

MAIN COMMITTEE II OF THE DIPLOMATIC CONFERENCE FOR THE
ADOPTION OF A REVISED TRADEMARK LAW TREATY

Chair: Mr. James Aggrey Otiendo-Odek (Kenya)

Secretary: Mr. Edward Kwakwa (WIPO)

First Meeting Friday, March 17, 2006 Morning
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1. The CHAIR thanked the delegations for having entrusted to him the task of chairing Main Committee II, and considered it an honor for his country and a privilege for himself. He said that he hoped his Chairmanship would live up to the Delegation's expectations.

2. He noted that the task of Main Committee II was to deal with the other provisions of the treaty, as contained in Articles 23 to 32 of the Basic Proposal (document TLT/R/DC/3).

Article 23: Assembly

3. The CHAIR turned to Article 23 and asked for comments from delegations.

4. Mr. PANAHİ AZAR (Islamic Republic of Iran) said that his delegation was preparing proposals on Article 23 and thus he wished to reserve his position to come back to this provision at a later stage.

Article 24: International Bureau

5. The CHAIR opened the floor for comments on Article 24.

6. Mr. STEMMET (South Africa) said that, after consultations with the Legal Counsel of WIPO, the Delegation of South Africa had decided to withdraw its proposal in relation to Article 24(3)(a) and (c) to change the word "shall" for "may", as presented in document TLT/R/DC/15.

Article 25: Revision and Amendment

7. The CHAIR opened the floor for comments on Article 25.

8. Ms. LIEW (Singapore) said that the Delegation of Singapore wished to refer to the relationship between Articles 23 and 25. As currently drafted, Article 25(2)(a) provided that Article 23 dealing with the powers of the Assembly may be amended by the Assembly, and Article 23(2), stated that the Assembly shall deal with matters concerning the development of the treaty. At the same time, Article 25(1) provided that the Treaty may only be revised by a Diplomatic Conference, the convocation of which shall be decided by the Assembly.

9. She sought clarification as to whether there was a possibility of inconsistency between Articles 23 and 25. She asked whether with the powers vested in the Assembly under Articles 23(2)(i), and 25(2)(a), it could amend its own powers or revise the treaty, as it was in charge of dealing with matters concerning the development of the Treaty. The Delegation of Singapore considered that this was perhaps not the intention of the provisions, but reading them together suggested some degree of inconsistency.

10. Mr. STEMMET (South Africa) referred to the written proposal submitted by the Delegation of South Africa, concerning Article 25(2)(a). The proposal consisted in adding at the beginning of that paragraph the phrase “Notwithstanding paragraph (1).” He explained that the addition was necessary to establish the link between Article 25 and Articles 23 and 24, particularly since paragraph (2)(a) of Article 25 seemed to be the exception to paragraph (1).

11. Mr. KWAKWA (WIPO) drew the attention of the Committee to the Notes on Article 25, contained in document TLT/R/DC/5. He then wondered whether the proposal by the Delegation of South Africa would address the concerns expressed by the Delegation of Singapore.

12. Ms. LIEW (Singapore) said that if the Assembly had the power to amend Article 23 in such a way as to give itself the ability to decide whether the Treaty could be revised by a Diplomatic Conference, that meant in an oblique manner, that the Assembly could amend the powers in Article 23 in such a way as to give itself the power to revise the Treaty. She believed that the words “notwithstanding” should rather be included in paragraph (1) and should read “notwithstanding paragraph (2)”, since that was the exceptional case.

13. Mr. KWAKWA (WIPO) explained that his understanding of the intervention made by the Delegation of Singapore was that the delegation wished to make it clear that this treaty can only be revised by the Diplomatic Conference with the exception of Articles 23 and 24. He said that delegations may wish to consider whether to insert in Article 25(1) the word “only” and then, in Article 25(2)(a) to start with the phrase proposed by the Delegation of South Africa “notwithstanding paragraph (1).

14. Ms. BERESFORD (United States of America) said that while she did not have any specific comments regarding the proposals submitted by other delegations, the Delegation of South Africa had raised some issues on the relationship between Articles 23 and 25. She announced that the Delegation of the United States of America would present a written proposal on those articles.

15. Mr. PANAH AZAR (Islamic Republic of Iran) sought clarification from the International Bureau of WIPO regarding Article 25(2)(c), and in particular what would happen if in one state, the constitutional procedures were not finished and yet an amendment would enter into force because it was accepted by three-fourths of the Contracting Parties. He considered that this could complicate the implementation of the amendment in question. He also suggested that instead of three-fourths majority, the requirement should be unanimity, since changes regarded the treaty itself.

16. Mr. KWAKWA (WIPO) said that Article 25(2)(c) did not constitute new language in terms of WIPO-administered treaties. In fact, according to the provision, if the proposed amendments were accepted by three-fourths of the Member States, they would automatically bind all the WIPO Member States at the time that the amendment was accepted.

17. Mr. OMOROV (Kyrgyzstan), speaking on behalf of the Central Asian, Caucasus and Eastern European group, supported the proposal made by the Delegation of South Africa. He also proposed deleting the reference to Article 23 in Article 25(2)(a) because Article 23 was important, since it described the work of the Assembly.

18. Mr. KWAKWA (WIPO), referring to the proposal made by the Delegation of Kyrgyzstan, said that deleting the reference to Article 23 in Article 25(2)(a) would mean that the Assembly could not change its own rules of procedure, which seemed to be an inflexible position.

Article 26: Becoming Party to the Treaty

19. The CHAIR opened the floor for comments on Article 26. He then noted that there no further comments on this provision.

Article 27: Application of the TLT 1994 and This Treaty

20. The CHAIR opened the floor for comments on Article 27.

21. M. PIAGET (Suisse) dit que l'article 27 traite de l'application du traité de 1994 ainsi que de l'application et de sa relation avec le TLT révisé. Sa compréhension de cet article est qu'il n'existe aucune relation mutuelle entre les Parties contractantes dans le système du TLT. Il précise en effet qu'en l'espèce il ne s'agit pas de la même situation que celle que connaît le système de Madrid où ce type de relation mutuelle existe effectivement. À son sens, dès l'instant où une partie ratifie le TLT, que ce soit celui de 94 ou le TLT révisé, cette partie est soumise aux exigences du traité et elle doit, si elle se situe dans un système moniste, appliquer simplement le traité. Si cette Partie contractante prévoit un système dualiste, elle doit intégrer les dispositions du traité dans sa propre réglementation nationale. Il en conclut par conséquent que tout titulaire peut bénéficier sur le territoire d'une Partie contractante des effets du TLT ratifié par cette Partie contractante et cela même si le pays auquel est rattaché le titulaire n'a pas signé le TLT. Selon lui, une conclusion

différente pourrait se révéler contraire au principe du traitement national, c'est pourquoi la délégation suisse souhaiterait que le Bureau international apporte quelques éclaircissements quant à la compréhension que l'on doit avoir de cette disposition.

22. Mr. KWAKWA (WIPO) explained that this provision was simply a restatement of public international law. It was not meant to be a normative provision, but one that addressed relations between parties to both treaties and parties to only one of them. However, if the sense of the Conference was that such a specific provision was not needed, it could be removed from the text.

Article 28 Entry into Force; Effective Date of Ratifications and Accessions

23. The CHAIR opened the floor for comments on Article 28. He then noted that there were no comments to this provision.

24. Mr. PANAH AZAR (Islamic Republic of Iran) requested a clarification as to the history of Article 28(2), which required the instruments of ratification or accession of only five states or intergovernmental organizations to bring the treaty into force. He recalled that only five states or intergovernmental organizations could call for an Assembly to deal with matters concerning the treaty.

Article 29: Reservations

25. The CHAIR opened the floor for comments on Article 29. He then noted that there were no comments to this provision. Regarding the proposal made by the Delegation of Japan, as contained in document TLT/R/DC/6, the Chair recalled that there was consensus in Main Committee I to draft that proposal as a transitional provision and to request the Drafting Committee to finalize the drafting and submit it to Main Committee II.

Article 30: Denunciation of the Treaty

Article 31: Languages of the Treaty; Signature

Article 32: Depositary

26. The Chair opened the floor for comments on Articles 30, 31 and 32. He then noted that there were no comments on these provisions.

27. Mr. Love Mtesa (Zambia) noted that the group of LDC countries had submitted a proposal for a new article that should be placed in the treaty.

28. The Chair adjourned the meeting.

Second Meeting
Monday, March 20, 2006
Morning

Article 23: Assembly

29. The CHAIR suggested to continue the discussion on Article 23.
30. Mr. GHORBANI (Islamic Republic of Iran) suggested to delete paragraph (2)(iv). He explained that the wording of this provision was extremely broad.
31. Mr. KWAKWA (WIPO) explained that this paragraph simply provided that the Assembly should perform such other functions as are appropriate under this Treaty. This wording was found in every other WIPO-administered treaty. However, the Conference could decide that this provision should not be included.
32. Mr. GHORBANI (Islamic Republic of Iran) said that his delegation was flexible to agree on any language that could improve and narrow the effect of the provision.
33. Mr. RAGAB (Egypt) considered that the text of paragraph (2)(iv) needed to be clarified, because the parties could only agree to give very clear functions to the Assembly.
34. Mr. KHAN (Pakistan) said that the point raised by the Delegation of the Islamic Republic of Iran was reasonable and justified.
35. The CHAIR asked whether the Committee would agree to delete paragraph (2)(iv).
36. Mr. WARDLE (New Zealand) said that the text should be kept as it stood in the Basic Proposal, since it was similar to other WIPO-administered treaties and there was no evidence of any problems deriving from the implementation of that provision.
37. Mr. ARBLASTER (Australia) considered that there was no need to delete paragraph (2)(iv). He believed that it was better to keep the treaty flexible and provide the Assembly with powers to adapt. For example the Assembly could decide on a particular measure to assist developing countries with the implementation of the treaty. He said that although the language could be made more precise, it was better left unchanged.

38. Mr. MARTENS (Germany) supported the comments made by the Delegation of Australia and said that the language of Article 23(2)(iv) was found in the instruments of other international organizations. This concerned what was known as “residual powers” for the Assembly to perform its functions in a satisfactory manner. The Delegation of Germany was not aware of any difficulties arising from the implementation of this provision in the past. It did not seem to be a harmful provision nor one that could be against the interests of developing and least developed countries.

39. Mr. SIMI (Samoa) supported the proposal made by the Delegation of New Zealand to maintain the text of the Basic Proposal. He said that deleting the provision, as suggested by the Delegation of the Islamic Republic of Iran would not serve any purpose other than unnecessarily limiting the functions of the Assembly. He held the view that the text was not vague and it allowed the necessary flexibility for the Assembly to determine what was appropriate in relation to the treaty itself.

40. M. VARVESI (Italie) note que parfois les principes généraux permettent une flexibilité qui a pour effet de donner à l'Assemblée des pouvoirs que l'on ne peut pas prévoir, c'est pourquoi il comprend parfaitement la position du délégué de l'Iran lorsque celui-ci dit que cet article est vague. Il constate en effet que l'article en question est vague sur un point, à savoir lorsqu'il stipule “ other function ”. Aussi, propose-t-il pour ces “ autres fonctions ” soit de les préciser une par une, au risque d'en oublier quelques-unes, soit de laisser le terme “ other function ”. Il constate cependant que cet article est précis en ce qu'il donne les pouvoirs à l'Assemblée, dès lors c'est le principe fondamental qu'il faudrait respecter.

41. La Sra. ROAD D'IMPERIO (Uruguay) dijo que su delegación apoyaba que se mantuviera el Artículo 23.2) iv) por entender que su redacción no ofrecía ambigüedad. A su parecer dicho artículo era claro por cuanto la Asamblea, además de sus funciones enumeradas, tenía funciones accesorias dentro del contexto del Tratado. Añadió que no había que olvidar que esas funciones accesorias o residuales de la Asamblea estaban condicionadas a las que les correspondieran como rezaba la disposición en virtud del Tratado, y que no iban a ir más allá de eso.

42. Mr. STEMMET (South Africa) supported the proposal to maintain the provision in the treaty. He believed that it was positive to maintain uniformity in WIPO-administered treaties and he felt that the provision allowed the Assembly to have some policy space to consider such matters as they may arise.

43. Mr. RAGAB (Egypt) proposed to take the middle road since he considered that the provision was indeed vague and provided no link to define what those other functions were. He thus suggested adding language to the effect that the functions would lead to the accomplishment of the treaty.

44. El Sr. RUBIO ESCOBAR (Colombia) indicó que su delegación también apoyaba que se mantuviera el numeral segundo del Artículo 23.iv) por dos razones importantes: la primera era porque creían que no generaba ninguna dificultad un texto similar como lo habían dicho las delegaciones que le habían precedido - subrayó que en los demás tratados administrados por la OMPI no había generado dificultad

alguna - y segundo, porque creían que no había ninguna imprecisión en ese Artículo, sino antes bien, una clarificación en el sentido de que se le asignaba a la Asamblea la cláusula residual y general de competencia de que podía ejercer cualquier función que le correspondiera en virtud del presente Tratado. Por esas dos razones solicitó que se mantuviera el iv), párrafo segundo del Artículo 23.

45. M. REQUENA (France) dit qu'en ce qui concerne le point examiné, il rejoint totalement ce qui a déjà été exprimé par les délégations de l'Australie, de la Nouvelle-Zélande et de l'Italie. Il indique que sa délégation ne voit pas de difficulté particulière avec cette disposition qui existe déjà dans plusieurs traités. Pour des raisons d'harmonisation mais également de flexibilité, il a été rappelé que c'est l'Assemblée qui aurait le pouvoir de définir ces fonctions administratives. Il conclut en précisant que sa délégation souhaite le maintien de cette disposition.

46. Mr. GHORBANI (Islamic Republic of Iran) supported the proposal made by the Delegation of Egypt to find a middle way. He said that it was necessary to keep the flexibility provided in this Article and that he could suggest the appropriate language later.

47. M. BELFORT (Haïti) dit qu'il souhaite que le dispositif prévu au sous-alinéas 4) et 2) de l'article 23 soit maintenu parce qu'il s'agit d'un dispositif classique en matière de droits des traités. De plus, ces sous-alinéas font référence à l'Assemblée comme autorité suprême et comme il s'agit d'un traité qui sera approuvé par les États membres et que l'Assemblée est constituée par les États membres il ne voit aucune contradiction dans le libellé du traité. C'est pourquoi sa délégation appuie le dispositif prévu par ces sous-alinéas.

48. La Sra. MENJIVAR CORTÉS (El Salvador) indicó que su delegación consideraba que el Artículo debería mantenerse en virtud de que no ofrecía ninguna ambigüedad. Se trataba de una disposición clásica de los tratados.

49. La Sra. RÍOS DE DAVIS (Panamá) dijo, con relación al Artículo 23.2) iv), que su delegación apoyaba mantener la propuesta básica. Efectivamente consideraba que el Artículo debía quedar tal cual ya que permitiría que se cumplan otras funciones de tal modo que la Asamblea podría decidir lo que correspondía en cada situación. Añadió que esta disposición estaba en otros tratados y que no había creado ninguna dificultad.

50. Mr. AL-MOHAMMED (Iraq) supported the proposal made by the Delegation of Egypt, which he considered was a compromise solution and encouraged that delegation to submit a written proposal.

51. Mr. ARBLASTER (Australia) suggested postponing the discussion until the proposals by the Delegations of Egypt and the Islamic Republic of Iran were submitted.

52. Mrs. MOHAMED (Kenya) said that in principle, the position of the Delegation of Kenya was to maintain Article 23(2)(iv). However, as mentioned by

the Delegation of Australia, it would be adequate to accord the Delegations of Egypt and the Islamic Republic of Iran an opportunity to submit their proposals.

53. Mr NDINGA (Congo) dit qu'il souhaite appuyer le maintien de cet alinéa et qu'il voudrait aussi, à titre d'exemple, que le Secrétariat de l'OMPI indique si cette disposition figure également dans les autres traités. Il fait cette demande afin d'éclairer les autres délégations qui sont peut-être réticentes quant au maintien de cette disposition dans le traité.

54. Mr. DANILIUC (Republic of Moldova) said that the debate on Article 23(2)(iv) had yielded a number of ideas. However, in his view, the other functions referred to in that provision were those contemplated in paragraph (7) of Article 23. Therefore, he supported maintaining the text as it stood in the Basic Proposal.

55. La Sra. ESTUPIÑÁN BARRANTES (Ecuador) transmitió la posición de su delegación para solicitar que se mantuviera el Artículo 23.2) iv) en virtud de que las funciones de la Asamblea serían las correspondientes al Tratado, lo que no ofrecía ninguna ambigüedad.

56. The CHAIR announced that, after consultations on Article 23(2)(iv), the following drafting had been agreed "to perform such other functions as are appropriate to implementing the provisions of this treaty".

57. Mr. GHORBANI (Islamic Republic of Iran), Mr. ARBLASTER (Australia), Mr. RAGAB (Egypt), and Mr. KHAN (Pakistan) supported the wording suggested by the Chair.

Article 25: Revision and Amendment

58. The CHAIR suggested to continue the discussion on Article 25. He asked the International Bureau of WIPO to brief the meeting on the proposals submitted by Delegations with regard to this provision.

59. Mr. KWAKWA (WIPO) noted that, at the previous meeting of the Committee, three proposals were submitted in relation to this Article, by the Delegations of Kyrgyzstan, South Africa and the United States of America. He noted that the proposal by the Delegation of South Africa was consistent with the other two. However, the proposals of the United States of America and of South Africa differed in that according to the former, the Assembly could only amend Article 23(2) dealing with the tasks of the Assembly, whereas according to the latter, it could only amend Article 24 dealing with the International Bureau.

60. The CHAIR asked the delegations concerned to present their proposals.

61. Ms. COTTON (United States of America) said that the Delegation of the United States of America explained its proposal on Article 25(2)(a), as reflected in document TLT/R/DC/17. She explained that the current text of Article 25(2)(a) read

“Articles 23 and 24 may be amended by the Assembly” and said that the Delegation believed that formulation was unclear, because it did not refer to the procedures by which the Assembly could amend the treaty and the procedures for the entry into force. She suggested first of all replacing the reference to Articles 23 and 24 for a reference to Article 23(2). The second proposal was to add language at the end of the first sentence in Article 25(2)(a) to read “in accordance with paragraph (2) of this Article” to clarify the way in which the Article can actually be amended by the Assembly. She noted that the special amendment procedures that were reflected in Article 25(2)(a), would be appropriate for certain administrative and technical provisions. However, it seemed unprecedented for these procedures to apply to critical provisions with a three-fourths vote and to enter into force after three-fourths ratifications had been received. Nevertheless, she recalled that, as the International Bureau had noted, it would be too inflexible if the Assembly could not amend its own procedures and this was the reason to retain Article 23(2). She further noted that this was in line with the Patent Law Treaty provisions, on which this text was modeled.

62. With respect to the deletion of Article 24, relating to the role of the International Bureau in the administration of the treaty and the ability of the Assembly to amend that role, she noted that the Patent Law Treaty did not contain a similar provision. The Delegation of the United States of America found that it was unnecessary in the context of the revised TLT. She noted that the role of the International Bureau of WIPO in administering the TLT was similar to its role in administering the PLT, and this contrasted with its role in the administration of the Geneva Act of The Hague Agreement or the Madrid Protocol.

63. Mr. WARDLE (New Zealand) said that the Delegation of New Zealand had looked at Article 25(2) in comparison with Article 19 of the PLT. He noted that, under the revised TLT, the Assembly was provided with much broader amendment powers. His Delegation had presumed that some problems or issues had been raised under the PLT that would necessitate a departure from its provisions. He was interested to hear why the revised TLT required a broader provision than the PLT.

64. Mr. KWAKWA (WIPO) said that similar language was found in the Madrid Protocol and in the Geneva Act of The Hague Agreement. However, as pointed out by the Delegation of the United States of America, the drafting could be closer to the PLT. He also noted that the addition of the sentence “in accordance with paragraph (2) of this Article” added clarity to the provision and was therefore welcome.

65. Mr. GHORBANI (Islamic Republic of Iran) thanked the Delegation of the United States of America for its proposal. He noted that, generally all articles of the treaty should reflect a balance of interests. He further noted that in several instances, the International Bureau had mentioned that the provisions were inspired in the corresponding PLT provisions or in provisions of other treaties. However, he believed that each treaty should stand on its own merits and should make sense as a package for all member states. He highlighted the level of commitment that this proposal required from developing countries. According to his delegation, this proposal would destroy the interests of developing and least developed countries, at

this point and in the future. This was the initial stage of harmonization for all matters relating to the future through the Assembly of the TLT.

66. Mr. ARBLASTER (Australia) said that throughout the preparatory work on the revised TLT, the Delegation of Australia had sought to give the Assembly broader powers to amend detailed provisions. That was achieved by moving such provisions from the text of the treaty to the Regulations. While his delegation still preferred the basic proposal, because it provided maximum flexibility, it could support the proposal submitted by the Delegation of the United States of America.

67. The CHAIR asked the Delegation of the United States of America to further explain its proposal.

68. Ms. COTTON (United States of America) said that the Delegation of the United States of America proposed to amend Article 25(2)(a) to read “Article 23 may be amended by the Assembly in accordance with paragraph (2) of this Article”. Paragraphs (b) and (c) would remain unchanged. The wording “In accordance with paragraph (2) of this Article” was meant to bring in the procedures by which an amendment could be made by the Assembly. She recalled that Article 23(2) was the provision which allowed the Assembly to amend its own tasks, so that the Assembly could in fact amend its rules of procedure as needed. It did not appear necessary for the Assembly to be able to amend the rest of Articles 23 and 24, dealing with voting procedures and the tasks of the International Bureau of WIPO. In her opinion, the revised TLT should be in line with Article 17 of the PLT, which did not contain those provisions.

69. Mr. GHORBANI (Islamic Republic of Iran) said that according to the Rules of Procedure of the Conference, the redrafted proposal by the Delegation of the United States of America should be submitted in writing. He also announced that his delegation intended to submit a proposal to insert new wording between paragraphs (b) and (c).

70. Mr. STEMMET (South Africa) supported the amended proposal by the Delegation of the United States of America as stated orally.

71. Mr. ARBLASTER (Australia) supported the proposal by the Delegation of the United States of America. However, as a question of procedure, he held the view that the proposal by the Delegation of Kyrgyzstan should also be considered in this context as both proposals could be contradictory.

72. Mr. KWAKWA (WIPO) explained that the proposals submitted by the Delegations of Kyrgyzstan and the United States of America were in fact mutually exclusive.

73. Mr. WARDLE (New Zealand) wondered why the Assembly would need additional powers. He supported the proposal by the Delegation of the United States of America and held the view that the proposal by the Delegation of Kyrgyzstan would limit the powers of the Assembly to amend its own procedures.

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74. Mr. MEJÍA GUEVARA (Honduras) said that the Delegation of Honduras supported in principle the proposal made by the Delegation of the United States of America, which included also Article 23(2)(iv). He believed that this text would provide the necessary flexibility to carry out other functions under the treaty.
75. Mr. RAGAB (Egypt) said that removing the reference to Article 24 in Article 25(2)(a) simply meant that the highest body established by the treaty could not change the provisions relating to the International Bureau. This left open the question as to how those provisions could be changed.
76. Mr. CARLSON (Sweden) said that the Delegation of Sweden would declare its position on this matter in due course.
77. Mr. GHORBANI (Islamic Republic of Iran) referred to the proposal made by the Delegation of Kyrgyzstan and said that Article 24 concerned the functions of the International Bureau of WIPO. He held the view that members of the Assembly should be able to broaden or narrow the functions of the International Bureau in order to facilitate the work of implementation of the treaty and the regulations.
78. El Sr. RUBIO ESCOBAR (Colombia) indicó que de acuerdo con la propuesta básica, los únicos artículos que podían ser modificados por la Asamblea eran los Artículos 23 y 24 que trataban de la Asamblea y de la Oficina Internacional. Las enmiendas que se estaban presentando, tanto por la Delegación de Estados Unidos de América como por la Delegación de Kirguistán limitaban esas modificaciones por la Asamblea. En la propuesta de la Delegación de Estados Unidos era el Artículo 25.2) y en la propuesta de la Delegación de Kirguistán era el párrafo 1, Artículo 24. En su opinión, para poder tomar una decisión era útil saber cuál era la motivación para que la Delegación de Estados Unidos lo limitara al 25.2) y no como estaba en la propuesta básica.
79. Mrs. MOHAMED (Kenya) expressed support for the amended proposal presented by the Delegation of the United States of America. She noted, however, that her position would be guided by the position of the African group.
80. Mr. ARBLASTER (Australia) explained that the Delegation of Australia accepted the proposal made by the Delegation of the United States of America to remove the ability of the Assembly to amend Article 24 because it was difficult to see what the Assembly would do by way of amendment. Both Article 23(2)(iv) and Article 24(5) had a similar provision, that the Assembly and the International Bureau, respectively, would perform such other functions as assigned to it under the treaty. He noted that it was difficult to see why the Assembly would alter these provisions, because the Assembly had the role of providing guidance to the International Bureau so that it may carry out the tasks assigned to it.
81. Mme JOSEPH (Haïti) dit qu'elle souhaite obtenir un éclaircissement de la part du Secrétariat au sujet de l'alinéa 2) de l'article 25. Elle indique que l'article 25 dans son alinéa 1) dit que le traité peut être révisé par une conférence diplomatique et que la convocation d'une conférence diplomatique est décidée par l'Assemblée. Par ailleurs, à l'alinéa 2)a), il est dit que les articles 23 et 24 peuvent être modifiés par

l'Assemblée. Dès lors, elle souhaite savoir si c'est l'Assemblée elle-même qui peut modifier les articles 23 et 24 ou bien si c'est une conférence diplomatique convoquée par l'Assemblée qui peut procéder à une telle modification. Elle dit qu'elle a l'impression qu'il y a une confusion sur ce point.

82. Mr. KHAN (Pakistan) asked whether the Delegation of the United States of America could explain the rationale behind the proposed deletion of the reference to Article 24 in Article 25(2)(a).

83. Mr. GHORBANI (Iran) noted that he had submitted a proposal for changes in Article 25(b), which he would be ready to discuss once the proposals would be made available to the Delegations.

84. Ms. COTTON (USA) said that the proposal of the United States of America was submitted at the Diplomatic Conference only because the final and administrative clauses of the revised TLT had not been discussed throughout the seven sessions of the SCT but only at the latest sessions. She noted that the Delegation of the United States of America wished to provide additional clarifications concerning its proposal on Article 25(2)(a). She indicated that, according to the general rule contained in the Vienna Convention on the Law of Treaties, parties could not be bound by an amendment unless they agreed to that amendment. Article 25(2)(c) provided that an amendment could be adopted by three-fourths of the members present during the amendment procedure. That meant that one fourth of the members that were not present and did not agree to the amendment could still be bound by it.

85. With regard to the voting provisions in Article 23, she felt that it was important to narrow the scope of the provision contained in Article 25(2)(a), so that the assembly could not amend critical voting provisions or have the ability to make amendments enter into force in spite of the objection of one fourth of the members present. With regard to Article 24, on the role of the International Bureau, she noted that given the nature this treaty and the limited role that the International Bureau of WIPO would play in the administration of the treaty, in contrast to the Madrid Protocol, or the Hague Agreement, the Assembly did not need to amend the tasks of the International Bureau. She also noted that the Secretariat had indicated several times that when negotiating new treaties, the administrative clauses from previous treaties were used as a basis for the start of negotiations. With those ideas in mind, the Delegation of the United States of America preferred to keep the administrative clauses, and in particular Article 25(2)(a) as narrow as possible. She said that these provisions would set a precedent for the future and it was not appropriate to give the Assembly expansive powers when they were not needed.

86. Mme JOSEPH (Haïti) confirme que c'est effectivement une explication qu'elle souhaiterait obtenir de la part du Secrétariat en ce qui concerne la première question qu'elle avait posée. Elle demande s'il est usuel en matière de traités qu'une Assemblée soit habilitée à modifier des articles qui ont été adoptés dans le cadre d'une conférence diplomatique.

87. Mr. KWAKWA (WIPO) referred to the question raised by the Delegation of Haiti and confirmed that if Articles 23 and 24 remained in the text of Article 25(2)(a), the provisions relating to the Assembly and the International Bureau could be amended by the Assembly. This provision was not exception and existed in other WIPO-administered treaties.

88. Mr. OMOROV (Kyrgyzstan) said that with regard to the reference to Article 25, it was important to differentiate the specific role of the International Bureau of WIPO, as stated in Article 25(2) from other global questions which needed to be decided by a Diplomatic Conference.

89. Mr. RAGAB (Egypt) considered that Article 23 concerned the normal powers of the Assembly and therefore this matter needed to be decided by a Diplomatic Conference. However, a change in the rules of procedure of the Assembly could be decided by the Assembly itself. With regard to Article 24, the International Bureau of WIPO was a technical secretariat and it seemed logical that the provisions concerning that Secretariat could be amended by the Assembly.

90. Mr. WARDLE (New Zealand) supported the proposal made by the Delegation of the United States of America to limit the powers of the Assembly to amend Article 23(2). He noted that new WIPO treaties were modeled in previous treaties. Therefore, caution should be exercised to change the powers of the International Bureau, since any such change could have the power to influence WIPO's overall budget.

91. Mr. GHORBANI (Islamic Republic of Iran) supported the views expressed by the Delegation of Egypt.

Article 28: Entry into Force; Effective Date of Ratifications and Accessions

92. Mr. GHORBANI (Islamic Republic of Iran) said that according to Article 28, the treaty would come into force after five states or intergovernmental organizations had deposited their instruments of ratification or accession. He expressed concern that such a low number of states could decide the convocation of a Diplomatic Conference.

93. The CHAIR adjourned the meeting.

Third Meeting
Monday, March 27, 2006
Afternoon

94. Mr. KWAKWA (WIPO) called on Mr. James OTIENO-ODEK (Kenya), Chair of Main Committee II to preside the meeting.

95. The CHAIR reconvened the meeting of Main Committee II and called on the Chair of the Drafting Committee to present her report with respect to Articles 23 to 32 of the treaty.

(Uruguay, as Chair of the Drafting Committee)

96. The CHAIR took the opportunity to congratulate the Drafting Committee for its work and for the report, which truly reflected the deliberations and decisions of Main Committee II. He asked the Committee whether he could submit the text of Articles 23 to 32 for approval by the Plenary. He noted that the Committee had approved the submission of that text and closed the meeting.

97. Mr. KWAKWA (WIPO) announced that the Plenary would reconvene to deal with Agenda Items 11, 13 and 14. He also announced that the credentials committee would hold a second meeting immediately after the Plenary.