Chapter Four

DIPLOMATIC CONFERENCE ON THE
REVISION OF THE PARIS CONVENTION
I. Introduction

The objective of the Diplomatic Conference was to effect the Seventh Revision of the Paris Convention after due deliberations. It was convened pursuant to a decision of the Assembly of the Paris Union by the Director General of WIPO. The First Session of the Diplomatic Conference commenced its proceedings in Geneva from 4 February to 4 March 1980. H.E. Ambassador Aliouie Sene (Senegal), was elected unanimously as the President of the Conference. In his opening statement, the President noting the existing disparities in the field of industrialization and the transfer of technology, outlined briefly the objectives defined by the Ad Hoc Group of Experts which had studied the revision of the Paris Convention: (a) examine the possibility of ensuring a proper balance between the needs of the developing countries and the rights granted by patents; (b) promote the actual working of inventions; (c) establish the principal obligations and rights of the owners of industrial property rights; (d) encourage creative invention in the developing countries; (e) judge the real value of inventions for which protection is needed.

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1 For a synoptic view of the Sessions of the Diplomatic Conference and the Consultative Meetings see Tables 4.1 and 4.2 at the end of this chapter.

2 WIPO, PR/SM/3, Final Summary Minutes of the Diplomatic Conference on the Revision of the Paris Convention, First Session, Geneva, 4 February to 4 March 1980, p.2. During the sixth session of the Coordination Committee of the WIPO held in June 1974 that the idea of possible revision of the Paris Convention was put forward. The Director General of the WIPO was requested "to make provision in the draft budget for 1975 for the creation and convening by him of an ad hoc committee of experts coming from States both members and non-members of the Paris Union". Pursuant to this decision, the Ad Hoc Group of Governmental Experts was set up and it held three sessions: in February 1975 (Geneva), in December 1975 (Geneva), and in June 1976 (Lausanne).
sought: (f) screen and control licensing contracts; (g) improve the means of information set up under national legislation; (i) create suitable institutional structures; (j) prevent or combat abusive practices in the field of industrial property; (k) take it as understood that all forms of industrial property, including trademarks, should be designed to facilitate development and to ensure cooperation between countries; (l) consider the principle of equality of all forms of industrial property, of national treatment, of the independence of patents and of preferential treatment for developing countries; (m) assist the developing countries in strengthening their scientific and technological infrastructure and in the training of specialists and (n) to give each country all latitude to adopt the legislative and administrative measures consistent with its needs and with its social and economic policy.

These broad objectives set for the Diplomatic Conference were formulated by the Ad Hoc Group of Experts during its second session held in Geneva from December 15 to 22, 1975. On the basis of its recommendation the Preparatory Intergovernmental Committee on the Revision of the Paris Convention was constituted. This Preparatory Committee set up four Working Groups to examine specific issues and prepared a 'Draft' in the form of 'Basic Proposals' and submitted it to the Diplomatic Conference. The

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2Ibid., p.8. In order to examine certain specific questions, the Preparatory Committee formed four Working Groups, to deal with - Inventor's Certificates, Article 5A of the Paris Convention. Questions of Special Interest to Developing Countries and the Conflict Between an Appellation of Origin and Trademark.

3Ibid., p.9.
Conference constituted three Main Committees to deal with specific items for revision as classified under the ‘draft’ (PR/SM/3). The Chairmanship of each Main Committee was offered to different group of countries. The Main Committee I was chaired by a delegate from the Group of Developing countries as it dealt with questions which were crucial to them. The chairmanship of Main Committee II was assumed by a delegate from Group D countries, and Main Committee III by delegate from Group B countries.

II. Procedural Tangles: Unanimity v. Majority

The Diplomatic Conference soon after it began deliberations was occupied for the greater part with the task of resolving the question of Principle of Unanimity. The Group B countries strongly defended the ‘principle of unanimity’ as enunciated in the practices followed by the Paris Convention in all its earlier Revision Conferences. However, in order to pacify the Group of Developing countries, the spokesman of the Group B countries put forward the adoption of a rule of "qualified unanimity". According to him

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*The specific items discussed by each Main Committee were: Main Committee I dealt with Article 5A (Non-Voluntary Licensing); Main Committee-II dealt with Article 1 (Scope of Industrial Property); and Main Committee-III discussed Article 20 to 30 (mainly Procedural Aspects); see PR/SM/3, n.2.

*The three groups were: Group of Developing Countries, consisting of the Group of 77 and other developing countries; Group D comprised Bulgaria, the Byelorussian SSR, Czechoslovakia, the German Democratic Republic, Hungary, Poland, the Soviet Union, and the Ukrainian SSR; The countries belonging to neither the Group of Developing Countries nor Group D were comprised in Group B. China did not belong to any of these groups; see PR/DC/3, n.3.

*Ibid., p.16. There was some disagreement with regard to the distribution of chairmanships of Main Committees between different Groups.

*First Session, n.2, p.19.
such qualified unanimity would mean that "in order to prevent the adoption of a revised text, at least three countries would have to register a negative vote." Both the Group of Developing countries and the Group D countries expressed the view that the principle of unanimity no longer, "corresponded to the objectives and tasks of the Paris Convention". Instead, they proposed the accepted practice of two-thirds majority.
The representative from African Intellectual Property Organization (OAPI) endorsed the views of Group of Developing Countries and pointed out that "every Conference for the revision of the Paris Convention had been, and remained, sovereign on the matter of laying down the rules under which it wished to revise the Convention."

The justification of the rule of unanimity on the ground that it had contributed to the "general harmonization" in the field of industrial property law was not acceptable, because it necessitated a careful and detailed study of the problems until a unanimously

"Ibid. He further clarified that this rule of qualified unanimity rule would not be applicable to Articles 23 and 27, which, *inter alia* dealt with, "mode of entry into force of the revised Convention and its accession".

"Ibid., p.20.

"Ibid. In order to substantiate his argument, the spokesman of the Group of Developing Countries cited the practice adopted in the Vienna Convention on the Law of Treaties, 1969; also the treaties concluded under the aegis of the International Labour Organization, UNESCO, WIPO, as specialized agencies of the UN.

"Ibid. The Egyptian Delegation had noted: "The origins of the unanimity tradition in the Paris Union went back to its foundation, when the Paris Union had only 11 members. That was almost a hundred years ago, and circumstances had changed considerably, particularly as a consequence of the emergence of the developing countries."
approved solution was found. At the same time, the Director General of WIPO suggested that the solution adopted for the present Conference should not create a precedent for future revision conferences since the circumstances that would prevail at such conferences would obviously be just as different as the circumstances prevailing at the present conference.

III. Qualified Unanimity: Developing Countries' Views

The definition of "qualified unanimity" as enunciated by the Group B countries varied considerably during the proceedings of the Conference. In the beginning, it comprised of the "registration of three negative votes". The rationale behind this number of "three negative votes" was unclear. Group of Developing Countries did not accept this proposition. There was another proposal by the Group B countries for accepting a "nine-tenths qualified majority" and the acceptance of which it described as a "very important and difficult step".

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14 Ibid. The unanimity rule had led to the non-ratification of two previous revision texts - Rome, 1886 and Madrid, 1890; see, Ulf Anderfelt, International Patent Legislation and Developing Countries (The Hague, 1971), p.73.

15 Ibid., p.23.

16 "First Session, n.2, p.31. The Director General of WIPO in his suggestion had stated: "The revised text shall be adopted by the Conference meeting in Plenary by consensus or, if there is no consensus, if not more than 10 delegations vote against it".

17 Ibid., p.26. This proposal was promptly rejected by Group of Developing Countries as it would have had far-reaching implications on the interests of the developing countries. Instead, they suggested that the consideration of Rule 36 (1) which outlined the mode of bringing into force the Paris Convention, be itself suspended, leaving it entirely to the consideration of the Contact Group, while at the same time resuming discussions on the substantive items.
The spokesman on behalf of the Group B countries referred to the Vienna Convention on the Law of Treaties. According to him it did not "preclude the adoption of a rule stipulating that a treaty should be adopted unanimously." He drew a distinction between the adoption of new treaties and the revision of an existing treaty. Diplomatic Conferences organized within the Paris Union which had adopted new treaties had indeed followed, he argued, the two-thirds majority rule but they were new treaties and not the revision of an existing treaty as was the case with the present Conference. To the argument that the Paris Convention itself did not mention the rule of Unanimity, he supported his Group's viewpoint on the basis of customary law and "customary law", he emphasised, "existed within the Paris Union followed the principle of Unanimity." 

IV. Consensus or Two-Thirds Majority: Hijacking the Issue

The spokesman of the Group of Developing countries, before evolving the principle of "consensus coupled with majority", categorized the proposals enunciated by

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"Ibid. In his statement he expressed his doubt regarding the "entry into force of the Vienna Convention on Law of Treaties", which was immediately refuted by the Brazilian delegate on behalf of developing countries.

"Ibid.

"Ibid.

"Ibid. Andrefelt points out that, "The efficient working and development of an agreement, in which any change is conditioned by the need for unanimous consent, requires a basic community of interest... In fact, despite the unanimity rule, the evolution has reached a point where a large group of countries has not ratified the latest text and a few countries not even the preceding one; see. Ulf Andrefelt, n.14, p.98."
the different Groups. First, the proposal by Group B that substantive matters should be discussed informally or unofficially until the Rules of Procedure were adopted. Second, the proposal of Group D to set aside the whole of Rule of Procedure as provided in Rule 36. Third, the Group of Developing Countries proposal to adopt Rules of Procedure partially and that discussions on substantive questions and further consideration of Rule 36(1) to proceed in parallel. Finally, he formulated the following proposal which he claimed was based more on consensus than anything else. It read as follows: "The Conference should try its utmost to adopt the new Act (or revised Act) by consensus. However, if consensus cannot be reached, the Conference will decide, by a simple majority vote, that the new Act shall be adopted by a two-thirds majority of members of the Paris Union present and voting, unless the same majority of two-thirds decides to apply a different rule". The Group D countries supporting the Group of Developing Countries' proposal agreed that "it provided vast opportunities for a solution acceptable to the overwhelming majority of countries."

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22First Session, n.2, p.33.

23This proposal was opposed by the Group of Developing Countries.

24First Session, n.2, p.33. Rule 36 dealt with the mode of adoption of the decisions at the revision conferences.

25Ibid. The Brazilian delegate speaking on behalf of the Group of Developing Countries said that it was wrong to think that the proposal of the Group of Developing Countries was based on two-thirds majority. His Group's proposal, according to him, started rather from the same principle, the principle of consensus which found favour with all the Groups.

26Ibid., p.35.
At this stage, the Diplomatic Conference finding no solution to the question of voting could not proceed with the discussion on substantive topics. The French delegate expressed his concern as to the possibility of "failure of the Conference because of disagreement on a question of rules of procedure... when the preparatory work had shown that there were good hopes of reaching general agreement on substantive questions." The Director General of WIPO suggested that the Plenary could take a compromise decision to adopt the rules of procedure except the contentious Rule 36(1), on the understanding that the application of other sub-clauses of Rule 36 could not start until the Rule 36(1) had been adopted.

A. EEC Proposal

The Italian delegate on behalf of the nine European Economic Community (EEC) member countries presented the following proposal: "The revised Act shall be adopted by consensus. Nevertheless, if a consensus is not reached, the revised Act will be considered to be adopted if the number of States voting against its adoption does not exceed ten." The spokesman clarified that "the EEC's initiative formed part of Group B's

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27Ibid., p.36. The Group of Developing Countries did not agree to a proposal by Group D countries "to commence work in the Main Committees without having the rules of procedure that were applicable to those Committees, rules which were to be found in paragraphs (2) and (3) of Rule 36.

28Ibid.

29The nine EEC countries comprised of: Belgium, Denmark, France, Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom. First Session, n.2, p.46.
efforts to break the deadlock in which the Conference found itself." The French delegate in justification of the contents of the EEC proposal giving due weightage to the 'consensus' factor pointed out that the reasons for adhering to 'consensus' were not only legal and historical. According to him the reasons are economic since "the Paris Convention had a direct effect on the industrial, commercial and artistic activities as well as agricultural activities of each Contracting State... In the absence of consensus, certain countries would not sign or accept the revised text." 

B. Proposal by the United States

The American proposal, in fact, affirmed the proposal of the Group B countries enunciated earlier as a rule of "Qualified Unanimity". The proposal, *inter alia*, stated, that "if three or more countries vote against -- that would prevent the adoption of the text." In support of this proposal, the US delegate pointed out that the previous six Revision Conferences of the Paris Convention were based on 'Unanimity', because it was a Convention which dealt with "substantive rights of enormous commercial value." 

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"Ibid.

"Ibid. Most of the EEC countries had made statements supporting this proposal. The U.K. delegate said: "A text rejected by eleven countries or more would not be applied by many countries that were transferrers of technology and thus it would fail to attain its basic aim". This idea was echoed by Federal Republic of Germany, France and Japan also.

"Ibid., pp.54-55.

"Ibid. The American Proposal had two important threads of arguments; One, unanimity as the fundamental principle to "preserve the sovereignty of member states", second, unanimity "as an incentive and stimulus to work toward compromise and away from rigid positions; ensures that the rule of law prevails". Further, it clarified that to avoid "one single country" to block the adoption of the revised text a qualified unanimity of two would be sufficient.
C. Committee of Nine

The First Session of the Diplomatic Conference, failed to reach an acceptable solution almost till the very end. Without deciding the voting procedure, the negotiations could not have produced results. The President in order to formulate an acceptable proposal to all the Groups established an ad hoc Group of nine members to negotiate and propose a solution. These members after due deliberations produced the following draft which inter alia, stated: "The Conference, meeting in Plenary Session shall endeavour to achieve final adoption of the Revised Text by Consensus. However, if consensus cannot be attained, the final adoption of the Revised Text shall require a majority of two-third, provided that the number of States voting against its approval shall not exceed 12. In case the Revised Text is not approved on a first vote as prescribed above a second vote under the same rules will take place not less than 48 hours later. If, in the second vote, the Revised Text is not approved, a third vote will take place not less than 48 hours later than the second vote. The third vote shall be taken under the same rules but by means of a secret ballot."

This proposal, however, was accepted with reservations by the Group B countries. The United States, however, did not support the proposal and stuck to its

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*"Ibid. The Committee of Nine was composed of representatives of Australia, France and the United States of America for Group B, the Soviet Union and Czechoslovakia for Group D, and Rumania, Yugoslavia, Zaire and Brazil for the Group of Developing Countries.*

*Ibid., p.65.*

*Ibid., p.66.*
original position of "qualified unanimity" with only 2 countries voting against. In view of its reservation it was agreed that the compromise proposal formulated by the Committee of Nine would be passed without vote. For the developing countries, the adoption of this rule of procedure for voting with its vague reference to "consensus" and the three rounds of voting so as to achieve an acceptable solution before voting was not a major victory. It is interesting to note that the restriction of two-third majority to 12 countries was sufficient to block the adoption of any "basic proposal".

D. India's Role

India's role in the revision Conferences needs to be considered briefly. Although India has not joined the Paris Union until now, by virtue of its membership of the WIPO it took part actively in the formulation of Revision Proposals.

"Ibid.

*Ibid.

*Ibid., p.69; The membership of the Paris Union at the Commencement of the First Session of the revision conference was eighty-seven of which majority were developing countries. The negotiations were held on the basis of representations made by three groups of countries, representing distinct economic interests. Voting pattern was also accordingly restricted to two-third majority of the 12 countries only. Although developing countries constituted the largest single group within the system their voices were not adequately heard. They had also pointed out that the main objectives set by the Ad Hoc Group of Governmental Experts were diluted to such an extent that there could be a "most minimal revision". The delegate from Soviet Union, on behalf of other Socialist countries had urged the Member States to recognize, "the legitimate interests of developing countries in the field of legal protection of industrial property". On the other hand, the spokesman on behalf of the developed countries did not agree with the viewpoint that "the existing international system for the protection of industrial property is responsible for the problems countries may experience in their industrial and economic development".
It was during the sixth (second extraordinary) session of the Coordination Committee of the WIPO, held in June 1974 that the idea of a possible revision of the Paris Convention was first put forward. In a discussion based on a proposal made (after an informal meeting of the delegations of developing countries) by the delegation of India, the Coordination Committee requested the Director General to make necessary provisions for the creation and convocation of ad hoc Committee of Experts coming from States both members and non-members of the Paris Union to study the possibilities of revising the Paris Convention.  

Subsequently, upon the recommendation of the Ad hoc Group of Experts, the Assembly of the Paris Union established in September/October 1976 the Preparatory Intergovernmental Committee on the Revision of the Paris Convention. This Intergovernmental Preparatory Committee constituted four Working Groups. India was included in three of the Working Groups, namely (a) The Working Group on Article 5A of the Paris Convention; (b) The Working Group Entrusted with Questions of Special Interest to Developing Countries; and (c) The Working Group on Conflict Between an Appellation of Origin and a Trademark. India was also a member of the Provisional Steering Committee of the Diplomatic Conference which established the provisional Rules of Procedure of the Diplomatic Conference and the Provisional Agenda of the Diplomatic Conference. This Committee was also responsible as an advisory body for the preparation of the documents for the Diplomatic Conference. The negotiations in the Diplomatic

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*Basic Proposals, n.3, p.7.

*Ibid., p.8.*
Conference were conducted, as mentioned already, in three Main Committees represented by the three Groups of Countries. India was one of the members of the Group of Developing Countries.  

V. **Main Proposals at the Conference**

The proposals submitted to the Diplomatic Conference fell into two main categories. The first category consisted of drafts adopted and forwarded to the Diplomatic Conference by the Preparatory Inter-governmental Committee on the Revision of the Paris Convention for the Protection of Industrial Property. The second category consisted of three proposals made by the Group of Developing Countries at the time of the March 1979 session of the Provisional Steering Committee of the Diplomatic Conference on the Revision of the Paris Convention. For the purpose of our study the following main provisions would be discussed:

(a) Article 1: It dealt with the scope of industrial property. The proposed Article 1 introduced the recognition of inventors’ certificates as a title of industrial property to be

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4First Session, n.2, p.21. In the First Session India made one intervention independently to point out the role of developing countries in the negotiations and also to note that the principle of unanimity was totally outdated.

4Basic Proposals, n.3. There were either amendments to Articles in the latest exiting text (the Stockholm Act of 1967) of the Paris Convention, namely, Articles 1, 5A, 13, 20, 21, 22, 23, 24, 26, 27, 28, 29 and 30, or new provisions (having no corresponding provisions in the Stockholm Act), namely, Articles 12 bis, 12 ter, 22 bis and the protocol on the Protection of the Olympic symbol.

4Ibid. One of them concerns Article 5 quater of the Stockholm Act of the Paris Convention; the two others would constitute two new Articles, designated as Articles A and B.
accepted on the same footing as the other titles of industrial property, in particular patents for inventions;

(b) Article 5A:- The proposal to amend this Article dealt particularly with the importation of articles covered by patents, failure to work patents, abuses of patent rights, exploitation of patents in the public interest, and special provisions for developing countries.

(c) Article 5 quater:- This Article originally provided that when a product is imported into a country of the Union where there exist, a patent protecting a process for the manufacture of the said product, the patentee has all the rights, with regard to the imported product, that would be accorded to him by the law of the country of importation on the basis of the process patent, with respect to products manufactured in that country. The basic proposal submitted envisaged the total omission of the Article or at least to exempt developing countries from this obligation.

(d) Articles A and B:- The proposal to include new Articles A and B was made by the Group of Developing Countries in order to implement certain measures of preferential treatment in favour of nationals of developing countries.

(e) Article 12 bis:- This proposed Article related to the furnishing of information, concerning patent applications filed for the same invention abroad, to the industrial property office of the country in which a patent of invention had been applied for.
(f) Article 12 ter: This proposed new Article provided that the Paris Union should endeavour, within its field of competence, to contribute to the development of developing countries by means of industrial property.

In addition to some of these important proposals, the "Basic Proposals", included certain matters relating to administrative and final provisions such as ratification of the new Act; or of its accession; closing of earlier acts, disputes concerning the interpretation and application of the Convention; and the settlement of such disputes.

A. Substantive Issues: A Definition of Industrial Property

This article dealt with the scope of the concept of industrial property. In other words, it defined 'industrial property' and its applicability. The modifications sought in this article primarily related to the extension of the scope of industrial property to inventors' certificates. Inventors' certificates were not initially included in the Paris Convention as it envisaged submission of patentee's rights to the State authority for a royalty to be paid by the State itself and it did not represent the ideas of free market as outlined by the developed countries. The State is to determine the extent of royalty on the basis of utility of the new invention to the society. It may be noted that the concept of 'inventors' certificate' evolved with the idea of socialist pattern of society where every material benefit would be pooled together in such a way as to subserve the interests of society in general. Accordingly, the countries which adhered to the socialist means of economy advocated the inclusion of inventors' certificates into the provisions of Paris
Convention. Developed countries were not ready to accept this inclusion as it affected their interests. The Paris Convention in its evolution did not anticipate this development at the ideological level. The developed countries feared that the monopoly aspect of the patent grant as an incentive to patentee would lose all its meaning. But they also found it difficult to close their eyes towards an evolution in the legal systems of the countries which comprised of one-third of the mankind. The text of the Paris Convention originally confined its scope to patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellation of origins, and the repression of unfair competition. The Draft, however, inserted "inventors' certificates" as one of the objects of protection of the industrial property.

A notable feature of the Draft relates to its first ever attempt to define patents and inventors certificates in terms of their functional utility. The revision conferences, as shown earlier, did not take into account patent's functional utility. Instead, the descriptive method of outlining the areas which would come under the category of patents was employed. Article 1 (3) of the original text says - "Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products; for example, wines, grain, tobacco, leaf, fruit, cattle, minerals, mineral waters,

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*Ibid. p.21. These countries were: Soviet Union, German Democratic Republic, Bulgaria and mostly East European Countries (as existed during that period).

beer, flowers and flour." After this long list of items which come under the purview of industrial property, Article 1(4) of the Paris Convention specifically mentions the various kinds of industrial patents recognized by the law of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc. The Draft, on the other hand, in Article 1(2) (b) defines a 'patent' taking into account functionally its main features such as, (a) the exclusive right for a limited period of time; (b) exploitation of the patented invention or the right to prevent others for a limited period of time; and (c) these rights exercisable on the basis of national laws. However, with the addition of inventors' certificates Article 1(2) (b) defines it in two different but complementary ways. These definitions it may be noted were based on the provisions already incorporated in the patent regimes of member states of the WIPO. In one case, State acquires the absolute right to exploit the invention or the exploitation of the invention by others requires the authorization of the State. The State, however, would have to compensate the inventor, fulfilling any other rights and privileges available within the precincts of national law. In the other case, the holder of the right retains the right to exploit the inventions and to receive remuneration from

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"Ibid.

"Ibid.

"Basic Proposals, n.3, p.22. The Draft was drawn up by a working group of the Preparatory Committee, called "the working Group on Inventors' Certificates".

"Ibid. Article 1(2) (b) (i) states: "(i) titles by virtue of which their holders have the right to compensation and other rights and privileges as provided in the national law of the country, having granted them and by virtue of which the rights to exploit the invention belongs to the State or the exploitation of the invention by others requires the authorization of a State authority."
others for their use of the inventions. This right is exercisable by the inventor subject to an approval by the State and he cannot exclude others from using his invention.  

The ramifications of granting inventors certificates along with patents at the international level have brought forth certain difficulties. The genesis of these difficulties arose from the primary fact that the ideology which determined the political and economic process within different groups of countries had assumed greater importance. The different alternatives presented in the Draft presupposed an interplay of such factors, especially with regard to the extent of applicability of inventors' certificates and patents within national jurisdictions. Article 1(5) (a) of the Draft provides in general terms that "each country of the Union shall protect inventions by the grant of patents or by the grant of patents and inventors' certificates in the same fields of technology." However, the Draft reflects clearly in the exceptions provided the difference of approach in the applicability of this provision. The Draft in its explanatory paragraph interpreted Article 5(a), which inter alia, meant in essence, the preclusion of any country from granting only inventors' certificates in certain fields of technology. Alternative A, proposed by Group of Socialist Countries, as an exception, retained the right to "protect some categories of inventions by inventors' certificates only." Alternative B, by the Group of Developing Countries provided for special treatment to developing countries.

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3Ibid. Article 1(2)(b) (ii) states: "(ii) titles by virtue of which the holder retains the right to exploit the inventions and to receive remuneration from others for their use of the inventions, approval by the national authority, but receives no right to exclude use of the inventions by others".


5Ibid.
in a new article. This exception could be invoked by a developing country if it adopted in its legislation for the first time inventors' certificate as a form of protection of inventions. Alternative C, by the Group of Developed Countries, emphasized on the possibility of granting patents to foreigners in all fields of technology for which the protection of invention was available. In sum, the main differences existing between these three different options mainly related to whom protections were granted. In other words, Alternatives A and B allowed any country to apply certain exceptions in respect of both its own nationals and foreigners. Alternative C, on the other hand, allowed an exception only in respect of the country's own nationals.44

Main Committee II which considered this proposal could not conclude its discussion in the first session. The Socialist Group, supporting the proposal, argued that "Inventors' Certificates ensured the most harmonious relationship between the interests of society and the interests of inventors."55 It also pointed out that more than one-third of titles of protection issued in the world were inventors' certificates. The Czechoslovakian delegate pointed out that in his country inventions covered by inventors' certificates could be worked by all the organizations and it was the State's responsibility to ensure that the inventor received fair remuneration.56 Accession of the Soviet Union to the Paris Convention in 1965 was also referred to by the Socialist Countries. Further, the adoption of a provision by the 1967 Stockholm Diplomatic Conference which

44Ibid, p.35.


56Ibid, p.100.
recognized, for the purposes of the right of priority, inventors' certificates on the same footing as patents was also pointed out by the delegate of Hungary. References were also made to the existence of members with different economic and legal systems under the umbrella of the Paris Convention countries and the recognition of diverse legal institutions within its framework.

The Group of Developed Countries, on the other hand, stressing on the patentee's rights, stated that the inventors' certificates did not provide for any exclusive right to work to their owners. According to them, it did not allow the inventor to grant licences. The United States stated its opposition to incorporating inventors' certificates in the Paris Convention. According to it, patents rather than inventors' certificates were the basic and the most effective means for transfer of technology from one country to another. Opposition was also voiced by the United States against reserving certain technologies for inventors' certificates only; it advocated the "principle of free choice" as a fundamental condition for any further assimilation of inventors' certificates in the Paris Convention. The emphasis on the "principle of free choice" by the majority of developed countries was due to their primary concern in protecting the

"Ibid. p.99.

"Ibid.

"Ibid. p.100.


"Ibid. Japan also supported this idea. Portugal, while supporting this argument based its reasoning on this - "it was the invention and not the individual that was the subject of the certificate".
interests of foreign inventors. In order to extend their monopoly rights, foreign inventors obviously regard patent as the most suitable form of protection. Accordingly, it was noted - "it was indisputable that a patent was of much greater value to a foreign inventor than an inventors' certificate. Since a foreign inventor did not want remuneration the amount of which was fixed by the State, but wished to negotiate freely the conditions for the transfer of his rights, the principle of free choice must be included in the Convention."62 Group of Developed countries unilaterally withdrew the alternative exceptions provided by them to Article 1(5) and expected the Socialist block to reciprocate. Soviet Union, while rejecting this compromise formula, explained possible disparities which it may create between nationals and foreigners. In other words, nationals would be governed by regulations relating to inventors' certificates foreigners would get the benefit of patent rights. Instead, the Soviet Union agreed to consider the steps to reduce the number of categories of inventions for which only inventors' certificates were available and to limit the term of protection of inventors' certificates. However, the First Session of the Diplomatic Conference could not harmonise the proposals contained in the Draft. The differences between different groups of countries were so wide that there was no meeting point in sight. Due to this, the focus of the discussions got shifted to procedural matters.

The discussions at the Second Session of the Diplomatic Conference, once again, primarily focused on the divergent views expressed by socialist countries on the one hand and developed countries on the other. The following six areas of contention were

identified in the process of discussion: (a) the criteria for issuing an inventors' certificate; (b) the reasons for opposition or annulment; (c) the time limits for opposition or annulment; (d) the term of protection; (e) the principle of free choice between a patent and an inventors' certificate; and (f) the exceptions to the principle. In addition to this three Nordic countries, namely, Finland, Norway and Sweden in a separate proposal pointed out that it was a serious deficiency of Article I that it did not mention the inventor as the prime holder of the title. A major part of the third and fourth sessions were also devoted to the question of defining patents and inventors' certificates. Group B countries reiterated that it did not favour the introduction of inventors' certificates as it created a model of inadequate protection. According to them patents not only accorded suitable protection, but also enhanced the possibilities of increased technology transfer. State control, as argued by many delegates from developed countries, did not adequately reimburse the returns for the inventions made. It did not allow the patentee even to work his own inventions. The most crucial problem as regards this arose when there were two modes of protection. Countries which offered patent as a protection mechanism for invention were placed at a disadvantageous position vis-a-vis countries which offered inventor certificates as the protection. This position assumed patent as a higher form of protection. Developing countries on their part were not against having both the forms of 

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WIPO, PR/SM/6, Final Summary Minutes of the Diplomatic Conference on the Revision of the Paris Convention, Second Session (Meetings of the Main Committees II and III), Nairobi, 28 September to 24 October 1981, p.13.

Ibid, p.20.

protection with their respective definitions. This was, however, subject to certain preferential treatment being granted to them. At the close of the fourth session, the Conference adopted a resolution recommending the Assembly of the Paris Union for the protection of industrial property to convene the Diplomatic Conference for what would be its fifth session as soon as it saw prospects of positive results. The consultative machinery set up by the extraordinary session in September 1984 pursuant this resolution could not finalise the contents of Article 1. No agreement could be reached in the subsequent six consultative meetings concluded finally in September-October 1989.

B. Working of Patent Grants: For an Equitable Provision

This provision primarily dealt with the "working" of the patented invention. It was not easy to describe as to what requirements actually constituted working. The perception of developing and developed countries differed sharply on the definition of "working". The differences could be traced to several factors such as economic development, level of growth of science and technology, amount spent on research and development and so on. Article 5A of the draft attempted to give weightage to the interests of developing countries. It may be recalled here that during the first revision of the Paris Convention "local working" was the rule. In other words, the national legislations created an obligation on the part of the patentee to put to use his patent.

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within a stipulated period. Eventually we see the gradual dilution of this concept and its place being occupied by many conditionalities, including compulsory licensing. The revision conferences, in fact, gradually, attached conditions in the form of fulfilment of certain time frame before allowing compulsory licenses' effective operation. Now, compulsory licensing or non-voluntary licensing, as termed in the diplomatic conference, seemed an effective mode to compel the patentee to put to work his patent. For developing countries working of a patent, brought forth certain advantages which became very difficult to assess in tangible terms.

In this background, the adoption of the proposals relating to Article 5A, though termed as "unanimous" was not in actuality unanimous. The Draft consisted of nine paragraphs. Paragraph 1 (a) incorporated provisions relating to "working". It, inter alia, stated, "any country of the Union may provide in its national law that an invention for which that country has granted a patent must be "worked" in its territory". The concept of "working" was not defined. However, the 'notes' incorporated by the Director General of WIPO, described "working" in the following language: "... in cases of product patents, the products comprising the invention are manufactured, and, in cases of process patents, the process comprising the invention is used in manufacture". The Diplomatic Conference was unanimous in accepting that portion of the paragraph which

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*Basic Proposals, n.3, p.39. While adopting this Draft proposal, it was accompanied by a number of footnotes and, at the same time, the Preparatory Committee noted a number of understandings, statements and declarations concerning certain provisions.

related to "working". By not defining "working" the Draft avoided setting any minimum standard; it was left to the municipal legislations to entirely decide the scope of "working". Since this mechanism did not create any conflict as regards the definitional aspect of "patent and its working" participating states in the subsequent Diplomatic Conferences approved the proposals in the Draft.

The contentious part of paragraph (1) related to aspects concerning "deferred examination" which had not been elaborated in the Draft. The introduction of "deferred examination" elicited some response from few countries for it would have created two regimes regulating patent grants with two timeframes. In other words, it would have created a unforeseen gap between countries without deferred examinations and countries offering deferred examination. Notes prepared by the Director General, WIPO, outlined the scope of "deferred examination" as "an examination of the patentability (novelty, inventive step - or non-obviousness, and industrial applicability) of the invention by the authority (patent office) granting patents, which only takes place on special request to be submitted within a certain period of time".1 According to some countries deferred examination of patents would affect effective working requirements as it would not conclusively decide the question of patentability. In such a case a detailed examination would be pending till a specific future date. This may become necessary for two reasons: one, to meet the requirements of provisions relating to priority; second, uncertainty factor of inventions' viability for industrial exploitation emerging at a later stage; or

1Ibid.
inventor may find a better solution than the one proposed and decide to abandon it."

The provision relating to "regional working", did not get the approval of developing countries. Though "suspension" of patents, pending final disposal of cases pertaining to non-working or insufficient working could not get much needed support, few developed countries made an attempt to retain it in one way or the other.

The single most crucial aspect of Article 5A which in the ultimate analysis could not be resolved related to "non-voluntary licences". Most part of the discussions at the four sessions of the Diplomatic Conferences on Article 5A were limited to the question of whether such a non-voluntary licence should be exclusive or non-exclusive. The criteria for the application of the sanction of non-voluntary licence subject to certain time limits was accepted.

The main objection of Group B countries was directed against inclusion of "exclusive" non-voluntary licences in the Basic Proposals of Article 5A. According to the spokesperson of that Group, "the exclusive non-voluntary licences now transforms the benefit given to the patentee into a burden."73 It changed the benefit into an impediment because the patentee himself was excluded from using the invention in that country. On the other hand, however, a non-voluntary licensee who would invest substantial amount of money in order to work the patented invention may find it extremely difficult to withstand competition posed by the patentee. most often a

71ibid.

73First Session, n.2, p.90.
multinational company. But the Group B countries contended that exclusivity of non-voluntary licence hindered free circulation of goods; and resulted in an indirect forfeiture of patent. In addition, industrialized countries noted certain economic reasons to show the hindrance caused by the exclusive non-voluntary licence such as risk involved in investing markets which would be more likely to be foreclosed. Instead of diverting capital and investment in technologies to such "uncertain" markets, it was pointed out investors from industrialised countries may prefer to go over to main market areas where such uncertainties might not exist; in the process small countries with adverse and inadequate patent protection might be deprived of much needed technology transfer.

Objections raised by industrialized countries with regard to other clauses of the Article 5A related to "non-working, insufficient working and abuses". According to the commentaries as provided in the Basic Proposals these three situations were interrelated. Non-working or an insufficient working in certain cases may assume the dimensions of abuses. For a developing country, for example, non-working means spending of foreign currency abroad for goods that should be manufactured in the country itself and depriving its workers employment opportunities. Industrialized countries, however, proposed a totally different view. For them mere non-working was not an abuse; there was abuse only where there were additional circumstances, constituting abuse. In the Basic Proposals, they argued, the inter-relationship between non-working, insufficient working and abuses was unclear.

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"Basic Proposals, n.3, p.41.

"First Session, n.2, p.87."
The differences in approach towards some of these fundamental issues even within Group B countries surfaced during the Second Session of the Diplomatic Conference. It showed how economic progress is closely linked with the evolution of patent system. Among the Group B countries, six countries, namely, Australia, Canada, New Zealand, Portugal, Spain and Turkey were not in entire agreement with remaining members as regards Article 5A. It is interesting that these six countries granted nearly 70 per cent of the patents in their country to foreigners. This was perhaps the primary reason for these countries to accord support to strict working requirements. Spain supported measures which were introduced in order to achieve the effective working of patented invention and to avoid abuses, at the same time respecting the legitimate and reasonable rights of the patentee. It also supported the strengthening of patents' performance as a result of adoption of measures to strictly work it; and noted that the effect of "weakened" patents was non-working and their use would not promote the technological advancement of the country. Spain, while speaking on behalf of these six countries, also referred to the preponderant intensification of international trade and its related consequences. For example, it was perfectly possible to secure profits through a patent without working the invention in the country, by way of export to the market

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"Second Session, n.63, p.32.

7 Australia granted nearly 90 per cent of its total patents to non-residents. In the case of Canada, this figure is as high as 93 per cent. See, WIPO, *Background Reading Material on Intellectual Property* (WIPO, 1988), p.77.
concerned of the goods protected by patent. Accordingly, such new developments justified these moderate measures to secure working of invention in the country that had granted the patent. Even measures to induce working, such as compulsory licensing, had proved ineffective, specially in countries which had not achieved a significant level of development. In such cases, it was argued that other stringent measures, such as forfeiture and revocation could be applied so as to put into use a patented invention. In other words, measures applicable for encouraging working should be capable of being utilized effectively by any country, at any time.

In order to uniformly apply provisions relating to working requirements, six Group B countries put forward a "universalist" approach. They did not see any logical necessity to extend special treatment to developing countries. The Turkish delegate however argued that each Regional Group of Countries contained countries whose economic situation was not very advanced and who consequently, needed an Article 5A to increase the chances of the patented invention being worked within the very country that had granted the patent.79

In another proposal, 12 delegations belonging to Group B countries were ready to accept special provisions relating to working for the developing countries. But, they were not prepared to accept provisions relating to exclusive non-voluntary licences and automatic forfeiture. According to them past revisions of the Paris Convention

79Second Session, n.63, p.36. For detailed treatment of principles relating to working and non-voluntary licensing also see Chapter Eight.

79Ibid., p.37.
strengthened the position of the patentee by abolishing in the London Act of 1934 automatic revocation of patents and by abolishing the grant of exclusive compulsory licensing subsequently in the Lisbon Act of 1958. They also proposed in a new clause a provision which would review after every 10 years the special measures given to the developing countries. Spain, on behalf of six Group B countries did not support these contentions. It stressed on the strict working requirements by incorporating exclusive non-voluntary licences. According to the Spanish delegate the Paris Convention in its Stockholm Convention provided for such a measure whenever there was an abuse of patent grant. The above discussion demonstrated different perceptions which exist within Group B countries. The United States stoutly refused to accommodate any reference to exclusive non-voluntary licences. However, other developed countries of the Group were inclined to arrive at a compromise formula so as to achieve a consensus on Article 5A. At one level, substantial parts of Article 5A were cleared for acceptance as enunciated in the Basic Proposals. As regards the exclusive non-voluntary licences, there was no unanimity insofar as time frames for its applicability were concerned. Group of Developing countries agreed in principle to agree to adopt a proposal put forward by Group B, which *inter alia*, stated without referring to time frames, "...a non-voluntary

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*Ibid.*, p.46. For a detailed discussion on these aspects refer to Chapter Three.

*Ibid.*, p.48. In this regard, erstwhile Soviet Union on behalf of Group D countries supported the position of Group of developing countries, although according to Group D countries exclusive non-voluntary licences might not necessarily have to be limited to developing countries. However, they supported measures of revocation or forfeiture without preconditions as a special provisions for the developing countries.

*Ibid.*, p.90. In order to arrive at a consensus Chairman of the Main Committee I proposed to establish a small core group, entitled "Friends of Chairman" which would comprise of members from all Groups to resolve issues relating to Article 5A.
licence may be exclusive for a period up to ... years in the case where it is determined by the national authority, competent to grant non-voluntary licences, that there are circumstances constituting abuse of the patent rights and that the non-working or insufficient working is one of the constituent elements of the abuse, subject to the condition that the patent may not be forfeited or revoked for the expiration of the exclusive license." United States unilaterally did not go along with this proposal; it stated, "A right to use one's own invention is an individual right, recognized world-wide. An exclusive licence, non-voluntary under an inventor's patent, deprives the inventor of his individual right. It is confiscation of private property, correlated to the patent. The patent is the right to exclude others. The right to use one's own invention is a separate property right and in reference with that right in the Paris Union, it is something that is out of place." Further, it felt that "abuses" were not properly identified so as to warrant such an extreme provision. It is, however, submitted that the approach of the United States of America was one-sided and it did not at all take into account the priorities of a large numbers of developing countries. Secondly, its position overlooked the fact that patent as a monopoly grant had a primary objective in subserving the interests of society.

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*Ibid.* p.93. As a compromise proposal developing countries agreed later to delete the reference to period of exclusivity of non-voluntary licences. Developing countries, on the other hand, preferred to allow a country to decide the necessity for the exclusivity of the non-voluntary licences by determining the "abuses". Even this was not acceptable to the United States and other developed countries.
The third and fourth diplomatic conferences did not see any perceptible progress in the negotiations. On the other hand, Group B countries refused in toto to accommodate any reference to "exclusive non-voluntary licences."*

In order to arrive at a consensus decision, developing countries in the Group B proposed three ideas: One, deletion of paragraphs referring to "special provisions for developing countries and exploitation in public interest"; second, to replace these two changes with following new lines, "when a non-voluntary licence has been issued in any developing country, such a country shall have the right to take all appropriate measures to protect the interests of the non-voluntary licencees, in accordance with its laws"; third, to accommodate the wishes of developed countries, an inclusion in paragraph (4) would state, "such non-voluntary licence shall be generally non-exclusive and shall not be transferable, even in the form of a grant of a sub-licence, except with that part of the enterprise or goodwill which exploits such licence."** These ideas were not approved by Group B on the ground that it widened the scope of exclusive non-voluntary licences. Instead, Group B elaborated on the Nairobi text which incorporated four conditions for the grant of exclusive non-voluntary licences. To put it briefly, these conditions were: one, it was granted by a developing country; two, the patentee had abused the patent; third, non-working or insufficient working of the patent might not as such be considered as abuse; it might only be one of the elements which constituted abuse; finally, the

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*Fourth Session, n.65, p.61.

**Ibid., p.60.
licence may not exceed four and half years.\textsuperscript{67} These were agreed to constitute a form of consensus at the informal consultations held in Nairobi. At the fourth session the results of these consultation, however, were repudiated by the Group B countries, primarily on the basis that they were not ready to accept in any form exclusive non-voluntary licences. Soviet Union, on behalf of Group D countries extended its unequivocal support to the proposals of Group of developing countries.\textsuperscript{68} At the tail-end of the discussion developing countries were very unhappy with the rigid attitude of developed countries and termed the process of revision as "counter-revision".\textsuperscript{69}

At the end of the fourth session, a resolution was adopted recommending the Assembly of the Paris Union for the Protection of Industrial Property to convene a Diplomatic Conference to consider the setting up of a machinery for consultation designed to prepare, on substance, the next session of the Diplomatic Conference. Accordingly, the Assembly held an extraordinary session from September 24 to 28, 1984 to set up a machinery for consultation. The Assembly decided that the said machinery would consist of Consultative Meetings of up to ten representatives of States, including the spokesman, for each group of countries, plus China.\textsuperscript{70}

\textsuperscript{67}Ibid., p.66.

\textsuperscript{68}Ibid., p.67.

\textsuperscript{69}Ibid., p.70.

\textsuperscript{70}Paris Convention, n.66, p.37. For the synoptic view of the date, venue and issues discussed at the Consultative Meetings see Table-4.2 at the end of this Chapter.
C. Consultative Meetings

The First Consultative Meeting dealt only with Article 5A of the Paris Convention. Representatives from each of the three groups reiterated their positions vis-a-vis the provisions which should be included in the Article, explaining the principles that supported each of the proposals.\(^1\) The Second Consultative Meeting dealt mainly with Articles 1, 5A and 5quater. The discussions concerning Article 1 focused on the incorporation of inventor's certificates in the text of the Paris Convention on an equal footing with patents. No agreement could be reached on that proposal. The discussions concerning Article 5A and 5quater were marked by the submissions made by the developing countries, introducing four new ideas aimed at ending the deadlock. One of the ideas submitted was that the notion of exclusivity in an exclusive non-voluntary licence would be interpreted as meaning a "simple" or "relative" exclusivity (not an absolute exclusivity), with the consequence that the patent owner would be allowed to work the patent, if he so wished, parallel to the exclusive non-voluntary licensee.\(^2\) At the Third Consultative Meeting Group B raised several specific questions aimed at

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\(^1\)WIPO, PR/CM/I/3, First Consultative Meeting on the Revision of the Paris Convention, Geneva, June 24 to 28, 1985.

\(^2\)WIPO, PR/CM/II/I, Second Consultative Meeting on the Revision of the Paris Convention, Geneva, January 26 to 31 and February 3, 1987. The other three ideas were, briefly: (a) to exclude paragraph (6) and to add its content to paragraph (4) so as to make it compatible with the Stockholm Act; (b) Paragraph 8(b) of the Nairobi text to form part of these proposals; and (c) To delete Article 5quater.
clarifying the scope and meaning of these four ideas. In the ultimate analysis, it was decided that further discussion on these ideas would be necessary.\textsuperscript{32}

The Fourth Consultative Meeting mainly dealt with new proposals submitted by Group D on inventors' certificates. However, the issue of free choice for the inventor as regards the form of protection for his invention (either a patent or an inventor's certificate) could not be resolved.\textsuperscript{33} The proceedings at the Fifth Consultative Meeting were inconsequential as there was no concrete decision on any of the proposals.\textsuperscript{34} Discussions on Article 5A were based on a proposal presented by the Group of Developing Countries presented in the previous Consultative Meetings. That proposal included special provisions allowing developing countries to grant non-voluntary licences on grounds of non-working of the patented invention after 30 months from the grant of a patent, to grant relatively exclusive non-voluntary licences in case of abuse of patent rights, and to revoke a patent if after five years from grant it had not been worked in the country. The question of greater freedom to legislate in relation to failure to work in developing countries was also brought into discussion. Group B did not express its approval to these proposals pending consultations with their governments and affected private groups.

\textsuperscript{32}WIPO, PR/CM/III/1, Third Consultative Meeting on the Revision of the Paris Convention, Geneva, May 18 to 23 and 26, 1987.

\textsuperscript{33}WIPO, PR/CM/IV/2, Fourth Consultative Meeting on the Revision of the Paris Convention, Geneva September 14 to 19 and 22, 1987.

\textsuperscript{34}WIPO, PR/CM/V/4, Fifth Consultative Meeting on the Revision of the Paris Convention, Geneva, September 19 to 23, 1988.
D. An Unfinished Agenda

In the overall negotiating process the proposals submitted by the developing countries gradually got watered down to meet conditions attached by the developed countries. The discussions at the Fourth Session of the Conference clearly show this trend.* The report of the Chairman of the Main Committee I noted "In spite of all the efforts made, both within Main Committee I and at the meetings of Working Group-I unfortunately can only report that Main Committee I has failed to reach a consensus on Article 5A and on the other questions relating to patents." In fact, the proposals put forward by the developing countries were in keeping with the basic objectives set for the revision of the Paris Convention. Accordingly, the Spokesman of the Group of Developing countries while reiterating this position in the First Consultative Meeting, noted, "The key element...is the attainment of a fair balance between the protection of commercial interests of the owners of industrial property rights and the technological interests and development needs of the countries granting those rights".8

At the Fifth Consultative Meeting the Spokesman of the Group of Developing countries wished to convey his group's state of mind and its understanding of the process of revision of the Paris Convention which according to him had already been "a rather,

*Fourth Session, n.65, pp.63-80.

*Ibid., p.27; The Fourth Session subsequently recommended the setting up of a machinery for consultations designed to prepare, on substance, the next session of the Diplomatic Conference.

*First Consultative Meeting, n.91, p.4.
long process, indeed too long a process in certain respects." He referred to three objectives of the revision, such as, namely (a) to correct and prevent certain abusive practices that sometimes occurred in the industrial property field; (b) to make the Paris Convention, in a new, revised and improved version, capable of facilitating the technological development of the developing countries and improving the conditions of technology transfers to those countries on equitable terms; and (c) patents not to be merely used as a means of closing some markets and dividing others, speculating on prices or building up de facto monopolies that were always prejudicial to the weakest economies.

The spokesman of Group B, on the other hand, referred to three points which needed closer consideration. These were: (a) Group B, had no wish to revise the Paris Convention; it had considered the Stockholm Act as satisfactory: it had wished to revise the Paris Convention keeping in view the problems of developing countries and at the same time without affecting the interests of its Group members; (b) developing and growing concern in the countries of Group B regarding the incidence of widespread infringement of industrial property rights, often referred to as counterfeiting and piracy: in this regard note to be taken of the developments and discussions within GATT on trade-related aspects of intellectual property rights, including trade in counterfeit goods; and (c) increase in the last 15 years, the developing countries' participation in the world

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*Fifth Consultative Meeting, n.95, p.3.

Ibid., p.4.
While outlining these three points, the Spokesman of Group B pointed out that the industrialized countries were, as had become apparent in the GATT negotiations and elsewhere, looking for rules or standards to enforce intellectual property so as not to create distortions to legitimate trade. It was also pointed out that the Group B, although wanted to find solutions to the issues involved in the process of the revision of the Paris Convention, but without prejudice to the negotiations in the GATT.

It is only at the end of the Sixth Consultative Meeting that the Group of Developing Countries also started referring to issues which had already entered the ambit of the GATT. The developing countries had noted that the trend towards strengthening of the protection of industrial property rights in a number of areas was increasing owing to the greater commercial and technological importance of those rights. The developing countries had also noted that this had the effect of promoting protectionism and technological secrecy, and in turn causing a reduction in technology transfers.

Considering these issues, an attempt was made by the developing countries to focus on the "real question regarding the degree to which every country would be free to introduce an adequate system for the protection of industrial property that corresponded to its actual

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"Ibid.

"Ibid., p.6. However, the Spokesman of Developing Countries continued to refer to the Declaration on the Objectives of the Revision of the Paris Convention concluded in December 1975. The Group of B countries, on the other hand, continued to maintain that since 1975 the situation existing at that time had changed. References were also made by the Group of Developing Countries to the emerging trend of intimidation through the application of unilateral measures to enforce the norms of industrial property rights. Also see Chapter Five for the discussion on the bilateral coercive approach adopted by the US.

"WIPO, Sixth Consultative Meeting on the Revision of the Paris Convention, PR/CM/V/1, Geneva, September 18 to 22, 1989, p.5.
development stage". Expressing disappointment, the Spokesman of the Group of Developing Countries noted that the Representative of Group B wanted the revision process to be adjourned as Group B basically did not want to revise the Paris Convention in the way that the developing countries wanted to revise it.

E. Uruguay Round on the Horizon: Failure of Diplomacy

With the commencement of the process of Consultative Meeting in 1985 to arrive at a reasonable conclusion of the Diplomatic Conference, it was clear that the seriousness in negotiating the agenda of revision was lacking. This was particularly true in the case of developed countries. The preparations for the creation of new norms and standards to protect IPRs was already set in motion in a totally different forum, i.e., GATT. By 1985, it should be noted, negotiations were in full swing not only in Geneva, but in the Capitals of many developed countries. The dominant groups of MNCs had, by then, started lobbying for the inclusion of the issue of IPRs in the Uruguay Round Agenda. Unfortunately, there was no indication to this new development, at least in the statements of developing countries in the subsequent Consultative Meetings held after 1985.

However, it would be entirely incorrect to say that developing countries did not anticipate the possible inclusion of IPRs in the Uruguay Round of negotiations. By the

104Ibid.

105This aspect has been considered in the next Chapter; see Chakravarti Raghavan, Recolonization: GATT, the Uruguay Round and the Third World (Penang: Third World Network, 1990).
time the Second Consultative Meeting was convened. Major developed countries such as US, Japan, EC and Nordic countries were set to make detailed statements on the proposed negotiating objectives of the Uruguay Round. These statements, it should be noted, included a substantial section on the creation of new norms and standards for the IPRs. These new norms and standards were, however, totally discarded the work done substantively in the Diplomatic Conference.106

At a slightly later date, both India and Brazil, had also circulated detailed statement on the proposed negotiating objective to be followed in the Uruguay Round negotiations concerning IPRs. In these statements, they had clearly stated the objectives set forth by them.107 The mid-term review of the Uruguay Round negotiations brought about unforeseen changes in the policy pursued by the developing countries which particularly included such leading developing countries as India, Brazil, Republic of Korea and Mexico.108 The reasons for the change in the views of developing countries should be attributed to certain other factors. So, it should be stated that there was a failure of diplomacy on the part of developing countries to foresee these emerging changes and accordingly to strike a compromise. In view of this failure, developed


countries, on the other hand, refused to discuss the substantive aspects of the provisions such as Article 5A, and Article 1 in the Consultative Meetings of the Diplomatic Conference. Even then the question remains as to whether developing countries should have agreed for some kind of compromise so that they could have salvaged the unfinished agenda of the Diplomatic Conference. This is, however, difficult to justify as we could see in greater detail in the next Chapter.

As there was no meeting point between the perceptions of developing and developed countries in regard to the substantive aspects of revision of the Paris Convention, the Sixth Consultative Committee recommended convening of a Diplomatic Conference to conclude the revision in the biennium 1990-91. In order to build a consensus, the recommendation invited the Director General to prepare new proposals for amending the articles of the Paris Convention which were under consideration for revision. The Assembly of the Paris Union accepting these recommendations in its session of September/October 1989, decided that it would meet in extraordinary session in January 1991 to fix further procedural steps and to take cognizance of these proposals of the Director General, that session being preceded by meetings of countries members of the Paris Union for an exchange of views on the said proposals; and decided that amongst the procedural steps there would be at least one preparatory meeting in the first half of 1991 to consider the proposals of the Director General.109 At its session in September/October 1991, the Assembly of the Paris Union decided that the question of the revision of the Paris Convention should be placed on the agenda of the Assembly.

109Sixth Consultative Meeting, n.103.
once the outcome of the results of the Uruguay Round of GATT in respect of intellectual property and of the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are concerned (the Patent Law Harmonization Treaty) were known.\textsuperscript{110}

\section*{F. WIPO Draft Harmonization Treaty}

It had become clear by 1985 that the Diplomatic Conference and the subsequent Consultative Meetings to revise the Paris Convention were leading nowhere. In order to find a solution to this uncertainty a parallel effort was undertaken at the WIPO forum. This effort which began in 1983 evolved into a Draft Harmonization Treaty by 1990. The history of this Treaty started with a proposal made in June 1983 by the Director General of WIPO to the Governing Bodies of WIPO (and in particular, the Assembly of the Paris Union) for a study on the legal effects of public disclosure of an invention by its inventor prior to filing an application.\textsuperscript{111} The proposal was adopted and the question was considered in May 1984 by the WIPO "Committee of Experts on the Grace Period for Public Disclosure of an Invention Before Filing an Application".\textsuperscript{112} Soon this

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\begin{itemize}
\item \textsuperscript{110} Ibid. For the opinions expressed by different countries as regards the continuation of revision process of Paris Convention, see, Assembly, Seventeenth Session (8th Extraordinary), Geneva, April 29 and 30, 1991, WIPO P/A/XV/2.
\item \textsuperscript{112} Ibid; The "grace period" as it is popularly called, has the effect that certain disclosures made during a specified period prior to the filing or priority date of an application, do not affect the patentability of the invention claimed in the application. This is provided in the Article 12 of the "Basic Proposal". See, WIPO, PLT/DC/3, The "Basic Proposal" for the Treaty and the Regulations, 21 December 1990. This (continued...)
\end{itemize}
Committee of Experts realised that there were other issues which also needed consideration. For instance, such issues as the identification of the inventor (since the grace period is a period primarily covering publication of the invention by the inventor) and the requirements of a filing date of the application (since the grace period has to be counted back from that date) were considered for the first time in the second meeting of the Committee of Experts held in July 1985.\footnote{In view of the expanded scope of work addressed by the Committee of Experts, its name was changed after the conclusion of the second meeting in 1985. The Committee was called the "Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions" and this name was retained till the formulation of the "Basic Proposals in November 1990. This Committee had eleven preparatory meetings between 1984 and 1991.\footnote{\Ibid; These issues constitute Article 6 and 8 of the Basic Proposals.} The Paris Union Assembly, at a special session, held in April 1991 decided to postpone a vote on the treaty until the second part of the Conference.\footnote{\Ibid; It met once in 1985 and once in 1986 and twice in each of the subsequent four years (1987 to 1990).} The second part of the Conference, which had been scheduled for July (continued) document was submitted to the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are concerned, The Hague, June 3 to 28, 1991.\footnote{\Ibid; These issues constitute Article 6 and 8 of the Basic Proposals.} The second part of the Conference, which had been scheduled for July}
1993, was later held in September of 1994.\textsuperscript{11} Before considering the present status of the Draft Harmonization Treaty we shall examine some of its main features and the differences in the first-to-file and first-to-invent procedures.

\textbf{A. Main Features of the Treaty}

The Draft Harmonization Treaty consists of thirty-nine articles.\textsuperscript{117} In addition to the articles, the Treaty also has thirteen rules.\textsuperscript{118} These rules, it is pointed out, elaborate on the articles and can generally be amended by a three-fourths vote of an assembly of the signatories.\textsuperscript{119} Articles 3 to 22 deal with what could be termed as the "substantive aspects" of the patentability procedures. Article 3, for instance, outlines the standard of "Disclosure and Description" as "in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art. It also outlines the disclosure standards for the "biologically reproducible material". Article 6 specifies that

\begin{itemize}
\item \textsuperscript{11}Andrew Y. Piatnicia, "An Evaluation of the World Intellectual Property Organization's Draft Harmonization Treaty with Respect to Direct Infringement", \textit{New York University Journal of International Law and Politics}, vol.26 (1994), p.377. This delay in holding the Conference was necessitated due to a request made by the Clinton Administration. The US was reluctant to adopt the "first-to-file" system as envisaged in the Draft Treaty. In a first-to-file system, a patent on an invention is granted to the first person to file a patent application. Under the US system of first-to-invent, a patent is granted to the first person who conceives and then reduces an invention to practice: see H. Bardehle, "The WIPO Harmonization Treaty and the Grace Period", \textit{Industrial Property}, vol.30 (1991), pp.372-76.
\item Basic Proposals, n.112; The eleven of the articles present two different alternatives. Article 19, covering Patent Infringement, has three alternatives.
\item Article 29, Basic Proposals, n.112.
\item Article 29, Para 2(b), Basic Proposals, n.112.
\end{itemize}
"No patent may be granted on an application that does not identify an inventor". The filing date has been identified in Article 8 as "the date of receipt by the Office".

The conditions of patentability is defined in Article 11 as "novel, shall involve an inventive step (shall be non-obvious) and shall be, at the option of the Contracting Party, either useful or industrially applicable". Article 12 provides for "Disclosures Not Affecting Patentability" which we have seen is also termed as "Grace Period". The Harmonization Treaty also seeks to harmonize some of the procedural aspects of the patenting. For instance, it provides for "Amendment or Correction of Application (Article 14); Publication of Application (Article 15); Time Limits for Search and Substantive Examination (Article 16)". One of the controversial provisions, particularly from the US point of view relates to 'Prior User" as provided in Article 20. The provision relating to the "Reversal of Burden of Proof" in Article 24 was omitted on the recommendation of the Assembly of the Paris Union. Article 22 which dealt with the term of patents omitted the minimum duration of protection. However, paragraph (d) of this article dealt with the "commencement of the term of a patent". The other provisions of the Harmonization Treaty, from Article 28 to 39 provided for the institutional and other procedural aspects such as the constitution of the Assembly, International Bureau.

\[^{120}\text{The observations of the International Bureau note that "With regard to Article 20, it would seem that a provision such as Alternative B of the basic proposal, which would oblige Contracting Parties to provide for prior users' rights, would not, under the present circumstances, be acceptable in the United States of America and could endanger the successful adoption of the Treaty or at least its acceptance by that country". See WIPO, PLT/PC/69, Observations of the International Bureau Following the First Part (1991) of the Diplomatic Conference, 29 January, 1993, p.97.}\]

\[^{121}\text{Ibid; This decision was made in the session of the Paris Union Assembly which took place from September 21 to 29, 1992.}\]
and other matters relating to the revision, amendment, and reservations of the Treaty. Article 30 provided for the 'settlement of disputes' which *inter alia*, included measures relating to consultation panel and any other means of settlement.

**B. First-to-File Vs. First-to-Invent**

The whole Harmonization Treaty was called into question as the US was unable to accept the provision relating to first-to-file system. It was not ready to relinquish its first-to-invent system and adopt first-to-file system as envisaged in the Treaty. This was the main reason why the US sought the postponement of the second part of the Diplomatic conference to finalize and adopt the Harmonization Treaty. The difference in the operation of first-to-file and first-to-invent systems needs to be considered. It is also important to note that the US is the only country now which provides for the first-to-invent system.¹²²

Section 102 of the US Code (Title 35) provides for the conditions of patentability. While outlining the conditions which shall disentitle a person the patent, this section, specifies in paragraph (f) and (g) the relevant features of the first-to-invent system. It provides that "A person shall be entitled to a patent unless... (f) he did not himself invent the subject matter sought to be patented, or (g) before the applicant's invention thereof the invention was made in this country another who had not abandoned, suppressed, or

concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other (emphasis added).

In first-to-file system, on the other hand, patent is granted to that person who first filed it with the patent office. The basic difference between the first-to-file and first-to-invent system relates to the characteristic of the state of the art vis-a-vis grace period. Grace period here refers to the period during which the disclosures of the patent does not affect its patentability. Article 12 of the Harmonization Treaty, for instance, provides the existing common position. It says "Disclosure of information which otherwise would affect the patentability of an invention claimed in the application shall not affect the patentability of that invention where the information was disclosed during the 12 months preceding the filing date or, where priority is claimed, the priority date of the application".

In the first-to-file system the state of the art created by the applicant remains accessible to the community at large just as any other prior art. During the grace period

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123 Article 8 of the Harmonization Treaty, for instance provides that "The filing date of the application shall be the date of receipt by the Office of at least the following elements". These elements include (i) an express or implicit indication that granting of a patent is sought; (ii) identity of the applicant to be established, and (iii) a part which, on the face of it, appears to be a description of an invention. There are other additional requirements also, such as, required fee to be paid and the mode of description of claims etc.


125 Basic Proposals, n.112, p.22.
the applicant gets no additional right except that his priority right is maintained over other applicants. Anyone making use of the prior art must check whether any other valid title exists against this application. So, anybody using this prior art during the grace period does not violate the title of the applicant. In other words, the rights of the bonafide "prior user" are protected. Article 20 of the Harmonization Treaty states this clearly. It provides that "a patent shall have no effect against any person (hereinafter referred to as "the prior user") who, in good faith, for the purposes of his enterprise or business, before the filing date or, where priority is claimed, the priority date of the application on which the patent is granted, and within the territory where the patent produces its effect, was using the invention or was making effective and serious preparations for such use; any such person shall have the right, for the purposes of his enterprise or business, to continue such use or to use the invention as envisaged in such preparations". 126

The grace period as envisaged in the first-to-invent system, on the other hand, has a different basis. With the creation of the invention (conception date) the inventor forthwith enjoys a priority right with respect to inventions made subsequently which is not affected by disclosure by the inventor. The grace period applying in the US it is pointed out, is a mere administrative provision and it is useful in the event of disclosure, by default or by design, by the inventor, that he must file his patent application within one year of such disclosure. 127

126 Ibid., p.41.

One basic difference, therefore, between these two systems has been summed up as under:

In practice, this has the consequence under the first-to-file system that any third party has freely available access to the State of the art created by the inventor during the grace period and on that basis may claim a right of prior use if the necessary acts have been performed, that is to say, prior utilization before the day on which the relevant applications is filed, whereas in the first-to-invent system, the only question that may arise is whether the prior user or the subsequent applicant is to be considered the first inventor. In the first-to-invent system, therefore, the legal institution of the right of prior use does not exist since it would run counter to the system.128

C. Absence of Consensus

The Consultative Meeting for the further preparation of the Diplomatic Conference for the Conclusion of the Patent Law Treaty was held in Geneva from May 8 to May 11, 1995.129 Its main task was to review the situation and to express its opinion as to possible ways forward. However, the delegation of the US pointed out that it was "...unable to support any conclusion which calls for the continuation of the negotiation of the Patent Law Treaty, nor are we in a position to suggest that this situation will change in the near term".130 The US delegation while pointing out that its public were generally not supportive of any of the alternatives stated that

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128Ibid: The right of "prior use" was the primary reason, as we shall see in the next section, for the US to totally abandon the Harmonization Treaty.


130Ibid., p.3.
"Notwithstanding the quite satisfactory progress that is being made by many countries of the world, including ours, to obtain the indisputable benefits from the harmonization of many aspects of the patent laws of our respective countries, the United States is not in a position to agree to the continuation of the WIPO negotiations. We would have to object to a decision to fix the date for the continuation of the exercise. Again we would not object to a decision to consider the matter at some future time".\textsuperscript{131}

On the other hand, there was general consensus among all the other groups of countries to continue with the harmonization process.\textsuperscript{132} Finally, the Consultative Meeting adopted a recommendation which \textit{inter alia}, provided that "...in the absence of consensus on the basic proposal that was before the diplomatic conference in The Hague in 1991, a continuation of that Conference may either not be the best approach or not be opportune". It further recommended to the Director General of WIPO "to seek decisions from the September 1995 session of the General Assembly of WIPO and the Assembly of the Paris Union on another approach for promoting harmonization, particularly of matters concerning the formalities of national and regional patent applications including matters such as signatures, changes in names and addresses, change in ownership, correction of mistakes, observations in case of intended refusal, representation, address for service, contents of at least the request part of the application, and use of model

\textsuperscript{131}Ibid., p.4; As mentioned above, the US reluctance to continue with the harmonization process stemmed from its disagreement to changeover to first-to-file system and the consequent acceptance of rights relating to prior use.

\textsuperscript{132}Ibid; Japan, Germany, Italy and other EC countries were supportive of the harmonization process. The Indian delegation stated that the issue under discussion was important and that it was keen to see the process move ahead. It concluded by recalling that the needs of all countries had to be borne in mind.
international forms, and that two or more sessions of a Committee of Experts to discuss such matters should be organized by WIPO before the September 1997 sessions of the said Assemblies". 133

With this recommendation which is to be considered by the General Assembly of the WIPO and Assembly of the Paris Union in September 1995, twelve long years of efforts to harmonize some of the substantive aspects of the patent laws bore no fruits. So, the efforts are now directed towards the harmonization of pure administrative and procedural aspects. The US position against the introduction of first-to-file system and the refusal to accommodate the prior user's rights was the primary reason for the failure to adopt the Draft Harmonization Treaty. It would, on the other hand, be relevant to examine as to what extent the US and other developed countries agreed to harmonize some of the substantive aspects of the patent laws in the GATT's Uruguay Round negotiations.

VII. Summation

The Diplomatic Conference to revise the Paris Convention began with a specific agenda. The Ad Hoc Group of Intergovernmental Experts which set the agenda for these conferences in 1976 had primarily sought to revise the Convention in such a way as to benefit the developing countries. Developed Countries took part in these conferences with some reservations. Even during the negotiations they continued to maintain that the Paris

133Ibid., p.13.
Convention, as existing, would serve the purpose as envisaged in the recommendations of the Ad Hoc Group of Experts. The differences were so wide that the negotiations at the First Session of the Diplomatic Conference met with some initial setbacks while attempting to resolve procedural issues such as voting and adoption. Without completely finding answers to these problems, the Diplomatic Conference went ahead with the substantive issues as enunciated in a document entitled "Basic Proposals". These proposals mainly dealt with three important areas, namely, (a) definitions i.e., to extend the definition of a patent to inventor's certificate in Article 1; (b) Working requirements and the issuance of "non-exclusive" non-voluntary licences as described in Articles 5A and 5Quater; and (c) Other provisions of the Paris Convention i.e., from Articles 20 to 30.

As the negotiations progressed in the different sessions of the Diplomatic Conference, the disagreements on Article 5A and Article 1 remained unresolved. Developed countries viewed the granting of "non-exclusive non-voluntary licences" as nearly disastrous. Developing countries, on the other hand, produced numerous compromise formulations so that the revision conferences would achieve some success. With the passage of time, as evident from the discussions in the sessions, the negotiating stance of developed countries grew narrower and narrower. Reasons for such a shrinking of the stance, to a large extent, could be attributed to their concerns developing in the area of counterfeiting and piracy. The role of private sector, particularly the multinational companies, should not be ruled out in influencing constantly the agenda of the negotiations. By the time the Fourth Session ended with no perceptive results and with
the decision to continue the negotiations in smaller consultative meetings, the traces of
GATT's agenda started overshadowing the whole negotiating process. This is evident
from the discussions which took place in the Fifth and Sixth Consultative Meetings
wherein the GATT's concern in the area of trade-related aspects intellectual property
were clearly noted. Developed countries, at the same time, made it clear that the
negotiations at the revision conferences would not preclude them from seeking higher and
stronger patent protection in other fora such as GATT. They also argued that in the last
15 years, during which revision conferences took place, technological developments and
innovation had made the negotiating agenda of the Diplomatic Conference out of date.

With these conflicting arguments, the Paris Union finding no other viable option,
decided that the question of the revision of the Paris Convention should be placed on the
agenda once the outcome of the results of the Uruguay Round in respect of IPRs were
known.

In 1983, upon the initiative taken by the Director General, WIPO, efforts were
undertaken to harmonize some of the substantive provisions of the patent laws. This
effort, after eleven preparatory meetings, evolved into a Draft Harmonization Treaty.
The 'Basic Proposals' constituting this Treaty were ready for adoption by 1990. These
proposals merely harmonized some of the common substantive and procedural aspects
of the patent laws. The conditions of patentability, for instance, were defined with total
flexibility, allowing parties to the Treaty maximum freedom. Accordingly, at a later date,
controversial provisions such as one relating to "reversal burden proof" were eliminated.
On the contrary, the TRIPs formulations, as we shall see in the next Chapter, sought to formulate and construe the norms and standards of the patents in mandatory terms.

The adoption of the Draft Harmonization Treaty did not, however, materialize due to the rigid position adopted by the US. The US was not prepared to accept an obligation which necessitated change in its first-to-invent system. The US was also against granting 'Prior user's rights'. So, in May 1995, the Consultative Meeting of the Diplomatic Conference for the Conclusion of Treaty Supplementing the Paris Convention as far as Patents are Concerned, adopted a recommendation to the effect that the consideration of any harmonization process should be deferred.

During this period the US along with other developed countries, however, succeeded in achieving a major harmonization process in the GATT forum. Developing countries, on the other hand, had maintained that GATT was not the proper forum to elaborate and adopt the substantive norms and standards for IPRs, including patents. We shall examine these perceptions and the final outcome of the TRIPs negotiations as regards patents in the next chapter.
Table-4.1

**Diplomatic Conference on the Revision of the Paris Convention**

(Various Sessions)

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Sessions (Diplomatic Conference)</th>
<th>Venue of sessions</th>
<th>Period of the sessions</th>
<th>Main issues dealt in the Sessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>First Session</td>
<td>Geneva</td>
<td>February 04 to March 04, 1980</td>
<td>Only few matters of substance were dealt. The Conference initially ran into some difficulties in approving the rules of Procedure particularly concerning the &quot;Principle of Unanimity&quot; and voting.</td>
</tr>
<tr>
<td>2.</td>
<td>Second Session</td>
<td>Nairobi (Kenya)</td>
<td>September 28 to October 24, 1981</td>
<td>Considered new text of Article 5A; Article 1 discussed without reaching any conclusion</td>
</tr>
<tr>
<td>3.</td>
<td>Third Session</td>
<td>Geneva</td>
<td>October 04 to October 30, 1982</td>
<td>Negotiations on Article 5A continued; Article 10quarter dealt with in a Working Group; Proposals on Article 1 were also examined.</td>
</tr>
<tr>
<td>4.</td>
<td>Fourth Session</td>
<td>Geneva</td>
<td>February 27 to March 24, 1984</td>
<td>Article 10quarter was discussed; Article 5A was also discussed; Two new proposals on Article 1 were discussed.</td>
</tr>
<tr>
<td>5.</td>
<td>Fifth Session (extraordinary session)</td>
<td>Geneva</td>
<td>September 24 to September 28, 1984</td>
<td>A resolution adopted in which it was decided to set up a machinery for consultation designed to prepare, on substance, the next session of the Diplomatic Conference; accordingly established machinery of Consultative Meetings of up to ten representatives of States.</td>
</tr>
</tbody>
</table>
Table 4.2
Consultative Meetings on the Revision of the Paris Convention

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Consultative Meetings</th>
<th>Venue of the Meetings</th>
<th>Period of the Meetings</th>
<th>Main Issues Dealt in the Meetings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>First Meeting</td>
<td>Geneva</td>
<td>June 24 to June 28, 1985</td>
<td>Considered only with Article 5A</td>
</tr>
<tr>
<td>2.</td>
<td>Second Meeting</td>
<td>Geneva</td>
<td>January 26 to February 3, 1987</td>
<td>Considered Articles 1, 5A and 5quarter</td>
</tr>
<tr>
<td>3.</td>
<td>Third Meeting</td>
<td>Geneva</td>
<td>May 18 to May 26, 1987</td>
<td>Ideas submitted in the earlier meeting by the group of developing countries were discussed; Also discussed Article 10quarter A and B.</td>
</tr>
<tr>
<td>4.</td>
<td>Fourth Meeting</td>
<td>Geneva</td>
<td>September 14 to September 23, 1988</td>
<td>Considered proposals on Article 1 (Proposals on inventors certificates)</td>
</tr>
<tr>
<td>5.</td>
<td>Fifth Meeting</td>
<td>Geneva</td>
<td>September 11 to September 23, 1989</td>
<td>DEALT with Articles 1, 5A, 5quarter and briefly, 10quarter.</td>
</tr>
</tbody>
</table>