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(PARIS UNION)

ASSEMBLY

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DRAFT GUIDELINES FOR THE INTERPRETATION  
OF ARTICLE 6~~ter~~(1)(b) AND (3)(b) OF  
THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

Document prepared by the International Bureau

## I. INTRODUCTION

1. In its session held from September 23 to October 2, 1991, the Assembly of the Paris Union for the Protection of Industrial Property examined a document entitled "Application of Certain Provisions of Article 6~~ter~~ of the Paris Convention for the Protection of Industrial Property" (document P/A/XVIII/1); following the discussions of that document, it was decided that the International Bureau should prepare, for the next session of the Assembly, draft guidelines for the interpretation of Article 6~~ter~~(1)(b) of the said Convention, and that the matters referred to in paragraphs 17 and 18 of the above-mentioned document (request by the "United Nations Environment Programme (UNEP)" to communicate its logo and request of the "Convention on Wetlands of International Importance especially as Waterfowl Habitat (RAMSAR, 1971)" to communicate its name, abbreviation and emblem) should be decided once those guidelines have been adopted (document P/A/XVIII/5, paragraph 21). The text of Article 6~~ter~~ of the Paris Convention for the Protection of Industrial Property, as revised at Stockholm in 1967 (hereafter referred to as "the Paris Convention"), is reproduced in the Annex to the present document.
2. Paragraphs (1)(b) and (3)(b) of Article 6~~ter~~ of the Paris Convention were adopted by the Revision Conference of Lisbon in 1958. Their purpose was to extend (with some limitations; see paragraph 3, below) the application of Article 6~~ter~~ to armorial bearings, flags and other emblems, as well as to names and abbreviations of such names, of international intergovernmental organizations of which one or more countries of the Union were members. Examples of such organizations are the United Nations Organization (UNO), the World Health Organization (WHO) and the Food and Agricultural Organization (FAO).
3. The Revision Conference of Lisbon excepted from protection under Article 6~~ter~~(1)(b) the emblems, names and abbreviations of international intergovernmental organizations which are already the subject of international agreements in force that are intended to ensure their protection (for example, the emblem of the Red Cross on a white ground, the words "Red Cross" or "Geneva Cross," and analogous emblems protected under the Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field, of August 12, 1949).
4. On several occasions, the International Bureau received requests for a communication under Article 6~~ter~~(1)(b) of the Paris Convention while the entity requesting such communication did not seem to fulfill the required conditions. For that reason, the International Bureau requested the Assembly of the Paris Union to take decisions on the application of Article 6~~ter~~(1)(b) of the Paris Convention.
5. In its session held in 1979, the Assembly of the Paris Union "unanimously requested the International Bureau not to communicate to the countries of the Paris Union the armorial bearings, flags, other emblems, abbreviations and names corresponding to specific conventions or programs of intergovernmental organizations" (documents AB/X/12 and AB/X/32, paragraphs 29 to 31; emphasis added).
6. Later on, in its session held in 1983, the Assembly of the Paris Union decided that the International Bureau should refuse the communication, under Article 6~~ter~~(1)(b) and (3)(b), of any emblem, abbreviation or name of an intergovernmental organization that, in its opinion, is not an emblem,

abbreviation or name of the intergovernmental organization itself which has requested such communication (documents P/A/VIII/2-P/CR/X/2 and P/A/VIII/3, paragraphs 4 to 7).

7. In the implementation of the above-mentioned decisions taken by the Assembly of the Paris Union, difficult questions of interpretation have arisen in several cases, in particular in the cases that are mentioned in paragraphs 5 to 14 of document P/A/XVIII/1 of May 31, 1991 (the logo of the United Nations Environment Programme (UNEP); the emblem, abbreviation and name of the Convention on Wetlands of International Importance especially as Waterfowl Habitat (RAMSAR, 1971); the name and emblem of the Alliance of the Orders of St. John of Jerusalem). In fact, the International Bureau often has difficulties in determining whether an entity presenting a request under Article 6ter(3)(b) of the Paris Convention should be considered as an international intergovernmental organization; for example, some entities, while having been jointly created by several States, do not have all the customary characteristics of an intergovernmental organization.

8. The following draft Guidelines are aimed at facilitating the implementation of Article 6ter(1)(b) and (3)(b) by both the International Bureau, which is in charge of effecting the communications provided for in Article 6ter(3)(b), and the States which have to protect, according to Article 6ter(1)(b), the signs communicated to them by the International Bureau.

## II. DRAFT GUIDELINES

9. It is proposed that the Assembly of the Paris Union adopt the following Guidelines for the Interpretation of Article 6ter(1)(b) and (3)(b):

"A. Definition of International Intergovernmental Organization. For the purposes of the implementation of Article 6ter(1)(b) and (3)(b) of the Paris Convention for the Protection of Industrial Property, the term "international intergovernmental organization" means any of the following:

(i) any international organization established by a treaty to which one or more States members of the Paris Union are party, provided that such organization is administered by an assembly of its member States, has its own budget and is managed by its own Chief Executive (Director General or Secretary General) elected by the said assembly;

(ii) any program established by an international organization of the kind referred to in item (i), above, provided that the said program constitutes or is intended to constitute, within the said organization, a permanent entity having specified aims and its own rights and obligations;

(iii) any institution established by an international organization of the kind referred to in item (i), above, provided that the said institution constitutes or is intended to constitute, within the said organization, a permanent entity having specified aims and its own rights and obligations;

(iv) any convention constituting an international treaty to which one or more States members of the Paris Union are party, provided that the said convention establishes or is intended to establish a permanent entity having specified aims and its own rights and obligations.

B. Interpretation of Terms Used in the Definition of International Intergovernmental Organization. For the purposes of the present guidelines,

- "permanent entity" means an entity which is established for an indefinite period of time; thus entities established to promote a particular issue or celebrate a special event within a limited period of time (for example programs such as "year of ....") are excluded;
- "specified aims" means that the permanent entity is competent for certain subject matters which are clearly defined in its enabling statutes or charter, or in the resolutions or other decisions establishing such entity;
- "own rights and obligations" means that the permanent entity has rights and obligations which are clearly defined in its enabling statutes or charter or in the resolutions or other decisions by which it has been established. Such rights and obligations may concern the management of the permanent entity, election or appointment of its chief executive, finance, reporting of activities, etc."

III. DECISIONS TO BE TAKEN

10. The adoption of the above-mentioned guidelines by the Assembly of the Paris Union would necessarily entail the revocation by the Assembly of the decisions it took at its sessions in 1979 and 1983 with respect to the interpretation of Article 6~~ter~~(1)(b) of the Paris Convention, to the extent that they are contrary to the guidelines, as from the date on which the guidelines enter into force.

11. Moreover, the Assembly of the Paris Union is invited to take the following decisions as regards the cases mentioned in paragraphs 17 and 18 of document P/A/XVIII/I (see paragraph 1, above):

(a) The International Bureau should satisfy the request of the "United Nations Environment Programme (UNEP)" for the communication of its logo because:

(i) the United Nations Environment Programme is a program established by an international intergovernmental organization (the United Nations) which corresponds to the definition of "international intergovernmental organization" contained in Part A of the guidelines;

(ii) the said program has been adopted by a Resolution of the General Assembly of the United Nations and constitutes, within the United Nations, a permanent entity as defined in Part B of the guidelines;

(iii) the subject matters put under the responsibility of the Governing Council established for administering UNEP are clearly defined in the said Resolution;

(iv) the rights and obligations of the Secretariat established in the framework of the United Nations to serve as a focal point for environmental action and coordination within the United Nations system, and headed by an Executive Director elected by the General Assembly of the United Nations, are clearly indicated in the said Resolution.

(b) The International Bureau should also satisfy the request of the "Convention on Wetlands of International Importance especially as Waterfowl Habitat (RAMSAR, 1971)", for the communication of its name, abbreviation and emblem because:

(i) the said Convention constitutes an international treaty to which several States members of the Paris Union are party;

(ii) the said Convention establishes a permanent entity ("the continuing Bureau") having specified aims and its own rights and obligations which are defined in that Convention.

(c) On the other hand, in view of the guidelines, the International Bureau could not (as already decided by the Assembly of the Paris Union in 1991) satisfy the request of the Alliance of the Orders of St. John of Jerusalem for the communication of its name and emblem because such Alliance is not an international organization within the meaning of the definition given in the guidelines nor a program, an institution or a convention of the kind referred to in the guidelines.

12. The Assembly of the Paris Union is invited

(i) to adopt the guidelines contained in paragraph 9, above;

(ii) to adopt the decisions contained in paragraphs 10 and 11, above, and

(iii) to decide that the guidelines enter into force on October 1, 1992.

[Annex follows]

Article 6ter of the Paris Convention  
(Lisbon Act, 1958, and Stockholm Act, 1967)

Article 6<sup>ter</sup>

[Marks: Prohibitions concerning State Emblems, Official Hallmarks,  
and Emblems of Intergovernmental Organizations]

(1) (a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.

(b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection.

(c) No country of the Union shall be required to apply the provisions of subparagraph (b), above, to the prejudice of the owners of rights acquired in good faith before the entry into force, in that country, of this Convention. The countries of the Union shall not be required to apply the said provisions when the use or registration referred to in subparagraph (a), above, is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the armorial bearings, flags, emblems, abbreviations, and names, or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.

(2) Prohibition of the use of official signs and hallmarks indicating control and warranty shall apply solely in cases where the marks in which they are incorporated are intended to be used on goods of the same or a similar kind.

(3) (a) For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated.

Nevertheless such communication is not obligatory in respect of flags of States.

(b) The provisions of subparagraph (b) of paragraph (1) of this Article shall apply only to such armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations as the latter have communicated to the countries of the Union through the intermediary of the International Bureau.

(4) Any country of the Union may, within a period of twelve months from the receipt of the notification, transmit its objections, if any, through the intermediary of the International Bureau, to the country or international intergovernmental organization concerned.

(5) In the case of State flags, the measures prescribed by paragraph (1), above, shall apply solely to marks registered after November 6, 1925.

(6) In the case of State emblems other than flags, and of official signs and hallmarks of the countries of the Union, and in the case of armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations, these provisions shall apply only to marks registered more than two months after receipt of the communication provided for in paragraph (3), above.

(7) In cases of bad faith, the countries shall have the right to cancel even those marks incorporating State emblems, signs, and hallmarks, which were registered before November 6, 1925.

(8) Nationals of any country who are authorized to make use of the State emblems, signs, and hallmarks, of their country may use them even if they are similar to those of another country.

(9) The countries of the Union undertake to prohibit the unauthorized use in trade of the State armorial bearings of the other countries of the Union, when the use is of such a nature as to be misleading as to the origin of the goods.

(10) The above provisions shall not prevent the countries from exercising the right given in paragraph (3) of Article 6<sup>quinquies</sup>, Section B, to refuse or to invalidate the registration of marks incorporating, without authorization, armorial bearings, flags, other State emblems, or official signs and hallmarks adopted by a country of the Union, as well as the distinctive signs of international intergovernmental organizations referred to in paragraph (1), above.

