents or nationals of a Paris Union country.

1042.3 Article 4 of the Paris Convention did not give the priority right on the basis of the nationality or residence of the applicant but on the basis of the place where the earlier application was filed. As long as that application was filed in a Paris Union country, the priority right existed.

1043. Mr. GABAY (Israel) said that the text appearing in the Draft was preferable and that on balance it would seem to be more equitable not to exclude a person entitled to file an international

application from filing it because he had associated himself with a person who was not entitled to file an international application than the other way round.

1044. Mr. HAERTEL (Germany (Federal Republic)) asked whether in the view of the Secretary General of the Conference an international application jointly filed by a person qualified to file international applications and a person not so qualified could or could not be the basis of a Paris Union priority.

1045. Mr. BOGSCH (Secretary General of the Conference) said that in his view the answer was probably in the affirmative. In any case the problem was not a new one which would be created by the PCT because it already existed under a Paris Convention. There, the question was whether a later national application invoking the priority of an earlier national application could do so validly if one of the co-applicants in the earlier application was a person who was neither a resident nor a national of a Paris Union country.

1046. Mr. PETERSSON (Australia) said that his Delegation supported the text of the Draft as he believed that it was not in conflict with the Paris Union.

1047. Mr. TASNÁDI (Hungary) said that his Delegation supported the text as appearing in the Draft.

1048. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that since the balance should be tipped in favor of the co-applicant who was qualified to file an international application, the text appearing in the Draft should be adopted.

1049. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation was ready to accept the text as appearing in the Draft provided that it was clearly understood that it did not prejudice the question concerning the validity of a priority claim based or attempted to be based on an international application where not all the co-applicants were nationals or residents of Paris Union countries.

1050. Mr. BOGSCH (Secretary General of the Conference) said that the understanding proposed by the Delegation of Germany (Federal Republic) amounted in a sense to an interpretation of the Paris Convention. He wondered whether the Conference was the appropriate forum to reach an understanding on the meaning of any provision of the Paris Convention.

1051. Mr. ARMITAGE (United Kingdom) said that in his view the declaration of the Delegation of Germany (Federal Republic) did not amount to an interpretation of the Paris Convention. It would leave the possibility of different interpretations of the Paris Convention open. The speaker was of the opinion that the main thrust of the proposal of the Delegation of Japan was not in the direction of the right of priority but in the direction of whether an international application should be able to have the effect of a national application – as it would under Article 11(3) – if not all the applicants were nationals or residents of Paris Union countries.

1052.1 Mr. LEWIN (Sweden) agreed with the Delegation of the United Kingdom that there were two questions involved. One was the question who was entitled to file an international application, and in that respect his Delegation was of the opinion that if at least one of the applicants was entitled to file an international application he should not lose his right only because he had associated himself with persons who had no such right.

1052.2 As far as the question of the priority right was concerned, the Scandinavian countries were in the same position as the United Kingdom: they decided the matter on the basis of the country in which the earlier application was filed and not on the basis of the nationality or residence of the applicants.

1052.3 Professor Bodenhausen, in his book entitled *Guide to the Application of the Paris Convention for the Protection of Industrial Property (as revised at Stockholm in 1967)*, had expressed the opinion that the priority right could be denied if one of the applicants was not a national or resident of a Paris Union country. However, the same book also recalled that the Chairman of the Diplomatic Conference adopting the relevant provision of the Paris Convention had expressed the contrary view in respect of a trade name belonging jointly to a national of a country of the Union and a national of a country outside the Union. Professor Bodenhausen also stated in his book that the opinion of the Chairman remained an isolated opinion. In conclusion, the Delegation of Sweden favored the Draft as far as the entitlement for filing was concerned. The right of priority was a different question, which should be regulated in another provision. (Continued at 1053.)

End of the Fourteenth Meeting

FIFTEENTH MEETING

Tuesday, June 2, 1970, afternoon

Rule 18: The Applicant (Continued from 1052.)

1053. Mr. BOGSCH (Secretary General of the Conference) said that after further reflection he wished to state that in his view, since Article 11(4) provided that an international application should be equivalent to a regular national filing "within the meaning of the Paris Convention," whatever ambiguity existed in the Paris Convention should simply be transferred to the PCT. The PCT did not have to resolve the ambiguity.

1054. *The proposal of the Delegation of Japan was rejected by 12 votes against to 4 in favor, with 13 abstentions.*

1055. *Rule 18.3 was adopted as appearing in the Draft.*

1056. *The proposal of the Delegation of Japan, contained in document PCT/DC/44, concerning Rule 18.4(a) was withdrawn.*

1057. *Rules 18.4 and 18.5 were adopted as appearing in the Draft.* (Continued at 1841.)

Rule 19: Competent Receiving Office

1058. Mr. ARMITAGE (United Kingdom) said that his Delegation interpreted Rule 19.1(a), which, on the face of it, would seem to leave the choice to the applicant to file his international application either in the country of his nationality or the country of his residence (assuming that the two countries were different), as not limiting the right of any Contracting State to apply, to the fullest extent, its provisions on national security. For example, the United Kingdom law required that every resident of the United Kingdom wishing to file abroad should conform to the security requirements of the United Kingdom law, irrespective of the applicant's nationality.

1059. Mr. GAJAC (France) said that his Delegation, too, interpreted the Rule under discussion, and Article 27(7), as did the Delegation of the United Kingdom.

1060. Mr. BOGSCH (Secretary General of the Conference) said that he was of the opinion that the interpretation given by the Delegation of the United Kingdom was correct and followed from Article 27(7) of the Draft.

1061. *Rule 19 was adopted as appearing in the Alternative Draft.* (Continued at 1842.)

Rule 20: Receipt of the International Application

1062. *Rule 20 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1843.)

Rule 21: Preparation of Copies

1063. *Rule 21 was adopted as appearing in the Draft, without discussion.* (Continued at 1844.)

Rule 22: Transmittal of the Record Copy

1064. Mr. VILLALBA (Argentina) withdrew the proposal of his Delegation contained in document PCT/DC/71.

1065. Mr. VAN DAM (Netherlands) requested a clarification of the legal significance of the last sentence of Rule 22.1(a) reading as follows: "If the transmittal is effected by mail, the receiving Office shall mail the record copy not later than 5 days prior to the expiration of the 13th month from the priority date." Did the provision mean that, if the record copy was mailed within the said time limit, arrival in the International Bureau after the prescribed time limit would be excused?

1066. Mr. BOGSCH (Secretary General of the Conference) replied that late arrival would not be excused and the provision was merely of an exhortatory nature.

1067. Mr. CLARK (United States of America), referring to the proposal of his Delegation contained in document PCT/DC/67, moved the following amendments in Rule 22.2(e): at the end of the first sentence delete the words "and pay a special fee to that Bureau" appearing in the Alternative Draft; delete the last two sentences of Rule 22.2(e). The

mistake with which those provisions dealt was not a mistake on the part of the applicant. Therefore, there seemed to be no justification for obliging him to pay a special fee if the mistake was made.

1068. Mr. OTANI (Japan) seconded the proposal of the Delegation of the United States of America.

1069. Mr. SINGER (Germany (Federal Republic)) said that the provisions opposed by the Delegation of the United States of America should be maintained. There seemed to be no other way than that foreseen by the Alternative Draft to prevent abusing the additional month's delay intended to be used only in special circumstances.

1070. Mr. VAN DAM (Netherlands) shared the views expressed by the previous speaker.

1071. Mr. CLARK (United States of America) said that the provisions in the Draft were too harsh towards the applicant. Any mistake would be a mistake by the receiving Office, not by the applicant. The speaker asked that the non-governmental organizations be heard on the subject.

1072. Mr. ARMITAGE (United Kingdom) said that his Delegation was not directly interested in the matter since the United Kingdom would not allow the applicant to transmit the record copy to the International Bureau but would see to its transmittal direct by its national Office. Allowing the applicant to effect the transmittal of the record copy would cause additional work for the receiving Office which was completely unnecessary.

1073. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) said that his Association could not see how the applicant could misuse the opportunity which, under the Rule, could be given to him to transmit the record copy himself. Any delay would be caused by the receiving Office and the applicant should not have to pay any additional fee if such a delay occurred.

1074. Mr. ADAMS (Pacific Industrial Property Association (PIPA)) said that his Association shared the views expressed by the Delegation of the United States of America.

1075. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that his Association had no strong feelings about the matter although it found that it was not clear why an applicant should be made responsible for a mistake which someone else had made.

1076. Mr. BEESTON (Committee of National Institutes of Patent Agents (CNIPA)) said that he found the argument developed by the Delegation of the United States of America to be persuasive.

1077. Mr. HAZELZET (Union of Industries of the European Community) shared the views expressed by the representatives of the other non-governmental organizations.

1078. Mr. SINGER (Germany (Federal Republic)) said that, after having heard the previous speakers, his Delegation no longer objected to the adoption of the proposal of the Delegation of the United States of America.

1079. Mr. VAN DAM (Netherlands) said that his Delegation, too, withdrew its opposition.

1080. *The proposal of the Delegation of the United States of America was adopted as contained in document PCT/DC/67.*

1081. *Subject to the amendment in Rule 22.2(e) referred to in the preceding paragraph, Rule 22 was adopted as appearing in the Alternative Draft. (Continued at 1845.)*

Rule 23: Transmittal of the Search Copy

1082. *Rule 23 was adopted as appearing in the Draft, without discussion. (Continued at 1847.)*

Rule 24: Receipt of the Record Copy by the International Bureau

1083. *Rule 24 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1848.)*

Rule 25: Receipt of the Search Copy by the International Searching Authority

1084. *Rule 25 was adopted as appearing in the Draft, without discussion. (Continued at 1849.)*

Rule 26: Checking and Correcting Certain Elements of the International Application

1085. *Rule 26 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1850.)*

Rule 27: Lack of Payment of Fees

1086. *Rule 27 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1851.)*

Rule 28: Defects Noted by the International Bureau or the International Searching Authority

1087. *Rule 28 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1852.)*

Rule 29: International Applications or Designations Considered Withdrawn Under Article 14(1), (3) or (4)

1088. *Rule 29 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1853.)*

Rule 30: Time Limit Under Article 14(4)

1089. *Rule 30 was adopted as appearing in the Draft, without discussion. (Continued at 1854.)*

Rule 31: Copies Required Under Article 13

1090. Mr. BOGSCH (Secretary General of the Conference) said that some consequential changes would have to be incorporated in the Rule under discussion, as well as in Rule 24 and possibly others,

in view of the decisions taken by Main Committee I on the Articles to which those Rules related.

1091. The CHAIRMAN said that all decisions on the Rules should be understood as requiring the Drafting Committee to make such consequential changes in them as were necessary in view of the changes adopted in the Treaty, and allowing the Drafting Committee to propose such drafting changes as it saw fit.

1092. *Rule 31 was adopted as appearing in the Alternative Draft.* (Continued at 1855.)

Rule 32: Withdrawal of the International Application or of Designations

1093. Mr. FERGUSSON (United Kingdom) enquired as to the reasons why the Rule prohibited the withdrawal of the international application after the international processing had ended.

1094. Mr. BOGSCH (Secretary General of the Conference) replied that, once the international phase was ended, withdrawal was still possible but had to be notified separately to each designated Office because, once the national phase started, the International Bureau had no further role to play.

1095. *Rule 32 was adopted as appearing in the Alternative Draft.* (Continued at 1856.)

Rule 33: Relevant Prior Art for the International Search

1096. Mr. MCKIE (United States of America) said that discussion should start with Rule 33.3(a) because, if that Rule were adopted as appearing in the Alternative Draft, it would prejudice decisions on some parts of Rule 33.1.

1097. *Rule 33.3(a) was adopted as appearing in the Alternative Draft.*

1098. Mr. MCKIE (United States of America) said that, after the decision on Rule 33.3(a), the amendment proposed in the Alternative Draft for Rule 33.1 (a) became superfluous and, consequently, Rule 33.1 (a) should be adopted as appearing in the Draft rather than in the Alternative Draft.

1099. *Rules 33.1(a) and 33.1(b) were adopted as appearing in the Draft.*

1100. Mr. HASHIMOTO (Japan) said that Rule 33.1(c), first sentence, as appearing in the Alternative Draft, provided for the exclusion of utility models. He saw no reason for such exclusion and therefore proposed that the sentence in question should be adopted as appearing in the Draft, which did not provide for such exclusion.

1101.1 The SECRETARY said that the reason for the exclusion of utility models in the Alternative Draft was based on the consideration that few countries needed utility models. Consequently, their consideration in the very particular situation with which Rule 33.1(c) dealt would be of very limited practical usefulness and would complicate the task of the International Searching Authorities.

1101.2 As far as the last sentence of Rule 33.1(c) was concerned – which provided in the Alternative Draft that, for the purposes of paragraph (c), applications which had only been laid open for public inspection were not considered published applications – it was proposed to harmonize it with Rule 34 because it was not practical to expect International Searching Authorities to have access to texts which were only laid open for public inspection without being published in copies that were generally available.

1102.1 Mr. ARMITAGE (United Kingdom) said that, as far as the question of utility models as mentioned in the first sentence was concerned, his Delegation had no strong views since that was a matter for those countries which had utility models, such as Germany (Federal Republic) and Japan.

1102.2 Nor had his Delegation any strong views on the last sentence of Rule 33.1(c). However, it should be taken into account that, where the International Searching Authority was a national Office and applications were laid open for public inspection in that Office, referring to them in the international search report might be quite useful because they would contain some very recent information.

1103. Mr. ASCENSÃO (Portugal) said that his Delegation supported the proposal of the Delegation of Japan concerning the first sentence.

1104. The CHAIRMAN said that there seemed to be no opposition to Rule 33.1(c) as appearing in the Draft.

1105. The SECRETARY said that the ultimate wording of the first sentence would have to depend on the definition to be adopted later in Article 2.

1106. *Rule 33.1(c) was adopted as appearing in the Draft.*

1107. *Rule 33.2 as appearing in the Draft, and Rule 33.3(a) and (b) as appearing in the Alternative Draft, were adopted without discussion.*

1108.1 Mr. HADDRICK (Australia), referring to the proposal of his Delegation contained in document PCT/DC/75, suggested that the following paragraph be added to Rule 33.3: “(c) Where, for any reason, a search is not based strictly on the wording of the claims, the international search report shall contain a statement defining precisely the scope of the invention searched.”

1108.2 It was most desirable that all designated Offices receiving international search reports know exactly what had been searched.

1109. Mr. LORENZ (Austria) supported the proposal of the Delegation of Australia.

1110. Mr. GABAY (Israel) also supported the proposal of the Delegation of Australia.

1111. The SECRETARY said that it would be interesting to know whether the prospective International Searching Authorities were of the opinion that the new task which the proposal of the Delegation of Australia would impose on them could be carried out without considerably increasing the fees and without considerably prolonging the time required for the preparation of the search report. Furthermore,

he wanted to call attention to the fact that the proposal of the Delegation of Australia would require that the search report contain some text matter which would require interpretative functions and translations, both of which were regarded as undesirable.

1112. Mr. FERGUSSON (United Kingdom) said that, although the proposal of the Delegation of Australia was an interesting one, for practical purposes, as already explained by the Secretary, his Delegation would oppose it. Searching an application and drafting a statement defining what the searcher understood the claim involved to be were two very different operations. The latter operations also involved some dangers for the applicant, who alone, through the claims, should express the scope of the protection sought.

1113. Mr. MCKIE (United States of America) agreed with the observations of the Delegation of the United Kingdom. His Delegation feared that the proposal would oblige the International Searching Authority to confine the search to exactly what was claimed. This would be in contradiction to the principle adopted, namely, that the search should also try to anticipate amendments in the claims.

1114. Mr. VAN WAASBERGEN (International Patent Institute) said that he fully agreed with the Delegation of the United Kingdom. The proposal of the Delegation of Australia would, in practice, require the searcher to draw up claims. Such an operation would be extremely costly.

1115. Mr. OTANI (Japan) shared the views expressed by the Delegation of the United Kingdom.

1116. Mr. SINGER (Germany (Federal Republic)) shared the views of the Delegation of the United Kingdom and those other Delegations which had expressed the same views.

1117. Mr. GYRDYMOV (Soviet Union) said that his Delegation, too, shared the views of the Delegation of the United Kingdom.

1118. Mr. HADDRICK (Australia) said the discussion had shown that, in the opinion of all speakers, the search should be limited to the exact scope of the claims. That was exactly what his Delegation wished.

1119. Mr. VILLALBA (Argentina) said that he shared the views of the Delegation of Australia and supported the proposal of that Delegation.

1120. Mr. GABAY (Israel) said that, in view of the considerable opposition expressed to the proposal of the Delegation of Australia, perhaps the problem could be solved by casting the proposal not in the language of an obligation but merely as a faculty.

1121. Mr. LORENZ (Austria) said that perhaps the difficulties could be avoided if the word "precisely" were to be stricken from the proposal of the Delegation of Australia, and that the International Searching Authorities should be obliged to indicate, in connection with each cited document, which parts of that document were of relevance.

1122. Mr. HADDRICK (Australia) said that one of the important elements of the proposal of his

Delegation was that it would oblige the International Searching Authorities to make it clear that, if their search went beyond the scope of the claims, it would do just that. He understood the amendments proposed by the Delegations of Israel and Austria to be of a drafting nature and, if that were so, he could accept them.

1123. Mr. FERGUSSON (United Kingdom) said that the purpose of the search was to discover relevant prior art in relation to a particular invention. Elements concerning the scope of the invention might be found also in parts of the application other than the claims.

1124.1 Mr. LEWIN (Sweden) said that his Delegation shared the views of the Delegation of the United Kingdom. The proposal of the Delegation of Australia would require the International Searching Authority to define what it considered the invention to be. In order to avoid such a task, it would probably simply rely on the claims. By doing that, it would unduly restrict the scope of the search since – as has been stated in other parts of the Regulations – the search had to take into account the description and the drawings and had to anticipate possible changes in the claims.

1124.2 His Delegation agreed with the wish to make the international search report more meaningful and, in that respect, would make a proposal, far more modest in its scope than the proposal of the Delegation of Australia, in connection with Rule 43.

1125. Mr. HADDRICK (Australia) said that it was precisely because Rule 33.3(b) invited the searcher to take into account the anticipated amendments of the claims that the proposal of his Delegation was necessary. If the searcher followed the said invitation, he should duly state that he had done so and to what extent.

1126. Mr. GABAY (Israel) said that his compromise proposal – making the provision permissive rather than mandatory – was useful in the very situation in which the searcher accepted the invitation contained in Rule 33.3(b) and could, without major difficulty, indicate in the international search report to what extent he had done so.

1127. Mr. FERGUSSON (United Kingdom) said that, in view of the fact that any changes in Rule 43 might have a bearing on the issue, discussion on the proposal of the Delegation of Australia should be deferred.

1128. *It was decided to defer discussion on the proposal of the Delegation of Australia contained in document PCT/DC/75. (Continued at 1204.)*

Rule 34: Minimum Documentation

1129. Mr. HAERTEL (Germany (Federal Republic)) suggested that discussion on Rule 34.1(a) be deferred until Article 2, concerning definitions, had been adopted.

1130. *Discussion on Rule 34.1(a) was deferred. (See 1624.)*

1131. *Rules 34.1(b), 34.1(c) and 34.1(d) were adopted as appearing in the Alternative Draft, without discussion.*

1132. Mr. GYRDYMOV (Soviet Union) said that Rule 34.1(e) would mean that patent documents in the Russian language for which no English abstracts existed would be excluded from the minimum documentation. Such exclusions would be extremely dangerous for applicants, particularly if they designated the Soviet Union, because they could find their applications rejected on the basis of Soviet documents for which no English abstracts existed.

1133. Mr. GIERCZAK (Poland) shared the views expressed by the Delegation of the Soviet Union.

1134. Mr. BOGSCH (Secretary General of the Conference) said that the Committee for Technical Cooperation would do its utmost to ensure that a satisfactory solution be found to a problem which was, to a large extent, transitional and should be resolved when mechanical searching methods had been perfected.

1135. Mr. BENÁRD (Hungary) shared the views expressed by the Delegation of the Soviet Union.

1136. Mr. ARMITAGE (United Kingdom) said that, in principle, everybody agreed that searches would be incomplete without the inclusion in the minimum documentation of all the Japanese and Russian language documentation. However, the matter was of questionable practicality. The integration of the said documents in the existing documentation of the prospective International Searching Authorities would be a tremendous task and, even if it were carried out, would serve little useful purpose because most searchers did not understand Japanese and Russian and there was little hope that they would learn those languages. Consequently, the only practical solution seemed to be to cover with English abstracts the greatest possible number of Japanese and Russian patent documents.

1137. Mr. SAVIGNON (France) said that he agreed with the principle of the proposal underlying the observations of the Delegation of the Soviet Union. Perhaps the desire of that Delegation and the Delegation of Japan could be more easily satisfied if there were only one International Searching Authority. However, for practical reasons, at the present time his Delegation had to support Rule 34.1(e) as appearing in the Alternative Draft.

1138. Mr. VAN WAASBERGEN (International Patent Institute) said that the Institute already considered all the Russian language documents for which there was an English abstract available. The only practical solution was the one provided for in Rule 34.1(e) of the Alternative Draft.

1139. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) said that the problem concerned not only documents in Russian and Japanese, but also documents in many other languages.

1140. Mr. ARTEMIEV (Soviet Union) suggested that the discussion be postponed until most of the

remaining Draft Regulations had been considered by the Main Committee.

1141. *Discussion on Rule 34.1(e) was deferred. (See 1625.)*

1142. *Rule 34.1(f) was adopted as appearing in the Alternative Draft. (Continued at 1624.)*

Rule 35: The Competent International Searching Authority

1143. *Rule 35 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1859.)*

Rule 36: Minimum Requirements for International Searching Authorities

1144.1 Mr. LORENZ (Austria) moved the proposal of his Delegation, contained in document PCT/DC/53, suggesting that the minimum number of full-time employees referred to in item (i) be changed from 150 to 100.

1144.2 The Patent Office of Austria fulfilled all the conditions for becoming an International Searching Authority except as far as the number of examiners was concerned. It had just slightly over 100 examiners. In order to enable his Office to become an International Searching Authority, the proposal would require adoption.

1145. Mr. VILLALBA (Argentina) moved the proposal of his Delegation contained in document PCT/DC/71. According to that proposal, item (i) would not specify a minimum number of examiners, but would simply state that the International Searching Authority would need to have "an adequate number" of examiners. The purpose of the proposal was that it should not close the door to countries, like his own, wishing to become International Searching Authorities. The number of examiners was irrelevant as long as the Authority could effect adequate searches. Searches might be carried out – and in Argentina they were carried out – not only by fulltime employees but also by persons who were not employees of the national Office but who were specialists in the technological field working on a contractual basis. Furthermore, with the automation of searches, the number of examiners required might be far less than the number in question.

1146. Mr. SIMONS (Canada) supported the proposal of the Delegation of Austria.

1147. Mr. ALMEIDA (Brazil) supported the proposal of the Delegation of Argentina.

1148. Mr. SAVIGNON (France) supported the proposal of the Delegation of Austria.

1149. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) supported the proposal of the Delegation of Argentina.

1150. Mr. SINGER (Germany (Federal Republic)) said that his Delegation could agree with the proposal of the Delegation of Austria. The more so as it would make the requirement as to the number of examiners the same as that contained in Rule 63 in connection with International Preliminary Examining Authorities.

He could see no reason for any differences, in that respect, between Rules 36 and 63.

1151. Mr. SHER (Israel) said that his Delegation could go along with the proposal of the Delegation of Argentina.

1152. Mr. PRETNAR (Yugoslavia) supported the proposal of the Delegation of Austria for the reasons mentioned by the Delegation of Germany (Federal Republic).

1153. Mr. HASHIMOTO (Japan) also supported the proposal of the Delegation of Austria.

1154. Mr. VILLALBA (Argentina) said that a more flexible criterion was important for his Delegation because it wished to make it easier for developing countries of a certain region to become regional Searching Authorities, if they so desired. South America was particularly in need of such an Authority.

1155. Mr. CLARK (United States of America) said that, although his Delegation was sympathetic to the principle underlying the proposal of the Delegation of Argentina, for practical reasons it would support the proposal of the Delegation of Austria. Like the Delegation of Germany (Federal Republic), he could see no reason for any differences between Rules 36 and 63.

1156. Mr. MESSEROTTI-BENVENUTI (Italy) said that perhaps the criterion of the number of examiners was not a valid one, since much depended on the number of national applications which such examiners would have to handle. To refer to the number of international applications would seem to be more reasonable. For example, it could be stipulated that each International Searching Authority must be able to search at least 1,000 international applications per year.

1157. Mr. DAHMOUCHE (Algeria) said that any Rule containing a fixed minimum number might be too rigid and, perhaps, unnecessary because the final decision would in any case be taken by the Assembly. Consequently, his Delegation was sympathetic to the proposal of the Delegation of Argentina. For practical reasons, however, it would support the proposal of the Delegation of Austria.

1158. Mr. ARTEMIEV (Soviet Union) said that his Delegation was not opposed to the proposal of the Delegation of Austria.

1159. Mr. ARMITAGE (United Kingdom) said that his Delegation would oppose the proposal of the Delegation of Austria if the reduction of the minimum number of examiners from 150 to 100 would mean a significant proliferation of the number of International Searching Authorities. But since changing the Rule would only add one or two more International Searching Authorities, his Delegation did not oppose the proposal of the Delegation of Austria.

1160. Mr. ASCENSÃO (Portugal) said that any minimum number was arbitrary and therefore his Delegation preferred the proposal of the Delegation of Argentina.

1161. Mr. HADDRICK (Australia) supported the declarations made by the Delegation of the United Kingdom.

1162. Mr. TASNÁDI (Hungary) said that, since he knew very well the high quality of work performed in the Austrian Patent Office, his Delegation could accept the proposal of the Delegation of Austria.

1163. Mr. LEWIN (Sweden) also supported the proposal of the Delegation of Austria.

1164. Mr. GIERCZAK (Poland) also supported the proposal of the Delegation of Austria.

1165. Mr. NARAGHI (Iran) also supported the proposal of the Delegation of Austria.

1166. Mr. LORENZ (Austria) said that his Delegation was opposed to the proposal of the Delegation of Argentina since it contained an element of uncertainty. It did not, for example, guarantee that 100 examiners would be sufficient.

1167. Mr. VILLALBA (Argentina) withdrew the proposal of his Delegation in favor of the proposal of the Delegation of Austria.

1168. *The proposal of the Delegation of Austria was adopted as appearing in document PCT/DC/53.*

1169. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation's preference for the proposal of the Delegation of Austria was merely dictated by the desire to provide for an objective criterion. His Delegation's position should not be interpreted as opposing the creation of an International Searching Authority, or International Searching Authorities, in South America, be they regional Offices or national Offices. On the contrary, the Delegation of Germany (Federal Republic) would welcome the creation of one or more International Searching Authorities in Latin America.

1170. Mr. GABAY (Israel) said that his Delegation's support for the proposal of Argentina should not be interpreted as opposing the proposal of the Delegation of Austria. Had the proposal of Argentina been put to a vote and defeated, and had then the proposal of the Delegation of Austria been put to a vote, his Delegation would have voted for it. His country, too, recognized the importance for Latin America to have one or more International Searching Authorities of its own.

1171. *Rule 36 was adopted as appearing in the Draft, subject, in item (i), to changing the number 150 to 100. (Continued at 1860.)*

End of the Fifteenth Meeting

SIXTEENTH MEETING

Wednesday, June 3, 1970, morning

Rule 37: Missing or Defective Title

1172. *Rule 37 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1861.)*

Rule 38: Missing or Defective Abstract (In the signed text, Rule 38: Missing Abstract)

1173. *Rule 38 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1862.)

Rule 39: Subject Matter Under Article 17(2)(a)(i)

1174. Mr. HASHIMOTO (Japan) said that in item (iv) of the Alternative Draft, which reads "methods for treatment of the human or animal body by surgery or [physical] therapy, as well as diagnostic methods," the word "physical" should be deleted. The methods of treatment of the human body by surgery or therapy were not patentable under the patent law of Japan. Consequently, the Japanese Office, as a prospective International Searching Authority, would have difficulty in searching prior art in that field.

1175. Mr. VAN DAM (Netherlands) expressed agreement with the point of view of the Delegation of Japan.

1176. Mr. SINGER (Germany (Federal Republic)) said that his Delegation would prefer retaining the word "physical" since it would restrict the scope of the provision and would, for example, oblige International Searching Authorities to search applications concerning medicaments for the purposes of healing.

1177. Mr. ARMITAGE (United Kingdom) said that the question was one concerning what kind of inventions International Searching Authorities were equipped to search. His delegation could support the deletion of "physical."

1178. Mr. VAN WAASBERGEN (International Patent Institute) said that he did not think that any International Searching Authority would have difficulty in searching drugs, since drugs consisted of chemical components or matter to be found in nature. However, "therapy" was different, and there search might not be possible for some of the prospective International Searching Authorities.

1179. *It was decided to delete the word "physical" in item (iv) of the Alternative Draft.*

1180. Mr. ASHER (Canada) asked what was meant in item (v) of the Alternative Draft by "mere presentations of information."

1181. Mr. BOGSCH (Secretary General of the Conference) replied that the wording of item (v) had been adopted by the March 1970 Committee of Experts and it was not clear to him what it meant.

1182. Mr. CLARK (United States of America) supported the text appearing in the Alternative Draft cited above.

1183. Mr. FERGUSSON (United Kingdom) said that the intent of the provision was to remove from what an International Searching Authority had to search just "a presentation of information," say in tabular form, particular ways of writing, and that sort of thing.

1184. *It was decided to delete item (vii).*

1185. *Rule 39 was adopted as appearing in the Alternative Draft, on the understanding that the word*

"physical" in item (iv) and the entire item (vii) would be deleted. (Continued at 1863.)

Rule 40: Lack of Unity of Invention (International Search)

1186. Mr. BOGSCH (Secretary General of the Conference) said that, in view of the changes decided by the Main Committee in Article 17, some consequential changes in the Rule under discussion would have to be made by the Drafting Committee.

1187. *Rule 40 was adopted as appearing in the Alternative Draft, with the understanding that the Drafting Committee would harmonize it with Article 17.* (Continued at 1864.)

Rule 41: The International-Type Search

1188. *Rule 41 was adopted as appearing in the Draft, on the understanding that it would be harmonized by the Drafting Committee with the changes made in Article 15.* (Continued at 1865.)

Rule 42: Time Limit for International Search

1189. *Discussion on Rule 42 was deferred.* (Continued at 1248.)

Rule 43: The International Search Report

1190. *Rules 43.1, 43.2 and 43.3 were adopted as appearing in the Alternative Draft, without discussion.*

1191. Mr. VILLALBA (Argentina) recalled his Delegation's proposal concerning Article 18, contained in document PCT/DC/33, discussion on which was deferred (See 503) until the Rule under consideration had been reached. The purpose of that proposal was to enable designated Offices to require that the international search report be translated into their languages by the applicant, and that the applicant be responsible for any mistakes that the translation might contain. Such translations were indispensable for the smooth working of the designated Offices.

1192. Mr. FERGUSSON (United Kingdom) said that much of the relevance of the proposal of the Delegation of Argentina depended on the question whether the international search report would contain any substantial text matter. Consequently, it would seem to be preferable to postpone discussion until the contents of the international search report had been decided upon.

1193. Mr. VILLALBA (Argentina) said that the Treaty already provided for the translation of the international search report in certain circumstances. Thus, it was clear that a translation was needed. His Delegation's proposal was that the rule concerning translation be generalized, that is, that each designated Office should be allowed to require translation of the international search report into its national language and not have to content itself with an international search report in the form of an English translation when the original of that report was in a language other than English.

1194. Mr. ARMITAGE (United Kingdom) said that his Delegation was naturally quite willing to have a

full discussion on the proposal of the Delegation of Argentina. Only it seemed to be more logical to have that discussion once it became quite clear how much text there would be in each international search report, because the need for translation would be dictated by that fact.

1195. *Rule 43.4 was adopted as appearing in the Alternative Draft but would be further discussed if necessary along with the further discussion of the proposal of the Delegation of Argentina in document PCT/DC/33 which was deferred until after the disposal of the remaining parts of Rule 43. (See 1239.)*

1196. Mr. ALMEIDA (Brazil), referring to his Delegations' proposal contained in documents PCT/DC/34/Rev. and Rev. Corr., said that Rule 43.5 should be completed by a provision to the effect that, whenever the international search report was to be transmitted to an applicant or designated Office of a developing country, it must also contain the relevant transcripts of the cited document. The said transcript would not necessarily be composed of the entire cited document but would always have to contain all those parts of the cited document which were of relevance in connection with the citation.

1197. Mr. ARMITAGE (United Kingdom) said that it would be quite difficult to apply the proposal of the Delegation of Brazil because there were various degrees of relevance and it would be uncertain what degree of relevance had to be present to allow the requiring of transmittal of transcripts. Consequently, it would be more practical to have the document cited transmitted in its entirety. The right to ask for complete copies was contained in Rule 44.3 as appearing in the Alternative Draft. As far as Rule 43.5 was concerned, his Delegation preferred to maintain the text as appearing in the Draft.

1198. Mr. VAN WAASBERGEN (International Patent Institute) said that he feared that transmitting all the cited documents in all cases would cause a lot of unnecessary work since, in many cases, such documents would not be needed by the designated Office. He also warned the meeting that making the transcripts would be an enormous task and would be very expensive.

1199. Mr. CLARK (United States of America) said that the proposals of the Delegation of Brazil for changes in Rules 43.5(a) and 43.5(d) seemed to be contradictory. He expressed the wish that the Delegation of Brazil clarify the relationship between the two proposals.

1200. Mr. ALMEIDA (Brazil) said that some drafting improvements might be necessary. However, what was important was that developing countries had much less facility of access to documents than developed countries and the former could hardly be expected to work on the international search report without, at the same time, obtaining the texts to which that report referred.

1201. Mr. FERGUSSON (United Kingdom) wanted a clarification on the question whether the proposal of the Delegation of Brazil meant transcripts, or copies,

in the original language of the document cited or translations thereof.

1202. Mr. ALMEIDA (Brazil) replied that, for the moment, the discussion was about the documents in their original language. The question of translation was another question, which would be dealt with separately and was not to be confused with the question of copies or transcripts.

1203.1 Mr. LEWIN (Sweden) said that he saw some merit in the proposal of the Delegation of Brazil since one of its aims was to indicate to the user of the international search report which parts of the cited documents were relevant. However, to solve that problem by transcribing into the international search report certain parts of the cited document was not easy, for practical reason. Such transcripts would necessarily take certain passages out of context, which could result in misinterpreting both the international search report and the cited document. He thought that the proposal of his Delegation contained in document PCT/DC/72 was more practical. It proposed that citations of particular relevance should be especially indicated.

1203.2 Since the Regulations did not provide for any limit on the number of documents that an international search report could cite, there might be cases in which they would cite very large numbers of documents. That would put the applicant and the designated Office in a difficult position because they would have to check a large number of documents and would lose a lot of time in finding those which were of particular relevance. His Delegation's proposal tended to avoid such superfluous work and directed the attention of the user of the international search report to the most relevant documents.

1203.3 The proposal had been considered by previous meetings and had been rejected by them on the grounds that it would introduce an element of judgment into the international search report, which, as everybody agreed, should not express any opinion on patentability. He did not share those fears since bringing out the relevance of certain documents could also be achieved by simply not citing documents of secondary relevance. Such a procedure, however, would endanger the completeness of the international search report. Consequently, a solution had to be found which assured the completeness of the international search report and at the same time avoided unnecessary work for the users of the international search report. The proposal of his Delegation achieved that result.

1204. Mr. PETERSSON (Australia) said that his Delegation strongly supported the proposal of the Delegation of Sweden as appearing in document PCT/DC/72 and that the proposal of his Delegation, contained in document PCT/DC/75, on which discussion was deferred (See 1128), was only a small extension of the former proposal and might be added to it.

1205.1 Mr. SINGER (Germany (Federal Republic)) said that his Delegation was opposed to the proposal of the Delegation of Sweden because it implied weighing the relative importance of the cited

documents. Such weighing would be contrary to the basic principle of an independent search, namely, that the search should take no position on the value of the invention. Furthermore, the proposal was also dangerous because it might incite applicants and third parties to neglect those cited documents whose relevance was not underlined in the international search report, and yet those search documents might also contain information detrimental to patentability.

1205.2 As far as the proposal of the Delegation of Brazil was concerned, his Delegation considered it impractical. Only in some cases would it be possible to transcribe into the international search report passages of cited documents. In most cases the totality of the cited documents would be of relevance. Transcribing long documents into the international search report would be most impractical.

1206. Mr. HASHIMOTO (Japan) agreed with the point of view expressed by the Delegation of Germany (Federal Republic).

1207. Mr. GABAY (Israel) said that, although in principle his Delegation supported the idea underlying the proposal of the Delegation of Brazil, particularly since it would facilitate the work in developing countries, it recognized the practical difficulties. Perhaps the best solution would be a combination of the proposals of the Delegations of Australia and Sweden.

1208. Mrs. SIMONSEN (Denmark) supported the proposal of the Delegation of Sweden.

1209. Mr. GALL (Austria) supported the proposals of the Delegations of Australia and Sweden.

1210.1 Mr. COMTE (Switzerland) said that his Delegation shared the views of the Delegation of Germany (Federal Republic). The international search report must be perfectly objective and must not contain any expression of opinion. The international search report should not be confused with the international preliminary examination report. On the contrary, they should be kept clearly apart, one from the other.

1210.2 If the proposal of the Delegation of Sweden simply meant that a sign (underlining, asterisk or some other sign) would indicate documents of particular relevance – and such indications would never take the form of comments, notes or other text matter – his Delegation could accept it.

1210.3 The proposal of the Delegation of Brazil would be totally impractical because, among other things, it would require the translation of the transcribed passages into the language of the search report. The translation could contain errors or differences in emphasis, which could be misleading. The transmittal of copies of the cited documents, in their original languages, would be sufficient.

1211. Mr. ALMEIDA (Brazil), on a question from the Chairman, said that, as he had already stated, the question of translation was not under discussion at that time.

1212. Mr. FINNE (Finland) expressed his Delegation's support for the proposal of the Delegation of Sweden.

1213. Mr. VAN DAM (Netherlands) said that his Delegation supported the view of the Delegation of Germany (Federal Republic). The proposal of the Delegation of Sweden would constitute the beginning of an evaluation. Evaluation, however, should be a matter reserved for the international preliminary examination phase and should not be introduced into the international search phase.

1214. Mr. ARMITAGE (United Kingdom) shared the views expressed by the Delegations of Germany (Federal Republic) and the Netherlands.

1215. Mr. VAN WAASBERGEN (International Patent Institute) said that his Institute had no strong feelings about the proposal of the Delegation of Sweden.

1216. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that his Association shared the views of the Delegations of Germany (Federal Republic) and the Netherlands.

1217. Mr. HAZELZET (Union of Industries of the European Community) shared the views expressed by the previous speaker.

1218. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) also shared the views expressed by the Delegations of Germany (Federal Republic) and the Netherlands.

1219. Mr. BARDEHLE (International Federation of Patent Agents (FICPI)) said that his Federation agreed with the views expressed by the Delegations of Germany (Federal Republic) and the Netherlands as far as the proposal of the Delegation of Sweden was concerned. As far as the proposal of the Delegation of Brazil was concerned, the transcriptions were undesirable not only because they could prejudice the situation of the applicant but also because they would cause a lot of work and complications for the International Searching Authorities, which had to work within rather short time limits.

1220. Mr. VAN DER AUWERAER (European Industrial Research Management Association (EIRMA)) also supported the views of the Delegations of Germany (Federal Republic) and the Netherlands.

1221. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that something more than a mere list of numbers referring to documents should be included in the international search report. Such additional information would be very useful for the developing countries which were members of his Association. That did not mean that the international search report would have to go as far as evaluating the invention.

1222. Mr. ADAMS (Pacific Industrial Property Association (PIPA)) said that his Association was ready to accept the proposal of the Delegation of Sweden if it was understood that the relevant documents would only be indicated by conventional symbols.

1223. Mr. YUASA (Asian Patent Attorneys Association (APAA)) said that his Association agreed with the view expressed by the Delegation of Germany (Federal Republic).

1224. Mr. BEESTON (Committee of National Institutes of Patent Agents (CNIPA)) supported the views expressed by the Delegations of Germany (Federal Republic) and the Netherlands.

1225. Mr. PETERSSON (Australia) said that when the designated Offices received the international search reports they would, in many cases, also receive amendments to the claims. It was very important for the designated Offices to know whether the international search report covered the fields to which the amendments related. That was why the indications suggested in the proposal of his Delegation contained in document PCT/DC/75 would be particularly useful.

1226. Mr. GABAY (Israel) said that he shared the views of the Delegation of Australia. Furthermore, his Delegation interpreted the proposal of the Delegation of Brazil as requiring the furnishing of copies only, rather than transcribing into the text of the international search report long passages or whole documents.

1227. *The proposal of the Delegation of Brazil appearing in documents PCT/DC/34/Rev. and Rev. Corr., was rejected by 16 votes against to 7 in favor, with 8 abstentions.*

1228. *The proposal of the Delegation of Sweden appearing in document PCT/DC/72 was adopted by 16 votes in favor to 7 against, with 8 abstentions.*

1229. *The proposal of the Delegation of Australia concerning Rule 33.3(c), appearing in document PCT/DC/75, without the word "precisely", was rejected by 18 votes against to 10 in favor, with 4 abstentions. (Continued at 1857.)*

1230. *Rule 43.5 was adopted as appearing in the Draft, subject to the incorporation of the proposal of the Delegation of Sweden referred to above. (Continued at 1231.)*

End of the Sixteenth Meeting

SEVENTEENTH MEETING

Wednesday, June 3, 1970, afternoon

Rule 43: The International Search Report (Continued from 1230.)

1231. Mr. GAJAC (France) asked, in connection with Rule 43.6(a), in what language the classification used would be published if the said classification was other than the International Patent Classification.

1232. The SECRETARY replied that it would be published only in the original languages since translating classifications would be an inordinately expensive and complicated task.

1233. Mr. CLARK (United States of America) said that his Delegation would prefer the text of the Draft to that of the Alternative Draft as far as Rule 43.6(b) was concerned, since the former used the word "or" rather than the word "and." That would leave a certain flexibility to the International Searching Authority in a case where a substantial burden was put on it, as in the provision under consideration.

1234. The SECRETARY said that, in his view, under both texts the International Searching Authority would be under the obligation to indicate the States and the periods and the languages in question and that the word "or" in the Draft merely meant that whatever was applicable must be indicated.

1235. Mr. ARMITAGE (United Kingdom) said that, in many cases, it would be difficult for the International Searching Authority to comply with the Rule under consideration. It was relatively easy to comply with it if an International Searching Authority included in its search files big areas of documents, for example, documents of a given country not included in the minimum documentation. On the other hand, where scattered documents not included in the minimum documentation were also in the search files of the International Searching Authority, their identification would cause great practical difficulties. Consequently, he suggested that the words "when practicable" should be inserted.

1236. *Rule 43.6 was adopted as appearing in the Alternative Draft, subject to the insertion in paragraph (b) of the words "when practicable."*

1237. *Rule 43.7 was adopted as appearing in document PCT/DC/14, without discussion.*

1238. *Rules 43.8, 43.9 and 43.10 were adopted as appearing in the Alternative Draft, without discussion. (Continued at 1867.)*

Article 18: The International Search Report (Continued from 1195.)

1239. The CHAIRMAN said that the proposal of the Delegation of Argentina contained in document PCT/DC/33, on which discussion had been deferred, would then be discussed.

1240. Mr. VILLALBA (Argentina) said that the proposal contained in document PCT/DC/33 was to the effect that a new paragraph be added to Article 18 reading as follows: "The designated Offices may require a translation from the applicant and legislate on the responsibilities which originate from the mistakes that it may contain." The translation in question was that of the international search report. In the previous discussion he had already indicated the reason for the proposal. Simply stated, it was that if any designated Office required that the international search report be translated into its own language, such translation would facilitate its work.

1241. Mr. SINGER (Germany (Federal Republic)) said that, before discussing the proposal he would like to ask two questions: Would the requirement of translation relate to the international search report only or to the international search report and the annexes of that report? Since the applicant did not know the language in which the translation was to be prepared, was it he or the translator who would undergo the sanctions?

1242. Mr. VILLALBA (Argentina) said that a translation was to be made of the international search report, as well as of any additional elements which might accompany it. Providing some sanctions in the case of erroneous translation was indispensable

because incorrect translations would mislead everybody concerned.

1243.1 Mr. ARMITAGE (United Kingdom) said that his Delegation has no strong feelings about the translation of the international search report since that report would contain practically no text matter. Consequently, even if a translation were required, it would not represent a very heavy burden on the applicant. He did not, however, see any real need for a translation since even those statements which could be made in words, such as the indication that there was a lack of unity of invention, or that the claims were unclear, etc., could be expressed in the international search report by symbols not requiring any translation.

1243.2 As far as the documents cited in the international search report were concerned, it would put an inordinate burden on the applicant to have to furnish a translation of each and every document. Of course, national legislations were free, as far as the processing of the applications in the national Offices was concerned, and were not prevented from asking for translations under certain circumstances.

1244. Mr. MCKIE (United States of America) asked what the time limit would be for furnishing the translation if the proposal of the Delegation of Argentina were to be adopted.

1245. Mr. BOGSCH (Secretary General of the Conference) replied that the time limit would probably have to be the same as that applicable under Article 22 for other acts by the applicant.

1246. Mr. LADAS (International Association for the Protection of Industrial Property (AIPPI)) said that the proposal of the Delegation of Argentina was wholly impractical. It would mean that, if the international search report contained citations of documents in the Dutch, Japanese and German languages, and Argentina and Brazil were designated, all the cited documents would have to be translated into Spanish and Portuguese. It would be certain that, under such conditions, no applicant would ever use the PCT.

1247. *The proposal of Argentina, contained in document PCT/DC/33, was rejected by 10 votes against to 7 in favor, with 12 abstentions. (Continued at 1762.)*

Rule 42: Time Limit for International Search
(Continued from 1189.)

1248.1 Mr. MCKIE (United States of America) presented his Delegation's proposal contained in document PCT/DC/83. It had been proposed that a new paragraph be added to Rule 42 reading as follows: "For a transitional period of 5 years after this Treaty has entered into force, time limits for the agreement with any International Searching Authority may be individually negotiated." The purpose of the amendment was to allow the prospective International Searching Authorities and the International Bureau to agree, for the purposes of producing international search reports, on time limits longer than those provided for in the Draft (those time limits were

three months from the receipt of the search copy by the International Searching Authority, or nine months from the priority date, whichever time limit expired later).

1248.2 The proposal aimed at securing a degree of flexibility for an initial period after the Treaty was put into operation so that the national Offices which were International Searching Authorities might be able to comply with the requirements of the Treaty without disadvantage to domestic applicants. Under a rigid time schedule, the national Office might have to take up international applications which had been filed later than certain national applications, before taking up the said national applications.

1249. Mr. LORENZ (Austria) supported the proposal of the Delegation of the United States of America.

1250. Mr. PETERSSON (Australia) asked whether those prospective International Searching Authorities which could not meet the time limits foreseen in the Draft could identify themselves.

1251. Mr. MCKIE (United States of America) said that he did not wish to give the impression that the US Patent Office could not meet the requirements in question. However, the number of applications to be dealt with under the PCT was uncertain. The impact that international applications would have on the regular business of the US Patent Office was also uncertain. Furthermore, it was uncertain what the date of disposals of domestic applications in the US Patent Office would be at the time the Treaty went into effect. It was because of all those uncertainties that a certain degree of flexibility ought to be written into the Rule under consideration.

1252. Mr. VAN WAASBERGEN (International Patent Institute) said that he shared the views expressed by the Delegation of the United States of America.

1253. Mr. LORENZ (Austria) said that he wished the record to show that, if the Austrian Patent Office became an international Searching Authority, it would not need any extensions of the time limits provided for in the Rule under consideration.

1254. Mr. OTANI (Japan) supported the proposal of the Delegation of the United States of America.

1255. Mr. SINGER (Germany (Federal Republic)) said that the German Patent Office did not foresee any difficulties in complying with the time limits provided for in the Rule under consideration, the more so as in the years which would pass between the signature of the Treaty and its entry into force there would be ample time to plan and prepare for the entry into force. However, if other prospective International Searching Authorities wished to have the required flexibility his Delegation had no objections to the amendment proposed by the Delegation of the United States of America.

1256. Mr. TUXEN (Denmark) said that for the applicant and for the Patent Offices which were not International Searching Authorities compliance with the time limits provided for in the PCT was of the greatest importance. A slight deviation from the time

limit provided for in the Draft could be accepted for an initial period, but the proposal of the Delegation of the United States of America set absolutely no limits on possible extensions. If it were to be retained, the limits of possible extensions of the time limits should be precisely defined.

1257. Mr. MCKIE (United States of America), on a question from the Secretary General of the Conference, said that the words "after this Treaty has entered into force," contained in the proposal of his Delegation, were to be understood as meaning "from the entry into force of this Treaty."

1258. Mr. FERGUSSON (United Kingdom) said that his Delegation understood that the US and Japanese Patent Offices and the International Patent Institute might wish to have some flexibility in the first years of application of the PCT. Could they, however, accept some limitation on that flexibility? For example, could they accept that the time limit be extended only in special circumstances, and by not more than one or two months?

1259. Mr. VAN WAASBERGEN (International Patent Institute) said that the proposal of the Delegation of the United Kingdom would be acceptable and the five years could even be diminished.

1260. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) asked whether any extension of the time limits in the Rule under discussion would also cause the extension of other time limits.

1261. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) said that he would like to hear an answer to the question of the previous speaker, in particular, whether the time limit for publications and the time limit for starting the national processing would be extended if the time limit for searching was extended.

1262. Mr. VILLALBA (Argentina) said that his Delegation, too, was interested in having an answer to the question, particularly with respect to the time limit provided for in Articles 22 and 23.

1263.1 Mr. PETERSSON (Australia) said that the question was of great importance because it affected the rhythm of all the various steps provided for in the PCT.

1263.2 In view of the importance of the proposal and the shortness of time that the Delegations had had to study the proposal of the Delegation of the United States of America, which had been distributed only that same day, his Delegation suggested that discussion be postponed.

1264. Mr. ARTEMIEV (Soviet Union) supported the proposal of the Delegation of Australia to defer further discussion on the proposal of the Delegation of the United States of America.

1265. Mr. VILLALBA (Argentina) said that a period of reflection could be put to much better use if the question concerning the effect of any prolongation of the time limit provided for in the Rule under discussion on other time limits were to be answered.

1266. Mr. BOGSCH (Secretary General of the Conference) said that there were no proposals before the Main Committee to prolong time limits other than that contained in the Rule under discussion. He did not think that the proposal could lead to unreasonable time limits since the Assembly of the PCT Union would have to approve any agreement between prospective International Searching Authorities and the International Bureau, and such an agreement would specify the extent to which any time limit for searching could be prolonged. If the prospective International Searching Authority were to ask for an unacceptably long time limit, there would be no agreement, and the candidate wishing to become an International Searching Authority would not be considered.

1267. *Further discussion on the proposal of the Delegation of the United States of America appearing in document PCT/DC/83 was deferred.* (Continued at 1277.)

Rule 44: Transmittal of the International Search Report, Etc.

1268. *Rules 44.1 and 44.2 were adopted as appearing in the Alternative Draft, without discussion.*

1269. Mr. GIERCZAK (Poland), referring to the proposal of his Delegation contained in document PCT/DC/23, said that it was important that not only should the applicant have the right to require that a copy of any cited document be sent to him, but so also should the designated or elected Office, since it might be extremely difficult if not impossible for such Office to locate, in its own files, the cited documents.

1270. Mr. ASCENSÃO (Portugal), referring to the proposal of his delegation and the Delegation of Argentina, contained in document PCT/DC/42, said that the right to be given to each designated Office to ask for copies of cited documents was so important that it should be written into the Treaty itself, rather than merely into the Regulations. That was why his Delegation proposed that the right in question should constitute a new paragraph in Article 20.

1271.1 Mr. BOGSCH (Secretary General of the Conference) said that the question was mainly how the prospective International Searching Authorities should organize themselves to be able to satisfy, in a practical way, requests for copies. The cost of furnishing copies was not at issue since both the Alternative Draft and the proposal of the Delegation of Poland provided that such costs would be borne by the party asking for the copies, that is, by the applicant if he asked for copies, and by the designated or elected Office if it asked for copies.

1271.2 In the meeting of March 1970, it had also been mentioned that, where any International Searching Authority found it too burdensome to organize the transmittal of the copies in question, particularly if they were requested several years after the international search report had issued, perhaps such Authority should transmit only one copy to the International Bureau and the International Bureau

would meet the requests of applicants and designated or elected Offices.

1272. Mr. SINGER (Germany (Federal Republic)) said that, although his Delegation realized that the proposal of the Delegation of Poland would not be easy to implement from an organizational viewpoint, it was ready to accept it.

1273. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation supported the proposal of the Delegation of Poland, and also the proposal of the Delegation of Japan contained in document PCT/DC/48, which would allow each International Searching Authority to delegate the responsibility of sending copies.

1274. Mr. GABAY (Israel) said that his Delegation agreed with the general idea underlying the proposal of the Delegation of Poland and felt that the practical difficulties might be resolved if the International Searching Authorities were required to send one copy to the International Bureau and the International Bureau were required to take care of the individual wishes of applicants and designated or elected Offices.

1275. Mr. MCKIE (United States of America) said that his Delegation thought that the proposal of the Delegation of Poland might cause added complexity and expense. Consequently, it supported the provision as it appeared in the Alternative Draft.

1276. *Further discussion on Rule 44.3 was deferred.* (Continued at 1317.)

End of the Seventeenth Meeting

EIGHTEENTH MEETING

Thursday, June 4, 1970, morning

Rule 42: Time Limit for International Search (Continued from 1267.)

1277.1 Mr. ROBINSON (Canada) said that a two or three months prolongation of the time limit for the search would, in most cases, make the use of the Treaty undesirable for the applicant since he would have no, or clearly insufficient, time for considering the international search report and amending his application.

1277.2 Consequently, his Delegation would suggest that the time limit for search should not be extendible beyond the maximum of two months.

1278. Mr. OTANI (Japan) said that, in the previous discussion on the proposal of the Delegation of the United States of America, his Delegation had supported that proposal because it wished to satisfy the desire of the US Patent Office and the International Patent Institute to have a safety valve at their disposal in the earlier stages of the implementation of the Treaty. As far as the Japanese Patent Office was concerned, there was no need for such safety valves since that Office could respect the time limit as fixed in the Alternative Draft.

1279. Mr. NORDSTRAND (Norway) said that, while his Delegation had sympathy with the concern of some of the prospective International Searching

Authorities, the Treaty would be useless for applicants if they could not count on international search reports delivered within the strict time limits. Consequently, his Delegation supported the amendments proposed by the Delegation of Canada, which would place a two-month outer limit on any prolongation of the time limit.

1280. Mr. ARTEMIEV (Soviet Union) said that an indefinite prolongation, as proposed by the Delegation of the United States of America, was not acceptable because it could endanger the efficiency of all the procedures under the Treaty. However, his Delegation was ready to accept a prolongation of one month of the time limit fixed in the Alternative Draft during the first years of application of the Treaty.

1281. Mr. LIPS (Switzerland) said that the prolongation could be granted in cases where the international application was a first application in the sense that it did not invoke the priority of any earlier application. On the other hand, when it did invoke such priority there should be no – or only a much shorter – prolongation. The two cases should be treated separately in the Treaty.

1282.1 Mr. VAN DAM (Netherlands) said that applicants would certainly choose to use the Treaty only if they knew in advance that they could count on the international search report being delivered to them within a fixed and reasonable time limit.

1282.2 Subject to what further light might be thrown on the problem by possible interventions on the part of the representatives of the non-governmental organizations, the Delegation of the Netherlands favored the idea underlying the proposal of the Delegation of Canada, namely, that the length of any prolongation should be clearly fixed.

1283. Mr. MCKIE (United States of America) said that his Delegation did not believe that any time limit needed to be written into the Treaty itself. Such time limit would, in any case, be written into the agreement between the International Searching Authority and the International Bureau and that agreement would be under control of the Assembly. Any prolongation written into such agreements could be less than the two months proposed by the Delegation of Canada.

1284. Mr. HAERTEL (Germany (Federal Republic)) said that, in his Delegation's view, what was really important was that in any case the applicant should be in possession of the international search report before the expiration of the 18th month from the priority date so that he should have enough time to consider it and amend the application. Even so, the two months which would remain for him – that is, from the 18th to the 20th month – would be sufficient only if he received the document cited in the international search report together with that report. Consequently, provision should be made for a flexible time limit, depending on whether or not the international application invoked the priority of an earlier application; a possible time limit of 18 months from the priority date should be established; and a guarantee should be written into the Regulations according to which the applicant would not have to wait for copies of the cited documents but would

receive them together with the international search report.

1285. Mr. LIPS (Switzerland) supported the proposal of the Delegation of Germany (Federal Republic).

1286. Mr. PETERSSON (Australia) said that the proposal of the Delegation of the United States of America was acceptable because it was to be presumed that the applicants would exercise sufficient pressure on the International Searching Authorities not to make any prolongation too long. In any case, his Delegation was ready to set a two-month limit to the prolongation.

1287. Mr. FERGUSSON (United Kingdom) said that it would be interesting to hear the reaction of the Delegation of the United States of America to the proposal of the Delegations of Germany (Federal Republic) and Switzerland.

1288. Mr. ROMANUS (International Federation of Inventors Association (IFIA)) said that, under the proposal of the Delegation of the United States of America, it would be perfectly possible that the applicant would receive the international search report after his international application had been published. That was obviously not in his interest as he could no longer prevent his application from being publicly known. It would therefore be desirable that the international publication should take place later than at the expiration of the 18th month, at least in all cases in which the international search report was late.

1289. Mr. HAZELZET (Union of Industries of the European Community) said that if there were no guarantees that the international search report would be received within a fixed and reasonable time, applicants would not only be reluctant to use the Treaty but would simply not use it at all.

1290.1 Mr. BARDEHLE (International Federation of Patent Agents (FICPI)) said that it was extremely important for the applicant to see the international search report some time before the international application was published because the international search report might prompt him to withdraw his application. Even if the international search report revealed anticipations which made patenting unlikely, the application might contain much interesting information, for example, concerning know-how developed by the applicant, which the applicant would not wish to see published unless his prospects for patenting were good.

1290.2 Consequently, his Federation was of the opinion that, without a satisfactory solution on the time limit for international search reports, the Treaty would probably not be used very much by industry.

1291. Mr. VAN DER AUWERAER (European Industrial Research Management Association (EIRMA)) said that it was desirable, in order to make the Treaty effective, to have the international search report in the hands of the applicant well before the time he had to file amendments.

1292. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) said that his Federation

supported the views expressed by the previous two speakers.

1293. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that it was uncertain in any case to what extent, if any, applicants would use the Treaty. By prolonging the time limit for search the need for prolonging other time limits might also arise. Longer time limits would be undesirable because they would delay the issuing of patents.

1294.1 Mr. ROBINSON (Canada) said that the publication of anticipated inventions could do no harm and therefore he did not consider it necessary to prolong the time limits for publication only because the time limit for search would be prolonged.

1294.2 His Delegation was ready to accept the proposal of the Delegation of Germany (Federal Republic), which was an improvement on the proposal of his own Delegation.

1295. Mr. ADAMS (Pacific Industrial Property Association (PIPA)) said that applicants had to realize the initial difficulties in which some International Searching Authorities might find themselves. However, that initial period could, and should, be shorter than the proposed five years.

1296. Mr. MCKIE (United States of America) said that his Delegation saw a great deal of merit in the suggestions of the Delegation of Germany (Federal Republic). It also was concerned to satisfy the wishes of the private sector. Consequently, the various proposals made could be referred to the Drafting Committee in order that it suggest a solution.

1297. Mr. VILLALBA (Argentina) said that the discussion had, so far, yielded clear enough answers to some important questions to allow the matter to be referred to the Drafting Committee.

1298. Mr. LADAS (International Association for the Protection of Industrial Property (AIPPI)) said that one should not overcomplicate the Treaty. A one-month prolongation, as proposed by the Delegation of the Soviet Union, should be sufficient.

1299. Mr. NORDSTRAND (Norway) proposed that, if the proposal of the Delegation of the United States of America were adopted, it should be completed by the following words: "In those cases, all time limits subsequent to the receipt of the international search report shall be automatically accorded the same prolongation." That proposal would take the place of the proposal of the Delegation of Canada.

1300. Mr. ONIGA (Brazil) said that his Delegation agreed with the view which had just been expressed by the Delegation of Argentina.

1301.1 The SECRETARY said that he wished to call the attention of the meeting to the fact that the Draft already differentiated between international applications invoking and international applications not invoking the priority of an earlier application.

1301.2 In any case, the proposal in question was to limit both in time – since it would only last for a limited number of years after the entry into force of

the Treaty – and in scope, since only two of the prospective International Searching Authorities seemed to intend to make use of it.

1301.3 In any case, it was not advisable to make any of the other time limits provided for in the Regulations dependent on the time limit within which the international search report had to be prepared. The time limit for publication and for starting the national procedure could hardly be prolonged.

1302. Mr. LEWIN (Sweden) said that his Delegation had no very strong views on the subject but it would prefer that the proposal of the Delegation of the Soviet Union, providing for a one-month prolongation of the time limit, were adopted. However, the matter had been sufficiently discussed for it to be sent to the Drafting Committee.

1303. Mr. GIERCZAK (Poland) said that his Delegation favored the proposal made by the Delegation of the Soviet Union.

1304. The CHAIRMAN said that the discussion did not seem to have given sufficient directives to the Drafting Committee. Perhaps the matter could best be left to the Assembly of the Union when it was called upon to approve or disapprove of any agreement between the International Bureau and any International Searching Authority.

1305. Mr. VILLALBA (Argentina) said that the question of giving certain powers to the Assembly was not the only question. Even if the Assembly received some powers, the limits of those powers would have to be set in the Treaty. Among those limits most speakers would seem to prefer a reduction of the five-year transitional period and wish to fix a maximum for the possible prolongation of the time limit. His Delegation would suggest that the two time limits in question be fixed at three years and two months, respectively.

1306. The CHAIRMAN pointed out that the Rule under discussion was one which the Assembly could always change by a majority vote.

1307. Mr. FINNS (Finland) said that his Delegation could accept the proposal of the Delegation of the United States of America.

1308. Mr. FERGUSSON (United Kingdom) said that the whole matter could be left in the hands of the Assembly, as proposed by the Delegation of the United States of America.

1309. Mr. GABAY (Israel) agreed with the previous speaker and added that the transitional period should last three years.

1310. Mr. HAERTEL (Germany (Federal Republic)) said that there seemed to be at least one point on which everybody appeared to be in agreement, namely, that in any case the international search report must be completed within 18 months from the priority date.

1311. *It was decided to adopt 18 months as the time limit within which the international search reports must be completed, such time limit to be counted from the priority date.*

1312. Mr. PETERSSON (Australia) asked if the Main Committee might be consulted on the question of any possible prolongation and on the duration of the transitional period.

1313. *It was decided that Rule 42 should contain a limitation of the duration of possible prolongations of the time limit by 16 votes in favor to 3 against, with 12 abstentions.*

1314. *Ten Delegations voted that the extension should be two months, eight that it should be one month, and 12 Delegations abstained.*

1315. *Two Delegations voted that the transitional period should be five years, 20 Delegations voted that the transitional period should be three years, and 12 Delegations abstained.*

1316. Mr. PETERSSON (Australia) said, in explanation of his Delegation's vote, that in his view there was no need for any limitation such as was provided for in the proposal of the Delegation of the United States of America and that the only reason for which his Delegation had accepted the proposal was that it wished to help those International Searching Authorities which might need such a transitional provision. (Continued at 1866.)

Rule 44: Transmittal of the International Search Report, Etc. (Continued from 1276.)

1317.1 Mr. BOGSCH (Secretary General of the Conference) introduced the proposal of the Secretariat contained in document PCT/DC/88. The proposal was based on the discussions of the previous day and consultations with the Delegations which had participated in those discussions.

1317.2 The new proposal was that the right of any designated Office and of any applicant to receive copies of the documents cited in the international search report should not only be recognized but should also be written into the Treaty itself. Furthermore, that the obligations which would result for any International Searching Authority from the said right of the designated Offices and applicants could be satisfied either by sending one copy of the documents to the International Bureau – which then would see to it that those wishing to have copies would receive them – or by satisfying each individual request separately. The choice between the two solutions would rest entirely with the International Searching Authority.

1318.1 Mr. OTANI (Japan) said that his Delegation was grateful to the Secretariat for producing a proposal consolidating various proposals, including the proposal of the Delegation of Japan contained in document PCT/DC/48.

1318.2 His Delegation did not consider it essential that Article 20 be amended as proposed. The whole matter could be left to the Regulations since it was of an administrative nature.

1318.3 As regards the sentence “any International Searching Authority may perform the above obligation through any agency responsible to it,” such a provision was essential for his Delegation since, in Japan, it was the Invention Association of Japan rather

than the Japanese Patent Office which performed the services in question. It did so in a satisfactory way, at a reasonable cost, and under the supervision of the Japanese Patent Office.

1319. The CHAIRMAN said that for the moment only Rule 44.3 was under discussion and not also Article 20(3).

1320. Mr. ASCENSÃO (Portugal) said that his Delegation favored the proposal of the Secretariat because it incorporated the earlier proposals of the Delegations of Portugal and Argentina. However, since the two proposals were closely connected, they should be discussed at the same time.

1321. Mr. GIERCZAK (Poland) thanked the Secretariat for preparing the proposal, which was acceptable to his Delegation as it included also the proposal of the Delegation of Poland.

1322. Mr. FERGUSSON (United Kingdom) said that, subject to some drafting changes, his Delegation supported the proposal of the Secretariat.

1323. *The proposals contained in document PCT/DC/88 as far as Rule 44.3 was concerned were adopted, subject to any decision which might be taken on the proposal of the Delegation of Israel contained in document PCT/DC/89.*

1324. Mr. GABAY (Israel), presenting his Delegation's proposal contained in document PCT/DC/89, said that it would be desirable not only that the International Searching Authority could decide that the copies were to be communicated through the International Bureau but also that the applicant and the designated Offices should be entitled to obtain those copies through the International Bureau – rather than direct from the International Searching Authority – if they preferred to obtain them in that way. There might be language or other reasons for which that indirect route was preferable.

1325. Mr. FERGUSSON (United Kingdom) opposed the proposal of the Delegation of Israel. It would create utter chaos, he said, and would be unworkable in practice.

1326. Mr. BOGSCH (Secretary General of the Conference) said that it seemed to him far more practical to leave the option only to the International Searching Authorities since the normal route for communications between applicant and International Searching Authority should be a direct one.

1327. Mr. HAERTEL (Germany (Federal Republic)) said that the proposal of the Delegation of Israel would introduce unnecessary complexities in the procedure.

1328. Mr. LIPS (Switzerland) said that his Delegation agreed with the point of view of the previous speaker.

1329. Mr. HAERTEL (Germany (Federal Republic)) said that one of the complications which the proposal of the Delegation of Israel could cause was that some applicants would ask for copies direct from the International Searching Authority, whereas others would ask for them through the International Bureau.

1330. Mr. PETERSSON (Australia) said that his Delegation objected to the proposal of the Delegation of Israel also on the grounds that it would make the procedure more expensive since an intermediary could not perform services without being paid for it.

1331. Mr. VAN WAASBERGEN (International Patent Institute) said that the proposal of the Delegation of Israel could be carried out but it would increase the costs.

1332. Mr. GABAY (Israel) said that, in view of the opposition that the proposal of his Delegation had encountered, it withdrew that proposal. (Continued at 1870.)

Article 20: Communication to Designated Offices
(Continued from 576.)

1333. *The Committee adopted paragraph (3) as appearing in document PCT/DC/88, subject to revision of the text by the Drafting Committee.* (Continued at 1764.)

Rule 45: Translation of the International Search Report

1334. Mr. VILLALBA (Argentina), referring to the discussion which had taken place on the proposal of his Delegation contained in document PCT/DC/71, moved that it be adopted. The proposal was to the effect that the international search report should be translated into the languages of all the designated Offices.

1335. Mr. ASCENSÃO (Portugal) seconded the proposal of the Delegation of Argentina.

1336. Mr. ONIGA (Brazil) supported the proposal of the Delegation of Argentina.

1337. Mr. HAERTEL (Germany (Federal Republic)) said that he had the impression that the proposal had already been discussed and decided upon.

1338. The SECRETARY said that the Delegation of Argentina had made the same proposal in document PCT/DC/33 concerning Article 18 and that that proposal had been put to the vote and defeated.

1339. Mr. VILLALBA (Argentina) said that the vote and discussion in question had related to the transcripts of the cited documents in the international search report rather than to the international search report itself.

1340. The SECRETARY said that a further difference between the proposals contained in document PCT/DC/33 and PCT/DC/71 might be that, whereas under the former translations would have to be prepared by the applicant, under the latter they would have to be prepared by the International Bureau.

1341. Mr. VILLALBA (Argentina) said that the remarks by the previous speaker clearly showed that the two proposals were not comparable in scope. The one under discussion was far less ambitious because it related only to the international search report itself, which would contain only a very limited amount of text matter and therefore should cause the

International Bureau no difficulty when it had to present it.

1342. The SECRETARY said that the former decision had been taken on the international search report itself and not on possible transcripts appearing in it, and that the proposal being considered was more far-reaching because it would transfer the responsibility for the translation from the applicant to the International Bureau.

1343. Mr. MCKIE (United States of America) wanted to know who was supposed to furnish the translation under the proposal under discussion.

1344. The SECRETARY replied that, according to Article 18(3), the translation would have to be prepared by or under the responsibility of the International Bureau.

1345. Mr. VILLALBA (Argentina) said that it just did not make sense to assert that there was nothing to translate in the case of an international search report, when the Draft itself provided for translation into English where the international search report was in another language than English.

1346. Mr. HAERTEL (Germany (Federal Republic)) asked whether the International Bureau could undertake the task of translating and how much that would cost.

1347. Mr. BOGSCH (Secretary General of the Conference) replied that the International Bureau could undertake the task but it would be rather expensive.

1348. *The proposal of the Delegation of Argentina contained in document PCT/DC/71 was rejected by 17 votes against to 5 in favor, with 8 abstentions.*

1349. *Rule 45 was adopted as appearing in the Draft. (Continued at 1873.)*

Rule 46: Amendment of Claims Before the International Bureau

1350. Mr. FERGUSSON (United Kingdom) moved his Delegation's proposal contained in document PCT/DC/26. According to the Proposal, Rule 46.1 should read as follows "The time limit referred to in Article 19 shall be 2 months from the date of transmittal of the international search report to the International Bureau and to the applicant by the International Searching Authority, if said date is not earlier than the expiry of 15 months from the priority date; otherwise, the time limit referred to in Article 19 shall expire at the end of 17 months from the priority date." The proposal would allow the applicant some more time for amending his application when such extension of the time limit did not hamper national processing.

1351. Mr. QUINN (Ireland) supported the proposal of the Delegation of the United Kingdom. It would make the time limit for amendment more flexible and, in certain cases, facilitate the task of the applicant. Interested private circles had made representations for such flexibility.

1352. Mr. VAN DAM (Netherlands) drew attention to the fact that the proposal by the Delegation of the

United Kingdom would have an influence on Rule 47.1(b). According to that Rule, the International Bureau had to make the communication to the designated Offices only after the time limit for amendment had expired.

1353. Mr. SIMONS (Canada) said that, as a result of the decision taken earlier in the day to extend the time limit for producing international search reports until the end of a period of 18 months from the priority date, situations might be created which were not reconcilable with the proposal of the Delegation of the United Kingdom.

1354. Mr. FERGUSSON (United Kingdom) said that, indeed, the proposal under discussion could not be reconciled with the longer time limit which would be applicable during the transitional period.

1355. Mr. MCKIE (United States of America) wanted to know how much time the applicant would have for amendment if the international search report was received only at the end of the 17th month.

1356. Mr. BOGSCH (Secretary General of the Conference) replied that the applicant would have two months.

1357. Mr. FERGUSSON (United Kingdom) said that his Delegation withdrew the proposal under discussion.

1358. *Rule 46.1 was adopted as appearing in the Draft.*

1359. *Rules 46.2, 46.3, 46.4 and 46.5 were adopted as appearing in the Alternative Draft, without discussion. (Continued at 1874.)*

End of the Eighteenth Meeting

NINETEENTH MEETING

Thursday, June 4, 1970, afternoon

Rule 47: Communication to Designated Offices

1360. Mr. ONIGA (Brazil) withdrew the proposal of his Delegation contained in document PCT/DC/52.

1361. Mr. ROBINSON (Canada) said that his Delegation had introduced a proposal only an hour earlier and that it might be better to defer discussion in order to allow the delegations to study it.

1362. *Further discussion on Rule 47 was deferred. (Continued at 1436.)*

Rule 48: International Publication

1363. *Rules 48.1, 48.2 and 48.3(a) and (b) were adopted as appearing in the Alternative Draft (with the corrections appearing in document PCT/DC/12/Add.1), without discussion.*

1364. Mr. TÖRNROTH (Sweden) moved the proposal of the Delegations of Denmark, Finland, Norway and Sweden contained in document PCT/DC/73. The proposal was to the effect that not only the abstract but also all the independent patent claims, if not in English, should be published both in the original language and in English. Claims

contained more precise, if not more, information than mere abstracts. Claims had legal consequences and therefore were drafted with much care. It was for those reasons that the amendment had been proposed.

1365. Mr. BOGSCH (Secretary General of the Conference) said that, while it was undoubtedly useful to have as much information as possible in as many languages as possible, the proposal of the four Nordic countries would cause considerable expense and possibly also delays.

1366. Mr. SINGER (Germany (Federal Republic)) said that he would like to know whether the proponents of the amendment were thinking of the claims in their original form, or in their amended form, or in both. Furthermore, he would like to hear the views of the representatives of the non-governmental organizations since the matter was a practical one and primarily concerned them.

1367. Mr. ARMITAGE (United Kingdom) said that, while his Delegation sympathized with the proposal as one which would make the procedure more perfect, it would also entail additional cost and complications and therefore should not be accepted. In any case, the private sector in his country was of the opinion that at the international publication stage it could accept it if only the abstract were translated into English.

1368. Mr. VAN DER AUWERAER (European Industrial Research Management Association (EIRMA)) said that, whereas it would undoubtedly be interesting to see the claims also translated into English, such a requirement would cause considerable expense, which would have to be met by the applicant. On balance, therefore, he was opposed to the proposal, it being understood that if experience showed that translation of the claims was also necessary the Regulations could later be amended accordingly.

1369. Mr. HAZELZET (Union of Industries of the European Community) said that his Union agreed with the declarations of EIRMA.

1370. Mr. GILLIES (International Chamber of Commerce (ICC)) expressed agreement with the statements of the Representatives of EIRMA and the Union of Industries of the European Community.

1371. Mr. BEESTON (Committee of National Institutes of Patent Agents (CNIPA)) also agreed with the statements of the Representatives of the non-governmental organizations who had spoken on the subject.

1372. Mr. LEWIN (Sweden), in reply to the question from the Delegation of Germany (Federal Republic), said that those claims which were the latest at the time of publication would be published in the form of a translation. The cost would not be very high because only the first independent claim would have to be translated, which was usually not very long.

1373. *The proposal of the Delegation of Sweden was rejected by 11 votes against to 5 in favor, with 9 abstentions.*

1374. *Rule 48.3(c) was adopted as appearing in the Draft.*

1375. *Rules 48.4, 48.5 and 48.6 were adopted as appearing in the Alternative Draft, without discussion. (Continued at 1876.)*

Rule 49: Languages of Translations and Amounts of Fees under Article 22(1) and (2)

1376. Mr. FERGUSSON (United Kingdom) wished to know whether it was the understanding of the Main Committee that any national Office could, in the national stage, require that the applicant sign a statement to the effect that the translation, according to the best of his knowledge, was complete and faithful.

1377. Mr. MORTON (United States of America), referring to the proposal of his Delegation contained in document PCT/DC/85, said that the last sentence of Rule 49.2 should be deleted. The sentence said that, if there were several official languages in a country but the national law of that country prescribed the use of one such language for foreigners, the translation must be into that language.

1378. Mr. ROBINSON (Canada) said that his Delegation could assure the Delegation of the United States of America that the national law of Canada would never prescribe the use of English only or French only by foreigners.

1379. Mr. FINNE (Finland) said that the sentence in question applied to the conditions prevailing in his country. There the minority could use its own language in official dealings. However, that privilege was not accorded to foreigners, who could use only the Finnish language.

1380. The CHAIRMAN said that the proposal of the Delegation of the United States of America was rejected because it had not been seconded by any other Delegation.

1381. Mr. BOGSCH (Secretary General of the Conference) said that certain consequential changes in the Rule would be necessary because of the changes decided in connection with Article 22.

1382. *Subject to that understanding, Rules 49.1, 49.2 and 49.3 were adopted as appearing in the Alternative Draft. (Continued at 1877.)*

Rule 50: Faculty Under Article 22(3)

1383. *Rule 50.1 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1878.)*

Rule 51: Review by Designated Offices

1384. *Rule 51 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1879.)*

Rule 52: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices

1385. *Discussion on Rule 52.1(a) was deferred. (Continued at 1523.)*

1386. *Rule 52.1(b) was adopted as appearing in the Draft, without discussion.*

1387. *It was decided, as suggested in the Alternative Draft and as proposed by the Delegation of Argentina in document PCT/DC/71, that Rule 52.1(a) appearing in the Draft should be omitted. (Continued at 1523.)*

Article 31: Demand for International Preliminary Examination

1388. *Article 31(1) was adopted as appearing in the Draft, without discussion.*

1389.1 Mr. GABAY (Israel), referring to the proposal of his Delegation contained in document PCT/DC/41, proposed that Article 31(2) should read as follows: "A demand for international preliminary examination may be made (a) by an applicant who elected a State member of this Treaty which requires that every international application designated to it be accompanied by such examination; (b) by an applicant who is a resident or national of a Contracting State bound by this Chapter." It seemed unjustified that the use of Chapter II should be limited only to nationals and residents of States accepting Chapter II. Nationals and residents of any Contracting State should be enabled to use Chapter II.

1389.2 Furthermore, each designated Office should be allowed to receive international preliminary examination reports even if it had not been elected under Chapter II. That would be particularly useful for developing countries.

1390. Mr. LORENZ (Austria) said that, if he understood the proposal of the Delegation of Israel correctly, it meant that any Contracting State could require that the applicant produce an international preliminary examination report. If that was the objective, he approved of it.

1391.1 Mr. BOGSCH (Secretary General of the Conference) said that it had always been understood during the preliminary negotiations that Chapter II should be doubly optional, that is, optional both as far as Contracting States were concerned and as far as applicants were concerned: a Contracting State should be able to accept the Treaty without accepting Chapter II; no applicant should be under the obligation to use Chapter II. The proposal of the Delegation of Israel, if accepted, would take away the second option.

1391.2 If the Treaty provided that a designation might imply an election, then some applicants might prefer not to designate the countries in which such a consequence would arise.

1391.3 Any country which wished to receive international preliminary examination reports could require the production of such a report, even without the Treaty, provided that it impose the same obligation on both domestic and foreign applicants and provided that it could reach an agreement with an International Preliminary Examining Authority to prepare such reports.

1392. Mr. COULIBALY (Ivory Coast) supported the proposal of the Delegation of Israel.

1393. Mr. ARMITAGE (United Kingdom) said that the proposal of the Delegation of Israel posed quite a number of complicated problems and it might be better to ask a working group to study it.

1394. The CHAIRMAN said that a working group would be set up and its composition would later be announced.

1395. *Further discussion on Article 31(2) was deferred. (See 1672.)*

1396. *Article 31(3) was adopted as appearing in the Draft, without discussion.*

1397. Mr. GABAY (Israel) said that the proposal of his Delegation contained in document PCT/DC/41 concerned also Article 31(4) and therefore should also be transmitted to the working group.

1398. *Discussion on Article 31(4) was deferred. (See 1672.)*

1399. *Articles 31(5), 31(6) and 31(7) were adopted as appearing in the Draft, without discussion. (See 1672.)*

1400. The CHAIRMAN said that the Working Group mentioned earlier (See 1394) would consist of the Delegations of Austria, Germany (Federal Republic), Israel, Ivory Coast, Japan, Soviet Union, United Kingdom, and United States of America. (Continued at 1672.)

Article 15: The International Search (Continued from 555.)

1401. Mr. VILLALBA (Argentina), referring to the proposal of his Delegation and the Delegation of Portugal contained in document PCT/DC/68, said that the two Delegations had redrafted their proposal in order to make it fit in better with the other provisions of the Treaty. They had also proposed that Article 61 be complemented by the addition of a sentence saying that that Article – which dealt with the gradual application of the Treaty – should also apply to the provision under discussion. That would mean that International Searching Authorities would have time to adjust themselves to the new situation.

1402. Mr. ARMITAGE (United Kingdom) said that it was important that it be understood that no International Searching Authority would be under an obligation to carry out international-type searches. It would do so only if it had agreed to undertake such a task.

1403. Mr. BOGSCH (Secretary General of the Conference) said that, in his view, the implication that the proposal of the Delegations of Argentina and Portugal carried with it was that any prospective International Searching Authority, before agreeing to act as an International Searching Authority for international applications originating from a certain country, would have to reckon with the possibility of having to make international-type searches on all national applications filed in the same country.

1404. Mr. ARMITAGE (United Kingdom) said that if a country wished to have the International Patent Institute search all the national applications filed in

that country the normal way to go about it was to join the International Patent Institute.

1405. Mr. VAN WAASBERGEN (International Patent Institute) said that his Institute had no objection to the proposal contained in document PCT/DC/68. It was to be clearly understood, however, that the form and language requirements would be the same as under the PCT.

1406. Mr. ASCENSÃO (Portugal) said that he agreed with the interpretation of the International Patent Institute and saw no objection to reflecting it clearly in the final text.

1407. Mr. VILLALBA (Argentina) agreed with the statement of the Delegation of Portugal.

1408. Mr. MCKIE (United States of America) said that his Delegation was, in principle, in favor of the proposal of the Delegations of Argentina and Portugal. However, it wished to know why, if subparagraph (b) meant that an international-type search could be requested on any; national application, such entitlement had to be written into the Treaty rather than into the national law.

1409. Mr. VAN DAM (Netherlands) said that, in his view, national Offices should not be allowed to require international-type searches for some applications and not for others. Otherwise, this could lead to discrimination against foreign applicants, which would be incompatible with the Paris Convention.

1410. Mr. CRUZ (Portugal) said that the main reason for the amendment was to ensure that each application of sufficient importance would become an international Application and be made the object of a search. If that was achieved, the number of applications to be searched would be the same whether or not the proposed amendment was adopted.

1411. Mr. BOGSCH (Secretary General of the Conference) said that it might be desirable to specify in the Treaty that no discrimination was allowed.

1412. Mr. VILLALBA (Argentina) said that the question should be further studied. There was no provision against discrimination in connection with any other provision of the Treaty. It was not clear why in that case such a provision should be necessary only in connection with Article 15.

1413. Mr. ASCENSÃO (Portugal) said that differentiation would not be made on the basis of the nationality of the applicant but might have to be made on the basis of the nature of the invention. For some more complex inventions an international search report would be required, whereas for more simple ones this might not be necessary.

1414. *The proposal of the Delegations of Argentina and Portugal was adopted as appearing in document PCT/DC/68 and as far as it concerned Article 15(5). (Continued at 1753.)*

Article 16: The International Searching Authority (Continued from 472.)

1415. *By 19 votes in favor to none against, with 9 abstentions, it was decided to resume discussion on*

Article 16(1) in order to consider the proposal, appearing in document PCT/DC/84, of the Delegations of Belgium, France, Italy, Monaco, the Netherlands, Switzerland, and the United Kingdom (herein-after referred to as "the Seven Delegations")

1416. Mr. SAVIGNON (France), in the name of the Seven Delegations, moved the proposal. Since it had been accompanied by a written explanatory statement, it was not necessary to repeat it orally. The essence of the proposal was that the International Patent Institute be mentioned expressly – that is, by name – in Article 16(1) as one of the possible future International Searching Authorities.

1417. Mr. HAERTEL (Germany (Federal Republic)) said that, although his Delegation had no objection on practical grounds, it was not sure whether it was a wise thing for an international interment to refer to an organization by name, the more so as other organizations might be created in the future which could have similar aspirations. He wished to know whether it was customary for international treaties to contain the names of specific organizations, as proposed by the Seven Delegations.

1418. Mr. ARTEMIEV (Soviet Union) said that his Delegation would prefer not to have any organization mentioned by name but merely make a general description of the kind of organization which could become an International Searching Authority, a description which would obviously also cover the International Patent Institute.

1419. *The proposal of the Seven Delegations to amend Article 16(1) was adopted as appearing in document PCT/DC/84, by 17 votes in favor to 4 against, with 9 abstentions. (Continued at 1756.)*

Article 32: The International Preliminary Examining Authority

1420. Mr. BOGSCH (Secretary General of the Conference) said that some changes would have to be made as a result of the changes made earlier in Article 16(2).

1421. *Subject to that understanding, Article 32 was adopted as appearing in the Draft. (Continued at 1672.)*

Article 33: The International Preliminary Examination

1422. Mr. FERGUSSON (United Kingdom) withdrew the proposal of his Delegation concerning Article 33(1) contained in document PCT/DC/25.

1423. *Paragraphs (1), (2) and (3) were adopted as appearing in the Alternative Draft, without discussion.*

1424. Mr. VILLALBA (Argentina) said that his Delegation would not insist on the proposal presented in document PCT/DC/51 in respect of Articles 33(4) if it received assurances that each Contracting State would be free to interpret what "industry" meant.

1425. Mr. BOGSCH (Secretary General of the Conference) replied that the provision was addressed merely to the obligations of the International Preliminary Examining Authorities: they should not

be allowed to escape from their obligation to examine inventions merely on the grounds that they gave some arbitrary, narrow interpretation to the expression "industry."

1426. *Paragraph (4) was adopted as appearing in the Draft.*

1427. *Paragraphs (5) and (6) were adopted as appearing in the Draft, without discussion. (Continued at 1785.)*

Article 34: Procedure Before the International Preliminary Examining Authority

1428. Mr. FERGUSSON (United Kingdom) said that the proposals of his Delegation, contained in document PCT/DC/25, concerning paragraphs (2) and (3) were merely of a drafting nature.

1429. *Paragraphs (1), (2) and (3) were adopted as appearing in the Draft.*

1430. Mr. FERGUSSON (United Kingdom), referring to the proposal of his Delegation concerning paragraph (4)(a) contained in document PCT/DC/25, suggested that no international preliminary examination report should be established where the international application contained claims which were not searched. Without an international search report on certain claims, the International Preliminary Examining Authority could not do intelligent work.

1431. Mr. BOGSCH (Secretary General of the Conference) said that, under the proposal, the applicant might fall a victim to a difference of appreciation between the International Searching Authority and the International Preliminary Examining Authority. The main reasons for which any claim would not be searched were covered by items (i) and (ii) of paragraph (4)(a).

1432. Mr. MCKIE (United States of America) opposed the proposal of the Delegation of the United Kingdom for the reasons stated by the Secretary General of the Conference and because it seemed to be in conflict with Articles 19 and 34(2)(b), which allowed for amendments after receipt of the international search report.

1433. Mr. ARMITAGE (United Kingdom) said that his Delegation could also accept the Draft as it stood. Nevertheless, he would be interested to see the proposal of his Delegation put to a vote to discover the reaction of the various delegations. If they rejected the proposal, it would have to be recognized that there would be cases – probably rare, but nevertheless one – in which International Preliminary Examining Authorities would, themselves, have to carry out some search work.

1434. *The proposal of the Delegation of the United Kingdom concerning Article 34(4)(a) contained in document PCT/DC/25 was rejected by 10 votes against to 2 in favor, with 17 abstentions.*

1435. *Paragraph (4) was adopted as appearing in the Draft. (Continued at 1786.)*

End of the Nineteenth Meeting

TWENTIETH MEETING

Friday, June 5, 1970, morning

Rule 47: Communication to Designated Offices (Continued from 1362.)

1436. Mr. ROBINSON (Canada) presented his Delegation's proposal contained in document PCT/DC/94. The Rule under consideration provided that the communication must be effected by the International Bureau. Rule 52 provided that any amendment filed under Article 28 must be filed not earlier than at the time when the said communication reached the designated office. Since, however, the applicant would not know – or would only be able to find out with great difficulty – when his application would be communicated to the designated Office and when it would reach it, if the communication was effected by the International Bureau, his Delegation's proposal provided that the communication should be effected by the applicant himself. Thus, he could insert his amendments at the time when he effected the communication. Any possibility of missing the deadline would thus be automatically eliminated.

1437. Mr. VAN DAM (Netherlands) said that the applicant had the right to communicate the application himself, that followed from Article 22. Communication by the International Bureau would take place only if the applicant had not himself effected the communication. Consequently, the applicant could insert, at the time he effected the communication, all the amendments he wished to make.

1438. Mr. PETERSSON (Australia) seconded the proposal of the Delegation of Canada.

1439. Mr. ROBINSON (Canada) said that communications under Article 20 (made by the International Bureau) and Article 22 (made by the applicant) would unnecessarily duplicate each other. The proposal of his Delegation tended to avoid such duplication: under it, the applicant would notify the International Bureau that he would effect the communication, and in such case the International Bureau would not itself proceed with any communication.

1440. Mr. BOGSCH (Secretary General of the Conference) asked whether the proposal of the Delegation of Canada meant that only amendments made under Article 28 would reach the designated Offices and not amendments made under Article 19.

1441.1 Mr. ROBINSON (Canada) replied that the subject matter of the communication would not be different; the only difference would be that the communication would be effected by the applicant rather than by the International Bureau.

1441.2 Another consideration which should be kept in mind was that, if the international search report was issued very late – which might particularly be the case under the new Rule according to which International Searching Authorities might be authorized to extend the time limit allotted for search – the time limits for

amendments under Articles 19 and 28 could practically coincide.

1442. Mr. VAN DAM (Netherlands) said that the proposal of the Delegation of Canada was inseparably linked to another proposal, contained in document PCT/DC/96, which had been made by the Delegations of Canada and the Netherlands and dealt in particular with the question of time limits for amendments. He suggested discussion be deferred until discussion of said document.

1443. *Further discussion on Rule 47 was deferred.* (Continued at 1533.)

Article 35: The International Preliminary Examination Report

1444. Mr. FERGUSSON (United Kingdom) noted that the proposals of his Delegation contained in document PCT/DC/25 concerning Article 35 were mere drafting points.

1445. *Article 35 was adopted as appearing in the Alternative Draft.* (Continued at 1787.)

Article 36: Transmittal, Translation, and Communication, of the International Preliminary Examination Report

1446. *Article 36 was adopted as appearing in the Draft.* (Continued at 1788.)

Article 37: Withdrawal of Demand or Election

1447. Mr. SAVIGNON (France) noted that the proposals of his Delegation contained in document PCT/DC/21 were mere drafting points.

1448. *Article 37 was adopted as appearing in the Draft.* (Continued at 1792.)

Article 38: Confidential Nature of the International Preliminary Examination

1449. *Article 38 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1793.)

Article 39: Copy, Translation, and Fee, to Elected Offices

1450. Mr. FERGUSSON (United Kingdom) noted that the proposals of his Delegation contained in document PCT/DC/25 concerning Article 39 were mere drafting points.

1451. *Article 39 was adopted as appearing in the Draft, without discussion.* (Continued at 1794.)

Article 40: Delaying of National Examination and Other Processing

1452. *Article 40 was adopted as appearing in the Draft, without discussion.* (Continued at 1795.)

Article 60: Reservations (In the signed text, Article 64: Reservations) (Continued from 2399, see document PCT/DC/87.)

1453. *Paragraph 2 of this Article was adopted as appearing in the Draft, without discussion.* (Continued at 1604.)

Article 41: Amendment of the Claims, the Description, and the Drawings, Before Elected Offices

1454. Mr. FERGUSSON (United Kingdom) withdrew the proposal of his Delegation, concerning Article 41(3), contained in document PCT/DC/25.

1455. *Article 41 was adopted as appearing in the Alternative Draft.* (Continued at 1796.)

Article 42: Results of National Examination in Elected Offices

1456. Mr. ASCENSÃO (Portugal) said that his Delegation could find no very strong arguments in favor of the adoption of the Article in question. Such an Article would, to a certain extent, limit the freedom of national legislations.

1457. Mr. BOGSCH (Secretary General of the Conference) said that the reason for the Article under discussion was the desire to make the use of Chapter II of the Treaty more attractive to the applicant. It would save the applicant the trouble and expense of furnishing, to any elected Office, copies of documents which he had to furnish to other elected Offices. There seemed to be no justification for demanding such copies since the international preliminary examination report was furnished to all elected Offices and those Offices would find that report a most valuable aid for their task of examination.

1458. *Article 42 was adopted, as appearing in the Draft.* (Continued at 1797.)

Rule 53: The Demand

1459. *Rule 53 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1881.)

Rule 54: The Applicant Entitled To Make a Demand

1460. Mr. LORENZ (Austria) said that, if the proposal of the Delegation of Israel concerning Article 31, the study of which was still pending in a working group, was going to be adopted, several rules would have to be revised.

1461. The CHAIRMAN said that the adoption of any rule would be subject to reopening the discussion should the action on the proposal of the Delegation of Israel require consequential changes.

1462. *Rule 54 was adopted as appearing in the Alternative Draft.* (Continued at 1882.)

Rule 55: Languages (International Preliminary Examination)

1463. *Rule 55 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1883.)

Rule 56: Later Elections

1464. *Rule 56 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1884.)

Rule 57: The Handling Fee

1465. *Rule 57 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1885.)

Rule 58: The Preliminary Examination Fee

1466. *Rule 58 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1886.)

Rule 59: The Competent International Preliminary Examining Authority

1467. *Rule 59 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1672.)

Rule 60: Certain Defects in the Demand or Elections

1468. *Rule 60 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1888.)

Rule 61: Notification of the Demand and Elections

1469. *Rule 61 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1889.)

Rule 62: Copy for the International Preliminary Examining Authority

1470. *Rule 62 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1890.)

Rule 63: Minimum Requirements for International Preliminary Examining Authorities

1471. *Rule 63 was adopted as appearing in the Draft, without discussion.* (Continued at 1891.)

Rule 64: Prior Art for International Preliminary Examination

1472. *Rule 64.1 was adopted as appearing in the Draft, without discussion.*

1473. The SECRETARY said that changes paralleling those made in the corresponding Rule 33 would have to be made in the Rule under consideration.

1474. The CHAIRMAN said that an amendment concerning paragraph 2 had been proposed by the Delegation of Poland (document PCT/DC/23) but since that Delegation could not be present in the meeting it would be given the opportunity at a later time to move its proposal.

1475. *Subject to the above understanding, Rules 64.2 and 64.3 were adopted as appearing in the Alternative Draft.* (Continued at 1535.)

Rule 65: Inventive Step or Non-Obviousness

1476. *Rule 65 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1893.)

Rule 66: Procedure Before the International Preliminary Examining Authority

1477. *Rule 66 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1894.)

Rule 67: Subject Matter Under Article 34(4)(a)(i)

1478. *Subject to the omission of the word "physical" in item (iv), and the omission of item (vii), Rule 67 was adopted as appearing in the Alternative Draft.* (Continued at 1895.)

Rule 68: Lack of Unity of Invention (International Preliminary Examination)

1479. *Rule 68 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1896.)

Rule 69: Time Limit for International Preliminary Examination

1480. *Rule 69 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1897.)

Rule 70: The International Preliminary Examination Report

1481. *After the proposal of the Delegation of the United Kingdom concerning Rule 70.8 contained in document PCT/DC/26 had been withdrawn, Rule 70 was adopted as appearing in the Alternative Draft, subject to the understanding that the Delegation of Poland could, if it so wished, move at a later time its proposal contained in document PCT/DC/23.* (Continued at 1538.)

Rule 71: Transmittal of the International Preliminary Examination Report

1482. Mr. BOGSCH (Secretary General of the Conference) said that the Rule would have to be changed to parallel the changes which had been made in the corresponding Rule concerning Chapter I.

1483. *Subject to the above understanding, Rule 71 was adopted as appearing in the Alternative Draft.* (Continued at 1899.)

Rule 72: Translation of the International Preliminary Examination Report

1484. *Rule 72 was adopted as appearing in the Draft, without discussion.* (Continued at 1900.)

Rule 73: Communication of the International Preliminary Examination Report

1485. *Rule 73 was approved as appearing in the Draft, without discussion.* (Continued at 1901.)

Rule 74: Translations of Annexes of the International Preliminary Examination Report and Transmittal Thereof

1486. *Rule 74 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1902.)

Rule 75: Withdrawal of the International Application, of the Demand, or of Elections (In the Alternative Draft and in the signed text, Rule 75: Withdrawal of the Demand, or of Elections)

1487. *Rule 75 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1903.)

Rule 76: Languages of Translations and Amounts of Fees Under Article 39(1) (In the Alternative Draft, also, Rule 76bis: Translation of Priority Document; in the signed text, Languages of Translations and Amounts of Fees Under Article 39(1); Translation of Priority Document)

1488. *Rule 76 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1904.)

1489. *Rule 76bis was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1904.)

Rule 77: Faculty Under Article 39(1)(b)

1490. *Rule 77 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1905.)

Rule 78: Amendment of the Claims, the Description, and the Drawings, Before Elected Offices

1491. *Rule 78 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1906.)

Article 43: Inventors' Certificates (In the signed text, no corresponding Article)

1492. *Discussion on this Article was deferred.* (Continued at 1548.)

Article 44: Regional Patents and Regional Patent Treaties (In the signed text, Article 45; Regional Patent Treaties)

1493. *Discussion on this Article was deferred.* (Continued at 1550.)

Article 45: Seeking Protection Through Other Means Than the Grant of a Patent (In the Alternative Draft, Article 45: "Seeking Certain Kinds of Protection" and Article ...: "Seeking Two Kinds of

Protection"; in the signed text, Article 43: "Seeking Certain Kinds of Protection" and Article 44: "Seeking Two Kinds of Protection")

1494. Mr. FERGUSSON (United Kingdom) asked whether patents of importation, as known in the national law of Spain, were to be understood as coming under the general notion of patents or were to be regarded as special types of patents.

1495. The SECRETARY replied that, in his opinion, patents of importation and patents of introduction, whether existing under the law of Spain or of any other country, came under the general heading of "patents." The only reason for which patents of addition were mentioned separately was that some special provisions concerning indications of the parent patent were needed.

1496. Mr. FERGUSSON (United Kingdom) said that, consequently, it was understood that the word "patent" covered all types of patents which were peculiar to any of the Contracting States,

1497. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that patents of importation existed also in Belgium and confirmation patents existed in several of the Latin American countries.

1498. *The Articles entitled "Seeking Certain Kinds of Protection" and "Seeking Two Kinds of Protection" were adopted as appearing in the Alternative Draft.* (Continued at 1589.)

Article 46: Incorrect Translation of the International Application

1499. *Article 46 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1802.)

Article 47: Time Limits

1500. Mr. OHWADA (Japan) asked whether the modification referred to in paragraph (2)(a) meant that the text would have to be altered or that the Assembly would simply decide that certain time limits would be changed.

1501. Mr. BOGSCH (Secretary General of the Conference) replied that the decision of the Assembly would suffice. No document would have to be drawn up and signed.

1502. Mr. VILLALBA (Argentina) said that the proposal of his Delegation, contained in document PCT/DC/51, was withdrawn in Main Committee II.

1503. Mr. SOUSA (Portugal) referring to the proposal of his Delegation contained in document PCT/DC/70 said that only where decisions were made by correspondence should unanimity be required.

1504. Mr. LORENZ (Austria) seconded the proposal of the Delegation of Portugal.

1505. Mr. HAERTEL (Germany (Federal Republic)) said that the time limits provided for in the Treaty were of such great importance that they should be modifiable only by unanimous decision even where the decision was made in the Assembly, rather than by correspondence.

1506. Mr. MCKIE (United States of America) supported the view expressed by the Delegation of Germany (Federal Republic).

1507. Mr. OTANI (Japan) also supported the view expressed by the Delegation of Germany (Federal Republic).

1508. Mr. ASCENSÃO (Portugal) said that, in his Delegation's view, the time limits provided for in the Treaty were too long and that, once the Treaty was applied, they would prove to be too long. Reduction of the time limits should be possible even if a few countries opposed such reduction. That was why the Assembly should be able to make a decision by a majority vote.

1509. *The proposal of the Delegation of Portugal was rejected by 15 votes against to 1 in favor, with 6 abstentions.*

1510. *Article 47 was adopted as appearing in the Draft. (Continued at 1803.)*

Article 48: Delay in Meeting Certain Time Limits

1511. *Article 48 was adopted as appearing in the Draft, without discussion. (Continued at 1804.)*

Article 49: Right to Practice Before International Authorities

1512. *Article 49 was adopted as appearing in the Draft, without discussion. (Continued at 1805.)*

Rule 79: Calendar

1513. *Rule 79 was adopted as appearing in the Draft, without discussion. (Continued at 1907.)*

Rule 80: Computation of Time Limits

1514. *Rule 80 was adopted as appearing in the Alternative Draft and in document PCT/DC/12/Add. 1, without discussion. (Continued at 1908.)*

Rule 81: Modification of Time Limits Fixed in the Treaty

1515. Mr. PETERSSON (Australia), referring to the proposal of his Delegation contained in document PCT/DC/77, proposed that Rule 81.3(c) should be amended. In the Draft it read as follows: "Replies containing formal proposals for amending the proposal shall be considered negative votes. Replies merely containing statements as to preferences or other observations shall be considered positive votes." The proposal in document PCT/DC/77 read as follows: "Replies must be either positive or negative. Proposals for amendment or observations shall not be regarded as votes."

1516. Mr. SAVIGNON (France) supported the proposal of the Delegation of Australia.

1517. Mr. BOGSCH (Secretary General of the Conference) asked whether the Delegations of Australia and France could accept that, in the proposal of the Delegation of Australia, the word "mere" should be inserted before the word "observations."

The consequence of such an amendment would be that if a positive or negative vote were accompanied by observations it would be counted as a vote; whereas, if the reply consisted only of observations without a formal conclusion ("yes" or "no"), the reply would not be considered a vote.

1518. The CHAIRMAN said that the Delegations of both Australia and France were in agreement with the proposal of the Secretary General.

1519. *The proposal of the Delegation of Australia was adopted as appearing in document PCT/DC/77, with the addition of the word "mere" before the word "observations."*

1520. *Subject to the foregoing decision, Rule 81 was adopted as appearing in the Alternative Draft. (Continued at 1909.)*

Rule 82: Irregularities in the Mail Service

1521. *Rule 82 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1910.)*

Rule 83: Right to Practice Before International Authorities

1522. *Rule 83 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1911.)*

End of the Twentieth Meeting

TWENTY-FIRST MEETING

Saturday, June 6, 1970, morning

Rule 52: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices (Continued from 1387.)

1523.1 Mr. VAN DAM (Netherlands) presented the proposal of the Delegations of Canada and the Netherlands contained in document PCT/DC/96.

1523.2 The problem to be solved was how to give the applicant sufficient time to amend his claims under Article 28, that is, before the designated Office (in the national phase) after he had received the international search report. The starting date of that period, according to the Draft, was the date on which the international application was communicated to the designated Office. However, the international search report might reach the applicant only after such communication had been effected. It was therefore desirable that in such a case the period should not start to run until some time – for example, one month – after he had obtained the international search report.

1523.3 As to the closing date of the period allowed for amendment, the Draft provided that it should be the same as the date on which the translation of the international application was due, that is, 20 months after the priority date. However, if the international search report was abnormally late, the so-called "closing date" could, in fact, be reached before the starting date of the period. It was not indispensable

that the time limit for the acts called for under Article 22 be applied also to the amendments. It was therefore suggested that the closing date could, under certain circumstances, be later than the time limit provided for in Article 22 – namely, when the lateness of the international search report so required. In any case, the closing date should be fixed for a point in time not earlier than the expiration of two months from the receipt of the international search report.

1524. Mr. LORENZ (Austria) asked whether the proposal would also apply when the international search report was extremely late, even if it was several months late.

1525. Mr. ROBINSON (Canada) replied that even during the first years of the Treaty's application, when International Searching Authorities could obtain slightly longer periods for producing international search reports, the period could only be such that it would be necessary, for the purpose of filing amendments, to prolong the deadline of 20 months from the priority date until the end of the 21st or 22nd month from the priority date.

1526. Mr. VILLALBA (Argentina) said that the effect of the proposal of the Delegations of Canada and the Netherlands would be that national processing could not start at the end of the 20th month after the priority date. Since that would mean further limitation on the freedom of the designated Offices, his Delegation opposed the proposal.

1527. Mr. BARDEHLE (International Federation of Patent Agents (FICPI)) wanted to know whether the proposal of the Delegations of Canada and the Netherlands meant that in countries where amendments could be proposed later – in the course of the normal examination procedure – such possibilities would be excluded.

1528.1 Mr. VAN DAM (Netherlands), referring to the objection of the Delegation of Argentina, said that the proposal under discussion would not prolong the time limit provided for in Article 22.

1528.2 As far as the question raised by the Representative of FICPI was concerned, the proposal under discussion would not modify the existing situation. The PCT did not modify, in any way, the procedure in the national phase, so that the present national laws and practices would continue to be applicable.

1529. Mr. LORENZ (Austria) wondered whether the proposal under discussion would not allow amendments to be made after the patent had been granted. Such amendments were allowed under the national law of Austria.

1530. Mr. ONIGA (Brazil) said that his Delegation shared the views expressed by the Delegation of Argentina.

1531. Mr. FERGUSSON (United Kingdom) wondered whether the proposal under discussion would stand up in cases where the international application would not be published.

1532. Mr. BOGSCH (Secretary General of the Conference) said that perhaps the best thing would be

to set up a working group to examine in detail all the implications of the proposal under discussion.

1533.1 Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that the proposal under discussion, as well as the proposal made by the same Delegations in connection with Rule 47, would benefit applicants and the national Offices of developing countries. Transmittal of the copy of the application by the applicant would give greater control over the procedure. The applicant would act through local patent attorneys and agents, who would, together with the transmittal, also take care of the amendments.

1533.2 He had been asked by Mr. LADAS, the Representative of the International Association for the Protection of Industrial Property (AIPPI), who could not be present in the meeting, to state the following opinion. The failure of the applicant to communicate the international application to each designated Office raised a serious problem. It was at the moment when the international search report reached him that he must make important decisions; he might decide to withdraw the application or certain designations; he had to prepare a translation; he might wish to file amendments. It was therefore more logical and economical that all those acts, as well as the communication of the international application, should be done by the applicant.

1534. *It was decided to refer the proposals concerning Rules 47 and 52, contained in documents PCT/DC/94, PCT/DC/96 and PCT/DC/100, to a working group consisting of the Delegations of Austria, Brazil, Canada, the Netherlands, and the United Kingdom. (Continued at 1544.)*

Rule 64: Prior Art for International Preliminary Examination (Continued from 1475.)

1535. Mr. GIERCZAK (Poland) moved the proposal of his Delegation concerning Rule 64.2 referred to in document PCT/DC/23. Its aim was to establish complete parallelism with the corresponding Rule under Chapter I, namely, Rule 33.1(b).

1536. Mr. SINGER (Germany (Federal Republic)) said that his Delegation supported the proposal of the Delegation of Poland.

1537. *The proposal of the Delegation of Poland concerning Rule 64.2, contained in document PCT/DC/23, was adopted. (Continued at 1892.)*

Rule 70: The International Preliminary Examination Report (Continued from 1481.)

1538. Mr. GIERCZAK (Poland) introduced the proposal of his Delegation concerning Rule 70.10 contained in document PCT/DC/23 and said that it was merely consequential upon the amendment just adopted in respect of Rule 64.2.

1539. *The proposal of the Delegation of Poland concerning Rule 75.10 contained in document PCT/DC/23 was adopted. (Continued at 1898.)*

Article 2: Definitions (Continued from 182.)

1540. Mr. ARTEMIEV (Soviet Union), referring to the proposal of his Delegation contained in document PCT/DC/18 and to the proposals of the Delegations of France and the United States of America contained in documents PCT/DC/97 and PCT/DC/98, respectively, proposed that a working group be established to propose a text which would try to take care of all those proposals.

1541. Mr. SAVIGNON (France) seconded the proposal of the Delegation of the Soviet Union.

1542. Mr. HAERTEL (Germany (Federal Republic)) also supported the proposal of the Delegation of the Soviet Union.

1543. *It was decided to refer to the working group consisting of the Delegations of Algeria, France, Romania, the Soviet Union, and The United States of America, the task of considering and reporting on Articles 1 and 2 in particular, as affected by the proposals contained in documents PCT/DC/18, PCT/DC/97 and PCT/DC/98.* (Continued at 1546.)

End of the Twenty-First Meeting

TWENTY-SECOND MEETING

Monday, June 8, 1970, morning

Rule 47: Communication to Designated Offices (Continued from 1534.)**Rule 52: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices** (Continued from 1534.)

1544.1 Mr. ROBINSON (Canada) introduced the report of the Working Group contained in document PCT/DC/103.

1544.2 He said that, after the report had been prepared, it had been decided that the last two lines of Rule 47.1(e) should read as follows: "... on the request of that Office, or the applicant, be sent to the applicant at the time of the notice referred to in paragraph (c)."

1545. *Subject to the above modification, the proposals concerning Rule 47.1(e), Rule 52.1(a) and Rule 52.1(b) were adopted as contained in document PCT/DC/103, without discussion.* (As far as Rule 47 is concerned, continued at 1875; as far as Rule 52 is concerned, continued at 1880.)

Article 2: Definitions (Continued from 1543.)

1546. Mr. BOGSCH (Secretary General of the Conference) presented document PCT/DC/102, which contained the report of the Working Group set up to consider various proposals concerning Article 2.

1547. *Subject to the understanding that the Drafting Committee would be entitled to propose consequential or terminological language modifications, Article 2 was adopted as appearing in document PCT/DC/102.* (Continued at 1737.)

Article 43: Inventors' Certificates (In the signed text, no corresponding Article) (Continued from 1492.)

1548. Mr. BOGSCH (Secretary General of the Conference) said that the Alternative Draft proposed the omission of the Article appearing as Article 43 in the Draft in view of the fact that inventors' certificates were now being taken care of in other provisions of the Treaty expected to emerge from the Diplomatic Conference.

1549. *Subject to the understanding that the Drafting Committee was entitled to propose such further consequential changes as might appear to be necessary, it was decided not to include in the Treaty Article 43 as appearing in the Draft.*

Article 44: Regional Patents and Regional Patent Treaties (In the signed text, Article 45: Regional Patent Treaties) (Continued from 1493.)

1550. The CHAIRMAN pointed out that the Alternative Draft proposed the deletion of the Article in question and that the Delegations of France and the Netherlands had made a proposal for its modification. Their proposal appeared in document PCT/DC/95.

1551.1 Mr. LEWIN (Sweden) said that his Delegation objected to the deletion of the Article in question although it had to be admitted that some of its objections were no longer valid in view of the amendments to Article 2 on definitions. In the Nordic countries there were proposals for a special kind of application called "the Nordic patent application." Such an application could be filed with any of the national Offices of the Nordic countries and, if the application was granted, it resulted in national patents in each of the countries which were designated in the application. It must be noted that the system had not yet entered into force.

1551.2 It was believed that Article 2, even as modified, did not cover that kind of system. For that reason, Article 44 should be maintained in one form or another.

1552.1 Mr. VAN BENTHEM (Netherlands) introduced the proposal made by his Delegation and the Delegation of France, which was contained in document PCT/DC/95. It represented a complete rewrite of Article 44. Paragraph (1) stipulated that any treaty providing for the grant of regional patents could provide that international applications designating a State party to both the regional patent treaty and the PCT could be filed for the grant of a regional patent. Paragraph (2) provided that if, for the purpose of obtaining a patent in any Contracting State, the applicant was entitled to file a regional application the national law of such State would provide that any designation of such State in the international application would have the effect of a request to obtain a regional patent in that State.

1552.2 The sense of paragraph (2) was that the national law of any State could close the so-called "PCT route" to the obtaining of national patents if, in the same State, regional patents were available. In other words, a national patent could be obtained only

by not using the PCT; and if the PCT was used, only a regional patent could be obtained.

1552.3 One of the reasons for the proposal was that, under a system like the contemplated European patent system, applications would be examined even though some of the countries belonging to the European system would have no examination as far as national patents were concerned. In countries like the Netherlands, where a large number of applications came from abroad, it was desirable that such applications be examined, and the task of such Offices would be considerably facilitated if such an examination were preceded by an international search and possibly also an international preliminary examination. It was to be expected that once the European system became operative most foreign applicants would use it. They should not be allowed to avoid examination by using the PCT to obtain national patents. The cumulative effect of the PCT and the European system might be that national Offices would have such small numbers of applications to deal with that they would discontinue their examination procedures. It would not be worthwhile keeping up an examining staff only for those exceptional cases in which an applicant might wish to have a national patent via the PCT.

1552.4 It had to be noted, however, that once the PCT route was closed as proposed to national patents for foreigners, it would also be closed to national patents for nationals. Furthermore, the route to national patents would not be closed entirely but only for those who used the PCT; so that applicants who still wished to obtain national patents could obtain them by not using the PCT. Finally, it was impossible to foresee which countries, if any, would use the faculty that the proposal in question would give them. That would certainly depend on the circumstances which would prevail in the future.

1553.1 Mr. SAVIGNON (France) said that his Delegation, which was co-signatory of the proposal with the Netherlands, naturally supported it. It was a fact that most applications by foreigners related to inventions of international importance. A particularly serious examination of such applications was desirable. Consequently, they should be directed as much as possible towards the contemplated European patent systems, in which such examination would be assured.

1553.2 The Government of France considered the PCT as part of several measures, contemplated at that time, to improve patent systems through international collaboration. The proposal was not intended to take away any of the advantages of the PCT; on the contrary, it was intended to combine the advantages of the PCT and the future European Convention and thereby make both more attractive to applicants.

1554. Mr. BOGSCH (Secretary General of the Conference) said that it would be interesting to know whether the proposal would still allow an applicant filing an international Application under the PCT to designate only some of the six countries of the European Economic Community in view of the fact that European Convention No. 2, to be concluded

among the said six countries, would not allow designation of any fewer than all six countries.

1555.1 Mr. VAN BENTHEM (Netherlands) replied in the affirmative to the question of the Secretary General. Naturally, under European Convention No. 1 the situation was different because under that Convention countries other than the six could be individually designated without having to designate all the countries additional to the said six.

1555.2 As far as the Netherlands was concerned, it would be a party to European Convention No. 2. The proposal, if used by the Netherlands, would mean that an applicant using the PCT could not restrict his application to some only of the six countries, even if he desired to file his application only in the Netherlands. The case was not unlike the situation in the United States of America, where applicants could not obtain patents for any fewer than all the 50 States composing the United States.

1555.3 In practice, it was unlikely that foreign applicants would not want to have protection in all the six countries.

1556. Mr. ONIGA (Brazil) wondered whether the proposal under discussion was compatible with the Paris Convention.

1557. Mr. PHAF (Netherlands) replied that Article 2(3) of the Paris Convention provided that the laws of each of the member States of the Paris Union relating to administrative procedure were not subject to any limitation by virtue of Article 2(1), which provided for national treatment for foreigners. Consequently, any country was free to regulate the procedure as long as it permitted the obtaining of protection in that country.

1558. Mr. OTANI (Japan) said that his Delegation was opposed to the proposal of the Delegations of France and the Netherlands because it would reduce the number of possibilities open to foreigners. The PCT should improve the situation of the applicant and not deprive him of possibilities which he had today. Furthermore, the question was also one of expense. The fees for the European patent would probably be much higher than those for a national patent. Consequently, an applicant who wished, for example, to obtain protection only in the Netherlands would have to pay much bigger fees because he could obtain such protection only if he paid the fees applicable under the European Convention.

1559. Mr. PHAF (Netherlands) said that he wished to make a further observation in connection with the remarks of the Delegation of Brazil. Complete equality between foreigners and nationals would be maintained under the proposal of the Delegations of France and the Netherlands because, if any country closed the PCT route to national patents, it would do so irrespective of the nationality of the applicant.

1560. Mr. FERGUSSON (United Kingdom) said that, whereas the implications of the proposal of the Delegations of France and the Netherlands could be fairly well predicted, since there was a rather clear picture of what the European Convention was going to be and which countries would adhere to it, the same

was not true in respect of other possible regional agreements which did not even exist in draft form at the present stage. It might, therefore, be dangerous to accept a proposal which would naturally go far beyond the European regional patent system. Prohibitive fees might be introduced in some regional treaties which would, in practice, make it impractical for the applicant to use the PCT and would force him to use the national route. Furthermore, the regional patent might extend into countries in which the applicant did not desire or simply had no right to protection and, therefore, he might wish to be selective in designating countries. Such selectivity would be excluded under the PCT if the proposal under discussion was adopted and was combined with that feature of the European Patent Convention which provided that the European patent must be requested for all six countries and none of them could be left out of the application. For all those reasons, the Delegation of the United Kingdom would vote against the proposal.

1561. Mr. CLARK (United States of America) said that, for the reasons stated by the previous speaker, his Delegation aligned itself with the position taken by the Delegation of the United Kingdom.

1562. Mr. PETERSSON (Australia) said that his Delegation, too, would prefer the PCT to remain as flexible for the applicant as possible. Consequently, he would oppose the proposal of the Delegations of France and the Netherlands.

1563.1 Mr. VAN BENTHEM (Netherlands) said that it was clear from the proposal that it could only apply if, under the regional treaty, any person who could file a PCT application could also file a regional application. That was so because paragraph (2) started with the words: "If, for the purpose of obtaining a patent in any Contracting State, the applicant is entitled to file a regional application..." Consequently, if the applicant were not entitled to file a regional application, the provision would not apply.

1563.2 It had to be emphasized that it had not yet been decided whether use would be made of the proposal once the PCT and the European Convention went into effect. However, the possibility must be provided for now because, otherwise, only a revision conference could provide for it, with all the delays that such a procedure necessarily entailed.

1564. Mr. BRAUN (Belgium) said that his Delegation fully supported the proposal of the Delegations of France and the Netherlands. It would be impractical to adopt a "wait and see" attitude since both the PCT and the European Convention might enter into force within a few years. Furthermore, he shared the view expressed by the Delegation of the Netherlands that the proposal was in perfect conformity with the Paris Convention.

1565. Mr. TUXEN (Denmark) said that his Delegation shared the views expressed by the Delegations of Japan and the United Kingdom. The proposal was out of line with the spirit of the PCT. According to that spirit, as long as national patents were available in a country, the PCT should be available for obtaining such patents. Furthermore, it

was also in the spirit of the PCT that no applicant who did not wish to have his application examined should be forced into such an examination if, under the national law of the designated State, no examination system existed. The proposal under discussion would force foreign applicants into examination by the European Patent Office, even for the purpose of countries where national applications were not subject to examination.

1566. Mr. KÄMPF (Switzerland) said that, as long as an applicant could choose between national and regional patents, he should be able to use the PCT for obtaining either according to his choice. The proposal would eliminate the possibility of choice where the PCT was used. Consequently, his Delegation did not look with favor on the proposal.

1567. Mr. FERGUSSON (United Kingdom) said that the objections of his Delegation related to paragraph (2) and not to paragraph (1).

1568. Mr. LAUWERS (Commission of the European Communities) said that, in the name of the Commission of the European Communities, he wished to record his support for the proposal of the Delegations of France and the Netherlands. It was in harmony with the basic principle of the PCT, namely, that the PCT did not affect the freedom of the Contracting States to legislate in patent matters as they wished. Such freedom was particularly important for States which were part of an economic community.

1569. Mr. SAVIGNON (France) said that it was a merit rather than a demerit of the proposal under discussion that it could be applied also to economic communities other than the European Community. It was a natural tendency of the present age for countries to form regional groups for economic purposes. It could not hurt any applicant if his patent extended to all countries members of such groups rather than only to some of them.

1570. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation supported the proposal of the Delegations of France and the Netherlands. It should be noted that the effect of the proposal was merely to reserve a possibility; it did not provide that countries party to treaties providing for regional patents had to apply it.

1571. Mr. CLARK (United States of America) said that his Delegation proposed that the proposal contained in document PCT/DC/95 be amended in two respects: in paragraph (1), after the words "Regional Patent Treaty" the following words should be inserted: "to applicants entitled to file international applications under Article 9"; paragraph (2) should read as follows: "The national law of such designated State may provide that any designation of such State in the international application shall have the effect of a request to obtain a regional patent."

1572. Mr. PRETNAR (Yugoslavia) said that he shared the views expressed by the Delegations of Japan and Switzerland. As long as in any country both national and regional patents were available, the PCT should be able to be used for obtaining either of them.

1573. Mr. VAN BENTHEM (Netherlands) said that his Delegation had no objection to the amendments proposed by the Delegation of the United States of America.

1574. Mr. CLARK (United States of America), at the invitation of the Chairman, repeated the amendments which his Delegation had proposed.

1575. The CHAIRMAN asked whether there was any objection to the amendments proposed by the Delegation of the United States of America.

1576. Mr. LEWIN (Sweden) said that the amendments presented by the Delegation of the United States of America did not change the situation. For the reasons stated by the Delegation of Denmark, his Delegation still had misgivings. The proposal of the Delegations of the Netherlands and France introduced an element of competition between the PCT plan and other examination systems such as the European regional patent system. His Delegation was against the original proposal and the proposal as amended by the Delegation of the United States of America.

1577. Mr. ASCENSÃO (Portugal) said that his Delegation objected to the proposal even in the form amended by the Delegation of the United States of America.

1578. The CHAIRMAN said that, according to the Secretary, the Delegations of Portugal and Sweden had objected to the amendment proposed by the Delegation of the United States of America, but he understood that they had objected to the proposal of the Delegations of France and the Netherlands, whether amended or not.

1579. Mr. LEWIN (Sweden) said that his Delegation was against the proposal as originally presented by the Delegations of France and the Netherlands and was also opposed to the same proposal as amended by the Delegation of the United States of America.

1580. The CHAIRMAN said that that was his understanding of the previous intervention by the Delegation of Sweden.

1581. Mr. OTANI (Japan) said that his Delegation shared the views expressed by the Delegation of Sweden.

1582. The CHAIRMAN said that, as there seemed to be no objection to the amendment, then the proposal as amended would be put to the vote provided the Delegations of France and the Netherlands had no objection. He said that those two Delegations had signalled that they had no objection.

1583. *The proposal of the Delegations of France and the Netherlands as amended by the Delegation of the United States of America was put to the vote. The result was 14 votes in favor to 14 against, with 8 abstentions.*

1584. The CHAIRMAN said that the Secretary had informed him that, under the Rules of Procedure, an equally divided vote meant rejection of the proposal. He had not himself checked that point in the Rules of

Procedure. In order to be sure that the count was correct, he would ask for a recount.

1585. *In the course of a new vote, the proposal of the Delegations of France and the Netherlands as amended by the Delegation of the United States of America was adopted by 15 votes in favor to 14 against, with 7 abstentions.*

1586. Mr. ARMITAGE (United Kingdom) said that, as Chairman of the Drafting Committee, he would like to clarify a point relating to paragraph (1). As amended, that paragraph implied that only such regional patent treaties were meant as gave the right to file regional applications to all those who were entitled to file international applications under the PCT. However, Article 2, which contained a definition of regional patents, did not contain such a qualification. He wished to know whether the definition in Article 2 overrode paragraph (1), which had just been adopted or whether the latter overrode the former.

1587. The CHAIRMAN replied that it was his understanding that there was no desire in the Article under discussion to restrict the definition of "national Office" as appearing in Article 2. The Article under discussion related to another matter, namely, in what circumstances the national law of a country might restrict the use of the PCT, and it provided that it could restrict it only in connection with regional treaties under which regional applications could be filed by any person who was entitled to file an international application under the PCT.

1588. Mr. LEWIN (Sweden), on the invitation of the Chairman, restated the question which he had brought up earlier in the discussion. In the Nordic countries the result of a national application could be that, once granted, national patents would come into existence in each of the Nordic countries. It was not clear whether, in the terminology of the PCT, that kind of application was a national Application or a regional application. The Drafting Committee should make sure that some provision in the Treaty would make it clear that those kinds of applications were also covered. (Continued at 1800.)

Article 45: Seeking Protection Through Other Means Than the Grant of a Patent (In the Alternative Draft, Article 45: "Seeking Certain Kinds of Protection" and Article "Seeking Two Kinds of Protection"; in the signed text, Article 43: "Seeking Certain Kinds of Protection" and Article 44 "Seeking Two Kinds of Protection") (Continued from 1498.)

1589. Mr. GYRDYMOV (Soviet Union) said that it was important that either the Article under discussion or Article 2 on definitions cover the case of regional inventors' certificates.

1590. Mr. BOGSCH (Secretary General of the Conference) said that, in his view, Article 2 already took care of the problem but, if not, the Drafting Committee should propose an amendment because it was clearly desirable that the PCT should also refer to regional inventors' certificates. (Continued at 1798 and 1799.)

*End of the Twenty-Second Meeting***TWENTY-THIRD MEETING**

Monday, June 8, 1970, afternoon

Article 1: Establishment of a Union (Continued from 350.)

1591. Mr. ARTEMIEV (Soviet Union), referring to the proposal of his Delegation contained in document PCT/DC/18, said that, in conformity with the recent decision on the new definition of the word "application" in Article 2, the reference in Article 1 should not be to "patent applications" but rather to "applications," thereby placing inventors' certificates and patents on the same footing.

1592. Mr. DAHMOUCHE (Algeria) seconded the proposal of the Delegation of the Soviet Union.

1593. Mr. TASNÁDI (Hungary) supported the proposal of the Delegation of the Soviet Union.

1594. *The proposal of the Delegation of the Soviet Union concerning Article 1(1) was adopted as appearing in document PCT/DC/18, and as amended during the discussion.*

1595. Mr. ALMEIDA (Brazil) said that the Working Group on a new chapter to be inserted in the PCT would also come up with a proposal for modifying the paragraph in question.

1596. *It was understood that the discussion on Article 1 would be re-opened when the report of the Working Group on the new chapter was available.* (Continued at 1690.)

In the signed text, Preamble (no provision in the Drafts) (Continued from 175.)

1597. Mr. ARTEMIEV (Soviet Union), referring to the proposal of his Delegation contained in document PCT/DC/18, said that there were proposals for a preamble also by the Delegations of Romania, contained in document PCT/DC/104, Brazil and Sweden, referred to in the working group document PCT/DC/WG.II/6. He had the impression that all Delegations wished the PCT to have a preamble. That was customary in treaties of the kind to which the PCT belonged. The establishment of a working group would seem to be desirable in order to present a joint proposal after having taken account of the various proposals presented.

1598. Mr. SAVIGNON (France) seconded the proposal of the Delegation of the Soviet Union to set up a working group.

1599. Mr. BOGSCH (Secretary General of the Conference) said that perhaps, in order to save time, the task of drafting a preamble could be given directly to the Drafting Committee.

1600. Mr. ARTEMIEV (Soviet Union) said that his Delegation was ready to entrust the task to the Drafting Committee.

1601. Mr. VILLALBA (Argentina) suggested that the preamble contain references not only to filing,

search, and preliminary examination, but also to the other matters with which the PCT was going to deal.

1602. Mr. DAHMOUCHE (Algeria) said that the Working Group for the new chapter would, as far as he was aware, propose an addition to the preamble which would cover the new Chapter In question.

1603. *The task of drafting a preamble was referred to the Drafting Committee.* (Continued at 1690.)

Article 11: Filing Date and Effects of the International Application (Continued from 810.)**Article 27: National Requirements** (Continued from 814.)**Article 60: Reservations** (In the signed text, Article 64: Reservations) (Continued from 1453.)

1604.1 Mr. ROBINSON (Canada) presented the report of the Working Group set up to deal with Articles 11(3) and 27(5) of the Draft. The report was contained in document PCT/DC/106.

The document in question represented the result of a substantial amount of work over a number of meetings. The Working Group first addressed itself to isolating the aspects of the problem on which there was general agreement from those aspects which divided the delegations. After much deliberation and reflection, a unanimous solution was arrived at, subject to the reservations of some Delegations referred to in paragraph 5 of the report.

1604.2 It was proposed that Article 11(3) be completed in two respects. First, a reference should be made to the possibility of reservations which would be inscribed as a new paragraph (4) in Article 60 [Article 64 in the signed text]. Secondly, Article 11(3) should be completed by the following words: "which shall be considered to be the actual filing date in each designated State." Those words should make it clear that the priority effect of Article 11(3) was complete.

1604.3 Furthermore, it was proposed that the last sentence of Article 27(5) as appearing in the Draft should be deleted.

1604.4 Finally, it was proposed that a new paragraph(4) be written into Article 60 concerning the possibility of reservations in connection with the prior art effect. It should be noted that the Working Group considered not only the proposals cited in paragraph 2 of the report – namely, the proposal of the Netherlands contained in document PCT/DC/29 and the joint proposal of twelve Delegations contained in document PCT/DC/32 – but also the proposals of the Delegation of France, contained in document PCT/DC/17 and Poland, contained in document PCT/DC/23.

1604.5 It was important to note that the three amendments proposed – namely, those concerning Article 11(3), Article 27(5) and Article 60(4) [new] – constituted a single proposal whose elements were not to be dissociated from each other.

1605.1 Mr. SAVIGNON (France) said that paragraph 5 of the report stated that certain Delegations in the Working Group had expressed

reservations as to the point in time at which the declaration under the proposed Article 60(4)(a) could be made and as to the freedom to modify the statement under Article 60(4)(c). The Delegation of France was among the said Delegations.

1605.2 Above all, it should be noted that the Delegation of France was glad that any possible exception to Article 11(3) was now admitted only by way of a reservation, and thus regulated in the Article concerning reservations.

1605.3 As far as the time at which the declaration under Article 60(4)(a) should be made was concerned, the Delegation of France suggested that such declaration should be possible only up to the time when the instrument of ratification or accession was deposited. Such a measure would create a situation in which all countries could know, at the time another country deposited its instrument of ratification or accession, whether that country was going to make use of the faculty and, if so, to what extent. Article 60(4)(c), last sentence, provided that the statement referred to in that subparagraph could be modified at any time. The Delegation of France proposed that such modification should be able to consist of either a withdrawal of the reservation or of a shortening of the period which separated the prior art effect from the international filing. In other words, it should not allow the lengthening of such period. That was important because, otherwise, the situation, which was not very satisfactory in any case, could by a later modification be still further aggravated.

1606. Mr. STAMM (Switzerland) said that, for the reasons stated by the previous speaker, his Delegation could not accept the proposal of the Working Group.

1607. Mr. VAN BENTHEM (Netherlands) said that, although his Delegation had great sympathy with the point of view expressed by the Delegations of France and Switzerland, it was ready to accept the proposal contained in the report of the Working Group since the flexibility provided for in that proposal seemed to be indispensable in the eyes of some of the delegations.

1608.1 Mr. HAERTEL (Germany (Federal Republic)) said that, as was well known, the aims of the proposal in question was to deal with the now famous U.S. Court decision in the Hilmer case. His Delegation wanted to try to find a compromise solution and to limit the effects of that case to the maximum extent possible but, in view of the fact that entire freedom in the matter seemed to be of paramount importance to at least one country, his Delegation – although with some hesitation and with much sympathy for the point of view expressed by the Delegation of France – was ready to accept the proposal of the Working Group.

1608.2 The proposal of the Delegation of France would, in fact, freeze the situation of each country as of the date of its becoming party to the PCT, at least in the sense that if it had no principle similar to that of the Hilmer case at that time it could not later introduce such a principle into its legislation, or if it had such a principle in its legislation at that time it could not later strengthen the period in question. The proposal of the

Delegation of France would therefore favor those countries which at the time of the discussion had a principle like the Hilmer principle as compared with those countries which, at the time in question or at the time when they ratified or acceded to the PCT, had or would have no such principle in their laws.

1608.3 His Delegation was of the opinion that each Contracting State should have the same right. Any State which was going to make use of the faculty provided for in Article 60(4) must be aware of the fact that it was giving an example which other Contracting States might follow.

1609. Mr. ARMITAGE (United Kingdom) said that his Delegation wished to associate itself with the very statesman – like declarations of the Delegations of the Netherlands and Germany (Federal Republic). Although the Delegation of the United Kingdom had sympathy with the ideas expressed by the Delegations of France and Switzerland, it was convinced that, under the circumstances, the proposal represented the best compromise. In expressing that view, the Delegation of the United Kingdom wished to emphasize that its attitude should not be interpreted as recognizing that, from the point of view of the efficient working of the PCT, it was satisfactory that the laws of some countries should remain as they were. If they had to remain as they were, the Delegation of the United Kingdom accepted that fact with resignation but, at the same time, it hoped – because it would be equitable in respect of the other countries – that the laws of those countries would move in a direction which would make the PCT more attractive to applicants.

1610. Mr. VILLALBA (Argentina) said that his Delegation firmly believed in the freedom of each Contracting State to regulate its substantive patent law as it desired. The proposal of the Working Group seemed to represent a compromise which his Delegation was ready to accept.

1611.1 Mr. BRAUN (Belgium) said that his Delegation shared the views expressed by the Delegation of France. It was most important for both the applicant and third parties that no uncertainties should exist as to the future attitude of the countries once they had become party to the PCT.

1611.2 As far as the views expressed by the Delegation of Germany (Federal Republic) were concerned, his Delegation took the view that once a country accepted the PCT, and in particular Article 11(3), it should not have the right to render, at a later date, the situation of applicants more difficult.

1612. Mr. LORENZ (Austria) said that, for the reasons expressed by the Delegation of Germany (Federal Republic), his Delegation was ready to accept the compromise proposal of the Working Group.

1613. Mr. PETERSSON (Australia) said that his Delegation was sympathetic to the difficulty in which the Delegation of the United States of America found itself on the point under discussion but it wished, at the same time, to express its regret that such a provision had become necessary. In the hope that the use to which the faculty provided for in the compromise proposal was going to be put would

remain minimal, his Delegation – without supporting the proposal – would not oppose it.

1614. Mr. CLARK (United States of America) said that his Delegation appreciated the understanding and cooperation which had become manifest in the Working Group and which was illustrated by the statesman-like observations of the various Delegations and, in particular, by those of the Delegation of Germany (Federal Republic). His Delegation respectfully solicited the support of the other Delegations for the compromise proposal contained in document PCT/DC/106.

1615. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation entirely agreed with the observations of the Delegation of the Netherlands shared in part also by the Delegations of the United Kingdom and Germany (Federal Republic). Although his Delegation was of the opinion that the proposal of the Delegation of France, supported by the Delegation of Belgium, would clarify and improve upon the proposal of the Working Group, in view of the fact that the latter proposal was the result of a compromise, it was ready to accept it in the form in which it had been proposed by the Working Group.

1616. Mr. SAVIGNON (France) said that it was rather dangerous to admit the possibility of retaliation. It was that very idea of retaliation which, at the beginning of the Working Group's task, had been eliminated. It was to be regretted that it had later been accepted in the proposals contained in document PCT/DC/106. It was mainly for that possibility of retaliation that the Delegation of France could not accept the proposal of the Working Group.

1617. Mr. LEWIN (Sweden) said that his Delegation could agree with the compromise solution. He thought it unlikely that the possibility of retaliation would be made use of. The matter was not so much a question of reciprocity as a question of what was a better system. A good system required the protection of third parties from a patenting picture according to which inventions that were very similar could be protected by a continuous chain of patents, thereby reducing the right of third parties to have the freedom of construction of improvements which were not inventions in themselves.

1618. Mr. ROBINSON (Canada) said that his Delegation, while fully sympathizing with the sense of the reservations proposed by the Delegation of France and supported by the Delegations of Switzerland and Belgium, was ready, like the Delegations of the Netherlands and Italy, to support the proposed solution since it seemed to be the best practical solution of a practical problem that could be reached.

1619. Mr. OTANI (Japan) said that his Delegation was in favor of the compromise solution proposed by the Working Group for the reasons stated by the Delegation of Germany (Federal Republic) and other Delegations.

1620. *The proposals of the Working Group concerning Articles 11(3), 27(5) and 60(4) [new] were adopted as contained in document PCT/DC/106, by 18 votes in favor to 4 against, with 11 abstentions.*

(Article 11 continued at 1749; Article 27 at 1774; Article 60 at 2690.)

Rule 1: Abbreviated Expressions (Continued from 815.)

1621. *It was agreed to refer the reserved parts of this Rule to the Drafting Committee for harmonization with the new definitions contained in Article 2 as amended.* (Continued at 1815.)

Rule 2: Interpretation of Certain Words (Continued from 816.)

1622. *It was agreed to refer the reserved parts of this Rule to the Drafting Committee for harmonization with the new definitions contained in Article 2 as amended.* (Continued at 1816.)

Rule 4: The Request (Contents) (Continued from 876.)

1623. *It was agreed to refer the reserved parts of this Rule to the Drafting Committee for harmonization with the new definitions contained in Article 2 as amended.* (Continued at 1818.)

Rule 34: Minimum Documentation (Continued from 1142.)

1624. *Rule 34.1(a) was adopted with the understanding that the Drafting Committee would harmonize it with the new definitions contained in Article 2 as amended.*

1625. Mr. ARTEMIEV (Soviet Union), referring to the proposal of his Delegation contained in document PCT/DC/99 concerning Rule 34.1(e), said that the aim of the proposal of his Delegation was to avoid any uncertainty which might arise in connection with the discontinuation of the publications of English abstracts of certain Russian language documents by some private publishing firms. The maintaining of the Russian documents in the minimum documentation should not be exposed to such uncertainties.

1626. Mr. OTANI (Japan) supported the proposal made by the Delegation of the Soviet Union.

1627. Mr. TASNÁDI (Hungary) said that, for the reasons stated by the Delegation of the Soviet Union, his Delegation also supported the proposal of the Delegation of the Soviet Union.

1628. Mr. IONITA (Romania) said that his Delegation too supported the proposal of the Delegation of the Soviet Union.

1629. Mr. VAN BENTHEM (Netherlands) said that it was not entirely clear to him what was meant by the word "classes" in the proposal of the Delegation of the Soviet Union.

1630. Mr. BOGSCH (Secretary General of the Conference) said that he thought that the word "classes" meant that, if in a certain branch of technology abstracts in English existed, then for that branch of technology such abstracts could not be discontinued in the future.

1631. Mr. ARTEMIEV (Soviet Union) said that the Secretary General's interpretation corresponded to the views of his Delegation.

1632. Mr. OTANI (Japan) said that the text of the proposal of the Delegation of the Soviet Union should be clarified in the sense that it related to the responsibility of all the International Searching Authorities.

1633. Mr. HAERTEL (Germany (Federal Republic)) said that he would appreciate it if the Delegation of the Soviet Union could clarify the practical scope of its proposal, preferably by giving an example.

1634. Mr. ARTEMIEV (Soviet Union) said that, as was known, Soviet patent documents were at the present time abstracted in English by a London-based firm. However, since that firm was under no obligation to continue the service, it could happen that in the future the service might be discontinued, either entirely or in respect of some of the classes of technology. The aim of the proposal of his Delegation was to provide that in such a situation the International Searching Authorities would take joint measures to continue the publication of the English abstracts of Russian and Japanese patent documents.

1635. Mr. CLARK (United States of America) asked whether the proposal of the Delegation of the Soviet Union would require the International Searching Authorities to provide, on their own, for translations of all Russian and Japanese patents in case the present services were discontinued.

1636. Mr. BOGSCH (Secretary General of the Conference) replied that, as far as he understood the proposal of the Delegation of the Soviet Union, it dealt only with abstracts, not with patents.

1637. Mr. CLARK (United States of America) said that he would then ask the question in relation to abstracts only.

1638. Mr. BOGSCH (Secretary General of the Conference) said that he thought that the proposal of the Delegation of the Soviet Union meant that there was a collective obligation on the International Searching Authorities to find some solution.

1639. Mr. CLARK (United States of America) asked who would pay for such services.

1640. Mr. BOGSCH (Secretary General of the Conference) replied that the question was left open by the proposal under discussion. "Appropriate measures" would try to take care of the problem.

1641. Mr. HAERTEL (Germany (Federal Republic)) said that he did not think that it was justified to oblige the International Searching Authorities to take the measures asked for by the Delegation of the Soviet Union, particularly in view of the fact that the International Patent Institute would not be a contracting party. Such measures should rather be taken by the Contracting States or by their Assembly.

1642. Mr. SCHATZ (International Patent Institute) said that his Institute fully shared the views expressed by the Delegation of Germany (Federal Republic) and

asked whether the problem could not be taken care of by the Committee for Technical Cooperation.

1643. Mr. ARTEMIEV (Soviet Union), on a question from the Chairman, said that, while it seemed to be more practical and more natural to ask that solutions be found by the International Searching Authorities, his Delegation was ready to consider the proposal that the taking of such measures should be a task for the Assembly.

1644. Mr. FERGUSSON (United Kingdom) said that the matter was one of minimum documentation, which was the responsibility of the International Searching Authorities. If, because of the situation envisaged by the Delegation of the Soviet Union, the International Searching Authorities would have to incur expenses, such expenses would ultimately be borne by the applicants when they paid for the international search reports. Paying for such expenses should not be made the responsibility of the Contracting States or the Assembly.

1645. Mr. VAN BENTHEM (Netherlands) said that he understood the proposal of the Delegation of the Soviet Union in the sense that, if the abstracting service were discontinued, each International Searching Authority would do its best to solve the problem but there was no absolute obligation on anybody to restore the service.

1646. Mr. CLARK (United States of America) proposed that the Main Committee consider and vote separately on the first and second paragraphs of the proposal of the Delegation of the Soviet Union contained in document PCT/DC/99.

1647. Mr. ARTEMIEV (Soviet Union) said that it was not realistic to imagine that a complete search could be established without searching the Russian and Japanese patent documents. If there was no other solution, perhaps each International Searching Authority which could not, itself, search in the Japanese or Russian literature should send its search reports to the Soviet and Japanese Offices for a supplementary search in the Japanese and Russian literature.

1648. *It was understood that the two paragraphs of the proposal of the Soviet Delegation contained in document PCT/DC/99 would be voted upon separately and that the vote would just be taken on paragraph 1 and then on paragraph 2.*

1649. *The meeting recessed for thirty minutes.*

1650. Mr. ARTEMIEV (Soviet Union) said that, during the recess, the Delegation of the Soviet Union had studied further the proposal of the Delegation of Germany (Federal Republic) to the effect that in case of discontinuation of abstracting services it would be the Assembly, rather than the International Searching Authorities, which would have the task of taking appropriate measures. His Delegation was prepared to accept that proposal provided that the Delegation of the United States withdrew its proposal to vote separately on the two paragraphs of the proposal of the Delegation of the Soviet Union.

1651. Mr. CLARK (United States of America) said that, in view of the statement made by the Delegation

of the Soviet Union, his Delegation withdrew its proposal for separate votes on the two paragraphs.

1652. Mr. HADDRICK (Australia) said that the Main Committee had already decided to have two separate votes.

1653. The CHAIRMAN asked the Delegation of Australia whether it wished to renew the proposal of the Delegation of the United States of America in view of the fact that the Delegation of the United States of America had withdrawn it.

1654. Mr. HADDRICK (Australia) said that there seemed to be no need to renew any proposal because the decision had been made by the Main Committee.

1655. The CHAIRMAN replied that he had reversed his former declaration but that he would certainly consider a new motion by the Delegation of Australia if it wished to present one.

1656. Mr. HADDRICK (Australia) requested that there should be separate votes for the two paragraphs in question.

1657. Mr. ARTEMIEV (Soviet Union) said that his Delegation objected to separate votes.

1658. Mr. HADDRICK (Australia) said that the first paragraph of the proposal of the Delegation of the Soviet Union was probably acceptable to most Delegations, whereas the second paragraph was more controversial. Leaving them together would confuse the discussion.

1659. Mr. HAERTEL (Germany (Federal Republic)) said that during the recess the hope of a compromise had seemed to emerge from private conversations with the interested delegations. There was a definite possibility that, if separate voting was to be insisted upon, the Delegation of the Soviet Union might withdraw its acceptance of the substitution of the Assembly of the Union for the International Searching Authorities in the second paragraph of its proposal.

1660. Mr. VAN BENTHEM (Netherlands) said that he shared the views of the Delegation of Germany (Federal Republic).

1661. *The motion to have two separate votes was rejected by 16 votes against to 2 in favor, with 10 abstentions.*

1662. Mr. HADDRICK (Australia) said that it was preferable to leave the matter under the responsibility of the International Searching Authorities. The Assembly would not be in a position to foresee, when it approved the agreement between the International Bureau and the International Searching Authorities, which abstracting services might be discontinued.

1663. Mr. VILLALBA (Argentina) said that the contracting parties were the International Searching Authorities and the International Bureau. Consequently, the Assembly should assume no responsibilities.

1664. Mr. FERGUSSON (United Kingdom) said that if the decision should be that the Assembly would have to take the appropriate measures, the Delegation of the United Kingdom reserved its position entirely on whether or not it would accept any additional

financial liability involved by any decision of the Assembly on the said point.

1665. Mr. VILLALBA (Argentina) said that he did not think that any reservation of the kind which the Delegation of the United Kingdom had just made would solve the problem. No State had the right to declare that certain decisions of the Assembly would not bind it if the exception was not provided for in the Treaty itself.

1666. Mr. SCHATZ (International Patent Institute) said that the principle underlying the proposal of the Delegation of the Soviet Union was acceptable to his Institute but that some drafting changes would have to be made in it. In particular, the word "classes" should be clarified and the word "restoration" should be complemented by the word "or replacement."

1667. Mr. OTANI (Japan) said that his Delegation supported the replacement of the words "International Searching Authorities" by the words "the Assembly."

1668. Mr. VAN BENTHEM (Netherlands) said that his Delegation was ready to accept the proposal of the Delegation of the Soviet Union as modified by that Delegation and the Delegation of Germany (Federal Republic). As far as any expense was concerned, he was convinced that the Assembly would have the wisdom to change, if necessary, the agreements with the International Searching Authorities and that the fees would be so amended as to take care of the increased cost.

1669. Mr. HADDRICK (Australia) said that he did not see how the Assembly could change an agreement. Agreements would presumably be concluded for a certain period of time and before that period expired it was not possible to modify them unilaterally.

1670. *The proposal of the Delegation of the Soviet Union contained in document PCT/DC/99 was adopted by 16 votes in favor to 2 against, with 9 abstentions, subject to the replacement, in its second paragraph, of the words "International Searching Authorities" by the word "Assembly."*

1671. *Subject to the decision recorded in the preceding paragraph, Rule 34.1 (e) was adopted as appearing in the Alternative Draft. (Continued at 1858.)*

End of the Twenty-Third Meeting

TWENTY-FOURTH MEETING

Wednesday, June 10, 1970, morning

Article 31: Demand for International Preliminary Examination (Continued from 1400.)

Article 32: The International Preliminary Examining Authority (Continued from 1421.)

Rule 59: The Competent International Preliminary Examining Authority (Continued from 1467.)

1672.1 Mr. FERGUSSON (United Kingdom), as Chairman of the Working Group entrusted with the Study of the proposal made by the Delegation of Israel in document PCT/DC/41 concerning Article 31, presented the report of the Working Group appearing in document PCT/DC/107. The Working Group had several meetings in which it considered a number of suggestions made by various Delegations and the observer of the African and Malagasy Industrial Property Office. The outcome of the deliberations appeared to be an important and useful contribution to the PCT. Adoption of the proposal would be of interest both to applicants and to national Offices. It should be noted that the non-governmental organizations, which were also represented on the Working Group, had not raised any objections to the conclusions of the Working Group.

1672.2 The proposal would fill a gap in the Draft, namely, the failure to allow nationals or residents of a Contracting State which had not accepted Chapter II to procure an international preliminary examination report and produce it in the national Offices, including those of States which had accepted Chapter II. There seemed to be no theoretical grounds for that gap; it probably had only a practical reason, namely, the difficulty in finding International Preliminary Examining Authorities for international applications filed in Contracting States not bound by Chapter II.

1672.3 The Working Group was of the opinion that three provisions of the Draft needed modification.

1672.4 First, Article 21 would have to be modified in order to provide that the Assembly could decide to allow applicants who were neither residents nor nationals of Contracting States bound by Chapter II, but who were residents or nationals of a Contracting State, to make a demand for international preliminary examination. Furthermore, it was proposed that the demand presented by such residents and such nationals could elect only those Contracting States bound by Chapter II which had declared that they were prepared to be elected.

1672.5 Secondly, it would be necessary to amend Article 32(2) by entrusting to the Assembly – rather than the receiving Office – the task of selecting and agreeing with International Preliminary Examining Authorities to act for the applicants in question.

1672.6 Finally, Rule 59(2) would have to be modified in order to guide the Assembly in carrying out the said task: the Assembly should give preference to the wishes of the receiving Office. Thus, for example, if the US Patent Office was ready to act as an International Preliminary Examining Authority for its own nationals, it would be able to ask the Assembly, in the case of demands presented by US nationals, to appoint it (the US Patent Office) to act as International Preliminary Examining Authority notwithstanding the fact that the United States might not have accepted Chapter II and would therefore be under no obligation to accept international preliminary examination reports obtained by any person.

1673. Mr. GABAY (Israel) said that he saw great merit in the proposals, which filled a gap. They would make it possible for smaller Patent Offices to benefit

from international preliminary examination reports and it was precisely those smaller Patent Offices which were most in need of assistance of that kind.

1674. Mr. SAVIGNON (France) wished to call the attention of the Drafting Committee to the possible need for harmonization between the proposed Article 31(2) and Article 9(2) in the case where the applicant was the resident and the national of a non-Contracting State.

1675. Mr. HAERTEL (Germany (Federal Republic)) said that, having heard that the interested private circles were also in agreement, his Delegation would give full support to the proposals of the Working Group. The proposals would substantially enhance the value of Chapter II, particularly for developing countries.

1676. Mr. VAN BENTHEM (Netherlands) called attention to the fact that under Article 9 it was possible for the Assembly to authorize persons who were neither nationals nor residents of any Contracting State to file international applications.

1677. Mr. BOGSCH (Secretary General of the Conference) said that the observations of the Delegations of France and the Netherlands could be taken care of by referring, in the suggested Article 31(2)(b), to persons who were entitled to file international applications.

1678. Mr. VAN BENTHEM (Netherlands) said that he would prefer that Article 9 be amended along the lines of the provision suggested in Article 31(4) so that, if a person had the right to file an international application only on the basis of the authorization of the Assembly, then such a person should have the right to designate only such States as had declared that they were prepared to be designated.

1679. Mr. GABAY (Israel) said that his Delegation had no strong feelings about maintaining or eliminating paragraph (4) of the proposed Article 31. However, it did see some merit in giving discretion to the Contracting States to accept international preliminary examination reports coming from nationals or residents of States which were not bound by Chapter II. That feature would secure a certain degree of reciprocity.

1680. Mr. MCKIE (United States of America) said that his Delegation was in agreement with the declarations made by the Delegations of Germany (Federal Republic) and the United Kingdom. Furthermore, he was of the opinion that the draft of the Working Group represented a balanced solution which accommodated an interesting new idea to the general objectives of the PCT.

1681. The CHAIRMAN said that Mr. van Benthem (Netherlands) had signalled to him that he would not insist on his suggestion to modify Article 9.

1682. Mr. MAST (Germany (Federal Republic)) said that he was not sure whether the suggestion of the Secretary General – namely, that Article 31(2) should refer to all persons entitled to file an international application – had been accepted or not. In any case, his Delegation proposed that it be accepted.

1683. Mr. VAN BENTHEM (Netherlands) supported the proposal of the Delegation of Germany (Federal Republic).

1684. Mr. SAVIGNON (France) also supported the proposal of the Delegation of Germany (Federal Republic).

1685. Mr. FERGUSSON (United Kingdom) said that his Delegation, too, was agreeable to the proposal of the Delegation of Germany (Federal Republic). It also wanted to know whether there was any change to be made in Article 9.

1686. Mr. BOGSCH (Secretary General of the Conference) said that, according to his understanding, there was no longer any proposal to make such a change.

1687. Mr. GABAY (Israel) said that his Delegation also supported the suggestion made by the Secretary General which was being transformed into a proposal by the Delegation of Germany (Federal Republic).

1688. *The amendments proposed by the Working Group concerning Articles 31 and 32 and Rule 59 were adopted as appearing in document PCT/DC/107, subject to the understanding that Article 31(2)(b) would refer to any person entitled to file international applications.*

1689. Mr. EKANI (African and Malagasy Industrial Property Office) wished to record his appreciation of the work accomplished by the Working Group and the excellent results which it had yielded. He said that the amendments made in Articles 31 and 32 were of great importance for developing countries. Those amendments would considerably increase the usefulness of the PCT as far as they were concerned and would make it much easier for them to accede to it. (Article 31 continued at 1783; Article 32 at 1784; Rule 59 at 1887.)

End of the Twenty-Fourth Meeting

TWENTY-FIFTH MEETING

Wednesday, June 10, 1970, afternoon

In the signed text, Preamble (no provision in the Drafts) (Continued from 1603.)

Article 1: Establishment of a Union (Continued from 1596.)

In the signed text, Article 50: Patent Information Services (no provision in the Drafts) (Continued from 350.)

In the signed text, Article 51: Technical Assistance (no provision in the Drafts) (Continued from 350.)

In the signed text, Article 52: Relations with other Provisions of the Treaty (no provision in the Drafts) (Continued from 350.)

1690. The CHAIRMAN announced that, in agreement with the Chairman of Main Committee II,

the present meeting would be a joint meeting of Main Committees I and II.

1691.1 Mr. ONIGA (Brazil) as Chairman of the Working Group entrusted with the preparation of a new chapter [in the signed text, Chapter IV: Technical Services], introduced the report of the Working Group contained in documents PCT/DC/109 and PCT/DC/109/Corr.

1691.2 The Working Group held seven meetings and a subgroup of the Working Group at least as many. Its discussions were based on a proposal by the Delegation of Brazil contained in document PCT/DC/45 and a proposal by the Delegation of Israel contained in document PCT/DC/20.

1691.3 The Working Group proposed the adoption of a new chapter consisting of three articles, one on patent information services (in document PCT/DC/109, Article 56*bis*; in the signed text, Article 50), one on technical assistance (in document PCT/DC/109, Article 56*ter*; in the signed text, Article 51), and one on relations with other provisions of the Treaty (in document PCT/DC/109, Article 56*quater*; in the signed text, Article 52). Furthermore, it proposed additions in the Preamble and in Article 1 in order to include in them references to the contents of the proposed new chapter.

1692. Mr. SHER (Israel) said that his Delegation viewed, with great satisfaction, the outcome of the efforts of the Working Group. The original approach suggested by his Delegation was somewhat more restricted but, on the proposal of the Delegation of Brazil, the scope of the chapter was now broader, which was all the better. The chapter represented a very positive contribution to the usefulness of the Treaty to developing countries.

1693. Mr. ONIGA (Brazil) suggested that the words "of income" appearing in Draft Article 56*bis*(5)(a) be omitted, and that in Article 56*ter*(3)(a) the words "set up" should be replaced by the words "for developing."

1694. The CHAIRMAN noted that the members of the Working Group had no objection to those small changes on the report and, consequently, the discussions continued on the report as amended orally by the Delegation of Brazil.

1695. Mr. VAN BENTHEM (Netherlands) said that his Delegation well understood the needs for which the new chapter was intended to provide and that his Government was quite willing to contribute towards satisfying those needs. However, his Delegation was wondering whether the matter really belonged in the PCT. Was the WIPO Convention not taking care of the matter? Would the PCT not duplicate the legal-technical assistance provisions of that Convention? Before expressing a final view on the proposed Chapter IV, he would appreciate comments on his questions.

1696.1 Mr. ALMEIDA (Brazil) said that, in the view of his Delegation, the PCT Draft was unbalanced in the sense that most of its stipulations had been drawn up to make the obtaining of patents cheaper and easier and thus to serve in the first place the developed countries which had most inventions. His Delegation

was not opposed to that basic aim of the PCT. However, without impairing the position of the owners of patents, his Government wished to make the Treaty more balanced and insert in it provisions of particular usefulness to developing countries.

1696.2 The patent system contained much valuable technical information. It was therefore desirable to increase the possibilities of information for those who bought, rather than produced, new technology. Such buyers should be informed of alternative processes for finding adequate – and, if possible, less expensive – solutions to their technological problems. More information would lead to more competition, and more competition would lead to cheaper prices for those who wished to obtain technology.

1696.3 Furthermore, technical assistance was needed. Not in the sense in which the term was used in the United Nations where it related to substantive transfer of technology, but technical assistance in order to increase the efficiency of the Patent Offices and assist them in digesting the information which they received from foreign patent documents.

1696.4 Several delegations had said in the Working Group that, nonetheless, changes in the PCT Draft were not needed because the matter was already taken care of by the WIPO Convention. Such, however, was not the view of other delegations, in particular, the Delegation of Brazil, which was of the opinion that the PCT would become attractive to under-developed countries mainly if it preserved a better balance between the needs of the developed and those of the developing countries. The Delegation of Brazil expressed the wish that the sources of information which the PCT would produce should be tapped in favor of developing countries.

1696.5 For all those reasons, his Delegation urged the adoption of the proposals contained in the report of the Working Group.

1697. Mr. VAN BENTHEM (Netherlands) said that he had not heard a precise answer to his question, namely, whether the PCT would not duplicate the tasks which had already been entrusted to WIPO in the field of technical assistance.

1698.1 Mr. GABAY (Israel) said that WIPO provided a general framework for different kinds of technical assistance activities. However, it was not duplication to provide for special tasks under that general framework by virtue of a special Treaty. That had been the approach as far as other aspects of industrial property were concerned, through special Unions other than the PCT Union.

1698.2 The PCT would produce a considerable accumulation of information and such information should be used for the purposes of helping developing countries. The proposal did not contain anything that was superfluous; it made those general tasks more precise and, thereby, the PCT more attractive to developing countries.

1699. Mr. LAURELLI (Argentina) said that in the Stockholm Conference of 1967 there had been much discussion about the best means of granting technical assistance to developing countries. Certain provisions

had been written into the WIPO Convention at that time. He wished to know whether, in the view of the International Bureau, the present WIPO structure would be sufficient to carry out the tasks outlined in the proposed new chapter.

1700.1 Mr. BOGSCH (Secretary General of the Conference) said that the WIPO Convention had provided for all kinds of technical assistance and therefore the position could be taken that whatever the new chapter would contain could already be carried out under the WIPO Convention. Nevertheless, the general mandate contained in the WIPO Convention did not exclude the definition of a more specific mandate in a more specialized Treaty as long as there was no contradiction between the said Convention and the PCT. He certainly did not see any contradiction between the two instruments.

1700.2 The mere fact that the Paris Convention was a Convention on industrial property did not exclude the creation of special agreements on certain aspects of such property. That had been done in the past, for example, in the field of trademarks and industrial designs. Now it would be done in the field of patents.

1700.3 Although it was true that the proposal to write provisions on technical assistance into the PCT had come somewhat late, that circumstance was not, in his view, a sufficient reason for rejecting such proposals. As far as the International Bureau was concerned, it saw no practical difficulties in the proposal of the Working Group and would consider the insertion of a new chapter, such as that suggested by the Working Group, a distinct improvement of the PCT. It would make the PCT more effective and more useful in a number of countries, particularly developing countries.

1701. Mr. LAURELLI (Argentina) said that the Washington Conference seemed to be the right place to present the proposals in question. The preparatory meetings had been highly technical ones but a Diplomatic Conference, by its very nature, was a meeting in which the more general interests of the participating countries came to the fore. Such general interests required recognition of the needs of developing countries and their satisfaction, even in a treaty which, otherwise, was highly technical.

1702.1 Mr. DAHMOUCHE (Algeria) said that the proposals of the Working Group were of great value for the international community.

1702.2 One had to recognize that, so far, WIPO had mainly been concerned with coordination and much less with cooperation. The new chapter would establish bases for a meaningful cooperation among the participating countries. Developing countries needed complete means to be able to participate in any cooperative venture. The Chapter in question would create means and possibilities for developing countries to become true partners in international cooperation in the patent field.

1702.3 The matter involved was rather specialized in its nature. WIPO and, even more particularly, the United Nations and its Specialized Agencies had vast and more general tasks in the field of technical cooperation. In the context under discussion, patent,

slow, and extremely specialized tasks had to be accomplished. For such tasks the specialized framework of the PCT should be far more efficient.

1702.4 For all those reasons, the Delegation of Algeria full-heartedly supported the report of the Working Group.

1703. Mr. VAN BENTHEM (Netherlands) said that, as indicated earlier, his Delegation was sympathetic towards the goals set out by the proposed new chapter. It merely was wondering whether the same problems could not be solved equally well in the framework of WIPO's technical assistance program. If the prevailing view was that the PCT would furnish a more efficient framework, his Delegation had no objection to the proposal of the Working Group. It would, however, be essential that the closest coordination be established between the organs of WIPO and those of the PCT so that all duplication of effort would be avoided.

1704.1 Mr. HAERTEL (Germany (Federal Republic)) said that the means of action of WIPO were probably less efficient than those contemplated by the new chapter since WIPO mainly addressed recommendations to its Member States. The new chapter would allow a more direct and more concrete action.

1704.2 Furthermore, it had to be remembered that WIPO was a large organization with a large membership. Consequently, it was unavoidable that it had to give attention to many problems and that its financial resources were called on for many tasks. On the other hand, the PCT Union would be a Union with a smaller number of members and only such countries as were directly concerned with the development of their patent systems.

1704.3 Most important, however, the proposed new chapter would provide for real assistance to developing countries in creating those conditions which were necessary for making the best use of international search reports, international preliminary examination reports and other services which the PCT provided for national Offices. Such conditions included the creation of well-organized technical literature and provision for the possibility of training examiners since, as was known, without such literature and without such examiners efficient use could not be made of the facilities provided for by the PCT.

1704.4 His Delegation was not interested in a paper treaty but in a treaty which was really useful in actual practice to the greatest possible number of countries, including developing countries. His Delegation was convinced that the proposals of the Working Group served those purposes and therefore it warmly supported the said proposals.

1705.1 Mr. CHONA (Zambia) said that the PCT would be of real interest to developing countries only if they had such patent systems as could make use of the services provided for under the PCT. The proposed new chapter would help developing countries to organize their patent systems in a way which would allow them to make full use of the PCT.

1705.2 There was no danger of duplication between the proposed new chapter and the WIPO Convention. The two complemented each other and would mutually reinforce each other.

1706.1 Mr. ARTEMIEV (Soviet Union) said that his country had always been in favor of rendering technical assistance to developing countries. Ratification by the Soviet Union of the WIPO Convention was eloquent proof of the fact that the Soviet Union was interested in rendering service to developing countries in the field of industrial property.

1706.2 The proposals of the Working Group had the support of the Delegation of the Soviet Union. The proposed new chapter would encourage a greater number of countries to accept the PCT.

1706.3 Consequently, the Soviet Union favored technical assistance also in the specific framework of the PCT.

1707.1 Mr. SAVIGNON (France) said that his Delegation approved the inclusion of a new Chapter in the PCT as proposed by the Working Group. Under the PCT more concrete and more specialized assistance could be expected than that available under the general WIPO Convention. Of course, the new Chapter itself would not be sufficient to effect the transfer of technology but it would be a contribution to that end.

1707.2 Consequently, the Delegation of France fully supported the proposals of the Working Group.

1708. Mrs. BARONA (Uruguay) also fully supported the proposals of the Working Group.

1709. Mr. WINTER (United States of America) said that, when the discussions started, the Delegation of the United States had also wondered whether the provisions of the WIPO Convention were not sufficient to provide the kind of technical assistance in question. However, during the discussion it had become clear that improvement of the patent systems in the developing countries might be facilitated through such measures as were contemplated in the proposed new chapter and consequently it was now in a position to support the proposals of the Working Group.

1710. Mr. LORENZ (Austria) said that his Delegation was also ready to support the proposal of the Working Group as it was its general policy to give aid to developing countries whenever possible.

1711.1 Mr. ARMITAGE (United Kingdom) said that his Delegation supported the proposal of the Working Group.

1711.2 The proposed new chapter contained the germ and possibility for some real advantages to developing countries under the PCT. In particular, it might be a very useful development if WIPO could organize programs and channel aid for the development of patent systems, the money needed for such aid coming from other sources than WIPO's own.

1712. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that, in the view of his Delegation, the proposal of the Delegation of Brazil, now the proposals of the Working Group, represented

important and desirable improvements of the PCT Draft. Consequently, his Delegation supported the proposals of the Working Group.

1713. Mr. BORGGÅRD (Sweden) said that his Delegation regarded the proposals of the Working Group as a basis for further steps towards the development of the patent systems of the developing countries. Consequently, it was glad to support the proposals of the Working Group.

1714. Mr. BRAUN (Belgium) said that, for reasons which the previous speakers had stated, and because of the great importance of aid for developing countries, his Delegation was ready to support the proposals of the Working Group.

1715. Mr. PRETNAR (Yugoslavia) said that his Delegation, too, supported the proposals of the Working Group. He wished to pay special tribute to the Government of Brazil, which had, on that and other occasions – in ECOSOC, in UNIDO, and in UNCTAD – taken the initiative in presenting constructive proposals in the patent field, proposals which were calculated to serve the interests of developing countries.

1716. Mr. OTANI (Japan) said that his Delegation was one of the members of the Working Group and had helped to work out the proposals in question. It was glad to support the proposals of the Working Group, which would doubtless be of interest to developing countries.

1717. Mr. BENÁRD (Hungary) said that his Delegation fully supported the proposals of the Working Group. His Government was ready to contribute, within the limits of its possibilities, to the success and the carrying out of the tasks which would have to be performed under the proposed chapter.

1718. Mr. NARAGHI (Iran) supported the proposals of the Working Group since it was an important contribution towards serving the interests of the developing countries.

1719. Mr. IONITA (Romania) said that his Government always favored means facilitating technical cooperation among the countries of the world. The proposals of the Working Group were useful in that respect and his Delegation supported them.

1720.1 Mr. COMTE (Switzerland) said that it was well known that his country was very much in favor of aid to developing countries. As far as industrial property was concerned, the Swiss Government had already proved its willingness to help by receiving trainees in the Federal Industrial Property Office and sending publications to the national Offices of developing countries.

1720.2 Consequently, his Delegation was ready to support the proposals of the Working Group. It only regretted that the proposal had not been made earlier, during the preparatory phase of the Conference, which would have permitted finding an even more far-reaching solution.

1721. Mr. TROTTA (Italy) said that, for the reasons stated by several delegations, his Delegation, too, supported the proposal of the Working Group.

1722. Mr. COULIBALY (Ivory Coast) said that his Delegation was in full agreement with the proposals contained in the report of the Working Group.

1723. Mr. QUINN (Ireland) said that his Delegation was glad to support the proposals of the Working Group, which should result in effective help for developing countries.

1724. Mr. EKANI (African and Malagasy Industrial Property Office) said that, in the name of the countries members of his organization, he was pleased to give his support to the proposals of the Working Group. It gave great satisfaction to those countries to see that the developed nations were ready to give efficient assistance to developing countries in the field of industrial property.

1725. Mr. HAZELZET (Union of Industries of the European Community), speaking also in the name of CEIF, said that the industries of the 17 countries of Western Europe were, as always, ready to give real and practical assistance to developing countries. It was too early to say whether the proposals of the Working Group would be sufficient to lead to effective aid. In any case, the industries in question hoped that they would.

1726. Mr. SIMONS (Canada), recalling the technical assistance afforded by his Government, particularly in the form of fellowships, to nationals of developing countries in the field of industrial property, said that his Delegation was in full support of the proposals of the Working Group.

1727. Mr. SCHATZ (International Patent Institute) said that his Institute was ready to assume its share in the technical assistance which would be given, under the proposed chapter, to developing countries.

1728. Mr. SHER (Israel) said that, as mentioned by the Delegation of the Netherlands, the utmost care should be taken to coordinate the technical assistance tasks under the PCT with those under WIPO.

1729.1 Mr. PETERSSON (Australia) said that it was a pity that the proposal concerning technical assistance had not been made before the Diplomatic Conference since a proposal made earlier would have allowed a more careful consideration and, possibly, a more satisfactory solution.

1729.2 Nevertheless, his Delegation was ready to accept the proposed new chapter. On the other hand, the proposals of the Working Group concerning the Preamble seemed to be too long and too detailed compared with the other parts of the proposed Preamble.

1730. The CHAIRMAN expressed the thanks of Main Committee I and Main Committee II to the Working Group for its arduous work and also to the Delegation of Brazil for its initiative and leadership.

1731. *The proposals of the Working Group were adopted as contained in document PCT/DC/109 and PCT/DC/109. Corr. and as orally modified by the Delegation of Brazil, subject to drafting changes.* (The Preamble continued at 1915, Article 1 at 1736, Article 50 at 1912, Article 51 at 1913, Article 52 at 1914.)

End of the Twenty-Fifth Meeting

TWENTY-SIXTH MEETING

Friday, June 12, 1970, morning

Report of the Drafting Committee

1732. The CHAIRMAN introduced the discussion on the texts presented by the Drafting Committee contained, as far as the Treaty was concerned, in document PCT/DC/112 and, as far as the Regulations were concerned, in document PCT/DC/113

1733. Mr. ARMITAGE (United Kingdom), speaking in his capacity of Chairman of the Drafting Committee, said that his Committee had not made any effort to polish the existing wording of the texts but had merely endeavored to eliminate grammatical errors, obscurities or inconsistencies.

1734. Mr. SAVIGNON (France) said that a subgroup of French – speaking participants were still working on the task of trying to polish the French text and he would ask for an understanding that such purely formal changes would be admitted between that time and the signing of the texts.

1735. *The Main Committee noted, with approval, the declaration of the Delegation of France.*

Article 1: Establishment of a Union (Continued from 1731.)

1736. *Article 1 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 2: Definitions (Continued from 1547.)

1737. Mr. ROBINSON (Canada) asked whether the various items appearing in that Article could not be put into alphabetical order and numbered accordingly.

1738. The CHAIRMAN replied that there was some logical order among the various items and, consequently, he did not think that it would be useful to change the order.

1739. Mr. BOGSCH (Secretary General of the Conference) said that there was an additional reason for not changing the order, namely, that the alphabetical order would not be the same in English and French. Thus the numbers would be different in the two texts.

1740. *Article 2 was adopted as appearing in document PCT/DC/112.*

Article 3: The International Application (Continued from 190.)

1741. *Article 3 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 4: The Request (Continued from 708.)

1742. *Article 4 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 5: The Description (Continued from 253.)

1743. *Article 5 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 6: The Claims (Continued from 262.)

1744. *Article 6 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 7: The Drawings (Continued from 263.)

1745. *Article 7 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 8: Claiming Priority (Continued from 669.)

1746. *Article 8 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 9: The Applicant (Continued from 345.)

1747. *Article 9 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 10: The Receiving Office (Continued from 300.)

1748. *Article 10 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 11: Filing Date and Effects of the International Application (Continued from 1620.)

1749. *Article 11 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 12: Transmittal of the International Application to the International Bureau and the International Searching Authority (Continued from 319.)

1750. *Article 12 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 13: Availability of Copy of the International Application to Designated Offices (Continued from 547.)

1751. *Article 13 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 14: Certain Defects in the International Application (Continued from 550.)

1752. *Article 14 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 15: The International Search (Continued from 1414.)

1753. Mr. SAVIGNON (France) asked that discussion of Article 15(5)(c) be deferred until the Representatives of the International Patent Institute were present.

1754. Mr. BRENNAN (United States of America) proposed that the whole of paragraph (5) be reserved.

1755. *Article 15, with the exception of paragraph (5), was adopted as appearing in document PCT/DC/112. (Continued at 1929.)*

Article 16: The International Searching Authority (Continued from 1419.)

1756. Mr. SAVIGNON (France) proposed that paragraph (3)(b) be deferred until the Representatives of the International Patent Institute were present.

1757. Mr. PHAF (Netherlands) said that, since it was in paragraph (1) of the Article under discussion that the International Patent Institute was mentioned for the first time, it would be preferable to indicate the treaty by which that Institute was constituted.

1758. Mr. BOGSCH (Secretary General of the Conference) said that, since the International Patent Institute was well known and no risk of confusion existed, there seemed to be no need for further specification.

1759. Mr. PHAF (Netherlands) said that he would not insist on his proposal.

1760. *Article 16, with the exception of paragraph (3)(b), was adopted as appearing in document PCT/DC/112. (Continued at 1950.)*

Article 17: Procedure Before the International Searching Authority (Continued from 491.)

1761. *Article 17 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 18: The International Search Report (Continued from 1247.)

1762. *Article 18 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 19: Amendment of the Claims Before the International Bureau (Continued from 564.)

1763. *Article 19 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 20: Communication to Designated Offices (Continued from 1333.)

1764. Mr. VAN DAM (Netherlands) said that there seemed to be some practical difficulty in sending the copies referred to in paragraph (3) to the designated Office.

1765. Mr. BOGSCH (Secretary General of the Conference) said that Rule 44.3(c) took care of the difficulty by stipulating, in essence, that if the International Searching Authority wished to send the copies via the International Bureau it could do so.

1766. The CHAIRMAN said that the Delegation of the Netherlands had signalled that it was satisfied with the reply of the Secretary General.

1767. *Article 20 was adopted as appearing in document PCT/DC/112.*

Article 21: International Publication (Continued from 581.)

1768. *Article 21 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 22: Copy, Translation, and Fee, to Designated Offices (Continued from 713.)

1769. *Article 22 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 23: Delaying of National Procedure (Continued from 586.)

1770. *Article 23 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 24: Possible Loss of Effect in Designated States (Continued from 587.)

1771. *Article 24 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 25: Review By Designated Offices (Continued from 588.)

1772. *Article 25 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 26: Opportunity To Correct Before Designated Offices (Continued from 589.)

1773. *Article 26 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 27: National Requirements (Continued from 1620.)

1774. Mr. ASCENSÃO (Portugal) said that in paragraph (8) the English version spoke about "national security," whereas the French version spoke about "défense nationale."

1775. Mr. SAVIGNON (France) said that, in French, "défense nationale" was acceptable and if the English words did not correspond they should be changed.

1776. Mr. BOGSCH (Secretary General of the Conference) said that the expressions used in both languages seemed to mean the same thing, namely, protection of the country against enemies or potential enemies.

1777. Mr. ARMITAGE (United Kingdom) said that the interpretation given by the Secretary General seemed to him to be correct. The right that the Delegation of the United Kingdom wished to preserve and exercise under paragraph (8) was the right to require residents of the United Kingdom to seek permission before filing in other countries under the PCT.

1778. The CHAIRMAN said that the Delegation of Portugal had signalled that it was satisfied with the explanation given.

1779. *Article 27 was adopted as appearing in document PCT/DC/112.*

Article 28: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices (Continued from 700.)

1780. *Article 28 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 29: Effects of the International Publication (Continued from 644.)

1781. *Article 29 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 30: Confidential Nature of the International Application (Continued from 742.)

1782. *Article 30 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 31: Demand for International Preliminary Examination (Continued from 1689.)

1783. *Article 31 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 32: The International Preliminary Examining Authority (Continued from 1689.)

1784. *Article 32 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 33: The International Preliminary Examination (Continued from 1427.)

1785. *Article 33 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 34: Procedure Before the International Preliminary Examining Authority (Continued from 1435.)

1786. *Article 34 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 35: The International Preliminary Examination Report (Continued from 1445.)

1787. *Article 35 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 36: Transmittal, Translation, and Communication, of the International Preliminary Examination Report (Continued from 1446.)

1788. Mr. ASCENSÃO (Portugal) said that it would be necessary to parallel, in Article 36, the provision contained in Article 20(3). Rule 71 already took care of the details but the principle should be expressed in the Treaty itself.

1789. Mr. BOGSCH (Secretary General of the Conference) said that the problem could be solved by adding a new paragraph (4) which would say, in essence, that Article 20(3) would also apply, *mutatis mutandis*, in the case of the International Preliminary Examining Authorities.

1790. Mr. ARMITAGE (United Kingdom) said that his Delegation could accept the proposal of the Secretary General.

1791. *Subject to the understanding that a new paragraph would be added paralleling Article 20(3), Article 36 was adopted as appearing in document PCT/DC/112.*

Article 37: Withdrawal of Demand or Election (Continued from 1448.)

1792. *Article 37 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 38: Confidential Nature of the International Preliminary Examination (Continued from 1449.)

1793. *Article 38 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 39: Copy, Translation, and Fee, to Elected Offices (Continued from 1451.)

1794. *Article 39 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 40: Delaying of National Examination and Other Processing (Continued from 1452.)

1795. *Article 40 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 41: Amendment of the Claims, the Description, and the Drawings, Before Elected Offices (Continued from 1455.)

1796. *Article 41 was adopted as appearing in document PCT/DC/112 without discussion.*

Article 42: Results of National Examination in Elected Offices (Continued from 1458.)

1797. *Article 42 was adopted as appearing in document PCT/DC/112, without discussion.*

In the signed text, Article 43: Seeking Certain Kinds of Protection (In the Draft, Article 45: Seeking Protection Through Other Means Than the Grant of a Patent. In the Alternative Draft, Article 45: Seeking Certain Kinds of Protection) (Continued from 1590)

1798. *Article 43 was adopted as appearing in document PCT/DC/112, without discussion.*

In the signed text, Article 44: Seeking Two Kinds of Protection (In the Draft, Article 45: Seeking Protection Through Other Means Than the Grant of a Patent. In the Alternative Draft, Article 45: Seeking Two Kinds of Protection) (Continued from 1590.)

1799. *Article 44 was adopted as appearing in document PCT/DC/112, without discussion.*

In the signed text, Article 45: Regional Patent Treaties (In the Draft, Article 44: Regional Patents and Regional Patent Treaties) (Continued from 1588.)

1800. Mr. ARMITAGE (United Kingdom) said that when the Article under discussion was adopted by the

Main Committee, he had stated that some coordination might be necessary between that Article and Article 2. He was by then of the opinion that Article 2(xii) was in the nature of an enabling provision and that Article 45 made only a restricted use of the possibilities offered by Article 2(xii) in the particular situation which Article 45 wished to cover. Consequently, he no longer saw any contradiction between the two provisions.

1801. *Article 45 was adopted as appearing in document PCT/DC/112.*

Article 46: Incorrect Translation of the International Application (Continued from 1499.)

1802. *Article 46 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 47: Time Limits (Continued from 1510.)

1803. *Article 47 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 48: Delay in Meeting Certain Time Limits (Continued from 1511.)

1804. *Article 48 was adopted as appearing in document PCT/DC/112, without discussion.*

Article 49: Right to Practice Before International Authorities (Continued from 1512.)

1805. Mr. BRAUN (Belgium) said that “attorney” and “*avocat*” (in French) did not mean the same thing. Furthermore, it did not seem to be necessary to refer to attorneys and patent agents; it was sufficient to refer merely to persons having the right to practice. In any case, in France and in Belgium, and perhaps also in Italy, an “*avocat*” did not have the right to practice before Patent Offices.

1806. Mr. BOGSCH (Secretary General of the Conference) said that even the word “*avocat*” was qualified by the words “having the right to practice” so that, in countries where they had no right to practice before the national Office, they would not qualify under Article 49. Thus, whether one maintained “*avocat*” or not, the result would be the same. Nevertheless, it would be regrettable if the noble professions of attorneys and patent agents were not mentioned *expressis verbis* in the Article.

1807. Mr. LUZZATI (Italy) said that, although it was true that in Italy, Belgium and France the two professions – attorneys and patent agents – were completely separate and that, in the present state of affairs, attorneys could not file patent applications, the PCT would substantially modify the whole system and consequently future professional Regulations might contain changes. Such changes were probable as far as Italy was concerned. He would therefore favor maintaining the term “*avocat*,” which could in no way embarrass the profession.

1808. The CHAIRMAN said that, as the Delegation of Belgium had signalled to him that it did not wish to have a vote on reopening the discussion, its proposal would no longer be considered.

1809. Mr. HAERTEL (Germany (Federal Republic)) said that he was not sure whether the proposal of the Delegation of Belgium was a matter of substance, on which the discussion would have to be reopened formally, or whether it was merely a matter of drafting. In particular, it was not clear to him whether the qualifying words “having the right to practice...” referred only to “other person” or also to “attorney” and “patent agent.”

1810. Mr. BOGSCH (Secretary General of the Conference) said that the qualification referred to all three categories and, by placing a comma before the word “having,” any doubt could be removed.

1811. Mr. ARMITAGE (United Kingdom) said that the proposal of the Secretary General would make the provision unambiguous but that a further comma, after the word “filed,” should also be inserted.

1812. Mr. SAVIGNON (France) said that, in essence, he would have agreed with the Delegation of Belgium in that the express mention of “*avocat*” and patent agent was unnecessary but, in any case, the punctuation would have to be changed also in the French text to conform with the proposal just made concerning two commas.

1813. *Subject to inserting a comma after the word “person” and a comma after the word “filed,” Article 49 was adopted as appearing in document PCT/DC/112.*

End of the Twenty-Sixth Meeting

TWENTY-SEVENTH MEETING

Friday, June 12, 1970, afternoon

Report of the Drafting Committee Concerning the Regulations

1814. The CHAIRMAN opened the discussion on the proposals of the Drafting Committee concerning the Regulations contained in documents PCT/DC/113, PCT/DC/114, and PCT/DC/116.

Rule 1: Abbreviated Expressions (Continued from 1621.)

1815. *Rule 1 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 2: Interpretation of Certain Words (Continued from 1622.)

1816. *Rule 2 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 3: The Request (Form) (Continued from 817.)

1817. *Rule 3 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 4: The Request (Contents) (Continued from 1623.)

1818. Mr. MESSEROTTI-BENVENUTI (Italy) said that the Rule did not provide for the case where the inventor wished to be designated.

1819. Mr. BOGSCH (Secretary General of the Conference) said that the matter was taken care of in Rule 18.4.

1820. Mr. MESSEROTTI-BENVENUTI (Italy) said that the Regulations did not seem to provide for the possibility of not designating the inventor.

1821. The CHAIRMAN replied that that case was provided for in Rule 4.6(c).

1822. Mr. BOGSCH (Secretary General of the Conference) said that, according to his interpretation, whenever the applicant did not wish to indicate the inventor he would simply leave blank the space reserved for such indications in the application form.

1823. Mr. MESSEROTTI-BENVENUTI (Italy) said that he was satisfied with that interpretation.

1824. *Rule 4 was adopted as appearing in document PCT/DC/113.*

Rule 5: The Description (Continued from 926.)

1825. *Rule 5 was adopted as appearing in documents PCT/DC/113 and PCT/DC/116, without discussion.*

Rule 6: The Claims (Continued from 947.)

1826. Mr. LIPS (Switzerland) said that Rule 6.4(a) was ambiguous. The first part of the sentence allowed reference to several claims, whereas the second part excluded reference to several claims. The words "all the features of one or more other claims" should be replaced by the words "a set of dependent claims, one subordinated to the other."

1827. Mr. BOGSCH (Secretary General of the Conference) said that the Drafting Committee had incorporated paragraph (d) of Rule 6.4, as it appeared in the Alternative Draft, in paragraph (a) of the same Rule. In so doing, it had wanted to make the text clearer without changing its substance and believed that that change would satisfy the Delegation of Switzerland.

1828.1 Mr. LIPS (Switzerland) said that the change only partly satisfied his Delegation.

1828.2 On a question from the CHAIRMAN, Mr. LIPS (Switzerland) replied that his Delegation did not wish to put its proposal to the vote.

1829. *Rule 6 was adopted as appearing in document PCT/DC/113.*

Rule 7: The Drawings (Continued from 948.)

1830. *Rule 7 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 8: The Abstract (Continued from 957.)

1831. *Rule 8 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 9: Expressions, Etc., Not to be Used (Continued from 958.)

1832. *Rule 9 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 10: Terminology and Signs (Continued from 959.)

1833. *Rule 10 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 11: Physical Requirements of the International Application (Continued from 967.)

1834. *Rule 11 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 12: Language of the International Application (Continued from 1034.)

1835. *Rule 12 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 13: Unity of Invention (Continued from 983.)

1836. *Rule 13 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 14: The Transmittal Fee (Continued from 984.)

1837. *Rule 14 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 15: The International Fee (Continued from 996.)

1838. *Rule 15 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 16: The Search Fee (Continued from 1010.)

1839. *Rule 16 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 17: The Priority Document (Continued from 1027.)

1840. *Rule 17 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 18: The Applicant (Continued from 1057.)

1841. *Rule 18 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 19: The Competent Receiving Office (Continued from 1061.)

1842. *Rule 19 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 20: Receipt of the International Application (Continued from 1062.)

1843. *Rule 20 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 21: Preparation of Copies (Continued from 1063.)

1844. *Rule 21 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 22: Transmittal of the Record Copy (Continued from 1081.)

1845. Mr. PHAF (Netherlands) suggested that the words "It is understood that" in Rule 22.3(b) should be deleted.

1846. *Rule 22 was adopted as appearing in document PCT/DC/113, subject to the omission of the words: "It is understood that" in Rule 22.3(b).*

Rule 23: Transmittal of the Search Copy (Continued from 1082.)

1847. *Rule 23 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 24: Receipt of the Record Copy by the International Bureau (Continued from 1083.)

1848. *Rule 24 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 25: Receipt of the Search Copy by the International Searching Authority (Continued from 1084.)

1849. *Rule 25 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 26: Checking and Correcting Certain Elements of the International Application (Continued from 1085.)

1850. *Rule 26 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 27: Lack of Payment of Fees (Continued from 1086.)

1851. *Rule 27 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 28: Defects Noted by the International Bureau or the International Searching Authority (Continued from 1087.)

1852. *Rule 28 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 29: International Applications or Designations Considered Withdrawn Under Article 14(1), (3) or (4) (Continued from 1088.)

1853. *Rule 29 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 30: Time Limit Under Article 14(4) (Continued from 1089.)

1854. *Rule 30 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 31: Copies Required Under Article 13 (Continued from 1092.)

1855. *Rule 31 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 32: Withdrawal of the International Application or of Designations (Continued from 1095.)

1856. *Rule 32 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 33: Relevant Prior Art for the International Search (Continued from 1229.)

1857. *Rule 33 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 34: Minimum Documentation (Continued from 1671.)

1858. *Rule 34 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 35: The Competent International Searching Authority (Continued from 1143.)

1859. *Rule 35 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 36: Minimum Requirements for International Searching Authorities (Continued from 1171.)

1860. *Rule 36 was adopted as appearing in document PCT/DC/133, without discussion.*

Rule 37: Missing or Defective Title (Continued from 1172.)

1861. *Rule 37 was adopted as appearing in document PCT/DC/113, without discussion.*

In the signed text, Rule 38: Missing Abstract (In the Drafts, Rule 38: Missing or Defective Abstract) (Continued from 1173.)

1862. *Rule 38 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 39: Subject Matter Under Article 17(2)(a)(i) (Continued from 1185.)

1863. *Rule 39 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 40: Lack of Unity of Invention (International Search) (Continued from 1187.)

1864. *Rule 40 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 41: The International-Type Search (Continued from 1188.)

1865. *Rule 41 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 42: Time Limit for International Search
(Continued from 1316.)

1866. *Rule 42 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 43: The International Search Report
(Continued from 1238.)

1867. Mr. GYRDYMOV (Soviet Union) said that Rule 43.6(b) should also deal with inventors' certificates of addition since the definition contained in Article 2(ii) did not apply.

1868. Mr. BOGSCH (Secretary General of the Conference) said that not only should inventors' certificates of addition be inserted in Rule 43.6(b), but also patents or certificates of addition and utility certificates of addition.

1869. *Rule 43 was adopted as appearing in document PCT/DC/113, subject to the addition of a reference to "patents of addition, certificates of addition, inventors' certificates of addition and utility certificates of addition."*

Rule 44: Transmittal of the International Search Report, Etc. (Continued from 1332.)

1870. Mr. PHAF (Netherlands) said that the words: "On the specific request" in Rule 44.3(a) seemed to be redundant with Article 20(3).

1871. Mr. BOGSCH (Secretary General of the Conference) said that, in his view, the remarks of the Delegation of the Netherlands were justified and Rule 44.3(a) should be adjusted accordingly.

1872. *Subject to the understanding that any redundancy with Article 20(3) would be removed from Rule 44.3(a), Rule 44 was adopted as appearing in document PCT/DC/113.*

Rule 45: Translation of the International Search Report (Continued from 1349.)

1873. *Rule 45 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 46: Amendment of Claims Before the International Bureau (Continued from 1359.)

1874. *Rule 46 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 47: Communication to Designated Offices
(Continued from 1545.)

1875. *Rule 47 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 48: International Publication (Continued from 1375.)

1876. Rule 48 was adopted as appearing in document PCT/DC/113, without discussion.

Rule 49: Languages of Translations and Amounts of Fees Under Article 22(1) and (2)
(Continued from 1382.)

1877. *Rule 49 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 50: Faculty Under Article 22(3)
(Continued from 1383.)

1878. *Rule 50 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 51: Review by Designated Offices
(Continued from 1384.)

1879. *Rule 51 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 52: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices (Continued from 1545.)

1880. *Rule 52 was adopted as appearing in documents PCT/DC/113, without discussion.*

Rule 53: The Demand (Continued from 1459.)

1881. *Rule 53 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 54: The Applicant Entitled To Make a Demand (Continued from 1462.)

1882. *Rule 54 was adopted as appearing in documents PCT/DC/113 and PCT/DC/116, without discussion.*

Rule 55: Languages (International Preliminary Examination) (Continued from 1463.)

1883. *Rule 55 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 56: Later Elections (Continued from 1464.)

1884. *Rule 56 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 57: The Handling Fee (Continued from 1465.)

1885. *Rule 57 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 58: The Preliminary Examination Fee
(Continued from 1466.)

1886. *Rule 58 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 59: The Competent International Preliminary Examining Authority (Continued from 1689.)

1887. *Rule 59 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 60: Certain Defects in the Demand or Elections (Continued from 1468.)

1888. *Rule 60 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 61: Notification of the Demand and Elections (Continued from 1469.)

1889. *Rule 61 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 62: Copy for the International Preliminary Examining Authority (Continued from 1470.)

1890. *Rule 62 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 63: Minimum Requirements for International Preliminary Examining Authorities (Continued from 1471.)

1891. *Rule 63 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 64: Prior Art for International Preliminary Examination (Continued from 1537.)

1892. *Rule 64 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 65: Inventive Step or Non-Obviousness (Continued from 1476.)

1893. *Rule 65 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 66: Procedure Before the International Preliminary Examining Authority (Continued from 1477.)

1894. *Rule 66 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 67: Subject Matter Under Article 34(4)(a)(i) (Continued from 1478.)

1895. *Rule 67 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 68: Lack of Unity of Invention (International Preliminary Examination) (Continued from 1479.)

1896. *Rule 68 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 69: Time Limit for International Preliminary Examination (Continued from 1480.)

1897. *Rule 69 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 70: The International Preliminary Examination Report (Continued from 1539.)

1898. *Rule 70 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 71: Transmittal of the International Preliminary Examination Report (Continued from 1483.)

1899. *Rule 71 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 72: Translation of the International Preliminary Examination Report (Continued from 1484.)

1900. *Rule 72 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 73: Communication of the International Preliminary Examination Report (Continued from 1485.)

1901. *Rule 73 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 74: Translations of Annexes of the International Preliminary Examination Report and Transmittal Thereof (Continued from 1486.)

1902. *Rule 74 was adopted as appearing in document PCT/DC/113, without discussion.*

In the signed text and in the Alternative Draft, Rule 75: Withdrawal of the Demand, or of Elections (In the Draft, Rule 75: Withdrawal of the International Application, of the Demand, or of Elections) (Continued from 1487.)

1903. *Rule 75 was adopted as appearing in document PCT/DC/113, without discussion.*

In the signed text, Rule 76: Languages of Translations and Amounts of Fees Under Article 39(1); Translation of Priority Document (In the Draft, Rule 76: Languages of Translations and Amounts of Fees Under Article 39(1)) (In the Alternative Draft as in the Draft and additionally, Rule 76bis: Translation of Priority Document) (Continued from 1488 and 1489.)

1904. *Rule 76 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 77: Faculty Under Article 39(1)(b) (Continued from 1490.)

1905. *Rule 77 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 78: Amendment of the Claims, the Description, and the Drawings, Before Elected Offices (Continued from 1491.)

1906. *Rule 78 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 79: Calendar (Continued from 1513.)

1907. *Rule 79 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 80: Computation of Time Limits
(Continued from 1514.)

1908. *Rule 80 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 81: Modification of Time Limits Fixed in the Treaty (Continued from 1520.)

1909. *Rule 81 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 82: Irregularities in the Mail Service
(Continued from 1521.)

1910. *Rule 82 was adopted as appearing in document PCT/DC/113, without discussion.*

Rule 83: Right to Practice Before International Authorities (Continued from 1522.)

1911. *Rule 83 was adopted as appearing in document PCT/DC/113, without discussion.*

In the signed text, Article 50: Patent Information Services (no provision in the Drafts) (Continued from 1731.)

1912. *Article 50 was adopted as appearing in document PCT/DC/114, without discussion.*

In the signed text, Article 51: Technical Assistance (no provision in the Drafts) (Continued from 1731.)

1913. *Article 51 was adopted as appearing in document PCT/DC/114, without discussion.*

In the signed text, Article 52: Relations with Other Provisions of the Treaty (no provision in the Drafts) (Continued from 1731.)

1914. *Article 52 was adopted as appearing in document PCT/DC/114, without discussion.*

In the signed text, Preamble (no provision in the Drafts) (Continued from 1731.)

1915. The CHAIRMAN opened the discussion on the Preamble proposed by the Drafting Committee, as appearing in document PCT/DC/114.

1916. Mr. OHWADA (Japan) said that the different parts of the Preamble should be proportionate to the different chapters of the Treaty. He found that the paragraph dealing with the developing countries was out of proportion to the length of the other paragraphs of the Preamble which referred to the other, much longer chapters of the Treaty.

1917. Mr. PETERSSON (Australia) said that he agreed with the observations of the Delegation of Japan. He had already asked the Drafting Committee to make that paragraph much shorter; however, his request had not been complied with.

1918. Mr. ALMEIDA (Brazil) said that the paragraph in question served to explain clearly what was intended by Chapter IV for developing countries. Consequently, it should be left as it was in the Draft submitted by the Drafting Committee.

1919. Mr. SCHERTENLEIB (Monaco) agreed with the declarations of the Delegations of Japan and Australia. The paragraph relating to the developing countries should be limited to the first 11 words.

1920. Mr. WINTER (United States of America) said that the paragraph concerning developing countries was the result of a compromise and seemed to be the best way to reflect the inclusion of the new Chapter IV in the Treaty.

1921. Mr. OTANI (Japan) supported the proposal of the Delegation of Monaco.

1922. The CHAIRMAN said that the paragraph repeated in essence what was in Chapter IV and therefore much of it was superfluous. In his view, the paragraph concerning developing countries should be limited to the first 29 words.

1923. Mr. DAHMOUCHE (Algeria) said that he did not find the paragraph on developing countries excessively long. He would therefore insist that it remain as it was in the proposals of the Drafting Committee.

1924. Mr. VILLALBA (Argentina) said that the relative length of the paragraphs was unimportant. The second part of the paragraph concerning developing countries contained an explanation which was necessary in view of the novelty of the problem.

1925. Mr. ARTEMIEV (Soviet Union) said that the Preamble should be adopted as proposed by the Drafting Committee.

1926. Mr. SCHERTENLEIB (Monaco) said that the paragraph concerning developing countries was not unnecessary but it was too long. Any preamble should refer only to the essential considerations. He would be ready to accept the suggestion of the Chairman, that is, to limit the paragraph to its first 29 words.

1927. The CHAIRMAN noted that the Delegations of Japan and Monaco had signalled that they were not insisting upon their proposal.

1928. *The Preamble was adopted as appearing in document PCT/DC/114.*

Article 15: The International Search (Continued from 1755.)

1929. Mr. BRENNAN (United States of America) moved the proposal of his Delegation contained in document PCT/DC/117. The proposal was to make available to those countries without search facilities a search encompassing the minimum documentation described by the PCT, with the assurance that patents would be granted on an invention that was truly inventive over prior art. The first part of the proposal suggested that the international-type search should not be available for applications with respect to which the applicant had filed an international application, provided that the two applications would not allow the subjecting of national applications to an international-type search whether the application was one "with respect to which the applicant [had] filed an international application directed to essentially the same subject matter, or [had] asked for an international-type search on a national application

filed in a Contracting State directed to essentially the same subject matter.” The proposal was made to avoid any duplication. As to the rest of the proposal contained in document PCT/DC/117, the words “and presents the search report” should be inserted before the comma and the word “all” should be replaced by the word “any.”

1930. Mr. ASCENSÃO (Portugal) said that the French text of the proposal of the United States of America seemed to be ambiguous but, subject to further clarification, he did not have any objection to the principle of the suggestion.

1931. Mr. VILLALBA (Argentina) said that, for countries which had a national search only, a more complete, international-type search might be desirable.

1932. Mr. BRENNAN (United States of America) said that the proposal of his Delegation was not concerned with the question of definition of novelty or patentability. Any country could still adopt the principle of universal prior art.

1933. Mr. SAVIGNON (France) said that the text proposed by the Delegation of the United States of America was not in conformity with present French law. The searches made on national applications were not based on the same documentation as the minimum documentation under the PCT, although it was to be hoped that, in the future, searches on national applications would have the same characteristics as international-type searches. In any case, the Government of France wished to maintain its freedom to require a complementary search to be effected by the International Patent Institute in the case of any international application.

1934.1 Mr. BOGSCH (Secretary General of the Conference) said that the freedom of France or any other country was not affected by the proposal of the Delegation of the United States, at least as far as the first part of the proposal was concerned. The first part of the proposal was intended to avoid duplication between international searches and international-type searches. It did not refer to purely national searches. Therefore, any State which had national searches could, under the proposal of the Delegation of the United States of America, still make a complementary search on the basis of its national law even if the application was the subject of an international or an international-type search.

1934.2 However, the second part of the proposal of the Delegation of the United States of America, which spoke about Contracting States that did not “normally subject national applications to searches of the minimum documentation,” was not very clear to him. What did “normally” mean? Furthermore, the concept of “minimum documentation” was not defined in the Treaty but only in the Regulations. He was wondering whether the Delegation of the United States of America would be satisfied by a provision which would simply state that the deliberate duplication of international searches and international-type searches must be avoided? In other words, he wondered whether the said Delegation would be ready to drop the second part of its proposal.

1935. Mr. BRENNAN (United States of America) said that his Delegation was ready to withdraw the second part of its proposal and accept the formula suggested by the Secretary General.

1936. Mr. ARMITAGE (United Kingdom) said that, whereas he found the idea behind the proposal of the Delegation of the United States of America – that is, limitation of any duplication in searches – a worthy one, he did not see how the idea could be positively expressed in the Treaty without trespassing on national law. Any State whose national searches were carried out by the International Patent Institute might be regarded as subjecting its national applications to international-type searches.

1937. Mr. ASCENSÃO (Portugal) said that the problem was merely to find the right wording and perhaps a working group should be set up to propose the precise text.

1938. Mr. BOGSCH (Secretary General of the Conference) said that, once an International Searching Authority conducted a search, it was either an international search or an international-type search. The proposal merely attempted to avoid duplication between those two searches and not between any of those two searches, on the one hand, and a national search, on the other hand. The mere fact that a national search was carried out by the international Patent Institute did not make the search international or “international-type.”

1939. Mr. MAST (Germany (Federal Republic)) said that the interpretation given by the Secretary General was correct. It followed already from the text in Article 15(5)(b) contained in document PCT/DC/112. The changes proposed by the Delegation of the United States of America were therefore not necessary.

1940.1 Mr. BRENNAN (United States of America) said that Article 15(5) had been proposed by the Delegations of Argentina and Portugal in order to allow countries to require International Searching Authorities to carry out searches on national applications. Once an international or international-type search was carried out on any given application, that objective was fulfilled and various countries wishing to profit from Article 15(5) should not be allowed to have the work duplicated. The spirit of the PCT was to avoid duplication. If any country could order a supplementary search, for example by the International Patent Institute, on an Application which was already the subject of an international search, or an international-type search, there would be as many searches as there were designated countries, plus one (namely, the international or international-type search). Such a situation would clearly result in a wholly unnecessary multiplication of the same effort.

1940.2 His Delegation would welcome the constitution of a working group to examine the matter more closely.

1941. Mr. LEWIN (Sweden) said that perhaps the problem raised by the Delegation of the United States of America could be solved by substituting for the words “any national application”, in Article 15(5) as appearing in document PCT/DC/112, the words “any

invention which is the subject of a national application.”

1942. Mr. SAVIGNON (France) said that the proposal of the Delegation of the United States of America would interfere with the freedom of national laws in respects in which it was never intended to interfere.

1943. The CHAIRMAN said that the proposal of the Delegation of the United States of America was interlinked with Article 16(3)(b) and the two should be considered together.

1944. Mr. BOGSCH (Secretary General of the Conference) said that perhaps all the speakers would be satisfied if the following words were merely added to Article 15(5)(b) as appearing in document PCT/DC/112 “except if the applicant has already filed an international application for the same invention or has already asked for an international-type search on another application concerning the same invention.”

1945. Mr. BRENNAN (United States of America) said that his Delegation was willing to withdraw its own proposal in favor of the suggestion made by the Secretary General. However, if other Delegations were also interested in adding some words about the availability of search reports, his Delegation would also support such additions.

1946. Mr. SAVIGNON (France) said that his Delegation could not accept the suggestion made by the Secretary General since it might limit the freedom of any Contracting State to ask for a search where an international or international-type search was already carried out.

1947. Mr. ASCENSÃO (Portugal) said that his Delegation could accept the suggestion of the Secretary General provided it was completed by the following words: “if the applicant presents the search report.”

1948. Mr. VILLALBA (Argentina) supported the suggestion made by the Secretary General. He understood the objections of the Delegation of France but, where there was clear duplication, it should be avoided.

1949. Mr. PHAF (Netherlands) said that his Delegation shared the views of the Delegation of France but would have no objections to having a working group try to clarify the matter.

1950. Mr. SAVIGNON (France) said that although his Delegation had no objection to the establishment of a working group to examine Articles 15(5)(b) and 16(3)(b) he wanted to point out to the Main Committee that the matter was of capital importance to countries members of the International Patent Institute. The issue involved was one of principle, namely, the use any Contracting State would make of an international or international-type search. The question was entirely within the competence of the national law of each Contracting State and no limitation of this freedom should be written into the Treaty.

1951. *It was decided to refer further consideration of Articles 15 (5)(b) and 16 (3)(b) to a working group consisting of the Delegations of three States members*

of the International Patent Institute, namely, the Delegations of France, the Netherlands, and Switzerland, and the Delegations of three States not members of that Institute, namely, the Delegations of Argentina, Portugal and the United States of America. (Continued at 1952.)

End of the Twenty-Seventh Meeting

TWENTY-EIGHTH MEETING

Monday, June 15, 1970, afternoon

Article 15: The International Search (Continued from 1951.)

Article 16: The International Searching Authority (Continued from 1951.)

1952. The CHAIRMAN opened the discussion on the matter referred to the Working Group concerning Article 15(5) and Article 16(3).

1953.1 Mr. BOGSCH (Secretary General of the Conference), speaking in his capacity of Chairman of the Working Group, said that the reason for which there was no written report by the Working Group was that it had decided to recommend that there should be no change in Articles 15(5) and 16(3). Instead, it had agreed that the following statement should be made in the name of the Working Group:

1953.2 “Article 16 provides for the possibility of the gradual application of the Treaty and makes express reference to international-type searches. It is to be understood that such gradual application may be different for international searches and international-type searches and that any agreement with International Searching Authorities, particularly the International Patent Institute, should give special attention to any danger that could arise from a sudden cessation of the use of international-type searches by any given State.

1953.3 “It should further be understood that since the International Searching Authority, for example, the International Patent Institute, is one of the contracting parties to the agreement concerning searches, its consent will naturally be necessary to that agreement.

1953.4 “Finally, it is understood that nothing in the Treaty or the Regulations affects the continued freedom of any State to enter into agreements outside the framework of the PCT with the International Patent Institute. For example, the existing agreement between the International Patent Institute, on the one hand, and France, the Netherlands and Switzerland, and any other member of that Institute, on the other hand, and any modification in the future of that agreement, will in no way be affected by the PCT.”

1954. *Article 15(5) and Article 16(3) were adopted as appearing in document PCT/DC/112.*

1955. Mr. ARMITAGE (United Kingdom) asked that the statement read by the Secretary General should appear in the records of the Conference.

1956. *It was decided that the statement quoted above would appear in the records of the Conference.*

Closing of the Work of the Main Committee

1957.1 Mr. ARMITAGE (United Kingdom), speaking on behalf of all members of the Main Committee, expressed very considerable thanks for the way in which Mr. Schuyler had chaired the meetings. The task had been an extremely difficult one. The Chairman had shown a great deal of patience and tact, and consideration for all delegations. It had been a great achievement to bring the work to a satisfactory conclusion within the scheduled time.

1957.2 The members of the Main Committee congratulated the Chairman on his achievement.

1957.3 The members of the Main Committee wished also to extend their thanks to Mr. Haertel, Vice-Chairman of the Committee, who had acted as substitute for the Chairman in several meetings. Those meetings dealt with some of the most difficult problems. Consequently, Mr. Haertel had assumed, together with Mr. Schuyler, a great burden.

1957.4 The members of the Main Committee wished therefore to express their appreciation also to Mr. Haertel.

1958.1 The CHAIRMAN wished, also on behalf of Mr. Haertel, to thank Mr. Armitage for expressing the feelings of the members of the Main Committee.

1958.2 It was thanks to the cooperation of all the delegates that it had been possible to complete the work within the prescribed time limits.

1958.3 In his capacity of Co-Chairman of the Delegation of the United States of America, he wished to inform the delegations that the Treaty and the Regulations, as reported by the two Main Committees, were acceptable to the Government of the United States of America and that Government intended to sign the Treaty in the form in which it then stood.

1958.4 It was not possible to indicate when the United States of America would ratify the Treaty, nor indeed whether it would ratify it. However, in his personal opinion, the United States of America would ratify the Treaty in the form in which it then stood.

End of the Twenty-Eighth Meeting

End of the Deliberations of Main Committee I

MAIN COMMITTEE II*

<i>Chairman:</i>	Mr. J. B. VAN BENTHEM (Netherlands)
<i>Vice-Chairmen:</i>	Mr. M. BESAROVIĆ (Yugoslavia) Mr. V. C. AKPONOR (Zambia)
<i>Secretary:</i>	Mr. Joseph VOYAME (BIRPI)

FIRST MEETING

Monday, June 1, 1970, morning

1959. The CHAIRMAN opened the discussion by stating that the Main Committee would deal with the Administrative Provisions and the Final Clauses of the draft Treaty, i.e., with Articles 50 to 65 in documents PCT/DC/4 and 11 and with the Rules corresponding to those Articles, i.e., with Rules 84 to 89, as contained in documents PCT/DC/5 and 12.

Article 50: Assembly (In the signed text, Article 53: Assembly, and Article 54: Executive Committee)

1960. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

1961. *Paragraph (2) was adopted as appearing in the Draft, without discussion.*

1962. *Paragraph (3) was adopted as appearing in the Draft, without discussion.*

1963. *Paragraph (4) was adopted as appearing in the Draft, without discussion.*

1964. *Paragraph (5) was adopted as appearing in the Draft, without discussion.*

1965.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65, suggested that a new subparagraph be added to paragraph (6) reading as follows: "If the number of delegates abstaining when a vote is taken in the Assembly exceeds one-half of the delegates present, the vote shall be null and void."

1965.2 He said that without such a change it would be possible for the Assembly to make a decision with, for example, two votes in favor, one against, and all the rest of the countries needed for the quorum abstaining. Such a result would be abnormal and should be avoided.

1966. Mr. BODENHAUSEN (Director of BIRPI) said that the same situation could arise also under any of the other Assemblies of Unions administered by BIRPI. It would be regrettable if the PCT did not follow the precedents. In any case the example given

by the Delegation of Yugoslavia would, in his opinion, merely show that the participating countries did not have any strong feelings about the matter and therefore would probably have no difficulty in accepting a decision which had received an affirmative vote from only a small number of countries.

1967. *Further discussion on paragraph (6) was reserved. (Continued at 413.)*

1968. *Paragraph (7) was adopted as appearing in the Draft, without discussion.*

1969. *Paragraph (8) was adopted as appearing in the Draft, without discussion.*

1970. *Paragraph (9) was adopted as appearing in the Draft, without discussion.*

1971. Mr. DAHMOUCHE (Algeria) said that it was curious that paragraph (10)(a) should provide that a higher organ (the Assembly) would generally meet at the same time as a lower organ (the Coordination Committee of WIPO). He wondered whether the rule should not be stated the other way round.

1972. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal was in conformity with the corresponding provisions in the other treaties administered by BIRPI. The Coordination Committee was an organ of BIRPI – and would in the near future be an organ of WIPO – that is, an organ which was not subordinated to the Assembly of any of the Unions and which was a central organ dealing with the matters of all Unions.

1973. Mr. PUSZTAI (Hungary) reminded the meeting that the observations of his Government appearing in document PCT/DC/8 contained a proposal for establishing an Executive Committee right at the outset and devoted a separate Article to it.

1974. The CHAIRMAN said that a similar proposal was expected to be made by the Delegation of Yugoslavia.

1975. *Further discussion on paragraph (10) was deferred. (Continued at 2173.)*

Article 51: International Bureau (In the signed text, Article 55: International Bureau)

1976. *Article 51 was adopted as appearing in the Draft, without discussion. (Continued at 2189.)*

Article 52: Committee for Technical Cooperation (In the signed text, Article 56: Committee for Technical Cooperation)

1977. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

* Note: In these summary minutes of Main Committee II:

(i) "Main Committee" means "Main Committee II";
(ii) "Chairman" means Mr. J. B. VAN BENTHEM (Netherlands) except in the case of the 9th and 13th meetings where it means Mr. MIRKO BESAROVIĆ (Yugoslavia);
(iii) "Secretary" means Mr. JOSEPH VOYAME (BIRPI);
(iv) "Draft" means the drafts of the Treaty and the Regulations as appearing in documents PCT/DC/4 and 5;
(v) "Alternative Draft" means the drafts of the Treaty and the Regulations as appearing in documents PCT/DC/11 and 12;
(vi) unless otherwise indicated, the numbers and titles of Articles and Rules are those used in the Draft.

1978. Mr. ALMEIDA (Portugal), referring to the proposal of his Delegation contained in document PCT/DC/64, proposed that the total number of the members of the Committee for Technical Cooperation should be more than double – rather than at least double – the number of the International Searching or Preliminary Examining Authorities. Such a change would secure that the *ex officio* interested members would always be a majority.

1979. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation was about to present written proposals on the same subject. Consequently, it would be preferable to defer further discussion.

1980. *Further discussion on paragraph (2)(a) was deferred.* (See 2194.)

1981.1 Mr. ALENCAR NETTO (Brazil) called the attention of the meeting to his Delegation's proposals contained in document PCT/DC/45 which suggested a number of changes in the Article under discussion.

1981.2 As far as paragraph (2)(b) was concerned, his Delegation proposed that the invitations should be made by the Director General either on his own initiative or at the request of the Committee for Technical Cooperation and that the organizations to be invited should be international and should be concerned with technical cooperation.

1982. Mr. CAPURRO-AVELLANEDA (Uruguay) supported the proposal of the Delegation of Brazil.

1983. *It was decided to adopt the proposal of the Delegation of Brazil contained in document PCT/DC/45 to the extent that the Article should specify that the invitations would be made by the Director General "on his own initiative or at the request of the Committee [for Technical Cooperation]."*

1984. Mr. BOWEN (United Kingdom) said that his Delegation was not convinced that the other proposals of the Delegation of Brazil concerning paragraph (2) should be adopted. A further study of the matter was required and the discussion should be deferred.

1985. Mr. SAVIGNON (France) said that his Delegation too would prefer deferring the discussion on the other proposals of the Delegation of Brazil since the advantages of the changes proposed were not clear to it.

1986. Mr. DAHMOUCHE (Algeria) said that his Delegation was in general agreement with the proposal of the Delegation of Brazil but that the text should be made clearer in order to indicate whether only intergovernmental organizations were meant or also non-governmental organizations.

1987. *Further discussion on paragraph (2)(b) was deferred.* (See 2194.)

1988. Mr. SAVIGNON (France) referred to the proposal of his Delegation contained in document PCT/DC/21 according to which a new subparagraph should be added to paragraph (3) reading as follows: "The Committee shall also examine the conditions in which a centralized search could be made by one single body. It shall report on this matter to the Executive Committee." The proposal was made

because the long-term role of the PCT was to have a single centralized International Searching Authority and it appeared that the Committee for Technical Cooperation was the appropriate body to prepare the creation of such a centralized authority.

1989. Mr. ASHER (Canada) said that his Delegation had made a proposal (document PCT/DC/31) similar to that of the Delegation of France and, because of that similarity, his own Delegation's proposal was to be considered withdrawn.

1990. Mr. STAMM (Switzerland) said that since his Delegation was also interested in centralized search, it supported the proposal of the Delegation of France.

1991. Mr. BESAROVIĆ (Yugoslavia) also supported the proposal of the Delegation of France.

1992. Mr. SCHURMANS (Belgium) also supported the proposal of the Delegation of France.

1993. Mr. MESSEROTTI-BENVENUTI (Italy) also supported the proposal of the Delegation of France.

1994. Mr. BRENNAN (United States of America) asked whether the proposal of the Delegation of France meant that the Committee for Technical Cooperation was to conduct a continuous investigation of the feasibility of a centralized International Searching Authority or if it would undertake one investigation and report on its results.

1995. Mr. SAVIGNON (France) said that his Delegation was ready to accept further clarifications, in particular on the question whether the work of the Committee for Technical Cooperation should not, also in that respect, be directed by the Assembly.

1996. Mr. BORGGÅRD (Sweden) expressed the view that the task in question was too big for the Committee for Technical Cooperation and, when the time came for an investigation, it could be better carried out by an *ad hoc* body of the Assembly.

1997. Mr. ROBINSON (Canada) said that the Committee for Technical Cooperation should have a continuous task for the purpose in question.

1998. Mr. MAST (Germany (Federal Republic)) expressed agreement with the observations of the Delegation of Sweden.

1999. Mr. BOWEN (United Kingdom) also supported the views expressed by the Delegations of Sweden and Germany (Federal Republic). Any investigation for the creation of a centralized single International Searching Authority should only start when the Assembly of the PCT Union found that the time was ripe for such study.

2000. Mr. OHWADA (Japan) expressed agreement with the Delegations of Sweden, Germany (Federal Republic) and the United Kingdom.

2001. Mr. PUSZTAI (Hungary) said that his Delegation too was in agreement with the Delegations of Sweden, Germany (Federal Republic), the United Kingdom and Japan.

2002. Mr. DAHMOUCHE (Algeria) said that a committee for technical cooperation had the technical qualifications to deal with the question of creating a single International Searching Authority.

Consequently, the task of studying the feasibility of such an authority should be entrusted to the Committee for Technical Cooperation.

2003. Mr. SAVIGNON (France) said that the question of the need for a centralized International Searching Authority was closely linked to the question of quality of the search. That question could be most competently handled by the Committee for Technical Cooperation, which would consist of specialists in the matter of searching.

2003.1 Of course, the political question whether the time had come for a transition from a multiplicity of International Searching Authorities to a single International Searching Authority was one that would be reserved for the Assembly. The Committee for Technical Cooperation would work under the directions of the Assembly.

2004. Mr. ARTEMIEV (Soviet Union) said that entrusting the task in question to the Committee for Technical Cooperation would probably complicate the tasks of that Committee. Consequently, he reserved the position of his Delegation.

2005. Mr. SHER (Israel) said that whereas his country was in favor of the ultimate creation of a centralized International Searching Authority it shared the view of the Delegation of the United Kingdom that the task should not be entrusted to the Committee for Technical Cooperation since that Committee would then be entrusted with contradictory tasks; on the one hand, it would be called upon to coordinate the work of several International Searching Authorities; on the other hand, it would be entrusted with the task of eliminating all but one of such Authorities.

2006. Mr. ROBINSON (Canada) said that he saw no danger and no contradiction. The decision whether a centralized International Searching Authority was feasible would ultimately be made by all the Contracting States in the Assembly. In addition to that political question there were also technical questions and the Committee for Technical Cooperation was ideally suited to study and report on such questions.

2007. Mr. TUULI (Finland) said that his Delegation also supported the views of the Delegation of Sweden.

2008. Mr. BRENNAN (United States of America) said that a compromise solution would consist in adding the proposal of the Delegation of France to the paragraph under discussion as a new item in that paragraph.

2009. The CHAIRMAN suggested as a compromise solution inserting in item (ii) of paragraph (3), at the beginning of that item, the following words: "taking into consideration the prospect of a centralized Searching Authority."

2010. Mr. SAVIGNON (France) said that his Delegation was ready to examine the possibilities of the compromise solution.

2011. The CHAIRMAN suggested that the Delegations of Canada, France, Sweden, the United Kingdom and the United States of America form a working group and try to find a compromise solution.

2012. *The proposal of the Chairman to appoint such a working group was adopted.* (See 2257.)

2013. Mr. BAHADIAN (Brazil), referring to the proposals of his Delegation contained in document PCT/DC/45, said that the tasks suggested by his Delegation were important for developing countries.

2014. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of Brazil omitted the words "by advice and recommendations" of the Draft. Should it be interpreted as meaning that, if the Committee had the power to make decisions, such decisions could be contrary to the decisions of the Assembly? Any possibility of such contradictory results should be avoided.

2015. Mr. BAHADIAN (Brazil) said that the emphasis in the proposal of his Delegation was on the need for special provisions concerning developing countries. Perhaps the matter should be referred to the Working Group created for the purpose of looking into the question of special provisions in favor of developing countries.

2016. Mr. BODENHAUSEN (Director of BIRPI) agreed with the last procedural proposal of the Delegation of Brazil.

2017. Mr. SHER (Israel) also agreed with the procedural proposal of the Delegation of Brazil.

2018. Mr. BRADERMAN (United States of America) said that the Working Group, in studying the proposal of the Delegation of Brazil, should take into account the recent entry into force of the WIPO Convention.

2019. Mr. BAHADIAN (Brazil) agreed with the procedural proposals made.

2020. Mr. SAVIGNON (France) also agreed with the idea of submitting the proposal of the Delegation of Brazil to the Working Group dealing with the questions of interest to developing countries.

2021. Mr. CHONA (Zambia) said that his Delegation wholeheartedly supported the provisions suggested by the Delegation of Brazil because they would considerably increase the potential usefulness of the PCT to developing countries.

2022. *It was decided to refer the proposals of the Delegation of Brazil concerning paragraph (3), contained in document PCT/DC/45, to the Working Group on developing countries.* (See 1690.)

2023. Mr. DAHMOUCHE (Algeria) asked whether paragraph (4) of the Draft, which provided that any interested organization might approach the Committee on Technical Cooperation, should not be limited to international organizations.

2024. Mr. BODENHAUSEN (Director of BIRPI) said that he would prefer it if the provision was limited to international organizations.

2025. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation would regret it if the provision was modified and the possibility of approaching the Committee limited to international organizations since there were conceivably cases where national organizations could also contribute in an important

way to the work of the Committee for Technical Cooperation.

2026. Mr. BODENHAUSEN (Director of BIRPI) said that no national organization which was important would have any difficulty in having its views expressed through an international organization.

2027. Mr. STAMM (Switzerland) said that his Delegation favored the idea that the provision be limited to international organizations.

2028. Mr. ALENCAR NETTO (Brazil) agreed with the views of the Delegation of Switzerland.

2029. Mr. MESSEROTTI-BENVENUTI (Italy) said that he would not insist.

2030. *It was decided that the word "international" should be inserted in paragraph (4).*

2031. Mr. ALMEIDA (Portugal), referring to the proposal contained in document PCT/DC/64 presented by his Delegation and the Delegation of Argentina, proposed that the Committee for Technical Cooperation should be able to address its advice also to the Assembly.

2032. Mr. BESAROVIĆ (Yugoslavia) said that the Committee for Technical Cooperation could address its advice to the Assembly but its recommendations should be addressed either to the Executive Committee or to the Director General.

2033. Mr. ALMEIDA (Portugal) said that his Delegation could accept the proposal of the Delegation of Yugoslavia.

2034. *It was decided to defer further discussion on the proposal of the Delegations of Argentina and Portugal contained in document PCT/DC/64 concerning paragraph (5) pending the filing of a written proposal by the Delegation of Yugoslavia. (See 2194.)*

2035. *It was decided to proceed in the same manner as far as paragraphs (6), (7) and (8) of the Draft were concerned. (Continued at 2194.)*

Article 53: Finances (In the signed text, Article 57: Finances)

2036. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

2037. *Paragraph (2) was adopted as appearing in the Draft, without discussion.*

2038. *Paragraph (3) was adopted as appearing in the Draft, without discussion.*

2039.1 Mr. SHER (Israel), referring to the proposal of his Delegation contained in document PCT/DC/49, suggested that paragraph (4) be completed by the following sentence: "In fixing the fees and charges for countries and nationals of countries, the Assembly may give special consideration to the level of economic development reached by the countries concerned."

2039.2 He said that, obviously, the proposal was made in favor of developing countries and applicants who were nationals of developing countries. The amount of the reduction which such countries and the nationals of such countries would enjoy would be determined by the Assembly.

2040. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of Israel, having to do with the special situation of developing countries, should perhaps first be examined by the Working Group set up to examine questions concerning developing countries.

2041. Mr. BOWEN (United Kingdom) agreed with the procedural proposal made by the Director of BIRPI.

2042. Mr. STAMM (Switzerland) said that the proposal of the Delegation of Israel raised the question whether, if it was adopted, it should apply to nationals of and/or persons domiciled in developing countries.

2043. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation agreed with the proposal of the Delegation of Israel and also supported the procedural proposal made by the Director of BIRPI.

2044. Mr. BRENNAN (United States of America) agreed with the proposal of the Director of BIRPI but wished to remind the Working Group of the national treatment principle of the Paris Convention, a principle which called for the same treatment for foreigners as for nationals in each member country of the Paris Union.

2045. Mr. SHER (Israel) said that his Delegation too agreed with the proposal of the Director of BIRPI to have its proposal first studied by the Working Group.

2046. *It was decided to entrust the Working Group dealing with questions of interest to developing countries with the task of studying the proposal of the Delegation of Israel contained in document PCT/DC/49.*

2047. *Further discussion on paragraph (4) was deferred. (See 2060.)*

2048. *Paragraph 5(a) was adopted as appearing in the Draft, without discussion.*

2049. Mr. HADDRICK (Australia), referring to the proposal of his Delegation contained in document PCT/DC/63, said that the Draft provided that, should any financial year close with a deficit, the member countries would pay contributions to cover such deficit and the amount of the contribution of each Contracting State would be decided by the Assembly with due regard to the number of international applications which had emanated from each of them in the relevant year "and other pertinent factors." The words "and other pertinent factors" should be deleted as they were too vague.

2050. Mr. BODENHAUSEN (Director of BIRPI) said that he would have some hesitation in recommending the adoption of the proposal of the Delegation of Australia because it would make the system of distributing possible deficits too rigid and would not, for example, allow the special situation of developing countries to be taken into account.

2051. Mr. ARTEMIEV (Soviet Union) said that his Delegation supported the proposal of the Delegation of Australia. An international treaty was a legal document of the highest order and should be absolutely precise as to the obligations of the

Contracting States. The term “and other pertinent factors” was much too vague, particularly in the field of financial obligations.

2052. Mr. BODENHAUSEN (Director of BIRPI) said that perhaps the words “other pertinent factors” should be replaced by “other factors which the Assembly considers relevant or pertinent,” thereby giving the task of more accurate definition to the Assembly.

2053. Mr. ARTEMIEV (Soviet Union) said that the suggested words contained the same ambiguity and therefore caused the same difficulties.

2054. Mr. BRENNAN (United States of America) said that it appeared to be wise to leave some flexibility to the Assembly in establishing the basis of the distribution of the deficits. Although deleting the words “and other pertinent factors” would make the text more precise, it would result in removing any flexibility and would retain a criterion which, in itself, might not reflect all the advantages of the PCT. For example, examining Offices would doubtless derive benefit from receiving applications under the PCT because they would be accompanied by international search reports. Consequently, the number of applications emanating from each country was not the only criterion for measuring the potential benefits of the PCT to any given State.

2055. Mr. BORGGÅRD (Sweden) said that his Delegation supported the suggestion made by the Director of BIRPI.

2056. Mr. LULE (Uganda) said that his Delegation was in favor of the language used in the Draft. It was more flexible and would allow the special situation of developing countries to be taken into account.

2057. Mr. MAST (Germany (Federal Republic)) said that his Delegation was of an opinion similar to that expressed by the Delegation of the United States of America. The text of the Draft should be adopted as it stood. The number of applications emanating from a country was a basic factor for judging the benefits of the Treaty to that country and it was therefore rightly mentioned in the Draft. But it was not the only factor and that was why it was appropriate that the Draft should also maintain the possibility of taking other factors into consideration. One of those factors would doubtless be the desire to assist developing countries.

2058. Mr. DAHMOUCHE (Algeria) said that the proposal to omit the words “and other pertinent factors” would not solve the problem for those who wished to have complete precision. The amount of the contributions would still be decided by the Assembly and the Assembly was not obliged to “base” its decision on the number of international applications but was merely invited to have “due regard” to that number in making its decision.

2059. Mr. ALENCAR NETTO (Brazil) said that his Delegation shared the views expressed by the Delegation of Algeria. (Continued at 2060.)

End of the First Meeting

SECOND MEETING

Monday, June 1, 1970, afternoon

Article 53: Finances (In the signed text, Article 57: Finances) (Continued from 2059.)

2060. The CHAIRMAN asked the Delegation of Australia whether it wished to maintain its proposal contained in document PCT/DC/63 in the light of the discussions of the previous meeting.

2061. Mr. HADDRICK (Australia) replied that his Delegation wished to maintain its proposal to delete the words “and other pertinent factors.” The matter being one of financial obligations contracted among the member States, it was essential that such obligations should be expressed in the most precise terms. Any reference to “other factors” would make the definition of the extent of the obligations uncertain and could become the source of disagreement in the Assembly.

2062. The CHAIRMAN said that it ought to be borne in mind that paragraph (4) of the same Article provided that the amounts of fees and charges due to the International Bureau and the prices of its publications must be so fixed that they should under normal circumstances be sufficient to cover all the expenses of the International Bureau connected with the administration of the PCT. Consequently, the provision under discussion, which related to the covering of deficits, would not be applied under normal circumstances but only in extraordinary circumstances, presumably only during the first few years after the Treaty had entered into force.

2063. Mr. BRADERMAN (United States of America) said that the provision under discussion was the result of careful consideration. His Delegation would have no objection to replacing “other pertinent factors” by an enumeration of such factors if other delegations could offer such an enumeration. It would also be possible to maintain only the beginning of the provision, namely, the words: “The amount of the contribution of each Contracting State shall be decided by the Assembly.” Such a solution, however, would have the drawback of not referring to one of the important factors which the Assembly should keep in mind when it made its decision, namely, the number of international applications which had emanated from each Contracting State.

2064. Mr. ARTEMIEV (Soviet Union) said that his Delegation was not opposed to finding a compromise solution which would suit all the delegations. What was important, however, was that the provision should be precise and entirely clear. In that connection, it would seem to be necessary to specify all the possible factors which should be taken into consideration in deciding the share of each country in possible deficits. That was the reason for which his Delegation supported the proposal of the Delegation of Australia. It had, however, no objection to asking a working group to propose some compromise solution.

2065. Mrs. MATLASZEK (Poland) said that her Delegation supported the proposal of the Delegation of Australia since it was important that the financial

obligations of each Contracting State be specified with precision. Her Delegation could not accept the suggestion of the Director of BIRPI since that would merely change the drafting without changing the essence.

2066. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation shared the views of the Delegation of the Soviet Union.

2067. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation supported the Draft as it stood for the reasons expressed by the Delegation of the United States.

2068. The CHAIRMAN suggested that a working group be appointed to study the problem further.

2069. Mr. BORGGÅRD (Sweden) said that before a working group was appointed there would need to be adequate guidelines for it, in particular on the question what other factors should be specified in the text, such as industrial capacity, economic capacity, state of development of the country, state of development of the patent system of the country.

2070. Mr. BODENHAUSEN (Director of BIRPI) said that the factors mentioned by the Delegation of Sweden would certainly be among the factors which could be taken into account by the Assembly under the text of the Draft.

2071. Mr. SAVIGNON (France) said that there was another factor which would certainly have relevance, namely, whether or not any Contracting State had accepted Chapter II of the PCT.

2072. The CHAIRMAN suggested the setting up of a working group consisting of the Delegations of Australia, Italy, Poland, the Soviet Union and the United States of America as they were the Delegations which had taken the most active part in the discussions.

2073. Mr. BRENNAN (United States of America) suggested that delegations of developing countries also be included in the working group.

2074. Mr. DAHMOUCHE (Algeria) expressed his agreement with the suggestion of the Delegation of the United States and suggested that the Delegation of Brazil be added to the members of the working group.

2075. Mr. BESAROVIĆ (Yugoslavia) proposed that the Delegation of Algeria be added to the members of the working group.

2076. Mr. MAST (Germany (Federal Republic)) said that his Delegation wished to participate in the work of the working group.

2077. *It was decided to establish a working group whose task would be to examine the proposal of the Delegation of Australia contained in document PCT/DC/63, and which would consist of the Delegations of Algeria, Australia, Brazil, Italy, Japan, Germany (Federal Republic), Poland, the Soviet Union and the United States of America.*

2078. *Further discussion on paragraph (5)(b) was deferred. (See 2530.)*

2079. Miss NILSEN (United States of America) proposed that the Drafting Committee improve the text of paragraph (5)(c).

2080. *Subject to improvement of the text by the Drafting Committee, paragraph (5)(c) was adopted as appearing in the Draft.*

2081. *Paragraph (5)(d) was adopted as appearing in the Alternative Draft, without discussion.*

2082. *Paragraph (5)(e) was adopted as appearing in the Draft, without discussion.*

2083. *Paragraph (6) was adopted as appearing in the Draft, without discussion.*

2084. *Paragraph (7)(a) was adopted as appearing in the Draft, without discussion.*

2085. *Paragraph (7)(b) was adopted as appearing in the Draft, without discussion.*

2086. *Paragraph (7)(c) was adopted as appearing in the Draft, without discussion.*

2087. Miss NILSEN (United States of America) said that she interpreted the words "taking into account the dates at which they were paid" in paragraph (7)(d) to mean, possibly among other things, that countries which paid earlier would have some advantage over countries which paid later because their payments would have produced interest in the meantime.

2088. Mr. BODENHAUSEN (Director of BIRPI) said that he interpreted the provision in the same manner.

2089. *Paragraph (7)(d) was adopted as appearing in the Draft.*

2090. *Paragraph (8) was adopted as appearing in the Draft, without discussion.*

2091. *Paragraph (9) was adopted as appearing in the Draft, without discussion. (Continued at 2241.)*

Article 54: Regulations (In the signed text, Article 58: Regulations)

2092. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

2093. *Paragraph (2)(a) was adopted as appearing in the Draft, without discussion.*

2094. Miss NILSEN (United States of America), referring to the proposal of her Delegation contained in document PCT/DC/58, proposed that the majority provided for in paragraph (2)(b) should be three-fourths rather than two-thirds.

2095. Mr. ALMEIDA (Portugal) supported the proposal of Delegation of the United States of America.

2096. *It was decided to amend paragraph (2)(b) to read as follows: "Subject to the provisions of paragraph (3), amendments shall require three-fourths of the votes cast."*

2097. Mr. LAURELLI (Argentina), referring to the proposal of his Delegation contained in document PCT/DC/51, said that there should be only two possibilities for making decisions in the Assembly: either by a two-thirds vote or by unanimity.

2098. Mr. ALMEIDA (Portugal) agreed with the suggestion of the Delegation of Argentina. Not only the unanimity rule was undesirable as it was contrary to the three-fourths majority just adopted but also

undesirable was the veto power given in certain cases to certain States as provided for in paragraph 3(a)(ii) of the Draft.

2099. Mr. ALENCAR NETTO (Brazil) said that his Delegation supported the proposal of the Delegation of Argentina.

2100. Mr. BOWEN (United Kingdom) said that a finer differentiation, according to the relative importance of the various Rules, should be maintained and therefore his Delegation generally supported the Draft.

2101. Mr. BRADERMAN (United States of America) said that his Delegation shared the views of the Delegation of the United Kingdom. As a general rule, amendment of the Regulations should require a three-fourths majority as just decided. In special cases, however, more stringent provisions should be required.

2102. Mr. CAPURRO-AVELLANEDA (Uruguay) supported the proposal of the Delegation of Argentina.

2103. Mr. PIETERS (Netherlands) opposed the proposal of the Delegation of Argentina for the reasons expounded by the Delegations of the United Kingdom and the United States of America.

2104. Mr. ARTEMIEV (Soviet Union) said that his Delegation also shared the views of the Delegation of the United Kingdom.

2105. Mr. MAST (Germany (Federal Republic)) said that some Rules had to require a unanimous decision if they were to be amended. His Delegation would later make proposals for amending Rule 88.1 of the Draft.

2106. Mr. ALMEIDA (Portugal) said that, if any Rule was so important that it could be amended only by unanimous decision, it should perhaps be transferred to the Treaty rather than left in the Regulations.

2107. The CHAIRMAN replied that transferring all Rules requiring unanimity to the Treaty would mean that such Rules could be amended only by a revision conference.

2108. Mr. ALMEIDA (Portugal) said that Article 56 provided for amendment of the Treaty without a revision conference.

2109. The CHAIRMAN replied that amendment of the Treaty without a revision conference applied only to administrative provisions and not to substantive provisions. The Rules requiring a unanimous decision for amendment were of a substantive nature.

2110. Mr. PIETERS (Netherlands) said that amendment of the Treaty followed a different procedure from amendment of the Regulations, even if one considered in connection with the Treaty only those provisions which could be amended without a revision conference.

2111. Mr. DAHMOUCHE (Algeria) suggested that the question be deferred until Rule 88 of the Draft had been reached.

2112. *Further discussion on paragraph (3)(a)(i) was deferred.* (See 2288.)

2113. Mr. SAVIGNON (France) said that paragraph (3)(a)(ii) as appearing in the Draft would limit the powers of decision of any intergovernmental organization referred to in that provision. His Delegation would later submit a proposal to amend the provision to avoid that shortcoming.

2114. Mr. MESSEROTTI-BENVENUTI (Italy) shared the views expressed by the Delegation of France and referred to the observations which his Government had made in document PCT/DC/8.

2115. Mr. SCHATZ (International Patent Institute) said that he shared the views expressed by the Delegations of France and Italy in order to maintain the freedom of contracting of the international organizations.

2116. *Further discussion on paragraph (3)(a)(ii) was deferred.* (See 2289.)

2117. *Paragraph (3)(b) was adopted as appearing in the Draft, without discussion.*

2118. *Paragraph (3)(c) was adopted as appearing in the Draft, without discussion.*

2119. *Paragraph (4) was adopted as appearing in the Draft, without discussion.*

2120. Mr. OHWADA (Japan), referring to the proposal of his Delegation contained in document PCT/DC/66, proposed that the Article under discussion be supplemented by an additional paragraph reading as follows: "The Regulations are annexed to this Treaty but do not form an integral part thereof."

2121. Mr. SHER (Israel) supported the proposal of the Delegation of Japan.

2122. Mr. PUSZTAI (Hungary) supported the proposal of the Delegation of Japan.

2123. Mr. BOWEN (United Kingdom) asked the Director of BIRPI to express an opinion on the legal significance of the proposal of the Delegation of Japan.

2124. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of Japan could cast some doubt on the legal status of the Regulations.

2125. Miss NILSEN (United States of America) said that it was extremely important that there be no doubt in anybody's mind that the Regulations were binding on the Contracting States. The proposal of the Delegation of Japan could throw some doubt on such binding force and for that reason her Delegation objected to the said proposal.

2126. Mr. MAST (Germany (Federal Republic)) said that as he understood the proposal of the Delegation of Japan it had been made only for some technical, internal reasons and was not intended to remove or weaken the obligation of the member States to comply with the Regulations. If the proposal of the Delegation of Japan was adopted, it would be necessary to state also in the Treaty that the Regulations were binding on the Contracting States.

2127. Mr. HADDRICK (Australia) said that his Delegation could well understand that some countries would have difficulties from the viewpoint of constitutional procedure but that it was indispensable

that it should be understood that the Regulations were binding on each Contracting State.

2128. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation was opposed to the proposal of the Delegation of Japan. If the Regulations were not an integral part of the Treaty, then, to make them binding on the Contracting States, they should be made the subject of a separate treaty. Such a procedure would obviously be too complicated.

2129. Mr. DAHMOUCHE (Algeria) said that the proposal of the Delegation of Japan seemed to raise more problems than it would resolve. Consequently, it would seem to be better not to adopt it.

2130. The CHAIRMAN said that there were, of course, two ways to make Regulations binding on Contracting States. One was to attach them to the Treaty; the other was to empower the Assembly to adopt Regulations. Throughout the preparatory work for the PCT it was understood that the Regulations would be adopted by the same diplomatic conference as the Treaty itself. It was, of course, understood that the Regulations would not necessarily remain unchanged forever because the Assembly was empowered to amend them subject to certain conditions.

2131. Mr. OHWADA (Japan) proposed that further discussion on the proposal of his Delegation be deferred so that the latter could further reflect on the observations made during the discussion.

2132. *Further discussion on the proposal of the Delegation of Japan contained in document PCT/DC/66 was deferred.* (Continued at 2280.)

Article 55: Revision of the Treaty (In the signed text, Article 60: Revision of the Treaty)

2133. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

2134. *Paragraph (2) was adopted as appearing in the Draft, without discussion.*

2135. Mr. TRUONG (Ivory Coast) said that, whereas he agreed with the draft of paragraph (3) which provided that any intergovernmental organization appointed as International Searching or Preliminary Examining Authority would be admitted as observer to any revision conference, he wished to know whether it would not be possible to admit as observer also such intergovernmental organizations as the African and Malagasy Industrial Property Office, which, without being such an Authority, still had some role to play in connection with the PCT, for example, as a receiving Office.

2136. Mr. BODENHAUSEN (Director of BIRPI) said that he was sure that the African and Malagasy Industrial Property Office would be invited to all revision conferences since it was a tradition that it be invited to all the diplomatic conferences organized by WIPO.

2137. Mr. TRUONG (Ivory Coast) said that he was satisfied with the assurances given by the Director of BIRPI.

2138. *Paragraph (3) was adopted as appearing in the Draft.*

2139. Miss NILSEN (United States of America) said that the proposal of her Delegation concerning paragraph (4) appearing in document PCT/DC/58, was purely of a drafting nature; and that her Delegation would be satisfied if it were simply referred to the Drafting Committee.

2140. *The proposal of the United States of America concerning paragraph (4) and contained in document PCT/DC/58, was referred to the Drafting Committee.*

2141. *Subject to the foregoing decision, paragraph (4) was adopted as appearing in the Draft.* (Continued at 2671.)

Article 56: Amendment of Certain Provisions of the Treaty (In the signed text, Article 61: Amendment of Certain Provisions of the Treaty)

2142.1 The SECRETARY said that there were two proposals concerning the Article under consideration.

2142.2 One was a proposal by the Delegation of Argentina, contained in document PCT/DC/51, to the effect that paragraph (2)(b) ("Adoption shall require three-fourths of the votes cast") be omitted.

2142.3 The other was a proposal by the Delegation of the United Kingdom, contained in document PCT/DC/61, to the effect that paragraph (3)(b) be completed and paragraph (3)(c) omitted.

2143. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

2144. *Paragraph (2)(a) was adopted as appearing in the Draft, without discussion.*

2145. The CHAIRMAN noted that the proposal of the Delegation of Argentina concerning paragraph (2)(b) and contained in document PCT/DC/51 had not been moved or seconded.

2146. *Paragraph (2)(b) was adopted as appearing in the Draft, without discussion.*

2147. *Paragraph (3)(a) was adopted as appearing in the Draft, without discussion.*

2148. Mr. BOWEN (United Kingdom) said that the proposal of his Delegation, contained in document PCT/DC/61, was intended to make the Draft conform with the corresponding provisions in the various texts adopted at the Stockholm Diplomatic Conference of 1967.

2149. Mr. BODENHAUSEN (Director of BIRPI) said that he agreed with the intent of the proposal of the Delegation of the United Kingdom.

2150. *It was decided to refer the proposal of the Delegation of the United Kingdom concerning paragraphs (3)(b) and (3)(c) to the Drafting Committee.*

2151. *Subject to the foregoing decision, paragraphs (3)(b) and (3)(c) were adopted as appearing in the Draft.* (Continued at 2672.)

Article 57: Becoming Party to the Treaty (In the signed text, Article 62: Becoming Party to the Treaty)

2152.1 The SECRETARY said that three proposals for amending the Draft had been filed.

2152.2 One, made by the Delegation of the United Kingdom, was contained in document PCT/DC/25 and

suggested that a new paragraph be added to the Article under discussion. The new paragraph would read as follows: "The provisions of Article 24 of the Paris Convention for the Protection of Industrial Property apply to this Treaty."

2152.3 The second proposal, made by the Delegation of the Netherlands, was contained in document PCT/DC/39 and tended to transfer the provision appearing as Article 63(2) of the Draft ("This Treaty shall remain open for signature for six months.") to the Article under discussion.

2152.4 The third proposal, made by the Delegation of the United States of America, was contained in document PCT/DC/58 and suggested that item (i) of paragraph (1) ("signature without reservation as to ratification") be deleted.

2153. Mr. OHWADA (Japan) said that his Delegation also intended to propose an amendment to the Article under discussion but the discussions had proceeded so rapidly that it had not yet had time to file any written proposal.

2154. The CHAIRMAN said that the discussion would proceed on the understanding that it would be reopened once the proposal of the Delegation of Japan, to be filed the same day, was available.

2155. Mr. BOWEN (United Kingdom) said that the proposal of his Delegation contained in document PCT/DC/25 was intended to fill what appeared to be an inadvertent gap in the Draft.

2156. Mr. BODENHAUSEN (Director of BIRPI) said that he saw no objection to the proposal of the Delegation of the United Kingdom but that the proposal ought to specify that the Stockholm Act of the Paris Convention was meant since the Article to which the proposal wished to refer had a different number in the Stockholm Act from the number in the previous Act.

2157. Mr. DAHMOUCHE (Algeria) said that he did not know what the contents of Article 24 of the Paris Convention were. In any case, the suggestion of the Director of BIRPI should be followed. Furthermore, it might be necessary to add "to the extent that those provisions (i.e., the provisions of Article 24 of the Stockholm Act of the Paris Convention) are not in discrepancy with the provisions of the present Treaty."

2158. Mr. ALENCAR NETTO (Brazil) requested the Director of BIRPI to clarify what the effect of the provision would be in respect of those countries which had not accepted the Stockholm Act of the Paris Convention.

2159. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the United Kingdom aimed at adding to the PCT a clause which had obviously been forgotten, namely, that the PCT could be declared applicable to dependent territories through a declaration of the Contracting State which was responsible for the external relations of such territories. There was nothing in Article 24 of the Stockholm Act which would be contrary to the provisions of the PCT. There was no obstacle to acceptance of the provision proposed by the Delegation of the United Kingdom by countries not

yet having accepted the Stockholm Act since Article 24 of that Act – which was merely a final provision, having nothing to do with substantive patent law – would simply be incorporated by reference in the PCT.

2160.1 Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) said that in his view BIRPI was right not to include a provision similar to Article 24 of the Stockholm Act of the Paris Convention, or a reference to that Article, in the Draft PCT. That Article, in fact, had given rise to serious controversy at the Stockholm Conference.

2160.2 Some years after the Stockholm Conference, the clause or any express provision on dependent territories would seem to be out of place. It would seem to be sufficient to give powers to the Assembly to extend the benefits of the Convention to non-Contracting States. Such powers, should the need for them arise, would enable dependent territories to profit from the PCT.

2161. Mr. DAHMOUCHE (Algeria) suggested that the discussion be deferred since it seemed that several delegations were in need of supplementary information.

2162. Mr. BODENHAUSEN (Director of BIRPI) said that a clause on dependent territories was routine in all treaties administered by WIPO. The proposal made by the representative of the African and Malagasy Industrial Property Office would not be sufficient. The Assembly could extend the benefits of the PCT only to States which were members of the Paris Union. Nationals or residents of dependent territories could thus not benefit from the PCT and that seemed to be a pity.

2163. Mr. DAHMOUCHE (Algeria) said that the proposal seemed to recognize that any colonial power which *de facto* controlled a territory, or believed that it had the rights of protectorate over a territory, had some kind of sovereignty over such territory. Such a pretension was completely unilateral. If such were the case, then any country could consider itself to have sovereignty over any other country.

2164. *The proposal of the Delegation of the United Kingdom contained in document PCT/DC/25 was adopted.*

2165. Mr. PIETERS (Netherlands), referring to the proposal of his Delegation contained in document PCT/DC/39, said that it was of a drafting nature and could be referred to the Drafting Committee.

2166. *It was decided to refer the proposal of the Delegation of the Netherlands contained in document PCT/DC/39 to the Drafting Committee.*

2167. Miss NILSEN (United States of America), referring to the proposal of her Delegation contained in document PCT/DC/58, said that it had been dictated by practical considerations. It was in fact likely that no – or only very few – States would be ready to bind themselves to the Treaty by a simple signature not followed by ratification. Consequently, item (i) in paragraph (1) seemed to be superfluous and should be deleted.

2168. Mr. GALL (Austria) seconded the proposal of the Delegation of the United States of America.

2169. *The proposal of the United States of America contained in document PCT/DC/58 was adopted.*

2170. *Subject to the decisions referred to in paragraphs 2164, 2166 and 2169, above, Article 57 was adopted as appearing in the Draft. (Continued at 2171.)*

End of the Second Meeting

THIRD MEETING

Tuesday, June 2, 1970, morning

Article 57: Becoming Party to the Treaty (In the signed text, Article 62: Becoming to the Treaty) (Continued from 2170.)

2171. Mr. ARTEMIEV (Soviet Union) said that as far as the proposal of the Delegation of the United Kingdom was concerned his Delegation wished to go on record as saying that the Soviet Union was opposed to it.

2172. Mr. DAHMOUCHE (Algeria) wished to emphasize that, in his view, the proposal of the Delegation of the United Kingdom had been accepted owing to some confusion. As he had already tried to indicate in the last session, any declaration by a State claiming to have powers over a territory was to be considered to have no legal effect. (Continued at 2318.)

Article 50: Assembly (In the signed text, Article 53: Assembly and Article 54: Executive Committee) (Continued from 1975.)

2173.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65 and his remarks on the previous day, said that paragraph (6) should be completed by a new subparagraph reading as follows: "If the number of delegates abstaining when a vote is taken in the Assembly exceeds one-half of the delegates present, the vote shall be null and void."

2173.2 Such a proposal was necessary because without it a decision could be adopted by the Assembly with only a few votes in favor if the majority of the countries represented abstained.

2173.3 His Delegation had in mind the observations of the Director of BIRPI made in that connection the previous day. It was quite conceivable that the majority of the delegates might abstain because they were uninterested. Nevertheless, it was shocking that a decision could be adopted by only a few votes.

2174.1 Mr. BODENHAUSEN (Director of BIRPI) said that he hoped that the Conference would not deviate from the pattern set in that respect by the other treaties administered by BIRPI, as amended at the Stockholm Conference in 1967.

2174.2 The provisions on the quorum were a sufficient guarantee that a small number of States could not adopt a decision without there being at least a passive attitude on the part of the other countries.

2175. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation would not insist on its proposal.

2176. Mr. DAHMOUCHE (Algeria) said that, although he was satisfied with the withdrawal of the proposal of the Delegation of Yugoslavia, he wished it to be noted that the argument advanced according to which the proposal should be rejected because it was not in conformity with the Stockholm Acts was not convincing. There was always room for improvement and if there was anything in those Acts that was not wise or practical it should not be followed merely because it was in the nature of a precedent.

2177.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65 concerning paragraph (9), said that the Executive Committee should be constituted not when the number of Contracting States exceeded 40 but when it exceeded 20.

2177.2 The reason for that proposal was that it might take a very long time before the number of Contracting States reached 40. It was inconvenient to convene the Assembly each year – as it would have to be – as long as the Executive Committee had not been set up. It was in order to advance the date of the setting up of the Executive Committee and to allow the Assembly to meet only once every three years, rather than yearly, that the proposal had been made.

2178.1 Mr. BODENHAUSEN (Director of BIRPI) said that the reason for the relatively high number of Contracting States in the Draft was that the PCT was an important treaty dealing with a new subject. Consequently, it was desirable to have the totality of its membership participating in the yearly review of the situation of the new Union for a long initial period. It was only when the number of Contracting States became very high, and the Assembly – for that reason – too cumbersome for transacting routine business, that the setting up of an Executive Committee would become necessary. The earlier creation of an Executive Committee was not desirable because, during the formative years of the new Union, it would exclude three-quarters of the member States from meeting every year.

2178.2 Furthermore, it would be quite difficult for practical and political reasons to select only five countries among 20 to be members of the Executive Committee. Such a selection would almost certainly force the Assembly to exclude from the membership of the Executive Committee States which had a legitimate claim to such membership.

2179.1 Mr. BESAROVIĆ (Yugoslavia) said that in view of the declarations of the Director of BIRPI his Delegation withdrew their proposal.

2179.2 He then presented a proposal, also contained in document PCT/DC/65, according to which the Treaty should contain a separate article on the Executive Committee and all matters concerning that Committee would be regulated in detail in the Treaty itself rather than leave most of the questions to a decision of the Assembly as the Draft would do.

2180.1 Mr. BODENHAUSEN (Director of BIRPI) said that whether there should be a special article

devoted to the Executive Committee or not was mainly a matter of taste in view of the fact that it would take a long time before the Executive Committee came into existence.

2180.2 However, if a special article were to be devoted to the Executive Committee it would be desirable that it follow, in its essentials, the parallel provisions of the Stockholm Act of the Paris Convention.

2181. Mr. BESAROVIĆ (Yugoslavia) said that it was the very intention of the proposal of his Delegation that the separate article on the Executive Committee of the PCT Union should closely follow the pattern set by the corresponding Article of the Stockholm Act of the Paris Convention.

2182. Mr. MAST (Germany (Federal Republic)) said that his Delegation supported the general idea underlying the proposal of the Delegation of Yugoslavia. A new article in the PCT concerning the Executive Committee should be drawn up along the lines of Article 14 of the Stockholm Act of the Paris Convention and Article 23 of the Stockholm Act of the Berne Convention.

2183. Mr. BOWEN (United Kingdom) said that his Delegation had no objection to the proposal of the Delegation of Yugoslavia provided the new article on the Executive Committee followed closely the precedent of the Stockholm Conference.

2184. Mr. PUSZTAI (Hungary) said that his Delegation, which had made a proposal similar to that of the Delegation of Yugoslavia in document PCT/DC/8, supported the proposal of the Delegation of Yugoslavia.

2185. Mr. STAMM (Switzerland) also supported the proposal of the Delegation of Yugoslavia.

2186. Mr. PIETERS (Netherlands) also supported the proposal of the Delegation of Yugoslavia.

2187. Mr. SAVIGNON (France) also supported the proposal of the Delegation of Yugoslavia.

2188. *It was decided that a new article dealing with the Executive Committee would be inserted in the Treaty; that that article would closely follow the corresponding articles in the Stockholm Acts of the Paris and Berne Conventions and that the Delegation of Yugoslavia, in cooperation with the Secretariat, would propose a text to the Main Committee for the said purpose.* (Article on Executive Committee continued at 2451; Article on Assembly at 2636.)

Article 51: International Bureau (In the signed text, Article 55: International Bureau) (Continued from 1976.)

2189.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65, suggested that, considering that in several provisions of the Article under discussion, as well as in other articles of the Draft, reference was made to the competence of the Director General in connection with the application of the PCT, a new article should be inserted in the Treaty and that such article should be devoted entirely to the responsibilities of the Director General.

2189.2 Furthermore, it would be logical to have a separate article for each of the organs of the PCT. The Director General was such an organ.

2190. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of Yugoslavia might cause some practical difficulties. The responsibilities of the Director General were mentioned in many articles of the Treaty, in places where they logically belonged. Lifting out those provisions from the logical context and grouping them in one article would be practically impossible.

2191. Mr. LAURELLI (Argentina) said that perhaps the best solution would be to group in the same paragraph or set of paragraphs all the provisions concerning the Director General but leave that paragraph or paragraphs in the same article as that in which the provisions concerning the International Bureau appeared.

2192.1 Mr. DAHMOUCHE (Algeria) said that the Article under consideration could be divided into two parts: one dealing with the duties of the International Bureau and the other with the duties of the Director General.

2192.2 The matter was really a matter of drafting and general presentation, which could be referred to the Drafting Committee.

2193. Mr. BESAROVIĆ (Yugoslavia) said that, in view of the explanations given by the Director of BIRPI, his Delegation would not insist on its proposal. (Continued at 2645.)

Article 52: Committee for Technical Cooperation (In the signed text, Article 56: Committee for Technical Cooperation) (Continued from 2035.)

2194.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65, proposed that paragraph (2)(a) be completed by the words "paying due regard to a proportionate representation of all regions." The reason behind the proposal was that, in determining the composition of the Committee for Technical Cooperation, the Assembly should secure an equitable representation of developing countries.

2194.2 Furthermore, the following sentence should be added at the end of the same paragraph: "The remaining members of the Committee may not be nationals of States in which the headquarters of an International Searching or Preliminary Examining Authority is located."

2195. Mr. DAHMOUCHE (Algeria) supported the proposals of the Delegation of Yugoslavia.

2196. Mr. CHERVIAKOV (Soviet Union) also supported the proposals of the Delegation of Yugoslavia.

2197. Mr. ALENCAR NETTO (Brazil) also supported the proposals of the Delegation of Yugoslavia.

2198. Mr. BOWEN (United Kingdom) said that his Delegation had no objection to the proposals of the Delegation of Yugoslavia.

2199. Mr. SAVIGNON (France) also said that his Delegation had no objection to the proposals of the Delegation of Yugoslavia.
2200. Mr. LAURELLI (Argentina) also said that his Delegation had no objection to the proposals of the Delegation of Yugoslavia.
- 2201.1 Mr. PIETERS (Netherlands) said that the first proposal of the Delegation of Yugoslavia, dealing with developing countries, should be referred to the Working Group dealing with questions of direct interest to developing countries.
- 2201.2 As far as the second proposal of the Delegation of Yugoslavia was concerned, his Delegation considered it unjustified because it would render a country like the Netherlands ineligible for a seat on the Committee for Technical Cooperation merely because the headquarters of one of the International Searching Authorities – namely, the International Patent Institute – would be on its territory.
2202. Mr. STAMM (Switzerland) wished to know what was exactly meant by the words “all regions” appearing in the first proposal of Yugoslavia. Certainly they did not convey clearly to him that developing countries were meant.
2203. Mr. BESAROVIĆ (Yugoslavia) said that the objections of the Delegations of the Netherlands and of Switzerland could both be taken care of by the Drafting Committee.
2204. Mr. SHER (Israel) said that, instead of speaking about “regions,” the proposal should speak about “representation of countries in different stages of economic development.” The latter formula would adequately cover developing countries.
2205. Mr. BRADERMAN (United States of America) said that, whereas his Delegation agreed with the intent behind the first proposal of the Delegation of Yugoslavia, it seemed to be obvious that the Drafting Committee would have to find a clearer expression of that intent.
2206. Mr. DAHMOUCHE (Algeria) said that the idea behind the first proposal of the Delegation of Yugoslavia could be better expressed by the words, “with due regard to equitable geographical representation.”
2207. Mr. BESAROVIĆ (Yugoslavia) said that the suggestion of the Delegation of Algeria should be combined with an express reference to developing countries.
2208. Mr. MAST (Germany (Federal Republic)) said that whereas his Delegation had no objection to referring to “equitable geographical representation” such criterion should not be the only one that should govern in the selection of the members of the Committee for Technical Cooperation.
2209. The CHAIRMAN suggested that the first proposal of the Delegation of Yugoslavia should be referred to the Working Group dealing with questions of interest to developing countries, and that the second proposal of the same Delegation should be so amended that it should exclude the inequity referred to by the Delegation of the Netherlands.
2210. Mr. MAST (Germany (Federal Republic)) agreed with the suggestions of the Chairman.
2211. Mr. BOWEN (United Kingdom) also agreed with the suggestions of the Chairman.
2212. Mr. BRENNAN (United States of America) also agreed with the suggestions of the Chairman.
2213. Mr. SAVIGNON (France) also supported the suggestion of the Chairman.
2214. Mr. BODENHAUSEN (Director of BIRPI) said that the International Patent Institute would in any case be represented on the Committee for Technical Cooperation through one of its member States.
2215. *The first proposal of the Delegation of Yugoslavia, concerning developing countries, was referred to the Working Group dealing with questions of interest to developing countries.*
2216. *The second proposal of the Delegation of Yugoslavia, concerning the problem of double representation, was adopted as far as its intent was concerned, it being understood that the Drafting Committee would redraft it so that States on the territory of which an international organization being an International Searching or Preliminary Examining Authority had its headquarters would not, because of that fact, be ineligible for membership on the said Committee.*
2217. Mr. ALMEIDA (Portugal), referring once more to the proposal of his Delegation and that of Argentina contained in document PCT/DC/64, asked that the words “at least” be replaced by “more than” in paragraph (2)(a).
2218. Mr. BODENHAUSEN (Director of BIRPI) said that the difference between the two proposals was minimal and he had no preference for either text.
2219. Mr. GALL (Austria) supported the proposal of the Delegations of Argentina and Portugal.
2220. *The proposal of the Delegations of Argentina and Portugal concerning paragraph (2)(a), contained in document PCT/DC/64, was adopted, subject to the Drafting Committee’s finding an appropriate place for the provision thus amended.*
2221. Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65, proposed that the Committee for Technical Cooperation should be entitled to give its advice also to the Assembly.
2222. Mr. ALMEIDA (Portugal) said that a compromise solution would consist in providing that the Committee for Technical Cooperation could address its advice to the Assembly and its advice or recommendations to the Executive Committee or the International Bureau or the Director General.
2223. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation was ready to accept the suggestion just made by the Delegation of Portugal,
2224. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of Portugal seemed to introduce a distinction which was

unnecessary since “advice” and “recommendation” were practically the same. In any case, it would be for the Assembly to decide whether to follow any advice or recommendation made by the Committee for Technical Cooperation.

2225. Mr. BOWEN (United Kingdom) said that his Delegation would prefer to maintain the Draft as it stood. His Delegation failed to see any difference between “advice” and “recommendation.” It was also indifferent whether the advice or recommendation went to the Assembly direct or through the Executive Committee.

2226. Mr. ALMEIDA (Portugal) said that the reason for the proposal of his Delegation was that the Draft did not provide for the possibility of any direct communication from the Committee for Technical Cooperation to the Assembly. Furthermore, there was no obligation on the Executive Committee to transmit any recommendation of the Committee for Technical Cooperation to the Assembly. The Executive Committee should not have the power to prevent any recommendation of the Committee for Technical Cooperation from reaching the Assembly.

2227. Mr. BORGGÅRD (Sweden) said that his Delegation supported the Draft as it stood.

2228. Mr. DAHMOUCHE (Algeria) said that his Delegation supported the idea behind the proposal of the Delegations of Argentina and Portugal, namely, that the Committee for Technical Cooperation should be able to report direct to the Assembly.

2229. Mr. HADDRICK (Australia) said that his Delegation supported the Draft as it stood.

2230. Mr. LAURELLI (Argentina) said that, since the Committee for Technical Cooperation was created by the Assembly, it was only logical that it should be able to report to the Assembly. Consequently, his Delegation supported the proposal of the Delegations of Argentina and Portugal.

2231. Mr. STAMM (Switzerland) said that his Delegation supported the views expressed by the Delegation of the United Kingdom.

2232. Mr. SAVIGNON (France) said that his Delegation supported the proposal of the Delegations of Argentina and Portugal.

2233. Mr. ALENCAR NETTO (Brazil) said that his Delegation also supported the proposal of the Delegations of Argentina and Portugal.

2234. Mr. CHONA (Zambia) said that his Delegation also supported the proposal of the Delegations of Argentina and Portugal.

2235. Mr. CHAVANNES (Netherlands) said that his Delegation also supported the proposal of the Delegations of Argentina and Portugal since it was desirable to establish a direct channel of communication between the Assembly and the Committee for Technical Cooperation.

2236. *The proposal of the Delegations of Argentina and Portugal concerning paragraph (5), contained in document PCT/DC/64, was adopted by 22 votes in favor to 8 against, with 1 abstention.*

2237. Mr. SHER (Israel) said that, as a consequential change, the Treaty should then provide that the Director General would have the right to comment on any recommendation of the Committee for Technical Cooperation at the time he transmitted it to the Assembly or Executive Committee.

2238. Mr. BODENHAUSEN (Director of BIRPI) agreed with the suggestion made by the Delegation of Israel.

2239. Mr. ALMEIDA (Portugal) said that his Delegation had no objection to the proposal of the Delegation of Israel.

2240. *It was decided that the proposal of the Delegation of Israel should be followed, on the understanding that it would be referred to the Drafting Committee for precise formulation. (Continued at 2257.)*

Article 53: Finances (In the signed text, Article 57: Finances) (Continued from 2091.)

2241.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation concerning paragraph (5)(d), contained in document PCT/DC/65, proposed that the words “shall decide” should be replaced by the words “may decide.”

2241.2 It was the conviction of his Delegation that, whenever the financial situation of the PCT Union made reimbursement possible, the Assembly should decide that such reimbursement must be made.

2242. Mr. BODENHAUSEN (Director of BIRPI) said that, in his view, the fact that the provision contained the condition – namely, that “if the financial situation of the Union so permits” – the question whether reimbursement was to be made was one which depended on the appreciation of the Assembly. As a general principle, however, it seemed to be preferable to leave the rule flexible. It might be that, at the time the Assembly met, the financial situation was such that a reimbursement would be possible but it would be unwise to proceed with it because, at the same time, it was already clear that the then current financial period, or the subsequent financial period, would end with a substantial deficit.

2243. Mr. SAVIGNON (France) said that his Delegation fully agreed with the views of the Director of BIRPI. The Assembly should be in a position to have a long-term financial policy, including the possibility of creating and increasing the reserve fund.

2244. Mr. BESAROVIĆ (Yugoslavia) said that he was not convinced by the arguments of the Director of BIRPI and insisted on the adoption of the proposal of his Delegation.

2245. Mr. BRENNAN (United States of America) said that his Delegation supported the proposal of the Delegation of Yugoslavia. The introductory phrase, expressed in the form of a condition, allowed the Assembly to exercise a certain discretion. Once that possibility had been exhausted, all reimbursements should be obligatory and not discretionary.

2246. Mr. GALL (Austria) said that, for the reasons just expressed by the Delegation of the United States

of America, his Delegation supported the proposal of the Delegation of Yugoslavia.

2247. Mr. BORGGÅRD (Sweden) said that in order that the rule should be as flexible as possible his Delegation consequently shared the views expressed by the Delegation of France.

2248. Mr. LULE (Uganda) said that his Delegation was also in favor of making the rule flexible and shared the views expressed by the Delegation of France.

2249. Mr. STAMM (Switzerland) said that his Delegation also supported the view of the Delegation of France.

2250. Mr. DAHMOUCHE (Algeria) said that if the question was put to the vote his Delegation would abstain.

2251. Mr. MAST (Germany (Federal Republic)) said that his Delegation was opposed to the proposal of the Delegation of Yugoslavia.

2252. Mr. BOWEN (United Kingdom) wondered whether the proposal of the Delegation of Yugoslavia should not be referred to the Working Group.

2253. Mr. BESAROVIĆ (Yugoslavia) said that some of the objections to the proposal of his Delegation might be taken care of if the following word were added: with due regard to the future program of the Union."

2254. Mr. BRENNAN (United States of America) said that he would like to hear an explanation on the question whether the provision related only to the deficits of the year in which the decision was to be taken by the Assembly, or also to the deficits of preceding years.

2255. Mr. SHER (Israel) said that his Delegation seconded the suggestion of the Delegation of the United Kingdom to refer the question to the Working Group.

2256. *It was decided to refer the proposal of the Delegation of Yugoslavia to the same Working Group as had already been set up to deal with paragraph (5)(b), with Zambia as an additional member of that Working Group. (Continued at 2266.)*

End of the Third Meeting

FOURTH MEETING

Tuesday, June 2, 1970, afternoon

Article 52: Committee for Technical Cooperation (In the signed text, Article 56: Committee for Technical Cooperation) (Continued from 2240.)

2257. The CHAIRMAN said that a Working Group set up to deal with paragraph (3) had made proposals which were contained in document PCT/DC/79. However, two members of the Working Group, namely, the Delegations of France and Canada, had reserved their position in the Working Group.

2258. Mr. SAVIGNON (France) said that although his Delegation had made a reservation in the Working Group, and although it was still not entirely satisfied

with the proposal, it was ready to accept such a proposal, in a spirit of compromise and in view of the fact that it did give a certain degree of satisfaction to his Delegation.

2259. Mr. MESSEROTTI-BENVENUTI (Italy) said that he would prefer it if the introductory words "on the invitation of the Assembly or the Executive Committee" (appearing in item (ii) of paragraph (3)) could be deleted because they were too limitative.

2260. The CHAIRMAN said that those were the very words on which, according to what he had been told, the Delegations of Canada and France had made their reservations. In the meantime, he had been informed that the Delegation of Canada no longer maintained its reservation and the Delegation of France had just declared that it did not maintain its reservation either.

2261. Mr. STAMM (Switzerland) asked whether the right given in paragraph (4) to any Contracting State to approach the Committee for Technical Cooperation was limited by paragraph (3)(iii), as proposed by the Working Group.

2262. Mr. BORGGÅRD (Sweden), as Chairman of the Working Group, replied that the limitation contained in paragraph (3)(iii) applied only to one specific topic, namely, the technical problems specifically involved in the establishment of a single International Searching Authority.

2263. Mr. STAMM (Switzerland) said that in view of the fact that paragraph (4) would still remain and would be the rule which would suffer only one exception, namely, that spelled out in paragraph (3)(iii), his Delegation would be ready to accept the proposal of the Working Group.

2264. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation would not insist.

2265. *Paragraph (3) was adopted as appearing in document PCT/DC/79. (Continued at 2647.)*

Article 53: Finances (In the signed text, Article 57: Finances) (Continued from 2256.)

2266.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposals of his Delegation contained in document PCT/DC/65, proposed that, in paragraph (7) dealing with the working capital fund, the following words be added to subparagraph (b): "on the basis of the number of applications in the preceding year" and that the following words be added at the end of subparagraph (d): "and the number of international applications in the preceding year." Those proposals were made in order to bring paragraph (7) into conformity with paragraph (5), which dealt with deficits.

2266.2 The difference between the two texts proposed for addition to subparagraphs (b) and (d) was that the first spoke of national applications whereas the second spoke of international applications since, in the first case, the country had just entered the PCT Union and there were therefore no international applications yet emanating from it.

2267. Mr. BODENHAUSEN (Director of BIRPI) said that basing the amount of the initial contribution

to the working capital fund on the number of national applications was a totally arbitrary criterion and had no logical connection with the size of the share that each new Contracting State should have in the creation of the working capital fund. It would be better to leave it to the Assembly, as did the Draft, to appreciate freely the best methods of assessing the amount of the initial payment to the working capital fund.

2268. Mrs. MATLASZEK (Poland) seconded the proposal of the Delegation of Yugoslavia.

2269. Mr. ARTEMIEV (Soviet Union) said that his Delegation agreed with the view expressed by the Director of BIRPI and would prefer to maintain the text of the Draft.

2270. Mr. BESAROVIC (Yugoslavia) said that the criterion of the number of national applications filed in any country had already been used in connection with the computation of the special contributions to the PCT work. Consequently, the criterion was not without some logical relation to the PCT nor without precedent.

2271. Mr. OHWADA (Japan) said that his Delegation also shared the views expressed by the Director of BIRPI and the Delegation of the Soviet Union.

2272. Mr. BRENNAN (United States of America) said that the whole question should be referred to the Working Group entrusted with the task of finding some solutions for paragraph (5) dealing with deficits. The creation of the working capital fund and participation in the deficits were two subjects which had some interrelationship and could therefore be usefully considered together.

2273. Mr. BODENHAUSEN (Director of BIRPI) said that there was a further problem with the proposal of the Delegation of Yugoslavia. That Delegation had proposed that in the constitution of the working capital fund the number of the national applications should be taken into account, whereas in the reimbursement of the working capital fund the number of the international applications should be taken into account. The two numbers might be totally different. The only logical criterion for reimbursement was that the reimbursement should be proportionate to the amounts paid into the working capital fund.

2274. Mr. BOWEN (United Kingdom) said that his Delegation opposed both proposals of the Delegation of Yugoslavia because it found no merit in them. It was unnecessary to send them to the Working Group. The Draft should be adopted as it stood.

2275. Mr. MESSEROTTI-BENVENUTI (Italy) associated his Delegation with the views expressed by the Delegation of the United Kingdom.

2276. Mr. BRENNAN (United States of America) said that his Delegation persisted in believing that the same criteria should apply to deficits as to the creation of the working capital fund.

2277. Mr. BODENHAUSEN (Director of BIRPI) said that naturally he had no objection to sending the matter to the Working Group if that was the desire of the majority of the delegations. However, the

contradiction between the proposals of the Delegation of Yugoslavia concerning subparagraph (b) and subparagraph (d) should, in any case, be eliminated.

2278. Mr. BESAROVIC (Yugoslavia) said that his Delegation continued to believe that the number of international applications was a logical criterion of reimbursement of contributions to the working capital fund.

2279. *It was decided to refer the proposals of the Delegation of Yugoslavia concerning paragraphs (7)(b) and (7)(d) to the Working Group already entrusted with the task of dealing with paragraph (5)(b).* (Continued at 2530.)

Article 54: Regulations (In the signed text, Article 58: Regulations) (Continued from 2132.)

2280. Mr. BESAROVIC (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65, proposed that a new paragraph be added to the Article, reading as follows: "In the event of divergence between the text of the Treaty and the Regulations, the text of the Treaty shall prevail."

2281. Miss NILSEN (United States of America) said that her Delegation was ready to second the proposal of the Delegation of Yugoslavia but wished that it spoke about "conflict" rather than "divergence."

2282. Mr. PIETERS (Netherlands) said that his Delegation supported the proposal of the Delegation of Yugoslavia.

2283. Mr. HADDRICK (Australia) said that his Delegation agreed with the proposal of the Delegation of Yugoslavia, provided that it was modified as suggested by the Delegation of the United States of America.

2284. Mr. BODENHAUSEN (Director of BIRPI) said that in his view it went without saying that as between a Treaty and its Regulations it was always the Treaty which was stronger if there was any conflict between the two texts. However, he saw no harm in stating that obvious principle in the Treaty itself.

2285. Mr. DAHMOUCHE (Algeria) said that it was generally wise to say things which went without saying. Therefore his Delegation supported the proposal of the Delegation of Yugoslavia.

2286. *The Proposal of the Delegation of Yugoslavia for the addition of a new paragraph to the Article under discussion, contained in document PCT/DC/65, was adopted on the understanding that the word "conflict" would be used rather than "divergence."* (Continued at 2296.)

Rule 88: Amendment of the Regulations

2287. Mr. BOGSCH (Secretary General of the Conference) said that Rule 14.1 concerning the transmittal fee had been put among the Rules which could be changed only by unanimous decision because it dealt with each national Office's right to charge a fee as a receiving Office for processing international applications. If the Rule in question were to be placed under a majority rule, transmittal fees could be abolished and even such national Offices as were in the minority and would wish to continue to collect

fees for the work they performed as receiving Offices could be deprived of such a possibility. Such a result would be patently undesirable, and that was why the said Rule should only be capable of being changed by unanimous decision.

2288.1 Mr. LAURELLI (Argentina) said that although his Delegation had been the one to propose that the unanimity requirement should be completely eliminated, it would not insist if, for certain situations, the delegations believed that such a requirement was indispensable.

2288.2 His Delegation no longer maintained its proposal that Article 54(3)(i) be deleted.

2289. Mr. ALMEIDA (Portugal) said that his Delegation reintroduced the proposal of the Delegation of Argentina as far as Article 54(3)(a)(ii) regarding the veto power was concerned.

2290. The CHAIRMAN said that as no other Delegation had supported the reintroduction of the proposal in question discussion on it could not be reopened.

2291. *Rule 88.1 was adopted as appearing in the Draft, as far as items (i), (ii), (iii), (iv) and (v) were concerned.*

2292. *Rules 88.1(vi) and (vii) were adopted as appearing in the Alternative Draft.*

2293.1 Mr. BRENNAN (United States of America), referring to the proposal of his Delegation contained in document PCT/DC/80, proposed that Rule 5 concerning the description and Rule 6 concerning the claims should also be among the rules which could be changed only by a unanimous decision, that is, that Rules 5 and 6 should also be referred to in Rule 88.1.

2293.2 The reason for the proposal was that the two Rules in question went to the heart of the international application and any change in Rules 5 and 6 could fundamentally affect the nature of the document called the international application. It was recognized that in the light of experience it might be necessary to make some changes in those two Rules, and to facilitate such changes the Delegation of the United States of America was satisfied that the matters regulated in Rules 5 and 6 should remain in the Regulations and should not be transferred to the Treaty. However, if maintained in the Regulations, sufficient safeguards were necessary so that the Rules in question should not be capable of being changed if any of the Contracting States objected to such changes. Rules 5 and 6 as now appearing in the Draft were the result of protracted negotiations resulting in well-balanced compromises. It should not be possible to upset such compromises by a majority decision of the Assembly.

2294. Mr. MAST (Germany (Federal Republic)) said that the proposal of the Delegation of the United States of America was a very important one and time for further reflection would seem to be indicated.

2295. *Further discussion on the proposal of the Delegation of the United States of America contained in document PCT/DC/80 was deferred. (Continued at 2325.)*

Article 54: Regulations (In the signed text, Article 58: Regulations) (Continued from 2286.)

2296. The SECRETARY called the attention of the meeting to the fact that the Alternative Draft differed from the Draft on certain points as far as paragraph (3) was concerned.

2297.1 Mr. SAVIGNON (France), referring to the proposal presented by his Delegation together with that of Italy in document PCT/DC/76, proposed that paragraph (3)(a)(ii) be changed so as to state that, where the International Searching or Preliminary Examining Authority was an intergovernmental organization, the veto power should be vested in a Contracting State which had been authorized for the purpose in question by the competent body of the said intergovernmental organization.

2297.2 The criteria of statistics proposed in the Draft and the Alternative Draft were too artificial. It was much more logical to leave it to the governing body of any intergovernmental organization to designate the State which should represent its interests.

2298. Mr. ALMEIDA (Portugal) said that his Delegation preferred the proposal of the Delegations of France and Italy to the Draft and the Alternative Draft but failed to see how it was compatible with the sovereignty of any State that it should use its voting right in any organ of the International Patent Cooperation Union according to instructions to be received from the governing body of an intergovernmental organization.

2299.1 Mr. FINNISS (International Patent Institute) said that it was not unusual in international relations that a group of States entrusted one given State with a certain task. For example Switzerland had been entrusted with the task of acting as supervisory authority of the International Bureau in Geneva, before it became WIPO.

2299.2 In his view, the proposal of the Delegations of France and Italy was excellent and perfectly served the purpose.

2300. Mr. PIETERS (Netherlands) said that his Delegation supported the proposal of the Delegations of France and Italy.

2301. Mr. SCHURMANS (Belgium) seconded the proposal of the Delegations of France and Italy.

2302. Mr. MAST (Germany (Federal Republic)) said that his Delegation did not see any difficulty either in the sense referred to by the Delegation of Portugal.

2303. Mr. BRENNAN (United States of America) said that the proposal might lead to the curious result that the State which was representing an intergovernmental organization would receive instructions from States which were not party to the PCT.

2304. Mr. FINNISS (International Patent Institute) said that it was to be anticipated that States which were members of the governing body of an intergovernmental organization but not members of the International Patent Cooperation Union would take into full account the fact that any instruction which

they gave to a State representing the intergovernmental organization concerned primarily those States members of the intergovernmental organization which were also members of the International Patent Cooperation Union.

2305. Mr. ALMEIDA (Portugal) said that if, for example, there was only one State member of the International Patent Cooperation Union which was also a member of the governing body of the International Patent Institute and that State wished to accept a modification in the Rules, whereas all the other States did not, then the other States could force the State in question to vote in the Assembly of the International Patent Cooperation Union against its own convictions. He seriously doubted that such a result would be compatible with the sovereignty of States.

2306. Mr. BODENHAUSEN (Director of BIRPI) said that he continued to believe that the proposal of the Delegations of France and Italy was perfectly workable. The sovereignty of the State was not involved. In the circumstances under consideration it would act as an agent for a number of States, which, in international relations, was a perfectly normal situation.

2307. Mr. MAST (Germany (Federal Republic)) wanted to have information on two questions. One was whether it was necessary that the State representing the intergovernmental organization in the Assembly of the International Patent Cooperation Union should be a member State of the PCT Union. The second was whether it was necessary for any State wishing to have the International Patent Institute make the international searches of applications filed with its national Office to be a member State of the International Patent Institute. If the answer to the second question was in the negative, then it could happen that no State member of an intergovernmental organization acting as an International Searching Authority would be a member also of the PCT Union and thus there would be no State that could represent that intergovernmental organization in the Assembly of the PCT Union.

2308. The CHAIRMAN replied that the answer to the first question was in the affirmative. As far as the second question was concerned, he thought that it was rather theoretical since it was extremely unlikely that the International Patent Institute would become an International Searching Authority without a single one of its member States becoming a Contracting State under the PCT.

2309. Mr. MAST (Germany (Federal Republic)) said that the difficulty indicated in his second question could be avoided if the State representing the intergovernmental organization did not have to be a member of that organization.

2310. Mr. DAHMOUCHE (Algeria) said that, whereas he agreed with the general principle that States could ask another State to act as their agent, he had hesitations about the wording of the proposal of the Delegations of France and Italy. According to that proposal, it would be the governing body of the intergovernmental organization rather than States

which would give instructions to a State. However, the matter was more of a drafting nature and the difficulty could be avoided if the authorization for representation were given by the member States of the intergovernmental organization.

2311. Mr. BOWEN (United Kingdom) said that his Delegation fully supported the proposal of the Delegations of France and Italy.

2312. Mr. LAURELLI (Argentina) said that the difficulty mentioned by the Delegation of Algeria could be avoided if the provision said that the instructions were given by the member States of the organization.

2313. Mr. FINNISS (International Patent Institute) said that in his view both the formula used in the proposal of the Delegations of France and Italy and that proposed by the Delegation of Algeria would be acceptable.

2314. Mr. SAVIGNON (France) said that perhaps the suggestions made by the Delegation of Algeria could be met if the formula were the following: "the member States of the intergovernmental organization, acting through the competent body of that organization and according to the rules of that organization."

2315. Mr. DAHMOUCHE (Algeria) said that the text which had just been suggested by the Delegation of France would meet his legal point because the instructions would be given by States and not by an organ of an intergovernmental organization.

2316. *The proposal of the Delegations of France and Italy was adopted as appearing in document PCT/DC/76 and as amended during the discussion on a suggestion made by the Delegation of Algeria.*

2317. The CHAIRMAN said that in view of the discussions on Rule 88 the whole of paragraph (3), as appearing in the Draft and as modified as far as paragraph (3)(a)(ii) was concerned, could be regarded as adopted. (Continued at 2324.)

Article 57: Becoming Party to the Treaty (In the signed text Article 62: Becoming Party to the Treaty) (Continued from 2172.)

2318. Mr. OHWADA (Japan), referring to the proposal of his Delegation contained in document PCT/DC/87, asked that, whenever the Draft spoke about "ratification" and "accession," it should also speak about "acceptance." It was accepted practice in technical treaties to use the term "acceptance." The Draft only spoke about ratification and accession. There was no reason for not using also the term "acceptance."

2319. Mr. BODENHAUSEN (Director of BIRPI) said that the treaties administered by BIRPI used only the two terms "ratification" and "accession" and, for reasons of uniformity, it would be preferable not to introduce an additional expression in the PCT. However, the matter was merely one of form and BIRPI had no strong feelings about it.

2320. Mr. PIETERS (Netherlands) said that his Delegation supported the proposal of the Delegation of Japan. "Acceptance" was a term used in many

treaties. It meant the act of binding a country which did not sign the treaty. The precedents of other BIRPI treaties should not determine the issue.

2321. Mr. DAHMOUCHE (Algeria) said that no State could become party to a treaty without signing it.

2322. Miss NILSEN (United States of America) said that her Delegation would prefer that only "ratification" and "accession" be used: the first term, for signatory States; the second term, for non-signatory States. A third term, whose legal significance was the same as one of the two terms – since "acceptance" and "accession" were interchangeable – would merely complicate the text. Considered from the view-point of the constitutional, internal procedure, the United States of America – and probably most other States – would have to go through the same steps whether, internationally, the act which caused it to become bound was called ratification, acceptance, or accession.

2323. Mr. OHWADA (Japan) said that his Delegation would not insist on its proposal. (Continued at 2673.)

End of the Fourth Meeting

FIFTH MEETING

Wednesday, June 3, 1970, morning

Article 54: Regulations (In the signed text Article 58: Regulations) (Continued from 2317.)

2324. Mr. HIRABAYASHI (Japan) said that his Delegation had filed a proposal concerning a new paragraph to be inserted in the Article under discussion. It had filed it first as document PCT/DC/78 and, later, as document PCT/DC/82. In the meantime it had consulted with its Government and would withdraw both proposals. (Continued at 2668.)

Rule 88: Amendment of the Regulations (Continued from 2295.)

2325. Mr. BRENNAN (United States of America) presented the proposal of his Delegation, contained in document PCT/DC/80, asking that Rule 5 on the description and Rule 6 on the claims should be among the Rules whose amendment would require a unanimous decision in the Assembly, that is, that they be mentioned in Rule 88.1. He said that the reasons for the proposal had been mentioned by his Delegation in the discussion which had taken place the previous day.

2326. Mr. MAST (Germany (Federal Republic)) said that his Delegation opposed the proposal of the Delegation of the United States of America. The two Rules in question – that is, Rule 5 on the description and Rule 6 on the claims – were characteristically among those Rules which, in the light of experience, might need to be changed. It might be extremely difficult, if not impossible, to obtain unanimity for any change among 30 or 40 member States. He thought that the heavily qualified majority required for amending Rules was, generally,

a sufficient guarantee that amendments would only be made if there was a very strong feeling among most of the member States that such amendments were needed.

2327. Mr. SAVIGNON (France) said that his Delegation supported the views expressed by the Delegation of Germany (Federal Republic).

2328. Mr. OHWADA (Japan) said that his Delegation, too, supported the views of the Delegation of Germany (Federal Republic).

2329. Mr. HADDRICK (Australia) said that his Delegation also supported the views expressed by the Delegation of Germany (Federal Republic).

2330. Mr. BOWEN (United Kingdom) said that his Delegation was against the proposal of the Delegation of the United States of America since a certain degree of flexibility should be retained in respect of Rules 5 and 6.

2331. Mr. STAMM (Switzerland) said that his Delegation shared the views expressed by the Delegation of Germany (Federal Republic).

2332. Mr. TUXEN (Denmark) said that perhaps a compromise solution could be found whereby amendments of Rules 5 and 6 would require a nine-tenths majority.

2333. Mr. LAURELLI (Argentina) said that his Delegation supported the proposal of the Delegation of the United States of America.

2334. Mr. DAHMOUCHE (Algeria) said that his Delegation also supported the proposal of the United States of America.

2335. Mrs. MATLASZEK (Poland) said that her Delegation opposed the proposal of the Delegation of the United States of America.

2336. Mr. BORGGÅRD (Sweden) said that his Delegation shared the view of the Delegation of Denmark and that a compromise solution should be found by taking a step in the direction desired by the Delegation of the United States of America.

2337. Mr. NORDSTRAND (Norway) said that his Delegation shared the views expressed by the Delegation of Germany (Federal Republic).

2338. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation also shared the views of the Delegation of Germany (Federal Republic).

2339. Mr. SCHURMANS (Belgium) said that his Delegation, too, shared the views of the Delegation of Germany (Federal Republic).

2340. Mr. TUULI (Finland) said that his Delegation also supported the views expressed by the Delegation of Germany (Federal Republic).

2341. Mr. BRENNAN (United States of America) said that description and claims were two elements of any application which were of the most essential importance for granting patents. Three and a half years had been spent in negotiations to arrive at definitions which were stringent enough to satisfy the laws of the potential member States. Such a delicately arrived at compromise should not be capable of being

put into jeopardy by a decision of the majority of the Contracting States.

2342. Mr. MAST (Germany (Federal Republic)) said that the great danger of the unanimity rule – as shown by the history of the Diplomatic Conferences on the Paris Convention – was that, even when there was an urgent need for change, one or two countries could prevent it. That was why the unanimity rule should not be applied.

2343.1 Mr. DAHMOUCHE (Algeria) said that his Delegation shared, in principle, the view of the Delegation of Germany (Federal Republic) but it was a fact that there were already a number of Rules which had been placed under the unanimity rule and that, therefore, it would not be inconsistent with the previous attitude of the negotiating countries to place two more Rules under the unanimity rule if that seemed to be indispensable for some of those countries.

2343.2 His Delegation was of the opinion that the attitude of those developed countries which asked for unanimity in respect of certain Rules was illogical and perhaps dangerous for them because a single developing country could block any changes in the future. However, as a representative of a developing country, he welcomed the opportunity for any developing country to play a decisive role in future amendments of certain Rules.

2344.1 Mr. BRENNAN (United States of America) said that one of the basic principles of the US patent system, and one of the main reasons for its success, was that it had stringent requirements for full disclosure of inventions in the description and in the claims. Not all countries had the same system. Many of the other countries required merely the elucidation of the principle of the invention without much detail. If, however, through an amendment of the Rules in question – which, as presently drafted, respected the standards required by the present US law – they could be changed by a majority decision in such a way that the requirements of detailed description and claiming would be weakened, one of the basic features of the US patent system could be affected. The PCT might be regarded with suspicion by many people as a device for altering these essential features of US law if Rules 5 and 6 could be changed by less than a unanimous vote. Because of those suspicions it would be a mistake now to take a liberal view of what was considered to be an essential guarantee that the PCT would not affect the present high standards of the US patent system.

2344.2 Another solution would consist in placing the two Rules in question under the Rule according to which they could not be changed if any of the International Searching Authorities objected to the change. Such a solution would give a veto power to, among other States, the United States of America as long as it was an International Searching Authority.

2345. The CHAIRMAN asked the Delegation of the United States of America whether it could accept the proposal of the Delegation of Denmark, supported by the Delegation of Sweden, that the majority required for changing Rules 5 and 6 should be nine-tenths.

2346.1 Mr. BRENNAN (United States of America) said that no majority, however heavily qualified, would be acceptable to the Delegation of the United States of America because it would make ratification of the Treaty extremely difficult, if not impossible.

2346.2 It might be useful to defer further discussion until a working group, or contacts among delegations, could facilitate further consideration.

2347. Mr. SAVIGNON (France) said that he did not object to a period of reflection but wished to indicate straightaway that the alternative proposal presented by the Delegation of the United States of America would not be acceptable to his Delegation. France was a country which did not intend that its national Office should become an International Searching Authority. Consequently, it would not have the veto power which the alternative proposal of the Delegation of the United States of America envisaged. The matter in question was not one which was of special concern to States whose national Offices were International Searching Authorities. It was a matter of equal concern to all Contracting States. They were equally concerned by maintaining or raising standards of their patents. If Rules 5 and 6, as presently drafted, guaranteed as high a standard as the United States of America desired, there was no need to fear that the standard would be lowered by some future amendment.

2348. Mr. ALMEIDA (Portugal) said that his Delegation shared the views just expressed by the Delegation of France.

2349. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation also shared the views of the Delegation of France.

2350. Mr. BOWEN (United Kingdom) said that the persistence of the Delegation of the United States of America was regrettable. Standing almost alone, the Delegation of the United States of America was defending a position which almost all the other Delegations rejected. The basic principles of description and claims were laid down not only in Rules 5 and 6 but in Articles 5 and 6. Those Articles themselves should give sufficient guarantee that the high standards would be respected. Rules 5 and 6 concerned details whose consequences, in practice, nobody could foretell with any assurance. It was, of course, possible that the Delegation of the United States of America, seeing in those Rules much of what it had in its national law, was more confident than others that they would work in practice. However, the same Delegation should keep in mind that other countries, used to different practices, might have less confidence and that the amendment of those two Rules could become necessary.

2351. Mr. MAST (Germany (Federal Republic)) said that his Delegation saw no point in setting up a working group but would not object to deferring the discussion.

2352.1 Mr. BORGGÅRD (Sweden) said that as long as there were no signs of a possible compromise he saw no reason for creating a working group.

2352.2 However, he wished to offer for consideration the possibility of a compromise, namely, that Rules 5 and 6 be placed under the unanimity rule for a transitional period after the entry into force of the Treaty.

2353. Mr. BRENNAN (United States of America) said that his Delegation was ready to consider the compromise solution offered by the Delegation of Sweden.

2354. Mr. DAHMOUCHE (Algeria) said that, if a time for reflection was granted to the delegations, perhaps they should also reflect on the question whether all the Rules placed under the unanimity rule should not be so placed only for a transitional period.

2355. The CHAIRMAN suggested that a working group be set up to consider the compromise proposal of the Delegation of Sweden. Such a working group would consist of the Delegations of Algeria, France, Germany (Federal Republic), Sweden, the United Kingdom, and the United States of America.

2356. Mr. DAHMOUCHE (Algeria) said that he would prefer it if his Delegation was replaced by the Delegation of Portugal.

2357. The CHAIRMAN said that he would modify his suggestion accordingly.

2358. Mr. SAVIGNON (France) said that he persisted in believing that it was unnecessary to create a working group. The question of creating a working group should be put to the vote.

2359. Mr. LAURELLI (Argentina) said that the issues were so clear-cut that the creation of a working group was not desirable. Perhaps the solution suggested by the Delegation of Algeria would be the right one, namely, to subject all the Rules which could be modified only by unanimous decision to a time limit, that is to say, that such requirement would be in force only for a transitional period.

2360. Mr. LORENZ (Austria) said that it was good procedure not to put the question to the vote if the issue was of extreme importance to one of the countries and if all hope of a compromise solution had not been lost. He did not think that all hope was lost and his Delegation therefore supported the proposal to set up a working group.

2361. Mr. BRENNAN (United States of America) said that he had the impression that the establishment of a working group had been proposed by the Swedish Delegation and already seconded by his Delegation.

2362. *The proposal to set up a working group to consider the question of the requirements to be imposed on any amendment of Rules 5 and 6 was adopted by 17 votes in favor to 4 against, with no abstentions. (Continued at 2510.)*

Article 58: Entry into Force of the Treaty (In the signed text, Article 63: Entry into Force of the Treaty)

2363. The SECRETARY said that there were three proposals for amending the Draft, namely, one by the Delegation of the Netherlands contained in document PCT/DC/39, one by the Delegation of the United States of America contained in document PCT/DC/58,

and one by the Delegation of Italy contained in document PCT/DC/69.

2364. The CHAIRMAN said that, whereas the proposals of the Delegations of the Netherlands and the United States of America were mainly of a drafting nature, that of the Delegation of Italy was of a substantive nature and would therefore be considered first.

2365.1 Mr. MESSEROTTI-BENVENUTI (Italy), referring to the proposal of his Delegation contained in document PCT/DC/69, said that the amendments proposed were intended to make the conditions for the entry into force of the Convention more difficult to meet. The PCT would be a treaty of global scope and, consequently, it was logical to require that a higher number of countries accept it before it came into force.

2365.2 The proposal was that the minimum number of countries required for entry into force should be ten rather than five or seven as in the Draft, and that the only criterion to be retained should be that outlined in paragraph (1)(ii) of the Draft because it was based on any country's role in the international flow of inventions and that was the correct criterion for an international treaty. The criterion under paragraph (1)(i) had nothing to do with the flow of inventions between countries, had no relevance in an international treaty, and that was why the proposal suggested that it be stricken.

2366. Mr. SAVIGNON (France) said that his Delegation supported the proposal of the Delegation of Italy. That proposal had also the merit that it was simpler than the system outlined in the Draft.

2367. Mr. ALMEIDA (Portugal) said that his Delegation also supported the proposal of the Delegation of Italy. Under that proposal, entry into force would take place only if an adequate geographical application of the Treaty was secured.

2368. Mr. BOGSCH (Secretary General of the Conference) said that, under paragraph (1)(i), acceptance by five countries could put the PCT into effect whereas, under paragraph (1)(ii), seven countries would have to accept the PCT for it to come into force. Under paragraph (1)(i), three of the five countries would have to be in the category of countries in which the number of applications filed in a given year exceeded 40,000. There were only very few countries in that category but, with one exception, they were the countries in which the international flow of inventions was by far the greatest. If the Treaty entered into force by virtue of paragraph (1)(i), the number of international applications could be much greater than if it entered into force by virtue of paragraph (1)(ii).

2369. The SECRETARY said that there were only 14 countries which, according to the latest available statistics (1968), fulfilled the conditions outlined in paragraph (1)(ii). The proposal of the Delegation of Italy would require that ten out of those 14 countries accept the Treaty before it could enter into force. That seemed to be an excessive requirement which could retard the entry into force of the Treaty for a very long time.

2370. Mr. BOWEN (United Kingdom) said that his Delegation opposed the proposal of the Delegation of Italy. Paragraph (1)(i) was of great importance because, if its conditions were fulfilled, a great number of international applications were likely to be filed. Fulfilling the conditions of the proposal of the Delegation of Italy would certainly delay the entry into force of the Treaty for an undesirably long time.

2371. Mr. BORGGÅRD (Sweden) said that his Delegation shared the view that the proposal of the Delegation of Italy was unacceptable.

2372. Mr. PIETERS (Netherlands) said that his Delegation shared the views expressed by the Delegations of the United Kingdom and Sweden. If paragraph (1)(ii) were to be amended as proposed by the Delegation of Italy, the condition laid down in it would be extremely difficult to fulfill because it would require that almost all the countries which, on the basis of their statistics fell under that provision, would have to accept the Treaty.

2373. Mr. MAST (Germany (Federal Republic)) said that his Delegation also opposed the proposal of the Delegation of Italy for the reasons stated by the Secretary General of the Conference, the Secretary, and the Delegations of the United Kingdom, Sweden and the Netherlands.

2374. Mr. PUSZTAI (Hungary) said that his Delegation opposed the proposal of the Delegation of Italy and approved the Draft for the reasons stated by those Delegations which had taken the same stand.

2375. Mr. STAMM (Switzerland) said that his Delegation also objected to the proposal of the Delegation of Italy.

2376. Mr. CHERVIAKOV (Soviet Union) said that his Delegation supported the Draft as it stood.

2377. Mr. NORDSTRAND (Norway) said that his Delegation also supported the Draft as it stood.

2378. Mr. LAURELLI (Argentina) said that his Delegation favored the proposal of the Delegation of Italy as far as omitting paragraph (1)(i) was concerned. As far as amending paragraph (1)(ii) was concerned, his Delegation had no strong views.

2379. Mr. DAHMOUCHE (Algeria) said that his Delegation supported the proposal of the Delegation of Italy.

2380. Mr. SCHURMANS (Belgium) said that his Delegation also supported the proposal of the Delegation of Italy.

2381. Mr. BESAROVIĆ (Yugoslavia) suggested that the proposal of the Delegation of Italy be modified to the following effect: the number of acceptances required should be ten, among which seven ought to fulfill the requirements set forth in paragraph (1)(ii).

2382. Mr. ALENCAR NETTO (Brazil) said that his Delegation supported the proposal of the Delegation of Italy.

2383. Mr. BODENHAUSEN (Director of BIRPI) said that it might be advisable to defer a decision since certain facts which had been brought to the attention of the meeting should be studied. In particular, it

should be borne in mind that in the first few years after the entry into force of the Treaty, and when the administrative machinery would have to be organized, certain costs would have to be borne by the Contracting States. Such costs would naturally be more easily borne by the larger States, namely, those in which a high number of applications were filed. One should, therefore, think twice before eliminating paragraph (1)(i), which was aimed at the countries with the highest number of applications.

2384.1 Mr. SAVIGNON (France) said that he did not entirely agree with the arguments of the Director of BIRPI because paragraphs (1)(i) and (1)(ii) of the Draft were alternatives and, if the Treaty entered into force by virtue of paragraph (1)(ii), the financial consequences might be the same as those which, according to the Director of BIRPI, would be avoided if it entered into force by virtue of paragraph (1)(i). Furthermore, in view of the fact that the international flow of inventions was showing a tendency to grow, it was likely that, by the time paragraph (1)(ii) would be applicable, the number of countries fulfilling the conditions set forth in that provision would be more than 14.

2384.2 In any case, his Delegation was not opposed to granting the Main Committee further time for reflection.

2385. The SECRETARY called attention to the Alternative Draft, according to which the statistics would be those of a specific year, namely 1969, so that an increase in the number of States (i.e., 14) meeting the statistical requirements was not likely.

2386. Mr. BODENHAUSEN (Director of BIRPI) said that the Delegation of France was right in saying that, even under the Draft, it would be possible that a number of smaller countries – rather than also larger countries – would have to finance the foreseeable deficits of the first few years after the entry into force of the Treaty. However, what was a mere possibility in the Draft – a possibility which hopefully would be avoided if the Treaty entered into force under paragraph (1)(i) – would be unavoidable under the proposal of the Delegation of Italy.

2387. *It was decided to defer further discussion on the proposal of the Delegation of Italy.*

2388. *The proposal of the Delegation of the Netherlands contained in document PCT/DC/39 and the proposal of the Delegation of the United States of America contained in document PCT/DC/58 were referred to the Drafting Committee.* (Continued at 2436.)

Article 59: Effective Date of the Treaty for States Not Covered by Article 58 (In the signed text, Article 63(2))

2389. *Subject to referring the proposal of the Delegation of the Netherlands contained in document PCT/DC/39 and the proposal of the Delegation of the United States of America contained in document PCT/DC/58 to the Drafting Committee, Article 59 was adopted as appearing in the Draft.* (Continued at 2684.)

Article 60: Reservations (In the signed text, Article 64: Reservations)

2390. Mr. OHWADA (Japan) said that the proposal of his Delegation contained in document PCT/DC/78 was to be considered withdrawn.

2391. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

2392. Mr. BOWEN (United Kingdom) said that paragraph (2)(a)(i) provided that an elected State might start national processing after 20 rather than 25 months. Such a concession would undermine one of the most basic features of Chapter II. Consequently, his Delegation was in favor of striking item (i) of paragraph (2)(a).

2393. Mr. LORENZ (Austria) said that the discussion on paragraph (2) should be deferred until Main Committee I had disposed of the proposal of the Delegation of Israel contained in document PCT/DC/41, which might have a bearing on the paragraph under discussion.

2394. Mr. TUXEN (Denmark) said that the Delegation of the United Kingdom must have misunderstood the paragraph under discussion. What that paragraph provided for was that the 25-month time limit could be shortened to 20 months only as far as the furnishing of a copy and of the translation and the publication in the national gazette of the elected State were concerned. In all other respects, in particular in respect of the payment of the national fees and the beginning of the processing of the international applications by the elected office, the 25-month time limit could not be waived but would always have to be respected.

2395. Mr. LORENZ (Austria) said that his Delegation agreed with the remarks of the Delegation of Denmark.

2396. Mr. BODENHAUSEN (Director of BIRPI) said that both paragraphs (2) and (3) of the Article under discussion dealt with substantive matters closely connected with provisions being discussed in Main Committee I. Consequently, it would seem to be preferable to await the results of the discussions in Main Committee I and only thereafter deal with paragraphs (2) and (3) in Main Committee II.

2397. Mr. MAST (Germany (Federal Republic)) said that his Delegation not only agreed with the declarations of the Director of BIRPI but would propose to go even further than he suggested and recommend that the entire Article under discussion should be referred to Main Committee I for the reasons stated by the Director of BIRPI.

2398. The CHAIRMAN said that the situation was not the same for paragraph (2) and for paragraph (3) since Main Committee I had not yet dealt with the matters concerning paragraph (2) but it had already disposed of the matters which related to paragraph (3).

2399. *It decided to ask Main Committee I to deal with paragraph (2).* (See 1453.)

2400.1 Mr. STAMM (Switzerland), referring to the proposal of his Delegation contained in document

PCT/DC/55, proposed that paragraph (3) of the Article under discussion should be deleted.

2400.2 That paragraph would allow any State to declare that international publication of international applications was not required as far as it was concerned, and that where, at the expiration of 18 months from the priority date, the international application contained the designation of only such States as had made the said kind of declarations the international application would not be published at the end of the 18 months but only at the express request of the applicant or once a national application or a patent based on an international application had been published.

2400.3 If the reservation provided for in paragraph (3) of the Draft was to be permitted, the resulting system would be extremely complicated. Furthermore, it would result in unequal treatment for the applicants. For both of those reasons, it would be much simpler, and more equitable, if all international applications, without exception, had to be published by the end of the 18th month.

2401.1 Mr. BOGSCH (Secretary General of the Conference) outlined the history of paragraph (3) in the Draft.

2401.2 Some national laws provided for publication after 18 months, whereas others did not provide for any publication of applications. One of the basic concepts underlying the PCT negotiations was that, unless it was absolutely unavoidable, the PCT should not require changes in national laws.

2401.3 An earlier Draft of the Treaty had provided that international publication would take place only if, among the designated States, there was at least one which, according to its national law, published national applications after 18 months.

2401.4 Those countries which had no publication on the national level had already made a substantial concession in the course of the negotiations when they agreed to modify the previous Drafts and accepted that those countries which did not have the system of publication on the national level would have to make a reservation, instead of relying on a general rule of the Treaty, if they wished that their system be included in the PCT system.

2401.5 Whereas it was true that accepting the proposal of the Delegation of Switzerland would make the provision simpler, it had to be borne in mind that, in some countries there was a strong feeling that the applicant should be able to control the publication of his application. He could preserve such control whenever paragraph (3) became applicable.

2401.6 It was to be expected that, in actual fact, the number of international applications which would not be published after 18 months because of the application of paragraph (3) would be extremely small. It would be small because the number of countries providing for publication after 18 months was already large and was constantly growing, so that international applications that would designate only such countries as those in which national applications were not published, and which used the faculty given

them in paragraph (3), would, in all likelihood, be very few in number. It was also to be expected that the reluctance of certain applicants to see their applications published after 18 months would also be greatly diminished because, in many important countries, even if they did not use the PCT, they could simply not avoid such publication.

2402. Mr. SAVIGNON (France) said that his Delegation supported the proposal of the Delegation of Switzerland. However, if any one of the States which might wish to use the faculty provided for in paragraph (3) declared that that provision was very important for it, his Delegation would not object to its adoption since the matter was not one of principle but merely a question of what was simplest and most practical.

2403. Mr. BRENNAN (United States of America) said that, for his Delegation, acceptance of paragraph (3) was desirable.

2404. Mr. ROBINSON (Canada) said that, for his Delegation too, acceptance of paragraph (3), although not vital, was desirable.

2405. Mr. LORENZ (Austria) said that his Delegation could accept the elimination of paragraph (3) but, if it was important for some countries to maintain it, it could also accept the decision to maintain the paragraph in question.

2406. Mr. STAMM (Switzerland) said that the Delegation of Switzerland would not insist and its proposal could be considered withdrawn.

2407. *Paragraph (3) was adopted as appearing in the Alternative Draft.*

2408. *Paragraph (4) (in the signed text, paragraph (6)), was adopted as appearing in the Draft, without discussion.*

2409. *Paragraph (5) (in the signed text, paragraph (7)), was adopted as appearing in the Draft, without discussion. (Continued at 2690.)*

Article 61: Gradual Application (In the signed text, Article 65: Gradual Application)

2410. Mr. ALMEIDA (Portugal), referring to the proposal of his Delegation and the Delegation of Argentina contained in document PCT/DC/68, proposed the addition to paragraph (1) of the words: "This provision also applies to requests for international-type search."

2411. *Paragraph (1) was adopted as amended by the proposal of the Delegations of Argentina and Portugal.*

2412. Mr. BRENNAN (United States of America) said that he wished to reserve the position of his Delegation on paragraph (2) as long as Main Committee I had not disposed of Rule 42.

2413. *Note having been taken of the reservation of the Delegation of the United States of America, paragraph (2) was adopted. (Continued at 2691.)*

Article 62: Denunciation (In the signed text, Article 66: Denunciation)

2414. *Article 62 was adopted as appearing in the Draft, without discussion. (Continued at 2693.)*

Article 63: Signature and Languages (In the signed text, Article 67: Signature and Languages)

2415. The SECRETARY enumerated the proposals for amendment made in connection with this Article: the proposal of the Delegation of the Netherlands contained in document PCT/DC/39, that of the Delegation of Switzerland contained in document PCT/DC/57, that of the Delegation of the United States of America contained in document PCT/DC/58, and that of the Delegations of Brazil and Portugal contained in document PCT/DC/62.

2416. Mr. PIETERS (Netherlands), referring to the proposal of his Delegation contained in document PCT/DC/39, asked that paragraph (1)(a) specify that both the English and the French texts were equally authentic.

2417. Mr. STAMM (Switzerland) seconded the proposal of the Delegation of the Netherlands, which was similar to the proposal made by his own Delegation in document PCT/DC/57.

2418. Miss NILSEN (United States of America), referring to the proposal of her Delegation contained in document PCT/DC/58, said that in paragraph (1)(a) the words "single copy" should be replaced by the words "single original" and added that the proposal was of a drafting nature.

2419. *The proposal of the Delegation of the United States of America contained in document PCT/DC/58 was referred to the Drafting Committee.*

2420. Mr. BOWEN (United Kingdom) said that his Delegation agreed with the proposal of the Delegation of the Netherlands.

2421. Mr. SAVIGNON (France) said that his Delegation also supported the proposal of the Delegation of the Netherlands.

2422. Mr. ROBINSON (Canada) said that his Delegation also supported the proposal of the Delegation of the Netherlands.

2423. Mr. SCHURMANS (Belgium) expressed the support of his Delegation for the proposal of the Delegation of the Netherlands.

2424. Mr. LAURELLI (Argentina) said that, if the Treaty provided for the case of conflict between the French and the English texts, the French should prevail.

2425. *The proposal of the Delegation of Switzerland contained in document PCT/DC/57 and the proposal of the Delegation of the Netherlands contained in document PCT/DC/39 were adopted to the extent that they provided for the addition of the words "both texts being equally authentic."*

2426. *Subject to the above decisions on the proposals of the Delegations of the United States of America, of the Netherlands and of Switzerland, paragraph (1)(a) was adopted as appearing in the Draft.*

2427. Mr. BAHADIAN (Brazil), referring to the proposal made by his Delegation and the Delegation

of Portugal in document PCT/DC/62, suggested that Portuguese be added to the languages in which, according to paragraph (1)(b), official texts of the Treaty would be established. There were 120 million people speaking Portuguese and, in ten years, the population of Brazil alone would reach 140 million. Portuguese being thus one of the main languages of the world, was justified in being included among the languages in which official texts would be established.

2428. *The proposal of the Delegations of Brazil and Portugal that Portuguese be added to the languages enumerated in paragraph (1)(b) was adopted as contained in document PCT/DC/62.*

2429. Mr. STAMM (Switzerland), referring to the proposal of his Delegation contained in document PCT/DC/57, asked that the following sentence be added to paragraph 1(b) "In case of differences of opinion on the interpretation of the various texts, the French and English texts shall prevail."

2430. Mr. BODENHAUSEN (Director of BIRPI) expressed the view that, after the modification of paragraph (1)(a), there seemed to be no need for the proposal of the Delegation of Switzerland.

2431. Mr. STAMM (Switzerland) withdrew the proposal of his Delegation.

2432. *Subject to the decision made on the proposal of the Delegations of Brazil and Portugal referred to above, paragraph (1)(b) was adopted as appearing in the Draft.*

2433. Mr. BOWEN (United Kingdom) asked whether paragraph (2) should not specify the place where the Treaty would remain open for signature.

2434. Mr. BODENHAUSEN (Director of BIRPI) suggested that the paragraph be completed by stating that the Treaty would remain open for signature at Washington.

2435. *Subject to the addition of the words "at Washington," paragraph (2) was adopted.* (Continued at 2694.)

End of the Fifth Meeting

SIXTH MEETING

Wednesday, June 3, 1970, afternoon

Article 58: Entry into Force of the Treaty (In the signed text, Article 63: Entry Into Force of the Treaty) (Continued from 2388.)

2436. Mr. MESSEROTTI-BENVENUTI (Italy) said that, in order to facilitate a compromise on the questions posed by paragraph (1), his Delegation withdrew its proposal contained in document PCT/DC/69.

2437. Mr. SAVIGNON (France) proposed that the Main Committee vote on the question whether two possibilities or only one possibility for entry into force should be incorporated in the Treaty; in other words, whether paragraph (1) should have two items as it had in the Draft.

2438.1 Mr. BOGSCH (Secretary General of the Conference) said that item (i) served two purposes.

The first purpose was that by providing that three of the five States would have to meet the requirement of 40,000 domestic applications in a given year the Soviet Union was essentially covered since it was a country which did not meet the requirement in item (ii) but did meet the requirement of 40,000 domestic applications. The other purpose was that by providing that there would be no statistical requirements for two of the five countries mentioned in item (i) any developing country, even with a small number of applications, could therefore contribute towards bringing the Treaty into force.

2438.2 Perhaps the best solution would be to merge items (i) and (ii) and provide that the Treaty would enter into force if seven States accepted it and among those States two would not have to meet any statistical requirement and five would have to meet at least one of the three statistical requirements now inscribed in items (i) and (ii) of the Draft.

2439. Mr. SAVIGNON (France) said that the suggestion of the Secretary General had the merit of simplifying the provision. However, the number of seven acceptances was too low. Ten acceptances should be required, of which four would have to meet the statistical requirements and six would not have to meet any statistical requirement.

2440. Mr. DAHMOUCHE (Algeria) asked that the suggestion of the Secretary General be put in writing so that the delegations could study it.

2441. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation agreed with the proposal of the Delegation of France that the total number of acceptances should be ten. However, five (rather than four) of those ten should have to meet at least one of the statistical requirements, and five (rather than six) would not have to meet any of the statistical requirements.

2442. *It was decided to defer further discussion on paragraph (1) until the proposals made orally during the meeting had been submitted in writing.* (Continued at 2466.)

Article 64: Depositary Functions (In the signed text, Article 68: Depositary Functions)

2443. The SECRETARY said that there were two proposals for amendment, one submitted by the Delegation of the Netherlands (document PCT/DC/39) and the other submitted by the Delegation of the United States of America (document PCT/DC/58).

2444. Mr. PIETERS (Netherlands) said that the essence of the proposal of his Delegation contained in document PCT/DC/39 appeared in the proposal of the Delegation of the United States of America contained in document PCT/DC/58.

2445. Miss NILSEN (United States of America), referring to the proposal of her Delegation contained in document PCT/DC/58, proposed that paragraph (1) should read as follows: "The original of this Treaty shall be deposited with the Director General when it is no longer open for signature."

2446. *It was decided that paragraph (1) should read as follows: "The original of this Treaty, when no*

longer open for signature, shall be deposited with the Director General."

2447. *Paragraphs (2), (3) and (4) were adopted as appearing in the Draft, without discussion. (Continued at 2695.)*

Article 65: Notifications (In the signed text, Article 69: Notifications)

2448. The SECRETARY said that the Delegation of Japan having withdrawn its proposal contained in document PCT/DC/78 the only remaining proposal for amendment was that of the Delegation of the Netherlands contained in document PCT/DC/39.

2449. Mr. PIETERS (Netherlands) said that the proposal of his Delegation contained in document PCT/DC/39 was merely of a drafting nature and could be referred to the Drafting Committee.

2450. *The Article was adopted as appearing in the Draft, on the understanding that the Drafting Committee was free to make formal changes on the basis of the proposal of the Delegation of the Netherlands and in the light of any relevant decision which would be made by Main Committee I. (Continued at 2696.)*

Article 50: Assembly (In the signed text, Article 54: Executive Committee) (Continued from 2188.)

2451. Mr. BESAROVIĆ (Yugoslavia) presented the proposal of his Delegation, contained in document PCT/DC/81, suggesting the adoption of a separate article on the Executive Committee. The proposal had been prepared in collaboration with the Secretary of the Main Committee and was based on the corresponding provisions of the Stockholm Act of the Paris Convention as well as on discussions which had taken place earlier in Main Committee II.

2452. Mr. LORENZ (Austria) said that his Delegation supported the proposal of the Delegation of Yugoslavia.

2453. Mr. LAURELLI (Argentina) asked whether the article on the Executive Committee should not specify its role in connection with the recommendations of the Committee for Technical Cooperation.

2454. The SECRETARY replied that the matter was covered by paragraph (6)(a)(vi), which provided that the Executive Committee must "perform such other functions as are allocated to it under this Treaty."

2455. Mr. BOWEN (United Kingdom) said that there was no provision paralleling Article 14(6)(b) of the Stockholm Act of the Paris Convention. That provision should be paralleled and the following subparagraph added to paragraph (6): "(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization."

2456. Mr. BODENHAUSEN (Director of BIRPI) said that he would welcome the adoption of the suggestion of the Delegation of the United Kingdom.

2457. Mr. SHER (Israel) asked whether the other Special Unions created under the Paris Union had a similar provision in their administrative clauses.

2458. Mr. BODENHAUSEN (Director of BIRPI) replied in the affirmative.

2459. *It was decided to complete paragraph (6) by adding a subparagraph (b) as proposed by the Delegation of the United Kingdom.*

2460. Mr. DAHMOUCHE (Algeria) proposed that the reference in paragraph (2)(a), as appearing in document PCT/DC/81, should not be limited to subparagraph (b) of paragraph (8) of the Article on finances but should also refer to subparagraph (a) of the same paragraph.

2461. *It was decided to modify paragraph (2)(a) according to the proposal of the Delegation of Algeria.*

2462. *Subject to the amendments indicated above, the proposal for a new article on the Executive Committee was adopted as contained in document PCT/DC/81. (Continued at 2640.)*

In the signed text, Article 59: Disputes (No provision in the Drafts)

2463. Mr. PIETERS (Netherlands) introduced the proposal of the Delegations of Austria, France, Japan, the Netherlands, Switzerland and Zambia, contained in document PCT/DC/86 (hereinafter referred to as the proposal of "the Six Delegations"), concerning the adoption of a new article on disputes.

2464. Mr. LAURELLI (Argentina) requested that this question be deferred until the delegations had had more time to study the proposal of the Six Delegations.

2465. *Discussion on the proposal for a new article on disputes was deferred. (Continued at 2514.)*

End of the Sixth Meeting

SEVENTH MEETING

Thursday, June 4, 1970, morning

Article 58: Entry into Force of the Treaty (In the signed text, Article 63: Entry Into Force of the Treaty) (Continued from 2442.)

2466.1 The CHAIRMAN opened the discussion on the proposal of the Secretariat for a new text for paragraph (1) contained in document PCT/DC/91.

2466.2 The proposal provided that the entry into force of the Treaty should require acceptance by eight countries, of which four did not need to meet any statistical requirement and the other four needed to meet one of three statistical requirements, namely: (i) 40,000 national applications in 1969, or (ii) 1,000 or 500 outgoing applications in 1969, or (iii) 10,000 or 5,000 incoming applications in 1969. A choice would have to be made between the pairs of figures indicated in items (ii) and (iii).

2467. Mr. ALMEIDA (Portugal) said that the conditions proposed in document PCT/DC/91 seemed to be generally easier to fulfill than those which were

proposed in the Alternative Draft, and, therefore, as between the two, his Delegation preferred the Alternative Draft.

2468. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation supported the Draft presented by the Secretariat as appearing in document PCT/DC/91, and would prefer the lower figures, i.e., 500 instead of 1,000, and 5,000 instead of 10,000.

2469. Mr. COMTE (Switzerland) proposed that the higher figures be retained (1,000 and 10,000, respectively), and that the total number of acceptances should be ten, of which four would have to meet any one of the three statistical requirements.

2470. Mr. ALMEIDA (Portugal) said that his Delegation supported the proposal of the Delegation of Switzerland.

2471. Mr. BOGSCH (Secretary General of the Conference) said that, in his view, the conditions of the proposal contained in document PCT/DC/91 were more difficult to fulfill than the conditions provided for in the Alternative Draft since under the latter three countries having more than 40,000 applications, together with two countries not meeting any statistical requirements, would have sufficed. In view of the manifest interest in the PCT of countries having the highest number of applications, it was probably not very difficult to find three countries which met the said statistical requirements, and it was, of course, easy to find two countries not meeting any statistical requirement. According to the new proposal, the number of countries having to meet the statistical requirements would be raised by one and the number of countries not meeting any statistical requirement would be raised by two.

2472. The SECRETARY said that if the lower figures (500 and 5,000, respectively) were to be accepted the number of countries which could meet the statistical requirements would rise from 14 to 20.

2473. Mr. PIETERS (Netherlands) said that his Delegation could accept the proposal contained in document PCT/DC/91 and would much prefer to have the higher figures (1,000 and 10,000, respectively) appear in it.

2474. Mr. MAST (Germany (Federal Republic)) said that his Delegation was not convinced that the conditions laid down in document PCT/DC/91 were more difficult to meet than the conditions in the Alternative Draft. Consequently, his Delegation would have a slight preference for the Alternative Draft. It could, however, go along with the proposal contained in document PCT/DC/91.

2475.1 Mr. SAVIGNON (France) said that his Delegation approved of that part of the proposal contained in document PCT/DC/91 according to which the number of countries with statistical requirements and the number of countries without any statistical requirement would be the same. Such a provision would establish an equilibrium between developed and developing countries.

2475.2 As far as the countries meeting statistical requirements were concerned, his Delegation would prefer the adoption of the higher figures (1,000

and 10,000, respectively), as already suggested by the Delegation of Switzerland.

2476. Mr. BRENNAN (United States of America) said that the proposal contained in document PCT/DC/91 seemed to be generally acceptable, particularly if the higher figures (1,000 and 10,000, respectively) were to be adopted. One of the distinct advantages of the proposal over the Alternative Draft was that the number of countries was raised to eight, which would mean that applicants could, from the outset, choose from among a certain number of countries to be designated. Furthermore, the higher number of countries would also be beneficial in connection with the division of the expenses in the early stages of the application of the Treaty.

2477. Mr. LORENZ (Austria) said that his Delegation supported the proposal contained in document PCT/DC/91 and expressed a preference for the lower numbers (500 and 5,000, respectively).

2478. Mr. DAHMOUCHE (Algeria) said that his Delegation could accept the proposal contained in document PCT/DC/91 provided that it did not refer to the statistics of 1969. The statistics might change considerably between 1969 and the year which would precede the entry into force of the Treaty, and some of the countries which, in 1969, would not yet meet the statistical requirements might be able to meet them later. Brazil, for example, could be in that category.

2479. Mr. BOGSCH (Secretary General of the Conference) said that the proposal could be modified so as to take into account the statistics of 1969 or any year thereafter.

2480. Mr. ROBINSON (Canada) said that the latest available yearly statistics would seem to be a better solution than referring to any specific year. He wished to know why the proposal spoke of inventors' certificates and utility certificates and not only of patents.

2481.1 Mr. BOGSCH (Secretary General of the Conference) said that referring to the "latest available statistics" would also seem to be acceptable though it might cause some difficulties if a country met the statistical requirements in 1969 but fell below them in later years and those years were still before the entry into force of the Treaty.

2481.2 Inventors' certificates had been inserted mainly in order to cover the case of the Soviet Union, in which more than 100,000 applications were filed each year of which the overwhelming majority were for inventors' certificates. The reference to "utility certificates" was necessary because of the new French law under which not only patents but also utility certificates could be applied for.

2482. Mr. MAST (Germany (Federal Republic)) said that his Delegation would not insist on adopting the Alternative Draft but would go along with the proposal contained in document PCT/DC/91, provided that the higher figures (1,000 and 10,000, respectively) were adopted. It would also prefer a reference to a specific year as far as the statistics were concerned since it was necessary for a country when it deposited its instrument of ratification or accession to

know whether it did or did not meet any of the statistical requirements.

2483. Mr. BOWEN (United Kingdom) said that his Delegation could accept the proposal contained in document PCT/DC/91 although it would have preferred the Alternative Draft.

2484. Mr. PRETNAR (Yugoslavia) said that if the lower figures (500 and 5,000, respectively) were adopted item (i) could be eliminated since every country falling under item (i) would also fall under either item (ii) or item (iii).

2485. Mr. BOGSCH (Secretary General of the Conference) said that much depended on whether the proposal of the Delegation of Algeria was to be accepted or not. The statistics for 1968 or 1969 were known but those for future years were uncertain. As far as the Soviet Union was concerned, it would probably always fulfill the condition laid down in item (i).

2486. Mr. CHERVIAKOV (Soviet Union) said that his Delegation supported the proposal contained in document PCT/DC/91 as it stood. It was important that item (i) be maintained.

2487. Mr. OHWADA (Japan) said that his Delegation supported the proposal contained in document PCT/DC/91 on the understanding that the higher figures (1,000 and 10,000, respectively) would be inscribed in it and that the statistics would refer to a specific year: 1969, 1970, or 1971.

2488. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation was still convinced that the lower figures (500 and 5,000, respectively) should be adopted since more countries could then meet the statistical requirements.

2489. Mr. LAURELLI (Argentina) said that his Delegation supported the views expressed by the Delegation of Yugoslavia.

2490. Mr. LORENZ (Austria) said that his Delegation also supported the views expressed by the Delegation of Yugoslavia.

2491. Mr. ALENCAR NETTO (Brazil) said that his Delegation also supported the views expressed by the Delegation of Yugoslavia.

2492. Mr. BORGGÅRD (Sweden) said that his Delegation had a slight preference for the higher numbers (1,000 and 10,000, respectively) but could also accept the lower numbers.

2493. Mr. AKPONOR (Zambia) said that a compromise solution would be to provide for the higher number (1,000) in item (ii) and for the lower number (5,000) in item (iii).

2494. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation would prefer the higher numbers (1,000 and 10,000, respectively).

2495. *The proposal for the lower numbers (500 and 5,000, respectively) was rejected and the proposal for the higher numbers (1,000 and 10,000, respectively) was adopted by 10 votes in favor to 9 against, with 3 abstentions.*

2496. Mr. COMTE (Switzerland) said that his Delegation insisted that the total number of acceptances should be ten rather than eight.

2497. Mr. LAURELLI (Argentina) said that his Delegation supported the proposal of the Delegation of Switzerland.

2498. Mr. BOGSCH (Secretary General of the Conference) expressed the view that much of the compromise character of the proposal of the Secretariat contained in document PCT/DC/91 would be lost if the total number of acceptances was raised to ten.

2499. Mr. PIETERS (Netherlands) said that his Delegation was opposed to the proposal of the Delegation of Switzerland. Eight seemed to be a reasonable number of countries to bring the Treaty into operation.

2500. Mr. MESSEROTTI-BENVENUTI (Italy) reminded the meeting that the original proposal of the Delegation of Switzerland had been to raise not only the total number from eight to ten but also the number of countries which would have to meet the statistical requirements from four to six.

2501. *The proposal of the Delegation of Switzerland was rejected by 16 votes against to 4 in favor, with 10 abstentions.*

2502. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation had abstained in the vote because it considered that the proposal of the Secretariat contained in document PCT/DC/91 was a compromise, each element of which was equally important.

2503. *A proposal to raise the total number of accessions from eight to ten without raising the number of States which would have to meet the statistical requirements from four to six was rejected by 15 votes against to 1 in favor, with 13 abstentions.*

2504. Mr. LAURELLI (Argentina) reiterated the view of his Delegation that the proposal of the Delegation of Canada should be accepted and the latest available yearly statistics should apply.

2505. Mr. DAHMOUCHE (Algeria) said that the latest available statistics should be understood as referring to the year preceding the deposit of a State's instrument of ratification or accession.

2506. Mr. ALENCAR NETTO (Brazil) said that his Delegation also supported the proposal of the Delegation of Canada.

2507. Mr. AKPONOR (Zambia) said that his Delegation shared the views just expressed by the Delegation of Algeria.

2508. The CHAIRMAN said that it was understood that the most recent annual statistics would refer to the year which was the most recent year concerning which statistics were available at the time the instrument of ratification or accession was deposited.

2509. *Subject to the above understanding, and retaining the higher figures (1,000 and 10,000, respectively), the proposal contained in document PCT/DC/91 was adopted. (Continued at 2684.)*

Rule 88: Amendment of the Regulations
(Continued from 2362.)

2510.1 Mr. BORGGÅRD (Sweden), in his capacity of Chairman of the Working Group set up to consider the proposal of the Delegation of the United States of America (document PCT/DC/80), introduced the report of the Working Group contained in document PCT/DC/93.

2510.2 The Working Group proposed that a new Rule be inserted between Rules 88.1 and 88.2 in the Draft and that the new Rule should provide as follows: "Amendment of the following provisions of these Regulations shall require that no State having the right to vote in the Assembly vote against the proposed amendment during the first 5 years after the entry into force of the Treaty: (i) Rule 5 (The Description), (ii) Rule 6 (The Claims), (iii) the present paragraph."

2510.3 Thus, Rule 5 and 6 could be amended only by unanimous consent during the first five years after the entry into force of the Treaty. Once that five-year period expired, the said two Rules could be amended by a three-fourths majority in the Assembly.

2511. Mr. BRADERMAN (United States of America) expressed his Delegation's thanks to the Working Group, whose proposal was acceptable to his Delegation.

2512. Mr. ROBINSON (Canada) suggested that the words "during the first 5 years after the entry into force of the Treaty" should be placed at the beginning of the provision.

2513. *The proposal of the Working Group contained in document PCT/DC/93 was adopted as orally amended by the Delegation of Canada.* (Continued at 2606.)

In the signed text, Article 59: Disputes (No provision in the Drafts) (Continued from 2465.)

2514. Mr. MATHON (Netherlands), referring to the proposal of the Six Delegations contained in document PCT/DC/86, said that the proposed new Article would parallel Article 28 of the Stockholm text of the Paris Convention. Since the PCT had many complicated provisions it would seem that an article on disputes would be even more necessary in the PCT than in the Paris Convention. It should be noted that any Contracting State could make a reservation to the effect that it did not accept the compulsory jurisdiction of the International Court of Justice and could exclude, as far as it was concerned, the application of the proposed new Article.

2515. Mr. ALMEIDA (Portugal), referring to the proposal of his Delegation contained in document PCT/DC/92, said that its purpose was to allow any Contracting State to make the reservation at a later time than the time at which it deposited its instrument of ratification or accession.

2516. Mr. BODENHAUSEN (Director of BIRPI) said that if the proposal of the Delegation of Portugal were to be accepted it would be necessary to provide that any reservation made after the bringing of an action before the International Court of Justice could not apply to that action.

2517. Mr. ALMEIDA (Portugal) agreed with the view expressed by the Director of BIRPI.

2518. Mr. DAHMOUCHE (Algeria) also agreed with the observations of the Director of BIRPI. Furthermore, he thought that the provision "unless States concerned agree on some other method of settlement" in the proposal of the Six Delegations was redundant with the words "not settled by negotiation" and should therefore be omitted.

2519. Mr. PUSZTAI (Hungary) said that the compulsory jurisdiction of the International Court of Justice was contrary to the sovereignty of States. Consequently, his Delegation opposed the proposal of the Six Delegations as well as the proposal of the Delegation of Portugal.

2520. Mr. BODENHAUSEN (Director of BIRPI) said that States sharing the views of the Delegation of Hungary could always make use of the possibility of reservation provided for in the proposal of the Six Delegations.

2521. Mr. BOWEN (United Kingdom) said that his Delegation supported the proposal of the Six Delegations. However, for the reasons stated by the Director of BIRPI, it opposed the proposal of the Delegation of Portugal.

2522. Mr. CHERVIAKOV (Soviet Union) said that his Delegation was opposed to the compulsory jurisdiction of the International Court of Justice and also to the proposal of the Six Delegations. The International Court of Justice could still be used, on a voluntary basis, by any Contracting State but for that purpose no provision was needed in the Treaty.

2523. Mrs. MATLASZEK (Poland) said that her Delegation shared the views of the Delegations of Hungary and the Soviet Union. Should the proposal of the Six Delegations be accepted, paragraphs (2) and (3) thereof should be transferred to the Article dealing with reservations.

2524. The CHAIRMAN said that the proposal of the Delegation of Poland would be referred to the Drafting Committee.

2525. Mr. CHERVIAKOV (Soviet Union) said that his Delegation would not insist on a vote on the proposal of the Six Delegations provided it was clearly understood that the possibility of reservation would be fully maintained.

2526. Mr. MATHON (Netherlands) said that his Delegation was opposed to the proposal of the Delegation of Portugal for the reasons stated by the Director of BIRPI.

2527. Mr. MAST (Germany (Federal Republic)) said that his Delegation shared the view expressed by the Delegation of the Netherlands.

2528. Mr. ALMEIDA (Portugal), on a question from the Chairman, said that his Delegation maintained its proposal. He was prepared to submit an amendment to its proposal in order to take into account the point raised by the Director of BIRPI and some of the delegations.

2529. *Further discussion on the proposed new article on disputes was deferred.* (Continued at 2588.)

Article 53: Finances (In the signed text, Article 57: Finances) (Continued from 2279.)

2530.1 The SECRETARY introduced the report contained in document PCT/DC/90, of the Working Group established in order to explore the possibilities of a compromise solution concerning paragraphs (5) and (7).

2530.2 As far as paragraph (5) was concerned, it was proposed to delete the words "and other pertinent factors" appearing in paragraph 5(b) of the Draft and to replace them by the following sentence: "The contribution of any State cannot, however, exceed 20% of the total of all contributions."

2530.3 As far as paragraph (7) was concerned, it was proposed to add to the text appearing in paragraph 7(b) of the Draft the following words: "on the basis of principles similar to those provided for in paragraph (5)(b)."

2531.1 Mr. BRENNAN (United States of America) said that his Delegation supported the solution proposed by the Working Group. It was difficult to establish objective criteria for evaluating the interest of each country in the PCT since that interest depended on many factors, such as the number of applications, the service rendered to competitors and the public at large by the international publication, the general technological development of any given country, etc.

2531.2 A ceiling of 20% for the contribution of each State to the deficit was to be welcomed because it would protect any State against an excessive participation. It was to be noted that the maximum share of any Contracting State in the budget of the Paris Union was approximately 3%, so that the 20% limit proposed by the Working Group was already a substantial departure from the situation existing in the Paris Union.

2532. Mr. DAHMOUCHE (Algeria) asked that Rule 34 of the Rules of Procedure of the Conference concerning reconsideration of proposals adopted or rejected should be applied.

2533. Mr. LAURELLI (Argentina) said that the proposal of the Working Group was in contradiction with the principles behind the Article already adopted concerning the entry into force of the Treaty. According to that Article, the countries having a great number of applications would have a determining role in causing the entry into force of the Treaty. Their financial responsibility for the years immediately following the entry into force should take that role into account. Any of those countries which had to meet the statistical requirements of the Article concerning the entry into force might cause far more than 20% of the work and expenses of the International Bureau in the first few years. Consequently, there was absolutely no logical reason for limiting the share of any of the countries to 20%. The proposal of the Working Group was totally unacceptable. (Continued at 2534.)

End of the Seventh Meeting

EIGHTH MEETING

Thursday, June 4, 1970, afternoon

Article 53: Finances (In the signed text, Article 57: Finances) (Continued from 2533.)

2534.1 Mr. MAST (Germany (Federal Republic)) said that his Delegation, which had reserved its position in the Working Group, was opposed to the proposal of that Group as far as it called for adding to paragraph (5)(b) the sentence: "The contribution of any State cannot, however, exceed 20% of the total of all contributions." The 20% limit could very well be beneficial to the Government of his country because one could easily imagine a combination of countries putting the PCT into effect in which the number of international applications filed by German nationals would exceed 20% of the total of the international applications. However, the principle of the 20% limit did not seem to be just for the very reason that the work caused by the nationals of any Contracting State might far exceed 20% of the total work caused by the PCT in the International Bureau. While it was of course true that considerations other than the number of international applications also influenced the evaluation of the interest of each State in the PCT, that number was nevertheless the most important of all considerations.

2534.2 His Delegation would be ready to accept, as far as paragraph (5)(b) was concerned, either the recommendation of the Working Group without, however, its last sentence, or the text contained in the Draft.

2535. Mr. BORGGÅRD (Sweden) said that, while the principle applying in the Paris Convention could perhaps also be applied in the PCT to developed countries, he was not sure whether the same principle could be applied in the PCT to developing countries, from which a very small number of international applications might emanate.

2536. Mr. DAHMOUCHE (Algeria) suggested that the sentence concerning the 20% limit should be deleted. Such a limitation would unduly restrict the power of free appreciation which should be left to the Assembly of the International Patent Cooperation Union. Furthermore, it might lead to unjust results when any given country used the PCT to a greater extent than 20% of its total use.

2537. Mr. BOWEN (United Kingdom) said that his Delegation continued to believe that the only just basis for distributing any possible deficit among the Contracting States was the number of the international applications emanating from each State. The 20% limit could lead to unjust results as had been pointed out by the Delegation of Germany (Federal Republic). Furthermore, the 20 limitation, if combined with the principle of the number of international applications, could lead to a situation in which less than 100% of the deficit would be covered. Such a result would obviously be unacceptable because there would be no one to finance the balance of the deficit.

2538. Mr. COMTE (Switzerland) said that his Delegation too was opposed to the last sentence of the

proposal of the Working Group, providing for the 20% limit, for the reasons already stated by the Delegations of Germany (Federal Republic), Sweden, Algeria, and the United Kingdom.

2539.1 Mr. BESAROVIĆ (Yugoslavia) said that, for the reasons stated by the previous speakers, his Delegation was also opposed to the 20% limit.

2539.2 He wondered why the Working Group had not tried to find a definition for the words "other factors" appearing in the Draft. After all, finding such a definition was the task – and the only task at that – with which the Working Group had been entrusted.

2540.1 Mr. BRENNAN (United States of America) said that whereas his Delegation was ready to enumerate the "other factors" all the members of the Working Group except the Delegation of the Soviet Union were of the opinion that only one factor, namely, that of the number of international applications emanating from each State, should be retained in the text.

2540.2 He failed to understand why certain delegations which had accepted the 20% limit in the Working Group were now opposed to it. That limit was five or six times higher than the limit existing in the Paris Convention, so that the PCT would already be much more liberal in that respect than the Paris Convention.

2540.3 He urged the members of the Working Group – except Germany (Federal Republic), which had reserved its position in that Group – to stick to the compromise they had already reached. Otherwise, his Delegation would insist that a long list of "other factors" should be included in the text of the Treaty.

2540.4 He was under the impression that the Delegation of Argentina, which had spoken in the previous meeting but was not present in the present meeting, had misunderstood the proposal of the Working Group because that proposal had nothing to do with the Article concerning the entry into force of the Treaty.

2541. Mr. TUXEN (Denmark) said that his Delegation agreed with the speakers who opposed the inclusion of the 20% limit. Such a limitation would be dangerous because it would lead to a situation where small countries, particularly developing countries, would be paying much more than would be justified by the number of international applications filed by their nationals.

2542. Mr. PIETERS (Netherlands) said that his Delegation too was opposed to the 20% limit for the reasons already expressed by the Delegations of Germany (Federal Republic), the United Kingdom, Sweden, and Switzerland. He said that it agreed with the earlier declaration of the Delegation of Algeria according to which the words "other factors" could be omitted from the Draft without changing its sense. Even if the Draft merely said that the amount of the contributions of each Contracting State was to be decided by the Assembly with due regard to the number of international applications which had emanated from each of them, other factors could also be taken into consideration by the Assembly.

2543. Mr. BRENNAN (United States of America) said that he was under the impression that most delegations in the Working Group understood that if only the words "with due regard to the number of international applications filed" were to be maintained no other criteria could be taken into account by the Assembly.

2544. Mr. BESAROVIĆ (Yugoslavia) said that one of the "other factors" which the Assembly should take into consideration would be the economic and financial situation of any Contracting State, particularly a developing State.

2545. Mr. HADDRICK (Australia) said that he too was surprised that some delegations which had accepted the 20% upper limit in the Working Group were now objecting to it. Perhaps by raising that upper limit to 25% more delegations could accept the idea of an absolute limit on contributions.

2546. Mr. CHERVIAKOV (Soviet Union) said that it had always been the view of his Delegation that the only criterion which should be taken into account was the number of international applications emanating from each Contracting State. His Delegation was not necessarily objecting to writing an upper limit – which might be more than 20% and could, for example, be 25% or 30% – into the Treaty although he could also see the arguments which militated against any limitation.

2547. Mr. BRADERMAN (United States of America) said that, since the proposal of the Working Group had been subscribed to by a number of delegations, it should be regarded as a formal proposal introduced and seconded and a vote should be taken on it.

2548. Mr. ASHER (Canada) said that his Delegation, for the reasons stated by the Delegation of Germany (Federal Republic), was also opposed to the 20% limit.

2549. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation supported the proposal of the Working Group.

2550. Mr. BODENHAUSEN (Director of BIRPI) said that it should be understood that, if the 20% limit was accepted, then a situation could arise where countries which, on the basis of the number of international applications, would have to pay a certain amount might find themselves having to pay a larger amount in order to cover the deficit which, after the payment of the contributions limited by the 20% rule, would remain uncovered.

2551. Mr. BRADERMAN (United States of America) said that whereas the Director of BIRPI was right it was nowhere stated that all deficits would have to be covered immediately and to the extent of 100%. Some of the deficit could be carried over from one year to the next.

2552. Mr. BODENHAUSEN (Director of BIRPI) said that the mere fact that some of the deficit would not be covered would not mean that the distribution would change. The 20% limit would still apply.

2553. Mr. BOWEN (United Kingdom) said that it was true that in the Working Group his Delegation had

not objected to the 20% limit. However, after having heard the arguments in the meeting, it was no longer convinced that the principle on which the 20% limitation was based was right. Consequently, if the question was put to a vote, his Delegation would abstain.

2554. Mr. MAST (Germany (Federal Republic)) said that perhaps the distribution formula could be drawn up so that it could take into account not only the number of incoming but also the number of outgoing applications,

2555. Mr. HADDRICK (Australia) said that the proposal just made by the Delegation of Germany (Federal Republic) had been considered by the Working Group but discarded because it would complicate the system too much. He wished to know whether the Delegation of the United States of America could accept the raising of the limit from 20% to 25%.

2556.1 Mr. BRADERMAN (United States of America) said that the US Congress had put a limit on the percentage the United States could subscribe for the purposes of any intergovernmental organization. If there was no limitation of any kind in the PCT, it would be possible that the limit set by the US Congress would be surpassed, in which case the United States of America would have no other choice but to leave the International Patent Cooperation Union.

2556.2 The proposal to raise the limit from 20% to 25% would be acceptable to his Delegation.

2557. Mr. LAURELLI (Argentina) said that as long as the limit of 20% was not substantially raised his Delegation could not accept it.

2558. Mr. MAST (Germany (Federal Republic)) said that since his Delegation was opposed to the principle of limitation it would oppose any limitation, whether it was 20% or 25%.

2559. Mr. HADDRICK (Australia) said that his Delegation persisted in believing that speaking of "other pertinent factors" would introduce a degree of uncertainty which would make the provision unacceptable. The compromise worked out by the Working Group might not be entirely logical but such things did happen in the case of compromises. He urged the Main Committee to accept it.

2560. Mr. MESSEROTTI-BENVENUTI (Italy) said that he would prefer it if a vote could be taken on the 25% limit because it seemed to him that that would be acceptable to a larger number of countries.

2561. Mr. DAHMOUCHE (Algeria) said that the only written proposal before the Committee was a proposal for a 20% limit and therefore that was the only proposal that could be put to the vote. In a similar situation, in the previous meeting, the Delegation of Portugal had been invited to make an amendment in writing and his oral amendment had not been accepted for voting purposes.

2562. Mr. HADDRICK (Australia) said that there was a difference between the two situations: the amendment presented orally by the Delegation of Portugal was a complicated one and therefore needed

to be put in writing: substituting 25% for 20% was a simple matter, instantly intelligible to everybody, and could therefore be put to the vote without any risk of confusion.

2563. The CHAIRMAN suggested that the vote should be taken first on the 25% limit and then on the 20% limit,

2564. Mr. BRADERMAN (United States of America) said that one should either put the principle of limitation or the proposal of the Working Group for a 20% limit to a vote, but not the proposal for a 25% limit.

2565. Mr. LAURELLI (Argentina) said that the vote should first be taken on the proposal which was furthest removed from the Draft.

2566. *The proposal of the Working Group contained in document PCT/DC/90 concerning the inclusion of a sentence in paragraph (5)(b) reading as follows: "The contribution of any State cannot, however, exceed 20% of the total of all contributions," was rejected by 12 votes against to 5 in favor, with 12 abstentions.*

2567. *The same sentence, providing for a 25% limit was rejected by 11 votes against to 8 in favor, with 9 abstentions.*

2568. The CHAIRMAN said that as to the question whether "other factors" should be mentioned in paragraph (5)(b) or should be expounded and, if so, how, that question should be referred to the Working Group.

2569. Mr. HADDRICK (Australia) said that he thought that it would serve no useful purpose to refer the question to the Working Group since that Group had tried to define "other factors" but had not succeeded. Consequently, the best thing would be to speak only about the number of international applications and not about other factors.

2570. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation continued to believe that the provision should also refer to the economic and financial situation of each State, particularly if the State was a developing country.

2571. Mr. BOWEN (United Kingdom) said that there were so many different factors that one could, and in any given situation should, take into consideration that it was undesirable to try to mention them in the text of the Treaty. The words "due regard" in the Draft would be a sufficient safeguard that factors other than the number of international applications could also be taken into account. It was very difficult to define for the purposes of a legal text which countries were developing and which were not. Since the number of international applications seemed to be the most pertinent factor in any case, specifying that sole factor would be quite sufficient.

2572. Mr. SAVIGNON (France) said that if the text mentioned expressly any factor other than the number of international applications then such other factor would be put on the same footing as the number of international applications. Such a result, however, was undesirable because the most important factor was undoubtedly the number of international

applications. However, the fact that only one factor was expressly mentioned did not exclude taking other factors into account, in a secondary way, since the text did not say that the principle of the number of international applications was the only one to be applied. On the contrary, it said that it was merely a factor to which due regard had to be paid.

2573. Mr. BORGGÅRD (Sweden) said that his Delegation agreed with the views expressed by the Delegations of the United Kingdom and France.

2574. Mr. LULE (Uganda) said that his Delegation was in favor of a flexible formula since one could count on the wisdom of the Assembly in applying it in a just and equitable way.

2575. Mr. CHONA (Zambia) said that if the matter was referred back to the Working Group he wished that Group to consider the participation in any deficit of countries from which no international application would emanate. A maximum should be provided for such countries.

2576. Mr. CHERVIAKOV (Soviet Union) said that the Working Group had already decided to delete the words "and other pertinent factors." If the question was to be reopened, it would have to be prepared by a new Working Group.

2577.1 The CHAIRMAN said that the assignment of the Working Group had been to define "other relevant factors." It had been unable to agree on such a definition and had recommended that the words "and other relevant factors" be deleted.

2577.2 He would therefore proceed to put paragraph (5)(b) to the vote without the last sentence concerning the limitation, which had just been rejected, and without the last words of the first sentence, reading as follows: "and other pertinent factors." It was, of course, to be understood that since the sentence, as it remained, still contained the words "with due regard" the Assembly was free to apply criteria in addition to the criterion of the number of international applications emanating from each State.

2578. *Paragraph (5)(b), reading as follows: "The amount of the contribution of each Contracting State shall be decided by the Assembly with due regard to the number of international applications which has emanated from each of them in the relevant year," was adopted by 26 votes in favor to none against, with 4 abstentions.*

2579. Mr. BOWEN (United Kingdom) asked what the meaning of paragraph (5)(c) was.

2580. The SECRETARY replied that if any financial year closed with a deficit the Assembly could decide to ask that it be covered by contributions. That was what subparagraphs (a) and (b) provided for. However, the Assembly might decide to carry forward the deficit, but it could do so only if some means, other than contributions, were found to cover the deficit provisionally, that is, if there were other sources from which expenses in excess of income could be paid. Such other sources could be a loan from the Swiss Government, an appropriation from the reserve fund, or a withdrawal from the working

capital fund. That was what subparagraph (c) was intended to provide for.

2581. *Paragraph (5)(c) was adopted as appearing in the Draft, on the understanding that its text would be clarified by the Drafting Committee.*

2582. The CHAIRMAN invited comments on the proposal of the Working Group concerning paragraph (7)(b). That provision would read as follows: "The amount of the initial payment of each Contracting State to the said fund or of its participation in the increase thereof shall be decided by the Assembly on the basis of principles similar to those provided for in paragraph (5)(b)." The words "on the basis of principles similar to those provided for in paragraph (5)(b)" constituted a proposal by the Working Group to be added to the Draft.

2583. Mr. COMTE (Switzerland) said that he could not understand the proposal of the Working Group since the principle in paragraph (5)(b) was the principle of the number of international applications, which could obviously not be applied to the constitution of a working capital fund, since the constitution of such a fund would precede the filing of any significant number of international applications.

2584. Mr. BRADERMAN (United States of America) said that his Delegation shared the views of the Delegation of Switzerland.

2585. The SECRETARY said that when the Working Group made the proposal it was of the opinion that the working capital fund was not necessarily to be constituted at the very beginning of the Treaty's existence. It could be constituted two or three years after its entry into force when there was already a significant flow of international applications. In the meantime advances from the Swiss Government could take the place of a working capital fund.

2586. Mr. BRADERMAN (United States of America) said that, since one of the elements contained in the proposal of the Working Group concerning paragraph (5)(b) had been removed from the text by the Main Committee, the same difficulties which had been noted by his Delegation in connection with the removal of the element in that paragraph could also appear in connection with paragraph (7)(b).

2587. *Paragraph (7)(b) was adopted as appearing in the proposal of the Working Group (document PCT/DC/90). (Continued at 2664.)*

In the signed text, Article 59: Disputes (No provision in the Drafts) (Continued from 2529.)

2588. Mr. ALMEIDA (Portugal) said that his Delegation no longer intended to file an amendment to its proposal contained in document PCT/DC/92 and that it withdrew the said proposal.

2589. *The Article on disputes was adopted as appearing in the proposal of the Six Delegations contained in document PCT/DC/86, on the understanding that the Drafting Committee was free to make formal changes, in particular to transfer paragraphs (2) and (3) to the Article on reservations. (Continued at 2669.)*

Rule 84: Expenses of Delegations

2590. Mr. SHER (Israel) said that the Drafting Committee should look into the question of the meaning of the word "delegation." It should be understood that "delegation" meant any delegation participating in any of the organs established by the Treaty and not only delegations in the Assembly.

2591. *Rule 84 was adopted as appearing in the Draft, on the understanding that the observations of the Delegation of Israel would be referred to the Drafting Committee.* (Continued at 2701.)

Rule 85: Absence of Quorum in the Assembly

2592. *Rule 85 was adopted as appearing in the Alternative Draft, without discussion* (Continued at 2703.)

Rule 86: The Gazette

2593. Mr. ALENCAR NETTO (Brazil) said that his Delegation had a proposal contained in document PCT/DC/45 but since it was going to present a new proposal, it wished to reserve the right to revert to Rule 86.

2594. *Rule 86 was adopted as appearing in the Alternative Draft, with the understanding that the Delegation of Brazil may revert to it.* (Continued at 2706.)

Rule 87: Copies of Publications

2595. Mr. SHER (Israel) said that in Rule 87.2(a) as appearing in the Alternative Draft the words "in which it is designated" should be deleted since the sorting out of international applications in which any given country was designated would probably cost more than sending all the international applications to each national Office.

2596. Mr. COMTE (Switzerland) agreed with the proposal of the Delegation of Israel.

2597. Mr. CHAVANNES (Netherlands) said that his Delegation also shared the views of the Delegation of Israel.

2598. Mr. ALMEIDA (Portugal) said that his Delegation agreed with the purpose of the proposal of the Delegation of Israel but considered it to be unnecessary since the Alternative Draft already achieved that purpose.

2599. The CHAIRMAN said that the copies in question were not the copies which were communicated or transmitted under Articles 20 or 22 (those copies were not necessarily the printed publications) but copies of the printed publication.

2600. Mr. CHAVANNES (Netherlands) said that the copies received under Articles 20 or 22 were needed for processing the international application whereas the copies which each country would receive under the Rule under discussion would be for their search files and libraries.

2601. Mr. BOWEN (United Kingdom) said that giving additional copies to the designated States might substantially increase the costs.

2602. Mr. SHER (Israel) said that, as he had stated before, the cost would be higher if a differentiation

had to be made – when the distribution of printed copies was organized – between designated States for the purposes of each international application. That was why it would be more economical to send a copy of each international application to every national Office whether it was designated or not.

2603. Mr. MAST (Germany (Federal Republic)) said that a situation should not be created which would weaken the International Bureau's prospects of receiving national publications in exchange for international applications.

2604. Mr. SHER (Israel) said that even if it was not stated explicitly it was still understood that the Paris Convention required national Offices to give their publications free of charge to each other and to the International Bureau.

2605. *Rule 87 was adopted as appearing in the Alternative Draft except that the words "in which it is not designated" in Rule 87.2(a) were deleted.* (Continued at 2708.)

End of the Eighth Meeting

NINTH MEETING

Friday, June 5, 1970, morning

Rule 88: Amendment of the Regulations
(Continued from 2513.)

2606. *Rule 88.2 and Rule 88.3 (Rule 88.3 and Rule 88.4 in the signed text) were adopted as appearing in the Draft, without discussion.* (Continued at 2711.)

Rule 89: Administrative Instructions

2607. *Rule 89 was adopted as appearing in the Draft, without discussion.* (Continued at 2713.)

Rule 90: Representation

2608. *Rule 90 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 2715.)

Rule 91: Obvious Errors of Transcription

2609. Mr. BOWEN (United Kingdom), referring to the proposal of his Delegation contained in document PCT/DC/26, said that the purpose of the amendment was to provide, in paragraph (d)(ii) and (iii), that the request for rectification must be presented before a certain time limit, namely, during the time when the international application was still in the hands of the International Searching Authority or the International Preliminary Examining Authority.

2610. Mr. BRENNAN (United States of America) said that he was in agreement with the intent of the proposal of the United Kingdom but thought that some redrafting would have to be made since, as it stood, it could be interpreted as providing that no authorization for any rectification would be needed from anybody once the matter was no longer before the said Authorities. That, of course, was not the case.

2611. Mr. COMTE (Switzerland) said that, if the proposal of the Delegation of the United Kingdom

was to be accepted, paragraph (d)(iv) would have to give the International Bureau power to authorize rectification once the time limits provided for in the proposal of the Delegation of the United Kingdom had expired.

2612. Mr. BOWEN (United Kingdom) said that his Delegation shared the views expressed by the Delegation of Switzerland. The International Bureau should be entitled to authorize corrections, for example in the amendment of the claims under Article 19, once the files were no longer with the International Searching or Preliminary Examining Authority.

2613. Mr. BRENNAN (United States of America) said that the extension of the powers of the International Bureau, as suggested by the Delegations of Switzerland and the United Kingdom, might cause some difficulties since the International Bureau would have to pass judgment on questions of substantive patent law, namely, whether an error was an obvious error of transcription or an error in substance.

2614. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of the United Kingdom concerning items (ii) and (iii) was, of course, logical since the Authorities referred to in those provisions could not pass judgment on requests for corrections in applications which were no longer under active consideration by them. On the other hand, as far as item (iv) was concerned, he had doubts whether the International Bureau should be burdened with the responsibility of judging whether a correction offered in the claims, description, or other substantive parts of the application, related to an obvious error of transcription or not.

2615. Mr. BOWEN (United Kingdom) said that his Delegation recognized the difficulty referred to by the Director of BIRPI. One of the solutions would be not to give any opportunity for correction once the application was no longer under active consideration by the said Authorities; the other would be to pass the request for correction filed with the International Bureau to those Authorities for their opinion. Perhaps the best solution would be to deny all possibility of making corrections in any part of the international application, other than the request, once the time limits proposed in the amendment of his Delegation had expired.

2616. Mr. SHER (Israel) expressed the view that, even if the applicant was cut off from any further possibility of making corrections, as suggested by the Delegation of the United Kingdom, no real harm would be done to him because he could always make corrections in the national phase.

2617. Mr. BRENNAN (United States of America) said that he too was of the opinion that, once the time limits indicated in the proposal of the United Kingdom had expired, there should be no further opportunity to correct in the international phase.

2618. Mr. COMTE (Switzerland) said that the description of the time limits in the Rule were necessary because, otherwise, any request for rectification, however late it was presented, would have to be referred to the International Searching

Authority or the International Preliminary Examining Authority.

2619. Mr. BRENNAN (United States of America) said that, subject to drafting, the proposal of the Delegation of the United Kingdom should be accepted.

2620. *The proposal of the Delegation of the United Kingdom concerning paragraph (d)(ii) and (iii) was accepted, on the understanding that the Drafting Committee was free to suggest a different expression of the ideas contained in the said proposal.*

2621. *Subject to the above decision, Rule 91 was adopted as appearing in the Alternative Draft.* (Continued at 2716.)

Rule 92: Correspondence

2622. *Rule 92 was adopted as appearing in the Alternative Draft without discussion.* (Continued at 2719.)

Rule 93: Keeping of Records and Files

2623. *Rule 93 was adopted as appearing in the Alternative Draft without discussion.* (Continued at 2724.)

Rule 94: Furnishing of Copies by the International Bureau and the International Preliminary Examining Authority

2624. Mr. BOWEN (United Kingdom) asked whether there was any reason that the Rule spoke only about the International Bureau and the International Preliminary Examining Authority, and not also about the International Searching Authority.

2625. Mr. BODENHAUSEN (Director of BIRPI) replied that he saw no reason why the International Searching Authority should be mentioned.

2626. Mr. BRENNAN (United States of America) said that there might be good reason for not speaking about the International Searching Authority in the Rule under consideration since it was only the International Bureau and the International Preliminary Examining Authority which would be in possession of the complete file of the international application, including any amendments and corrections.

2627. Mr. BODENHAUSEN (Director of BIRPI) suggested that a decision be deferred.

2628. Mr. BOWEN (United Kingdom) suggested that any reference to the International Preliminary Examining Authority should also be omitted in the Rule under consideration.

2629. *Further discussion on Rule 91 was deferred.* (Continued at 2631.)

Rule 95: Availability of Translations

2630. *Discussion on Rule 95 was deferred.* (Continued at 2633.)

Rule 94: Furnishing of Copies by the International Bureau and the International Preliminary Examining Authority (Continued from 2629.)

2631. Mr. BOGSCH (Secretary General of the Conference) said that the reason for which Rule 94 did

not refer to the International Searching Authority was that that Authority would not necessarily be in possession of the complete file of the international application.

2632. *Rule 91 was adopted as appearing in the Alternative Draft.* (Continued at 2726.)

Rule 95: Availability of Translations (Continued from 2630.)

2633. Mr. BOGSCH (Secretary General of the Conference) said that the Alternative Draft represented a considerable simplification in comparison with the Draft, a simplification which had been suggested in the last Committee of Experts meeting by the Delegation of Switzerland.

2634. *Rule 95 was adopted as appearing in the Alternative Draft.* (Continued at 2727.)

*End of the Ninth Meeting**

TENTH MEETING

Thursday, June 11, 1970, morning

2635. The CHAIRMAN opened the discussion on the report of the Drafting Committee contained in document PCT/DC/108.

Article 50: Assembly (In the signed text, Article 53: Assembly) (Continued from 2188.)

2636. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee.

2637. Mr. COMTE (Switzerland) said that paragraph (1)(a) which reads "The Assembly shall consist of the Contracting States" should refer to paragraph (8) of the Article on finances so as to cover the case of the State on whose territory the Organization had its headquarters and which would be a member of the Assembly even before it became a Contracting State.

2638. *The proposal of the Delegation of Switzerland to refer, in paragraph (1)(a), to paragraph (8) of the Article dealing with finances was adopted.*

2639. *Subject to the above decision, Article 50 was adopted as appearing in document PCT/DC/108.* (Continued at 2731.)

In the signed text, Article 54: Executive Committee (No separate article in the Drafts) (Continued from 2462.)

2640. Mr. BALMARY (France), as Chairman of the Drafting Committee, introduced the text established by his Committee.

2641. Mr. COMTE (Switzerland) said that, if the State on whose territory the Organization had its headquarters was not to be taken into consideration in computing the reeligible two-thirds, paragraph (5)(b) should state so.

2642. The SECRETARY said that the question raised by the Delegation of Switzerland concerned the computation of the two-thirds but did not concern the question of re-election.

2643. Mr. COMTE (Switzerland) did not insist on his proposal.

2644. *The Article on the Executive Committee (50bis in document PCT/DC/108) was adopted as appearing in that document.* (Continued at 2734.)

Article 51: International Bureau (In the signed text, Article 55: International Bureau) (Continued from 2193.)

2645. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the text of the Article on the International Bureau,

2646. *The Article on the International Bureau was adopted as appearing in document PCT/DC/108.*

Article 52: Committee for Technical Cooperation (In the signed text, Article 56: Committee for Technical Cooperation) (Continued from 2265.)

2647. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the Article under discussion.

2648. Mr. BESAROVIĆ (Yugoslavia) recalled that in a previous meeting his Delegation had proposed that paragraph (2)(a) be completed by the following words: "with due regard to an equitable representation and with due regard to the economic development of the various States."

2649. Mr. DAHMOUCHE (Algeria) said that his Delegation too was of the opinion that the proposal of the Delegation of Yugoslavia should be accepted. It should be noted that "equitable" representation did not mean necessarily a mathematically proportionate representation.

2650. Mr. LAURELLI (Argentina) said that his Delegation too was of the opinion that there should be an express reference to an equitable representation of developing countries.

2651. Mr. BRENNAN (United States of America) said that, in view of the fact that by virtue of paragraph (2)(b) International Searching and Preliminary Examining Authorities were *ex officio* members of the Committee for Technical Cooperation, countries whose national Offices acted as such Authorities would already be among the members of the said Committee. Consequently, a reference to an equitable geographical distribution might be desirable.

2652. Mr. ALENCAR NETTO (Brazil) said that his Delegation was in agreement with the observations made by the Delegations of Algeria, Argentina and Yugoslavia.

2653. Mr. SAVIGNON (France) said that it was much more necessary to speak about representation of the developing countries, if their representation was to be achieved on the Committee, than of an equitable geographical distribution, because in every geographical area there were highly developed countries and if they were selected as members, the

* Main Committee II met jointly with Main Committee I in the afternoon of June 10, 1970. The joint meeting is reported on as the 25th meeting of Main Committee I.

Committee would have a geographically equitable distribution and still not have sufficient members among developing countries. Consequently, it would be better not to speak about geographical distribution, but directly state that developing countries should have an equitable representation.

2654. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation agreed with the suggestion of the Delegation of France.

2655. Mr. DAHMOUCHE (Algeria) said that his Delegation too agreed with the proposal of the Delegation of France.

2656. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation preferred the original proposal of the Delegation of Yugoslavia.

2657. Mr. BORGGÅRD (Sweden) said that his Delegation favored the proposal of the Delegation of France.

2658. *The proposal to add the following words to paragraph (2)(a): "with due regard to an equitable representation of developing countries" was accepted by 23 votes in favor to 2 against, with 5 abstentions.*

2659. Mr. PHAF (Netherlands) said that some reference to paragraph (5) should be made in paragraph (6)(a). For example, paragraph (6)(a) could be introduced by the words: "In any case."

2660. *The proposal to add the words "In any case" at the beginning of paragraph (6)(a) was adopted.*

2661. Mr. BOWEN (United Kingdom) asked that the Drafting Committee look into the question whether paragraph (3)(i) needed any coordination with the provisions of the new Chapter concerning information services.

2662. *The proposal of the Delegation of the United Kingdom was adopted.*

2663. *Subject to the decisions recorded above, the Article on the Committee for Technical Cooperation was adopted as appearing in document PCT/DC/108. (Continued at 2736.)*

Article 53: Finances (In the signed text, Article 57: Finances) (Continued from 2587.)

2664. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the Article under consideration.

2665. Mr. NORDSTRAND (Norway) said that the Drafting Committee should look into the question whether any reference should be made in the Article under discussion to the last Article of the new Chapter on information services, an Article which also dealt with financial questions.

2666. *The Committee decided to refer the request of the Delegation of Norway to the Drafting Committee.*

2667. *Subject to the above understanding, the Article on finances was adopted as appearing in document PCT/DC/108.*

Article 54: Regulations (In the signed text, Article 58: Regulations) (Continued from 2324.)

2668. *The Article on the Regulations was adopted as appearing in document PCT/DC/108, without discussion.*

In the signed text, Article 59: Disputes (No provision in the Drafts) (Continued from 2589.)

2669. Mr. BALMARY (France), as Chairman of the Drafting Committee, said that the provisions on the possibility of making reservations in respect of the Article under discussion would appear in the Article on reservations.

2670. *The article on disputes was adopted as appearing in document PCT/DC/108, without discussion.*

Article 55: Revision of the Treaty (In the signed text, Article 60: Revision of the Treaty) (Continued from 2141.)

2671. *The Article on revision of the Treaty was adopted as appearing in document PCT/DC/108, without discussion.*

Article 56: Amendment of Certain Provisions of the Treaty (In the signed text, Article 61: Amendment of Certain Provisions of the Treaty) (Continued from 2151.)

2672. *The Article on the amendment of certain provisions of the Treaty was adopted as appearing in document PCT/DC/108, without discussion.*

Article 57: Becoming Party to the Treaty (In the signed text, Article 62: Becoming Party to the Treaty) (Continued from 2323.)

2673.1 Mr. DAHMOUCHE (Algeria) said that his Delegation saw no good reason for paragraph (3), which referred to the so-called territorial clause of the Stockholm Act of the Paris Convention. That Article amounted to the recognition of the colonial system. His Government had not accepted the Stockholm Act of the Paris Convention and did not desire to become bound by it as far as the PCT was concerned.

2673.2 For those reasons, paragraph (3) should be omitted.

2674. The CHAIRMAN said that since paragraph (3) had already been adopted by the Main Committee there was no place in that Committee to rediscuss the question since the Main Committee was at that time concerned only with the question whether the Drafting Committee had correctly implemented the former's decisions. However, any Delegation could raise the question of substance in the Plenary of the Conference.

2675. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation agreed with the proposal of the Delegation of Algeria to the effect that paragraph (3) should be omitted.

2676. Mr. ARTEMIEV (Soviet Union) said that when ratifying the Stockholm Act his country had expressly objected to Article 24 of that Act. For the same reasons as those which had prompted that objection and which had been explained by the Delegations of Algeria and Yugoslavia, the Delegation

of the Soviet Union also supported the proposal that paragraph (3) should be omitted.

2677. Mr. AKPONOR (Zambia) said that his Delegation too supported the proposal of the Delegations of Algeria and Yugoslavia.

2678. Mr. LULE (Uganda) asked what the position of a country which had not accepted the Stockholm Act of the Paris Convention would be in respect of the paragraph under discussion.

2679. Mr. BOGSCH (Secretary General of the Conference) said that, as the Director of BIRPI had explained in an earlier meeting, there was no legal difficulty in that respect.

2680. Mrs. MATLASZEK (Poland) said that her Delegation also supported the views expressed by the Delegation of Algeria.

2681. Mr. ALENCAR NETTO (Brazil) wished the reservation of his Delegation in respect of paragraph (3) to be recorded. The more so as his country had not accepted the Stockholm Act of the Paris Convention.

2682. Mr. LAURELLI (Argentina) said that his Delegation also associated itself with the views expressed by the Delegation of Algeria and other delegations sharing that view.

2683. *The Article on becoming party to the Treaty was adopted as appearing in document PCT/DC/108. (Continued at 2729.)*

Article 58: Entry into Force of the Treaty and Article 59: Effective Date of the Treaty for States Not Covered by Article 58 (In the signed text, Article 63: Entry Into Force of the Treaty) (Continued from 2509 and 2389, respectively.)

2684. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the Article under discussion.

2685. Mr. BRENNAN (United States of America) asked whether the objective of paragraph (1)(b) was to exclude utility models from being taken into account when the statistical requirements entered into consideration.

2686. The CHAIRMAN replied that that was precisely the intention of paragraph (1)(b).

2687. Mr. BOWEN (United Kingdom) asked whether it was also the intention to exclude patents of addition.

2688. Mr. MAST (Germany (Federal Republic)) said that patents of addition should not be excluded.

2689. *On the above understanding, the Article on the entry into force of the Treaty was adopted as appearing in document PCT/DC/108. (Continued at 2738.)*

Article 60: Reservations (In the signed text, Article 64: Reservations) (Continued from 1620 and 2409.)

2690. *The Article on reservations was adopted as appearing in document PCT/DC/108, without discussion. (Continued at 2740.)*

Article 61: Gradual Application (In the signed text, Article 65: Gradual Application) (Continued from 2413.)

2691. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the said Article.

2692. *The Article on gradual application was adopted as appearing in document PCT/DC/108, without discussion.*

Article 62: Denunciation (In the signed text, Article 66: Denunciation) (Continued from 2414.)

2693. *The Article on denunciation was adopted as appearing in document PCT/DC/108, without discussion.*

Article 63: Signature and Languages (In the signed text, Article 67: Signature and Languages) (Continued from 2435.)

2694. *The Article on signature and languages was adopted as appearing in document PCT/DC/108, without discussion.*

Article 64: Depositary Functions (In the signed text, Article 68: Depositary Functions) (Continued from 2447.)

2695. *The Article on depositary functions was adopted as appearing in document PCT/DC/108, without discussion.*

Article 65: Notifications (In the signed text, Article 69: Notifications) (Continued from 2450.)

2696. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the said Article.

2697. Mr. SHER (Israel) said that the reference to notifications under Article 32 should be added.

2698. *It was agreed that the Drafting Committee would look into the proposal of the Delegation of Israel.*

2699. *Subject to the above understanding, the Article on notifications was adopted as appearing in document PCT/DC/108. (Continued at 2742.)*

End of the Tenth Meeting

ELEVENTH MEETING

Thursday, June 11, 1970, afternoon

2700. The CHAIRMAN said that the consideration of the text proposed by the Drafting Committee in document PCT/DC/108 would continue.

Rule 84: Expenses of Delegations (Continued from 2591.)

2701. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee.

2702. *Rule 84 was adopted as appearing in document PCT/DC/108.*

Rule 85: Absence of Quorum in the Assembly (Continued from 2592.)

2703. Mr. ALMEIDA (Brazil) said that the title of Rule 85.1 should be "Consultation by Correspondence," as in the Draft, rather than "Voting by Correspondence" since the written replies of the States might also contain comments and express abstentions.

2704. The SECRETARY said that, naturally, each State could make comments and could abstain. However, what was important was that there should be a clear expression of position which required a "yes" or a "no," in other words, a vote.

2705. *Rule 85 was adopted as appearing in document PCT/DC/108.*

Rule 86: The Gazette (Continued from 2594.)

2706. Mr. ALENCAR NETTO (Brazil) said that his Delegation intended to introduce an amendment and asked for the right to do so later.

2707. *Subject to the possibility of reopening the discussion in the light of any later proposal by the Delegation of Brazil, Rule 86 was adopted as appearing in document PCT/DC/108.* (Continued at 2728.)

Rule 87: Copies of Publications (Continued from 2605.)

2708. Mr. BALMARY (France), as Chairman of the Drafting Committee, said that the words "in which it is not designated" in Rule 87.2(a) had been maintained since it appeared to the Drafting Committee that, without them, there would be an undesirable duplication in respect of designated Offices.

2709. Mr. COMTE (Switzerland) said that his impression was that the Main Committee was rather of the opinion that the said words should be deleted since designated Offices needed several copies of the same application. The copies received under Articles 13, 20 or 22 were needed in connection with the processing of the international application, whereas the copies which would be received under the Rule under discussion would go into the search files and other collections of the national Offices.

2710. *Subject to deleting the words "in which it is not designated" in Rule 87.2(a), Rule 87 was adopted as appearing in document PCT/DC/108.* (Continued at 2744.)

Rule 88: Amendment of the Regulations (Continued from 2606.)

2711. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made in the Rule under consideration.

2712. *Rule 88 was adopted as appearing in document PCT/DC/108.*

Rule 89: Administrative Instructions (Continued from 2607.)

2713. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made in the Rule under consideration.

2714. *Rule 89 was adopted as appearing in document PCT/DC/108.*

Rule 90: Representation (Continued from 2608.)

2715. *Rule 90 was adopted as appearing in document PCT/DC/108.*

Rule 91: Obvious Errors of Transcription (Continued from 2621.)

2716. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made in the Rule under consideration.

2717. Mr. BOWEN (United Kingdom) suggested that the words "or the making of a declaration under Article 34(4)(a)" be added at the end of Rule 91.1(g)(iii).

2718. *Subject to consideration of the proposal of the Delegation of the United Kingdom by the Drafting Committee, Rule 91 was adopted as appearing in document PCT/DC/108.* (Continued at 2746.)

Rule 92: Correspondence (Continued from 2622.)

2719. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made in the Rule under consideration.

2720. Mr. ASHER (Canada) asked whether the last sentence of Rule 92.1(a) ("The letter shall be signed by the applicant.") could be interpreted as meaning that the agent of the applicant could sign instead of the applicant.

2721. The SECRETARY, referring to Rule 90.2(a), replied in the affirmative.

2722. Mr. BRENNAN (United States of America) said that paragraph 92.2(d) should be replaced by the text appearing in document PCT/DC/12, since it contained a simple clerical error.

2723. *Subject to the correction of the error in question, Rule 92 was adopted as appearing in document PCT/DC/108.* (Continued at 2748.)

Rule 93: Keeping of Records and Files (Continued from 2623.)

2724. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made in the Rule under consideration.

2725. *Rule 93 was adopted as appearing in document PCT/DC/108.*

Rule 94: Furnishing of Copies by the International Bureau and the International Preliminary Examining Authority (Continued from 2632.)

2726. *Rule 94 was adopted as appearing in document PCT/DC/108.*

Rule 95: Availability of Translations (Continued from 2634.)

2727. *Rule 95 was adopted as appearing in document PCT/DC/108.*

Rule 86: The Gazette (Continued from 2707.)

2728. Mr. ALENCAR NETTO (Brazil) said that his Delegation withdrew its proposals contained in documents PCT/DC/45 and PCT/DC/110.

Article 57: Becoming Party to the Treaty (In the signed text, Article 62: Becoming Party to the Treaty) (Continued from 2683.)

2729.1 Mr. DAHMOUCHE (Algeria) said that his Delegation did not intend to reopen discussion on the Article but wished to inform the Main Committee that it had prepared a document (PCT/DC/111) in which it proposed three solutions to the problem of the so-called territorial clause.

2729.2 Alternative I would consist in deleting paragraph (3); Alternative II would consist in making it possible for any State to exclude the application of paragraph (3) by a reservation; Alternative III would consist in adding a new paragraph (paragraph (4)) to the Article under consideration, reading as follows: "However, paragraph (3) of this Article shall not entail for any State party to this Treaty the recognition or tacit acceptance of any legal implications that might arise from such declarations or notifications."

2729.3 After further reflection and an exchange of views with others, it had appeared that Alternative I was not acceptable to a number of delegations. Consequently, Alternative I was withdrawn.

2729.4 If Alternative II were adopted, then full satisfaction would be given both to those countries which wished to have a territorial clause and those which did not wish to have one.

2729.5 Alternative III would also appear to be capable of giving satisfaction to all States. Those wishing to have a territorial clause would be satisfied because paragraph (3) would be maintained. Those, however, which were of the opinion that no country could lawfully claim to have any sovereignty over the so-called territories could safeguard their position of principle because they would expressly reserve their opinion by virtue of paragraph (4).

2730. The CHAIRMAN suggested that the question whether discussions should be reopened on the Article under consideration, and whether the proposal of the Delegation of Algeria should be considered, should be reserved for a subsequent meeting of the Main Committee so as to allow delegations to reflect further on the matter. (Continued at 2750.)

Article 50: Assembly (In the signed text, Article 53: Assembly) (Continued from 2639.)

2731. The CHAIRMAN said that during the recess the Secretariat had noted the changes still to be made in the Articles and Rules discussed earlier and that those changes would now be presented to the Main Committee.

2732. The SECRETARY said that the words "subject to Article 53(8)" should be inserted in paragraph (1)(a).

2733. *The said change was adopted.*

Article 50: Assembly (In the signed text, Article 54: Executive Committee) (Continued from 2644.)

2734. The SECRETARY said that paragraph (2)(a) should start with the words: "The Executive Committee shall, subject to Article 53(8), consist of ..."

2735. *The said change was adopted.*

Article 52: Committee for Technical Cooperation (In the signed text, Article 56: Committee for Technical Cooperation) (Continued from 2663.)

2736.1 The SECRETARY said that paragraph (2)(a) should be completed by the following words: "with due regard to an equitable representation of developing countries."

2736.2 Furthermore, paragraph (6)(a) should start with the words: "In any case."

2736.3 Finally, in paragraph (6)(b), the word "the" should be deleted in the expression "with the appropriate comments."

2737. *The said changes were adopted.*

Article 58: Entry into Force of the Treaty (In the signed text, Article 63: Entry into Force of the Treaty) (Continued from 2689.)

2738. The SECRETARY said that the words "for patents' inventors' certificates and utility certificates" appearing in paragraph (1)(a)(i), (ii) and (iii) should be deleted.

2739. *The said changes were adopted.*

Article 60: Reservations (In the signed text, Article 64: Reservations) (Continued from 2690.)

2740. The SECRETARY said that in paragraph (4)(a) the words "for the Protection of Industrial Property" should be added after the words "Paris Convention."

2741. *The said change was adopted.*

Article 65: Notifications (In the signed text, Article 69 Notifications) (Continued from 2699.)

2742. The SECRETARY said that a new item (item (vii)) should be added to the end of the Article, reading as follows "any declarations made under Article 31(4)."

2743. *The said change was adopted.*

Rule 87: Copies of Publications (Continued from 2710.)

2744. The SECRETARY said that in Rule 87.2(a) the words "in which it is not designated" should be deleted.

2745. *The said change was adopted.*

Rule 91: Obvious Errors of Transcription (Continued from 2718.)

2746. The SECRETARY said that Rule 91.1(e)(ii) should read as follows: "of the International Searching Authority if the error is in any part of the international application other than the request or in any paper submitted to that Authority."

2747. *The said change was adopted.*

Rule 92: Correspondence (Continued from 2723.)

2748. The SECRETARY said that Rule 92.2(d) should read as follows: "Any letter from the applicant to the International Bureau shall be in English or French."

2749. *The said change was adopted.*

End of the Eleventh Meeting

TWELFTH MEETING

Friday, June 12, 1970, afternoon

Article 57: Becoming Party to the Treaty (In the signed text, Article 62: Becoming Party to the Treaty) (Continued from 2730.)

2750. The CHAIRMAN said that the preliminary question before the Main Committee was whether discussion should be reopened on the Article under consideration on the basis of the proposal of the Delegation of Algeria contained in document PCT/DC/111.

2751. *It was decided to reopen discussion on Article 57.*

2752.1 Mr. DAHMOUCHE (Algeria) said that in the light of the discussions which his Delegation had had with other delegations, it would seem that Alternative III, as contained in document PCT/DC/111, would be preferable to Alternative II. Alternative III would have to undergo some changes as to form but not as to substance.

2752.2 In any case, Alternative I was withdrawn.

2753. Mr. ALENCAR NETTO (Brazil) said that his Delegation supported Alternative III.

2754. Mr. LABRY (France) said that the wording of Alternative III did not seem to correspond exactly to the intent of the Delegation of Algeria. It referred to the recognition of "legal implications that might arise from" declarations made under paragraph (3). The new paragraph should speak about the factual situation concerning any given country or territory and should provide that any Contracting State could understand paragraph (3) as not implying the recognition or tacit acceptance by it of such factual situation.

2755. Mr. DAHMOUCHE (Algeria) said that the Delegation of France had correctly interpreted the intent of the proposal of the Delegation of Algeria.

2756. Mr. BRADERMAN (United States of America) asked what the impact of the proposal under discussion would be on an international application which would be filed by a resident of Hong Kong and in which Algeria would be designated.

2757. Mr. DAHMOUCHE (Algeria) replied that the question was of a practical nature and that the proposal of the Delegation of Algeria was not intended to deal with practical questions. What the proposal of his Delegation aimed at was to ensure that any declaration made under paragraph (3) by any country should not be capable of being interpreted as having the approval of the Government of Algeria.

2758. Mr. LABRY (France) said that his Delegation favored the inclusion of a new paragraph along the lines previously mentioned by it.

2759.1 Mr. ARTEMIEV (Soviet Union) said that his Delegation would have preferred Alternative I, that is, the deletion of paragraph (3), and regretted that that Alternative had been withdrawn.

2759.2 Under the circumstances, his Delegation could accept a new paragraph and proposed that it be drafted as follows: "However, the declaration of notification made under Article 24 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property cannot be understood as recognition or tacit acceptance by any other Contracting State of the legal *status quo* concerning the territory mentioned in such declaration or notification."

2760. The CHAIRMAN said that there were now three different wordings for a new paragraph before the Main Committee, namely, that proposed by the Delegation of Algeria, that proposed by the Delegation of France, and that proposed by the Delegation of the Soviet Union. Perhaps a working group should be set up to establish an agreed text.

2761. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation did not see the need for a working group. The proposal of the Delegation of the Soviet Union seemed to be the best among the three.

2762. Mr. PHAF (Netherlands) said that the new paragraph proposed by the Delegation of the Soviet Union should speak about declarations made under paragraph (3) rather than declarations made under the Paris Convention.

2763. Mr. LABRY (France) said that the observations of the Delegation of the Netherlands were pertinent and thus could be used to modify the proposal of the Delegation of the Soviet Union.

2764. Mr. BOWEN (United Kingdom) said that his Delegation would have preferred no addition whatsoever to paragraph (3). However, among all the proposals made, that of the Delegation of the Soviet Union seemed to be the least objectionable. In any case, his Delegation needed some more time to consider it.

2765. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation would prefer that the proposal of the Delegation of the Soviet Union be accepted. If that proposal was not accepted, his Delegation would support the proposal of the Delegation of Algeria.

2766. Mr. BOGSCH (Secretary General of the Conference) said that, in view of the importance of the issue under discussion, it would seem to be preferable not to press for an immediate decision but to give some time to the interested delegations to work out together an agreed text.

2767. Mr. DAHMOUCHE (Algeria) said that since the principle behind the three proposals was the same and was generally accepted, it would be more correct to speak about the setting up of a drafting group rather than a working group. The group would simply have the task of finding a clear wording for the principle, which seemed to encounter no objection.

2768. The CHAIRMAN said that he would ask the Secretary General to make a proposal after

consultation with the Delegations of Algeria, France, the United Kingdom, and the Soviet Union.

2769. *The procedure suggested by the Chairman was adopted.* (Continued at 2770.)

End of the Twelfth Meeting

THIRTEENTH MEETING

Monday, June 15, 1970, afternoon

Article 57: Becoming Party to the Treaty (In the signed text, Article 62: Becoming Party to the Treaty) (Continued from 2769.)

2770.1 The CHAIRMAN introduced document PCT/DC/118, which contained the report of the Drafting Group composed of the Delegations of Algeria, France, the Soviet Union, and the United Kingdom.

2770.2 The Drafting Group suggested that paragraph (4) should read as follows: "Paragraph (3) shall in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Treaty is made applicable by another Contracting State by virtue of the said paragraph."

2770.3 As was stated in the report of the Drafting Group, the Delegation of the United Kingdom reserved its position on the substance of the proposed text.

2771. Mr. ARMITAGE (United Kingdom) said that his Government did not welcome the sort of provision which paragraph (4) would constitute in a Treaty. Paragraph (3) was in the Treaty for purely practical purposes to facilitate acceptance of the Treaty and the operation of the Treaty in different territories. Paragraph (4), on the other hand, was declaratory rather than functional. However, since it seemed to be

in some way a counterweight to paragraph (3), and although his Government would prefer it if paragraph (4) were not included in the Treaty, it would not oppose its inclusion if it was the general consensus of the Main Committee that paragraph (4) should be in the Treaty.

2772. Mr. DAHMOUCHE (Algeria) said that his Delegation appreciated the conciliatory attitude of the Delegation of the United Kingdom.

2773. Mr. CHERVIAKOV (Soviet Union) said that his Delegation was most displeased that paragraph (3) had been included. However, as a sign of his Delegation's willingness to participate in a compromise solution, it could accept the maintenance of paragraph (3) provided that paragraph (4), as proposed by the Drafting Group, was included. The latter paragraph explained the position both of the Delegation of the Soviet Union and of the delegations of many other States which objected, and continued to object, to colonial clauses in treaties and especially in a new treaty.

2774. Mr. BRADERMAN (United States of America) said that his Delegation also recognized the difference of opinion which existed on the subject under consideration and on the question how it should be handled in the Treaty. It was of the opinion that the compromise solution reached would meet the needs of all concerned.

2775. *Paragraph (4) was adopted as appearing in document PCT/DC/118.*

Closing of the Work of the Main Committee

2776. The CHAIRMAN declared that the Main Committee had completed its work and closed its meetings.

End of the Thirteenth Meeting

End of the Deliberations of Main Committee II

