E

WIPO/IP/CAI/1/03/2
ORIGINAL: English
DATE: February 2003

CAIRO UNIVERSITY

WORLD INTELLECTUAL PROPERTY ORGANIZATION

WIPO NATIONAL SEMINAR ON INTELLECTUAL PROPERTY

organized by
the World Intellectual Property Organization (WIPO)

in cooperation with
the Cairo University, Arab Republic of Egypt

Cairo, February 17 to 19, 2003

THE INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY: FROM THE PARIS CONVENTION TO THE TRIPS AGREEMENT

Lecture prepared by Professor Michael Blakeney, Director, Queen Mary Intellectual Property Research Institute, Center for Commercial Law Studies, University of London

c:\winnt\apsdoc\nettemp\1272\$asqwipo_ip_cai_1_03_2.doc
20/06/03

1. Paris Convention for the Protection of Industrial Property 1883

1.1 BACKGROUND

Prior to the existence of an international industrial property regime it was difficult to obtain protection for industrial property rights in the various countries of the world because of the diversity of their laws. In the field of patents, applications had to be made roughly at the same time in all countries in order to avoid the publication of an application in one country destroying the novelty of the invention in the other countries. During the second half of the nineteenth century, the growth of industrial production, the increase in international trade and the development of a more internationally oriented flow of technology and made the harmonization of industrial property laws urgent in the fields of patents, trademarks and industrial designs.

The origins of proposals for an international convention on the protection of industrial property were traced by Carl Pieper and Paul Schmid, in their history of the 1883 Paris Convention[1], to a suggestion of Prince Albert, the Consort of Queen Victoria, made at the time of the Great Exhibition of 1851, that there should be some form of international protection for inventions.[2]

(a) The Vienna Congress 1873

The first international conference, which addressed the possibility of an international industrial property regime, was a conference on patent law, which was convened on the occasion of the 1873 Vienna International Exposition. At the time that plans for the Vienna Exposition were announced, US inventors and manufacturers had threatened a boycott of the event unless the Austrian Patent Law of 15 August 1852 could be improved to provide more satisfactory protection to foreign inventors. The particular complaint which was made about the Austrian law, was the requirement that the manufacture of a patented article should commence within the Austro-Hungarian Empire within one year from the grant of a patent. Bureaucratic delays within the Empire were identified as a significant obstacle to this working requirement.[3] As a consequence of US expressions of concern, discussions were held in Vienna between the Austro-Hungarian Minister for Foreign Affairs and the US legate, John Jay, resulting in the enactment by the Austro-Hungarian Government of a special law "for the provisional protection of articles introduced at the Vienna Exposition".[4] This law was based on those which had been enacted by the UK and French Governments in connection with the International Expositions in London in 1851 and 1862 and Paris in 1855 and 1867.

Although convened at the invitation of the Austro-Hungarian Government, the Vienna Congress was an unofficial meeting. The Preparatory Committee sent to delegates a series of questions concerning

> …the international rights of inventors; the boundaries of those rights; whether such boundaries should be international or territorial; the granting, cost, lapsing, and duration of patents; the administration of the Patent Office, and the securing of international arrangements somewhat analogous to those existing in the case of copyright.[5]

The answers received to these questions formed the basis for a number of resolutions which were presented for discussion at the Congress which met between 4 and 8 August 1873. The first Resolution which was adopted by the Congress was that "The protection of inventions should be guaranteed by the laws of all civilized nations". [و] Seven "reasons" were advanced to justify this Resolution. These were:

(i) The sense of right among civilized nations demands the legal protection of intellectual work.
(ii) This protection affords, under the condition of a complete specification and publication of the invention, the only practical and effective means of introducing new technical methods without loss of time, and in a reliable manner, to the general knowledge of the public.
(iii) The protection of invention renders the labour of the inventor remunerative and induces thereby competent men to devote time and means to the introduction and practical application of new and useful technical methods and improvements, and attracts capital from abroad, which, in the absence of patent protection, will find means of secure investment elsewhere.
(iv) By the obligatory complete publication of the patented invention, the great sacrifice of time and of money, which the technical application would otherwise impose upon the industry of all countries, will be considerably lessened.
(v) By the protection of inventions, secrecy of manufacture, which is one of the greatest enemies of industrial progress, will lose its chief support.
(vi) Great injury will be inflicted upon countries which have no rational patent laws, by the native inventive talent emigrating to more congenial countries, where their labour is legally protected.
(vii) Experience shows that the holder of a patent will make the most effectual exertions for a speedy introduction of his invention. [ز]

The second Resolution listed the principles upon which an "effective and useful patent law should be based". These included the principles that only the inventor or his legal representative should be entitled to a patent and that "a patent should not be refused to a foreigner". [ح] A patent term of 15 years was proposed, together with the complete publication of a patent at the time of grant, as well as the principle of the independence of national. [ط] Probably, the most controversial of these principles was that which allowed patented inventions to be used "by all suitable applicants for an adequate compensation". [ي] The acceptance of this principle of compulsory licensing, reflected the strong influence of the German delegates in Vienna, who saw some advantage in debates about the patent system in their country in demonstrating how abusive patent monopolies might be mitigated. [ك]

A Permanent Executive committee was established to continue the work of the Congress and to publicise the Recommendations.

1.2 THE PARIS CONFERENCES 1878, 1880 AND 1883

Although of limited influence, largely because of its unofficial nature, the Vienna Congress placed patent protection on the international diplomatic agenda and provided a negotiating basis for the more influential Paris Conferences of 1878, 1880 and 1883.

The most significant resolutions of the 1878 conference was the resolve to secure from a government, sponsorship of an official conference to "determine the bases of uniform legislation" and to establish a Permanent Committee "to give effect to the propositions adopted by the Congress of Industrial Property". [ل]

On 18 and 19 September 1878, the Permanent Committee met to determine its mandate and functions. It considered a draft treaty "concernant la Création de l'Union Gènèrale pour la protection de la Propriété Industrielle", which was prepared by its Swiss member, Bodenheimer.[ٹ] This draft treaty, which sought to incorporate all the matters which had been raised during the 1878 conference, was adopted by the Permanent Committee.

The 1880 Paris Conference was the first diplomatic conference concerned solely with the international protection of industrial property rights. It was attended by 35 official delegates from Argentine Confederation, Austria, Belgium, Brazil, France, Guatemala, Hungary, Italy, Luxemburg, Netherlands, Norway, Portugal, Russia, Salvador, Sweden, Switzerland, Turkey, UK, Uruguay, USA, Venezuela. With the exception of Belgium, France, Italy and the UK, which were represented by the respective heads of their industrial property offices[ن], the delegates were drawn largely from diplomatic backgrounds. This was a contrast with the previous conferences, where most participants came from industrial property backgrounds.

The first act of the 1880 Conference was to reject the third draft treaty in favour of an alternative draft, prepared by Charles Jagerschmidt, of the French Ministry of Foreign Affairs.[س] The Conference accepted Jagerschmidt's suggestion in Article 1 of this draft that the Conference establish a "Union for the Protection of Industrial Property". The term "Industrial Property" was defined in Paragraph 1 of the Final Protocol as being "understood in the broadest sense" and relating "not only to the products of industry in the strict sense, but also to agricultural products (wines, grain, fruit cattle, etc), and mineral products which are put into trade (mineral waters, etc)".

The proposal for a "Union" followed the initiatives of the International Telegraph Union (1865) and the Universal Postal Union (1874), particularly in relation to the establishment and funding of the International Bureau. [ع]

The Jagerschmidt draft, like its predecessors, proposed the right of national treatment as a fundamental principle. This was defined in Article 2 of the final draft in the following terms:

> The subjects or citizens of each of the contracting States of the Union, shall enjoy in all other States of the Union, in the matter of patents, industrial designs or models, trademarks, and commercial names, the advantages that their respective laws now accord or may hereafter accord to nationals. In consequence, they shall have the same protection as the latter and the same legal remedy against injury to their rights, upon the only condition that they accomplish the formalities imposed upon nationals by the domestic legislation of each State.

Thisprinciplehadhithertofeaturedinanumberofbilateralcommercialtreaties,suchasthe TreatyofCommercebetweenAustria -HungaryandtheUKof5December1878.

Noneofthe delegatesatthe1880ConferencewereauthorisedbytheirGovernmentstoaccede toanyconvention.Adocumentrecordingtheworkofthe1880Conferencewassignedby delegates,togetherwithanagreementtosubmitthetextofthedraftConventiontotheir respectiveGovernments. ف

InMarch1883,theFrenchMinisterofForeignaffairs,convenedaseconddiplomatic conference,observingthatsufficienttimehadelapsedforGovernmentstohavestudiedthe drafttext. صThe1883Conferencethusagreednottoma keanysubstantiveamendmentstothe 1880text,buttopermitpointsoffinalclarificationtobeincludedintheFinalProtocol. قOn thisbasistherepresentativesofBelgium,Brazil,France,Guatemala,Italy,theNetherlands, Portugal,Salvador,Serbia, SpainandSwitzerlandwereabletogivetheirsignaturesofassent tothetermsoftheParisConventionon20March1883.

TheUSAwasconstitutionallyunabletoaccedetotheConventionin1883becausetheUS SupremeCourthadheldin1879thattheFeder alTrademarksActsof1870and1876were unconstitutional,becauselegislationontrademarkswasbeyondtheFederalGovernment’s powerto“promotetheprogressofscienceandtheusefularts”. رTheUSdelegatestothe1880 ConferenceobtainedaReservatio ntobeincludedinParagraph4oftheFinalProtocolwhich statedthat

> TherepresentativeoftheUnitedStates,havingdeclaredthatintermsoftheFederal Constitution,therighttolegislateinrelationtotrademarksisinacertainmeasure, reservedtoeachoftheStatesoftheUnion,itisunderstoodthattheprovisionsofthe Conventionshallnotbeapplicableexceptwithinthelimitsoftheconstitutional powersofthecontractingparties. ش

ByaNotedated18March1887,theUSAinformedtheSwis sFederalCouncilofitsaccession totheParisConvention,subjecttothisReservation,totakeeffectfrom30May1887. ت

TheParisConventionof1883wasobviouslysignificantasthefirstmultilateralintellectual propertyconvention.Itcontainedan umberofimportantsubstantivefeatures:therequirement ofnationaltreatment,priorityrightsandtheconceptofan“OpenUnion”,withthepossibility ofrevisionandtheextensionofmembership.TheParisConventionwastoserveasamodel forthesubse quentinternationalintellectualpropertyagreements.Indeedthesewere contemplatedasSpecialAgreementsbyArticle15oftheParisConvention,whichprovided:

> ItisunderstoodthattheHighContractingPartiesreservetherighttomakeseparately betweenthemselvesspecialarrangementsfortheprotectionofindustrialproperty,in sofarasthesearrangementsdonotcontravenetheprovisionsofthepresent Convention.

AsJean -FrançoisBozérianhadpropheticallytoldthe1880ParisConference,theirwor k wouldamountonlyto”lapréfaced’unlivrequivas’ouvriretquineserapeut -êtreferméque dansdelonguesannées”. ث

1.3 REVISIONS1886 -1967

TheParisConventionprovidedinArticle14forperiodicconferencesofrevision,withaview toamendingt heConventioninformedbyitspracticalapplication.Themoreimportantof thesewere:

(a) SecondConferenceofRevisionatMadrid,1890 -91

Followinganunofficialindustrialpropertycongressheldin ParisinAugust1889atwhicha generalharmonization ofindustrialpropertylawswascanvassed,fourtextswerepreparedby theInternationalBureauandtheSpanishGovernmentforarevisionconferencetobeheldin Madrid.Thefirstwasaprotocolofinterpretationandexecutionofthe Convention,whichha d beensubmittedtotheRomeConference.Thesecondconcernedtheadministrationofthe InternationalBureau.ThethirdwasproposedasaspecialagreementundertheParis Conventionfortheinternationalregistrationoftrademarksandthefourthconcerne daspecial agreementfortherepressionoffalseindicationsoforigin. خ

Thearrangementsconcerningtheinternationalregistrationoftrademarkswereadoptedby ninecountries ذ andfortherepressionoffalseindicationsoforiginwereadoptedbyten countries. ض

(b) FourthConferenceofRevision,Washington1911

TheWashingtonConference,whichmetonMay15,1911,hadnoadditionaltextstoconsider, butincorporatedtheamendmentstotheParisConventionmadeatthepreviousconferences intotheo riginaltextasseparatearticles,whichattemptedtopreservetheoriginalnumbering oftheConvention.

ThenationaltreatmentprincipleinArticle2wasextendedtoincludeindicationsoforigin, utilitymodelsandactsofunfaircompetition.Theprinc ipleoftheindependentstatusof patents,providedinArticle4 *bis*,wasclarifiedbyanindicationthatindependenceincluded groundsforrefusal,revocationandduration.

TheInternationalBureauwasdirectedtoundertakestudiesonfourmattersonwhic h agreementcouldnotbereached:simplificationoftheformalitiesrelatingtopatent applications;anagreementfortheinternationaldepositofdesignsandmodels;asystemfor theuniformclassificationoftrademarks;andthecreationofasystemfor therecordingof trademarksincountries,suchasChina,whichdidnothavearegistrationsystem.These studiesweretobepresentedatthenextconference,whichwasscheduledfortheHague

(c) FifthConferenceofRevision,TheHague,1925.

TheFifth RevisionConferencemetinthecontextofthecreationofanumberofnewstates,as aconsequenceofthePeaceTreaties,whichconcludedtheFirstWorldWarandthecreationof theLeagueofNationsandtheInternationalChamberofCommerce(ICC).

Oneob viousconsequencewasthattheagitationbysomecountriesforanobligationtoworka patentinallcountriesoftheUnionwasreplacedbythesuggestionoftheUKandUS delegationsthatapatenteewhohadnotworkedaninventionforthreeyears,couldb e compelledtograntalicencetootherstoworkthatinvention.

AseparatetextwasputforwardforthecreationofaseparateUnionfortheinternational depositofdesignsandmodels.

(d) SeventhRevisionConference,Lisbon,1958

At the Lisbon Conference, which met from October 6 -31, 1958, a new Agreement for the InternationalRegistrationofAppellationsofOriginwasalsoadopted. غ

(e) EighthConferenceofRevision,Stockholm,1967

TheStockholmRevisionConferencewasconcernedlargelywiththerearrangementofthe administrationoftheParisConvention.TheadministrationoftheParisUnionandalsoofthe BerneUnionhadbeencombinedbytheSwissGovernmentinanadministrativeBureauofthe SwissGovernment,theBureauxInternationauxRéunispourlaProtectiondelaProprieté Intellectuelle(BIRPI).From1952,BIRPIbegantoassumeagreateradministrative independenceandtomoveinthedirectionofbecomingaspecializedagencyoftheUnited Nations.ط ThisevolutionaryprocesswasconsummatedattheStockholmRevisionconference, whichonJuly14,1967,adoptedtheWIPOConvention,whichcameintoeffectonApril26, 1970.NewArticles13 -17wereinsertedintotheStockholmtextoftheParisConventionto effectthisadministrativechange,whichincludedthecreationofneworgansfortheParis Union:theAssembly,theexecutivecommitteeandareorganizedInternationalBureau. ii

TheStockholmConferencealsoadoptedanAdditionalacttotheMadridagreementforthe RepressionofFalseIndicationsofOriginandthetextoftheMadridArrangementfor InternationalRegistrationofTrademarkswasrevised.AComplementaryactofStockholmfor theHagueArrangementfortheInternationalDepositofDesigns,createdaSpecialassembly fortheHagueUnion.

TheNiceAgreementforInternationalClassificationofGoodsandservicesandtheLisbon AgreementforProtectionofAppellationsofOriginwerealsorevisedatStockholm.

ThemajorityofParisUnioncountriesarenowpartytotheStockholmActof1967.Itisthe StockholmActwhichisincorporatedbyreferenceintotheWorldTradeOrganization AgreementonTradeRelatedAspectsofIntellectualPropertyRights. بب

1.4 REVISIONOFTHEPARISCONVENTIONANDTHEEVOLUTIONOFTHETRIPS AGREEMENT

InMarch1980,thememberstatesoftheParisConventionandtheWorldIntellectualProperty Organization(WIPO)metinGenevatodiscussproposalsfortherevisionoftheParis Convention.TherevisionconferencewascalledforbyanUNCTADstudyconcerningtherole ofthepatentsysteminthetransferoftechnologytodevelopingcountriesandwasintendedto adapttheParisConvention,inparticular,tocertainrequestsoftheGroupoftheDeveloping Countries.Therevisionconferenceovera15yearperiodfailedtocometoanagreementand nonewActtotheParisConventionwasadopted.Thismayalsobeoneofthereasonswhythe USAproposedtheinclusionofintellectualpropertymattersinthenegotiationsoftheUruguay RoundoftheGeneralAgreementonTariffsandTrade(GATT).

Article2oftheAgreementonTradeAssociatedAspectsofIntellectualPropertyRights (TRIPSAgreement),whichresultedfromtheUruguayRound,obligesMemberstatesto complywithmostofthesubstantiveprovisionsoftheParisConvention.Because,signatureof

theTRIPSAgreement,isaprerequisiteformembershipoftheWorldTradeOrganization (WTO),theeffectoftheTRIPSAgreementistoextendmembershipoftheParisUniontoall membersoftheWTO.

2. TheBerneConventionforthe ProtectionofLiteraryandArtistic Works1886

2.1 BILATERALCOPYRIGHTAGREEMENTS

Ricketsonidentifiesbilateralcopyrightarrangementsastheprecursortoaninternational regimefortheprotectionofcopyright.Thefirstbilateralagreementswereenteredinto betweenPrussiaand32GermanStatesbetween1827and1829.Thefirstmultilateral copyrightconventionwasenteredintobetweenAustriaandSardiniaon22May1840,to whichtheSwissCantonofTicinoacceded,togetherwiththeItalianStatesof Lucca,Modena, Parma,RomeandTuscany. Themotiveforceforthesebilateralagreementswasapparently theextensiveincidenceofcopyrightpiracyinthegermanandItalianStates. Bythemiddle ofthenineteenthcenturyBritainandFrancehadconcludedbilateralcopyrightagreements withthemajorityofEuropeanStates.

Theseagreementsfollowedafairlystandardform,containingprovisionsonnationaltreatment andspecificobligationsinrelationtothesubjectmatterofprotectionandauthors'rightssuch astranslationandperformancerights.

2.2 BRUSSELSCONGRESSONLITERARYANDARTISTICPROPERTY1858

Thefirstsignificantproposalforaninternationalcopyrightregimewasconsideredatthe congressonliteraryandartisticproperty,whichwasheldinBrusselsin1858.Thecongress broughttogethersome300delegatescomprisinglawyers,economists,publishersandprinters, menofletters,universityacademicsandrepresentativesfromlearnedsocieties,aswellas officialdelegatesfromDenmark, Netherlands,Parma,PortugalandSaxony. Additionally, unofficialrepresentativesweresentbyalargenumberofEuropeancountriesandbytheUSA, whichatthattimewasconsideredthehomeoftheprincipalpiratesofUKcopyrightworks.

Thecongressaddressedfivecategoriesofquestions,whichwerepreparedbythecommitteeof organization.Thesewere:"internationalquestions","propertyinliteraryandartisticworksin general","dramaticandmusicalworks","artisticworks"and"economicquestions" concerningcustomsdutiesoncopyrightworks.Theanswerstothesequestionsformeda seriesofresolutionswhichwereadoptedbythecongress.Theseresolutionsforeshadowedthe subsequentdebateontheinternationalprotectionofcopyright,whichculminatedintheberne conventionof 1886.

Theorganisingcommitteeofthecongressconstituteditselfintoadraftingcommitteeandit preparedadraftlaw,whichincorporatedtheresolutionsofthecongress.Afollow-up congressheldinAntwerpin1861calledupongovernmentstoenterintonegotiationsto implementthe1858resolutions.

2.3 PARISINTERNATIONALLITERARYCONGRESS,1878

In1878,inconjunctionwiththeuniversalexhibition,heldinParis,theFrenchgovernment organisedaninternationalliterarycongress.ThiscongresswaspresidedoverbyVictorHugo andfollowing12daysofdebateanumberofresolutionswerepassedwhichassertedthe

perpetualrightofauthorsandtheirsuccessorstothe“rightofproperty”ofauthorsintheir works. R esolutionsalsocalledfornationaltreatmentandforthesimplificationof formalitiesforcopyrightprotection.

Animmediatepracticalresultofthe1878congresswasitsdecisiontoestablishthe internationalliteraryassociation.Underthepresidenc yofHugo,thefirstobjectofALAIwas “theprotectionoftheprinciplesofliteraryproperty”.Fiveyearslatertheassociationwas expandedtoincludeartistsanditsnamewaschangedtoassociationlittéraireetartistique internationale(ALAI).From itsinceptionALAIwasastrongadvocateofaninternational copyrightregime.AtitsLisboncongressin1880anditsViennacongressin1881itcalledfor uniformnationalcopyrightlawsandatthe1882Romecongressamodelcopyrightlawwas tabled.

A significantproposal,advancedattheromecongressbyDrPaulSchmidtoftheGerman publishers’guildwasthecreationofaliterarypropertyunionbystates,alongthelinesofthe universalpostalunion,whichhadbeenestablishedin1874. Thecongress agreedthatthe detailofthisproposalshouldbeconsideredbyaconferencetobeheldinBerne,the headquartersofthepostalandtelegraphunions.

2.4 BERNEALAICONFERENCE1883

FollowingtheRomeCongress,thePresidentofALAI,M.TorresCaicedo,th eSalvadorian MinistertoParis,obtainedthesupportoftheSwissGovernmentfortheproposedBerne Conference. TheFrench,GermanandUKnationalcommissionsofALAIconsideredwhich questionswouldbeputtotheconference,whichwasfixedfor10 -17September1883.Five draftpropositionswerecirculatedbytheFrenchcommissiondealingwiththeestablishmentof a“UniversalLiteraryConvention”. Thefirstpropositionsoughttheestablishmentofnational treatmentinallcontractingstatesfortheauth orsofliteraryorartisticworkswhichoriginated inacontractingstate.Abroaddefinitionwasgiventoprotectedsubjectmatter.Thesecond proposalcalledforthecompleteassimilationoftranslationrightstoreproductionrights. Probablythemosten duringpropositionwasthefifth,whichcalledfortheestablishmentofan internationalofficetoactasadepositoryforthecopyrightlawsofthecontractingstatesandto co-ordinateinternationalcopyrightco -operation.

InDecember1883,atthereque stofALAI,theSwissGovernmentaddressedacircularnote tothegovernmentsof“allcivilisednations”,whichenclosedthedraftConventionandthe *process-verbaux*,invitinganexpressionofinterestintheconveningofadiplomatic conferencethefollo wingyear,toexploretheestablishmentofaninternationalcopyright regime.

2.5 BERNEDIPLOMATICCON FERENCEOF1884

Atthe1884conference,twodraftingcommission,comprisingrepresentativesfromBelgium, France,Germany,NorwayandSwitzerland,prepa redfortheConferenceadraftconvention forthecreationofageneralUnionfortheprotectionoftherightsoftheauthor,anadditional articletothatconvention,aclosingprotocol,asetofprinciplesforan“ulteriorunification” andthefinal *process-verbal*oftheconference.Withminorchanges,thesedocumentswere adoptedbytheConferenceonSeptember18.

Article1ofthedraftConventionadoptedtheALAIprovisionthatthecontractingstateswere

establishinga“Unionfortheprotectionofthe rightsofauthorsintheirliteraryandartistic works”.TheprincipleofnationaltreatmentfollowedtheALAIdraftbutthiswassubjectto thetemporallimitationthatthedurationofthisrightwascoterminouswiththesubsistenceof theauthor’sright sintheirowncountry.Thedraftconventioninarticle4retainedtheALAI definitionofliteraryandartisticworks.However,theprovisionconcerningtranslationrights (art.4)wasmorelimitedthanthecompleteassimilation,whichhadbeenproposedin the ALAIdraft.EachUnioncountrywasrequiredtoaccordthenationalsofothercountriesofthe Unionanexclusivetranslationrightintheirworksoftenyear’sduration,followingthefirst publicationoftheirworkinanyUnioncountry.

2.6 BERNED IPLOMATICCONFERENCE OF1885

Attheconclusionofthe1884DiplomaticConference,theSwissGovernmenthadindicated thatitintendedtoconveneafurtherconferenceinthefollowingSeptemberatwhichthe negotiationswouldbeconcluded.TheConference spenttwodaysexaminingthedraft conventionandotherdocumentswhichhadbeenpreparedbythe1884conference.Delegates madeproposalsfortheamplificationofvariousprovisions,followingwhichasmalldrafting commissioncommenceditswork. ششOn17 Septemberitsubmittedtoaplenarysessionofthe Conference,adraftconvention,anadditionalarticleandaclosingprotocol.Thesubstanceof theearliertextwasretainedandtherewassomeredraftingofprovisionstoremove ambiguities.Thenational treatmentarticlewasredraftedtoensurethatthelawofanauthor’s countryappliedonlytocompliancewithformalitiesanddurationofprotection.

TheFrenchproposaltohavecompleteassimilationoftranslationrightstocopyrightwas narrowlydefeate dandanabsoluterightoftranslationfortenyearswasadopted.Therewas considerablediscussionoftherightofreproductionsofnewspaperandperiodicalarticles. سس Countrieswerepermittedtorequiretheindicationofsourceofarticlesincompilation sand theregulationoflawfulborrowingsforeducationalandscientificpurposesandforinclusion inchrestomathies,wasleftto domesticlegislation. ععAnewarticle10wasinserted,dealing withadaptations,whichdeclaredthatnon -essentialchangesto awork,whichdidnotgiveit thecharacterofanewandoriginalwork,shouldberegardedasunauthorisedindirect appropriations.

Minorchangesweremadetotheadministrativeprovisionsofthedraftconvention,withthe exceptionofanewarticle19, whichdealtwiththeaccessiontotheConventionby metropolitangovernmentsonbehalfoftheircolonies.

TwelveofthedelegationsrepresentedatBernesignedthe *procés-verbal*,whichrequestedthe SwissFederalCounciltotakethenecessarystepstocon vene,withinoneyear,afurther diplomaticconferencetotransformthedrafttextintoaformaldiplomaticinstrument. فف

2.7 BERNEDIPLOMATICCON FERENCEOF1886

DelegatesfromBelgium,France,Germany,Haiti,Italy,Liberia,Spain,Switzerland,Tunisia andtheUKmetinBernefrom6to9September1886. صصOnthelatterdatetheysignedthe Conventionandannexes(theadditionalarticleandClosingProtocol)Thesedocuments,with onlyminoramendmentswerethesameasthosewhichhadbeensettledatthe188 5 Conference.

Inthe *procés-verbaldesignature* ,theFrenchandBritishGovernmentsdeclaredthattheir

accessionboundtheircoloniesandforeignpossessions.TheSpanishGovernmentreservedthe righttomakeknownatthetimeofitsratification,itsde terminationasregarditsown colonies.[قق]

ThreemonthsaftertheexchangeofratificationsinBerneinSeptember1887,theConvention cameintoforceon5December1887.WiththeexceptionofLiberia,whichwastoaccedeto theConventionsome20yearslat er,[رر]allofthestateswhichhadsignedthe *procés-verbalde signature*atthe1886Conference,ratifiedtheConvention.TheUKhadaccededonbehalfof herprincipalself -governingdominions,theAustraliancolonies,Canada,Cape -Colony,India, Natal,New ZealandandNovaScotia.

2.8 REVISIONCONFERENCES 1896- 1971

Article17ofthe1886ActprovidedforperiodicrevisionsoftheParisConventionandthese haveoccurredin1896,1908,1928,1948,1967and1971.

(a) TheBrusselsRevisionConference1948

The1948BrusselsConferencewasconsideredthelastmeetingoftheUnion,whichwastobe characterisedbyaEurocenticandFrancophoneorientation. [شش]TheemergenceoftheUSAasa worldpowerandtheuseofEnglishastheworkinglanguageofthenewlyind ependentstates weresignificantfactorsforchange.Cinematographicworks,photographicworksandworksof appliedartwereaddedtothelistofworksprotectedunderarticle2.TheBrusselsConference recognised,throughtheadoptionofseveralmotions(“voeux”),thedesirabilityofprotecting soundrecordingsandradioemissionsandofperformers.Thesesubjectsweretobepursuedin thecontextofseparateconventionsonthesubject.

(b) TheStockholmRevisionConference1967

Atitsclosingsession,t heBrusselsConferencechoseStockholmasthevenueforthenext revisionconference.BythecommencementoftheStockholmConferenceinJune1967,there were58Memberstates,includingasignificantnumberofdevelopingcountries,including10 Africanst ates.[تت]AnAfricanStudyMeetingonCopyright,heldinBrazzavilleinAugust1963 hadadvocatedcopyrightconcessionsfordevelopingcountries,includingreductionsinthe durationofprotection,theprotectionoffolkloreandthefreeuseofprotectedwork sfor educationalpurposes. [ثث]

FiftymembersoftheBerneUnionwererepresentedattheconference,togetherwith representativesfrominternationalandintergovernmentalorganizationsandNGOs. [خخ]The USAwasrepresentedinthecapacityofobserver.TheSto ckholmConferencewasnottobe limitedtoaconsiderationofcopyrightmatters,butwouldincludeconsiderationsforthe revisionoftheParisConventionontheProtectionofIndustrialPropertyandtheadoptionofa newconventiontoestablishaninterna tionalintellectualpropertyorganizationtoreplace,the UnitedInternationalBureauxfortheProtectionofIntellectualProperty(BIRPI),whichhad beenestablishedbytheSwissGovernmenttoadministertheParisandBerneConventions.

TheStockholmCon ferencewitnessedthefirstsignificantagitationfromdevelopingcountries foranacknowledgementoftheirparticularcircumstances.Inmeetingsofthe IntergovernmentalCommitteeoftheUCCandoftheGeneralConferenceofUNESCO, concernshadbeenexpre ssedabouttheunavailabilityindevelopingcountriesofhighpriced

foreignscientificandtechnologicalbooksandthelowavailabilityofworksintranslation. [ذذ] TheseissueshadbeenaddressedbyaCopyrightSeminarforAfricanCountries,whichmetat Brazzavillein1963. [ضض] Inadditiontoproposingreductionstothetermofprotection,this meetingsuggestedspecialprovisionsfortheprotectionoffolklore.

InthepreparationsfortheStockholmConference,itwasproposedthattheconcernsof developing countriescouldbeaccommodatedinaseparateprotocol.Thisquestionwasthe subjectofsomefairlyacrimoniousdebatesatStockholm. [غغ] Thecriticalissueswerethe definitionofdevelopingcountry,translationrightsandcompulsorylicensing.Bothdevelop ed anddevelopingcountriesweredividedoverwhetherthesituationofdevelopingcountries wouldbeimprovedbyaloweringoftheBernestandards.AlthoughaProtocolwasgrudgingly adoptedbythefinalplenarysessionoftheStockholmConferenceitdidn otcomeintoforceas itfailedtosecuretherequisitenumberofratifications.

Similarly,thesubstantiveprovisionsoftheConventionwhichweresettledattheStockholm Conferencealsofailedtosecuretheappropriateratifications.Thisresultedina seriesof internationalmeetingstoconsiderwaysinwhichtheProtocolconcerningdeveloping countriesmightberevisedtomakeitacceptabletodevelopedcountries. [ظظ] Withtheprospect ofabifurcationoftheBerneUnionbetweendevelopedanddeveloping countriesanew revisionconferencewasspeedilyconvenedinParisin1971.

2.9 THEBERNECONVENTION ANDTHETRIPSAGREE MENT

Article9.1oftheTRIPSAgreement,whichcameintoforceon1January1995, [iii] obliges MembersoftheWorldTradeOrganizationto “complywithArticles1through21ofthe BerneConvention(1971)andtheAppendixthereto”.However,inrelationtomoralrights whicharereferredtoinArticle6 *bis*oftheBerneConvention,Article9.1oftheTRIPS Agreementprovidesthat“Membersshal lnothaverightsandobligationsunderthis AgreementinrespectoftherightsconferredunderArticle6 *bis* ofthatConventionorofthe rightsderivedtherefrom”.ThisexclusionofmoralrightswasattheinsistenceoftheUSA, whichhasproblemswitht hatconcept. [ببب]

ThenationaltreatmentprincipleaccordedbytheBerneConventionisadoptedbyArticle3of theTRIPSAgreementandArticle2.2oftheTRIPSAgreementprovidesthatnothing containedinPartsItoIVofthatAgreement,whichareconcernedw ithbasicprinciples,the availability,scope,useandenforcementofintellectualpropertyrights,aswellasthe acquisitionandmaintenanceofthoserights“shallderogatefromexistingobligationsthat Membersmayhavetoeachother”undertheBerneCo nvention.

Finally,thecopyrightprovisionsoftheTRIPSAgreementamplifyandextendanumberofthe substantiveprovisionsoftheBerneConvention.ThusforexampleArticle10.1providesthat “computerprograms,whetherinsourceorobjectcode,shallb eprotectedasliteraryworks undertheBerneConvention(1971)”.SpecificArticlesdealwithrentalrights,thetermof protection,limitationsandexceptionsandtheprotectionofperformers,producersof phonograms(soundrecordings)andbroadcastingor ganizations. [ححح]

3 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994

3.1 INTELLECTUAL PROPERTY AS A WORLD TRADE ISSUE PRIOR TO THE URUGUAY ROUND

From the late 1970's there was a growing realisation, particularly in the USA, that the counterfeiting of trademarked products was having a considerable impact adverse impact upon trade revenues. In 1979 the USA and the European Community had reached agreement on a draft 'Agreement on Measures to Discourage the Importation of Counterfeit Goods' [ددد]. Between 1980 and 1982 informal meetings with a number of industrialised countries [ººº] resulted in a revised draft Anticounterfeiting Code. [ووو]

This US initiative was carried forward into the ministerial meeting of 1982 for the preparations for the forthcoming GATT Round. [ززز] In the face of a US suggestion that the Draft Code be adopted as part of the GATT, the developing countries led by Brazil and India argued that intellectual property issues were the exclusive territory of WIPO and that, in any event, the GATT was concerned with trade in tangible goods and therefore, that the GATT had no jurisdiction over trademark counterfeiting. [ححح] The Resultant Ministerial Declaration requested the Director General of GATT to hold consultations with his counterpart at WIPO in order to clarify the appropriateness of joint action in relation to counterfeiting. [ططط] During 1982 an Expert Group produced a report on the effects of trademark counterfeiting on international trade. [ييي] Discussions within the GATT Council renewed the questioning of the relevance of intellectual property rights to the GATT and, additionally, raised the question of whether the allegations of the trade impacts of trademark counterfeiting could be quantified.

This challenge was taken up in the United States, both through Congressional hearings and through studies conducted by trade associations submitting to those hearings. The Subcommittee on Trade of the US House of Representatives was informed in its 1983 hearings [ككك] that the annual losses of the video industry were approximately $6 billion. [للل] The House Subcommittee on Oversight and Investigations, which conducted hearings on counterfeiting in 1984 [ممم], was informed by the Automotive Parts and Accessories Association that the industry lost some $12 billion from the counterfeiting of spare parts.

In 1985 the International Intellectual Property Alliance (IIPA) representing seven trade associations of copyright-related industries [ننن] produced a study of the copyright laws of Brazil, Egypt, Indonesia, Malaysia, Nigeria, the Philippines, the Republic of Korea, Singapore, Taiwan and Thailand. It estimated that ineffective copyright laws in these countries was responsible for annual losses to the American copyright industries of $1.3 billion. [سسس] The IIPA submitted that "the U.S. Government's goal must be to establish an international trading climate in which intellectual property is respected and protected".

3.2 INTELLECTUAL PROPERTY RIGHTS AND THE URUGUAY ROUND -

PRELIMINARY NEGOTIATIONS

Between 1982 and 1986 a Preparatory Committee of the GATT identified the issues which would be the concern of the forthcoming GATT Round.[ععع] The U.S. proposed that the Round consider all intellectual property rights, affirming that the GATT was the appropriate forum to seek the enforcement of intellectual property rights. Subsequent negotiations led by the Swiss and Columbian Ambassadors sought a compromise between the opposing views on the jurisdiction of GATT in these matters. and produced a proposal which served as the basis for the Ministerial Declaration of 20 September 1986 which launched the Uruguay Round[ففف]. Identifying the subjects for negotiation in the Round, the Ministerial Declaration explained that

> In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines.
>
> Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.[صصص]

This initiative was expressed to be without prejudice to complementary initiatives which might be taken by WIPO or elsewhere.[ققق]

The Negotiating Plan settled by a Decision of 28 January 1987[ررر] under the heading "Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods", identified that the initial phase of the negotiating process would be taken up with gathering relevant factual material and with the tabling of the texts of interested participants. In response to this invitation, the Office of the United States Trade Representative in Geneva on 19 October 1987 submitted a substantive proposal for the interdiction of the trade in infringing products through the implementation of Customs controls and through the promulgation and implementation of legislative norms for the protection of intellectual property rights.[ششش] Further suggestions were tabled by Switzerland, Japan and the European Community. The E.C. proposal was the most far reaching in that it suggested that a TRIPS Agreement should adhere to the basic GATT principles of national treatment, non-discrimination, reciprocity and transparency, as well as applying to the new categories of intellectual property right, such as semi-conductor layouts, and plant varieties as well as to the traditional categories, including utility models and appellations of origin.[تتت]

The subsequent negotiations of the Round were dominated and almost frustrated by a deadlock over agricultural policies. By the mid-term review, scheduled for December 1988, agreement had been reached or was close in the eleven other negotiating areas. An exception to this wide-ranging concord was intellectual property, where led by India and Brazil, the developing countries continued to question the relevance of intellectual property for the GATT, particularly because of the existence and availability of WIPO[ثثث]

A key factor in the ultimate success in securing the GATT TRIPS Agreement was the preparedness of the United States to define its negotiating objectives through domestic trade

legislation.TheimpasseattheGATT,aswellastheincreasingcacophonyofagitationfrom tradelobbyistshadresultedintheintroductionin1984ofana mendmenttos.301oftheTrade Actof1974,whichpermittedthePresidenttoseektheeliminationof“unjustifiableor unreasonable”tradepractices.The1984TradeandTariffActmadeintellectualproperty protectionexplicitlyactionableunders.301. [ččč] Actionunderthissectionwastakenagainstthe RepublicofKoreain1985,becauseofcomplaintsaboutthelimitedscopeofthatcountry’s patent,trademarkandcopyrightlawsandagainstBrazilinthesameyearbecauseof concernsaboutitsrestrictive lawsdealingwiththeprotectionofcomputerprogrammesand computersoftware.Brazilwasalsothetargetofactionunders.301in1987,whentheUSA increasedtariffsoncertainBrazilianexportstoprocurechangesinBrazil’sprotectionof pharmaceuticalpatents.

Theapparentsuccessofs.301andthecontemporaneousstallingoftheGATTTRIPS negotiationsareexplanationsoftheintroductionofsocalled‘Special301’bytheOmnibus TradeandCompetitivenessActof1988 [ذذذ].Special301requiresanannual reviewbytheU.S. TradeRepresentative(USTR)oftheintellectualpropertypracticesofthecountry’strading partners.,TheUSTRisrequiredtoidentify“priorityforeigncountries”whichdeny “adequateandeffectiveprotectionofintellectualproper tyrights”orwhich“denyfairand equitablemarketaccess”toU.S.traders.TheUSTRisthenobligedtoplacethosecountrieson eitherawatchlistorapprioritywatchlist,withaviewtoafasttrackinvestigation,followed bytraderetaliationinthe formofincreaseddutiesorimportrestrictions. [ضضض]Special301 wasexplicitlyintroducedasasupplementtotheU.S.TRIPSnegotiatingstrategy.Inthe ConferenceReportonthelegislationinCongresstheexplanationwasprofferedthat

> Thepurposeoft heprovisionsdealingwithmarketaccessistoassistinachievingfair andequitablemarketopportunitiesforU.S.personsthatrelyonintellectualproperty rightsprotection.asacomplementtoU.S.objectivesonintellectualpropertyrights protection intheUruguayRoundoftradenegotiations,theconfereesintendthatthe Presidentshouldensure,whereverpossible,thatU.S.intellectualpropertyrightsare respectedandmarketaccessprovidedininternationaltradewithallourtrading partners.[ځځځ]

3.4 GATTTRIPS -BREAKINGTHEDEADLOCK

Throughout1989theTRIPSnegotiatinggroupreceivedsubmissionsfromanumberof countriesandbythebeginningof1990thesehadbeenreducedtofivetexts.Textswere proposedbyTheE.C.,Japan,Switzerlandandth eU.S.andatextwasproposedbyagroupof developingcountries.furtherrevisionsduring1990culminatedinthepresentationofaDraft TRIPSAgreement,dated22November1990totheMinisterialMeetinginBrussels scheduledfor3December1990. [ظظظ]Dfferencesremainedoversomeofthedetailofpatent andcopyrightlawprinciples,aswellasthemoreimportantissuesofincorporatingintellectual propertyintotheGATTandtheapplicabilityofdisputeresolutionproceduresforintellectual property. Inanyevent,theseconcernswererenderednugatorybythecollapseoftheBrussels meetingduetotheimpasseoveragriculture.

TheRoundwasrestartedthefollowingyear,withconcertedattemptsbytheGATTDirector Generaltoidentifytheissuesforre solution.FurtherdrafttextswerereceivedbytheTRIPS negotiatinggroupduring1991andinNovember1991theDirectorGeneral,ArthurDunkel issuedaprogressreportwhichidentifiedsometwentyintellectualpropertyissueswhich requiredresolution. [iiii] Inadramaticdevelopmentthefollowingmonth,theDirectorGeneralof

theGATTattemptedtoprecipitateaconclusionoftheUruguayRoundbytablingaDraft FinalActEmbodyingtheResultsoftheUruguayRoundofMultilateralTradeNegotiations, whichin cludedanewTRIPStextwhichattemptedtosettleoutstandingdifficultiesby proposingcompromiseformulae.

TheDunkelDraftattractedconsiderablecriticismfromU.S.,particularlyfromthe pharmaceuticalandcopyrightindustries.Thepharmaceutical industrywasconcernedthat developingcountrieswereallowedtoolongatransitionalperiodtoimplementappropriate patentlaws. TheconcernsofthecopyrightindustriesweresummarisedbyRalphOman, theU.S.RegistrarofCopyrightswhocriticisedthe problematicalprotectionofcomputer programmesandbecauseoftheabsenceofcoverageofthelegalstatusofvideogram producersanddirectsatellitebroadcastingandtheconceptoftheftinrelationtocableand satellitecommunications.

NegotiationswereresumedinGenevainlate1992followingtheresolutionofdifferences betweentheE.C.andtheU.S.onagriculturalpoliciesandbothIndiaandtheU.S.proposed revisionsoftheDunkelDraft.IntheresultthefinaldraftoftheTRIPSAgreement,wh ichwas adoptedwhentheUruguayroundwasbroughttoacloseattheMinisterialmeetingat Marrakesh,April12 -15,1994,wasverycloseinformandcontenttotheDunkelDraft.

4. TheTRIPSReviewandImplementationProcess

TheTRIPSAgreementcamein toeffecton1January1995afterthelonganddifficult negotiationsoftheUruguayRoundoftheGATT,whichhadcommencedfiveyearsearlier. ThenegotiatorsoftheTRIPSAgreement,appreciatedthattheexigenciesofnegotiationhad producedadocumentw hichwouldrequiresubsequentamendmentandimprovement.Builtin totheAgreementitselfwasareformagendaapplyingtoanumberofthespecificsubstantive provisions;geographicalindications(article23.4);thepatentabilityofbiologicalinventions (article27.3.b);and"non -violation"cases(article64).Additionally,Art.71requiresthe CouncilforTRIPStoreviewtheimplementationoftheAgreementaftertheexpirationoffive yearsfromthecommencementoftheAgreementandattwoyearintervals afterthat..Also, theoccasionsoftheSingapore,SeattleandDohaMinisterialshavebeenusedtobroadenthe subjectsofreview.

4.1 IMPLEMENTATION

Acomplicationtothereviewprocess,hasbeenthedifferentialschedulefortheimplementationofTRI PS.DevelopedcountrymembersoftheWTOwereobligedby Art.65(1)oftheTRIPSAgreementtoimplementitsprovisionswithinoneyearofthecoming intoforceoftheAgreement,namelyby31December1995.Developingcountrymembers weregrantedafurtherf ouryearsgracebyArticle65(2).Aconsequenceoftheseprovisions hasbeentheimplementationofsignificantchanges,particularlybydevelopingcountriesto theirintellectualpropertyrights'systems. Anumberofdevelopingcountrieshavebeen obligedtointroducesubstantiveintellectualpropertyrights,wherenoneexistedbeforeandto introducethemachineryfortheregistrationandenforcementofintellectualpropertyrights.

Anumberofdevelopingcountrieshavefoundthefiveyeardeadlinefor implementationtobe rathertoobrieftopermittheircompliance.Also,giventhebuilt -inandgeneralreview agendasoftheAgreement,theyareobligedtoparticipateinareviewprocesspriortotheir

obtaining of any experience in the way in which the Agreement has operated.

A number of developing countries have questioned what they consider to be unreasonable pressures by developed countries to impose compliance with the TRIPS Agreement. Thus the Dominican Republic and Honduras have observed that

> Ever since the end of the Uruguay Round, all countries, developed and developing alike, have been racing against time to ensure due compliance at the national level with the provisions of this Agreement. However, during the transition period granted to the developing countries, we have seen selective unilateral pressures unleashed against countries that have tried to exercise their legitimate rights in full compliance with the letter and spirit of the Agreement. [jjjj]

Developing countries have contrasted the pressure imposed on them to implement the TRIPS Agreement with the failure of developed countries to provide incentives for the transfer of technology to, as required by Art. 66.2 and to provide technical assistance to developing countries, as required by Art. 67[cccc].

A number of developing countries (eg Cuba, Dominican Republic, Egypt, Honduras) have indicated that the transitional implementation period of five years, granted under Art. 65.2 has been insufficient to undertake the complex and costly administrative tasks required under the TRIPS Agreement, such as the modernization of their administrative infrastructure (intellectual property offices and institutions, the judicial and customs system), as well as the promulgation of new intellectual property laws. They have, therefore, sought an extension of the transition period for the developing countries. [hhhh]

Opposed to the desire of developing countries to delay the implementation of the TRIPS Agreement are pressures from developed countries to initiate the review of the implementation of the Agreement under Art. 71.1 [iiii] The European Union has reminded negotiators that the TRIPS Agreement establishes minimum intellectual property standards "from which to seek further improvements in the protection of IPR. There should therefore be no question, in future negotiations, of lowering of standards or granting of further transitional periods".[kkkk] Similarly Japan has declared that "We should not discuss the TRIPS Agreement with a view to reducing the current level of protection of intellectual property rights. To the contrary, the TRIPS Agreement should be improved properly in line with new technological development and social needs". [llll]

4.2. DOHA MINISTERIAL

Intellectual Property played a significant role in the WTO Ministerial Meeting, which concluded at Doha on 14 November 2001. The atmosphere of the meeting was charged by a combination of the proximity of the meeting to the terrorist attacks in the USA, as well as the aftermath of the HIV AIDS litigation in South Africa and Brazil.

Clauses 17 – 19 of the Ministerial Declaration, which was issued at Doha stated:

> 17. We stress the importance we attach to implementation and interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in a manner supportive of public health, by promoting both access to existing medicines and research and development into new medicines and, in this

connection,areadoptingaseparateDeclaration.

18.Withaviewtocompletingtheworkstartedi ntheCouncilforTrade -Related AspectsofIntellectualPropertyRights(CouncilforTRIPS)ontheimplementationof Article23.4,weagreetonegotiatetheestablishmentofamultilateralsystemof notificationandregistrationofgeographicalindications forwinesandspiritsbythe FifthSessionoftheMinisterialConference.Wenotethatissuesrelatedtothe extensionoftheprotectionofgeographicalindicationsprovidedforinArticle23to productsotherthanwinesandspiritswillbeaddressedint heCouncilforTRIPS pursuanttoparagraph12ofthisDeclaration.

19.WeinstructtheCouncilforTRIPS,inpursuingitsworkprogrammeincluding underthereviewofArticle27.3(b),thereviewoftheimplementationoftheTRIPS AgreementunderArticle7 1.1andtheworkforeseenpursuanttoparagraph12ofthis Declaration,toexamine, *interali* a,therelationshipbetweentheTRIPSAgreementand theConventiononBiologicalDiversity,theprotectionoftraditionalknowledgeand folklore,andotherrelevan tnewdevelopmentsraisedbyMemberspursuanttoArticle 71.1.Inundertakingthiswork,theTRIPSCouncilshallbeguidedbytheobjectives andprinciplessetoutinArticles7and8oftheTRIPSAgreementandshalltakefully intoaccountthedevelopment dimension."

OneoftheimponderablefeaturesoftheDohanegotiationswillbetheextenttowhich intellectualpropertywillbebargainedagainstothersubjectsofthetraderound,suchas agriculture,servicesandtextiles.

[Endofdocument]

أ C.PieperandP.Schmid, *GesichtederinternationalenUnionfürdenSchutzdesgewerblichen EigentumssammtKonventionundStaatsverträgen* (Berlin:DeutschenVereinsfürdenSchutz desgewerblischenEigentums,1884).

ب *Ibid.,* at6 -7.This viewofthegenesisofproposalsfortheinternationalprotectionofindustrial propertywasacceptedbyY.Plasseraud andF.Savignon, *Paris1883:Genésedudroit UnionistedesBrevets* (Paris:Litec,1883)at121.

ج Egseearticlein *ScientificAmerican* dated23December1871,reproducedinUSA, CongressionalPapers, *PapersRelatingtotheForeignRelationsoftheUnitedStates,1872,* 42nd Cong.,3 rd Sess.,HofR,ExDocsVI,part1at48 -49.

د *Ibid.,*60.

ه SeeT.Webster, *ViennaUniversalExhibition1 873:ReportontheInternationalPatent Congress*,UK,ParliamentaryPapers,1874,399at342.

و *Ibid.*,at343.

ز *Ibid.*at343 -344.

ح *Ibid.*at350.

ط *Ibid.*at350 -51.

ي *Ibid.*at351.

ك SeeinL.J.Duncan, *FromPrivilegestotheParisConvention* ,Unpub lishedPhDThesis, MonashUniversity,July1997,405 -406.

ل Quotedibid.,at482and493.

[Endnotecontinuedonnextpage]

[Endnotecontinuedfrompreviouspage]

م Thedrafttreatyisreproducedin France, MinistèredeL'agricultureetduCommerce, *ComptesrendusSténographiquespubliés souslesauspicesduComitéCentrale desCongrés etConfèrencesetladirectiondeM.Ch.Thirion,SecrètaireduComité,aveclec oncoursdes BureauxdesCongrésetdesauteursdeConférences:CongrésInternationaledelaPropriété Industrielle,tenuáParisdu5au17Septembre1878* (Paris1 879),712 -718.

ن *Ibid.*,at6 -7.

س SeeFrance, *ConférenceInternationale(1880)* ,n.27*supra* ,AppendixVIII.

ع *Ibid.*at46.

ف *Ibid.*at147.

ص France,MinistèredesAffairesétrangères, *ConférenceInternationalepourlaprotectiondela propriétéindustr ielle*(Paris1883),at15.

ق SeeFrance, *ConférenceInternationale(1883),* n.36*supra* at26.

ر SeeW.H.Browne,'HasCongressAuthoritytoLegislateontheSubjectofTrade -Marks' (1880)14 *AmericanLawReview* 156.

ش SeeFrance, *ConférenceInternationa le(1880)* ,n.27*supra* ,at167.

ت [1887]3 *LaPropriétéIndustrielle* 40.

ث SeeFrance, *ConférenceInternationale(1880),* n.27*supra* ,at20,quotedbyDuncan,n.11 *supra*,at586.

خ Seechs. *Infra.*

ذ Belgium,Guatemala,Italy,Netherlands,Norway,Port ugal,Spain,SwedenandSwitzerland.

ض Brazil,France,GreatBritain,Guatemala,Norway,Portugal,Spain,SwitzerlandandTunis.

غ Seech. *infra*

ظ SeeS.P.Ladas,'ProposedReorganizationoftheParisUnion'(1966)56 *TrademarkRep.* 817.

أأ See *RecordsoftheIntellectualPropertyofStockholm* (Geneva,1971).

بب Seech. *infra.*

جج S.Ricketson, *TheBerneConventionfortheProtectionofLiteraryandArtisticWorks;1886 - 1986*,London,1987,25 -37.

دد *Ibid.*,at26.

هه SeeW.Briggs, *TheLawofInternation alCopyright* ,1906,49 -54.

وو SeeRicketson,n.31supraat27 -29.

زز FortheproceedingsandrecordsoftheCongresssee,E.Romberg, *CompterendudesTravaux duCongrèsdelaPropriétéLittéraireetArtistique* ,Brussels,1859.

حح SeeE.Gressin, *CompteRe ndudesTravauxduCongrèsArtistiqued'Anvers* ,Brussels,1862.

طط SeeV.C.H.Carmichael, *TheParisInternationalLiteraryCongress* ,London,1878.

يي See *Associationlittéraireetartistiqueinternationale -SonHistoire.SesTravaux* (1878 -1889), Paris,188 9,120- 122.

كك *Ibid.*,122 -123.

لل *Ibid.*,129 -130.

مم *Ibid.*,135 -136.

نن Thisdraftingcommissioncomprised:Bergne(UK),Droz(Switzerland),Lagerheim(Sweden), Reichardt(Germany),Renault(France),Rosmini(Italy)andTamayo(Spain), *Ibid.*59.

سس Newarti cles7and8.

عع SeeRicketsonn.31 *supra*,at75.

فف *Actesdela2meConférence* ,n.21*supra* ,at81.

صص *Actesdela3meConférenceinternationalepourlaprotectiondesoeuvreslittéraireset artistiquesréunieàBernedu6au9septembre1885* ,Berne,188 6,7.

قق *Ibid.,* at41.

رر On16October1908,[1908] *LeDroitd'Auteur* 145.

[Endnotecontinuedonnextpage]

[Endnotecontinuedfrompreviouspage]

ش ش SeeRicketson,n.33 *supra*at108 -109.

ت ت Cameroon,Congo,Dahomey,Gabon,IvoryCoast,Madagascar,Mali,Niger,Senegal,Upper Volta[1967] *LeDroitd'Auteur* 132- 133.

ث ث See[19 63] *LeDroitd'Auteur* 250.

خ خ *Ibid.*,585 -593.

ذ ذ SeeI.A.Olian,'InternationalcopyrightandtheNeedsofDevelopingCountries:the AwakeningatStockholmandParis'(1974)7 *CornelInt.L.J* .81;N.M.Tocups, 'DevelopmentofSpecialProvisionsinInternat ionalCopyrightLawfortheBenefitof DevelopingCountries'91982)29 *JournaloftheCopyrightSociety* 129.

ض ض SeeC.F.Johnson,'TheOriginsoftheStockholmProtocol'(1970)18 *Bulletinofthe CopyrightSociety* 91.

غ غ SeeegRicketson,n31 *supra*at607 -620.

ظ ظ See *RecordsoftheParisConference1971* ,Geneva,1971,34 -42.

أأأ Seech *infra.*

ب ب ب SeeR.Oman,'BerneRevision:TheContinuingDrama'(1993)4 *FordhamIntell.Prop,Media &EntL.J.* 139at143.

ججج TRIPSAgreementArticles11 -14.

ددد GATTDoc.No.L /4817(July31,1979).

ههه Viz.Canada,JapanandSwitzerland.

ووو *AgreementonMeasurestoDiscouragetheImportationofCounterfeitGoods* ,GATTDoc. No.L/5382(Oct18,1982).

ززز SeeBradley,'IntellectualPropertyRights,InvestmentandTradeinServices intheUruguay Round;LayingtheFoundations'(1987)23 *StanfordJ.Int'lLaw* 57.

ححح *Ibid.*,66- 67.

ططط *MinisterialDeclaration* GATT, *BISD*30thSupp.,9(1983).

ييي T*radeinCounterfeitGoods,* GATTDoc.No.L/5758(1982).

ككك *PossibleRenewaloftheGeneralis edSystemofPreferences -HearingBeforethe SubcommitteeonTradeoftheU.S.HouseofRep.Comm.onWaysandMeans,* 98th Cong., 1stSess.(1983)

للل *Ibid.,* 57.

ممم *UnfairForeignTradePractices,StealingAmericanIntellectualProperty:ImitationisNo t Flattery*,98thCong.,2dSess.1 -3(1984).

ننن TheIIPAcomprised:theAmericanFilmMarketingAssociation,theAssociationofAmerican Publishers,theComputerandBusinessEquipmentManufacturersAssociation,the Computer SoftwareandServiceIndustry ,theNationalMusicpublishersAssociationandthe Recording IndustryAssociationofAmerica.

سسس IIPA,*PiracyofUSCounterfeitedWorksinTenSelectedCountries* (1985),7.

عع ع Foracomprehensiveaccountofthenegotiatinghistoryof theRoundseeTeren ceP.Stewart, Ed., *TheGATTUruguayRound.aNegotiatingHistory(1986 -1992),volsI -III.* (Deventer, Boston; Kluwer,1993).

ففف See *ibid.*,vol.II,2263 -2264.

صصص *MinisterialDeclarationontheUruguayRound* ,reproduced *ibid.,*vol.III,7 -8.

ققق *Ibid.*,8 .

ررر Reproduced, *ibid.,* 11 -25.

ششش *SuggestionbytheUnitedStatesforAchievingtheNegotiatingObjective* ,GATTDoc.No. MTN.GNG/NG11/W/14(Oct.20,1987).

تتت *GuidelinesProposedbytheEuropeanCommunityfortheNegotiationsonTradeRelated Aspectsof IntellectualPropertyRights* GATTDoc.No.MTN.GNG/NG11/W/17 (Nov.20, 1987)

[Endnotecontinuedonnextpage]

[Endnotecontinuedfrompreviouspage]

ثثث Foracomprehensivesurveyofthecompetingpositionsseef.BeierandG.Schricker,eds, *GATTorWIPO?NewWaysintheInternationalProtectionofIntellectualProperty* (Munich: VCH,1989).

خخخ 98Stat.2948(1984).

ذذذ 19U.S.C. §2242(1990).

ضضض Seegenerally,BelloandHolmer,'"Special301":ItsRequirementsImplementationand Significance'(1989 -1990)13 *FordhamInt'lL.J.* 259.

غغغ H.R.Conf.Rep.No.576,100thCong.2 dsess.580(1988)

ظظظ GATTDoc.No.MTN.TNC/W/35/Rev.1(Dec.3,1990).

iiii *ProgressofWorkinNegotiatingGroups:StockTaking* ,GATTDoc.No. MTN.TNC/W/89/Add.1(Nov.7,1991).

بببب TheDunkeltextisreproducedin(1992)6 *WorldIntell.Prop.Rep.* 42- 55.

جججج SeeStewart,n.28 *supra* 2284-2285.

دددد Oman,'BerneRevision:theContinuingDrama'(1993)7 *WorldIntell.Prop.Rep.* 160- 161.

هههه AgreementonTrade -RelatedAspectsofIntellectualPropertyRights,reproducedin(1994)33 *I.L.M.* 1197-1225.

وووو EgseeBla keney,'TheImpactoftheTRIPSAgreementintheAsiaPacificRegion'[1996]18 *EuropeanIntellectualPropertyReview* 544

زززز WTODoc(WT/GC/W/119).

حححح EgseecommunicationstotheCouncilonTRIPSbyEgypt(WT/GC/W/109),India (WT/GC/W/147)andtheAfr icanGroup(WT/GC/W/302).

طططط EgseeWT/GC/W/209.

يييي EgtheUSA,WT/GC/W/115.

كككك WT/GC/W/193.

لللل WT/GC/W/242.