

Convention relating to the distribution of program-carrying signals transmitted by satellite. Done at Brussels May 21, 1974, entered into force August 25, 1979, for the United States March 7, 1985
TIAS 11078

Parties

Armenia	Germany,	Morocco	Slovenia
Australia	Fed Rep	Nicaragua	Switzerland
Austria	Greece	Panama	Tajikistan
Bosnia-	Italy	Peru	USSR
Herzegovina	Kenya	Portugal	United States
Croatia	Mexico	Russian Fed	Yugoslavia

INTERNATIONAL CONFERENCE OF STATES ON THE DISTRIBUTION OF PROGRAMME
CARRYING SIGNALS TRANSMITTED BY SATELLITE: CONVENTION RELATING
TO THE DISTRIBUTION OF PROGRAMME-CARRYING SIGNALS TRANSMITTED BY SATELLITE*
[Done at Brussels, May 21, 1974]

REPORT
ON THE
INTERNATIONAL CONFERENCE OF STATES
ON THE DISTRIBUTION OF
PROGRAMME-CARRYING SIGNALS
TRANSMITTED BY SATELLITE

BRUSSELS, BELGIUM

MAY 6-21, 1974

BACKGROUND

The advent of communications satellites has greatly increased the size of geographic areas that can be served by television broadcasts. So broad are the expanses of territory that can be covered by satellite transmissions that several countries can be included, involving different copyright laws and practices.

Technically, it is relatively easy to receive a signal from a satellite and to rebroadcast it using terrestrial distribution systems. Any unauthorized rebroadcasting, however, violates the rights of broadcasters, performers, and copyright owners.

Normally, television broadcasts are made on the basis of contracts under which broadcasters agree to pay a fee to show particular works in specified geographic areas. The fee is directly related to the size of the area covered by the broadcast. It follows that if broadcasters are unable to specify the area of distribution, the owners of rights in the material transmitted may either prohibit the use of the material or charge an additional fee for the entire area of potential use. The broadcasting organization, in turn, will either have to pay the additional fee or, if the fee is considered too high—a strong possibility where the potential geographical area is large—abandon the broadcast. Relationships between broadcasters and owners of rights are thereby complicated. Even more to the point, either a high additional fee or the abandonment of the broadcast would defeat the very purpose of using satellites, namely, a cheaper and more effective means of communication.

While there have been some instances of poaching, notably transmission of sporting events, the problem to date has not been severe for several reasons. First, copyrighted materials of the traditional sort, such as films, plays and musical compositions have been used sparingly in intercontinental television transmissions. Moreover, the relatively

*[Reproduced from U.S. House of Representatives, Committee on Science and Astronautics, 93d Congress, 2d Session, Committee Print, Serial U, July 1974.]

[The Convention will remain open for signature until March 31, 1975. On May 21, 1974, the Convention was signed by representatives of the following States: Belgium, Brazil, Cyprus, Federal Republic of Germany, Israel, Italy, Ivory Coast, Kenya, Lebanon, Mexico, Morocco, Senegal, Spain, Switzerland, and the United States. As of October 25, 1974, no instruments of ratification had been deposited with the Secretary-General of the United Nations.]

[The Final Act of the Conference appears at page 1446; the text of the Convention at page 1447; and the Report of the General Rapporteur at page 1449.]

few ground stations in existence are owned and operated by government agencies or responsible broadcast companies under government regulation. As time passes, however, it can reasonably be expected that more and more copyrighted materials of the traditional sort will be transmitted via satellite. It is also reasonable to anticipate that the costs of erecting ground stations will continue to decrease and that there will be a corresponding increase in their numbers, in countries all around the globe. The opportunity and inclination to engage in poaching will, presumably, increase. In the absence of some international agreement, poaching of satellite signals could become a very difficult problem in the future.

Despite the fact that poaching of satellite signals has not been widespread thus far, there has been strong feeling in certain international organizations that some attempt should be made to reach agreement on measures designed to anticipate future problems before they develop to an acute stage. Accordingly, an international meeting of experts was scheduled to occur in April 1971 in Lausanne, Switzerland for the purpose of studying problems raised by transmissions through satellites in the field of copyright and of the protection of the rights of performers, producers of phonograph records, and broadcasting organizations.

The Lausanne Conference addressed the question whether the need for protection of television signals transmitted through communications satellites would require modification of existing conventions or the preparation of a new international instrument. The Lausanne Conference concluded that a new agreement was desirable, prepared a draft convention, and recommended a second committee of experts be organized to give the matter further study.

About one year later, in May 1972, a second meeting was held in Paris, France. This conference undertook to refine the earlier draft (called the Lausanne Text) and adopted a resolution recommending a third meeting of experts.

In July 1973, a third conference was convened in Nairobi, Kenya which refined the Paris Text and recommended that a diplomatic conference be held in 1974 for the purpose of "concluding an international convention on the subject." Accordingly, the Brussels Conference, sponsored jointly by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO), convened in order to consider the Nairobi Text on May 6, 1974.

THE BRUSSELS CONFERENCE

The Brussels Conference, officially known as the International Conference of States on the Distribution of Programme-Carrying Signals Transmitted by Satellite, convened in Brussels, Belgium on May 6, 1974, and concluded May 21, 1974. Speeches, discussions, and debates were conducted in one of four official languages—English, French, Russian, and Spanish—and simultaneously translated.

Fifty-seven States sent delegations to the Conference, forty-seven as voting participants and ten as observers. The Conference was also attended by observers from five intergovernmental organizations and observers from seventeen international non-governmental organizations.

Delegations from the following States participated in the Brussels Conference: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Central African Republic, Cyprus, Czechoslovakia, Denmark, Ecuador, Arab Republic of Egypt, Finland, France, Federal Republic of Germany, German Democratic Republic, Ghana, Guatemala, Hungary, Iran, Iraq, Israel, Italy, Ivory Coast, Japan, Kenya, Lebanon, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Norway, Senegal, Spain, Sweden, Switzerland, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom, United States of America, Yugoslavia.

Representatives of the following ten States registered as observers: Bangladesh, Bulgaria, Colombia, Holy See, Poland, Romania, San Marino, Turkey, Republic of Viet-Nam, Zaïre.

The United States Delegation to the Brussels Conference was ably led by Mr. Harvey J. Winter, Director of the Office of Business Practices, Bureau of Economics and Business Affairs, U.S. Department of State, and by Ms. Barbara Ringer, Register of Copyrights, Library of Congress. Both Mr. Winter and Ms. Ringer were effective spokesmen for the U.S. position on the various procedural and substantive issues discussed and debated during the course of the conference. In addition, Ms. Ringer was honored by her fellow delegates by her election as Rapporteur General, a key position at the conference. A draft of her report is included elsewhere in this report.

A number of substantive and procedural issues were considered by the conference which, in each case, were satisfactorily resolved from the standpoint of American policy. Particularly noteworthy were the repeated attempts by the Soviet Union to amend the text of the convention, as well as its preamble, so as to provide for governmental control over program content of signals transmitted by satellite. Such proposals could only be construed as the equivalent of a requirement of government censorship of program materials, a practice which would be in clear conflict with the U.S. Constitution as well as philosophically repugnant to the American people.

The U.S. Delegation took the lead in opposing all such proposed Soviet amendments to the body of the convention and its preamble. Arguments advanced in opposition to those proposals were based on several grounds. First, the Soviet proposals dealt with matters outside the scope and purpose of the treaty, and were beyond the mandate and competence of the conference. It was noted that neither the Soviet Delegation, nor any other delegation, had raised any such matter at the Nairobi preparatory meeting, and that the Nairobi draft convention under consideration by the Brussels Conference dealt only with signals transmitted via satellite and not with program content. Moreover, to take up such proposals would be inappropriate since these matters were being considered contemporaneously by the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space. Finally, it was noted that a decision had been taken earlier in the conference to exclude consideration of direct broadcast satellites from the convention.

An overwhelming majority of the delegations attending the Brussels Conference supported the American position and opposed the proposals of the Soviet Delegation. The Conference did, however, approve a letter from the president of the Conference to the Secretary-General of the United Nations enclosing the verbatim records of the conference related to this subject for the information of the Committee on the Peaceful Uses of Outer Space. A copy of this draft letter is included elsewhere in this report.

At the conclusion of the Brussels Conference on May 21, 1974, the convention was signed by representatives of the following fifteen participating nations: Belgium, Brazil, Cyprus, Federal Republic of Germany, Israel, Italy, Ivory Coast, Kenya, Lebanon, Mexico, Morocco, Senegal, Spain, Switzerland, and the United States. It should be noted that not all participating delegations were authorized by their governments to sign the convention at the conclusion of the conference. The convention will remain open for signature by other states until the end of March 1975. It is anticipated that perhaps as many as fifteen additional states will have signed the convention by that time. It is further expected that many non-signatory nations will embrace the terms of the convention.

The key phrase in the convention is found in the first sentence of Article II, Paragraph 1 which reads as follows: "Each contracting state undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended." Thus, the essence of the convention is that a contracting state simply agrees to undertake to prevent, by methods it deems satisfactory, any ground station on its territory from picking up and redistributing signals received from satellites without authority.

The entire text of the convention is set forth elsewhere in this report.

FINAL ACT OF THE INTERNATIONAL CONFERENCE OF STATES ON THE DISTRIBUTION OF PROGRAMME-CARRYING SIGNALS TRANSMITTED BY SATELLITE

The International Conference of States on the Distribution of Programme-Carrying Signals Transmitted by Satellite, convened jointly by the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization.

Was held at Brussels on the invitation of the Belgian Government, from May 6 to 21, 1974, under the Chairmanship of Mr. Gérard de San (Belgium)

The principal bodies established by the Conference were a Main Commission, chaired by Mr. João Frank da Costa (Brazil), a Drafting Committee, chaired by Mrs. Elisabeth Steup (Federal Republic of Germany) and a Credentials Committee, chaired by Mr. N'Déné N'Diaye (Senegal).

The Conference held discussions on the basis of the Draft Convention drawn up by the Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission via Space Satellites held at Nairobi (Kenya) from July 2 to 11, 1973.

The Conference established the text of the Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite as well as a report on its work, drafted by its General Rapporteur, Ms. Barbara Ringer (United States of America).

The text of the Convention, established in the English, French, Russian and Spanish languages, the four versions being equally authentic, is attached to the present Act. Official texts of the Convention will be established in the Arabic, Dutch, German, Italian and Portuguese languages.

IN WITNESS WHEREOF, the undersigned, Delegates of the States invited to the Conference, have signed this Final Act.

DONE at Brussels, at the Palais d'Egmont, this twenty-first day of May 1974, in the English, French, Russian and Spanish languages, the original to be deposited in the archives of the United Nations.

CONVENTION RELATING TO THE DISTRIBUTION OF PROGRAMME-CARRYING SIGNALS TRANSMITTED BY SATELLITE

The Contracting States.

Aware that the use of satellites for the distribution of programme-carrying signals is rapidly growing both in volume and geographical coverage,

Concerned that there is no world-wide system to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors, and that this lack is likely to hamper the use of satellite communications;

Recognizing, in this respect, the importance of the interests of authors, performers, producers of phonograms and broadcasting organizations;

Convinced that an international system should be established under which measures would be provided to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors.

Conscious of the need not to impair in any way international agreements already in force, including the International Telecommunication Convention and the Radio Regulations annexed to that Convention, and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers, producers of phonograms and broadcasting organizations,

Have agreed as follows:

ARTICLE 1

For the purposes of this Convention.

(i) "signal" is an electronically-generated carrier capable of transmitting programmes,

(ii) "programme" is a body of live or recorded material consisting of images, sounds or both, embodied in signals emitted for the purpose of ultimate distribution;

(iii) "satellite" is any device in extraterrestrial space capable of transmitting signals;

(iv) "emitted signal" or "signal emitted" is any programme-carrying signal that goes to or passes through a satellite,

(v) "derived signal" is a signal obtained by modifying the technical characteristics of the emitted signal, whether or not there have been one or more intervening fixations;

(vi) "originating organization" is the person or legal entity that decides what programme the emitted signals will carry;

(vii) "distributor" is the person or legal entity that decides that the transmission of the derived signals to the general public or any section thereof should take place;

(viii) "distribution" is the operation by which a distributor transmits derived signals to the general public or any section thereof

ARTICLE 2

(1) Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended. This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal.

(2) In any Contracting State in which the application of the measures referred to in paragraph (1) is limited in time, the duration thereof shall be fixed by its domestic law. The Secretary-General of the United Nations shall be notified in writing of such duration at the time of ratification, acceptance or accession, or if the domestic law comes into force or is changed thereafter, within six months of the coming into force of that law or of its modification.

(3) The obligation provided for in paragraph (1) shall not apply to the distribution of derived signals taken from signals which have already been distributed by a distributor for whom the emitted signals were intended

ARTICLE 3

This Convention shall not apply where the signals emitted by or on behalf of the originating organization are intended for direct reception from the satellite by the general public.

ARTICLE 4

No Contracting State shall be required to apply the measures referred to in Article 2(1) where the signal distributed on its territory by a distributor for whom the emitted signal is not intended

(i) carries short excerpts of the programme carried by the emitted signal, consisting of reports of current events, but only to the extent justified by the informative purpose of such excerpts, or

(ii) carries, as quotations, short excerpts of the programme carried by the emitted signal, provided that such quotations are compatible with fair practice and are justified by the informative purpose of such quotations, or

(iii) carries, where the said territory is that of a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, a programme carried by the emitted signal, provided that the distribution is solely for the purpose of teaching, including teaching in the framework of adult education, or scientific research.

ARTICLE 5

No Contracting State shall be required to apply this Convention with respect to any signal emitted before this Convention entered into force for that State

ARTICLE 6

This Convention shall in no way be interpreted to limit or prejudice the protection secured to authors, performers, producers of phonograms, or broadcasting organizations, under any domestic law or international agreement.

ARTICLE 7

This Convention shall in no way be interpreted as limiting the right of any Contracting State to apply its domestic law in order to prevent abuses of monopoly.

ARTICLE 8

(1) Subject to paragraphs (2) and (3), no reservation to this Convention shall be permitted.

(2) Any Contracting State whose domestic law, on May 21, 1974, so provides may, by a written notification deposited with the Secretary-General of the United Nations, declare that, for its purposes, the words "where the originating organization is a national of another Contracting State" appearing in Article 2(1) shall be considered as if they were replaced by the words "where the signal" is emitted from the territory of another Contracting State."

(3) (a) Any Contracting State which, on May 21, 1974, limits or denies protection with respect to the distribution of programme-carrying signals by means of wires, cable or other similar communications channels to subscribing members of the public may, by a written notification deposited with the Secretary-General of the United Nations, declare that, to the extent that and as long as its domestic law limits or denies protection, it will not apply this Convention to such distributions.

(b) Any State that has deposited a notification in accordance with subparagraph (a) shall notify the Secretary-General of the United Nations in writing, within six months of their coming into force, of any changes in its domestic law whereby the reservation under that subparagraph becomes inapplicable or more limited in scope.

ARTICLE 9

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until March 31, 1975, for signature by any State that is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice.

(2) This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1).

(3) Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nations.

(4) It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its domestic law to give effect to the provisions of the Convention.

ARTICLE 10

(1) This Convention shall enter into force three months after the deposit of the fifth instrument of ratification, acceptance or accession.

(2) For each State ratifying, accepting or acceding to this Convention after the deposit of the fifth instrument of ratification, acceptance or accession, this Convention shall enter into force three months after the deposit of its instrument.

ARTICLE 11

(1) Any Contracting State may denounce this Convention by written notification deposited with the Secretary-General of the United Nations.

(2) Denunciation shall take effect twelve months after the date on which the notification referred to in paragraph (1) is received.

ARTICLE 12

(1) This Convention shall be signed in a single copy in English, French, Russian and Spanish, the four texts being equally authentic.

(2) Official texts shall be established by the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director-General of the World Intellectual Property Organization, after consultation with the interested Governments, in the Arabic, Dutch, German, Italian and Portuguese languages.

(3) The Secretary-General of the United Nations shall notify the States referred to in Article 9(1), as well as the Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director-General of the World Intellectual Property Organization, the Director-General of the International Labour Office and the Secretary-General of the International Telecommunications Union, of

(i) signatures to this Convention;

(ii) the deposit of instruments of ratification, acceptance or accession;

(iii) the date of entry into force of this Convention under Article 10(1);

(iv) the deposit of any notification relating to Article 2(2) or Article 8(2) or (3), together with its text;

(v) the receipt of notifications of denunciation.

(4) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to all States referred to in Article 9(1).

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

DONE at Brussels, this twenty-first day of May, 1974.

DRAFT REPORT OF THE GENERAL RAPPORTEUR*

PART I

Introduction

1. I am honored to present the Report of the General Rapporteur of the International Conference of States on the Distribution of Programme-Carrying Signals Transmitted by Satellite. The International Conference of States (which will be referred to as "the Conference" in this Report) met at the Palais d'Egmont in Brussels from May 6 to 21, 1974, at the generous invitation of the Belgian Government.

2. The verbatim record of the Conference contains a complete chronological transcript of the work of the plenary sessions and of the Main Commission. The purpose of this Report is not to summarize the debates, but rather to analyze the accomplishments of the Conference, including the Convention adopted by the delegates, and to synthesize the interpretations given to particular provisions of the Convention.

3. For the sake of clarity and simplicity, I have tried to divide this Report by subject matter, without indicating the chronology of the debates or differentiating between discussions during plenary sessions and those in the Main Commission. In certain cases, for the sake of completeness and comprehensibility, I have also drawn upon the discussions in subsidiary bodies and from earlier reports.

Convocation of the Conference

4. The Conference was convened jointly by the United Nations Educational, Scientific and Cultural Organization (Unesco) and the World Intellectual Property Organization (WIPO), in accordance with decisions of their governing bodies.

Background and preparatory work

5. During the second half of the 1960s, with the introduction and increasing use of satellites in international telecommunications, experts began expressing concern about the new or potential legal problems raised by intercontinental transmissions of television programmes by satellite. The subject was considered in a preliminary way at several international meetings in 1968 and 1969, and these resulted in decisions by the governing bodies of Unesco and WIPO's predecessor organization, BIRPI (International Bureau for the Protection of Intellectual Property) to convene jointly a committee of governmental experts to consider "problems in the field of copyright and the protection of performers, producers of phonograms and broadcasting organizations raised by transmission via space satellites".

6. As it turned out, this meeting of the Committee of Governmental Experts was the first of three preparatory meetings held in 1971, 1972 and 1973, leading directly to the present diplomatic conference in Brussels in 1974. The essential problem, which has been referred to loosely and perhaps a bit pejoratively as "satellite piracy" or "poach-

ing of signals", results from the capacity of satellites to expand enormously the geographic coverage of broadcast signals, particularly signals carrying television programmes.

7. Before it became practical to launch satellites for public communications, the constraints of technology automatically protected a broadcaster who originated programming as against other broadcasters who might wish to intercept and retransmit his programmes to a different market. The geographic coverage of signals transmitted through a geostationary satellite is one-third of the earth's surface, and it is now possible for ground stations anywhere within that vast territory to pick up signals from the satellite and send them on to an entirely new and unintended audience without any licensing arrangements whatever. The originating broadcaster not only receives no remuneration for the retransmission of his signals in this situation; he is also put at a severe disadvantage in his contract negotiations with authors, performers and other contributors to his programmes. If the broadcaster cannot guarantee control over the retransmission of a particular programme to audiences within a specific country or geographic area, he will be called upon to pay his programme contributors for coverage in the additional area. That area is likely to include countries offering no legal protection, under concepts of copyright or neighboring rights, against retransmission of the programmes on their territories. If the originating broadcaster receives no benefit from the expanded coverage, he is unlikely to be willing to pay programme contributors substantially higher licensing fees to cover it, and the result could well be a decision not to use the satellite at all.

8. It has been recognized from the outset that this problem is a dangerous one, with potentially serious effects not only upon the legitimate interests of originating broadcast organizations, authors and other copyright owners, performers, and phonogram producers, but also upon the future of satellite communications itself. At the time of the meeting of the First Committee of Governmental Experts, in Lausanne, Switzerland, in April 1971, the practical effects of the problem had barely begun to be felt, since the satellites then in use were exclusively of the "point-to-point" variety, requiring ground stations with very powerful and expensive receiving equipment. In the three years intervening between the Lausanne meeting and the Brussels Conference, the predictable if still astonishing progress in space technology has led the way to widespread use of "distribution" satellites. These are not "direct broadcasting satellites" capable of transmitting signals directly to receiving sets in homes or community centers, but are considerably larger, heavier and stronger than "point-to-point" satellites, thus requiring receiving earth stations that are much less powerful and costly than those needed previously. The proliferation of satellite earth stations, and an increase in the number of countries having them, seems to be an inevitable consequence of progress in the power and sophistication of communications satellites. In a sense, therefore, the preparation of the Brussels Conference represented a race between law and technology.

9. Recognizing the urgency of the problem, all three of the Committees of Governmental Experts considered alternative possibilities for

*Portions of the report were not ready at the end of the Diplomatic Conference and are being circulated. This should, therefore, be cited and regarded as a provisional report.

solving it. (1) revision of the International Telecommunication Convention or of the Radio Regulations annexed to it; (2) revision of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the so called "Rome Convention" or "Neighboring Rights Convention", adopted at Rome in 1961); (3) a new multilateral convention, or (4) some other method, such as reliance on existing international agreements or adoption of a simple resolution condemning satellite piracy. As the preparatory work went forward a consensus emerged favoring the third of these alternative solutions. The debates at all three Experts Committee meetings centered for the most part around various drafts of a new multilateral convention to prevent retransmission of satellite signals by unintended distributors, but general agreement upon the content and wording of such a convention proved to be unusually difficult to achieve.

10. The principal difficulty emerged at the meeting of the First Committee of Governmental Experts at Lausanne in April 1971, and occupied much of the debates at all three preparatory meetings. The question was whether, if affirmative rights were to be accorded to originating broadcast organizations as a matter of private law under a new international convention, these should be counterbalanced by granting correlative rights to contributors to programmes, particularly authors and other copyright owners. There was sentiment for a simple, globally acceptable treaty that would give wide discretion to States as to the legal means for implementing it. At the same time, to quote the Lausanne report (UNESCO/WIPO/SAT. 22). "Several delegations said that they could accept an independent treaty only if it contained provisions safeguarding the interests of authors, performers and producers of phonograms, and did not prejudice the future of the Rome Convention." The Lausanne Committee appointed a working party which produced a draft convention offering affirmative protection to originating organizations and containing three alternative provisions dealing with the rights of programme contributors. The Committee annexed this draft to its report, and recommended that further preparatory work be undertaken.

11. The meeting of the Second Committee of Governmental Experts, which was held in Paris at Unesco House from May 9 to 17, 1972, refined the Lausanne draft in a number of positive ways and included the revised text of the draft Convention in its report. On the central issue of balancing the rights of programme contributors, however, the debates in Paris intensified the differences of opinion and led the delegates to postpone a decision on the convening of a diplomatic conference on the subject. The Second Committee recommended that the Secretariats of Unesco and WIPO prepare a detailed commentary on the Paris draft, and that a third committee be convened to consider this commentary and the comments received on it and to decide on the advisability of holding a diplomatic conference.

12. The results of the Third Committee of Governmental Experts, which met in Nairobi, Kenya, from July 2 to 11, 1973, have been described variously as a break-through, a turning-point, and a Columbus' egg. As explained in some detail in paragraphs 54-64 of the report of the Nairobi meeting (document UNESCO/WIPO/SAT. 3/23, which was also attached to document UNESCO/WIPO/CONFESAT/3 of

the Brussels Conference), the philosophy and legal framework of the draft Convention underwent a fundamental change. The Nairobi draft proposed to transport the Convention from the field of international private law to that of international public law, by eliminating any notion of private rights and leaving the States free to decide for themselves the most appropriate means for suppressing piracy on their territory. Rather than obliging States to enforce individual property rights in the form of an exclusive right of authorization, the Nairobi approach required States to take all appropriate measures against distribution on their territory of satellite signals by distributors for whom those signals were not intended. Since the Convention itself would confer no new rights upon broadcasters, there was no longer any corresponding need to create additional new rights in the Convention to safeguard the interests of programme-contributors.

13. The text of the draft Convention, as revised in line with this new philosophical approach, received widespread support at the Nairobi meeting. At the conclusion of its work, the Third Committee adopted a resolution characterizing the Nairobi draft as "susceptible of general acceptance" and recommending that a diplomatic conference to conclude an international convention on the subject be convened in 1974.

Documentation

14. The principal document before the Conference was the report of the Nairobi meeting, which was attached to document UNESCO/WIPO/CONFESAT/3.

Participation

15. In all, 57 States sent delegations to the Conference, 47 as voting participants and 10 as observers. The Conference was also attended by observers from 5 intergovernmental organizations and observers from 17 international non-governmental organizations. A final list of the participants in the Brussels Conference will be found in document UNESCO/WIPO/CONFESAT/INF.3. As noted in paragraph 22 of this Report, --- States were empowered to sign the Final Act of the Conference and -- States were empowered to sign the Convention.

16. In accordance with Rule 1 of the Rules of Procedure adopted by the Conference, 47 of the States invited to the Conference by the Director-General of Unesco in the name of the Executive Board of Unesco, and by the Director General of WIPO, participated in the Conference's work. Delegations from the following States participated: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Central African Republic, Cyprus, Czechoslovakia, Denmark, Ecuador, Arab Republic of Egypt, Finland, France, Federal Republic of Germany, German Democratic Republic, Ghana, Guatemala, Hungary, Iran, Iraq, Israel, Italy, Ivory Coast, Japan, Kenya, Lebanon, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Norway, Senegal, Spain, Sweden, Switzerland, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom, United States of America, Yugoslavia.

17. Representatives of the following 10 States registered as observers: Bangladesh, Bulgaria, Colombia, Holy See, Poland, Romania, San Marino, Turkey, Republic of Viet-Nam, Zaire.

18 The following 5 intergovernmental organizations were represented at the Conference: United Nations, International Labour Organisation, Council of Europe, Organization of Arab States for Education, Culture and Science (ALECSO), International Telecommunications Satellite Organization (INTELSAT).

19 Representatives of the following 17 international nongovernmental organizations attended the Conference as observers: European Broadcasting Union (EBU), Inter-American Association of Broadcasters (AIR), International Confederation of Professional and Intellectual Workers (CITI), International Confederation of Societies of Authors and Composers (CISAC), Internationale Gesellschaft für Urheberrecht (INTERGU), International Federation of Actors (FIA), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Federation of Variety Artists (IFVA), International Film and Television Council (IFTC), International Literary and Artistic Association (ALAI), International Music Council (CIM), International Publishers Association (IPA), International Secretariat of Entertainment Trade Unions (SETU), International Theatre Institute (ITI), International Writers Guild (IWG), Union of National Radio and Television Organizations of Africa (URTNA).

Organization of the Conference

20 Under the Rules of Procedure adopted by the Conference, the plenary sessions and meetings of the Main Commission were held in public. The working languages of the Conference were English, French, Russian and Spanish.

21 The Secretariat of the Conference was provided jointly by the Director-General of Unesco and the Director General of WIPO. The Co-Secretaries General of the Conference were Ms. Carle-Claude Dock (Unesco) and Mr. Claude Masouyé (WIPO). The names of all members of the Secretariat appear in document UNESCO/WIPO/CONFESAT/INF. 3.

22 The Secretariat proposed a program of work for the Conference (document UNESCO/WIPO/CONFESAT/INF. 2), and it proved possible to adhere to its recommended timetable for the most part. The opening ceremony of the Conference took place at 4 p.m. on Monday, May 6, 1974, and the Main Commission began its work at 3 p.m. on Wednesday, May 8, 1974. After 10 sittings, the Main Commission adopted the text of the draft Convention on Friday, May 17, 1974, and the plenary of the Conference adopted the Convention in its sitting on Saturday, May 18, 1974. This report was examined in draft form and adopted at the final plenary session, on the morning of Tuesday, May 21, 1974, and the closing speeches were followed by the ceremony of signing the Final Act and the Convention.

23 The Intergovernmental Committee established under Article 32 of the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) held its second extraordinary session in Brussels at the Palais d'Egmont, May 6 and 10, 1974, to consider the text of a draft model law concerning the protection of performers, producers of phonograms and broadcasting organizations, together with a commentary on that text.

Following debates which consisted in major part of interventions from observers representing international non-governmental organizations, the Committee adopted the draft text and commentary with some revisions. As shown by the report of that meeting (ILO/UNESCO/WIPO/ICR (Extr.)/II/5), and by certain interventions during the Brussels Conference (see paragraphs of this Report), the results of the two meetings are closely related to each other.

Opening Session

24. The opening session of the Conference heard introductory addresses by Mr. Jean-Pierre Grafé, the Minister of French Culture of Belgium, by Mr. René Maheu, Director-General of Unesco, and by Dr. Arpad Bogsch, Director General of WIPO. On behalf of himself and Madame H. de Backer-Van Ocken, Minister of Netherlands Culture and Flemish Affairs, Mr. Grafé extended the cordial greetings of his Government to all of the participants in the Conference. Recognizing both the importance and the difficulty of the Conference's work, he expressed his confidence that, through foresight and goodwill, the delegates would be able to surmount the obstacles facing them.

25. In turn, Mr. Maheu and Dr. Bogsch expressed their warm thanks and appreciation to the Belgian Government for its hospitality and assistance in convening the diplomatic conference. Each of the Directors General also expressed complete satisfaction with the efficient and cordial relations existing between their two Secretariats and with the effectiveness of their collaboration in the preparatory work for the Conference. Mr. Maheu reviewed the background of this preparatory work, in the context of broad responsibilities of Unesco in the field of space communications, and both he and Dr. Bogsch affirmed their ardent hopes for success in the Conference's endeavors.

26. Following the opening ceremonies, the Conference proceeded to elect the Chairman of the Plenary Assembly. On the proposal of Mr. Rafik Said, Head of the Delegation of Tunisia, supported by the Delegation of Morocco, Mr. Gérard de San, Honorary Director-General of the National Ministry of Education of Belgium, was elected Chairman of the Conference by acclamation.

27. In accepting his office, Mr. de San warmly thanked the Conference for the honor accorded to him and to his country. Referring to the difficulties encountered during the preparatory work, he spoke with admiration of the ingenious proposal put forward at Nairobi by the Delegations of Morocco, Brazil, India and Mexico. In his view, the Nairobi compromise had enabled the impasse to be broken, and convinced him that, through the same spirit of conciliation, the work of the Brussels Conference would succeed for the benefit of mankind.

Credentials Committee

28. The Conference then proceeded to elect a Credentials Committee consisting of delegates from seven countries: Canada, France, Ghana, Hungary, Japan, Mexico and Senegal. The Credentials Committee elected as its Chairman Mr. N'Déné N'Diaye, Head of the Delegation of Senegal. The Committee submitted its first report to the Plenary Assembly on May 7, 1974 (document UNESCO/WIPO/CONFESAT/22) and submitted its final report on May 21, 1974 (document UNESCO/WIPO/CONFESAT/41).

Rules of Procedure

29. The Conference approved the Draft Rules of Procedure (document UNESCO/WIPO/CONFESAT/2) without extensive discussion and without change. As adopted, the Rules of Procedure established a bureau consisting of the Chairman of the Conference, the five Vice-Chairmen of the Conference, the General Rapporteur of the Conference, the Chairman of the Main Commission, the Chairman of the Credentials Committee and the Chairman of the Drafting Committee. The size of the latter Committee was set at eight elected members, with the Chairman of the Main Commission and the General Rapporteur also serving in an *ex officio* capacity.

Officers, Committees and Adoption of Agenda

30. Following a meeting of the heads of all delegations present at the Conference, the Chairman proposed that the Heads of the Delegations of Hungary, Lebanon, Mexico, Morocco and the United Kingdom be elected as the five Vice-Chairmen of the Conference. These individuals were elected unanimously. The under-signed was honored to be elected as General Rapporteur of the Conference, and it was agreed that the General Rapporteur would also serve as Rapporteur of the Main Commission.

31. In accordance with the views expressed during the meeting of heads of delegations, and upon the proposal of the Chairman, Mr. João Frank da Costa, Head of the Delegation of Brazil, was unanimously elected as Chairman of the Main Commission, and the Heads of the Delegations of Japan and Sweden were unanimously elected as Vice-Chairmen of the Main Commission.

32. Also reflecting the views of the meeting of heads of delegations, the Chairman proposed that the Drafting Committee consist of representatives from the Delegations of Canada, Czechoslovakia, France, the Federal Republic of Germany, Ivory Coast, Kenya, Spain and the Union of Soviet Socialist Republics. These delegations were elected unanimously. It was agreed during the Plenary Assembly that, although the formal decision as to its officers was the responsibility of the Drafting Committee itself, the chairmanship of the Committee should be entrusted to Mrs. Elisabeth Steup, Alternate, Head of the Delegation of the Federal Republic of Germany and that Mr. Yuri Zharov, Head of the Delegation of the Union of Soviet Socialist Republics, should be elected as Vice-Chairman. Under the Rules of Procedure, the Chairman of the Main Commission and the General Rapporteur of the Conference also serve as *ex officio* members of the Drafting Committee.

33. Following these elections, the Provisional Agenda (document UNESCO/WIPO/CONFESAT/1) was adopted without change.

General Opening Discussion

34. The Chairman offered the floor to any delegation wishing to make a general statement on the work of the Conference, and 35 delegations responded to this invitation, in the following order: Netherlands, Senegal, United States of America, United Kingdom, Union of Soviet Socialist Republics, Brazil, Mexico, Israel, Denmark, Kenya, Argentina, Japan, Austria, France, Ghana, Sweden, Algeria, Federal Republic of Germany, Italy, Canada, Australia, Hungary, Morocco,

German Democratic Republic, Cyprus, Switzerland, Czechoslovakia, Ivory Coast, Tunisia, Finland, Ukrainian Soviet Socialist Republic, Norway, Spain, Yugoslavia and Ecuador. A large majority of the speakers recognized the growing importance of satellites as one of the most powerful means of communications ever devised, and the corresponding need for an effective international instrument to prevent transmission of satellite signals by unintended distributors. There was no opposition to using the Nairobi text as the basis for the Conference's work, and many delegations praised its realistic approach to the problem and its simplicity, clarity, flexibility, and balance. A number of these delegations referred to the impasse reached during the preparatory work preceding the Nairobi meeting and regarded the compromise reached there as the only framework in which a solution to the problem could be found.

35. Many delegations stressed that, in addition to the need to protect the legitimate interests of broadcasters in this situation, it was vital to insure that the equally legitimate interests of authors and performers were not adversely affected. A number of those who spoke on this point regarded the neutral approach of the Nairobi text as satisfactory for this purpose, since it left the question of balancing to domestic law and to contractual arrangements among the interested parties. The Delegations of France and of the United States of America particularly stressed that, under the international public law approach of the Nairobi draft, complete contractual rights of authorization to programme-contributors would be preserved even if broadcasting organizations were given a power of decision over terrestrial distribution of the signals they send to satellites, contributors to programmes would remain free to negotiate in their contracts with broadcasting organizations the destination of the signals carrying their contributions.

36. Other delegates, including those of Austria, Israel, Hungary and the Federal Republic of Germany, accepted the Nairobi text as a compromise, but would have preferred the approach of Alternative A of Article 4 of the Paris text, offering affirmative protection to authors, performers, and other creative contributors to programmes. The representatives of several delegations, including those of Denmark, Japan, Sweden and the United Kingdom, while pledging to cooperate constructively in the work of the Conference, regarded the Nairobi text as insufficient to protect the interests of authors and performers, and doubted its efficacy to achieve the goals of the Conference.

37. A related question, referred to by a number of speakers in their opening remarks, involved the interrelationship between the proposed Brussels Convention and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. The prevailing view among those who spoke to the point was that the Rome Convention offered within its scope the protection of broadcasters against unauthorized retransmission of their signals transmitted via satellite. Nevertheless, it was acknowledged that mainly because of the relatively small number of adherents to the Rome Convention, this protection was insufficient to solve the immediate problem on a world-wide basis. Assuming that a new and separate convention was necessary, several delegations emphasized very strongly that the two Conventions must be complementary rather than

competing, and that the Brussels Convention must not be permitted to undermine the growth of the Rome Convention.

38. Going beyond the interrelationship between the two Conventions as such, several speakers referred to the interrelationship between developments leading to the Brussels Conference and the preparation of a model law to implement the Rome Convention (see paragraph 23, above). The situation was a dynamic one, the key factors being the possibility of a change in attitude toward the Rome Convention by broadcasters, both nationally with respect to individual ratifications and internationally with respect to presentation of the model law. The opening remarks of the delegate of the United Kingdom were largely devoted to this question; he was frank to say that, unless and until the broadcasters and their representatives manifested a substantial change in approach to the Rome Convention, his Government would be unlikely to consider signing or adhering to the new treaty on satellites. This viewpoint was reflected to some extent in the remarks of the delegates of Brazil, Mexico, Denmark, Austria, Australia and the Federal Republic of Germany, during which some hope was expressed that the present Conference would represent a turning point in achieving peaceful, symbiotic relations between broadcasters and the other beneficiaries of the Rome Convention and a step forward in the history of that Convention. The question was also referred to in interventions by observers representing various non-governmental organizations at several points during the Conference. The delegate of Mexico referred to a resolution bearing on this subject adopted by the Assembly of the First National Symposium for Intellectual Workers held in March 1974, which is reproduced in document UNESCO/WIPO/CONFESAT/4.

39. The International Telecommunication Convention, the other major convention in the field, was also discussed during the opening statements. The Delegation of Switzerland maintained its preference for the ITU Convention as a means for solving the problem of satellite piracy. For its part, the Delegation of Canada considered that, although there was some overlapping between the ITU Convention and Radio Regulations and the proposed Brussels Convention, the latter in the form of the Nairobi text was more specific and better drafted, and was therefore worthy of support. There might well be situations in future, however, in which Canada would choose to rely on the provisions of ITU Convention to support its interests. The representative of Canada also stressed the importance to his Government of the issue of cable television as raised by the proposed reservation on the subject under Article 11 of the Nairobi draft.

40. A number of speakers from both developed and developing countries referred to the vital importance of orderly progress in satellite communications to educational and cultural development. It was recognized as significant that the Nairobi compromise was reached in a meeting held in a developing country, and that, as said by the delegate of the Ivory Coast, for the first time representatives of developed and developing countries were working together in perfect harmony in an effort to control technology and place it at the service of intellectual property. The importance of retaining the exceptions provided in Article 4 of the Nairobi draft was stressed by several

speakers, and sentiment was also expressed in favor of opening the Convention to adherence to as many countries as possible, and to deleting the provisions in paragraph (3) of Article 9 of the Nairobi draft dealing with application of the Convention to territorial dependencies.

41. Several of these points were made by the delegate of Tunisia, speaking for himself but reflecting the considered opinions of 24 African and Arab States. In his view, the new technology required the adoption of a new international instrument, and he expressed the hope that the results of the Conference would be realistic and would produce a text that all could ratify. Among other things, he supported in principle the proposals put forward by the Delegation of India at Nairobi concerning compulsory licensing (paragraph 110 of the Nairobi report) and abuses of monopoly (Article 7 of the Nairobi text).

42. The delegate of Kenya raised a question as to whether the Convention should cover retransmissions by unintended distributors of signals received from direct broadcast satellites. His view, which was that these activities might profitably be deleted from the scope of the Convention, was shared by the Delegation of Canada.

43. During the opening statements, the delegate of the Union of Soviet Socialist Republics explained that, although his Government had been represented by observers at earlier preparatory meetings, the Brussels Conference marked its first full participation in the project. He noted the present trend toward an easing of tensions and a more wholesome atmosphere in international relations, and that further effort is needed to make this trend irreversible. To that end, he proposed that the draft Convention could be enriched by provisions safeguarding the peaceful uses of satellites and imposing conditions on international television broadcasting to prevent interference by one State in the internal affairs of another. His proposals in this regard were supported directly during the opening statements by the Delegations of the German Democratic Republic, the Ukrainian Soviet Socialist Republic, Hungary, Czechoslovakia and Tunisia. Other delegations, including those of Kenya, France, Morocco, the United States of America and Spain took the view that the proposals were outside the competence and mandate of the Conference and did not appropriately fall within the scope of the Convention, and that the issue of programme content, which was related to the whole matter of direct broadcast satellites was quite properly being considered in the competent bodies of the United Nations. The Conference also heard a statement from the representative of Unesco concerning the status of activities in the United Nations and other intergovernmental bodies dealing with various problems raised by satellite communications. The Soviet proposals were later put forward in the form of specific amendments to the Nairobi text (document UNESCO/WIPO/CONFESAT/8, 23, 28, 31 and 32) and are dealt with in paragraphs . . . below.

44. Following the general statements from Government delegations, the President offered the floor to international organizations represented at the Conference by observers. The representative of one intergovernmental organization (the Organization of Arab States for Education, Culture and Science) and seven non-governmental organizations (European Broadcasting Union, International Federation of the Phonographic Industry, International Federation of Actors, Inter-

national Federation of Musicians, International Confederation of Professional and Intellectual Workers, International Copyright Society, and Union of National Radio and Television Organizations of Africa) addressed the Conference.

43. At the end of the opening statements, the President complimented the delegates on the goodwill, realism, spirit of moderation and cooperation manifested in their remarks. He was greatly encouraged by their support for the Nairobi draft as the basis for their discussions in the Main Commission to follow and, on the basis of the groundwork that had been laid, he considered that the prospects for success of the Conference were most auspicious.

Work of the Main Commission

46. Rule 8 of the Conference's Rules of Procedure provides: "The Main Commission, in the work of which all delegations are invited to participate, shall make a detailed study of the proposals for revision of the Draft Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, and shall prepare draft texts for submission to the Conference at a plenary meeting." Upon assuming the Chair of the Main Commission, Mr. da Costa reviewed the various positions taken in the course of the opening statements, and concluded that a real consensus existed only on one fundamental point, that the best solution must be sought on the basis of the Nairobi draft. In his opinion, if the Brussels Convention were to stray too far from the framework adopted at Nairobi, it would not be likely to be widely signed or ratified and would, indeed, be stillborn.

47. At the outset of its work, before considering the text drafted at Nairobi, the Main Commission took a decision to exclude from the scope of the Convention distribution of signals received from direct broadcast satellites, and entrusted the task of amending the Convention to accomplish this result to the Drafting Committee. The provision adopted for this purpose now appears in Article 3 of the Convention, and will be analyzed below in paragraphs .

48. After settling this fundamental point, the Main Commission began its review of the Nairobi draft, but not precisely in the order in which the provisions appeared in that text. Upon the suggestion of the Chairman, the Main Commission agreed to start with a consideration of Article 1 of the Nairobi draft, leaving the title and preamble to be considered after all numbered articles had been reviewed. Because of their technical nature the definitions in Article 2 were also deferred for consideration after Article 12. After completing its review of Article 1, the Main Commission became somewhat bogged down in differences of opinion over Article 3, the provision dealing with the duration of the measures a Contracting State is obligated to provide under Article 1. It was necessary to convene a working group, consisting of twelve delegations under the chairmanship of Sr. Lic. Gabriel Ernesto Larrea Richerand, Head of the Delegation of Mexico, to find a way out of this surprisingly difficult and time-consuming point. The Delegations represented on this Working Group were: Canada, the Federal Republic of Germany, Hungary, Italy, Ivory Coast, Japan, Mexico, Morocco, Senegal, Tunisia, the Union of Soviet Socialist Republics and the United States of America. The outcome of the Main Commission's work on Article 3 of the Nairobi text is now

reflected in paragraph (2) of Article 2 of the Convention, and is discussed below in paragraphs of this Report.

49. Meanwhile, the Delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic had introduced a document (UNESCO/WIPO/CONF/SAT/8) containing a series of amendments to implement the proposals broached during the opening statements (see paragraph 43, above). These proposals were introduced following the Main Commission's consideration of Article 3 of the Nairobi text, but following a procedural discussion were deferred for consideration until after Article 4 of the Nairobi text, involving exceptions. That Article was adopted by the Main Commission without extensive debate, and is discussed below in paragraphs .

50. When the question of the Soviet proposals in document UNESCO/WIPO/CONF/SAT/8 came up again on Friday afternoon, May 10, 1974, the discussion was opened on the proposal for a new article reading: "Each Contracting State shall undertake to exclude from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred or otherwise aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions." There was another short procedural debate, whereupon the delegate of the Federal Republic of Germany moved formally, under Rule 18(2) (a), to suspend the meeting. In accordance with the rule this motion was put immediately to the vote, and was carried, with 22 delegations voting in favor, 12 against and 5 abstentions. The meeting was therefore suspended until Monday morning, May 13, 1974.

51. Following resumption of the debate on the proposal, the Main Commission received separate proposals from the Delegations of Algeria and the United States of America for a procedural compromise. A working group was set up to consider these proposals, consisting of the Delegations of Algeria, Canada, Hungary, Mexico, the Union of Soviet Socialist Republics, and the United States of America, under the Chairmanship of Mr. da Costa, Chairman of the Main Commission. It was agreed that the discussion of the results of this Working Group, and of the package of Soviet proposals put forward in Parts I, II, and III of documents UNESCO/WIPO CONF/SAT/8 and 23, 28, 31 and 32, should take place after the Main Commission had finished its article-by-article review of the Nairobi draft.

52. As explained below in paragraph , the Conference agreed that its Chairman, Mr. de San, should send a specifically-worded letter to the Secretary-General of the United Nations, transmitting this Report and the verbatim records of the Conference relating to this subject. Thus, although the discussions of the issue took place at a number of different times throughout the Conference, they are all brought together in one place in this Report, following the article-by-article analysis of the text of the Brussels Convention. This Section of the Report comprises paragraphs . below.

53. In addition to the two Working Groups already mentioned, the Chairman appointed a small working group, consisting of the Delegations of the Ivory Coast and Kenya, to draft a section for insertion

in this Report concerning Article 7 on abuses of monopoly (see paragraph , below). At the Chairman's suggestion, an informal working group, consisting of delegates from Australia, Canada, the Federal Republic of Germany, Kenya, the United Kingdom, and the United States of America, also met to discuss the problem raised by paragraph (3) of Article 11 of the Nairobi draft (Article 8 of the Brussels Convention) concerning distribution by cable systems. This point is considered in paragraphs , below.

PART II—BRUSSELS CONVENTION RELATING TO THE DISTRIBUTION OF PROGRAMME-CARRYING SIGNALS TRANSMITTED BY SATELLITE

54. The following synoptical table is intended to help in tracing the origins of the various provisions of the Brussels Convention in inverse chronological order back to their origins:

Brussels (1974)	Nairobi (1973)	Paris (1972)	Lausanne (1971)
Preamble	Preamble	Preamble	Preamble
Par 1	(a)	(a)	(a)
2	(b)		
3	(c)	(b) (in part)	(b) (in part)
4	(d)	(c) (in part)	(c) (in part)
5	(e)	(d)	(d)
Article 1	Article 2	Article I bis	Article I
(i)	(i)	(i)	
(ii)	(ii)	(ii)	(iv)
(iii)	(iii)	(iii)	(i)
(iv)	(iv)		
(v)			
(vi)	(vi)	(iv)	(iii)
(vii)	(vii)	(v)	(ii)
(viii)	(viii)		
Article 2			
(1)	Art. I(1)	Art. I I(1) III(1)	Art. II(6) (ii) (iii)
(2)	Art. 3	Art. III(2)	Art. III
(3)	Art. I(2)	Art. II(2)	Art. II(iv)
Article 3			
Article 4	Article 4	Article V	Article V
(i)	(i)	(i)	ALT A(i)
(ii)	(ii)		
(iii)	(iii)	(ii)	ALT A(ii)
Article 5	Article 5	Article IV bis	Article IV
			ALT A(4)
			ALT B(3)
			Article IV(1)
Article 6	Article 6	Article IV(1)	
Article 7			
Article 8	Article 11	Article IX	Article IX
Article 9	Article 8	Article VI	Article VI
Article 10	Article 9	Article VII	Article VII
Article 11	Article 10	Article VIII	Article VIII
Article 12	Article 12	Article X	Article X

Title

55. The Conference adopted the title of the Convention in the form in which it had been drafted at Nairobi, in accordance with the "new philosophy" under which a State would be free to implement its obligations in any way it chooses. The formulation is a completely neutral one, avoiding terms such as "prohibit", "unauthorized", and "against" which had been used in the titles of earlier drafts.

56. Four of the words used in the title—"distribution", "programme", "signals" and "satellite"—are defined in Article 1. As decided by the Conference, Article 3 excludes from the scope of the Convention distribution of signals taken from direct broadcasting satellites: in view of the clear-cut exclusion expressed in that Article, no need was felt to change the formulation in the title.

Preamble

57. The Conference made only one change in the preamble of the Convention as drafted at the Nairobi meeting. In the form adopted, the preamble reflects as accurately as possible the thinking behind the concept on which the Nairobi draft, and now the Brussels Convention, are based.

58. The Conference adopted the first four preambular paragraphs of the Nairobi text without change. Proposals for three new paragraphs submitted by the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic (document UNESCO/WIPO/CONFESAT/S. 31 and 32) are discussed below in paragraphs . Consistent with its withdrawal of a proposal to amend Article 1(1) of the Nairobi draft, which is discussed below at paragraph , the Delegation of Japan withdrew a proposal to amend the second and fourth paragraphs of the preamble (document UNESCO/WIPO/CONFESAT/7).

59. Discussion of the preamble by the Conference centered around the fifth paragraph. The United States of America had submitted a proposal (document UNESCO/WIPO/CONFESAT/6) to add provisions specifically safeguarding the International Telecommunication Convention and Radio Regulations both to the preamble and to Article 6 of the Convention. The proposal to amend Article 6 was withdrawn after discussion (see paragraph , below), but the proposal to add a reference to the ITU Convention and Regulations to the last paragraph of the preamble was widely supported, and the Conference amended the paragraph accordingly.

60. A bone of contention at all three of the preparatory meetings was the specific reference to the Rome Convention in the last paragraph of the preamble. The Delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic had proposed, in document UNESCO/WIPO/CONFESAT/8, that the reference be deleted, and a proposal from the Delegation of Argentina (document UNESCO/WIPO/CONFESAT/24) would have deleted the entire section. A number of delegations spoke in favor of retaining a specific reference to the Rome Convention in the preamble. They considered that a special relationship existed between the two Conventions: for countries seeking establishment of affirmative rights on behalf of programme-suppliers, acceptance of the Nairobi text already represented a compromise, and explicit mention of the Rome Convention in the preamble was a part of that compromise. The proposals of Argentina and the Union of Soviet Socialist Republics were withdrawn, but it was agreed that this Report should reflect a point stressed by several speakers and accepted by the Conference without dissent: reference to the Rome Convention in the preamble in no way implies any legal or moral obligation on the part of a State party to the Brussels Convention to adhere to the Rome Convention.

ARTICLE 1: DEFINITION

61. The Conference adopted a proposal made by the Delegation of Austria at Nairobi to reverse the order of Articles 1 and 2 of the draft, thus for the sake of clarity and convenience having the definitions ap-

pear first in the Convention. It also agreed to drop the definition of "distributed signal" as superfluous.

62. The Delegation of Argentina recommended, in document UNESCO/WIPO/CONFESAT/27, that "the technical definitions in the Convention be taken from CAMTE (Geneva, 1971) (World Administrative Conference on Telecommunications) and the terminology used be that adopted by the International Telecommunication Union." The Conference, whose delegations included leading communications experts from several countries, sought to make its definitions and use of terminology as technically accurate as possible and in Article 3 it drew wording directly from the ITU Radio Regulations. However, it was agreed as a principle of drafting that, since the purpose of the Convention was fundamentally a juridical one, the terms used and their definitions should be made to serve legal purposes rather than conform to definitional standards developed for technical ends. For example, because of the well-known legal difficulties with the term, the Convention does not use "broadcasting" or any of its variants as an operative word.

"Signal"

63. The definition of "signal" has survived intact from the Paris draft. The term is intended to mean the electronic vector or "carrier" capable of transmitting a programme from its point of origin. As long as a signal has the potential capacity of transmitting programmes, it makes no difference what electronic means or combination of means, including radio waves of all sorts and laser beams, are used to generate or regenerate it.

"Programme"

64. The Brussels Convention deals with signals and not the messages those signals carry; as was often said, the subject of the treaty is the container and not the content. But the scope of the Convention is limited to those signals that carry "programmes" and, as defined, this term refers to bodies of material put together for transmission through a satellite to the general public. As it emerged in the Paris text, the concept of "programme" would include material such as privately-made films or tapes not initially intended for public consumption, but would exclude scientific and technical data, military intelligence, private communications, and other masses of material now being transmitted via satellite for specialized uses. Although the terms "body" and "material" might otherwise carry a connotation of corporeality, the definition makes clear that a programme may be either live or recorded or a combination of both.

65. It finally became necessary at Brussels to decide whether the Convention should be limited to television signals ("images or a combination of sounds and images") or should cover sound broadcasting as well ("images, sounds or both"). The Delegation of Morocco, supported by the Delegation of Algeria, urged that the scope of the Convention should be narrowed to cover television signals only. From its beginnings in Lausanne, the basic purpose of the Convention was to combat piracy of television transmissions by satellite; since satellite transmissions of radio programming are rare and lack a realistic economic basis, and since the ITU Convention is adequate to deal with

them, it was argued that programmes consisting of sounds alone should not be included in the definition. The contrary view was taken by a large number of delegations. The delegate of Kenya pointed out that satellites are increasingly being used for sound transmissions and that, since they are the same for both television and radio on this point, the ITU Regulations would be ineffective to combat piracy of sound programming transmitted by satellite. The Conference therefore decided in favor of the broader definition.

"Satellite"

66. Under this definition, which also comes from the Paris text, a "satellite" is a man-made object for transmitting signals, located in orbit around the earth or on a celestial body. It includes both an active satellite which transmits or retransmits signals, and a passive satellite which is intended for transmission by reflection. The word "extraterrestrial" in the definition means that, at least during part of its orbit, the satellite must be located outside the earth and its atmosphere. However, the definition is not intended to exclude satellites, such as those in elliptical orbit, which pass through the earth's atmosphere during part of their orbital path.

"Emitted signal" and "derived signal"

67. Before Nairobi, the drafts of the Convention had been based on the principle that, as long as it was still possible to derive a message from it, a signal remained the same signal no matter how many times it was amplified, modulated, changed in frequency, recorded, re-recorded, or otherwise changed in its physical characteristics. This principle continues to underlie the Convention, but as a matter of drafting it has been considered desirable to characterize three different stages in the life of a signal, when it is "emitted"; when it is "derived"; and when it is "distributed". The first two of these terms are defined explicitly in Article 1, and the meaning of a "distributed signal" is carried in the definition of "distribution". When these terms are used, they are intended to refer to the signal as it exists after certain acts have taken place with respect to it, and not to suggest that a different signal is involved or that the obligations of the Convention cease to exist when any of these events occur.

68. The Nairobi text adopted the term "emitted signal" to refer to a signal that had been transmitted to a satellite, or that had passed through a satellite. This concept was combined with some rather intricate drafting in Article 1 (now Article 2), which drew distinctions between emitted signals, signals derived from emitted signals, and signals derived from fixations of emitted signals. No one was sure exactly what this meant, much less whether it covered all the possibilities, and at Brussels an effort was made to simplify and clarify the text.

69. The key to this change was a new definition of "derived signal" to cover signals whose physical characteristics have been modified in some way because of technical requirements, regardless of how many times these modifications have taken place or how many intervening fixations or duplications of fixations have been made. The decision to include a definition of "derived signal" was based on a proposal by the Delegation of Algeria (document UNESCO/WIPO/CONFESAT/

11), and its adoption resulted in some consequential amendments in Articles 1 and 2

70. As it emerged in the final text, the concept of "emitted signal" covers any signal that goes to a satellite (the "up-leg") and any signal that has passed through a satellite and has been beamed back down to earth (the "down-leg"). As soon as the signal has passed through the satellite it also becomes a "derived signal" since technically it becomes necessary to change the signal's physical characteristics in order to transmit it back to earth without interference. Thus, in fact, on the down-leg and thereafter, the signal is both an "emitted" and a "derived" signal for purposes of the Convention

"Originating organization"

71. The definition of "originating organization" adopted by the Conference was based on the Paris text, and refers simply to the "person or legal entity that decides what programme the emitted signals will carry". Thus, the definition was intended to exclude telecommunications authorities and common carriers who exercise no control over what programmes signals carry, and a proposal by the Delegation of Italy for a new definition (document UNESCO/WIPO/CONFESAT/12) was not accepted by the Conference because of this concern.

72. The definition of "originating organization" in the Convention is also intended to exclude the creators and producers of programmes as such, since their control is over the content of programmes, not signals. The Delegation of the United Kingdom submitted a proposed amendment (document UNESCO/WIPO/CONFESAT/13) which would have defined "originating organization" to include the person or legal entity entitled "to decide, or delegate the right to decide, what programme the signals will carry". This suggestion was based on the situation in the United Kingdom and other countries where an official public broadcasting authority owns rights in programmes but delegates production authority to contractors in various regions. The Conference felt that, in this situation, the originating organization would be the broadcasting authority rather than the contractor since it possesses the ultimate power of decision, but that the proposed language in document UNESCO/WIPO/CONFESAT/13 might introduce uncertainties into the definition. The delegate of the United Kingdom therefore did not press his amendment, on the understanding that the discussion on the point would be reflected here.

73. A question was raised as to the meaning of the phrase "person or entity" in the definitions of "originating organization" and "distributor" in the Nairobi text. It was pointed out that, in some countries, it would not be possible for an individual human being to exercise the powers of decision referred to in those two definitions, but that in other countries licensing regulations made this possible, and that broadcasting licenses were commonly held by individuals in some places. To clarify the English text, the word "legal" was added before the word "entity" in both definitions.

"Distributor" and "distribution"

74. The concept of "distribution" is the most important one in the Convention, since this is the act that Contracting States are obliged

to prevent under certain circumstances. Proposals for amendment of the definition of "distribution" were put forward by the Delegations of Switzerland (document UNESCO/WIPO/CONFESAT/9) and Algeria (document UNESCO/WIPO/CONFESAT/11), but were not taken up by the Drafting Committee, which accepted the Nairobi text with some minor consequential changes. The key element in the concept of "distribution" is that there must be a transmission of programme-carrying signals "to the general public or any section thereof", and the "distributor" is the natural or legal person with ultimate decision-making responsibility in the distribution process.

75. The phrase "general public or any section thereof" also appears in the 1971 Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, and means any part of the public in any place on earth. It would not be a "distribution", and would be outside the scope of this Convention, to transmit signals received from a satellite for personal or private use, for testing, or for technical or experimental purposes.

76. A transmission would constitute "distribution" within the meaning of the Convention whether it is made simultaneously with the original emission to the satellite or from a fixation. The word "transmits" does not include the marketing or supply of fixations such as phonograms or video tapes. However, the definition is broad enough to cover any present or future telecommunications methods for transmitting signals, including not only traditional forms of broadcasting, but also transmission by cable or other fixed communications channels, laser transmission, and transmission by direct broadcasting satellites.

77. With respect to the latter, it should be noted specially that Article 3, which excludes from the scope of the Convention retransmissions of signals taken from direct broadcast satellites, does not affect the obligation of a Contracting State to prevent the distribution by means of a direct broadcast satellite, by an unintended distributor, of signals received from an ordinary ("point-to-point" or "distribution") satellite. In other words, where the signals are coming down from a DBS, then distribution is now outside the Convention by virtue of Article 3, but where the signals are received from another type of satellite, they cannot be retransmitted by an unintended distributor, even if he is using a DBS for the purpose.

ARTICLE 2: SCOPE OF THE CONVENTION

Paragraph (1): Subject Matter and Obligation

78. The basic provision of the Brussels Convention is found in paragraph (1) of Article 2, which incorporates the substantive content and, with some minor changes, the wording of the "Nairobi compromise". The essential point here is that, instead of conferring an exclusive right of authorization upon broadcasters with respect to distribution of signals transmitted by satellite, the Convention imposes an obligation on Contracting States to "take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the signal is not intended". The four key phrases in

this formula—"adequate measures",* "prevent", "distributor" and "not intended"—are all taken verbatim from the original proposal made by the Delegations of Morocco, Brazil, India and Mexico that became the basis for the Nairobi compromise.

79. Since the wording of the Nairobi draft of this provision was accepted as the basis for the Brussels Convention, the Conference did not discuss at any great length the meaning of the operative words used in Article 2(1). It was clear, however, that Contracting States are left completely free to implement the basic requirement of the Convention in any way they see fit. While the obligation of the Convention might well be undertaken within the legal framework of intellectual property laws granting protection to signals under theories of copyright or neighboring rights, a Contracting State could just as rightly adopt administrative measures, penal sanctions, or telecommunications laws or regulations on the subject. As was stated in paragraph 62 of the Nairobi report: "The good faith of the States in providing effective measures against piracy could and should be assumed."

80. The key factor in determining whether a distribution is to be prevented or permitted is whether or not the signal was intended for the distributor. On this point, the Nairobi report stated, in paragraph 61: "While it was true that the originating organization would often be the one making the decision as to the distributors for whom the signals were intended, this did not imply the creation of any economic rights under the Convention". In this connection, the Delegation of Japan tables a proposal to change the operative language from "to prevent the distribution . . . by any distributor for whom the signal is not intended" to "to prevent any distributor from distributing . . . without the consent of the originating organization or, as the case may be, of both the originating organization and the other contributors to the programme". The delegate of Japan explained that his Government accepted the Nairobi philosophy and that the purpose of its proposal was not to undermine it but to improve it technically. He found the vagueness of the word "intended" particularly troublesome, and considered that consent by the originating organization, which is not the same as authorization, was fundamentally the same as "intended". The reference to consent by other contributors "as the case may be" was intended to cover situations in which Contracting States choose to implement the Convention by means of private rights.

81. Several delegations saluted the good intentions behind the proposal of the Delegation of Japan but having received little or no support and considerable opposition, it was withdrawn without a vote. In general, the opponents considered the legal framework of the proposal of the Delegation of Japan as necessarily establishing private rights, and thus running counter to the Nairobi compromise.

82. At Nairobi, the reference to "on its territory" was changed to "on or from its territory", thus imposing an obligation upon a Contracting State to prevent piratical transmission from a sending station lo-

cated on its territory, even where the members of the public for whom the transmission is intended are entirely outside its territory. The Conference accepted this change without discussion.

83. It was pointed out in the course of the debates that the phrase "emitted to or passing through a satellite" could probably be deleted as a technical matter, but the Conference decided that, since paragraph (1) of Article 2 is the pivotal provision in the Convention, it should state explicitly that it is dealing with signals emitted to or passing through a satellite rather than relying upon definitions to convey the thought. As it came out, the language makes doubly clear that the Convention applies not only to poaching at the end of the "down-leg" of a transmission or thereafter, but at any point during the "up-leg" or "down-leg" or from the storage unit of the satellite itself. It was pointed out during the Conference that interception of signals on the "up-leg" is technically possible by use of a second satellite.

84. As already noted, the Conference decided to exclude distributions of signals taken from direct broadcast satellites from the scope of the Convention. This could have been done in Article 2, but the Conference agreed that the point was important enough to be covered in a separate article. The discussion of this provision, which became Article 3, appears in paragraphs

Paragraph (2): Duration of Measures

85. Throughout the preparatory work on the Convention, from its earliest beginnings in Lausanne, there had been a division of opinion as to whether a minimum limit should be attached to the length of time a Contracting State must take the measures required. At Nairobi, because of the fundamental change in philosophy, additional questions were raised as to whether a provision establishing a minimum term remained appropriate since the treaty was no longer based on private rights. The question finally had to be decided at Brussels, and it proved a very tough nut to crack. Formal proposals dealing with the matter were put forward in the following documents: UNESCO/WIPO/CONF/SAT/7 (Japan); 9 (Switzerland); 12 (Italy); 14 (Mexico); 15 (United Kingdom); 17 (Australia); 18 (France); 19 (Japan); 21 (Working Group); and 33 (Algeria, Brazil, Central African Republic, Czechoslovakia, Arab Republic of Egypt, Ghana, Guatemala, Hungary, Ivory Coast, Mexico, Morocco, Senegal, Tunisia, Union of Soviet Socialist Republics, Ukrainian Soviet Socialist Republic).

86. The debates on this question began with a series of general statements stating the various points of view. Those favoring the retention of a minimum term took the position that, without, a provision such as Article 3 of the Nairobi draft, the Convention could be interpreted, either as imposing a permanent obligation with respect to signals that have been recorded, or as presenting the opposite danger: that States might regard their obligation to take "adequate measures" as fulfilled shortly after the satellite emission. Some concern was also expressed as to whether countries party to the Rome Convention could adhere to a convention not requiring a minimum term of twenty years for broadcasts; however, this problem appeared to have lost much of its importance in the context of the Nairobi compromise.

*The original French draft used the phrase "mesures adéquates" which was translated as "all appropriate measures". In the English version of document UNESCO/WIPO/SAT 3/10 this translation was carried over into the English text of Article 1(1) in the Nairobi draft. At Brussels, however, the Delegation of Australia suggested that a more accurate English translation should be sought, and on the recommendation of the Drafting Committee, the Conference agreed to use the words "adequate measures" in the English text.

87. Several delegations urged complete deletion of the Article on the ground that a provision creating a minimum term would be inconsistent with a treaty carrying no obligation to protect private property rights and leaving States free to decide for themselves the most effective means for preventing distribution of satellite signals by unintended distributors. It was also argued that, although a specified minimum term may be relevant when it comes to the programme-content of a signal, it becomes difficult to apply logically if one is speaking only of the signal as such. Some delegates were also troubled by a legal situation in which new terms would start for particular signals upon each new emission, even though the programme contained in the signal might be old or even in the public domain.

88. At the outset of these debates, the Conference examined the proposal of the Delegation of Switzerland (UNESCO/WIPO/CONF-SAT/9) to delete Article 3 entirely. This proposal, which was intended to impose permanent obligations upon Contracting States, was linked to a proposed amendment of the definition of "distribution"; rather than allow his proposal to delete Article 3 to be considered separately, the delegate of Switzerland withdrew it, whereupon it was taken up formally by the Delegation of Tunisia. Several delegations stated that their Governments could not accept a treaty requiring protection without a limit of time (i.e., perpetually). The proposal of the Delegation of Italy in document UNESCO/WIPO/CONF-SAT/12 to substitute the words "the measures provided" for "the obligation provided" was examined in this connection. This proposal was aimed at drawing a conceptual line between the treaty obligations themselves, which presumably last indefinitely, and the measures taken to implement these obligations, which can be limited in time. The Conference eventually adopted this suggestion, and amended the text of what became Article 2(2), as well as that of Article 4, accordingly.

89. As the Chairman noted, the Main Commission appeared to be divided both badly and evenly on this issue. It seemed to him that, with the growth of the copyright and Rome Conventions, the problem might prove less important than it seemed. He therefore put forward a personal compromise proposal which, in general terms, would have involved deleting Article 3, leaving the duration of protection under the treaty perpetual, in theory at least. This Report would then state that the States pledge themselves to implement this protection in a spirit of good faith, without insisting that protection either be perpetual or without any term at all. The Report would add that the States will adopt practical measures under their domestic law to implement the treaty and that a term of twenty years, from one starting point or another, would be considered reasonable under domestic law.

90. The Delegation of France also advanced a compromise proposal to delete Article 3 and to add a new paragraph to Article 1 (now Article 2) stating that the duration of the "adequate measures" is a matter for domestic law to determine, but each Contracting State is obliged to notify the Secretary-General of the United Nations of the duration chosen under its law. The Delegation of Japan also referred to its proposal (document UNESCO/WIPO/CONF-SAT/19) to solve the problem as in Article 4 of the Phonograms Convention, leaving

duration to domestic law in each State but requiring that, if a specific duration is provided, it must be at least twenty years from emission. Proposals concerning the date from which the term was to be computed had also been placed before the Main Commission in documents UNESCO/WIPO/CONF-SAT/14, 15, 17 and 18.

91. During the debate, the Delegation of Israel, supported by the Delegation of Canada, had suggested the formation of a small working group, and a similar idea had been broached by the Delegation of the Ivory Coast. Later the same idea was put forward by the Delegation of the United States of America and was widely supported. It was agreed that the Working Group should be asked to search for a widely acceptable compromise solution, and that it should start its work with an examination of the proposals put forward orally by the Chairman of the Main Commission and by the Delegation of France.

92. The results of the Working Group's efforts, consisting of alternative proposals, appear in document UNESCO/WIPO/CONF-SAT/21. Both alternatives would delete Article 3 of the Nairobi draft and add a new paragraph to Article 1 (now Article 2) stating: "In any Contracting State in which the application of the measures referred to in paragraph 1 of this Article is limited in time, the duration thereof shall be fixed by national legislation". Both alternatives also required that a State notify the Secretary-General of the United Nations of the provisions of its legislation on duration, if any. Under Alternative A, this is all the treaty provision would provide, but the General Report would add the following (which includes two sub-alternatives) "With respect to the duration of the measure referred to in Article I(1) [the Conference considered] [it was generally considered] that a period of twenty years was a reasonable period." Under Alternative B, the new paragraph in the Convention would insert the underlined phrase "the duration thereof *must be reasonable* and fixed by the national legislation". Under this alternative "the General Report would not contain any commentary on the interpretation of the word "reasonable".

93. After a debate in the Main Commission on these alternative proposals and a minor change in language, the Chairman called for a show of hands, first on which of the sub-alternatives to retain in Alternative A, and then on the choice between the two alternatives. As the Chairman later ruled, it was not clear whether either or both of these tallies was a voice vote within the meaning of the Rules of Procedure or merely a straw tally or test vote. In the first tally, the sub-alternative that was accepted, by a vote of 20 to 17 with 3 abstentions read as follows: "... the Conference considered that a period of twenty years would constitute a reasonable period." In the second tally, Alternative B won by 22 to 18 with 2 abstentions. Under this alternative, "the General Report would not contain any commentary on the word "reasonable", and there was a sharp difference of opinion as to whether this precluded delegates from having individual explanations of views on the article inserted in the General Report. Following a procedural discussion, the Chairman ruled that the two tallies would be considered only a straw vote to test sentiment, especially since some delegations had believed that this was the case. This ruling was not formally appealed.

94. The Delegation of the Federal Republic of Germany suggested that, rather than proceeding to a formal vote, the Main Commission should consider whether or not it would be possible to achieve a consensus on Alternative A with the second sub-alternative (i.e., "... it was generally considered that a period of twenty years constituted a reasonable period."). A number of delegates supported this proposal, including the delegate of the Ivory Coast, who considered the whole matter very serious and hoped that the Chairman's diplomacy had saved the Main Commission from a tragic situation. She felt that the test votes indicated that some delegates did not trust certain Governments to be reasonable; she stressed that this attitude was wholly unjustified, and that any Government can be depended upon to adopt a reasonable period.

95. Shortly before the Main Commission took action on this suggestion, the delegate of Guatemala proposed that the language be changed to read, in part, "a period of twenty years *could constitute* ...". The Chairman reminded the Commission that a two-thirds majority would be necessary for adoption of the article in the plenary assembly, and urged the Main Commission to adopt the proposal of the Delegation of the Federal Republic of Germany by consensus. This action was taken with the Delegations of Tunisia and Algeria expressing reservations as to the procedure. After the Main Commission had acted, the delegate of Guatemala indicated that he would raise his proposal again in the plenary assembly.

96. This proposal was incorporated in document UNESCO/WIPO/CONF/SAT/33, co-sponsored by fifteen delegations. In introducing the proposal, the Delegation of Algeria stressed again the view that protection of the signal as a physical phenomenon, for a period of twenty years would be neither practical nor useful. In his opinion, if the signal carries material protected by copyright, the copyright law would be applicable, but if the signal carries sporting events the copyright law would not protect them, and they should not be given inflexible protection for twenty years under the guise of this treaty. The proposal was supported by several delegations and was not expressly opposed. In speaking for it, the Delegation of Guatemala explained that the change was a modest one and was needed to obtain favorable consideration for the Convention in certain national legislatures. He added that, unless the Conference as a whole adopted the proposed language as an interpretation in this Report, certain delegations including his own would be forced to vote against paragraph (2) of Article 2.

97. The Delegation of Kenya explained that, although it had not co-sponsored the proposal, it considered the problem more theoretical than practical. In countries that have copyright legislation, the delegate of Kenya felt that in transmissions of a sporting event there are copyrightable elements, in the camerawork, direction, and editing among other things, that will make them subject to copyright protection without regard to the present Convention.

98. Paragraph (2) of Article 2 was adopted by the Conference without dissent. It was understood that this Report would recount the events leading to the adoption of this paragraph, and would conclude with the following interpretative paragraph, which was also adopted without objection by the Conference: "With respect to the distribution

of the measures referred to in Article 2(1), it was generally considered that a period of twenty years could constitute a reasonable period."

Paragraph (3): Signals already distributed by intended distributor

99. Since it was adopted by the Conference without debate or objection and with only minor consequential changes, the form of wording discovered at Nairobi to express the difficult point covered in Article 2(3) is apparently a success. As explained in paragraph 92 of the Nairobi report: "Essentially, the case involves the following elements. (1) a signal that has passed through a satellite; (2) a chain of distributions of the signal taking place after the passage through the satellite; (3) a distributor, for whom the signal was not intended, who intercepts a signal along the chain; and (4) a distribution on or from the territory of a Contracting State."

100. The basic idea behind Article 2(2) is that the Convention is intended to deal primarily with space communications, and should not cover situations that are essentially terrestrial. Thus, where an unintended distributor is at the end of a chain of terrestrial distributions, and at least one of the distributors further up the chain was intended to receive the signals, the fact that the signals were emitted through a satellite would not make the Convention applicable. This is a case of rebroadcasting, fully covered by the Rome Convention, and it was felt by the preparatory Committees that the new treaty should not also attempt to cover this same terrestrial ground.

101. On the other hand, if none of the distributors up the line were intended to receive the signals emitted to or through the satellite, the situation would be different and the Convention would apply. For example, should the Convention deal with any distribution other than the first one? The Main Commission decided that it should. For example, if the first distribution was made by an unintended distributor in a non-Contracting State, it would not be prevented under the Convention, but if the signals were picked up from that distribution and redistributed by an unintended distributor in a Contracting State, the Convention should apply.

ARTICLE 3: DISTRIBUTION OF SIGNALS FROM DIRECT BROADCAST SATELLITES

102. At the very outset of its work, the Main Commission considered a proposal by the Delegation of Algeria to exclude from the scope of the Convention distributions of signals taken from direct broadcast satellites (DBS). As explained during the debate, DBS system or satellite broadcasting service can be described as a service in which a broadcaster, instead of using an aerial located on the earth's surface, uses an aerial located on a satellite in space with a very powerful transmitter capable of sending images directly to individual receiving sets on earth. In the context of the treaty, the originating organization and the distributor are one and the same, since no further distribution is needed to pick up signals from the satellite and send them on. As explained in paragraph 89 of the Nairobi report, the status of distributions from DBS signals was not thoroughly delineated in the Nairobi draft

103. The proposal of the Delegation of Algeria was widely sup-

one qualification. The delegate of Kenya, supported by other delegations, proposed that the exclusion of DBS signals from the scope of the Convention not be so wide as to remove from the obligation in Article 2(1) the situation in which an unintended distributor picks up signals from a conventional satellite and distributes them by means of a direct broadcast satellite. The Conference agreed with this proposal also, and referred the whole question to the Drafting Committee.

104. The Drafting Committee's proposed text of Article 3 (document UNESCO/WIPO/CONF SAT/36) is a combination of the proposal of the Delegation of Algeria for a separate article clearly expressing the exclusion (UNESCO/WIPO/CONF SAT/26) and a proposal made by the Delegations of Canada and the United States of America (UNESCO/WIPO/CONF SAT/16), which would have dealt with the exclusion as a paragraph in Article 1 (now Article 2). The Conference accepted the Drafting Committee's draft without change.

105. Article 3 expressly excludes from the scope of the Convention signals that are "emitted by or on behalf of the originating organization" and are "intended for direct reception from the satellite by the general public". The reference to the originating organization is needed to make clear that, as proposed by the delegate of Kenya, the exclusion does not go so far as to exempt the activities of a "pirate" distributor using a DBS system for his distributions of conventional satellite signals. As explained above in paragraph 77, the definition of "distribution" is also concerned with this point.

106. Number 84AP Spa2 of the ITU Radio Regulations, as amended in 1971, defines a "Broadcasting-Satellite Service" as "A radio-communication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public." The wording of Article 3 deliberately tracks this formulation as closely as possible, thereby conveying exactly the same meaning as the regulation without using the word "broadcasting." The Conference decided not to add the words "or any section thereof" to the phrase "general public" in this Article, even though the longer wording is taken from the Phonograms Convention and is used in two of the definitions in Article 1 of this treaty. Aside from the obvious advantages of using the same language as that used in the ITU Regulations to define the same concept, the latter includes a footnote making clear that, "In the broadcasting-satellite service, the term 'direct reception' shall encompass both individual reception and community reception."

ARTICLE 1. EXCLUSIONS

107. Thanks to the high quality of the preparatory work, Article 1 represents another case in which an important and previously-controversial provision was adopted with little debate and no substantive revisions. The only two proposals submitted in connection with this Article—UNESCO/WIPO/CONF SAT/7 (Japan) and 12 (Italy)—were withdrawn before the debate in the Main Commission, although the specific suggestion made in the latter for a technical change in wording was later adopted.

108. The discussion of this provision during the Main Commission consisted mainly of statements approving the content and balance of the article as drafted. No objections were raised, although a few interpretative remarks were made and will be reflected here. Following the debate, the Nairobi text, with some minor technical amendments, was accepted without dissent.

109. A point of interpretation included in the report on the Paris text, and elaborated in the UNESCO/WIPO Secretariat commentary on that text, was explicitly accepted by the Conference and is repeated here: "Under paragraph (i), short excerpts of a contest or spectacle could be distributed if the genuine purpose was the reporting of a newsworthy event, but only to the extremely brief extent 'justified by the informative purpose'. To warrant the use of a short excerpt under this provision, the programming must be done as part of a report of general news of the day and would therefore, as a rule, have to be transmitted on the basis of a fixation. The possibilities of distributing all or any part of a sporting event paragraph (iii) seem even more limited, since the *sole* purpose of the distribution must be teaching."

110. At Nairobi, the term "teaching" in paragraph (iii) was amplified to include "teaching in the framework of adult education." The Delegation of the United States of America suggested that the Conference interpret these terms in a general way to include any kind of "systematic instructional activities." This phrase, which also appears in the 1971 texts of both the Berne and Universal Copyright Conventions, includes all conventional forms of teaching at every level of education, and instructional television as distinguished from general programming that is cultural or informational in character.

111. A point made several times during the Conference, with specific reference to Article 4, was that the exceptions allowed by that article have applicability only as far as the measures a State is required to take under this Convention. In other words, if the State has obligations under another treaty, such as the copyright conventions, the Rome Convention or the ITU Convention, these are not superseded by the exceptions in Article 4. Similarly, it was stressed that the Brussels Convention applies exclusively to international situations, and none of its provisions can have any sort of binding effect on the law governing exclusively domestic situations in a Contracting State.

ARTICLE 5: NON-RETROACTIVITY

112. This Article, which is patterned on Article 7(3) of the 1971 Phonograms Convention, was approved by the Conference without discussion. It means that, unless a Contracting State chooses to provide otherwise, the entry into force of the Convention in that particular State does not alter the legal status of signals that have already been emitted to a satellite.

ARTICLE 6. SAFEGUARD OF INTERESTS OF CONTRIBUTORS TO PROGRAMMES

113. As the Nairobi report says in paragraph 108, retention of what is now Article 6 was considered an integral part of the Nairobi compromise. Its purpose, which was acknowledged to be substantively

important, was to make clear that, under the new Convention, none of the "adequate measures" adopted by a Contracting State could be allowed to impinge in any way upon the present or future rights of authors, performers, phonogram producers or broadcasting organizations, whether the protection of those rights derived from domestic law, from either of the copyright conventions, or from the Rome Convention.

114 The Delegation of the United States of America, as noted above in paragraph , submitted a proposal (document UNESCO/WIPO/CONF/SAT/6) for amendment of the preamble and for a new paragraph in Article 6 to safeguard the International Telecommunication Convention and Radio Regulations against any interpretation under this treaty that would supersede or limit its application. It was pointed out that, throughout the many discussions of the ITU during the preparatory work, it had never been suggested that the present Convention should in any way impinge upon the obligations States have already assumed in the telecommunications field. The purpose of the Brussels Convention is to complement and supplement the ITU, not to compete with or weaken it. There was considerable support for this proposal in principle, and no dissent from the thinking underlying it, but the Conference agreed to place the amendment in the preamble rather than in the body of the Convention.

115 A proposal for the addition of a new paragraph dealing with rights of contributors to programmes being distributed via direct broadcast satellites, sponsored by the Delegations of the Federal Republic of Germany and Austria (document UNESCO/WIPO/CONF/SAT/10), was withdrawn in view of the Conference's decision concerning DBS signals. However, the Delegation of the Federal Republic of Germany asked that the following statement be inserted in the Report: "Among the governmental experts meeting in Paris (1972) and Nairobi (1973) it was undisputed that where a satellite is used for the distribution of programme-carrying signals made directly by the satellite itself, the originating organization, even without the insertion of such a provision in the Convention, is responsible for the distribution vis-a-vis the authors, performers, producers of phonograms and broadcasting organizations and cannot plead that the distribution was made in space and thus outside the sphere of application of any national law. However, since this view is disputed in legal literature it appears highly desirable to clarify the question by inserting an express provision."

116 The Main Commission also considered a proposal by the Delegations of Denmark and Mexico (document UNESCO/WIPO/CONF/SAT/20) that would have imposed an obligation on broadcasters to notify authors, performers and other contributors to programmes, in advance of a satellite broadcast using their contributions, of the distributors for whom the programme-carrying signals were intended. The obligation would have arisen only in cases where the contributions were protected against broadcasting in the Contracting State to which the broadcaster belonged, and the sponsors of the proposal also suggested that it might be made applicable only when the parties had not agreed otherwise.

117 The Main Commission expressed unanimous appreciation for the spirit behind this proposal, which had its counterpart in both Alternatives A and B of Article IV of the Paris draft. Several delegations supported the proposal, and there was also wide-spread support for the general principle involved: that, where the law of a broadcaster's country recognizes broadcasting rights in a contribution to a programme being transmitted by satellite, the contributor or his representative should be able to know in advance where the signals carrying the programme are intended to go, at least in cases where the contributor has not previously transferred or waived his rights. There was, however, opposition to the specific proposal on various grounds: that it would create insuperable practical difficulties in certain countries because of their legal framework or business or labour practices; that if not actually inconsistent with the compromise achieved in Nairobi, the proposal could upset the new balance of interests established under the Nairobi formula; and that, by limiting itself to an obligation to give advance notice, the proposal might adversely affect exclusive rights to control broadcasting already held by contributors under other international conventions. The proposal was therefore withdrawn on the understanding that the principle on which it was based, and the useful discussion of it in the Main Commission, should be reflected in this Report.

118 Several observers representing international non-governmental organizations made interventions at the end of the debate on this proposal. During these remarks a point was raised concerning the meaning of "secured" in the text of Article 6, and it was agreed that this Report should make clear that the term means "the right existing at the time when the distribution was made" rather than "rights secured in the past."

PART III

Article 7. Abuses of Monopoly

119. At Nairobi, the Delegation of India, supported by the Delegation of Mexico, put forward a proposal intended to preserve the right of a Contracting State to prevent abuses of monopoly under its domestic law. The Third Committee of Experts was divided on this proposal, and therefore decided to include the text in the draft Convention within square brackets. Within the bracketed section the word "international" was included in separate brackets, before the term "abuse of monopolies."

120. As at Nairobi, opinion on this Article was divided at the outset. The delegate of Tunisia took the lead in urging adoption of the Article without the word "international", which everyone agreed to drop as confusing and unnecessary. The section as thus amended received some fairly broad support, but was opposed by other delegations, mainly on the ground that the Article would be out of place and would serve no purpose in this Convention. The Delegations of Italy (document UNESCO/WIPO/CONF/SAT/12) and Argentina (document UNESCO/WIPO/CONF/SAT/24) made formal proposals to delete the provision, and questions were raised as to the possible impact of the provision upon the construction of existing copyright conventions, which contain no such safeguard clause.

121. The Chairman summarized the situation by suggesting that, even if it were true that the Article was redundant, certain delegations were urging its adoption in order to assert the principle involved. If no compromise were possible, it would be necessary to vote the provision up or down. The Delegation of the Ivory Coast urged delegations opposing the Article to avoid a vote and to participate in drafting a satisfactory explanation of the provision for insertion in this Report. This appeal was answered and a small working group was formed to prepare an explanatory statement (document UNESCO/WIPO/CONFESAT/30). After a long debate over the wording of this statement, a compromise was reached on a text and, with the understanding that the agreed wording would appear in this Report, the Article was adopted without dissent, but with certain qualifications expressed by the Delegations of Hungary and Italy. I am therefore indebted to the Main Commission for the next two paragraphs.

122. Article 7 is intended to preserve fully the application of domestic laws against abuses of monopoly. For purposes of this Convention, the application of these laws means that, if the conditions required for the enforcement of the law exist, a distributor not designated by the originating organization may be authorized by the competent national authorities to distribute programme-carrying signals. However, such a measure may not be applied when the originating organization does not possess the rights to distribute the signals on the territory of the State in question. A measure under Article 7 would also not be justified by the simple fact that the originating organization is asking for the signal a price considered too high, if it has not been determined that this price is not justified by the production and transport costs of the signal.

123. In short, the Conference adopted Article 7 with the clear understanding that Contracting States shall apply it in good faith and only where its application appears to them entirely legitimate.

Article 8 Reservations

124. This Article on Reservations, which had figured as Article 11 in all three of the earlier drafts, was brought forward to appear between the substantive and procedure articles of the Convention. The provision of paragraph (1), forbidding reservations in the situations specified in paragraphs (2) and (3), was adopted without discussion.

125. Since, under Article 2(1), the nationality of the originating organization is the sole criterion for the applicability of the Convention, a reservation is necessary to deal with the situation in a few countries whose present law is based on the criterion of the place from which the signals are emitted. A proposal for amendment of this paragraph put forward by the Republic of Argentina (document UNESCO/WIPO/CONFESAT/27) was referred to the Drafting Committee and was later accepted in part. However, a proposal by the United Kingdom (document UNESCO/WIPO/CONFESAT/15) aimed at facilitating adherence by that country was withdrawn when certain technical difficulties with the proposal were pointed out.

126. The Delegation of Australia had submitted a proposal (document UNESCO/WIPO/CONFESAT/29) for a new reservation based on the fact that Australian law protecting broadcasts provides that a

repeat broadcast made more than fifty years after the original broadcast does not revive the term of protection. The delegate of Australia withdrew his proposal, explaining that, after discussions with other delegations, he was convinced that Article 1 would offer no impediment to adherence by his Government.

127. Paragraph (3) of Article 8 involves the difficult problem of reconciling the present Convention with the domestic law of a few countries, under which retransmissions of broadcasts to subscribers of wire and cable systems are considered to fall outside the control of copyright owners. It has been recognized that a provision allowing reservations on this point would be necessary to achieve widespread ratification of the Convention, but efforts have been made to narrow the scope of the reservation as much as possible. To this end, the Delegation of the Federal Republic of Germany tabled a compromise proposal (document UNESCO/WIPO/CONFESAT/25) intended to be a substitute for the bracketed proviso in Article 11(3) of the Nairobi draft, under which a cable system would be prohibited from picking up signals directly from a satellite, before they had been distributed by broadcasters in the area. While sympathetic with the aims of this proposal, the delegations of some of the countries affected were uncertain whether, if the scope of the reservation were narrowed in this way, their Governments would be able to adhere to the Convention.

128. An informal working group met to seek a way out of this dilemma. As a result of its discussions, the Conference accepted a proposal involving the withdrawal of the proposal in document UNESCO/WIPO/CONFESAT/25 and deletion of the bracketed proviso, substitution of the date of signature of the Convention as the operative date for determining conditions justifying a reservation, and an interpretative statement in this Report. Changing the operative date narrows the possibilities for making a reservation; however, it was agreed in response to a point made by the Delegations of the Netherlands and Canada that a retrospective declaration could be deposited under this paragraph after the country became bound by the Convention, if a later court decision interpreted a statute in force on May 21, 1974, as limiting or denying protection to distribution by cable or similar means.

129. As a point of interpretation, the Conference agreed that, bearing in mind the provisions of the ITU Convention and the aims of the present treaty, it should not be possible for a cable system, relying on a reservation under Article 8(3) to pick up and distribute signals from a satellite before those signals have been distributed in the area.

Article 9 Application of the Convention

130. Article 8(1) of the Nairobi draft (now Article 9(1) of the Convention) presented the Conference with a choice as to the field of application of the treaty. Under one alternative, supported by the Delegation from France among others, adherents would be required to be party to the Universal Copyright Convention or members of the Berne Union. In favor of this alternative it was argued that countries should be induced to belong to the international copyright community before enjoying the benefits of the new treaty. The second alternative opening the Convention to members of the United Nations

or certain other intergovernmental arrangements, was supported by Italy (document UNESCO/WIPO/CONF/SAT/12) among many others. A proposal by the Delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic (document UNESCO/WIPO/CONF/SAT/8) would have deleted both alternatives, leaving the Convention completely open. It was put forward by its sponsors with the support of other delegations, as a formula designed to foster the principle of universality, which was considered particularly relevant in a treaty involving global communications. A motion by the Delegation of the Federal Republic of Germany to close the debate on this issue was carried, 32 to 6 with 4 abstentions, and the proposal in document UNESCO/WIPO/CONF/SAT/8 was defeated 24 to 11 with 7 abstentions. Thereupon, the intermediate alternative was adopted without a vote.

131. The sponsors of document UNESCO/WIPO/CONF/SAT/8 also proposed in the same document to delete paragraph (4) of Article 8 (now Article 9), arguing that, since the Nairobi draft leaves States free to choose the means of enforcing the Convention obligation, the provision is superfluous. This Proposal received some support but also some strong opposition, and was defeated 21 to 12 with 10 abstentions. The Conference agreed, however, that the provision does not necessarily imply that a country must pass new statutory legislation; as long as the obligations of Article 2 are met, the means chosen can be statutory or non-statutory.

Article 10. Entry into Force

132. Document UNESCO/WIPO/CONF/SAT/8 submitted by the Delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic also proposed to delete paragraph (3) of Article 9 (now Article 10), the so-called "territorial dependency" clause. The delegations of the United Kingdom and the Netherlands explained the practical difficulties that deletion of the clause, which appears in a number of intellectual property treaties, would cause for them, and their viewpoint was supported by several delegations. However, it was apparent to the Chairman that the question was one of principle for a number of delegations, and that there was no possibility of the provision attaining a two-thirds vote in the plenary. At his suggestion, therefore, the two parts of the paragraph were deleted without a vote. The delegates of the United Kingdom and the Netherlands later made formal statements dissenting from this action. The delegate of the Netherlands stressed that for his Government there was no question of colonialism, obsolete or moral, and that the deletion of what should preferably have been called the "metropolitan" rather than the "colonial" clause would form a very serious obstacle for adherence to the Convention.

Proposals Relating to Programme-Content

133. As indicated above, in paragraph 52, it is my purpose in this section of the Report to bring together in one place, and to summarize as briefly as possible the various discussions of the proposals con-

32. All of these proposals bear in one way or another on the question of the content of television programmes transmitted internationally by satellite. For the sake of reference, and to make the discussion comprehensible, it is necessary to tabulate these documents, and their contents here:

Document number and date	Sponsors	Proposed amendment
CONF/SAT/8, May 7, 1974	U.S.S.R., Ukrainian SSR, Byelorussian SSR	(1) New paragraph in Preamble "Admitting the necessity for an international agreement on principles governing the use by States of artificial earth satellites for direct television broadcasting in accordance with Resolution 2916 (XXVIII) of the United Nations General Assembly" (2) New article after Preamble "Each Contracting State shall undertake to exclude from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred or otherwise aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions" (3) New article after Preamble "Each Contracting State shall undertake to broadcast via satellite to foreign States only with the express consent of the latter" (4) New article after Article 7 "Contracting States shall consider as unlawful and incurring international responsibility, any broadcasts which are especially intended for a foreign State but which are made without the express consent of that State, and also any broadcasts which contain material which should not be included in programmes under the terms of this Convention" (5) New article after Article 7 "Contracting States shall bear international responsibility for all national activities connected with the use of satellites for broadcasting, irrespective of whether such broadcasting is carried out by governmental agencies or by non-governmental organizations and juridical persons" (6) New Article 3 (Essentially the same as item 2)
CONF/SAT/23, May 10, 1974	Same as CONF/SAT/8 plus German Democratic Republic, Czechoslovakia and Hungary	(7) New Article 7bis (Same as item 5)
CONF/SAT/28, May 14, 1974	Same as CONF/SAT/23	(8) New paragraph in Preamble "Recognizing the obligation of States to exclude from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of national and racial hatred and aimed at interfering in the domestic affairs of other States." (Similar to item 2)
CONF/SAT/31, May 14, 1974	Same as CONF/SAT/8	(9) New paragraph in Preamble "Recognizing the international responsibility of States for all national activity connected with the use of satellites for broadcasting" (Similar to item 5)
CONF/SAT/32, May 14, 1974	do	

134. The first preliminary discussions of the subject in the Main Commission took place in the context of item 2 (later item 6) on the above list. The sponsors argued that the distinctions between programmes and signals (content and container) are artificial and illusory, as evidenced by the debates over the term of protection, and the importance of fixations in the treaty. It was urged that the existence of the 1967 Treaty on Outer Space does not pre-empt the field or remove the moral obligation of this Conference to deal with the matter. At the outset, four delegations spoke generally in favor of the proposal or the principle expressed in it, but one of them wished to make sure there was no conflict between it and the Conference's decision to exclude distribution of signals from direct broadcast satellites from the treaty's scope. Two delegations opposed consideration of these proposals on the ground that questions of programme-content are outside

the scope and purpose of the treaty and beyond the mandate and competence of the Conference. Reference was made to the intervention of the Unesco representative, who had explained in detail the fundamental difference between this treaty and questions of programme-content now being studied actively by other international bodies. It was argued that, since the Conference had taken DBS signals out of the treaty, the proposals were irrelevant.

135. The second discussion in the Main Commission, which was interrupted by a suspension, was also devoted to item 6 (earlier item 2) on the above table. There were 25 interventions. The same arguments were made again by the proponents of the proposal and the delegations opposed to considering the proposal. The sponsors cited the exceptions in Article 4 as demonstrating that the treaty really deals with programme-content, and emphasized that their proposals were offered in the same spirit. These proposals, their sponsors emphasized, were aimed at settling the principles that should govern programme-carrying signals transmitted by satellite, and the workability of these principles could be tested in the context of point-to-point transmissions; in any case, the principles are equally applicable to DBS and point-to-point satellite transmissions. It was argued that these proposals are consistent with earlier treaties and standards of international law.

136. A number of delegations spoke against including the proposals in the Convention. Several of them took the view that the subject could not validly be discussed at all, since the Conference lacked competence to deal with the matter. Others argued that, whether or not the Conference had technical competence, as a legal matter, it was inappropriate for it to do so, in view of the current activities of other international bodies in the field, the irrelevance of the subject matter, now that DBS had been excluded from the treaty, and the lack of any real consideration of the question in the three years of preparatory work. It was also pointed out that the Nairobi draft deals only with signals, and is focused upon setting obligations for receiving States, not creating obligations for transmitting States. Some of the delegations expressed appreciation and understanding for the principle of the proposal, but said that they were unable or hesitant to see it included in the text, or even in the Preamble, of the Convention. Finding himself in this category, the delegate of Kenya proposed that the proposals be reflected in this Report. This proposal received support from several delegations, including that of Senegal whose preference, however, was to reflect the proposal in the Convention's Preamble or text.

137. As explained above, in paragraph , the Main Commission received procedural proposals from the Delegations of Algeria and the United States of America which, although quite different, had certain common features. Essentially they both involved having the Conference adopt a document (possibly a resolution, recommendation or letter) which would be transmitted with documentation from the Conference to the officials of other bodies dealing with the subject matter. A working group was formed to make recommendations for a solution to the problem, and full-scale discussion of the other proposals was eventually postponed until the Group had completed its task.

138. At the end of the discussion of Article 7, and before this postponement had been made, however, the proponents of document UNESCO/WIPO/CONFESAT/28, proposing a new Article 7bis (item 7, previously item 5 on the above list) had begun an introduction of their proposal. At the outset the delegate of the Union of Soviet Socialist Republics withdrew two of the proposals in document UNESCO/WIPO/CONFESAT/8 because they deal with DBS situations, about which there are differences as to coverage, on condition that they be mentioned in this Report. These are items 3 and 4 in the table above, where their texts are reproduced in full.

139. Speaking for the first time to the proposal for a new Article 7bis (items 5 and 7 on the above table), the delegates of the Union of Soviet Socialist Republics and the German Democratic Republic cited several multilateral agreements to support the proposal that individual States should assume responsibility for satellite emissions; and asserted that the principles of international law enunciated in these arrangements affect all satellite broadcasting, whether direct or point-to-point. They felt that the proposal therefore logically came within the scope of the Convention, which, they reiterated, deals with programmes as well as signals.

140. As noted above in paragraph , the Working Group produced a compromise proposal (document UNESCO/WIPO/CONFESAT/34), consisting of a draft letter. Before it was discussed, however, the Main Commission turned to a full-scale discussion of the proposal for a new Article 7bis (item 7, above). At the outset of this debate, an effort was made to determine which of the nine proposals in the five documents were still before the Main Commission. In effect, the position appeared to be that, if the letter and procedure proposed by the Working Group were accepted, the sponsors would withdraw all of their proposals except that for a new Article 7bis (item 7 on the above table).

141. The full-scale debate on the proposal in document UNESCO/WIPO/CONFESAT/28 (item 7 of the above table) began with the Delegation of Czechoslovakia, which made the same points as the previous proponents. His views were supported in principles by the Delegations of Algeria and Hungary, and were greeted sympathetically by Tunisia. Other delegations argued that the Outer Space Treaty was not intended to deal with the question of satellite broadcasting, which is now being considered by the Legal Subcommittee of the United Nations Outer Space Committee; others repeated the argument that the proposal was academic in light of the exclusion of DBS. The Delegations of the Ivory Coast and Ghana asked for a clarification of the procedural situation. The Delegation of the United Kingdom moved formally to close the debate and called for a vote. The proposal was rejected, 24 to 9 with 9 abstentions.

142. Thereafter, the Main Commission considered the text of the letter prepared by the Working Group (document UNESCO/WIPO/CONFESAT/34) and adopted it subject to polishing by the Drafting Committee. The Drafting Committee's text (document UNESCO/WIPO/CONFESAT/34 Rev.) was then adopted by the Main Commission and in turn by the Plenary Assembly (document UNESCO/WIPO/CONFESAT/37).

Article 11 Denunciation

143 As a result of the decision taken by the Conference to delete paragraph (3) of Article 9 of the Nairobi draft (now Article 10 of the Convention), and in accordance with the proposal of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic (document UNESCO/WIPO/CONFESAT/8), the reference to the last clause of paragraph (1) was deleted.

Article 12 Notifications

144 This Article was reworded to conform more closely with the equivalent provision in the 1971 Phonograms Convention. The Conference agreed that, in addition to the original texts in English, French, Russian and Spanish, official texts should be established by the Directors General of Unesco and WIPO, after consultation with the Governments concerned, in Arabic, Dutch, German, Italian and Portuguese.

Final Act

145 It was decided that, in addition to the Convention itself, the Brussels Conference should produce a Final Act, which all participating States could sign as attesting to the facts of the Conference. A draft was prepared by the Secretariat and put forward to the Main Commission (document UNESCO/WIPO/CONFESAT/35) and after some revisions, to the Plenary Assembly (document UNESCO/WIPO/CONFESAT/39). With certain further amendments it was adopted and signed by States on May 21, 1974.

Adoption of this Report

146.

Closing Ceremonies and Resolution

147.

Conclusion

148.

DRAFT LETTER RELATING TO DOCUMENT UNESCO/WIPO/CONFESAT/23 SUBMITTED TO THE PLENARY MEETING BY THE MAIN COMMISSION

Mr. Kurt Waldheim,
Secretary-General,
United Nations Organization.

SIR: 1. The International Conference of States on the distribution of programme-carrying signals transmitted by satellite has been seized with a proposal of the Byelorussian Soviet Socialist Republic, the Czechoslovak Socialist Republic, the German Democratic Republic, the Hungarian People's Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics to insert in the Convention a new article the text of which is as follows:

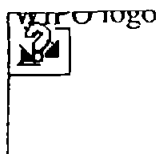
"Each Contracting State shall undertake to exclude in all cases from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred and aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions."

2. Although the issue mentioned in paragraph (1) was thought to be an important one by a significant number of delegations, the Conference considered that it was not within the scope of the Conference.

3. I am transmitting to you the attached report and the verbatim records of the Conference relating to this subject, in order that these documents may be sent to Member States as official documents of the United Nations Organization, and submitted to the Committee on the Peaceful Uses of Outer Space so that it may take them into account in its work.

Please accept, Sir, the assurances of my highest consideration.

THE PRESIDENT OF THE CONFERENCE.



CONTRACTING PARTIES OF TREATIES ADMINISTERED BY WIPO

Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite

Satellites Convention (Brussels, 1974)

Status on July 3, 1997

State	Date on which State became party to the Convention
Armenia	December 13, 1993
Australia	October 26, 1990
Austria	August 6, 1982
Bosnia and Herzegovina	March 6, 1992
Croatia	October 8, 1991
Germany [1]	August 25, 1979
Greece	October 22, 1991
Italy[1]	July 7, 1981
Kenya	August 25, 1979
Mexico	August 25, 1979
Morocco	June 30, 1983
Nicaragua	August 25, 1979
Panama	September 25, 1985
Peru	August 7, 1985
Portugal	March 11, 1996
Russian Federation	February 1, 1989[2]
Slovenia	June 25, 1991
Switzerland	September 24, 1993
Trinidad and Tobago[3]	November 1, 1996
United States of America	March 7, 1985
Yugoslavia	August 25, 1979

(Total: 21 States)

[1] With a declaration, pursuant to Article 2(2) of the Convention, that the protection accorded under

Article 2(1) is restricted in its territory to a period of 25 years after the expiry of the calendar year in which the transmission by satellite has occurred

[2] Date of accession by the Soviet Union, continued by the Russian Federation as from December 25, 1991

[3] With a declaration, pursuant to Article 2(2) of the Convention, that the protection accorded under Article 2(1) is restricted in its territory to a period of 20 years after the expiry of the calendar year in which the transmission by satellite has occurred
