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NASCUNTUR AB HUMANO INGENIO OMNIA ARTIS INVENTORUMQUE OPERA.
QUAE OPERA DIGNAM HOMINIBUS VITAM SAEPIUNT.
REIPUBLICAE STUDIO PERSPICIENDUM EST ARTES INVENTAQUE TUTARI

THE BERNE CONVENTION

for the Protection of Literary and Artistic Works from 1886 to 1986

published by

the International Bureau of Intellectual Property

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Preface

One hundred years ago, the plenipotentiaries of the heads of ten States adopted the "Convention Concerning the Creation of an International Union for the Protection of Literary and Artistic Works."

They signed the Convention at Berne, the capital of Switzerland, on September 9, 1886.

The preface of the Berne Convention says that the heads of States were "equally moved by the wish to protect in an efficient manner and in a way as uniform as possible the rights of authors in their literary and artistic works" *(également animés par le désir de protéger d'une manière efficace et aussi uniforme que possible les droits des auteurs sur leurs œuvres littéraires et artistiques)*.

Why were they moved by such a wish? What is the reason for which governments give rights to authors that allow them to derive material benefits from the use of their works by others and make any unauthorized distribution of their works illegal? And, what is the reason for which countries are ready to undertake the obligation, as they do under the Berne Convention, to give such rights to foreigners?

It is believed that the underlying reason is a sense of justice. *Justitia fundamentum rei publicae*. Justice is the foundation of the republic. Without its preservation, no government can survive.

The recognition of the rights of authors and the protection of such rights encourage creativity. Creativity results in works of literature and art that advance and spread knowledge and that make the life of everyone richer and more enjoyable.

Could life without the beauty of music, poetry, novels, paintings, sculptures, fine architecture, and dramatic works, whether performed on the stage or consisting of motion pictures or television broadcasts, be called a civilized life, a worthy life?

The Berne Convention has, for a hundred years, thus served both the authors and the interests of the public.

From the rudimentary provisions of which the original text of 1886 consisted, the Convention has become, through its several revisions during the century, a detailed and refined legal instrument that obliges the member States, now numbering 76, to provide for a protection of a high level and to resist the occasional temptation to adopt opportunistic solutions.

The Berne Convention not only guarantees the authors' legitimate rights. It is also the charter of a permanent association of States, called a "Union," served by a permanent international secretariat, the International Bureau of the World Intellectual Property Organization.

The changing socio-economic environment and the rapid development of means whereby works, or performances thereof, can be recorded, copied and disseminated raise new questions. If they cannot be immediately answered by a revision of the Convention, the States members of the Union and the Secretariat of that Union work on finding solutions and encourage governments and legislators to adopt such solutions. Furthermore, the Union and its Secretariat are active in catering to the special needs of developing countries, since a well-functioning system for the protection of authors' rights contributes to their cultural and economic development.

The present book relates the efforts of the various diplomatic conferences in which the representatives of States created and, later, perfected the Berne Convention. The account of those efforts is recorded in the reports of the Conferences. The text of those reports is reprinted in full in this book.

The present book also relates the history and the work of the Union and the International Bureau in developing the protection of the rights of authors in addition to the revisions of the Convention. The story of that work is related in an article by the undersigned, written for this book.

This book is also intended as a homage to those strong individuals—without whom no lasting human achievements are possible—who, through their knowledge, imagination and perseverance, have created and maintained the Union and the Convention.

Their dedication to the cause of authors should be an example for all those who will be called upon to serve that cause during the second century of the Berne Convention and the Berne Union.

Arpad Bogsch
Director General
World Intellectual Property Organization

L. Rohbock delt. A. Fesca sculpt.

Berne avec le palais fédéral.

BERN MIT DEM BUNDESPALAST.
(Bern)

Bern with the palace of the confederacy.

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by Arpad Bogsch

Director General of the World Intellectual Property Organization

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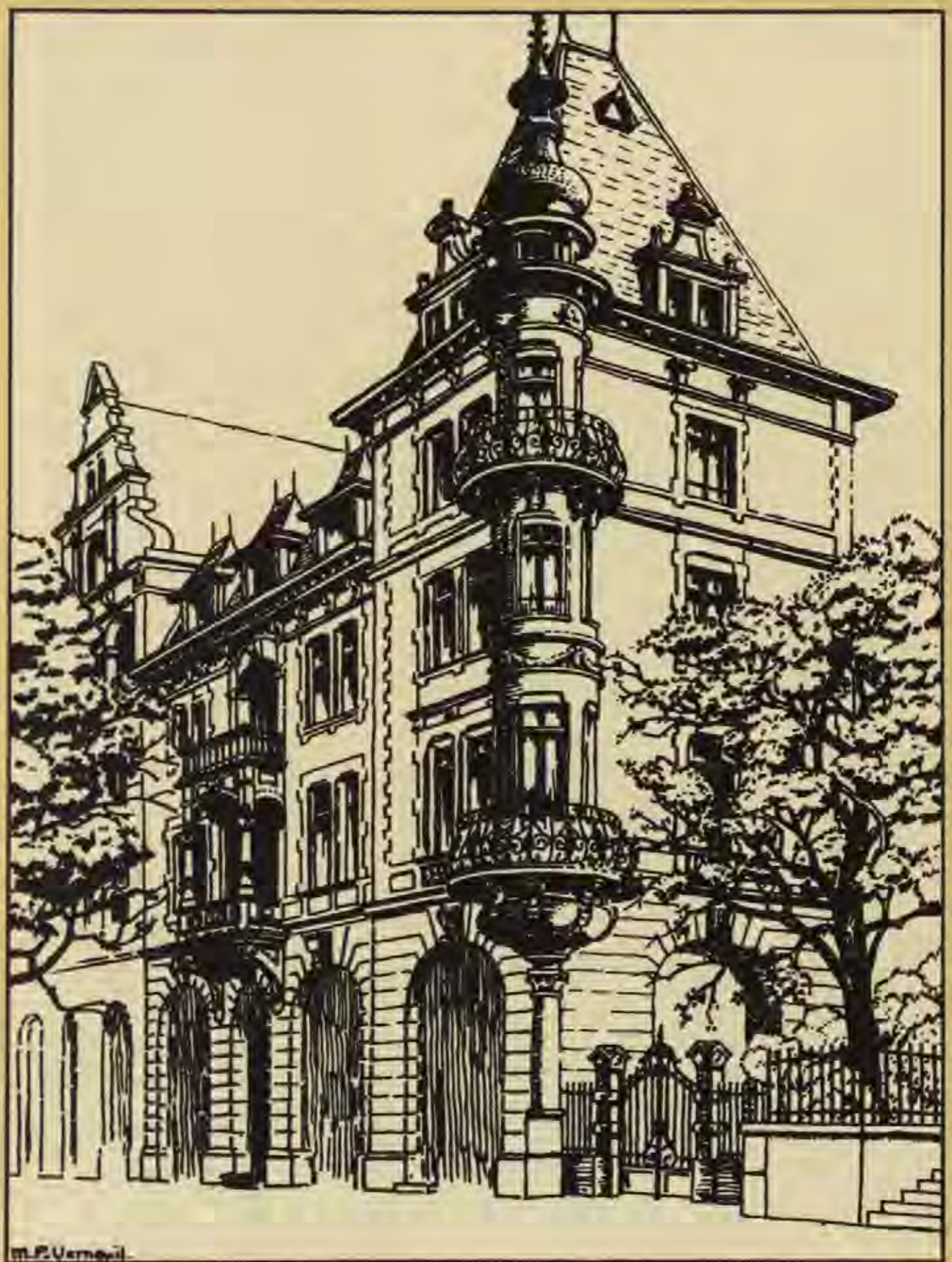
PART IV

THE HISTORY OF THE EFFORTS OF THE BERNE UNION FOR BETTER COPYRIGHT PROTECTION IN THE WORLD


M.F. Vermeil

Introduction

Scope and Organization of the Present Article

The present article is intended to commemorate the hundredth anniversary of the Berne Convention for the Protection of Literary and Artistic Works, adopted and signed on September 9, 1886.

The present article was written during the first months of 1986.

It tells the story of the Berne Convention and the Berne Union from their beginnings until 1986, the year of the centenary of the Berne Convention. It does not, however, deal with the evolution of the substantive law provision of the Berne Convention. That evolution is recounted in what is really the only authentic way in the official reports of the various diplomatic conferences that prepared the original (1886) text of the Convention and adopted the various, so-called "revised," texts of the Convention.

The present article narrates the history of those diplomatic conferences and of the evolution of the membership of the Berne Union. They are Parts I and II, respectively, of the present article.

Part III of the present article gives, briefly, the history of the administrative clauses of the Berne Convention, that is, the clauses that deal with the concept of a "Union" as it concerns the Berne Union, with the organs of the Berne Union, namely, the Assembly, the Conference of Representatives, the Executive Committee (and its predecessor, the Permanent Committee) and with the finances of the Berne Union. The same part (Part III) also contains information on the past and the present staff of the International Bureau, and about the persons who headed that Bureau. Finally, it outlines the relations of the Berne Union with the World Intellectual Property Organization (whose "International Bureau" is (also) the secretariat of the Berne Union) and with the United Nations.

The last part, Part IV, of the present article chronicles the past and present efforts of the Berne Union exercised with the aim to bring about a better copyright protection in the world, "better" meaning a protection that extends to the authors of all kinds of works and to all the various (old or new) kinds of uses of their works, consisting, wherever reasonable, of an exclusive right of authorization, efficiently enforced, when infringed, by courts and other law-enforcing instances. Such efforts may be grouped in four groups of activities: *first*, the establishment of new treaties; *second*, the advising of governments on copyright law subjects of topical interest, particularly those resulting from the use of new technologies of recording, copying and disseminating works or their performances; *third*, the assistance given to developing countries to help them in the achievement of their cultural and economic goals; and *fourth*, the consultations with non-governmental organizations and intergovernmental organizations.

Part I

The History of the Adoption and the Revisions of the Berne Convention

The Adoption of the Berne Convention

The Three Diplomatic Conferences of 1884, 1885 and 1886 (Berne). The *Association littéraire internationale*, a non-governmental organization, founded in 1878 in Paris, was the original proponent of what then was called *une convention universelle* (a universal convention) for the protection of literary and artistic property and the foundation of a *Union de propriété littéraire* (Literary Property Union). In its Congress held in Rome in 1882, the Association decided to meet in Berne in 1883. The Swiss Government accepted to host the 1883 Congress of the Association and delegated to it one of its ministers (*conseiller*), Numa Droz. The said Congress, presided over by Droz, took place in Berne in September 1883. It lasted four days (September 10 to 13) and concluded with the adoption of the draft of a multilateral treaty with the title *Convention pour constituer une Union générale pour la protection des droits des auteurs sur leurs œuvres littéraires et artistiques* (Convention Establishing a General Union for the Protection of the Rights of Authors in their Literary and Artistic Works). That draft consisted of ten articles.

The Federal Council (roughly equivalent of a council of ministers) of the Swiss Confederation sent the said draft, on December 3, 1883, to the governments of "all the civilized countries" (*tous les pays civilisés*) and informed them of the plans of a diplomatic conference in 1884 to adopt a treaty. The treaty should, according to the circular sent to the said countries, lead "on the one hand, to the universal recognition of the rights of authors without regard to their nationality and, on the other hand, to the desirable uniformity of the principles governing such protection."

The initiative was greeted with enthusiasm by the governments of several countries. The Government of the United States of America was one of those which were less enthusiastic. It said, in its reply to the Swiss Goverment, that in the protection of printed works, customs duties would complicate any attempt at international protection since not only the author but also the manufacturer of the paper, the caster of the printing type, the printer, the book binder and many other persons engaged in commerce were interested. But the number of favorable replies was sufficient for the Swiss Government to decide the convocation of the first diplomatic conference. Its dates were fixed from September 8 to 19, 1884, and the venue fixed was the room of the *Conseil des Etats*, the upper house of the Swiss Parliament, in Berne.

The Conference took place as foreseen. The countries represented were Austria-Hungary, Belgium, Costa Rica, France, Germany, Great Britain, Haiti, Italy, the Netherlands, Paraguay, El Salvador, Sweden-Norway and Switzerland. It was presided over by Droz from Switzerland. The Conference agreed on a new draft which the delegates took home as a basis for preparing themselves for the second diplomatic conference.

That Conference took place a year later, again in Berne, from September 7 to 18, 1885. Droz continued as president. The draft texts agreed upon were now three in number: the Convention, an "Additional Article" and a "Final Protocol." But they were still only drafts and served as a basis for the third diplomatic conference.

The third, and last, diplomatic conference in Berne took place from September 6 to 9, 1886. With some amendments, it adopted the said three texts. They were signed on behalf of ten countries: Belgium, France, Germany, Great Britain, Haiti, Italy, Liberia, Spain, Switzerland, Tunisia.

The Revisions of the Berne Convention

The Diplomatic Conference of 1896 (Paris). In the original (1886) text of the Berne Convention, it was stated that the first conference of revision would take place "in Paris, within four to six years from the entry into force of the Convention. The French Goverment shall fix its dates within those limits after having consulted the International Bureau" (Final Protocol of 1886, point 6). The Conference was actually convened only in 1896, that is, nine years after the entry into force of the Convention.

The Conference was prepared by the International Bureau under the leadership of Henri Morel, its Director, and by the French Goverment. It was presided over by Charles de Saulce de Freycinet, member of the French Academy and Senator. It adopted two texts: the Additional Act of Paris (which amended

Numa Droz

Marcel Plaisant

Articles 2, 3, 5, 7, 12 and 20 of the original (1886) text of the Convention and points 1 and 4 of the Final Protocol of 1886) and the Declaration interpreting certain provisions of the Additional Act.

Those texts were signed on behalf of Belgium, France, Germany, Italy, Luxembourg, Monaco, Montenegro, Spain, Switzerland, Tunisia and the United Kingdom of Great Britain and Ireland.

The Diplomatic Conference of 1908 (Berlin). The 1896 (Paris) conference of revision decided that the next conference of revision would take place within six to ten years in Berlin. Once more, the conference of revision was actually convened with a delay, in 1908.

It was prepared by the German Government in cooperation with the International Bureau, then directed by Henri Morel, Director. It was presided over by Dr. von Studt, Prussian Minister of State. Louis Renault, *membre de l'Institut* and law professor in Paris, was the *rapporteur*. The Conference lasted a full month and adopted a text in which the previous texts were not only amended but also merged into one text, the 1908 (Berlin) Act.

The revised Convention was signed by the representatives of Belgium, Denmark, France, Germany, Great Britain, Italy, Japan, Liberia, Luxembourg, Monaco, Norway, Spain, Sweden, Switzerland and Tunisia.

Additional Protocol of 1914 (Berne). This Protocol was signed in Berne without a conference of revision. It was proposed by the United Kingdom in order to allow the non-protection of works of United States citizens, even if first published on the territory of a member country of the Berne Union, as a retorsion against the "manufacturing clause" of the United States Copyright Law, a clause which caused great prejudice to English writers.

The Diplomatic Conference of 1928 (Rome). The 1908 (Berlin) conference of revision decided that the following conference of revision would take place within ten years in Rome. Mainly because of what was then called the "Great War" of 1914-1918, the Conference actually took place 20 years later, in 1928.

The Conference lasted from May 7 to June 2. It was prepared by the International Bureau under the leadership of Fritz Ostertag,

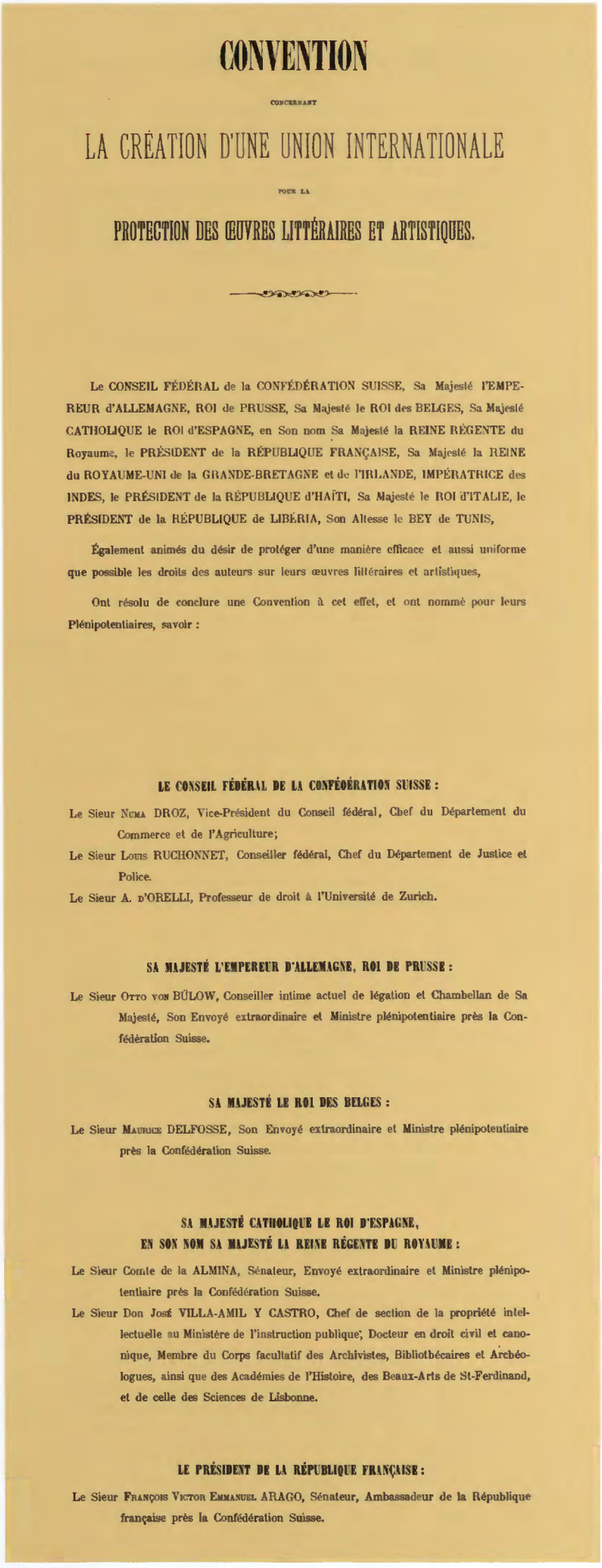
Director, and the Italian Government. It was presided over by Vittorio Scialoja, Minister of State, Senator and Law Professor (Italy). Professor Edoardo Piola Caselli (Italy) was the *rapporteur général.*

The Conference adopted a revised text ("the Rome Act") which was signed by representatives of Australia, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, Danzig, Finland, France, Germany, Great Britain and Northern Ireland, Greece, India, Italy, Japan, Monaco, Morocco, New Zealand, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Syria and Great Lebanon, Tunisia.

The Diplomatic Conference of 1948 (Brussels). The 1928 (Rome) Conference decided that the next conference of revision would take place in Brussels in 1935. In 1935, the Belgian Government convened the conference of revision for 1936 but postponed it, *sine die*, a few months later. The history of this postponement prefigures the drama—a great setback for the Berne Union from which it has not so far recovered—which was culminated in 1952 in the adoption of the Universal Copyright Convention. It started with a well-intentioned resolution (*vœu*) of the 1928 (Rome) conference of revision. That resolution (No. VI) reads as follows: "The Conference [of revision of 1928 of the Berne Convention]: *considering* the identity of the general principles which prevail in, and the objectives towards which are directed, the Berne Convention, revised in Berlin and then in Rome, and the Convention signed by the American States in Buenos Aires in 1910, since then revised in Havana in February 1928, *noting* the concordance of most of the provisions of the two Conventions, *expresses* the wish (*vœu*), in conformity with a suggestion made by the Delegation of Brazil and the French Delegation that, on the one hand, the American republics signatories of a convention to which non-American states may not adhere, accede, as did Brazil, to the Berne Convention revised in Rome and that, on the other hand, all interested governments get together (*se concertent*) to prepare a general agreement (*entente générale*) based on the similar provisions of the two Conventions and aiming at (*ayant pour objet*) the worldwide unification (*unification mondiale*) of the laws (*lois*) protecting the creations of the mind (*créations de l'esprit*)" (*Actes de la Conférence de Rome*, page 350). Although the work on the implementation of this recommendation was interrupted by World War II, the idea was revived, on the initiative of the United States of America, in 1947 at the General Conference of the new (created in 1945) United Nations Educational, Scientific and Cultural Organization (UNESCO). More is said about this in the next part.

The Diplomatic Conference of Brussels took place from June 5 to 26, 1948. It was prepared by the Government of Belgium in cooperation with the International Bureau, then directed by Bénigne Mentha, Director. The Conference was presided over by Julien Kuypers, Secretary General of the Public Education Ministry (*Ministère de l'Instruction publique*) of Belgium. Marcel Plaisant, *membre de l'Institut*, Senator and lawyer in Paris was the *rapporteur général.* Among the delegates were two future Directors General of WIPO: G.H.C. Bodenhausen (Netherlands) and Arpad Bogsch (Hungary).

The Conference adopted a revised Convention which was signed on behalf of Australia, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, Finland, France, Greece, Holy See,



CONVENTION

CONCERNANT

LA CRÉATION D'UNE UNION INTERNATIONALE

POUR LA

PROTECTION DES ŒUVRES LITTÉRAIRES ET ARTISTIQUES.

Le CONSEIL FÉDÉRAL de la CONFÉDÉRATION SUISSE, Sa Majesté l'EMPEREUR d'ALLEMAGNE, ROI de PRUSSE, Sa Majesté le ROI des BELGES, Sa Majesté CATHOLIQUE le ROI d'ESPAGNE, en Son nom Sa Majesté la REINE RÉGENTE du Royaume, le PRÉSIDENT de la RÉPUBLIQUE FRANÇAISE, Sa Majesté la REINE du ROYAUME-UNI de la GRANDE-BRETAGNE et de l'IRLANDE, IMPÉRATRICE des INDES, le PRÉSIDENT de la RÉPUBLIQUE d'HAÏTI, Sa Majesté le ROI d'ITALIE, le PRÉSIDENT de la RÉPUBLIQUE de LIBÉRIA, Son Altesse le BEY de TUNIS,

Également animés du désir de protéger d'une manière efficace et aussi uniforme que possible les droits des auteurs sur leurs œuvres littéraires et artistiques,

Ont résolu de conclure une Convention à cet effet, et ont nommé pour leurs Plénipotentiaires, savoir :

LE CONSEIL FÉDÉRAL DE LA CONFÉDÉRATION SUISSE :

Le Sieur NUMA DROZ, Vice-Président du Conseil fédéral, Chef du Département du Commerce et de l'Agriculture;

Le Sieur LOUIS RUCHONNET, Conseiller fédéral, Chef du Département de Justice et Police.

Le Sieur A. D'ORELLI, Professeur de droit à l'Université de Zurich.

SA MAJESTÉ L'EMPEREUR D'ALLEMAGNE, ROI DE PRUSSE :

Le Sieur OTTO VON BÜLOW, Conseiller intime actuel de légation et Chambellan de Sa Majesté, Son Envoyé extraordinaire et Ministre plénipotentiaire près la Confédération Suisse.

SA MAJESTÉ LE ROI DES BELGES :

Le Sieur MAURICE DELFOSSE, Son Envoyé extraordinaire et Ministre plénipotentiaire près la Confédération Suisse.

SA MAJESTÉ CATHOLIQUE LE ROI D'ESPAGNE,
EN SON NOM SA MAJESTÉ LA REINE RÉGENTE DU ROYAUME :

Le Sieur Comte de la ALMINA, Sénateur, Envoyé extraordinaire et Ministre plénipotentiaire près la Confédération Suisse.

Le Sieur Don José VILLA-AMIL Y CASTRO, Chef de section de la propriété intellectuelle au Ministère de l'instruction publique, Docteur en droit civil et canonique, Membre du Corps facultatif des Archivistes, Bibliothécaires et Archéologues, ainsi que des Académies de l'Histoire, des Beaux-Arts de St-Ferdinand, et de celle des Sciences de Lisbonne.

LE PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE :

Le Sieur FRANÇOIS VICTOR EMMANUEL ARAGO, Sénateur, Ambassadeur de la République française près la Confédération Suisse.

SA MAJESTÉ LA REINE DU ROYAUME-UNI DE LA GRANDE-BRETAGNE ET D'IRLANDE, IMPÉRATRICE DES INDES :

Sir FRANCIS OTTIWELL ADAMS, Chevalier Commandeur de l'Ordre très-distingué de St-Michel et St-George, Compagnon du très-honorable Ordre du Bain, Son Envoyé extraordinaire et Ministre plénipotentiaire à Berne; et

Le Sieur JOHN HENRY GIBBS BERGNE, Compagnon de l'Ordre très-distingué de St-Michel et St-George, Directeur au Département des affaires étrangères à Londres.

LE PRÉSIDENT DE LA RÉPUBLIQUE D'HAÏTI :

Le Sieur LOUIS JOSEPH JANVIER, Docteur en médecine de la Faculté de Paris, Lauréat de la Faculté de Médecine de Paris, Diplômé de l'École des Sciences politiques de Paris (Section administrative), Diplômé de l'École des Sciences politiques de Paris (Section diplomatique), Médaille décorative d'Haïti de troisième classe.

SA MAJESTÉ LE ROI D'ITALIE :

Le Sieur CHARLES EMMANUEL BECCARIA des Marquis D'INCISA, Chevalier des Ordres des S. S. Maurice et Lazare et de la Couronne d'Italie, Son Chargé d'affaires près la Confédération Suisse.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE LIBÉRIA :

Le Sieur GUILLAUME KŒNTZER, Conseiller impériat, Consul général, Membre de la Chambre de commerce de Vienne.

SON ALTESSE LE BEY DE TUNIS :

Le Sieur LOUIS RENAULT, Professeur à la Faculté de droit de Paris et à l'École libre des sciences politiques, Chevalier de l'Ordre de la Légion d'honneur, Chevalier de l'Ordre de la Couronne d'Italie.

Lesquels, après s'être communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, sont convenus des articles suivants :

ARTICLE PREMIER.

Les pays contractants sont constitués à l'état d'Union pour la protection des droits des auteurs sur leurs œuvres littéraires et artistiques.

ART. 2.

Les auteurs ressortissant à l'un des pays de l'Union, ou leurs ayants cause, jouissent, dans les autres pays, pour leurs œuvres, soit publiées dans un de ces pays, soit non publiées, des droits que les lois respectives accordent actuellement ou accorderont par la suite aux nationaux.

La jouissance de ces droits est subordonnée à l'accomplissement des conditions et formalités prescrites par la législation du pays d'origine de l'œuvre; elle ne peut excéder, dans les autres pays, la durée de la protection accordée dans ledit pays d'origine.

Est considéré comme pays d'origine de l'œuvre, celui de la première publication, ou, si cette publication a lieu simultanément dans plusieurs pays de l'Union, celui d'entre eux dont la législation accorde la durée de protection la plus courte.

Pour les œuvres non publiées, le pays auquel appartient l'auteur est considéré comme pays d'origine de l'œuvre.

ART. 3.

Les stipulations de la présente Convention s'appliquent également aux éditeurs d'œuvres littéraires ou artistiques publiées dans un des pays de l'Union, et dont l'auteur appartient à un pays qui n'en fait pas partie.

ART. 4.

L'expression « œuvres littéraires et artistiques » comprend les livres, brochures ou tous autres écrits; les œuvres dramatiques ou dramatico-musicales, les compositions musicales avec ou sans paroles; les œuvres de dessin, de peinture, de sculpture, de gravure; les lithographies, les illustrations, les cartes géographiques; les plans, croquis et ouvrages plastiques, relatifs à la géographie, à la topographie, à l'architecture ou aux sciences en général; enfin toute production quelconque du domaine littéraire, scientifique ou artistique, qui pourrait être publiée par n'importe quel mode d'impression ou de reproduction.

Hungary, Iceland, India, Ireland, Italy, Lebanon, Liechtenstein, Luxembourg, Monaco, Morocco, the Netherlands, New Zealand, Norway, Pakistan, Portugal, the South African Union, Spain, Sweden, Switzerland, Syria, Tunisia and the United Kingdom.

The Diplomatic Conference of 1967 (Stockholm). During the 1948 (Brussels) conference of revision, the Delegation of Sweden proposed that the next diplomatic conference of revision be held in Stockholm. This proposal was accepted.

The 1948 (Brussels) conference of revision set up a 12-man committee, called the *Comité permanent de l'Union littéraire et artistique* (Permanent Committee of the Literary and Artistic Union), primarily for the preparation of the conference of revision of Stockholm. Although the Permanent Committee of the Berne Union (the more familiar name of the said Committee) assumed other tasks as well, its main concerns, until the adoption of the Universal Copyright Convention by a diplomatic conference convened in Geneva by Unesco in 1952, was to prepare the "safeguard clause" for the Berne Convention. That clause provided, in essence, that the Universal Copyright Convention would not apply among States party to the Berne Convention. The preparation of the Stockholm Conference occupied the Permanent Committee mainly between 1960 and 1967.

Another intergovernmental committee, called the Working Party on an Administrative Agreement, dealt with the preparation of the administrative reform to be effected at the Stockholm Conference. It was set up by the Permanent Committee (of the Berne Union) and the Permanent Bureau of the Paris Union. It met three times, each time in Geneva, that is, in 1964, 1965 and 1966 (see BIRPI documents of the AA/I, AA/II and AA/III series).

The Stockholm Conference dealt not only with the revision of the Berne Convention but also with the revision of six other treaties administered by BIRPI and the establishment of the World Intellectual Property Organization. It is for this reason that its official title was "Intellectual Property Conference of Stockholm."

That Conference took place from June 11 to July 14, 1967, in Stockholm. Three of the five main committees of the Stockholm Conference dealt, wholly or in part, with matters concerning the revision of the Berne Convention: Main Committee I with the revision of Articles 1 to 20 (chairman: Eugen Ulmer (Federal Republic of Germany), *rapporteur*: Svante Bergström (Sweden)); Main Committee II with the establishment of the Protocol Regarding Developing Countries (chairman: Sher Singh (India), *rapporteur*: Vojtech Strnad (Czechoslovakia)); and Main Committee IV with the administrative provisions and the final clauses (chairman: François Savignon (France), *rapporteur*: Valerio De Sanctis (Italy)). G.H.C. Bodenhausen, Director of BIRPI, participated very actively in the work of Main Committees I and II. (Main Committee III did not deal with matters concerning the Berne Convention.)

The Stockholm Conference, among other things, revised the Berne Convention. The revised text was signed by representatives of Austria, Belgium, Bulgaria, Cameroon, the Democratic Republic of the Congo, Denmark, Finland, France, Gabon, Germany (Federal Republic of), Greece, the Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Ivory Coast, Japan, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco,

Morocco, Niger, Norway, the Philippines, Poland, Portugal, Romania, Senegal, South Africa, Spain, Sweden, Switzerland, Tunisia and Yugoslavia.

The Diplomatic Conference of 1971 (Paris). Soon after the closing of the Stockholm Conference, it became clear that the Protocol Regarding Developing Countries, an integral part of the Stockholm Act (1967) of the Berne Convention, would prevent many States from ratifying that Act because the exceptions made in that Protocol to the general rules of the Convention seemed, in the opinion of those States, to go too far.

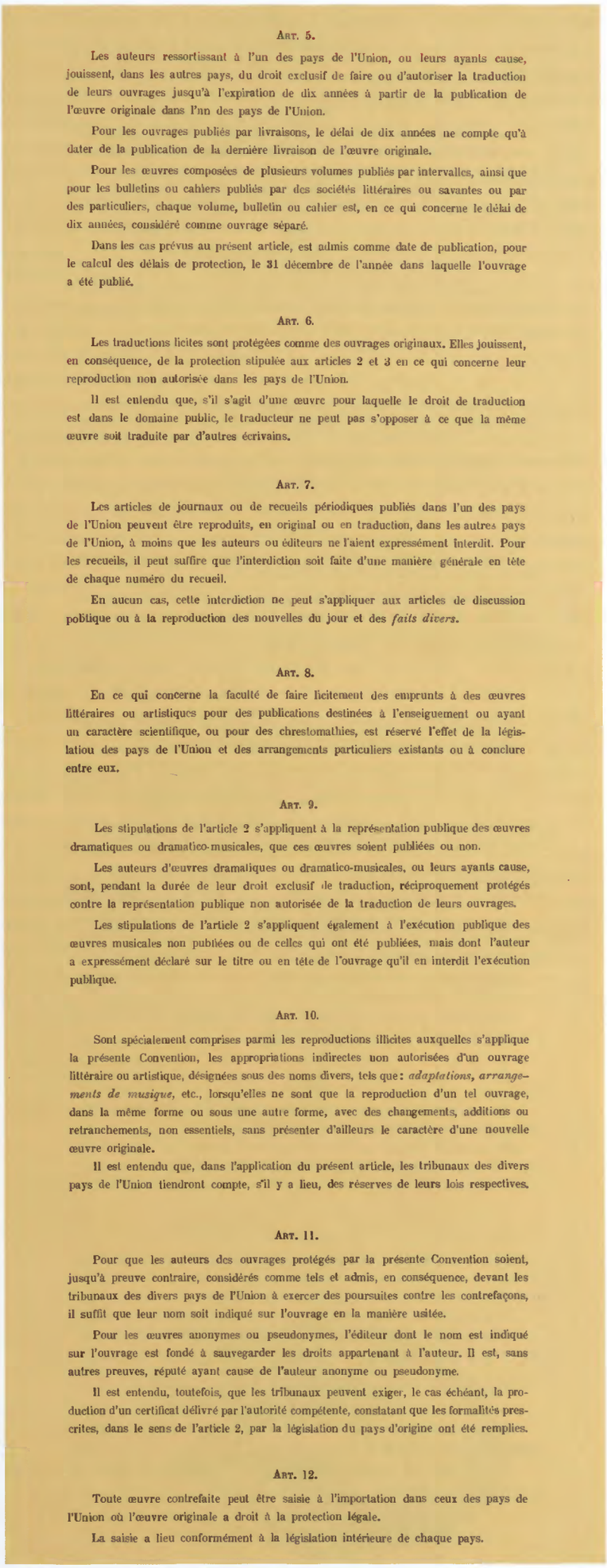
This opinion was noted by the Permanent Committee of the Berne Union as soon as December 1967. That Committee then started preparing the next—and so far last—conference of revision, the Diplomatic Conference held in Paris from July 5 to 24, 1971, at the same time as and in the same place in which the Universal Copyright Convention was revised, too. This was the first revision conference that was convened not by the government of a State member of the Berne Union but by the International Bureau of WIPO, in letters signed by the Director of the International Bureau, G.H.C. Bodenhausen. Pierre Charpentier (France) was the chairman, and Ousmane Goundiam (Senegal) the *rapporteur général* of the Conference.

The texts adopted by the Conference were identical with those adopted in Stockholm in 1967, except for those concerning developing countries. The new texts were signed on behalf of Austria, Belgium, Brazil, Cameroon, Ceylon, Cyprus, Denmark, Finland, France, Germany (Federal Republic of), the Holy See, Hungary, India, Israel, Italy, Ivory Coast, Japan, Lebanon, Liechtenstein, Luxembourg, Mexico, Monaco, Morocco, the Netherlands, Norway, the People's Republic of the Congo, Romania, Senegal, Spain, Sweden, Switzerland, Tunisia, the United Kingdom, Uruguay and Yugoslavia.

Unfinished Attempts to Enlarge the Membership of the Berne Union. The absence of the United States of America from the Berne Union has, from the very beginning, been considered as regrettable. The gap probably could have been filled had the 1948 (Brussels) conference of revision, instead of passively noting the emergence of the Universal Copyright Convention within the framework of Unesco, offered to the United States of America, and other States outside the Berne Union, to explore, together with the members of the Berne Union, an accommodation within the framework of that Union. With the hindsight one has today, it is evident that the concessions that the United States of America wanted—particularly, a shorter minimum duration of protection and a less rigid prohibition of formalities—and which were opposed by the leading countries of the Berne Union, were, by the very same countries, fully conceded within the framework of Unesco's Universal Copyright Convention.

As soon as the duality of the Conventions was consummated, that is, with the advent of the Universal Copyright Convention, *two* multilateral treaties, open to all countries and each with the ambition to be accepted by the maximum number, some people started to dream of an eventual merging of the two Conventions or, at least, of the entry of the United States of America in the Berne Convention.

The United States of America fundamentally revised its copyright legislation in 1976 in a way which considerably reduced its



ART. 5.

Les auteurs ressortissant à l'un des pays de l'Union, ou leurs ayants cause, jouissent, dans les autres pays, du droit exclusif de faire ou d'autoriser la traduction de leurs ouvrages jusqu'à l'expiration de dix années à partir de la publication de l'œuvre originale dans l'un des pays de l'Union.

Pour les ouvrages publiés par livraisons, le délai de dix années ne compte qu'à dater de la publication de la dernière livraison de l'œuvre originale.

Pour les œuvres composées de plusieurs volumes publiés par intervalles, ainsi que pour les bulletins ou cahiers publiés par des sociétés littéraires ou savantes ou par des particuliers, chaque volume, bulletin ou cahier est, en ce qui concerne le délai de dix années, considéré comme ouvrage séparé.

Dans les cas prévus au présent article, est admis comme date de publication, pour le calcul des délais de protection, le 31 décembre de l'année dans laquelle l'ouvrage a été publié.

ART. 6.

Les traductions licites sont protégées comme des ouvrages originaux. Elles jouissent, en conséquence, de la protection stipulée aux articles 2 et 3 en ce qui concerne leur reproduction non autorisée dans les pays de l'Union.

Il est entendu que, s'il s'agit d'une œuvre pour laquelle le droit de traduction est dans le domaine public, le traducteur ne peut pas s'opposer à ce que la même œuvre soit traduite par d'autres écrivains.

ART. 7.

Les articles de journaux ou de recueils périodiques publiés dans l'un des pays de l'Union peuvent être reproduits, en original ou en traduction, dans les autres pays de l'Union, à moins que les auteurs ou éditeurs ne l'aient expressément interdit. Pour les recueils, il peut suffire que l'interdiction soit faite d'une manière générale en tête de chaque numéro du recueil.

En aucun cas, cette interdiction ne peut s'appliquer aux articles de discussion politique ou à la reproduction des nouvelles du jour et des *faits divers*.

ART. 8.

En ce qui concerne la faculté de faire licitement des emprunts à des œuvres littéraires ou artistiques pour des publications destinées à l'enseignement ou ayant un caractère scientifique, ou pour des chrestomathies, est réservé l'effet de la législation des pays de l'Union et des arrangements particuliers existants ou à conclure entre eux.

ART. 9.

Les stipulations de l'article 2 s'appliquent à la représentation publique des œuvres dramatiques ou dramatico-musicales, que ces œuvres soient publiées ou non.

Les auteurs d'œuvres dramatiques ou dramatico-musicales, ou leurs ayants cause, sont, pendant la durée de leur droit exclusif de traduction, réciproquement protégés contre la représentation publique non autorisée de la traduction de leurs ouvrages.

Les stipulations de l'article 2 s'appliquent également à l'exécution publique des œuvres musicales non publiées ou de celles qui ont été publiées, mais dont l'auteur a expressément déclaré sur le titre ou en tête de l'ouvrage qu'il en interdit l'exécution publique.

ART. 10.

Sont spécialement comprises parmi les reproductions illicites auxquelles s'applique la présente Convention, les appropriations indirectes non autorisées d'un ouvrage littéraire ou artistique, désignées sous des noms divers, tels que: *adaptations, arrangements de musique*, etc., lorsqu'elles ne sont que la reproduction d'un tel ouvrage, dans la même forme ou sous une autre forme, avec des changements, additions ou retranchements, non essentiels, sans présenter d'ailleurs le caractère d'une nouvelle œuvre originale.

Il est entendu que, dans l'application du présent article, les tribunaux des divers pays de l'Union tiendront compte, s'il y a lieu, des réserves de leurs lois respectives.

ART. 11.

Pour que les auteurs des ouvrages protégés par la présente Convention soient, jusqu'à preuve contraire, considérés comme tels et admis, en conséquence, devant les tribunaux des divers pays de l'Union à exercer des poursuites contre les contrefaçons, il suffit que leur nom soit indiqué sur l'ouvrage en la manière usitée.

Pour les œuvres anonymes ou pseudonymes, l'éditeur dont le nom est indiqué sur l'ouvrage est fondé à sauvegarder les droits appartenant à l'auteur. Il est, sans autres preuves, réputé ayant cause de l'auteur anonyme ou pseudonyme.

Il est entendu, toutefois, que les tribunaux peuvent exiger, le cas échéant, la production d'un certificat délivré par l'autorité compétente, constatant que les formalités prescrites, dans le sens de l'article 2, par la législation du pays d'origine ont été remplies.

ART. 12.

Toute œuvre contrefaite peut être saisie à l'importation dans ceux des pays de l'Union où l'œuvre originale a droit à la protection légale.

La saisie a lieu conformément à la législation intérieure de chaque pays.

ART. 13.

Il est entendu que les dispositions de la présente Convention ne peuvent porter préjudice, en quoi que ce soit, au droit qui appartient au Gouvernement de chacun des pays de l'Union de permettre, de surveiller, d'interdire, par des mesures de législation ou de police intérieure, la circulation, la représentation, l'exposition de tout ouvrage ou production à l'égard desquels l'autorité compétente aurait à exercer ce droit.

ART. 14.

La présente Convention, sous les réserves et conditions à déterminer d'un commun accord, s'applique à toutes les œuvres qui, au moment de son entrée en vigueur, ne sont pas encore tombées dans le domaine public dans leur pays d'origine.

ART. 15.

Il est entendu que les Gouvernements des pays de l'Union se réservent respectivement le droit de prendre séparément, entre eux, des arrangements particuliers, en tant que ces arrangements conféreraient aux auteurs ou à leurs ayants cause des droits plus étendus que ceux accordés par l'Union, ou qu'ils renfermeraient d'autres stipulations non contraires à la présente Convention.

ART. 16.

Un office international est institué sous le nom de **Bureau de l'Union internationale pour la protection des œuvres littéraires et artistiques.**

Ce Bureau, dont les frais sont supportés par les Administrations de tous les pays de l'Union, est placé sous la haute autorité de l'Administration supérieure de la Confédération Suisse, et fonctionne sous sa surveillance. Les attributions en sont déterminées d'un commun accord entre les pays de l'Union.

ART. 17.

La présente Convention peut être soumise à des revisions en vue d'y introduire les améliorations de nature à perfectionner le système de l'Union.

Les questions de cette nature, ainsi que celles qui intéressent à d'autres points de vue le développement de l'Union, seront traitées dans des Conférences qui auront lieu successivement dans les pays de l'Union entre les délégués desdits pays.

Il est entendu qu'aucun changement à la présente Convention ne sera valable pour l'Union que moyennant l'assentiment unanime des pays qui la composent.

ART. 18.

Les pays qui n'ont point pris part à la présente Convention et qui assurent chez eux la protection légale des droits faisant l'objet de cette Convention, seront admis à y accéder sur leur demande.

Cette accession sera notifiée par écrit au Gouvernement de la Confédération Suisse, et par celui-ci à tous les autres.

Elle emportera, de plein droit, adhésion à toutes les clauses et admission à tous les avantages stipulés dans la présente Convention.

ART. 19.

Les pays accédant à la présente Convention ont aussi le droit d'y accéder en tout temps pour leurs colonies ou possessions étrangères.

Ils peuvent, à cet effet, soit faire une déclaration générale par laquelle toutes leurs colonies ou possessions sont comprises dans l'accession, soit nommer expressément celles qui y sont comprises, soit se borner à indiquer celles qui en sont exclues.

ART. 20.

La présente Convention sera mise à exécution trois mois après l'échange des ratifications, et demeurera en vigueur pendant un temps indéterminé, jusqu'à l'expiration d'une année à partir du jour où la dénonciation en aura été faite.

Cette dénonciation sera adressée au Gouvernement chargé de recevoir les accessions. Elle ne produira son effet qu'à l'égard du pays qui l'aura faite, la Convention restant exécutoire pour les autres pays de l'Union.

ART. 21.

La présente Convention sera ratifiée, et les ratifications en seront échangées à Berne, dans le délai d'un an au plus tard.

En foi de quoi, les Plénipotentiaires respectifs l'ont signée et y ont apposé le cachet de leurs armes.

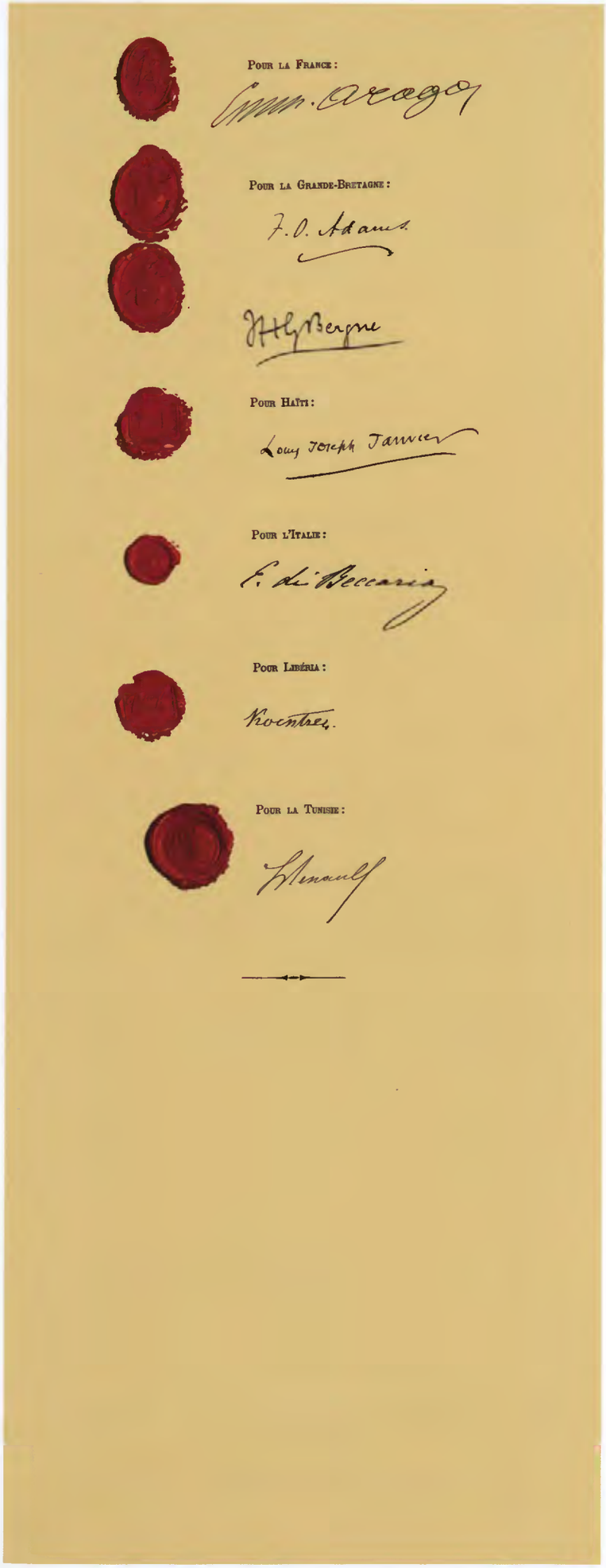
Fait à BERNE, le neuvième jour du mois de septembre de l'an mil huit cent quatre-vingt-six.

POUR LA SUISSE :

POUR L'ALLEMAGNE :

POUR LA BELGIQUE :

POUR L'ESPAGNE :



incompatibility with the Berne Convention. WIPO took the initiative then to propose the establishment, by a diplomatic conference of the Berne Union, of a protocol to the Berne Convention that would have allowed the United States of America to continue to apply, for a limited period of time, the same provisions on formalities that it is already allowed to apply under the Universal Copyright Convention. (The incompatibility as to the term of protection has disappeared thanks to the new Copyright Law of the United States of America.) The matter was discussed in a Group of Consultants convened by WIPO in 1978 (1979 *Copyright* 95). Although the Group endorsed the idea, the idea was, a couple of years later, abandoned, at least provisionally, in the light of declarations by the United States of America that there were real chances to modify further its copyright legislation to make it wholly compatible with the Berne Convention. This is why the diplomatic conference that should have adopted the said protocol has not been convened.

Eight years later, that is, in 1986, the year of the centenary of the Berne Convention, the United States of America was still not a party to the Berne Convention, but there were signs that the situation might change. Both the executive and the legislative branches of the United States of America, as well as the interested private circles, were actively engaged in studying what amendments would be necessary in the national legislation of that country to make it fully compatible with the Berne Convention. Those studies were clearly inspired by the desire to become a member of the Berne Union.

For the continued strength and further development of the Berne Union, United States membership would be of great significance, let alone the increased international protection which United States nationals would enjoy abroad. One has, therefore, to formulate the wish, on the occasion of the centenary, that accession by the United States of America to the Berne Convention become a reality early in the second century of that Convention. The wish holds, naturally, not only for the United States of America but also for all other countries, and among them particularly China and the Soviet Union, that, at the end of the first hundred years of its existence, were not members of the Berne Union.

Article additionnel.

Les Plénipotentiaires réunis pour signer la Convention concernant la création d'une Union internationale pour la protection des œuvres littéraires et artistiques, sont convenus de l'article additionnel suivant, qui sera ratifié en même temps que l'acte auquel il se rapporte:

La Convention conclue à la date de ce jour n'affecte en rien le maintien des Conventions actuellement existantes entre les pays contractants, en tant que ces Conventions confèrent aux auteurs ou à leurs ayants cause des droits plus étendus que ceux accordés par l'Union, ou qu'elles renferment d'autres stipulations qui ne sont pas contraires à cette Convention.

En foi de quoi, les Plénipotentiaires respectifs ont signé le présent article additionnel.

Fait à BERNE, le neuvième jour du mois de septembre de l'an mil huit cent quatre-vingt-six.

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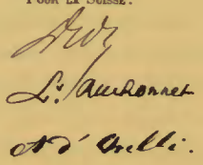

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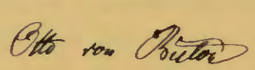

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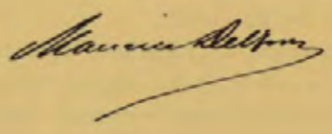

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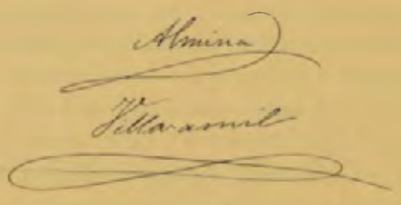

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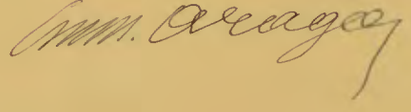

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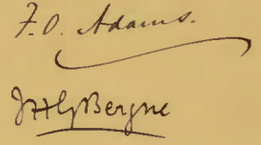
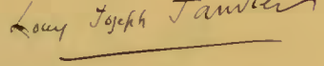


POUR HAÏTI:



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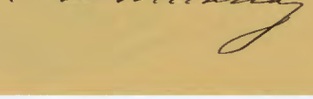

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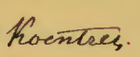

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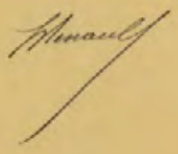

Protocole de clôture.

Au moment de procéder à la signature de la Convention conclue à la date de ce jour, les Plénipotentiaires soussignés ont déclaré et stipulé ce qui suit:

1. Au sujet de l'article 4, il est convenu que ceux des pays de l'Union où le caractère d'œuvres artistiques n'est pas refusé aux œuvres photographiques s'engagent à les admettre, à partir de la mise en vigueur de la Convention conclue en date de ce jour, au bénéfice de ses dispositions. Ils ne sont, d'ailleurs, tenus de protéger les auteurs desdites œuvres, sauf les arrangements internationaux existants ou à conclure, que dans la mesure où leur législation permet de le faire.

Il est entendu que la photographie autorisée d'une œuvre d'art protégée jouit, dans tous les pays de l'Union, de la protection légale, au sens de ladite Convention, aussi longtemps que dure le droit principal de reproduction de cette œuvre même, et dans les limites des conventions privées entre les ayants droit.

2. Au sujet de l'article 9, il est convenu que ceux des pays de l'Union dont la législation comprend implicitement, parmi les œuvres dramatico-musicales, les œuvres chorégraphiques, admettent expressément lesdites œuvres au bénéfice des dispositions de la Convention conclue en date de ce jour.

Il est d'ailleurs entendu que les contestations qui s'élèveraient sur l'application de cette clause demeurent réservées à l'appréciation des tribunaux respectifs.

3. Il est entendu que la fabrication et la vente des instruments servant à reproduire mécaniquement des airs de musique empruntés au domaine privé ne sont pas considérées comme constituant le fait de contrefaçon musicale.

4. L'accord commun prévu à l'article 14 de la Convention est déterminé ainsi qu'il suit:

L'application de la Convention aux œuvres non tombées dans le domaine public au moment de sa mise en vigueur aura lieu suivant les stipulations y relatives contenues dans les conventions spéciales existantes ou à conclure à cet effet.

A défaut de semblables stipulations entre pays de l'Union, les pays respectifs régleront, chacun pour ce qui le concerne, par la législation intérieure, les modalités relatives à l'application du principe contenu à l'article 14.

5. L'organisation du Bureau international prévu à l'article 16 de la Convention sera fixée par un règlement que le Gouvernement de la Confédération Suisse est chargé d'élaborer.

La langue officielle du Bureau international sera la langue française.

Le Bureau international centralisera les renseignements de toute nature relatifs à la protection des droits des auteurs sur leurs œuvres littéraires et artistiques. Il les coordonnera et les publiera. Il procédera aux études d'utilité commune intéressant l'Union et rédigera, à l'aide des documents qui seront mis à sa disposition par les diverses Administrations, une feuille périodique, en langue française, sur les questions concernant l'objet de l'Union. Les Gouvernements des pays de l'Union se réservent d'autoriser, d'un commun accord, le Bureau à publier une édition dans une ou plusieurs autres langues, pour le cas où l'expérience en aurait démontré le besoin.

Le Bureau international devra se tenir en tout temps à la disposition des membres de l'Union pour leur fournir, sur les questions relatives à la protection des œuvres littéraires et artistiques, les renseignements spéciaux dont ils pourraient avoir besoin.

L'Administration du pays où doit siéger une Conférence préparera, avec le concours du Bureau international, les travaux de cette Conférence.

Le Directeur du Bureau international assistera aux séances des Conférences et prendra part aux discussions sans voix délibérative. Il fera sur sa gestion un rapport annuel qui sera communiqué à tous les membres de l'Union.

Les dépenses du Bureau de l'Union internationale seront supportées en commun par les pays contractants. Jusqu'à nouvelle décision, elles ne pourront pas dépasser la somme de soixante mille francs par année. Cette somme pourra être augmentée au besoin par simple décision d'une des Conférences prévues à l'article 17.

Pour déterminer la part contributive de chacun des pays dans cette somme totale des frais, les pays contractants et ceux qui adhéreraient ultérieurement à l'Union seront divisés en six classes contribuant chacune dans la proportion d'un certain nombre d'unités, savoir:

1re classe	. . . . .	25 unités.
2me »	. . . . .	20 »
3me »	. . . . .	15 »
4me »	. . . . .	10 »
5me »	. . . . .	5 »
6me »	. . . . .	3 »

Ces coefficients seront multipliés par le nombre des pays de chaque classe, et la somme des produits ainsi obtenus fournira le nombre d'unités par lequel la dépense totale doit être divisée. Le quotient donnera le montant de l'unité de dépense.

Chaque pays déclarera, au moment de son accession, dans laquelle des susdites classes il demande à être rangé.

L'Administration suisse préparera le budget du Bureau et en surveillera les dépenses, fera les avances nécessaires et établira le compte annuel qui sera communiqué à toutes les autres Administrations.

6. La prochaine Conférence aura lieu à Paris, dans le délai de quatre à six ans à partir de l'entrée en vigueur de la Convention.

Le Gouvernement français en fixera la date dans ces limites, aprés avoir pris l'avis du Bureau international.

7. Il est convenu que, pour l'échange des ratifications prévu à l'article 21, chaque Partie contractante remettra un seul instrument, qui sera déposé, avec ceux des autres pays, aux archives du Gouvernement de la Confédération Suisse. Chaque Partie recevra en retour un exemplaire du procès-verbal d'échange des ratifications, signé par les Plénipotentiaires qui y auront pris part.

Le présent Protocole de clôture, qui sera ratifié en même temps que la Convention conclue à la date de ce jour, sera considéré comme faisant partie intégrante de cette Convention, et aura même force, valeur et durée.

En foi de quoi, les Plénipotentiaires respectifs l'ont revêtu de leur signature.

Fait à BERNE, le neuviéme jour du mois de septembre de l'an mil huit cent quatre-vingt-six.

POUR LA SUISSE:

POUR L'ALLEMAGNE:

POUR LA BELGIQUE:

POUR L'ESPAGNE:

POUR LA FRANCE:

POUR LA GRANDE-BRETAGNE:

POUR HAÏTI:

POUR L'ITALIE:

POUR LIBÉRIA:

POUR LA TUNISIE:

PROCÈS-VERBAL DE SIGNATURE.

Les Plénipotentiaires soussignés, réunis ce jour à l'effet de procéder à la signature de la Convention concernant la création d'une Union internationale pour la protection des œuvres littéraires et artistiques, ont échangé les Déclarations suivantes :

1° En ce qui concerne l'accession des colonies ou possessions étrangères prévue à l'article 19 de la Convention :

Les Plénipotentiaires de Sa Majesté Catholique le Roi d'Espagne réservent pour leur Gouvernement la faculté de faire connaître sa détermination au moment de l'échange des ratifications.

Le Plénipotentiaire de la République française déclare que l'accession de son pays emporte celle de toutes les colonies de la France.

Les Plénipotentiaires de Sa Majesté Britannique déclarent que l'accession de la Grande-Bretagne à la Convention pour la protection des œuvres littéraires et artistiques comprend le Royaume-Uni de la Grande-Bretagne et d'Irlande et toutes les colonies et possessions étrangères de Sa Majesté Britannique.

Ils réservent toutefois au Gouvernement de Sa Majesté Britannique la faculté d'en annoncer en tout temps la dénonciation séparément pour une ou plusieurs des colonies ou possessions suivantes, en la manière prévue par l'article 20 de la Convention, savoir : les Indes, le Dominion du Canada, Terre-Neuve, le Cap, Natal, la Nouvelle-Galles-du-Sud, Victoria, Queensland, la Tasmanie, l'Australie méridionale, l'Australie occidentale et la Nouvelle-Zélande.

2° En ce qui concerne la classification des pays de l'Union au point de vue de leur part contributive aux frais du Bureau international (chiffre 5 du Protocole de clôture):

Les Plénipotentiaires déclarent que leurs pays respectifs doivent être rangés dans les classes suivantes, savoir :

Allemagne	dans la	1re classe.
Belgique	„ „	3me „
Espagne	„ „	2me „
France	„ „	1re „
Grande-Bretagne	„ „	1re „
Haïti	„ „	5me „
Italie	„ „	1re „
Suisse	„ „	3me „
Tunisie	„ „	6me „

Le Plénipotentiaire de la République de Libéria déclare que les pouvoirs qu'il a reçus de son Gouvernement l'autorisent à signer la Convention, mais qu'il n'a pas reçu d'instructions quant à la classe où ce pays entend se ranger au point de vue de sa part contributive aux frais du Bureau international. En conséquence, il réserve sur cette question la détermination de son Gouvernement, qui la fera connaître lors de l'échange des ratifications.

En foi de quoi, les Plénipotentiaires respectifs ont signé le présent Procès-verbal.

Fait à BERNE, le neuvième jour du mois de septembre de l'an mil huit cent quatre-vingt-six.

POUR LA SUISSE :

POUR L'ALLEMAGNE :

POUR LA BELGIQUE :

POUR LA FRANCE :

POUR LA GRANDE-BRETAGNE :

POUR HAÏTI :

POUR L'ITALIE :

POUR LIBÉRIA :

POUR LA TUNISIE :

Part II

The History of the Evolution of the Membership of the Berne Union

Ratifications and Accessions

Ratifications of and Accessions to the Original (1886) Text. The following countries ratified or acceded to the original (1886) text of the Berne Convention: Belgium, Denmark, France, Germany, Great Britain, Haiti, Italy, Japan, Liberia, Luxembourg, Monaco, Montenegro, Norway, Spain, Sweden, Switzerland, Tunisia (17). The ratification by Great Britain extended also to Australia, Canada, India, New Zealand and South Africa.

Ratifications of and Accessions to the Later Texts. The following countries ratified or acceded to the texts (Acts or Protocols of the Berne Convention) adopted between 1886 and 1971:

Additional Paris Act (1896): Belgium, Denmark, France, Germany, Great Britain, Haiti, Italy, Japan, Liberia, Luxembourg, Monaco, Montenegro, Norway, Spain, Sweden, Switzerland, Tunisia (17). The ratification by Great Britain extended also to Australia, Canada, India, New Zealand and South Africa.

Berlin Act (1908): Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia, Danzig (Free City of), Denmark, Estonia, Finland, France, Germany, Greece, Haiti, Hungary, India, Ireland, Italy, Japan, Lebanon, Liberia, Liechtenstein, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, South African Union, Spain, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, United Kingdom, Yugoslavia (42).

Additional Berne Protocol (1914): Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia, Danzig (Free City of), Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Japan, Lebanon, Liberia, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway, Poland, Romania, South African Union, Spain, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, United Kingdom, Yugoslavia (37).

Rome Act (1928): Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia, Danzig (Free City of), Denmark, Finland, France, Germany, Greece, Holy See,

Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, South African Union, Spain, Sweden, Switzerland, Syria, Tunisia, United Kingdom, Yugoslavia (40).

Brussels Act (1948): Argentina, Australia, Austria, Bahamas,* Belgium, Benin,* Brazil, Cameroon,* Chad,* Chile, Congo,* Denmark, Fiji,* Finland, France, Gabon,* Germany (Federal Republic of), Greece, Holy See, India, Ireland, Israel, Italy, Ivory Coast,* Japan, Liechtenstein, Luxembourg, Madagascar,* Mali,* Mauritania,* Mexico, Monaco, Morocco, Netherlands, Niger,* Norway, Philippines, Portugal, Senegal,* South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, Upper Volta,* Uruguay, Yugoslavia, Zaire* (50);

Stockholm Act (1967) (all Articles): Chad, German Democratic Republic, Mauritania, Pakistan, Romania, Senegal (6)**;

Stockholm Act (1967), Articles 22 to 38: Australia, Austria, Belgium, Canada, Chad, Denmark, Fiji, Finland, German Democratic Republic, Germany (Federal Republic of), Ireland, Israel, Liechtenstein, Mauritania, Morocco, Pakistan, Romania, Senegal, Spain, Sweden, Switzerland, United Kingdom (22);

Paris Act (1971) (all Articles): Australia, Austria, Barbados, Benin, Brazil, Bulgaria, Cameroon, Central African Republic, Chile, Congo, Costa Rica, Cyprus, Czechoslovakia, Denmark, Egypt, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Holy See, Hungary, India, Italy, Ivory Coast, Japan, Libya, Luxembourg, Mali, Mauritania, Mexico, Monaco, Netherlands, Niger, Portugal, Rwanda, Senegal, Spain, Suriname, Sweden, Togo, Tunisia, Upper Volta, Uruguay, Venezuela, Yugoslavia, Zaire (48);

Paris Act (1971), Articles 22 to 38: Argentina, Bahamas, Iceland, Malta, Norway, Philippines, South Africa, Sri Lanka, Thailand, Zimbabwe (10);

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* By declaration of continued adherence.

** Articles 1 to 21 and the Protocol Regarding Developing Countries of the Stockholm Act have not entered into force. The condition laid down in Article 28(2)(a) of that Act (a minimum of five ratifications or accessions by members of the Union) has not been met since two (Chad, Mauritania) of the six countries were not members of the Union at the time (1974). As of October 10, 1974, when Articles 1 to 21 of the Paris Act (1971) and its Annex entered into force, no further country may ratify or accede to the Stockholm Act.

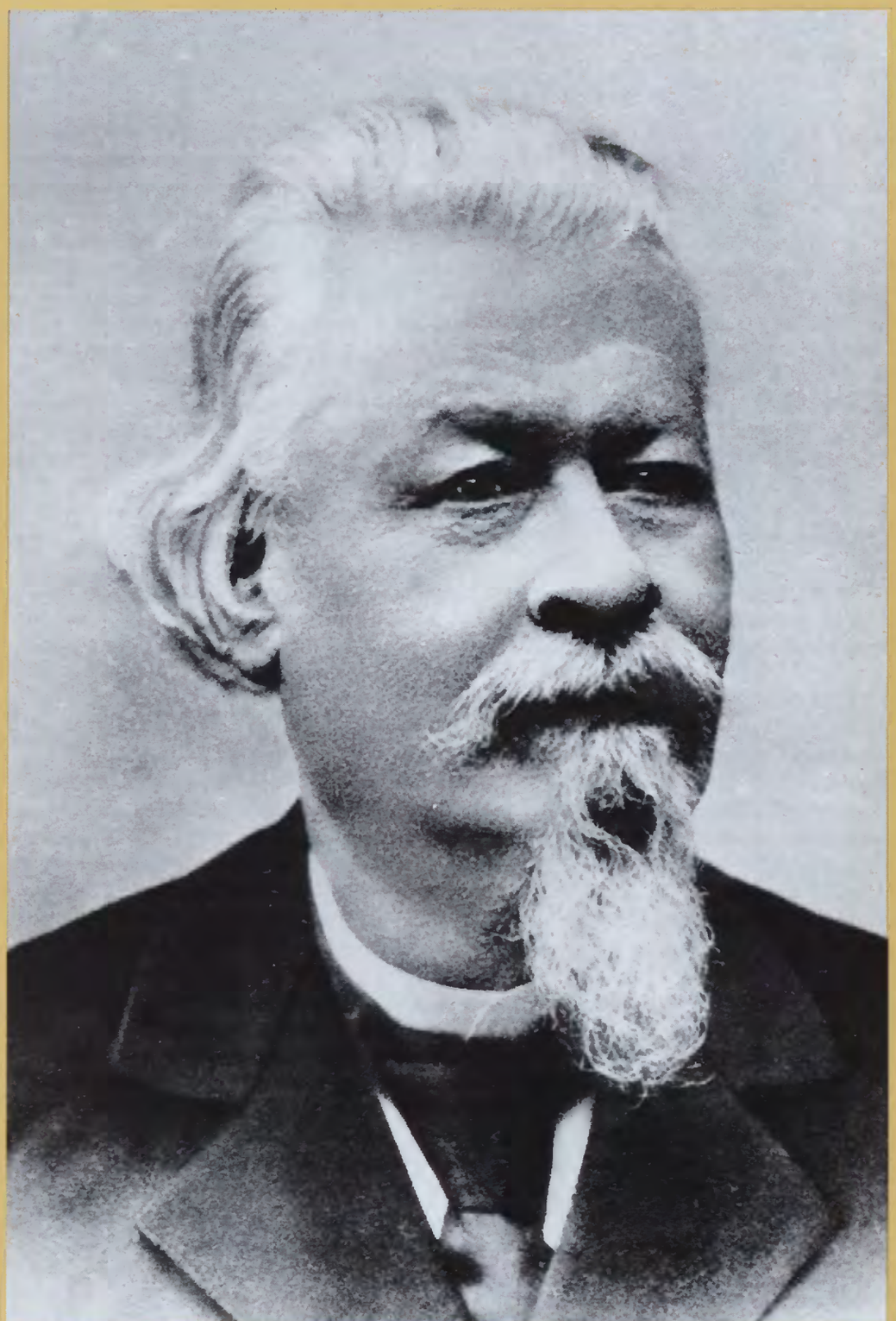
Denunciations

During the hundred years of its existence, the Berne Convention has been denounced by five countries: Haiti (1887-1943), Montenegro (1893-1900), Liberia (1908-1930), Indonesia (1913-1960) and Syria (1924-1962). Burkina Faso (previously Upper Volta, name of the country before 1984), which had acceded to the Berne Convention (Brussels Act) in 1963, denounced the Convention with effect from 1970, but acceded once more to the Berne Convention (Paris Act) with effect from January 24, 1976. Estonia was a member from 1927 to 1940, and Latvia was a member from 1937 to 1940, when they became republics of the Soviet Union.

Membership of the Berne Union

In the hundred years that have elapsed since the signature of the original (1886) text of the Berne Convention, the following countries, in the year indicated opposite their name, have become members of the Berne Union. Those countries that were members but have since left the Berne Union are not listed here, but are indicated under the heading "Denunciations," above.

1887:	Belgium, France, Germany (now German Democratic Republic and Germany (Federal Republic of)), Italy, Spain, Switzerland, Tunisia, United Kingdom
1888:	Luxembourg
1889:	Monaco
1890 to 1895:	—
1896:	Norway
1897 and 1898:	—
1899:	Japan
1900 to 1902:	—
1903:	Denmark
1904:	Sweden
1905 to 1910:	—
1911:	Portugal
1912:	Netherlands
1913 to 1916:	—
1917:	Morocco
1918 and 1919:	—
1920:	Austria, Greece, Poland
1921:	Bulgaria, Czechoslovakia
1922:	Brazil, Hungary
1923 to 1926:	—
1927:	Ireland, Romania
1928:	Australia, Canada, Finland, India, New Zealand, South Africa
1929:	—
1930:	Yugoslavia
1931:	Liechtenstein, Siam (now Thailand)
1932 to 1934:	—
1935:	Holy See
1936 to 1946:	—
1947:	Iceland, Lebanon
1948:	Pakistan
1949:	—
1950:	Israel
1951:	Philippines
1952:	Turkey
1953 to 1958:	—
1959:	Ceylon (now Sri Lanka)
1960:	—
1961:	Dahomey (now Benin)
1962:	Congo, Gabon, Ivory Coast (now Côte d'Ivoire), Mali, Niger, Senegal
1963:	Zaire
1964:	Cameroon, Cyprus, Malta
1965:	—
1966:	Madagascar
1967:	Argentina, Mexico, Uruguay
1968 and 1969:	—
1970:	Chile
1971:	Chad, Fiji
1972:	—
1973:	Bahamas, Mauritania
1974:	—
1975:	Togo
1976:	Libya, Upper Volta (now Burkina Faso)
1977:	Central African Republic, Egypt, Suriname
1978:	Costa Rica
1979:	—
1980:	Guinea, Zimbabwe
1981:	—
1982:	Venezuela
1983:	Barbados
1984:	Rwanda
1985:	—



Henri Morel, 1893-1912
"Clarity of mind"

Part III

The History of the Administrative Clauses of the Berne Convention and of the International Bureau of the Berne Union

The Concept of a Union and the Organs of the Union

First Occurrence in the Berne Convention. The expression "Union" was first used in the original (1886) text of the Berne Convention. Article 1 of that text provided that "The contracting countries constitute a Union (*sont constitués à l'état d'Union*) for the protection of the rights of authors in their literary and artistic works."

Later Developments. At the conference of revision of 1928 (Rome), the words "contracting countries" were replaced by the words "the countries to which this Convention applies." That wording has not been changed since, so that in the 1971 (Paris) Act also it reads as follows: "The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works" (Article 1).

Meaning of "Union." The constitution of a "Union" means that a permanent link among countries is being created. The original (1886) text of the Berne Convention expressly indicated that it is the contracting countries that have created the Union.

In the following parts of this article, the expressions "Union" and "Berne Union" will both be used.

Organs of the Union. The first organ of the Berne Union mentioned in the Berne Convention was the "Bureau of the International Union for the Protection of Literary and Artistic Works" (*Bureau de l'Union internationale pour la protection des œuvres littéraires et artistiques*). It is mentioned in Article 16, first paragraph, of the original (1886) text of the Berne Convention. The same Article provides for three important features of the said Bureau, namely, that its attributions shall be fixed by common agreement by the countries of the Union, that it is placed under the "high authority of the highest government authority (*Administration supérieure*) of the Swiss Confederation," and that the cost (*frais*) of the Bureau shall be supported by the governments (*Administrations*) of all the member countries of the Union.

Conferences for revising the Berne Convention were also mentioned in the Berne Convention from the very beginning. The original (1886) text of the Berne Convention says that such conferences are conferences "between the delegates of the said [the contracting] States" (Article 17, first paragraph) and the task of such conferences is "to introduce in it [in the Convention] improvements to perfect the system of the Union" (Article 17, second paragraph). Those conferences, commonly called "conferences of revision," are sometimes considered as an organ of the Berne Union although they lack the permanence that characterizes a typical organ.

The same is true in respect of the "Conferences of Representatives" instituted, in 1970, by the countries members of the Berne Union but not members of the Assembly of the said Union. Those conferences had—and in respect of five member countries (see below) still have—the task of dealing with certain questions, mainly the fixing of the maximum yearly amount of the expenses of the International Bureau of the Berne Union.

On the other hand, there is no doubt that the Assembly of the Berne Union and the Executive Committee of the Berne Union are organs of that Union. They were established by the 1967 (Stockholm) Act (see Articles 22 and 23).

The same Act replaced the International Bureau *of the Berne Union* by the International Bureau *of the World Intellectual Property Organization* (WIPO)—officially called the "International Bureau of Intellectual Property" (WIPO Convention, Article 2(ii))—and declared the latter to be the continuation of the united Bureaus of the Paris and Berne Unions (see Article 24(1)(a)). The Paris Union, it is recalled, is the Union founded in 1883 by the Paris Convention for the Protection of Industrial Property.

The International Bureau of the Berne Union was headed by a director (*directeur*). The expression was used already in the original (1886) text of the Berne Convention (in the fifth paragraph of point 5 of the Final Protocol). Although there was no provision in the Berne Convention concerning the appointment of the Director, he was appointed, in fact, by the Swiss Government, namely the Federal Council (*Conseil fédéral*, the supreme authority of the executive branch), the power for doing so being regarded as inherent in the supervisory authority functions of the Swiss Government. Since the entry into force, in 1970, of the 1967 (Stockholm) Act, the International Bureau of WIPO has

been headed by an official called in that Act "the Director General," appointed (elected) by the General Assembly of WIPO. Such election requires a two-thirds majority also in the Assemblies of the Paris and Berne Unions (WIPO Convention, Article 6(3)(g)).

The Assembly

First Occurrence in the Berne Convention and Present Membership. As already stated, the Assembly was created by the 1967 (Stockholm) Act of the Berne Convention and is first mentioned in that Act. References to articles are references to articles in the said Act and in the 1971 (Paris) Act.

The Assembly consists of those countries of the Berne Union which are bound by the administrative clauses (Articles 22 to 27), and, naturally, also the final clauses (Articles 28 to 38), of the said Act or the 1971 (Paris) Act. The administrative clauses are the same in the 1967 (Stockholm) and 1971 (Paris) Acts. Out of the 76 members of the Union, there were 71 such countries on January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention. They were the following: Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Egypt, Fiji, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Libya, Liechtenstein, Luxembourg, Mali, Malta, Mauritania, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Pakistan, Philippines, Portugal, Romania, Rwanda, Senegal, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Tunisia, United Kingdom, Uruguay, Venezuela, Yugoslavia, Zaire, Zimbabwe (71).

The other five countries of the Union were not members of the Assembly on the said date (January 1, 1986). They are, however, members of the Conference of Representatives. Those five countries are Lebanon, Madagascar, New Zealand, Poland and Turkey.

Representation and Voting. For each member country, what is represented is that country's "Government" (Article 22(1)(b)), and each country is represented by one "delegate" (Article 22(1)(b)). Each delegate may be assisted by one or more "alternate delegates," "advisors" and "experts." The designation given to such possible assistants of the delegates, and the number of such assistants, are decided by each government as far as its own delegation is concerned.

With respect to matters which are of interest also to other Unions administered by WIPO, the Assembly must, before making a decision, hear the advice of the WIPO Coordination Committee (Article 22(2)(b)).

One half of the countries members of the Assembly constitute a quorum (Article 22(3)). With two exceptions, all decisions of the Assembly require two thirds of the votes cast (Article 22(3)). One of the exceptions concerns Articles 23, 24 and 25, and paragraphs (1) and (3) of Article 26: those provisions can be amended only with a majority of three fourths of the votes cast (Article 22(2)); the other exception concerns Article 22 and paragraph (2) of Article 26: those provisions can be amended only with a majority of four fifths of the votes cast (Article 26(2)).

Tasks. Article 22(2)(a) of the 1967 (Stockholm) and 1971 (Paris) Acts lists, in 13 points, the tasks of the Assembly. They are quoted hereafter, with a few comments in each case:

"*The Assembly shall:*

"*(i) deal with all matters concerning the maintenance* (maintien) *and development of the Union and the implementation of this Convention.*" These are very broad terms, and almost everything that is specified in the subsequent twelve items may be regarded as falling also under this item. "Maintenance" includes, in any case, assuring that the organs of the Union exist and function. "Development" includes the entry of countries in the Union which are not yet members, and the Assembly consistently provides activities in the program of the Union for promoting knowledge of, and accessions to, the Convention. "Implementation" of the Convention certainly means the acts required from the member countries and the acts required from the various organs of the Union. Does dealing with matters concerning the implementation of the Convention mean that the Assembly may interpret the Convention? It is believed that it certainly means just that whenever the administrative and final provisions are concerned. It probably also means that the Assembly may deal with matters concerning the implementation of the Convention by any member country, for example, expressing an opinion on the question whether "the measures necessary to ensure the application" (Article 36(1)) of the Convention by a given member country have been adopted by that country. So far, however, the Assembly was not asked to express an opinion in respect of a question of such a nature; consequently, it is not known whether the Assembly would, in fact, follow such an interpretation of the Convention. Non-governmental organizations specialized in the field of copyright suggest, from time to time, that the conformity of the national laws of member countries with the requirements of the Convention be examined and opinions thereupon be expressed by the Director General or the Assembly. There is nothing in the Convention that would enable the Director General to do so short of a direct and precise order by the Assembly under item (iii) ("give him all necessary instructions concerning matters within the competence of the Union" (see below)), but the Assembly itself could, it would seem, express such opinions. However, as already stated, so far the matter has not been tested in the Assembly of the Berne Union. On the other hand, in the Assembly of the Paris Union (governed by provisions on the Assembly of the Paris Union which are the same as the provisions governing the Assembly of the Berne Union), the matter has been tested in 1985. For the first time in its history, the Assembly of the Paris Union expressed "a view" concerning what "the correct interpretation" of one of the substantive provisions (on the right of priority) of the Paris Convention was (see 1985 *Industrial Property* 349).

"*(ii) give directions concerning the preparation for conferences of revision to the International Bureau ..., due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26.*" This provision found application for the first and, so far, only time, when, in 1970, the Assembly, in its first session, decided the convocation of a diplomatic conference for the revision of certain provisions of the 1967 (Stockholm) Act. The said conference was the conference of revision that took place in Paris in 1971; it adopted the 1971 (Paris) Act.

"*(iii) review and approve the reports and activities of the Director General ... concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union.*" In preparation of each session of the Assembly,

Robert Comtesse, 1912-1921
"A kind man of exquisite taste"

the Director General writes reports on his activities undertaken since the preceding session of the Assembly. The same reports deal also with other events of interest to the Union.

"*(iv) elect the members of the Executive Committee of the Assembly.*" More is said about this task of the Assembly in the part devoted to the Executive Committee, below.

"*(v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee.*" The activities of the Executive Committee are generally covered in the reports of the Director General mentioned in item (iii), above. The tasks of the Executive Committee are mentioned in the part devoted to it, below.

"*(vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts.*" The 1967 (Stockholm) and 1971 (Paris) Acts provided, in this provision, for triennial budgets. The amendment of "triennial" to "biennial" was decided by the Assembly in its session held in 1979. In the same session, the Assembly also decided to apply the amendment immediately, that is, without waiting for its entry into force according to the provisions of Article 26(3). Those provisions require the notification of written acceptance by three fourths of the countries members of the Assembly at the time the amendment was adopted. That condition was fulfilled only on November 19, 1984, but, as already stated, the amendment was applied ever since its adoption (1979). A draft of the program and the budget of the Berne Union is prepared by the Director General in a document which also deals with the program and the budget of WIPO proper and the other Unions administered by WIPO. The expenses of the Berne Union represented, in the decade starting in 1976, an average of 13 percent of the total expenditure of the International Bureau. As far as the program is concerned, its main chapters deal with the promotion of accessions to the Berne Convention, with cooperation, for the development of developing countries, in the field of copyright and neighboring rights, with the collection and dissemination of information (publication of the monthly periodical *Copyright*, collection and publication of legislative texts), and with matters of topical interest. The budget allocates specific amounts for each of the corresponding activities that take different forms: meetings (usually with participants appointed by governments sitting together with participants appointed by interested non-governmental organizations), courses, seminars, individual training, study missions, surveys, publications, etc. The draft program and budget is first considered by the WIPO Budget Committee (a committee which presently has 14 States as members and whose members are elected by the WIPO Coordination Committee), and later by the Berne Union Executive Committee and the WIPO Coordination Committee, as well as by the Berne Union Assembly, which is sovereign in determining both the program and the budget of the Berne Union. More is said about those questions, particularly the development of the expenses and contributions, under "Finances of the Union," below. The final accounts of the Berne Union are established by the Director General, audited by external auditors and placed by the Director General before the Assembly for approval.

"*(vii) adopt the financial regulations of the Union.*" The financial regulations are not those of the Berne Union alone but are common to all Unions (and WIPO proper) administered by WIPO. From time to time, they are revised to respond to changing circumstances and when they are, the changes are, as far as the Berne Union is concerned, adopted also by the Assembly.

"*(viii) establish such committees of experts and working groups as may be necessary for the work of the Union.*" Most of these are *ad hoc*: they are established by virtue of appropriate provisions in the program, hold one or several sessions and, once their task is accomplished, go out of existence.

"*(ix) determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers.*" For the 1985 session of the Assembly, the situation was as follows: five countries members of the Berne Union but not members of the Assembly of that Union (by virtue of Article 22(3)(g)), 39 countries members of WIPO not members of the Berne Union, 19 intergovernmental organizations and 49 international non-governmental organizations were invited to attend the meetings of the Assembly as observers.

"*(x) adopt amendments to Articles 22 to 26.*" This power has been made use of once so far, namely in 1979, when the Assembly decided to amend Article 22(2)(a)(vi) and (4)(a) and Article 23(6)(a)(ii) and (iii), so as to make biennial, instead of triennial, its ordinary sessions and the budget of the Berne Union.

"*(xi) take any other appropriate action designed to further the objectives of the Union.*" The objectives of the Union are not stated in any detail in the Convention but Article 1 says that the Union is one "for the protection of the rights of authors in their literary and artistic works." Examples of such action are given in the parts entitled "Copyright Law Subjects of Topical Interest" and "Development Cooperation in the Field of Copyright," below.

"*(xii) exercise such other functions as are appropriate under this Convention.*" Examples of such functions are the adoption of its own (the Assembly's) rules of procedure (Article 22(5)), the establishment of the details of the rules governing the election of the members of the Executive Committee (Article 23(5)(c)), the determination, in the case where a country is in arrears in the payment of its contributions, whether that country may nevertheless exercise its right to vote on the ground that the delay in payment is due to exceptional and unavoidable circumstances (Article 25(4)(e)), the fixing of the proportion and terms of payment for each country in respect of the working capital fund (Article 25(6)(c)) and the designation of the external auditors (Article 25(8)).

"*(xiii) subject to its* [the Assembly's] *acceptance, exercise such rights as are given to it in the Convention establishing the* [*World Intellectual Property*] *Organization.*" The WIPO Convention gives certain rights to the Assembly of the Berne Union in connection with the appointment of the Director General of WIPO, the assuming by WIPO of the administration of certain international agreements, any transfer of the headquarters of WIPO outside Geneva, and any amendment of the WIPO Convention (WIPO Convention, Articles 6(3)(g) and 17(2)).

Sessions. By January 1, 1986, that is, by the beginning of the year of the centenary of the Berne Convention, the Assembly has held seven sessions. All sessions were ordinary; they took place in 1970, 1973, 1976, 1979, 1981, 1983 and 1985, and they were all held in Geneva.

The Conference of Representatives

Establishment and Present Membership. When the administrative clauses of the 1967 (Stockholm) Act, and among them the clauses concerning the Assembly of the Berne Union, came into

Ernest Röthlisberger, 1922-1926
"A fierce internationalist"

effect in 1970, not all countries members of the Berne Union had accepted those clauses and those which had not accepted them were not members of the Assembly. They, too, however, needed some organ in which they could, until they became members of the Assembly, make collective decisions. This is why, on September 28, 1970, the countries members of the Berne Union which, on that date, were not members of the Assembly of that Union "resolve[d] to establish a Conference of Representatives of the Berne Union." The members of this Conference of Representatives are countries that are members of the Berne Union without being members of the Assembly of that Union. Their number, at the time of the establishment of the Conference of Representatives (and when the Berne Union had 60 members), was 25. (The remaining 35 countries were members of the Assembly: 13 by virtue of their having accepted at least the administrative clauses of the 1967 (Stockholm) Act, and 22 by virtue of the "five-year privilege" provided for under Article 38(1)). Any country member of the Berne Union that accepts the administrative clauses of the 1967 (Stockholm) or 1971 (Paris) Act automatically ceases to be a member of the Conference of Representatives and becomes a member of the Assembly. Thus, the number of the countries members of the Conference of Representatives has gradually decreased. At the beginning of 1986, the year of the centenary of the Berne Convention, this number was five. The five countries, still members of the Conference of Representatives at that date, were Lebanon, Madagascar, New Zealand, Poland and Turkey. Unless the Resolution of 1970 establishing the Conference of Representatives is revoked, the Conference of Representatives will have to be convened also in the future, as long as all of the said countries have not accepted at least the administrative clauses of the 1971 (Paris) Act.

Tasks. Any Conference of Representatives is empowered to "modify, by unanimous decision, the maximum amount of the expenditure of the International Bureau" as far as the countries members of the Conference of Representatives are concerned, provided that it meets as a "Conference of Plenipotentiaries" (Resolution of 1970, point 6). "Modify" means to modify the amount fixed in the Convention itself (120,000 Swiss gold francs per annum according to Article 23(1) of the 1948 (Brussels) Act). Since 1970, such "modification" is made by the Conference of Representatives, meeting as a Conference of Plenipotentiaries, by reference to the amount decided upon by the Assembly of the Union.

Otherwise, each Conference of Representatives has two objectives or tasks: "to draw up for each three-year [beginning with the 1980-1981 biennium, two-year] period to come, a report on the foreseeable expenditure of the International Bureau as far as the Berne Union is concerned, and to consider questions relating to the protection [*sauvegarde*] and the development of the said [i.e., the Berne] Union" (Resolution of 1970, point 5). The first is, in practice, the same as the budget adopted by the Assembly. The second corresponds to what, in respect to the Assembly, is called dealing with "matters concerning the maintenance and development of the Union."

Sessions. By January 1, 1986, that is, by the beginning of the year of the centenary of the Berne Convention, the Conference of Representatives has held seven sessions. All sessions were ordinary, and each session was held jointly with the ordinary sessions of the Assembly. They took place in 1970, 1973, 1976, 1979, 1981, 1983 and 1985.

Representation on the Executive Committee. At each of its ordinary sessions, the Conference of Representatives may elect, among its members, and for each four of such members, one country to serve on the Executive Committee (see below) as an "associate member." At the beginning of 1986, the year of the centenary of the Berne Convention, the number of associate members was one (corresponding to one quarter of the five members of the Conference of Representatives). It was Turkey.

The Executive Committee

First Occurrence in the Berne Convention and Membership. The Executive Committee is first mentioned in the 1967 (Stockholm) Act. References to articles are references to articles in that Act and in the 1971 (Paris) Act.

The Executive Committee is a sub-organ of the Assembly: "The Assembly shall have an Executive Committee" says Article 23(l). Thus, it is an organ which, like the Assembly, started functioning in 1970.

The Executive Committee consists of countries elected by the Assembly from among countries members of the Assembly and, *ex officio*, of Switzerland (Article 23(2)(a)). The number of countries members of the Executive Committee corresponds to one fourth of the number of countries members of the Assembly (Article 23(3)) plus one fourth of the members of the Conference of Representatives. At the beginning of 1986, the year of the centenary of the Berne Convention, the Executive Committee had 19 members: one (Switzerland) is a member *ex officio*; 17 were elected by the Assembly of the Berne Union (Canada, Chile, Côte d'Ivoire, Czechoslovakia, France, German Democratic Republic, Hungary, India, Mexico, Morocco, Netherlands, Senegal, Sweden, Tunisia, United Kingdom, Venezuela, Zimbabwe); one (Turkey) was elected, as an associate member, by the Conference of Representatives of the Berne Union.

Representation and Voting. As already stated, the members of the Executive Committee are countries. Each country member of the Executive Committee has one vote (Article 23(8)(a)). Each country member of the Executive Committee is represented by one delegate, and each delegate may represent, and vote in the name of, one (namely, its own) country only (Article 23(8)(e)). One half of the members constitute a quorum, and all decisions are made by a simple majority of the votes cast (Article 23(8)(b) and (c)).

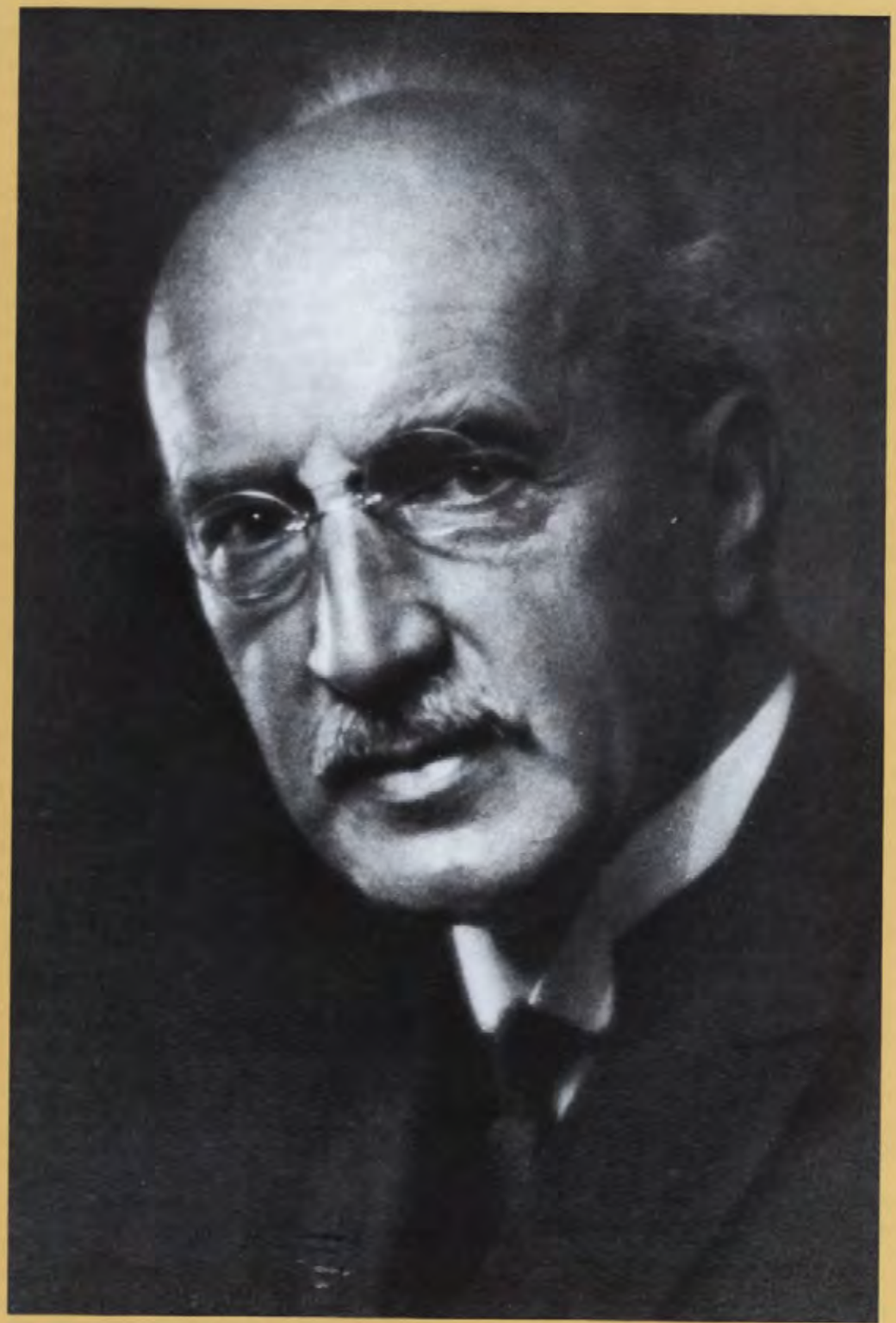
With respect to matters which are of interest also to other Unions administered by WIPO, the Executive Committee must, before making a decision, hear the advice of the WIPO Coordination Committee (Article 23(6)(b)).

Mandate and Renewal. Each member of the Executive Committee serves from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly (Article 23(5)(a)).

The Executive Committee is renewed every two years, at the biennial ordinary session of the Assembly. Members may be re-elected but only up to a maximum of two thirds of its members (Article 23(5)(b)).

The Executive Committee meets in ordinary session once a year (Article 23(7)(a)).

The Executive Committee may meet in extraordinary session upon convocation of the Director General, either on his own



Fritz Ostertag, 1926-1938
"Events never caught him by surprise"

The Permanent Committee dealt, among other things, with the relations between the Berne Convention and the Universal Copyright Convention (which, at the time the Permanent Committee was established in 1948, was a mere plan but which became a reality four years later, that is, in 1952) and between itself and the Intergovernmental Copyright Committee of the Universal Copyright Convention, administered by Unesco (the two Committees adopted the habit of meeting at the same place and time from 1958 onwards), with the preparations of the "Neighboring Rights Convention," eventually adopted in Rome in 1961, and with a certain number of questions of topical interest.

The International Bureau

First Occurrence in the Berne Convention and the Evolution of the Bureau. In the history of the Berne Union, one has to distinguish between *three* "International Bureaus" (a designation in vogue in the last century for the permanent secretariats of intergovernmental organizations): the International Bureau of the Berne Union, the United International Bureaus and the International Bureau of WIPO.

The Bureau of the International Union for the Protection of Literary and Artistic Works (*Bureau de l'Union internationale pour la protection des œuvres littéraires et artistiques*) is mentioned in the original (1886) text of the Berne Convention. As already stated, that text says that "an international office (*office*) shall be organized" under the said title and that it "shall be placed under the high authority of the highest Government authority (*Administration supérieure*) of the Swiss Confederation" (Article 16). As equally already stated, the same text also provided that the International Bureau "shall function under the supervision [*surveillance*]" of the said highest Government authority of the Swiss Confederation.

When the original (1886) text of the Berne Convention entered into force (1887), there was already in Berne, also under the high authority of the Swiss Confederation another, earlier constituted, International Bureau in the field of intellectual property. It was the International Bureau constituted by the Paris Convention for the Protection of Industrial Property signed three years earlier (1883). At that time, the Swiss Federal Council then appointed Henri Morel, a member of the *Conseil national suisse*, as Secretary General (*secrétaire général*) of the *United Bureaus* (*Bureaux réunis*). Thus, *de facto*, the International Bureau created by the Berne Convention really never had an independent existence as it has, from the very beginning, been united with the International Bureau created by the Paris Union.

This is how the United Bureaus—in the plural—came into existence. Their existence was formalized when the Swiss Federal Council adopted, on November 11, 1892, a decree (*arrêté*) in which the organization of the United Bureaus was fixed. The high supervision was to be exercised by the Swiss Federal Council, whereas for the less important matters the supervision was entrusted to what is today called the Federal Department (Ministry) of External Affairs (*Département fédéral des affaires étrangères*) and what, at that time, was called the *Département politique*. At the same time, Henri Morel was appointed Director —the first one to have that title—of the United Bureaus.

This kind of Bureau, the United Bureaus, was not mentioned in any of the texts or Acts of the Berne Convention, which continued to speak about the International Bureau—in the singular—of the Berne Union. There is, however, an oblique reference to the United Bureaus in the 1967 (Stockholm) Act, where that Act says, in Article 24(l)(a), that the International Bureau *of WIPO* is a continuation of the International Bureau of the Paris Union "*united* with the Bureau" of the Berne Union (emphasis added).

This International Bureau, the International Bureau of WIPO, started functioning in 1970 when the Convention Establishing the World Intellectual Property Organization and the 1967 (Stockholm) Act of the Berne Convention entered into force. However, the former kinds of International Bureaus did not, at the same time, altogether stop existing. They continue, at least in theory, for the purposes of the countries members of the Berne Union that have not yet become members of WIPO. This idea is expressly stated in the transitional clauses of the said Act in the following terms: "As long as all the countries of the [Berne] Union have not become members of the Organization [WIPO], the International Bureau of the Organization [WIPO] shall also function as the Bureau of the [Berne] Union, and the Director General [of WIPO] as the Director of the said Bureau [of the Berne Union]" (Article 38(3)). In practice, however, the situation is that the Swiss Government no longer exercises, since 1970, its supervisory functions and the Director General of WIPO no longer uses his title of Director of the International Bureau of the Berne Union, although, as already stated, there are still some countries (five on January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention) that are members of the Berne Union since a date preceding the creation of WIPO without having yet become members of WIPO. However, the fact that no practical use has been made so far of the quoted transitional provision does not mean that it could not be applied if any of the interested parties wanted it to be applied.

Three more observations concerning the evolution of the Bureaus:

One is that the International Bureau of the Berne Union has frequently been referred to, in common parlance, as the "Secretariat" of the Berne Union and that the International Bureau of WIPO is sometimes referred to as the "Secretariat" of WIPO.

The second is that, up to 1960—when the United Bureaus moved from Berne to Geneva—it was quite common to refer to it (or them) as "the Berne Bureau" or "the Berne Bureaus." This designation was merely based on the location of the Bureaus.

The third observation is that, in the nineteen-fifties and nineteen-sixties, the United Bureaus were frequently referred to as the "United International Bureaus for the Protection of Intellectual Property" or, in an abbreviated form, "BIRPI" (corresponding to the initials of the French designation *Bureaux internationaux réunis pour la protection de la propriété intellectuelle*). There was no legal basis for either this designation or its abbreviation. They were probably invented by Jacques Secrétan, Director of the United Bureaus from 1953 to 1963. Until then, the full name of the United Bureaus in usage was "United International Bureaus for the Protection of Industrial, Literary and Artistic Property." This was obviously too long. Replacing the separate references to industrial property, on the one hand, and literary and artistic property, on the other, by the single adjective "intellectual" was an ingenious innovation, although, in the beginning, it was sometimes misunderstood as some believed that "intellectual property" was coterminous with copyright. In any case, the expression "intellectual property" found its official recognition in the title of the World *Intellectual Property* Organization, when the Convention establishing WIPO was concluded at Stockholm in 1967.

Jacques Secrétan, 1953-1963
"He knew a great enterprise needed public attention"

Tasks. As far as the tasks of the first kind of International Bureau are concerned, the original (1886) text of the Berne Convention mentions four, namely, that the International Bureau:

(i) "shall centralize *information* of all kinds concerning the protection of the rights of authors in their literary and artistic works. It shall coordinate and publish such information" (Final Protocol of 1886, emphasis added);

(ii) "shall make general *studies* of general usefulness of interest to the Union" (*ibid.*; emphasis added);

(iii) "shall on the basis of documents which shall be put at its disposal by the different Governments (*Administrations*) *edit* (*rédigera*) a *periodical* (*feuille périodique*), in the French language, covering questions concerning the objects (*l'objet*) of the Union" (*ibid.*; emphasis added);

(iv) "must at all times be at the disposal of the members of the Union, to furnish them, on questions concerning the protection of literary and artistic works, with *specialized information* that they may require" (*ibid.*; emphasis added).

The definitions of those four tasks were slightly changed by some of the conferences of revision. In the latest Acts, those of 1967 (Stockholm) and 1971 (Paris), they are worded as follows:

(i) "The International Bureau shall assemble and publish *information* concerning the protection of copyright" (Article 24(2); emphasis added);

(ii) "The International Bureau shall conduct *studies*, and shall provide *services*, designed to facilitate the protection of copyright" (Article 24(5)); emphasis added);

(iii) "The International Bureau shall publish a monthly *periodical*" (Article 24(3); emphasis added);

(iv) "The International Bureau shall, *on request*, furnish *information* to any country of the Union on matters concerning the protection of copyright" (Article 24(4)); emphasis added).

This enumeration of specific tasks is preceded, in the 1967 (Stockholm) and 1971 (Paris) Acts, by a general statement to the effect that "administrative tasks with respect to the [Berne] Union shall be performed by the International Bureau" and that that Bureau "shall provide the secretariat of the various organs of the [Berne] Union" (Article 24(1)(a) and (b)). The administrative tasks include the convocation and servicing of meetings and the receiving and disbursing of funds. The main organs of the Berne Union are the Assembly and the Executive Committee.

In the following paragraphs, each of the four specific tasks mentioned above will be considered separately and some of the activities of the International Bureau under each of them will be briefly indicated.

General Information. The most important information assembled by the International Bureau relates to legislation in the field of copyright.

From the very beginning, the International Bureau has been collecting the texts of treaties, statutes and other legislative or regulatory texts concerning copyright both in their original version, and, where the original is other than French and where a French translation exists, also the texts of such translations. Since 1955, English translations, where available, have also been collected. The collection is constantly checked in order to make sure that it is complete, that repealed texts are treated as such and that new items are integrated promptly after their entry into force. Although the member States of the Berne Union are supposed to communicate promptly to the International Bureau all new laws and official texts concerning the protection of copyright (see Article 24(2) of the 1967 (Stockholm) and 1971 (Paris) Acts), the International Bureau regularly writes to the competent administrations of those States—and also to the administrations of non-member States—asking for the confirmation of information obtained from other than governmental sources or for a systematic review of the latest state of the information available in the International Bureau.

In 1986, there were over 10,000 texts, covering some 120 countries, in the collection of the International Bureau.

The most important texts have been published, in French, since 1888, in the monthly periodical *Le Droit d'auteur* and in English, since 1965, in the monthly periodical *Copyright*. Where no French or English translations are available, the International Bureau prepares the translations; where such translations are available from outside sources, the International Bureau generally checks their correctness. The number of legislative texts thus published before 1986 in French is estimated to be around 1,500 and that in English around 300. Some of the texts are the consolidated versions of a basic text amended several times, the consolidation being done by the International Bureau.

In the framework of its information tasks, the International Bureau maintains a library—essentially on legal subjects—in which it collects books dealing with copyright law, periodicals that exclusively or frequently carry articles on copyright law, and separate items (e.g., an article on copyright law extracted from a periodical not subscribed to by the library). They are all catalogued, and a monthly list of new acquisitions and selected articles is widely circulated throughout the world (in 1986, to 500 addresses in 92 countries). The library of the International Bureau is doubtless the oldest specialized library in the field, and its collection is probably among the most complete that there is. On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, it contained some 39,000 volumes of books and 19,000 volumes of periodicals and it was the recipient of 980 titles of periodicals. This is about ten times more than what it had 27 years earlier (in 1960) when the library, as part of the International Bureau, was moved from Berne to Geneva. The library is also the center of the printed archives of the International Bureau. Approximately 30 percent of the holdings deal with copyright law, whereas the rest deals with industrial property law or general legal subjects. The library has a reading room open to the public, which was visited by 200 readers in 1960 and 2,350 readers in 1985.

As a tool for its information tasks, the International Bureau has prepared multilingual glossaries of terms used in copyright law. In the early nineteen-eighties, it published them in the following versions: English-French-Spanish (1980), English-French-Arabic (1980), English-French-Russian (1981) and English-French-Portuguese (1983).

Studies. The International Bureau has been conducting studies in the field of the law of copyright from the very beginning. The studies have two principal aims: one is to call attention to the desirability of changes at the national level or in international relations because of changing social, economic or technological circumstances; the other is to analyze and explain changes that have been effected in national laws and international treaties. Such studies have become particularly numerous and important since the early nineteen-sixties. They are separately considered in the part entitled "Copyright Law Subjects of Topical Interest," below.

Changing social and economic conditions are making changes necessary also in the legislations of developing countries. The International Bureau has been studying how best to meet those

needs, and among the important results of those studies are the preparation and the publication of model laws for developing countries (see below), including in particular the Tunis Model Law on Copyright for Developing Countries, completed in 1976 by an intergovernmental committee of experts in the capital of Tunisia.

More is said about studies in the part entitled "Development Cooperation in the Field of Copyright," below.

The studies are carried out by the staff of the International Bureau, with or without the help of meetings of specialists, governmental or non-governmental. Their results are reflected in publicly available documents, in articles in the periodicals of the International Bureau or in separate publications of that Bureau. During the past 98 years, hundreds of articles commissioned by the International Bureau and written by specialists from scores of different countries have been published in the said periodicals.

As far as the analysis and explanation of the meaning of, or changes in, national laws, including the analysis of court decisions, are concerned, they are primarily the subject of articles published in the periodicals of the International Bureau. Some 700 such articles have been so published so far. They were mostly written by specialists of the countries concerned. From time to time, the International Bureau tries to give a general picture of the state of the national legislations on copyright by preparing synoptic tables which show—in a way to make comparisons easy—the solutions given to the most important questions in the different national laws at a given point in time.

But as far as analysis and explanations are concerned, the International Bureau itself is the author of countless papers which explain proposed or existing treaties in the field of copyright. The preparatory documents of the various conferences of revision of the Berne Convention and the "Records" (*Actes*) of such conferences are among the most important examples of such published studies. They run into more than a thousand pages.

Among the commentaries on existing treaties, the following three—each a separate book—deserve particular attention: *Guide to the Berne Convention* (1978), *Guide to the Rome and Phonograms Conventions* (1981) and *Guide to the Madrid Convention on Double Taxation* (1985). They are the work of Claude Masouyé who served the International Bureau, with great distinction, during the period from 1961 to 1986 and who, during the last ten years of that period, was the Director of the Public Information and Copyright Department of that Bureau.

Services. Among the services rendered by the International Bureau, the most important are those rendered to developing countries. They are discussed in detail in the chapter entitled "Development Cooperation in the Field of Copyright," below.

Monthly Periodicals. As already stated, *Le Droit d'auteur*, started as a monthly periodical with the January 1888 issue and, since then, has been published, without any interruption, even during the two world wars, so that, by the end of 1985, 1,176 issues had been published. The number of printed pages was 128 in 1888, 168 in 1908, 156 in 1928, 152 in 1948, 272 in 1968, 499 in 1978 and 418 in 1985. The total number of printed pages during the 98 years between 1888 and 1985 is 20,863. *Copyright* started as a monthly periodical in 1965 and the total number of printed pages during the 21 years between 1965 and 1985 is 7,000. The number of subscribers, in 1985, to each of those two periodicals was 650 and 780, respectively. During the years 1962, 1963 and 1964, the major part (although not the totality) of the contents of the monthly issues of *Le Droit d'auteur* was also published in English. The title of that English periodical, during those years, was *Le Droit d'auteur* (*Copyright*).

Claude Masouyé

Special Information on Request. Since such information is mainly requested by developing countries, reference is made to the part entitled "Development Cooperation in the Field of Copyright," below.

Official Languages. The original (1886) text of the Berne Convention provided that "The official language of the International Bureau shall be the French language" (Final Protocol of 1886, second paragraph of point 5). This provision was maintained until the conference of revision of 1967 (Stockholm). The Berne Convention ceases to speak about the official languages of the International Bureau beginning with the 1967 (Stockholm) Act since, by virtue of that Act and by virtue of the WIPO Convention of 1967, the International Bureau of the Berne Union has been replaced by the International Bureau of WIPO. The WIPO Convention itself is silent on the question of official languages, presumably because of the need to allow flexible solutions. And, indeed, there has been a constant evolution since 1963: more and more languages are used in more and more fields by the International Bureau. By 1986, the situation was as follows. English and French are generally used to the same extent by the International Bureau and in practically all its activities (correspondence, publications, working documents,

interpretation in meetings, etc.). Spanish is also used in correspondence. Arabic, Russian and Spanish are used in many publications and documents and a substantial part of the meetings. Some publications have been translated and distributed also in Chinese, German, Italian, Japanese and Portuguese. A commentary on the Berne Convention was translated and published in Hindi.

Emblem. The International Bureau has used an emblem since approximately 1960. It was Jacques Secrétan, then Director of the International Bureau, who decided that the International Bureau should use an emblem and what the emblem should consist of. In the middle of the emblem, at that time, was the word "BIRPI." Since 1970, that has been replaced by "WIPO" or its equivalent in French ("OMPI") or other languages. Around that word, which is in the middle of a circle, there is a second, outer circle, and between the two circles are five designs symbolizing fields of activity whose results may be the subject of intellectual property. They are the following: (i) the neck of a violin, symbolizing music; it may be interpreted both as a reference to the copyright of authors (here, composers) and as a reference to the so-called neighboring rights of performing artists (here, musicians); (ii) a human hand holding what may be a pen, a pencil, a painter's brush or a sculptor's chisel; it may be interpreted as symbolizing a writer of literary works or an artist of the plastic arts (who paints paintings, draws drawings, etches etchings or makes sculptures); in any case, it is a reference to copyright law; (iii) a cogwheel; a cogwheel is an element of many (mechanical) inventions; it symbolizes inventors and is a reference to the patent law; (iv) a book; it is a reference to the copyright of authors (writers); (v) the head of wheat; wheat is a plant and the symbol was probably chosen in anticipation of what, a few years later, became a reality, namely, the links that have been established and still exist between the International Bureau and the International Union for the Protection of New Varieties of Plants (UPOV).

Finances of the Union

First Occurrence in the Berne Convention and the System of Contributions. The original (1886) text of the Berne Convention provides that the expenses (*dépenses*) of the Bureau of the Berne Union "shall be shared (*supportées en commun*) by the contracting countries" (sixth paragraph of point 5 of the Final Protocol). In the Final Protocol of 1886, the so-called "class-and-unit system" of contributions—already in use in the Paris Union founded in 1883—is also defined: there are six "classes" (I, II, III, IV, V and VI); a number of "units" are assigned to each class, namely, 25, 20, 15, 10, 5 and 3, respectively; the number of the countries belonging to each class is multiplied by the appropriate number of units, and the products of the multiplications are added; the amount of the effective expenses in each given year is divided by the total number of units and the resulting quotient is the amount of contribution to be paid per unit. The contributions were in the nature of reimbursement to the Swiss Confederation since the Swiss Confederation advanced the funds necessary for covering the expenses when they arose.

For example, the Management Report (*Rapport de gestion*) of the International Bureau of the Berne Union for 1888 shows that, the following number of countries having belonged in the classes indicated, the contributions of 23,506 Swiss francs were divided as follows:

4 countries in Class I give	4 x 25	=	100 units
1 country in Class II gives	1 x 20	=	20 units
2 countries in Class III give	2 x 15	=	30 units
1 country in Class V gives	1 x 5	=	5 units
2 countries in Class VI give	2 x 3	=	6 units
	Total		161 units

The amount of 23,506 francs divided by 161 units gives 146 francs per unit. Consequently, the amount to be paid by each country was as follows:

for a country in Class I,	146 x 25	=	3,650 francs
for a country in Class II,	146 x 20	=	2,920 francs
for a country in Class III,	146 x 15	=	2,190 francs
for a country in Class V,	146 x 5	=	730 francs
for a country in Class VI,	146 x 3	=	438 francs

Choice of Class. The first members of the Berne Union chose the following classes of contribution: Class I: France, Germany, Italy, United Kingdom; Class II: Spain; Class III: Belgium and Switzerland; Class IV: none; Class V: Haiti; Class VI: Luxembourg and Tunisia.

The Final Protocol of 1886 stated the principle of free choice of class. It did so in the following terms: "Each country shall declare, at the time of its accession, in which of the above-mentioned classes it wishes to be placed (*rangé*)" (ninth paragraph of point 5). The 1928 (Rome) Act stated for the first time that a country may change class. It did so in the following terms: "Each country shall declare, at the time of its accession, in which of the above-mentioned classes it wishes to be placed but it may subsequently, at any time (*toujours*), declare that it wishes to be placed in another class" (Article 23(4)). This rule, subject to small changes in wording, was repeated in the 1967 (Stockholm) Act, but the following two sentences were added to it: "If it [a country changing class] chooses a lower class, the country must announce it to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session." (Article 25(4)(b)).

The 1967 (Stockholm) Act also created a new class. In that class, contributions are the lowest: it is Class VII, and the number of units corresponding to it is one.

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the countries members of the Berne Union belonged in the following classes for the purposes of computing their contributions:

Class I: France, Germany (Federal Republic of), United Kingdom (3);

Class II: Japan, Spain (2);

Class III: Australia, Belgium, Canada, Italy, Netherlands, Sweden, Switzerland (7);

Class IV: Brazil, Czechoslovakia, Denmark, Finland, India, Ireland, Mexico, Norway, South Africa (9);

Class V: German Democratic Republic, New Zealand, Portugal, Venezuela (4);

Class VI: Argentina, Austria, Bulgaria, Cameroon, Chile, Côte d'Ivoire, Greece, Hungary, Israel, Lebanon, Libya, Madagascar, Morocco, Pakistan, Philippines, Poland, Romania, Senegal, Tunisia, Turkey, Yugoslavia, Zaire (22);

Class VII: Bahamas, Barbados, Benin, Burkina Faso, Central African Republic, Chad, Congo, Costa Rica, Cyprus, Egypt, Fiji, Gabon, Guinea, Holy See, Iceland, Liechtenstein, Luxembourg, Mali, Malta, Mauritania, Monaco, Niger, Rwanda, Sri Lanka, Suriname, Thailand, Togo, Uruguay, Zimbabwe (29).

Amount of the Contributions. The Final Protocol of 1886 said that "until a new decision [is made], they [the expenses, *les dépenses*] cannot exceed the sum of 60,000 [Swiss] francs a year. This sum may be increased, if necessary, by the simple decision of one of the [Revision] Conferences provided for in Article 17 [of the original (1886) text]" (sixth paragraph of point 5). The 1928 (Rome) Act fixed the total amount of the expenses at a maximum of 120,000 Swiss francs per year (Article 23(1)). The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HELVETIA
CONVENTION
DE BERNE POUR
LA PROTECTION
DES ŒUVRES
LITTERAIRES
ET ARTISTIQUES
1886-1986

1948 (Brussels) Act fixed the maximum amount at 120,000 gold francs (*francs-or*) and added that the amount could be increased, if necessary, not only by a revision conference but also by a unanimous decision of the countries of the Union (Article 23(1)). The latter possibility was used several times thereafter and, as far as the countries not members of the Assembly are concerned, it is still used at the present time (in the Conference of Representatives acting as a Conference of Plenipotentiaries).

It is to be noted that, until the entry into force of the 1967 (Stockholm) Act, the system was the following: the Contracting States did not vote a budget; they left it to the Swiss Government to authorize expenses; they merely fixed a ceiling for the expenses; the expenses actually incurred were paid—advanced—by the Swiss Government; once yearly accounts were established and the actual amount of the expenses for the preceding year was known, the Contracting States reimbursed the Swiss Government according to the class-and-unit system.

Although the 1967 (Stockholm) Act preserved the class-and-unit system for the purposes of calculating contributions, it changed the system in all other respects (see Article 25): the Assembly of the Berne Union has to vote a budget in advance of the financial exercise; the budget shows, as a component of the expected income, the total amount of the contributions; the contributions are payable on the first day of each calendar year. There is no maximum but a fixed amount. The expenses are paid by the International Bureau from its own funds (not from funds advanced by the Swiss Government), and the contributions are owed to the International Bureau (not to the Swiss Government).

Other Financial Provisions. Article 25 of the 1967 (Stockholm) Act also introduced some of the other financial provisions usual for intergovernmental organizations: the need for a budget (paragraph (1)(a)); the enumeration of the possible sources of income (paragraph (3)); the possible loss of the right to vote for a country not having paid its contributions for two full years (paragraph (4)(e)); the constitution of a working capital fund (paragraph (6)); the auditing of the accounts (paragraph (8)).

The 1967 (Stockholm) Act squarely faces the accounting problem flowing—and existing since the International Bureau of the Paris Union was united with the International Bureau of the Berne Union in 1893—from the fact that the International Bureau (of WIPO) is working not for the Berne Union alone but for several (in 1986, eleven different) Unions, each of which has financial autonomy. The said Act provides, in particular, that "Expenses not attributable exclusively to the [Berne] Union but also to one or more other Unions [e.g., the Paris Union] administered by the Organization [WIPO] shall be considered as expenses common to the Unions. The share of the [Berne] Union in such common expenses shall be in proportion to the interest the [Berne] Union has in them." (Article 25(1)(c)).

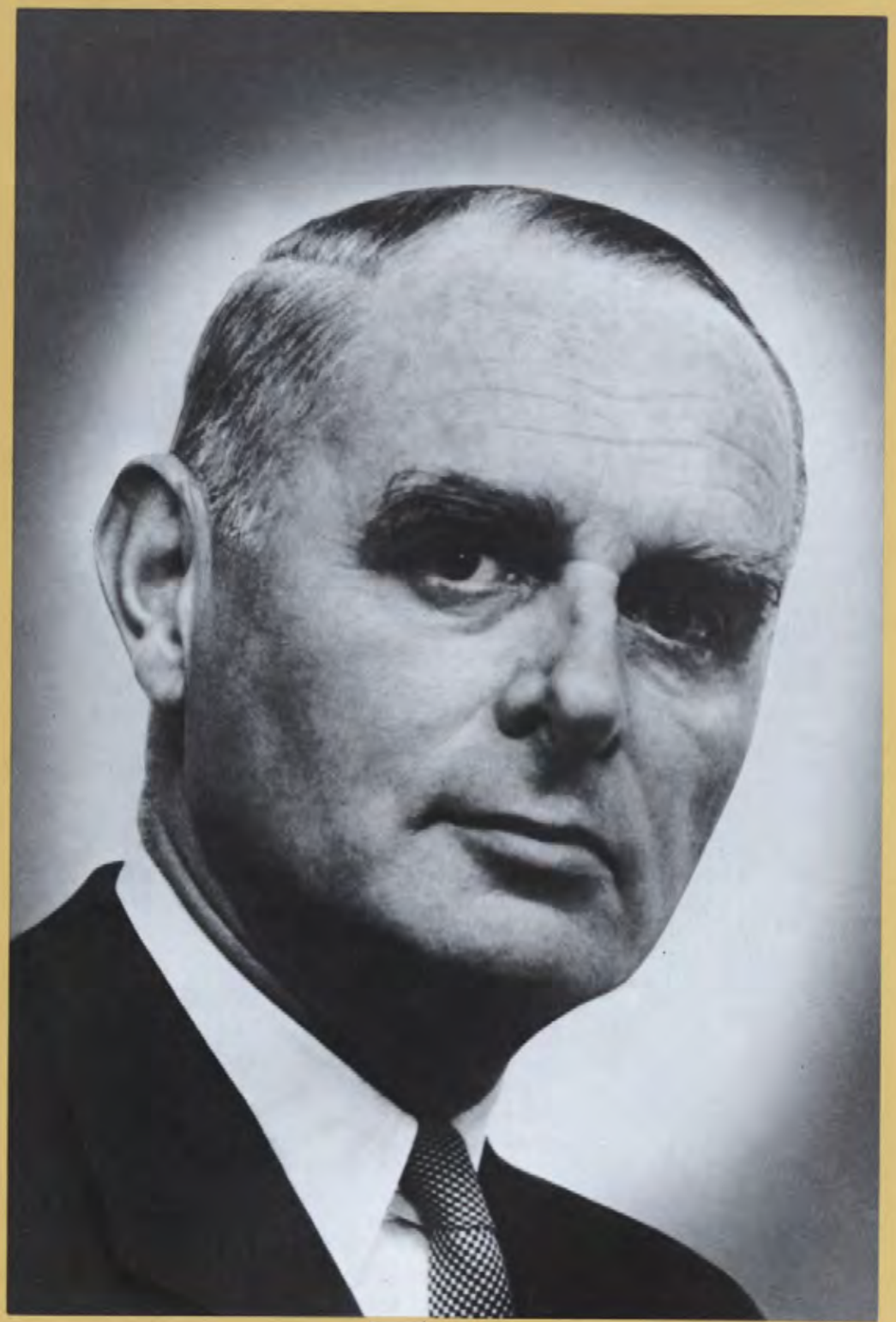
Evolution of the Contributions and the Expenses. From the beginning, the amount of the contributions has been established and the contributions have been payable in Swiss francs. The accounts of the International Bureau are also kept in Swiss francs. The yearly amount of the expenses of the International Bureau of the Berne Union, or on account of the Berne Union, was 23,464 Swiss francs in 1888 and doubled (exceeding the following amounts for the first time) in the following years: 50,000 francs in 1919, 100,000 francs in 1929, 200,000 francs in 1957, 400,000 francs in 1963, 800,000 francs in 1968, 1,600,000 francs in 1973 and 3,200,000 francs in 1978.

The yearly amounts, in Swiss francs, of the expenses of the Berne Union and of the contributions to the International Bureau on account of the Berne Union are shown in the following table:

Year	*Expenses*	*Contributions*	*Year*	*Expenses*	*Contributions*
1888	23,464	23,506	1938	80,280	75,218
1889	22,889	22,960	1939	72,544	69,009
1890	20,616	20,500	1940	80,461	78,276
1891	23,331	23,452	1941	82,451	80,087
1892	24,270	24,272	1942	80,249	78,393
1893	38,073	38,065	1943	87,152	85,769
1894	34,747	34,736	1944	92,855	90,245
1895	33,851	33,901	1945	95,292	93,518
1896	42,291	42,126	1946	105,354	100,073
1897	34,178	34,338	1947	124,316	121,177
1898	33,946	33,807	1948	153,934	148,970
1899	37,184	37,400	1949	176,545	165,786
1900	38,694	37,587	1950	171,671	164,561
1901	39,069	37,830	1951	179,505	171,320
1902	40,210	38,800	1952	177,815	171,381
1903	44,178	42,785	1953	177,137	171,378
1904	43,228	39,950	1954	179,663	171,400
1905	37,375	36,135	1955	187,026	171,400
1906	38,044	36,135	1956	191,445	171,400
1907	39,434	37,230	1957	248,372	231,400
1908	43,468	41,847	1958	249,527	231,400
1909	39,268	60,000	1959	247,311	231,400
1910	39,599	60,000	1960	248,260	231,400
1911	38,503	60,000	1961	280,844	231,400
1912	41,776	60,000	1962	359,303	341,762
1913	43,775	41,673	1963	417,981	366,663
1914	38,849	36,333	1964	424,224	378,508
1915	40,432	38,848	1965	693,836	624,009
1916	39,858	38,554	1966	685,868	640,066
1917	41,203	39,789	1967	743,607	644,178
1918	48,364	46,977	1968	863,542	800,000
1919	53,900	52,167	1969	1,070,558	900,000
1920	57,354	56,065	1970	1,138,309	1,000,000
1921	61,949	100,000	1971	1,235,024	1,250,000
1922	64,344	100,000	1972	1,341,259	1,350,000
1923	73,838	72,405	1973	1,463,132	1,500,000
1924	70,949	67,653	1974	1,875,945	1,683,000
1925	74,054	71,157	1975	1,980,939	1,950,000
1926	82,096	78,555	1976	2,340,590	2,535,000
1927	87,606	82,966	1977	3,002,260	3,001,000
1928	96,524	92,023	1978	3,649,680	3,733,000
1929	101,335	83,073	1979	4,256,592	3,750,000
1930	88,294	83,344	1980	3,915,611	3,846,000
1931	88,623	84,511	1981	4,734,623	3,846,000
1932	86,799	83,492	1982	4,483,756	4,211,000
1933	82,094	78,776	1983	4,483,756	4,211,000
1934	81,686	78,441	1984	5,287,781	5,048,000
1935	85,022	81,460	1985	5,287,781	5,048,000
1936	83,699	79,525	1986	6,016,000	5,761,500
1937	79,255	75,425			

Because of the gradual diminution of the purchasing power of the Swiss franc (or, for that matter, any other currency) during the last one hundred years, the above figures do not give a true picture of the increase "in real terms" either of the expenses or of the contributions. Taking as an example the fact that a daily issue of a newspaper—the *Journal de Genève*—cost 10 Swiss cents in 1888 and one Swiss franc in 1986—the purchasing power of the amounts concerning the years after 1888 has become gradually lower so as to become in 1986 some ten times less than it would have been in 1888.

Plans for Changing the System of Contributions. The class-and-unit system is used not only in the Paris Union, the Berne Union and in WIPO but also in a few other intergovernmental organizations, for example, among the United Nations specialized agencies, in the Universal Postal Union and the International Telecommunication Union. On the other hand, the other specialized agencies and the United Nations itself have a contribution system in which countries have no choice but are assessed mainly on the basis of their relative wealth.



Georg H. C. Bodenhausen, 1963-1973
"The right man at the right time"

The first, and so far only, change in the contribution system of the Berne Union was made by the conference of revision of 1967 (Stockholm), which, as already stated, added one new class (Class VII) to the six classes (I, II, III, IV, V and VI) established in, and in existence since, 1886. That new class (with one unit) raised from 1:8.33 to 1:25 the ratio between the contribution class with the highest and the contribution class with the lowest amount of contributions. Accordingly, in 1986, any of the three countries belonging to Class I paid 5.88%, and any of the 29 countries belonging to Class VII paid 0.24% of the total contributions in the Berne Union.

The difference between the highest and the lowest contributions is less than in most other intergovernmental organizations. For example, in the United Nations, it is 25 to 0.01, or two thousand five hundred-fold. Therefore, the question was raised, in the Assembly of the Berne Union (and other Governing Bodies), whether some further changes should not be introduced in the system of contributions.

The matter has been under consideration since 1977 but no decisions have been reached by the beginning of 1986, the year of the centenary of the Berne Convention.

Amendment of the Administrative Clauses

As already stated, the provisions on the Assembly of the Berne Union, on the Executive Committee of that Assembly, on the role of the International Bureau of WIPO and the Director General of WIPO in respect of the Berne Union, and on the finances of the Berne Union—that is, Articles 22, 23, 24 and 25 of the 1967 (Stockholm) Act—are generally referred to as "the administrative clauses." The conference of revision of 1967 (Stockholm), conscious of the fact that revising the text of a multilateral treaty in a conference of revision is a difficult and slow task, decided that there should be a simpler method of revising the said administrative clauses. That simpler method —which should also yield results faster—is provided for in Article 26 of the 1967 (Stockholm) Act and consists of the possibility of amending the said administrative clauses, including Article 26 itself, by the Assembly of the Union. The entry into effect of any such amendment requires that three fourths of the countries members of the Assembly (members, that is, at the date of the adoption of the amendment) notify their acceptance of it to the Director General. It is to be noted that, once the amendment enters into effect, it binds also those countries of the Assembly which were members of the Assembly at the said date and which have not notified their acceptance of the amendment. There is one exception to this rule: any amendment that increases the financial obligations of countries of the Berne Union binds only those countries which have notified their acceptance of the amendment. Any country that becomes a member of the Assembly after any amendment enters into force is automatically bound by it. All this is provided for in the said Article 26, which, by the way, is identical in the 1967 (Stockholm) and 1971 (Paris) Acts.

The possibility of amendment offered by the Article under consideration was made use of for the first—and so far only —time in 1979, when the Assembly decided to replace its triennial ordinary sessions by biennial ordinary sessions, and the triennial budget and annual budgets by a biennial budget. For that purpose, the Assembly adopted amendments to Article 22(2)(a)(vi) and (7)(a) and Article 23(6)(a)(ii) and (iii). The amendments entered into force on November 19, 1984, but, in fact, the amendments were applied from the moment they were adopted by the Assembly, and they were so applied by virtue of a corresponding unanimous decision of the Assembly. Amendments increasing the financial obligations have not so far been adopted by the Assembly.

The Locations of the International Bureau

The International Bureau has been in Switzerland from the very beginning: first in Berne, later and now (in 1986) in Geneva.

The first office of the United Bureaus, in 1886, was in an apartment of ten rooms at Kanonengasse 14 in Berne. Six rooms were used for office purposes, the other four were the apartment of the janitor and for storage. All those premises were rented.

A big change occurred in 1904 when the United Bureaus moved into the Helvetiastrasse in Berne. They rented most of a four-storey house. The house number was 7.

The Helvetiastrasse house was the home of the United Bureaus for 56 years, that is, until 1960.

In 1958, the construction of the first building belonging to the United Bureaus started, in Geneva, on a piece of land between the Avenue Giuseppe-Motta (*Conseiller fédéral* (Minister) from 1912 to 1940) and the Chemin des Colombettes ("*colombette*" is an edible mushroom (*lepiota naucina* in Latin, *large spored lepiota* in English, *rosablättriger Schirmling* in German, also called *bisette* in French); it was abundant in the suburban meadows of Geneva, where the street (*chemin*) is today)). The address of that building is 32, chemin des Colombettes. It is some hundred meters from the Place des Nations, a large square on one side of which is the main entrance to the Palais des Nations, the headquarters (since 1936) of the League of Nations and, since 1945, of the Geneva Office of the United Nations.

The construction of the said building of the United Bureaus was completed in 1960, and the Bureaus moved from Berne to Geneva in 1960. It is now referred to as "the BIRPI Building." Operations started there on July 20, 1960.

The BIRPI Building, when constructed, had four floors and an unequipped conference room. The size of the building is the same in 1986 as it was in 1960 but, in 1964, the (only) conference room, with some 60 seats, was furnished with simultaneous interpretation equipment. (In 1982, the conference room was dismantled.) The first telex equipment was installed in 1965. The first electric typewriters were purchased in 1964. The first word-processors were installed in 1980. Telefax was installed in 1985. The computerization of administrative operations started in 1984. In 1960, the BIRPI Building was too large for the needs of the International Bureaus and one of its floors was rented —from 1959 to 1969—to the European Free Trade Association (EFTA). When the WIPO Building (see below) was completed, two of its floors were, once again, rented out; such rentals ended in 1984 and 1986, respectively. On the ground floor, office space is rented (in 1986) to a bank and to a travel agency.

The volume of the BIRPI Building is 14,720 cubic meters. It has two small elevators.

All the rest is office space. The active collections of the library and the library's reading room are (in 1986) also in the BIRPI Building.

With the growth of the staff (see below) and the increased need for conference rooms for meetings, the BIRPI Building became too small and during the nineteen-seventies part of the staff had to be located in a temporary building constructed next to the BIRPI Building (1971 to 1978) and in several rented premises

in various places in Geneva (56 and 58, rue de Moillebeau from 1968 to 1971; 20, rue de Lausanne from 1974 to 1976; 31, avenue de Budé from 1975 to 1978; the headquarters of the World Health Organization (1970, 1973-1974, 1976-1978); the headquarters of the International Labour Office (1978)).

The construction of a new, much larger building, was decided in 1970. The construction was completed in 1978; it was inaugurated, for the staff, on June 16, 1978, and, in a ceremony for the delegates of Governments, on September 24, 1978.

The new building is usually referred to as "the WIPO Building." Its address is 34, chemin des Colombettes. It is next to and connected with the BIRPI Building. On its other side, it is on the edge of the Place des Nations. Its volume is 82,315 cubic meters. It has 19 levels: 14 above ground and five under ground. Four of the underground floors are garages for 220 automobiles. It has (in 1986) three conference rooms: one, with 270 seats, is equipped for simultaneous interpretation in four languages; a second, with 70 seats, is equipped for simultaneous interpretation in three languages; the third, with 50 seats, is without such equipment. There are six elevators. The top floor is a cafeteria open to delegates, the staff and the general public. The view from the top floor is circular: the Alps, including the Mont Blanc (the highest peak in Europe), are visible towards the South; the Lake of Geneva (*Lac Léman*) is visible towards the East; the Jura mountains are visible towards the North; and parts of the city of Geneva, including the Cathedral and the *jet d'eau*, with the Salève mountain on the horizon, are visible towards the West and the South.

The WIPO Building was planned, including its internal decoration, and its construction was supervised, by Pierre Braillard, a Swiss architect from Geneva, who was also the architect of the BIRPI Building. The WIPO Building is an arc-shaped building, almost completely covered by glass. The glass is blue: its tint changes with the color of the sky between pale blue and dark blue.

The main internal decorative element is the lobby, containing a *mur fontaine* and featuring a cupola. The *mur fontaine* consists of a wall of thousands of small marble blocks (each as big as a matchbox); from invisible openings, in the upper part, water trickles down the wall, changing the marble's illumination and causing gentle sounds of splashing in the basin to which the water eventually finds its way. The top of the cupola consists of a round window through which one can see the "tower," as the building is sometimes called. The cupola carries an inscription in Latin, text of Arpad Bogsch, the Director General of WIPO in 1978, reading as follows: "NASCUNTUR AB HUMANO INGENIO OMNIA ARTIS INVENTORUMQUE OPERA. QUAE OPERA DIGNAM HOMINIBUS VITAM SAEPIUNT. REIPUBLICAE STUDIO PERSPICIENDUM EST ARTES INVENTAQUE TUTARI." The English translation of this text is the following: "Human genius is the source of all works of art and invention. These works are the guarantee of a life worthy of men. It is the duty of the State to ensure with diligence the protection of the arts and inventions."

This was the situation at the beginning of 1986, the year of the centenary of the Berne Convention.

The Staff of the International Bureau

The staff of the International Bureau—and by "International Bureau" is meant, from 1893 to 1970, the United International Bureaus, and, since 1970, the International Bureau of WIPO—grew from one in 1885 to 291 in January 1986, the year of the centenary of the Berne Convention. The number of 10 was reached in 1904, 20 in 1929, 50 in 1960, 110 in 1970, and 200 in 1979. Only part of the staff works for the Berne Union.

The following list shows the number of staff for each of the years from 1886 to January 1986:

1886: 2; 1887: 2; 1888: 4; 1889: 4; 1890: 4; 1891: 4; 1892: 5; 1893: 7; 1894: 7; 1895: 7; 1896: 7; 1897: 7; 1898: 7; 1899: 8; 1900: 9; 1901: 9; 1902: 9; 1903: 9; 1904: 10; 1905: 10; 1906: 10; 1907: 10; 1908: 10; 1909: 10; 1910: 10; 1911: 11; 1912: 12; 1913: 13; 1914: 14; 1915: 14; 1916: 14; 1917: 14; 1918: 14; 1919: 12; 1920: 11; 1921: 12; 1922: 14; 1923: 14; 1924: 17; 1925: 18; 1926: 18; 1927: 18; 1928: 18; 1929: 20; 1930: 21; 1931: 21; 1932: 20; 1933: 20; 1934: 20; 1935: 20; 1936: 19; 1937: 18; 1938: 17; 1939: 17; 1940: 17; 1941: 17; 1942: 17; 1943: 18; 1944: 20; 1945: 20; 1946: 20; 1947: 20; 1948: 22; 1949: 22; 1950: 22; 1951: 22; 1952: 22; 1953: 22; 1954: 27; 1955: 27; 1956: 28; 1957; 28; 1958: 27; 1959: 45; 1960: 50; 1961: 52; 1962: 52; 1963: 61; 1964: 63; 1965: 64; 1966: 68; 1967: 73; 1968: 87; 1969: 97; 1970: 110; 1971: 114; 1972: 131; 1973: 144; 1974: 150; 1975: 158; 1976: 171; 1977: 174; 1978: 188; 1979: 200; 1980: 244; 1981: 264; 1982: 262; 1983: 270; 1984: 280; 1985: 288; January 1986: 291.

Complete data concerning the nationality of the staff are available since 1962, when the staff consisted of 52 persons. In that year, the staff came from five different countries, namely, from Algeria 1, from France 6, from Italy 3, from Switzerland 39, and from the United Kingdom 3. In January 1986, the staff consisted of 291 persons (133 men and 158 women), and came from 51 different countries, namely, Algeria 1, Argentina 4, Australia, 1, Austria 2, Belgium 6, Bolivia 1, Brazil 1, Bulgaria 1, Burma 1, Cameroon 1, Canada 2, Chile 4, China 1, Colombia 2, Czechoslovakia 1, Denmark 1, Egypt 4, France 80, German Democratic Republic 1, Germany (Federal Republic of) 12, Ghana 4, Greece 1, Honduras 1, Hungary 1, India 3, Iran 1, Ireland 1, Italy 11, Japan 6, Lebanon 1, Netherlands 6, Nigeria 1, Pakistan 1, Peru 3, Philippines 4, Portugal 4, Senegal 1, Singapore 1, Somalia 1, Soviet Union 6, Spain 4, Sri Lanka 4, Sudan 1, Sweden 3, Switzerland 58, Thailand 1, Tunisia 1, United Kingdom 24, United States of America 7, Uruguay 1, Viet Nam 1, stateless 1.

In January 1986, the Director General was Arpad Bogsch, and the staff consisted of the following persons (the name of the country indicates the person's nationality, whereas an asterisk indicates that the person is a woman):

Deputy Directors General: Pfanner, Klaus (Federal Republic of Germany); Porzio, Marino (Chile); Kostikov, Lev (Soviet Union);

Director of Department: Masouyé, Claude (France);

Legal Counsel: Ledakis, Gust (United States of America);

Directors of Division: Alikhan, Shahid (India); Baeumer, Ludwig (Federal Republic of Germany); Claus, Paul (Belgium); Curchod, François (Switzerland); Ficsor, Mihály (Hungary); Harben, Roger (United Kingdom); Idris, Kamil (Sudan); Kadirgamar, Lakshmanathan (Sri Lanka); Keefer, Thomas (Canada); Pareja, Enrique (Argentina); Thiam, Ibrahima (Senegal);

Professionals of grade P5: Balleys, François (Switzerland); Bartels, Busso (Federal Republic of Germany); Blumstengel, Reiner (German Democratic Republic); Bouchez, Daniel (France); Daghash, Mohamed (Egypt); Davoudi, Bernard (Iran); Dondenne, Bernard (France); Favatier, Philippe (France); Franklin, Jordan (United States of America); Hansson, Bo (Sweden); Hargreaves, Alan (United Kingdom); Higham, Philip (United Kingdom); Jaccard, Albert (Switzerland); Kindler, Claude (Switzerland); Machado, Bruno (France); Maugué, Pierre (France); Moussa, Farag (Egypt); Pike-Wanigasekara, Indrani* (Sri Lanka); Quashie-Idun, James (Ghana); Scherrer, Normando (Brazil); Troussov, Vitaly (Soviet Union); von Schleussner, Anna* (Federal Republic of Germany); Werkman, Casper (Netherlands); Woodford, Clive (United Kingdom); Yu, Geoffrey (Singapore);

Professionals of grade P4: Achkar, Maurice (Switzerland); Andary, Raymond (Lebanon); Andrews, Patrick (United Kingdom); Daval, Anne* (France); Davila, Andrès (Colombia); Eckstein, Guy (Belgium); Erstling, Jay (United States of America); Espinosa, Octavio (Peru); Frammery, Gilles (France); Hirai, Tamotsu (Japan); Ilardi, Alfredo (Italy); Kecherid, Aly-Bey (Algeria); Lewenton, Michael (Federal Republic of Germany); Li, Jiahao (China); Lom, Helen* (United States of America); Negouliaev, Guennadi (Soviet Union); Qayoom, Maqbool (Pakistan); Rezounenko, Erven (Soviet Union); Rubio, Ernesto (Uruguay); Sagarminaga, Antonio (Spain); Sihlé, Pierre (France); Sturges, Guy (United Kingdom); Tchouvaev, Nikolai (Soviet Union); Tran-Thi, Thu-Lang* (Switzerland); Watt, Richard (United Kingdom);

Professionals of grade P3: Allemby, David (Canada); Chuasai, Jumbhot (Thailand); Derqué, Raymonde* (France); Di Palma, Salvatore (Italy); Gascou,

Pierre (France); Gattone, René (France); Geiger, Erika* (Switzerland); Hutchins, Keith (United Kingdom); Imperio, Romano (Italy); Leder, Charles (Federal Republic of Germany); Luther, Robert (United Kingdom); Mizutani, Yoshio (Japan); Nguyen Quang Hao (Viet Nam); Omokolo, Hilaire (Cameroon); Pérez-Fernández Ignacio (Spain); Pilowsky, Jorin (Chile); Royles, Malcolm (United Kingdom); Sevilla, Jaime (Philippines); Swaminathan, Anuradha* (India); Tagnani, Giovanni (Italy); Terbois, Vincent (Switzerland); Valarino, Henry (United Kingdom); Wheeler-Stuckey, Joanne* (Australia); Yoshikuni, Nobio (Japan); Yossifov, Vladimir (Bulgaria);

Professionals of grade P2: Beattie, Martin (United Kingdom); Damond, Andrée* (Switzerland); Fankhauser, Adèle* (Switzerland); Graf, Henri (Switzerland); Graffigna Sperling, Carlotta* (Italy); Grassioulet, Christian (France); Kawai, Akira (Japan); Onyeama, Geoffrey (Nigeria); Tyc, Vladimir (Czechoslovakia); Vegas, Sandra* (Peru);

General Service grade G7: Bartolo, Odile* (Switzerland); Hansson, Patricia* (United Kingdom); Kaufmann, Marc (Switzerland); Lévy, Nicole* (France); Pugin, Henri (Switzerland); Sagiati, Jean* (Switzerland); Schweizer, Jacques (Switzerland); Seinet, Eliane* (Switzerland); Simpson, Marjorie* (United Kingdom); Unterkircher, Rudolf (Austria); Vitte, Claire* (France);

General Service grade G6: Anticevic, Jean* (United States of America); Boulaire, Brigitte* (France); Claa, Carlos (Argentina); Cornish, Sheila* (United Kingdom); Devillard, Marie-José* (France); Gunther, Karin* (Federal Republic of Germany); Ivanovsky, Monique* (France); Julen, Eliane* (Switzerland); Keist, Laura* (Switzerland); Kindler-Garnier, Christiane* (Switzerland); Kiriella, Travice (Sri Lanka); Kraft, Nicole* (Switzerland); Leitao, Jaime (Portugal); Maisonneuve, Gérard (France); Milner, Claire-Lise* (Switzerland); Moelijker, Geertje* (Netherlands); Montagnier-Milcent, Marie-France* (France); Olesen, Susan* (United Kingdom); Pautasso, Marco (Italy); Pidoux, Chantal* (Switzerland); Porret, Solange* (Switzerland); Potyka, Edith* (Austria); Python, Danielle* (France); Ribes, Rosemary* (United Kingdom); Rouge-Luetto, Piera* (Switzerland); Schneiter, Anne* (Switzerland); Schneuwly, Gabriel (Switzerland): Skowronski, Gilbert (France); Slater, Mary* (Ireland); Stassin, Thérèse* (Belgium); Zeender, Sylla* (Switzerland);

General Service grade G5: Adella, Giuseppe (Italy); Albanesi, Huguette* (Switzerland); Berlioz, Jean-Pierre (France); Bernillon, Andrée* (France); Berthelet, Maryvonne* (Switzerland); Cassiau, Elisabeth* (France); Chapman Nyaho, Mawunu* (Ghana); Coeckelbergs, Yolande* (Belgium); Corvaro, Pietro (Switzerland); Disch, Michèle* (France); Elson, Pauline* (United Kingdom); Fraccaroli, Elfriede* (Federal Republic of Germany); Grare, Paulette* (France); Grebing, Christa* (Federal Republic of Germany); Grguric, Danièle* (France); Guioton, Alain (France); Hänni, Liliane* (France); Heitz, Gisèle* (France); Hudry-Prodont, Marie-Noëlle* (France); Jendrysiak, Irène* (France); Kippelen, Paulette* (France); Labory, Martine* (France); Lagnieu, Michel (France); Mazel, Ginette* (France); Mermet-Burnet, Madeleine* (France); Montasser, Farid (Egypt); Moyne-Picard, Fleurette* (France); Nallet, Anne-Marie* (France); Obez, Nicola* (United Kingdom); Pennacchioli, Luigi (Italy); Polier, Barbara* (Switzerland); Rauser, Boris (Switzerland); Riond, Eliane* (Switzerland); Rozensztajn, André (Switzerland); Schwab, Anne* (United Kingdom); Schwarz, Linda* (Netherlands); Taylor, Marie-Claude* (France); Utiger, Claude (Switzerland); Valvo, Jeannie* (France); Wetzel, Paul (Federal Republic of Germany);

General Service grade G4: Antonietti, Valerie* (Switzerland); Baigrie, Bernadette* (United Kingdom); Bastard, Christine* (France); Bernard-Pierrard, Isabelle* (France); Briffod, Mireille* (Switzerland); Carrier, Ragnhild* (Denmark); Ciclet, Germaine* (France); Cochard, Patricia* (Switzerland); Davis, Véra* (Belgium); de Sèves Rodrigues, Frederico (Portugal); de Vries, Chantal* (France); Delaune, Denise* (France); Driessens, Pascale* (France); Enz, Irmgard* (Switzerland); Giorgi, Giorgio (Italy); Groppi, Arlette* (Switzerland); Guette, Marie-Thérèse* (France); Guillaume, Janine* (Switzerland); Gumy, Danielle* (Switzerland); Hamano, Yumiko* (Japan); Hanberk, Doris* (Federal Republic of Germany); Holdam, Isabelle* (Switzerland); Humbert, Renée* (Switzerland); Ianna, Rita* (France); Ibarra, Liliana* (Peru); Jacono, Monica* (Italy); Jaczynska, Blanche* (France); Jean-Prost, Agneta* (Sweden); Jones, Arlette* (United States of America); Khadhraoui, Mohamed (Tunisia); Kongmark, Louise* (Sweden); Lausenaz-Gris, Jocelyne* (France); Leignier, Christine* (France); Lindecker, Françoise* (France); Llarina, Imelda* (Philippines); Marion, Andrée* (France); Martinez, Martine* (France); Massetti, Catherine* (France); Meili, Marianne* (Switzerland); Menezes, Victoria* (United Kingdom); Morel, Michel (France); Ortega, Amelia* (Philippines); Perry, Anne* (France); Pillonel, Odette* (Switzerland); Prielaida, Josette* (Switzerland); Robertson, Marion* (United Kingdom); Roessli, Brenda* (Switzerland); Rossi, Pietro (Italy); Saint-Marcel, Béatrice* (France); Santos, Eugénia* (Portugal); Schwab, Caroline* (Switzerland); Sinner, Martine* (Switzerland); Theunissen, Marie-Paule* (Belgium); Tirador, Ramon (Spain); Van der Putten, Anahid* (Netherlands); Vasquez, Rodrigo (Chile); Vorburger, Peter (Switzerland); Woirhaye, Dominique* (France); Zahra, Judith* (Federal Republic of Germany); Zarraga, Edita* (Philippines); Zollet, Dominique* (France);

General Service grade G3: Addae, Anita* (Ghana); Ahluwalia, Anil (India); Asseeff, Patrick (France); Baron, Jean-Luc (France); Baroni, Monique* (France); Beijer, Gijsbertus (Netherlands); Belaïch, Nicole* (France); Bernard-Costilhes, France* (France); Bourdin, Ursula* (Switzerland); Carballeda, Valeria* (Argentina); Compoint, Michèle* (France); Corsetti, Danielle* (France); Costa, Luis (Chile); Crawford, Diane* (United Kingdom); Deif, Nadia* (Egypt); Dondenne, Muriel* (France); Egorova, Svetlana* (Soviet Union); Garrote, Gabriela* (Argentina); Gordillo, Luz Maria* (Colombia); Guillon, Marie-Noëlle* (France); Kalombratsos, Alkiviadis (Greece); Kotalawala, Munidasa (Sri Lanka); Lanier, Lydie* (France); Legge, Sally* (Ghana); Leitao, Julio (Portugal); Meighan de Gibbs, Barbara* (Honduras); Mezière, Audrey* (France); Monllor, Pascal (France); Monnier, Sylvie* (Switzerland); Navas del Monte, Francisca* (Spain); Neusser, Antoni (stateless); Nilsvang, Ophélie* (France); Panchard, Julienne* (Switzerland); Pary, Lazaro (Bolivia); Pierre, Marie-Caroline* (France); Pillet, Annamma* (Switzerland); Repond, Josefina* (Switzerland); Robert, Paul (France); Sacchi, Patricia* (France); Shermarke, Marian* (Somalia); Steunenberg, Petronella* (Netherlands); Verdan, Rémy (Switzerland); Walenda, Anny* (France);

General Service grade G2: Trescazes, Thierry (France); Win, Pyu Pyu* (Burma); Yamaguchi, Satoe* (Japan).

Directors and Directors General

Until 1893, the International Bureau was headed by persons not yet bearing the title of Director of the International Bureau.

During the subsequent 83 years, there were six who had the title of Director, while the seventh person started with the title of Director only but later (during the last three years of his term) he also had the title of Director General of WIPO. The eighth incumbent holds the post of Director General of WIPO and is also Director of BIRPI, although the latter title is no longer used in practice.

Before the International Bureau became that of WIPO in 1970, the heads of the International Bureau were appointed by the Federal Council (roughly equivalent to a council of ministers) of the Swiss Confederation. They were all citizens of Switzerland, with the exception of the last one.

Several of them, before becoming Directors, played an important role in the public life of Switzerland: the first (Morel), was a former president of the Swiss federal parliament; the second (Comtesse), was a former president of the Swiss Confederation; the fourth (Ostertag) was a former president of the highest Swiss federal court. Three came from the ranks of the International Bureau itself: the third Director (Röthlisberger) had been with the International Bureau for 34 years, the fifth (Mentha), 24 years, and the eighth (Bogsch), ten years, before they were appointed Directors. The sixth (Secrétan), the seventh (Bodenhausen) and the eighth (Bogsch) were private lawyers in their former professional life, two of them (Secrétan and Bodenhausen) having been also professors of law, one having been also a government lawyer (Bogsch), and two of them (Secrétan and Bogsch) having also worked for other specialized agencies of the United Nations system of organizations (Secrétan for the International Labour Office, and Bogsch for Unesco).

The Directors General of WIPO, as has been already indicated, are not appointed by the Swiss Federal Council but are elected by the Member States in the General Assembly of WIPO.

In the following pages, a few lines will be devoted to each of these eight persons.

Henri Morel was born at Claye (near Paris, France) on June 13, 1838, and he died at Bex (Canton of Vaud, Switzerland) on May 18, 1912. He was a citizen of Switzerland.

Morel was a lawyer by profession, was a judge at the tribunal of La Chaux-de-Fonds (Canton of Neuchâtel) and had an important career as a politician. He was a member of the Swiss federal parliament as deputy to its lower house, and, towards the end of his political activity, he was elected president of the said house of parliament.

He entered the service of the United Bureaus on January 1, 1888, with the title of Secretary General but, since there was no Director and he headed the Bureaus, he was, from that date, *de facto* Director. He received the title of Director on January 1, 1893. He retired on March 31, 1912, six weeks before his death. Thus, he was the chief executive of the United Bureaus for 24 years, between the ages of 50 and 74.

He was the man who really started the United Bureaus. He played a very important intellectual role in the preparation of, and negotiations in, the conferences of revision of the Paris Convention held in Brussels in 1897 and 1900 and the conferences of revision of the Berne Convention held in Paris in 1896 and in Berlin in 1908.

As there are no longer any people alive who knew Morel personally, one must turn to a necrology, published in 1912 in *La Propriété industrielle* (page 72): "In the diplomatic conferences and in the numerous congresses in which he participated, everybody appreciated the clarity of his mind, his perspicacity, his profound knowledge and his *bonhomie*, his frankness and the confidence one could place in him .... He suffered [in the last years of his life] less from the illness that slowly destroyed him than from the thought that he would have to give up working. His wish was to die in harness, in the middle of his work, since nothing was more repulsive to him than the thought that he would have to end his life in the idleness of retirement."

Robert Comtesse was born at Valangin (Canton of Neuchâtel, Switzerland) on August 14, 1847, and he died at La Tour-de-Peilz (Canton of Vaud, Switzerland) on November 17, 1922. He was a citizen of Switzerland.

Comtesse studied law at Heidelberg and Paris, practiced law in La Chaux-de-Fonds (Canton of Neuchâtel) and had a brilliant political career, particularly as deputy (*conseiller national*) in the Swiss federal parliament (from 1883 to 1899), and as minister (*conseiller fédéral*) in the Swiss federal government (from 1899 to 1912), serving two terms (1904 and 1910) as president of the Swiss Confederation.

He was Director of the United Bureaus from April 1, 1912, to December 31, 1921, that is, for nine years, from the 65th year to the 74th year of his life.

During his tenure, most of Europe was engaged in the first world war (1914-1918), and thus the period was hardly propitious for developing the Berne Union. But the Berne Union survived the war.

The following passage from his necrology, published in 1922 in *La Propriété industrielle* (page 172), throws some light on the eminent personality of Comtesse: "His main qualities were ... an inexhaustible kindness showing an exceptional goodness, exquisite tact due to the remarkable penetration and versatility of his mind and to the prompt and sure evaluation of the realities and possibilities of a given situation, evaluation which was the fruit of a profound knowledge of men and things."

Ernest Röthlisberger was born at Berthoud (Canton of Berne, Switzerland) in 1858, and he died in Berne on January 29, 1926. He was a citizen of Switzerland.

Röthlisberger studied theology, languages, history and philosophy in Berne, Montauban (France) and Paris. He taught at the University of Colombia in Bogota and in 1897 wrote and published a book on Colombia entitled "*El Dorado*." He was professor extraordinary at the University of Berne.

He entered the service of the International Bureau at about the same time as Henri Morel, that is, in 1888, almost at the very beginning of the existence of that Bureau. He was promoted to Deputy Director in 1917, and was appointed Director on January 1, 1922. He died in active service on January 29, 1926, as already indicated. Thus, he served the United Bureaus for 38 years, for the last four of which he served as Director, between the ages of 64 and 68.

Most of the activity of Röthlisberger, before he became Deputy Director, was devoted to the Berne Union. He was the first editor, and remained the editor for 29 years, of the monthly periodical *Le Droit d'auteur*. He was the main representative of the International Bureau in the conference of revision of the Berne Convention held in Berlin in 1908 in the absence of the then Director (Henri Morel).

His necrology states that Professor Röthlisberger "was an authority in the field of literary property; ... he was a man of

broad perspectives, animated by a humanitarian spirit; he was a fierce internationalist; ... he was methodical and went into the minutest details of all questions" (1926 *La Propriété industrielle* 26 and 27). The necrologist—one of his younger colleagues—writes that Röthlisberger "examined every piece of paper with extreme care and did not allow any important paper to leave without controlling it himself. With such methods, one succeeds in making great things but one ruins one's health ..." (*ibid.*).

Fritz Ostertag was born at Basle on May 7, 1868, and he died in Pully (Canton of Vaud, Switzerland) on May 6, 1948. He was a citizen of Switzerland.

Ostertag held a degree of doctor of laws and was a judge. His career with the judiciary was crowned by being the president of the highest Swiss court, the *Tribunal fédéral.*

He was appointed Director of the United Bureaus on April 1, 1926, at the age of 58. He retired, after 12 years of service, on April 30, 1938, at the age of 70.

He was one of the main forces behind the conference of revision of the Paris Convention held in London in 1934 and the conference of revision of the Berne Convention held in Rome in 1928. He was a prolific legal writer, and the United Bureaus' periodicals of the era contain many excellent articles by him. He also participated in the writing of the two pamphlets which commemorated the first 50 years of the Paris Union (published in 1933) and of the Berne Union (published in 1936).

Ostertag continued to write for the periodicals even after his retirement. Some of his writings gave a real impetus to what much later led to the Rome Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

The article on him published on the occasion of his retirement (1938 *La Propriété industrielle* 78) says that he "had a remarkable gift for legal creativity .... Mr. Ostertag was first of all a practician who was interested in the future and who boldly chose new directions, directions which corresponded to the expected needs of modern life to be served by the law. His work was that of a pioneer ...; events never caught him by surprise; on the contrary, he knew how to provoke them."

Bénigne Mentha was born at Cortaillod (Canton of Neuchâtel, Switzerland) on January 2, 1888, and he died in Thoune (Canton of Berne, Switzerland) on May 16, 1974.

Mentha was a *licencié en droit* (holder of a law degree) and entered the service of the United Bureaus at the age of 24, as a translator, in 1912. He retired after 41 years of service, interrupted once for a short period to be private secretary to Gustave Ador, then president of the Swiss Confederation. In 1922, he became secretary and, in 1938, Deputy Director.

He was appointed Director on May 1, 1938, and retired on May 1, 1953. Thus, he was Director for 15 years, between the ages of 50 and 65.

The period was certainly not an easy one: the worldwide recession and the second world war occupied a great part of it.

Mentha was principally a scholar and a specialist in the law of copyright. It was during his tenure that the conference of revision of the Berne Convention of 1948 took place in Brussels. It was also during his tenure that, under the auspices of Unesco, the Universal Copyright Convention was adopted in 1952. The creation of a second global multilateral treaty on copyright did not help the development of the Berne Convention. The responsibility is not only that of Mentha, far from it, since the adjustment of the Berne Convention that would have been necessary to save it from losing its unique position in international copyright relations was refused by the most influential among the governments which founded the Berne Convention.

He was "modesty itself" says an article, written by his Deputy Director when he retired (1953 *La Propriété industrielle* 103). "He did not like modern working methods which necessitate frequent trips, unfavorable—in his opinion—for mental concentration without which nothing durable can be created. He preferred the contact of ideas to the contact of persons ..." (*ibid.*).

He was an excellent jurist, and the style of his legal writings, whether in French or German, is of an exceptional clarity and elegance. Many articles, mostly unsigned but unmistakably recognizable as his—because of his unique style—prove this in the issues of the periodicals *Le Droit d'auteur* and *La Propriété industrielle* of several decades.

Jacques Secrétan was born on May 13, 1897, in Etoy (Canton of Vaud, Switzerland), and he died in Dardagny (Canton of Geneva) on July 25, 1964, in the year following that in which he retired from his post as Director.

Secrétan held the degree of doctor of laws, was an attorney-at-law and a law professor at the University of Lausanne. He served in various capacities in the International Labour Office in Geneva from 1923 to 1940 (*attaché de cabinet* of the Director-General, member of the legal staff, legal counsel).

He was appointed Director of the United Bureaus—to which he gave the designation "BIRPI"—on May 1, 1953, and retired on January 15, 1963. Thus, he was Director for almost ten years, between the ages of 58 and 67.

He came to his new post with an extremely solid background and ideas of what a modern intergovernmental organization should be. His main interest was the modernization of the Unions and their secretariats. He had very clear ideas of what should be done. In a speech given in 1956, he summarized it in the following way: "Three years of experience in the present Union [of Paris] and 30 years of experience in other associations of States have led me to the following conclusions: (a) Intellectual rights—whether in the field of patents and trademarks or in the field of copyright—must enjoy international protection just as much as any other rights mentioned in the Universal Declaration of Human Rights. For this effect, they must benefit from the support of their own and general intergovernmental organization .... (b) Such organization must be given its own jurisdiction—that is, intellectual rights—and organs that can represent it, and can represent the said rights, efficiently in international relations. (c) Finally, the said organization should be part of the great family of the United Nations" (1956 *La Propriété industrielle* 149).

These were prophetic words in 1956, and it took 18 years to accomplish what Secrétan proposed. He did not live long enough to see the accomplishment of all his wishes but he certainly took many practical steps that created an atmosphere propitious for carrying out his plans. He concluded working agreements with Unesco, the World Health Organization, the Council of Europe, the Organization of American States and others, which contributed towards placing BIRPI in a legal position similar to that of those organizations. He created and convened various committees consisting of representatives of governments members of the Paris and Berne Unions, which committees, step by step, and *de facto*, started to play the role vis-à-vis BIRPI that hitherto had been played exclusively by the Government of the Swiss Confederation. He persuaded the Swiss federal authorities to

authorize the transfer of the seat of BIRPI from Berne to Geneva, and he persuaded the authorities of Geneva to accept BIRPI on their soil. The transfer took place in 1960. It had obvious practical advantages and had a symbolic value as well: moving into the international city *par excellence* that Geneva is, moving into a city in which the European headquarters (as it was called then) of the United Nations was and in which five other specialized agencies of the United Nations system of organizations already were could not but favor the realization of Secrétan's plans.

His tenure saw several diplomatic conferences and, among them, the conference of Rome (1961) etablishing the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

Secrétan was a man of great culture and a man of the world. He liked flamboyance and knew that a great enterprise—in which he was engaged—needed public attention, and that public attention had to be created and cultivated. He travelled much and in style, and was a generous host. The bronze bust of Secrétan, placed in the lobby of the BIRPI Building on March 20, 1983, the date of the centenary of the Paris Convention, bears the following inscription: "*Jacques Secrétan, 1897 — 1964, Directeur des BIRPI de 1953 à 1963, Bâtisseur du siège des BIRPI à Genève.*"

Georg H.C. Bodenhausen was born in Utrecht (Holland) on July 11, 1905. He is a national of the Netherlands.

Bodenhausen studied law in the Netherlands and practiced there as an independent attorney-at-law, specialized in intellectual property from 1930 to 1962. He was also professor at the University of Utrecht, teaching intellectual property law. His specialization in the field of intellectual property and his keen interest also in the international aspects resulted in the Netherlands Government's choosing him to be a delegate at the conference of revision of the Berne Convention held in Brussels in 1948, at the conference of revision of the Paris Convention held in Lisbon in 1958, at the 1960 Hague diplomatic conference for the revision of the Hague Agreement, and at the 1957 Nice diplomatic conference adopting the Nice Agreement, and to head the Netherlands delegation at the diplomatic conference, held in Rome in 1961, that adopted the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

He was appointed Director of BIRPI on January 16, 1963, and elected Director General—the first Director General—of WIPO on September 22, 1970. He retired from both positions on November 30, 1973. Thus, he was in the service of BIRPI, or in the service of BIRPI and WIPO, for a total of almost eleven years, between the 58th and 69th years of his life.

Those eleven years saw many important events in the lives of the Berne Union and the United International Bureaus of the Paris and Berne Unions and the new International Bureau of WIPO.

The diplomatic conference of 1967 (Stockholm) not only created WIPO but also revised all the treaties then administered by BIRPI. Among those treaties, the Berne Convention was revised not only in respect of its administrative clauses but also, and profoundly, in respect of its substantive provisions. It was the first revision which introduced special provisions for the benefit of developing countries. Bodenhausen devoted special attention to the part of the Stockholm conference that dealt with the revision of the Berne Convention. The texts agreed upon in Stockholm soon had to be revised again, and the diplomatic conference which accomplished that revision, in Paris in 1971, was also masterminded by Bodenhausen.

Other diplomatic conferences held under his tenure were those of Locarno in 1968, of Washington in 1970, of Strasbourg in 1971, of Geneva in 1971, and of Vienna in 1973, adopting, respectively, the Locarno Agreement Establishing an International Classification for Industrial Designs, the Patent Cooperation Treaty, the Strasbourg Agreement Concerning the International Patent Classification, the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, and the three Vienna treaties, namely, the Trademark Registration Treaty, the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks and the Vienna Agreement for the Protection of Type Faces and their International Deposit.

It was during his tenure that BIRPI started to organize fellowships and training courses for developing countries. Bodenhausen opened the first such course ever held by the International Bureau. It was a course on copyright and took place at Brazzaville in the Congo in 1963.

During his tenure, 27 developing countries joined the Paris Union. The Soviet Union joined the Paris Union in 1965, after several official visits by Bodenhausen to Moscow and by Soviet representatives to Geneva.

The staff of BIRPI/WIPO also underwent a great change during the tenure of office of Bodenhausen: it grew from 52 to 149, and from comprising employees from six countries to employees from 32 countries. The English language was raised to a level equal to that of French as a working language. The construction of the WIPO Building started in May 1973.

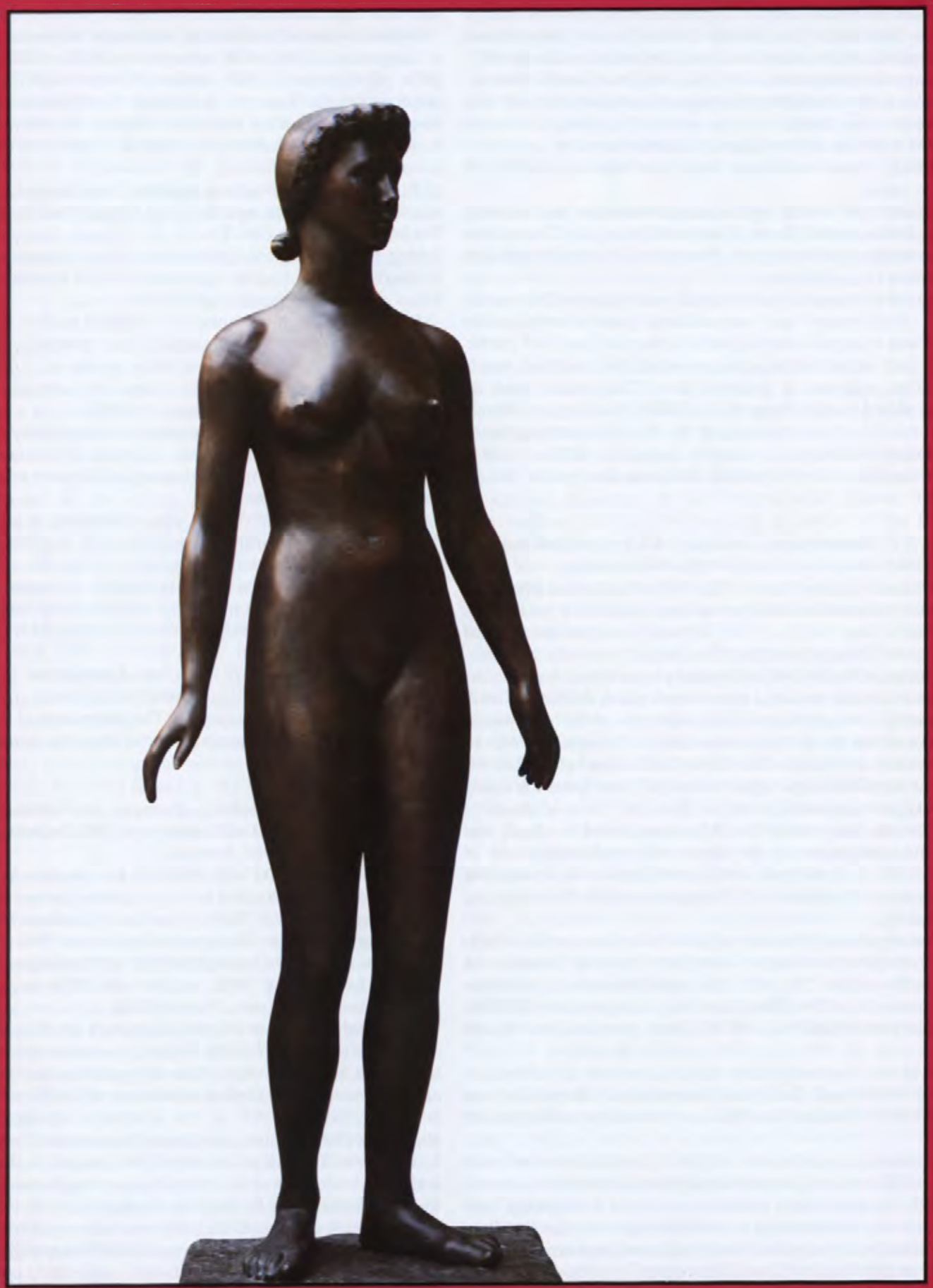
The period called for the respect of solid legal traditions, erudition in the field of all branches of intellectual property law and diplomatic skill. Bodenhausen had all these, and had them to an exceptionally high degree. The International Bureau was extremely fortunate to have at its head the right man at the right time.

Arpad Bogsch was born in Budapest on February 24, 1919. He was then a national of Hungary; in 1959, he became a citizen of the United States of America.

Bogsch studied law and obtained law degrees in Budapest, Paris and Washington. He was a practicing lawyer in Budapest and a member of the Washington bar. He was a legal adviser in Unesco (Copyright Division) in Paris from 1948 to 1954 and in the United States Copyright Office in Washington from 1954 to 1962. In 1961 and 1962, he also worked in—as it was then called—the United States Patent Office.

He was a member of the delegation of Hungary at the conference of revision of the Berne Convention held in Brussels in 1948; he was a member of the delegation of the United States of America at the conference of revision of the Paris Convention held in Lisbon in 1958, at the diplomatic conference of The Hague in 1960 revising the Hague Agreement Concerning the International Deposit of Industrial Designs and at the diplomatic conference of Rome in 1961 adopting the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. He was also a delegate of the United States of America to several BIRPI meetings, and negotiations sponsored by BIRPI, in 1961 and 1962, preparing the reforms that started to be implemented in 1963.

Bogsch joined BIRPI on March 1, 1963. He had the title of special adviser until July 15 of the same year, when he was appointed, by the Federal Council of the Swiss Confederation,



Deputy Director of BIRPI. When the WIPO Convention entered into force, he was appointed Deputy Director General of WIPO (on September 22, 1970).

In November 1973, Bogsch was elected Director General of WIPO for a period of six years. In 1979 and 1985, he was re-elected for the first and the second time, each time for a period of six years.

Since this article was written by him, it is left for others and for other occasions to recall his role as an official of BIRPI and WIPO.

Relations between the World Intellectual Property Organization and the United Nations

The first formal relations with the United Nations were relations between that organization and the United International Bureaux for the Protection of Intellectual Property (BIRPI). They were fixed in an exchange of letters effected in September and October 1964 and signed by G.H.C. Bodenhausen, then Director of BIRPI, and Philippe de Seynes, then Under Secretary-General for Economic and Social Affairs of the United Nations. The agreement provided for exchange of information and documentation and mutual representation at meetings (see 1964 *La Propriété industrielle* 210).

Some three years later, the World Intellectual Property Organization (WIPO) was established by a treaty entitled "Convention Establishing the World Intellectual Property Organization" that was adopted and signed in Stockholm on July 14, 1967, and entered into force on April 26, 1970. According to the rules of procedure of the Stockholm Diplomatic Conference, at least four fifths of the members of the Paris Union and at least four fifths of the members of the Berne Union had to vote for the adoption of the WIPO Convention. In fact, they voted unanimously for the adoption of the Convention Establishing WIPO. Thus, in a sense, WIPO is the creation of the Paris and Berne Unions.

The relations between WIPO, on the one hand, and the Paris and Berne Unions, on the other, are regulated in the WIPO Convention, in the 1967 (Stockholm) Acts of the Paris and Berne Conventions and in the 1971 (Paris) Act of the Berne Convention.

As far as the Berne Union is concerned, and on the level of governing bodies, those relations are characterized by the fact that all States members of the Assembly of the Berne Union which are members of WIPO are members of the General Assembly of WIPO and that all States members of the Executive Committee of the Berne Union which are members of WIPO are members of the WIPO Coordination Committee (see WIPO Convention, Articles 6(1)(a) and 8(1)(a)).

As to matters of common interest to WIPO and the Unions, the WIPO Convention provides that the WIPO Coordination Committee shall "give advice to the organs of the Unions [including the Assembly of the Berne Union and the Executive Committee of that Assembly], the [WIPO] General Assembly, the [WIPO] Conference, and the Director General [of WIPO], on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization [WIPO], and in particular on the budget of expenses common to the Unions" (WIPO Convention, Article 8(3)(i)), whereas the 1967 (Stockholm) and 1971 (Paris) Acts of the Berne Convention provide that "with respect to matters which are of interest also to other Unions [other than the Berne Union] administered by the Organization [WIPO], the Assembly [of the Berne Union] shall make its decisions after having heard the advice of the Coordination Committee of the Organization" (Article 22(2)(b)) and that "with respect to matters which are of interest also to other Unions [other than the Berne Union] administered by the Organization [WIPO], the Executive Committee [of the Assembly of the Berne Union] shall make its decisions after having heard the advice of the Coordination Committee of the Organization" (Article 23(6)(b)). Furthermore, "the Executive Committee [of the Assembly of the Berne Union] shall meet once a year in ordinary session upon convocation by the Director General, preferably during the *same period* and at the *same place* as the Coordination Committee of the Organization [WIPO]" (1967 (Stockholm) and 1971 (Paris) Acts of the Berne Convention, Article 23(7)(a); emphasis added).

On the level of the chief executive and the secretariat, the situation is that "the Director General of the Organization [WIPO] shall be the chief executive of the [Berne] Union and shall represent the [Berne] Union," and that the "administrative tasks with respect to the [Berne] Union shall be performed by the International Bureau [of WIPO]" (1967 (Stockholm) and 1971 (Paris) Acts of the Berne Convention, Article 24(1)(c) and (a), respectively).

There are no direct relations between the United Nations and the Berne Union, except that representatives of the United Nations are invited to sessions of the Assembly of the Berne Union and of the Executive Committee of that Assembly. But there are indirect relations, through the Director General of WIPO and the International Bureau of WIPO, on the basis of the agreement between the United Nations and WIPO, an agreement that has been in force since December 17, 1974. As a consequence of that agreement, on December 17, 1974, WIPO became a "specialized agency" in the United Nations system of organizations. The agreement "recognizes" WIPO "as a specialized agency and as being responsible for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it [WIPO], *inter alia*, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property in order to accelerate economic, social and cultural development..." (Article 1 of the said Agreement). One of the treaties administered by WIPO to which that Agreement refers is the Berne Convention. Thus, the competence of the Berne Union is also recognized by the United Nations.

Part IV

The History of the Efforts of the Berne Union for Better Copyright Protection in the World

The Berne Union, that is, the governments of the countries party to that Union, are aware of the fact that the promotion of a better protection of the rights of authors cannot be solely done by revising, from time to time, the Berne Convention but has to be done also by other actions, mainly through the International Bureau of Intellectual Property, the secretariat of WIPO.

Such other actions are chronicled in the following chapters. They are subdivided into four parts, dealing with the following four subjects: establishment of treaties on subjects related to copyright, copyright law subjects of topical interest, development cooperation in the field of copyright and cooperation with other organizations.

Establishment of Treaties on Subjects Related to Copyright

During the first hundred years of its existence, seven multilateral treaties were concluded under the exclusive or partial initiative and sponsorship of the member countries and the organs of the Berne Union, treaties which deal with subjects related to copyright. These seven treaties were concluded in the 21-year period between 1960 and 1981 and are dealt with in the following in the chronological order in which they were adopted.

The 1960 [Hague] Act of the Hague Agreement Concerning the International Deposit of Industrial Designs. The original Hague Agreement was concluded in 1925 as a "special agreement," not under the Berne Convention, but under the Paris Convention for the Protection of Industrial Property. And yet, the Permanent Committee of the Berne Union, in its seventh ordinary session held in Geneva in 1958 (1959 DA 188) and its eighth ordinary session held in Munich in 1959 (1959 DA 206) noted and encouraged the preparations for the diplomatic conference that, eventually, led to the revision of the Agreement. The interest of the Berne Union was motivated by the fact that the distinction between industrial designs (a subject usually covered by industrial property laws and dealt with in the Paris Convention) and works of applied art (a subject usually covered by copyright laws and dealt with in the Berne Convention) is not always easy to make, so much so that in several countries the national laws allow the protection of the same objects as industrial designs and works of applied art. The Permanent Committee of the Berne Union was particularly concerned lest formalities required for protection under industrial property laws could spill over to protection by virtue of copyright laws and saw to it that a provision in the 1960 Act of the Hague Agreement (Article 14) expressly prevented any possible extension of formalities in the field of copyright since the Berne Convention provides that the enjoyment and the exercise of copyright "shall not be subject to any formality" (Article 5(2)).

The Hague Agreement provides for the possibility of depositing industrial designs internationally. The international deposit is made with the International Bureau of WIPO either directly or through the intermediary of the national industrial property office of the competent Contracting State. The international deposit has, in each of the Contracting States designated by the applicant, the same effect as if all the formalities required by the domestic law for the grant of protection had been complied with by the applicant and as if all administrative acts required to that end had been accomplished by the office of that State. Each Contracting State may refuse protection within six months from the date of the receipt of the publication of the international deposit. The refusal of protection can only be based on requirements of the domestic law other than the formalities and administrative acts to be accomplished under the domestic law by the office of the Contracting State which refuses the protection. The effect of the international deposit lasts five years, or, if renewed, a total of ten years.

The system described above was in force on January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, among Belgium, France, Germany (Federal Republic of), Hungary, Liechtenstein, Luxembourg, Monaco, the Netherlands, Senegal, Suriname and Switzerland. During the calendar year 1985, 1,799 deposits, concerning some 12,000 designs were made.

The International [Rome] Convention [1961] for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations. The first formal expression concerning (one of the) neighboring rights dates back to 1928. In the conference of revision of the Berne Convention, held in that year in Rome, a *vœu* (wish or recommendation) was expressed by the member countries of the Berne Union to the effect that the possibility of measures for the safeguarding of the rights of performing artists be envisaged: "*La Conférence émet le vœu que les Gouvernements qui ont participé aux travaux de la Conférence envisagent la possibilité des mesures destinées à sauvegarder les droits des artistes exécutants.*"

The International Bureau of the Berne Union, together with the International Institute of Rome for the Unification of Private Law, convened a meeting of experts in Samedan (Switzerland) in 1939. That meeting drew up the draft of four separate treaties: (i) one on performers and the producers of phonograms, (ii) one on broadcasts, (iii) one on information by the press and (iv) one on *droit de suite*. Those drafts were based on a draft that was drawn up by Fritz Ostertag, then Director of the United International Bureaus of the Paris and Berne Unions. The four drafts were intended to become annexes to the Berne Convention and were intended to be adopted by the revision conference of the Berne Union scheduled to be held in Brussels in 1939.

The conference of revision of 1948 (Brussels) of the Berne Union did not deal with the said draft treaties. In three separate *vœux* (wishes or recommendations), it merely expressed the wish that the protection of the manufacturers of phonograms, of broadcasting organizations and performing artists be actively studied. The question of the conclusion of a treaty was considered by the Permanent Committee of the Berne Union in all its sessions between 1949 and 1960 as well as in the said Committee's subcommittee when it met, twice, in 1951. In the second of those meetings, Bénigne Mentha, the then Director of the International Bureau, presented a remarkable report which remained a solid basis for further discussions (see 1951 DA 70).

The protection of performing artists was of interest also to the International Labour Organisation, whereas all three subjects (performances, phonograms, broadcasts)—because of their using works protected by copyright—were also of interest to Unesco which, through sponsoring the adoption of the Universal Copyright Convention, had its say in copyright matters. Thus, the possibilities of concluding a multilateral treaty on what was termed "neighboring rights" was pursued, during the ten-year period from 1951 to 1961, jointly, first, between the International Bureau of the Berne Union and the International Labour Office (ILO), and, later, also the Secretariat of Unesco. Some of the milestones of this preparatory work were the committees, study meetings, working groups or committees of experts convened by one, two or all three of the said Organizations: in Rome in 1951 (1951 DA 137), in Paris in 1954 (1954 DA 211), in Berne in 1955 (1955 DA 194), in Monaco in 1957 (1957 DA 72) and in The Hague in 1960 (1960 DA 161).

Those preparatory meetings led to the diplomatic conference, convened by the Government of Italy and the three intergovernmental secretariats (BIRPI, ILO and Unesco) and held in Rome in 1961. The Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations—popularly known as "the Rome Convention" or "the Neighboring Rights Convention"—was adopted by that diplomatic conference.

In order to underline its connections to copyright, the Rome Convention is open only to States party to the Berne Convention or the Universal Copyright Convention and provides, in its *first* article that "protection granted under this [i.e., the Rome] Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works."

The purpose of the Rome Convention is to provide protection at the international level for the three categories of auxiliaries of literary and artistic creation mentioned in its title.

Performers (actors, singers, musicians, dancers, and other persons who perform literary or artistic works) are protected against certain acts the doing of which they have not consented to. Such acts are: the broadcasting and the communication to the public of their live performance; the fixation of their live performance; the reproduction of such a fixation if the original fixation was made without their consent or if the reproduction is made for purposes different from those for which they gave their consent.

Producers of phonograms enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms. Phonograms are defined in the Convention as meaning any exclusively aural fixation of sounds of a performance or of other sounds. When a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, or to the producers of the phonograms, or to both; States are free, however, not to apply this rule or to limit its application.

Broadcasting organizations enjoy the right to authorize or prohibit certain acts, namely: the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

The Rome Convention created an Intergovernmental Committee "to study questions concerning the application and operation of the Convention ... and to collect proposals and to prepare documentation for possible revision of this Convention" (Article 32). The Secretariat of the Intergovernmental Committee is furnished by the International Bureau of the Berne Union (since 1970, of WIPO), the International Labour Office and the Secretariat of Unesco. The cost of the meetings of the Intergovernmental Committee are borne by WIPO, ILO and Unesco, or, more precisely, as far as WIPO is concerned, by the budget of the Berne Union.

The Intergovernmental Committee has held, so far, ten ordinary (1967, 1969, 1971, 1973, 1975, 1977, 1979, 1981, 1983, 1985) and two (1972, 1974) extraordinary sessions. In each of them, matters concerning the protection of neighboring rights were discussed and means are sought to encourage accession to the Convention by countries not yet party to it.

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention (and the first quarter centenary of the Rome Convention), the following 29 States were party to the Rome Convention: Austria, Barbados, Brazil, Chile, Colombia, Congo, Costa Rica, Czechoslovakia, Denmark, Ecuador, El Salvador, Fiji, Finland, Germany (Federal Republic of), Guatemala, Ireland, Italy, Luxembourg, Mexico, Monaco, Niger, Norway, Panama, Paraguay, Peru, Philippines, Sweden, United Kingdom, Uruguay.

On the said date, the following 12 States were members of the Intergovernmental Committee: Austria, Brazil, Congo, Czechoslovakia, Finland, Germany (Federal Republic of), Italy, Mexico, Niger, Norway, Sweden, United Kingdom.

In order to facilitate the adoption of national laws on the subjects covered by the Rome Convention, the International Bureau of WIPO, the International Labour Office and the Secretariat of Unesco, with the help of two non-governmental study groups, both held at the headquarters of WIPO—one in 1973 and the other in 1974—prepared and published a model law, entitled "Model Law Concerning the Protection of Performers, Producers of Phonograms and Broadcasting Organizations" (1974 CR 163).

The [Geneva] Convention [1971] for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms. This multilateral treaty is generally known under the name "Phonograms Convention."

During the first nine years of the existence of the Rome Convention on Neighboring Rights, it was realized that the protection given by that Convention to producers of phonograms was not extensive enough to combat piracy efficiently and, in any case, was largely ineffective because of the small number of countries that had ratified it or had acceded to it. There were only eleven such countries in 1971 (when the Phonograms Convention was concluded) and, among them, there were only two (the Federal Republic of Germany and the United Kingdom) that had a significant phonographic industry.

On the urging of the phonographic industry, WIPO and Unesco convened, in March 1971 in Paris, a committee of experts (1971 CR 54) and, in October 1971, in Geneva, a diplomatic conference (1971 CR 240). The first adopted a draft, and the latter adopted the final text, of the Phonogram Convention. As far as WIPO is concerned, the costs were borne by the Berne Union and the brainpower was furnished by those members of the staff who were specialists in matters of the Berne Union.

The Phonograms Convention provides for the obligation of each Contracting State to protect a producer of phonograms who is a national of another Contracting State against the making of duplicates without the consent of the producer and against the importation of such duplicates, where the making or importation is for the purposes of distribution to the public. "Phonogram" means an exclusively aural fixation (that is, it does not comprise, for example, sound films or videocasettes), whatever be its form (disc, tape or other). Protection must generally last for at least 20 years from the first publication of the phonogram. The Convention expressly provides that it "shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors ..." (Article 7).

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the following 39 States were party to the Phonograms Convention: Argentina, Australia, Austria, Barbados, Brazil, Chile, Costa Rica, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Fiji, Finland, France, Germany (Federal Republic of), Guatemala, Holy See, Hungary, India, Israel, Italy, Japan, Kenya, Luxembourg, Mexico, Monaco, New Zealand, Norway, Panama, Paraguay, Peru, Spain, Sweden, United Kingdom, United States of America, Uruguay, Venezuela, Zaire.

Under the title "Secretariat," Article 8 of the Phonograms Convention provides that "the International Bureau of the World Intellectual Property Organization shall assemble and publish information concerning the protection of phonograms ... [and] ... shall, on request, furnish information to any Contracting State on matters concerning this Convention, and shall conduct studies and provide services designed to facilitate the protection provided therein." All this, WIPO does with the help of money coming from the budget of the Berne Union. The Phonograms Convention provides also that WIPO shall exercise the said functions "in cooperation, for matters within their respective competence" with Unesco and the International Labour Organisation.

As the secretariat under the Phonograms Convention, the International Bureau of WIPO reports to, and receives instructions from, the Assembly and the Executive Committee of the Berne Union. Matters concerning the Phonograms Convention are considered in particular detail in the extraordinary sessions (convened every second year) of the Executive Committee of the Berne Union.

The Vienna Agreement [1973] for the Protection of Type Faces and their International Deposit. This Agreement was adopted by the Diplomatic Conference of Vienna convened by the Government of Austria after preparation by WIPO (1973 CR 122).

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the said Agreement has not yet been ratified or acceded to by the number of countries required for its entry into force.

[Brussels] Convention [1974] Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. This multilateral treaty is usually referred to as "the Satellites Convention."

The work leading—six years later—to the adoption of the Satellites Convention started in a working group convened by the United International Bureaus of the Berne and Paris Unions (BIRPI) in Geneva in 1968 (1968 CR 230). It was continued in a Meeting of Governmental Experts convened by Unesco in 1969 (1970 CR 57). In 1969, the Permanent Committee of the Berne Union and the Intergovernmental Copyright Committee, serviced by Unesco, decided that, directed by them, WIPO and Unesco should jointly pursue the matter. This was done in three Committees of Governmental Experts: the first was held in Lausanne-Ouchy (Switzerland) in 1971 (1971 CR 102), the second was held in Paris in 1972 (1972 CR 142), and the third in Nairobi in 1973 (1973 CR 147).

The diplomatic conference that adopted the Satellites Convention took place in Brussels in 1974 (1974 CR 143).

The Satellites Convention provides for the obligation of each Contracting State to take adequate measures to prevent the unauthorized distribution on or from its territory of any programme-carrying signal transmitted by a satellite. The distribution is unauthorized if it has not been authorized by the organization—typically a broadcasting organization—which has decided what the programme consists of. The obligation exists in respect of organizations that are "nationals" of a Contracting State. The provisions of the Convention are not applicable, however, where the distribution of signals is made from a direct broadcasting satellite.

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the following eleven States were party to the Satellites Convention: Austria, Germany (Federal Republic of), Italy, Kenya, Mexico, Morocco, Nicaragua, Panama, Peru, United States of America, Yugoslavia.

The Satellites Convention does not establish any intergovernmental organ. Nevertheless, the Assembly and the Executive Committee of the Berne Union follow its development and encourage ratifications and accessions. A Working Group, convened in Geneva in 1978 (1978 CR 151), jointly by WIPO and Unesco "on the Implementation of the Satellites Convention," prepared model provisions for the implementation of the said Convention. Those provisions were further refined by a Committee of Governmental Experts, equally convened jointly by WIPO and Unesco, meeting in Paris in 1979 (1979 CR 219).

As far as WIPO is concerned, all activities concerning the Satellites Convention are monitored by the Assembly and the Executive Committee of the Berne Union, and the corresponding expenses are covered by the budget of that Union.

Multilateral [Madrid] Convention [1979] for the Avoidance of Double Taxation of Copyright Royalties. This Convention was adopted by a diplomatic conference convened by the Government of Spain after preparation by WIPO and Unesco. It was held in Madrid in 1979 (1980 CR 12). As far as WIPO is concerned, the costs of the preparation of the Convention were borne by the Berne Union and it is the organs—the Assembly and the Executive Committee—of that Union that monitor the fate of the Convention.

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the Madrid Convention has not yet been ratified or acceded to by the number of countries required for its entry into force.

Nairobi Treaty [1981] on the Protection of the Olympic Symbol. All States which are party to this Treaty are under the obligation to protect the Olympic symbol—five interlaced rings—against use for commercial purposes (in advertisements, on goods, as a trademark, etc.) without the authorization of the International Olympic Committee.

The Treaty also provides that, whenever a license fee is paid to the International Olympic Committee for its authorization to use the Olympic symbol for commercial purposes, part of the revenue must go to the interested national Olympic committees.

Thus, the Treaty should create a new and very important source of revenue for the national Olympic committees—particularly for the national Olympic committees in developing countries—for the purposes of establishing new sports facilities such as arenas and swimming pools, and for paying the expenses of athletes of developing countries connected with their travel and participation in the Olympic Games.

The Nairobi Treaty was adopted by a diplomatic conference convened by WIPO in 1981 (1981 CR 305).

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the following 27 States were party to the Nairobi Treaty: Algeria, Bolivia, Brazil, Bulgaria, Chile, Congo, Cuba, Cyprus, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Greece, Guatemala, India, Italy, Jamaica, Kenya, Mexico, Qatar, Senegal, Sri Lanka, Syria, Togo, Tunisia, Uganda, Uruguay.

Copyright Law Subjects of Topical Interest

Introduction. One of the most important activities of the International Bureau of WIPO (formerly BIRPI) is the promotion, under the aegis of the Berne Union, of a better protection of copyright. This is particularly true for matters that are in a

more or less uncertain legal situation when they emerge as a consequence of changes in the technologies that can be used for the dissemination of works or as a consequence of changes in the socio-economic environment. Such changes have their effect on the domestic and international policies concerning the relations among authors, users of their works and the public.

WIPO and the Berne Union try to keep pace with those changes and seek solutions to the new problems as they emerge. Since the 1971 (Paris) conference of revision of the Berne Convention, such solutions are sought in ways other than a new revision of the Berne Convention. The high number of the countries party to that Convention (76 at the date of the centenary in 1986), the greater differences in wealth among the member countries and the enormous cultural variety among them make it difficult if not unlikely, at least on major issues, to obtain the unanimity that is required for any revision of the Berne Convention (Berne (Paris) Convention, Article 27(3)).

This is why the means whereby the desired updating and improvement of the legal protection consist not in revising the Berne Convention but of advice to the national legislators, or, in other words, in attempts at persuasion, and, in a few (rather rare) cases, in attempts at concluding new special multilateral treaties. Examples of the latter are the, so far unsuccessful, attempts at concluding treaties on the protection of computer software and the protection of expressions of folklore.

On the other hand, many of the attempts at persuasion may be considered as successful, at least to some extent. By "successful," what is meant is that the advice given by WIPO and Berne Union bodies is heeded by governments when they propose the updating of national copyright laws, by legislators when they proceed with such updating and by courts when they interpret and apply the Berne Convention and their national laws.

This chapter deals with those matters roughly in the chronological order in which they emerged in the program of the Berne Union. Three of the 14 individually considered subjects preceded the 1967 (Stockholm) conference of revision, the last conference to deal with substantive copyright law of general applicability. (The 1971 (Paris) conference of revision dealt with substantive copyright law applicable only by developing countries.) The consideration of the remaining eleven questions took place in the last 18 years (1968 to 1986) of the centennial. They are questions concerning reprography, computer use, computer programs, videocassettes, cable television, expressions of folklore, rental of phonograms, private copying, direct broadcast satellites, employed authors, publishing contracts and piracy.

Those matters were considered in scores of meetings, each convened for the consideration of one of those matters. The participants, averaging some 60 per meeting, were government officials ("delegates"), experts acting in their personal capacity (sometimes called "independent experts") and representatives of interested intergovernmental and non-governmental ("private") organizations (associations). Most of such meetings were jointly organized by the International Bureau of WIPO and the Secretariat of Unesco and were held at the headquarters of WIPO in Geneva or at the headquarters of Unesco in Paris. The working languages were English and French, and, in many meetings, also Arabic, Russian and Spanish. As far as WIPO is concerned, the costs (staff, interpretation, translation and reproduction of documents, etc.) were covered by the budget of the Berne Union.

The question of what matter should be considered, when and by what kind of expert body (working group, committee of experts, expert group, "forum," etc.) was decided by the Assembly of the Berne Union and the decision incorporated in what is called the biennial (before 1980, triennial) program of that Union. The program is proposed by the Director General of WIPO and is adopted, with or without changes, by the Assembly.

The Assembly usually does not deal with all the details. They are dealt with by the Executive Committee of the Berne Union which, for that very purpose, meets in an extraordinary session at least once every second calendar year (since 1971).

The intellectual preparation and servicing of the expert groups in which the in-depth substantive consideration of copyright law matters takes place is furnished mainly by the International Bureau of WIPO, in most cases in consultation with the Secretariat of Unesco. Thousands of pages were written in the said period of 18 years by the Director General and the staff of the International Bureau of WIPO to serve as "preparatory documents" for the expert groups. And hundreds of pages were written by them as "draft reports" on the discussions and conclusions of the meetings of those groups. Most meetings lasted a week (Monday to Friday). The draft report is usually written during the night between the penultimate and the last day of the meetings of the expert group and is adopted, with or without modification, in the closing meeting in which, naturally, all participants may propose changes in the draft.

It is in the nature of this work that it is a work that can never end. The economic, social and technological situation, the legal systems and their underlying ideologies, as well as the political positions and the policies of the governments of the countries change constantly. With changes, new questions emerge and existing solutions have to be re-examined.

What follows in this chapter is, therefore, to be regarded as the picture merely of a short period in the history of copyright and the Berne Union. The examination of almost all the questions dealt with in this chapter will have to be continued beyond the centennial.

Protection of Cinematographic Works. Questions concerning the protection of cinematographic works, particularly the question in whom should copyright in such works originally vest, were considered by the Permanent Committee of the Berne Union between 1952 and 1963. Various reports were commissioned and prepared and study groups were convened. Their findings served as a basis for the very important amendments that the 1967 (Stockholm) conference of revision made in the provisions of the Berne Convention concerning cinematographic works.

More Effective Protection of Copyright. It was the Delegation of India that, in the 1959 session of the Permanent Committee of the Berne Union, proposed a study on the means whereby the protection of the rights of owners of copyright could be rendered more effective, for example, through increased criminal sanctions (1959 DA 10). The study resulted in a recommendation by the Permanent Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention, adopted in 1960, to the effect that countries should "facilitate the application of criminal proceedings in case of infringement of copyright" (1960 DA 334) and in a resolution, adopted in

1963, expressing the hope that "countries which have no such provisions or which give to authors an insufficient protection will adopt the necessary measures to do so" (1964 CR 41).

Extension of the Term of Protection. Two committees of experts, convened by BIRPI on the request of the Permanent Committee of the Berne Union, in Geneva in 1961 and in Rome in 1962, respectively, dealt with the question of whether the minimum term of protection provided for in the Berne Convention should not be extended or, at least, whether national legislations should not be encouraged to adopt a term of protection longer than the said minimum (1962 CR 113). The work was monitored by the Permanent Committee of the Berne Union and the results were used in the 1967 (Stockholm) conference of revision.

Reprography. The problem of copying by photography and other similar methods, easily accessible to almost anyone, of works protected by copyright, and of the cases, if any, in which, and the extent to which, such copying should be permissible without the authorization of the owner of the copyright, has been the subject of a number of special meetings sponsored by WIPO and Unesco. Such meetings took place between 1968 and 1975 and were monitored, as far as the Berne Union is concerned, by the Permanent Committee (until 1970) and the Executive Committee (thereafter) of that Union.

Considerations culminated in a resolution adopted by a joint meeting of a subcommittee of the Executive Committee of the Berne Union and a subcommittee of the Intergovernmental Copyright Committee established under the Universal Copyright Convention, held in Washington in 1975. The resolution is far from recommending in any precise manner what national laws could or should provide for. The following passage, however, is definitely of interest: "In those States where the use of the processes of reprographic reproduction is widespread, such States could consider, among other measures, encouraging the establishment of collective systems to exercise and administer the right to remuneration" (1975 CR 175). The enormous effort put into the search for solutions was not in vain as several countries have subsequently adopted solutions based on the quoted recommendation.

Storage of Protected Works in, and Retrieval from, Computers; Computer-Created Works. Professor Eugen Ulmer (Federal Republic of Germany) was the author of a report, presented in 1971 to the Executive Committee of the Berne Union and the Intergovermental Copyright Committee established under the Universal Copyright Convention, which dealt with "problems arising from the use of electronic computers and other technological equipment." According to Ulmer, "the essential question, as far as copyright was concerned, was whether the owners of copyright could exercise control at the point of input into a computer system, or only at the output stage" (1972 CR 15). His reply was that the author's authorization was required, at least under the Berne Convention, already for inputting his protected work into the memory of a computer.

The study later extended to the question of copyright protection for works created with the help of computers.

Among the several meetings, jointly sponsored by WIPO and Unesco, the two sessions of the Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works, held in 1980 and 1982, were particularly important. Among the recommendations adopted by the Committee of Experts, the most basic seems to be the following: "Storage in and retrieval from computer systems (input and output) of protected works may ... involve at least the following rights of authors ... (a) the right to make or authorize the making of translations, adaptations or other derivative works, (b) the right to reproduce any work involved, (c) the moral rights" (1982 CR 245).

As far as computer-created works are concerned, the Committee of Experts held that "In the case of works produced with the use of computer systems, the copyright owner in such works can basically only be the person or persons who produced the creative element without which the resulting work would not be entitled to copyright protection. Consequently, the programmer (the person who created the programs) could be recognized as co-author only if he or she contributed to the work by such creative effort" (1982 CR 246).

Computer Programs (Software). Substantive work on the question of the legal protection of computer programs in the framework of WIPO started in 1971 in the Advisory Group of Governmental Experts on the Protection of Computer Programs (1971 CR 35). That Group proposed that WIPO carry out a study on the best means of protecting computer programs. The study was carried out by the Group of Non-Governmental Experts on the Protection of Computer Software. It was convened by WIPO under the aegis of the Paris Union for the Protection of Industrial Property (rather than the Berne Union!) and met four times: in 1974 (1974 CR 226), 1975 (1975 CR 183), 1976 (1976 CR 163) and 1977 (1977 IP 259). ("IP" stands for the WIPO monthly periodical *Industrial Property*.) Its work resulted in the drafting of model provisions (1977 IP 265) for national legislators on the protection of computer software (that is, not only computer programs). The model provisions were neither in the nature of copyright nor in the nature of other branches of intellectual property law. They provided for a *sui generis* protection. They defined "computer software" as including computer program, program description and supporting material. "Computer program" was defined as "a set of instructions capable, when incorporated in a machine-readable medium, of causing a machine having information-processing capabilities to indicate, perform or achieve a particular function, task or result." The model provisions also provided that, to be protected, computer software must be "original in the sense that it is the result of its creator's own intellectual effort." Furthermore, under the model provisions, the authorization of the proprietor was required for disclosing, copying, using, selling, etc., the computer software. The model provisions provided for a term of protection of 20 years from the first use, sale, lease or licensing of the software but not beyond 25 years from the creation of the software.

The model provisions, however, were not followed by the legislator of any country. The belief, that characterized international thinking up to 1977, that computer software or, at least, computer programs should be protected by *sui generis* provisions started to give way to the belief that computer software is a literary or artistic work that should be, if it is not already, protected by copyright. The enactment, in 1980, by the United

States of America, of an amendment to its Copyright Act, which expressly granted the status of "work" to computer programs, is one often cited example of this—then new—belief.

Thereupon, WIPO constituted the Expert Group (later called "Committee of Experts") on the Legal Protection of Computer Software. That Group or Committee was under the aegis of both the Paris and the Berne Unions. It met twice: once in 1979 (1980 CR 36) and once in 1983 (1983 CR 271). It no longer dealt with model provisions for national legislators but, essentially, with the question whether, in order to assure the *international* protection of computer software, a special multinational treaty should be concluded. Its conclusion was negative. Although it is difficult to document it, the view most successfully pressed by experts was that a treaty was *not* necessary since the Berne Convention and the Universal Copyright Convention already provided everything that was necessary for the protection of computer programs. This view naturally entailed the consideration of the Universal Copyright Convention and the shifting of the jurisdiction—which first belonged to the Paris Union, then jointly to the Paris and Berne Unions—to the Berne Union and Unesco (the latter because it is the secretariat of the Intergovernmental Copyright Committee established under the Universal Copyright Convention).

Thus, in 1985, WIPO and Unesco convened, jointly, the Group of Experts on the Copyright Aspects of the Protection of Computer Software (1985 CR 146). The meeting was not conclusive as is illustrated by the following passages quoted from the report of the Group of Experts: "Several participants expressed the view that the international copyright conventions protected computer software and required no amendment to that effect. Other delegations expressed their doubts as to the applicability, with their present content, of those conventions" (1985 CR 147). "A great number of participants stated that computer programs were works protected by copyright.... Delegations from countries where computer programs were protected by copyright said that, in general, copyright provided an effective means of protection.... Several delegations said that in their countries the possibility of adopting *sui generis* protection was under consideration. Some participants raised doubts as regards the applicability of copyright to computer programs.... They also referred to difficulties resulting from the unclear coverage of copyright protection as regards various uses of the program and had doubts about its efficacy. In their view, the recognition of copyright protection of computer programs would erode the system of protecting traditional forms of authors' works" (1985 CR 147 and 148).

In 1986, the year of the centenary of the Berne Convention, the Berne Union was planning no further consideration of the question. This does not mean, however, that one day WIPO will not have to revert to the question since the economic interests involved, particularly in international transactions, in respect of computer software, are enormous, and will very probably further increase in the future, so that complete clarity will be indispensable about the question whether every country party to the Berne Convention is obliged—because of its being party to that Convention—to grant copyright protection (with the norms of that Convention) to computer programs and, if so, is obliged to grant such protection to computer programs created or first (or simultaneously) published in any other country member of the Berne Union.

Cable Television. During the last decade of the first hundred years of the Berne Convention, the questions of copyright and neighboring rights in connection with cable television occupied a prominent position among the preoccupations of the Berne Union. The Executive Committee of the Berne Union dealt with the matter in seven of its extraordinary sessions. They were held in 1975 (1976 CR 47), 1977 (1978 CR 111), 1979 (two sessions: 1979 CR 86 and 248), 1981 (1982 CR 72), 1983 (1984 CR 62) and 1985 (1985 CR 282). On substance, the matter was considered by a WIPO-Unesco working group in 1977 (1977 CR 246), by subcommittees of the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention in 1978 (1978 CR 203), by a subcommittee of the Intergovernmental Committee established under the Neighboring Rights (Rome) Convention also in 1978 (1978 CR 347), by a working group called the "Group of Independent Experts on the Impact of Cable Television in the Sphere of Copyright" in 1980 (1980 CR 154) and 1981 (1981 CR 218) and by a joint meeting of the subcommittees of the Executive Committee of the Berne Union and the Intergovernmental Committees established under the Universal Copyright and the Neighboring Rights (Rome) Conventions in 1982 (1983 CR 80) and in 1983 (1984 CR 184; hereinafter referred to as "the 1983 Meeting").

The essential question examined was the following: what rights have or should have the owners of copyright and neighboring rights when their works or performances are distributed by cable? Such distribution may consist of the distribution of a broadcast of the work or the performance, or it may consist of a distribution that has no connection with broadcasting. The first is called "distribution by cable of a broadcast" and was defined by the 1983 Meeting as "distribution by cable of a broadcast program item simultaneously with the broadcast of that program item and without any change therein." The second is called the distribution (by cable) of a cable-oriented (or cable-originated) program (1984 CR 145). The main issue is whether either kind of distribution requires the authorization of the owner of the copyright or neighboring right or may be done without such authorization, subject, however, to the payment of a certain compensation to the owner. The answer is not the same for all owners and all kinds of distributions and depends on the provisions of the applicable multilateral treaties. The 1983 Meeting put down the proposed answers in 38 points. Each point is called a principle and is drafted in the style of a legislative text. In other words, each point is a model provision for national legislators. The said 38 "principles," with "annotations" (commentaries) for each, were adopted by the 1983 Meeting and were published in 1984 CR 146.

Works or "Expressions" of Folklore. The Executive Committee of the Berne Union started to deal with the question of the intellectual property in works of folklore in 1975 (1976 CR 42) and continued to deal with it in its extraordinary sessions of 1977 (1978 CR 114), 1979 (1979 CR 77), 1981 (1982 CR 77), 1983 (1984 CR 65) and 1985 (1985 CR 284).

The subject matter is "expressions of folklore" which, according to one of the international meetings (held in 1984; see below), means "productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of their community" (1985 CR 46). Such expression may be "verbal" (tales, poems, riddles), "musical" (instrumental music), "by action" (dances, plays, artistic forms or rituals) or "tangible" (drawings, paintings, carving, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket-weaving, needlework, textiles, carpets, costumes; musical instruments; architectural forms). The main problems are to what extent, if any, should any commercial exploitation of expressions of folklore be licit only with authorization, who should be entitled to give such authorization (the government?), and who should benefit by the money paid for the authorization (the "community?"). Among the numerous other problems are the protection against the distortion of the expressions of folklore (a kind of collective moral right of the community) and the duration (unlimited?) of the protection. The consideration of those problems led to two sets of provisions: the first, model provisions for national legislators; the second, the draft of a multilateral treaty.

The work on model provisions was carried out by a working group of experts, called the "Working Group on the Intellectual Property Aspects of Folklore Protection," meeting twice (in 1980 (1980 CR 110) and in 1981 (1981 CR 111)) and by the Committee of Governmental Experts on the Intellectual Property Aspects of the Protection of Expressions of Folklore, meeting in 1982 (1982 CR 278). That work resulted in a model law of 14 sections entitled "Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions" (1982 CR 282).

The work on a multilateral treaty has consisted, so far, in a meeting of the "Group of Experts on the International Protection of Expressions of Folklore by Intellectual Property." That Group met in 1984, and its discussions were based on the draft of a multilateral treaty prepared by the secretariat of WIPO and Unesco (1985 CR 40).

All the above-mentioned meetings were jointly convened by WIPO and Unesco and, as far as WIPO is concerned, were monitored by the Executive Committee of the Berne Union.

In 1986, the year of the centenary of the Berne Convention, it is yet too early to say whether the efforts described above would be followed by enactments of national laws and the adoption of a multilateral treaty.

Rental and Lending of Phonograms and Videograms. The rental of phonograms and videograms characteristically amounts to a commercial and public use of the works whose performances are incorporated in the phonograms or videograms. Or, if the work is an audiovisual work (a motion picture), the rental is a rental of the work itself. The same is true in respect of phonograms where copyright vests, as it does under certain copyright laws, in the producer of the phonogram. Performing artists whose performances are incorporated in phonograms or videograms have claims also where the said devices are rented.

What is or should be the response of intellectual property laws: right of authorization, right to a remuneration, or no right whatsoever?

These are the main questions whose examination was first decided in 1981 (1982 CR 76) and further pursued in 1983 (1984 CR 68) on the basis of a study prepared by the International Federation of Phonogram and Videogram Producers

(IFPI), and in 1985 (1985 CR 285) on the basis of the report of the Group of Experts on the Rental of Phonograms and Videograms (1985 CR 16). The said examination was carried out by the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention. The Group of Experts was jointly convened by WIPO and Unesco.

That Group of Experts expressed, among other things, the view "that authors should enjoy, under copyright law, an exclusive right to authorize the rental and lending of phonograms or videograms embodying or constituting their works" (1985 CR 19). The Group of Experts recognized that "the soliciting and granting of licenses [authorizing the rental or lending] may require legislative measures ... resulting in the collective administration of the rights [of authorization]" (*loc. cit.*), and it recommended further studies "which should deal also with the uses (copying, performances, etc.) to which rented or lent copies may be put" (*loc. cit.*).

In 1986, the year of the centenary of the Berne Convention, the said studies were well under way in the International Bureau of WIPO.

Private Copying. The meeting, in 1984, of the Group of Experts on Unauthorized Private Copying of Recordings, Broadcasts and Printed Matter, jointly convened by WIPO and Unesco (hereinafter referred to as "the 1984 Group of Experts") was the meeting that, at the beginning of 1986, the year of the centenary of the Berne Convention, was the most recent of the international meetings dealing with problems of private ("home") copying.

The 1984 Group of Experts found that "the cumulative effect of reproduction for private purposes of sound and audiovisual recordings and broadcasts ['home taping'] as well as reprographic reproduction for private use of printed works is prejudicial to the author's legitimate interests.... Consequently, national legislations should not exempt such reproductions for private purposes from copyright liability.... Appropriate systems for protection with regard to reproduction for private purposes may be collective administration of the exclusive right of reproduction or various forms of non-voluntary licensing, such licensing implying the obligation to pay proper remuneration" (1984 CR 281).

The consideration of the problem, as far as sound and audiovisual recordings are concerned, started in the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention in 1977 (1978 CR 109). It was further considered by the said two Committees in 1979 (1979 CR 297) and 1985 (1985 CR 289). It was also considered, but only in respect of audiovisual recordings, in two expert groups in 1977 and 1978, the first being the Working Group on the Legal Problems Arising from the Use of Videocasettes and Audiovisual Disks (1977 CR 87) and the second being the Subcommittees of the Executive Committee of the Berne Union and of the Intergovernmental Committee of the Universal Copyright Convention on Legal Problems Arising from the Use of Videocasettes and Audiovisual Disks (1978 CR 406).

The 1984 Group of Experts suggested that the International Bureau of WIPO and the Secretariat of Unesco prepare "annotated principles" on questions of private copying. It is foreseen that this will be done in the years following the centenary of the Berne Convention.

Direct Broadcasting by Satellites. The question considered is the question what rights authors have when the works protected by copyright are transmitted by broadcasting, and such broadcasting is effected with the help of one or several artificial satellites and the signals transiting such satellites or satellite can be received by the members of the public ("direct broadcasting by satellites").

As far as the Berne Union is concerned, the question was discussed, in depth, for the first time in the "Group of Experts on the Copyright Aspects of Direct Broadcasting by Satellite." The Group of Experts was convened by WIPO and Unesco, and it met in 1985 (1985 CR 180).

There was unanimity in the Group of Experts "that it was always the broadcaster originating the direct broadcasting by satellite (determining its program and giving the order for its distribution) who was responsible vis-à-vis the owners of the copyright concerned" (1985 CR 183). The question on which views differed was the question whether this responsibility of the originating broadcaster had to be determined on the basis of the law of the country where the broadcasting originated or, if the broadcast was receivable also in other countries, on the basis of the laws of both the country where the broadcasting originated and the countries in which the broadcasting was receivable. The Director General of WIPO was of the view that the requirements of all the said countries had to be respected by the broadcaster. He based his opinion, among other things, on the Berne Convention which considered broadcasting as a communication to the public rather than a mere emission (the latter concept is not even mentioned in the Berne Convention). The answer to the question of the law or laws of which country or countries applies or apply has great practical significance since some countries party to the Berne Convention recognize the right of broadcasting as an exclusive right of authorization, whereas others recognize it as a right merely to an equitable remuneration (compulsory license).

The question has not been resolved at the time (1986) of the centenary of the Berne Convention. It will be doubtless further studied in the years following the centenary, as desired by the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention, a desire expressed in their sessions of 1985 (1985 CR 289).

Employed Authors. A committee, called the "Committee of Experts on Model Provisions for National Laws on Employed Authors," convened by WIPO and Unesco in January 1986, adopted such model provisions (1986 CR 76). More precisely, they adopted two sets of such provisions. One is based on the principle that copyright originally vests in the author even where he is an employee ("salaried author") and has created his work within the scope of his employment contract. The other set of provisions is based on the principle that where a work is created in the scope of an employment contract, copyright originally vests in his employer. The draft provisions also provide for exceptions from these principles and for rules covering the moral rights of the author. The reason for which the drafting of model legislative provisions seemed to be desirable is that, generally,

the employee is in a weaker bargaining position than the employer, and it is justified that this weakness be mitigated by legislative provisions protecting the natural person that every author is.

The matter, however, is not concluded, and its consideration in the Executive Committee of the Berne Union (1985 CR 286) is expected to continue beyond the centenary (1986) of the Berne Convention.

Publishing Contracts. Just as employee authors are generally in a weaker bargaining position vis-á-vis their employers, so are independent authors vis-á-vis their publishers. Here, too, national laws should help to put authors in a better position, and this is why, in 1984, a working group (1985 CR 289) and, in 1985, a committee of governmental experts (1986 CR 40) on "Model Provisions for National Laws on Publishing Contracts for Literary Works" were convened by WIPO and Unesco.

Both meetings, however, could not agree on draft provisions. Several participants were of the opinion, expressed with insistence, that, in fact, authors were generally not in a weaker bargaining position than their publishers and, consequently, needed no special support by legislation. (As a matter of fact, a similar view was expressed by some delegations also in respect of employed authors, a matter considered in the preceding chapter.)

Thus, by the end (1986) of the centenary of the Berne Convention, the consideration of the matter was not completed, and it was an open question whether it would be further considered in the framework of the Berne Union. (As to the discussion of the matter in the Executive Committee of the Berne Union in 1985, see 1985 CR 289.)

WIPO Forums for Combating Piracy. In order to call public attention and, in particular, the attention of legislators and governments, to the evils of piracy and to the need of combating it, WIPO has organized two "WIPO Worldwide Forums." The first, held in 1981, dealt with the piracy of sound and audiovisual recordings (1981 CR 191). The second, held in 1983, dealt with the piracy of broadcasts and the printed word (1983 CR 159). Each Forum was attended by some 200 participants, heard dozens of lecturers, held discussions with the lecturers and adopted resolutions urging the adoption and application of more effective measures for combating piracy.

Other Special Copyright Matters Considered in the Framework of the Berne Union. Other copyright matters that were considered in the last years of the first centenary of the Berne Union, under the supervision of the Executive Committee of that Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention, included the following:

— *domaine public payant* (1984 CR 69);

— *droit de suite* (1984 CR 70);

— model statutes for authors' organizations (1984 CR 70);

— copyright problems arising from the access by handicapped persons to protected works (1979 CR 87, 1982 CR 73, 1985 CR 283);

— the advisability of setting up an international register of audiovisual works (WIPO documents of the WIPO/FILMREG/I series of 1984).

Development Cooperation in the Field of Copyright

Nothing is more important for the survival and the extension of the principles of international copyright protection enshrined in the Berne Convention than the positive attitude of developing countries. The world had, in 1986, the year of the centenary of the Berne Convention, over 170 countries. Some 125 of them were so-called developing countries. Only 40 of them were members of the Berne Convention. Many of the remaining developing countries not only were not party to the Berne Convention but did not have a copyright law at all or, if they had one, it was inadequate or inadequately applied in practice.

The positive attitude of developing countries means working on the adoption of a copyright law in a country where there is none (in 1986, the most important example was China), working on the improvement of the copyright law when the country has a law which is not fully in harmony with its present economic and social goals, and working on a better administration and enforcement of the rights protected by copyright when the present administration or enforcement of such rights is not entirely what it should be.

The International Bureau, as an organ of WIPO and of the Berne Union, has devoted ever-increasing attention to the development of developing countries by serving them—as far as the Berne Union is concerned—in the field of copyright.

The present chapter is a brief description of the most important activities destined to serve developing countries. It is a history of some 20 years only, since, although the notion of developing countries (then called "underdeveloped countries") is some 40 years old in 1986, the Berne Union became active in the field of special service to developing countries only in the mid-nineteen-sixties.

Foundations and Organs of the Development Cooperation Activities. The Convention Establishing the World Intellectual Property Organization, signed in Stockholm in 1967, provides that "in order to attain the objectives [of WIPO] ... the Organization [that is, WIPO], through its appropriate organs, and subject to the competence of each of the Unions [among which, the one of interest here is the Berne Union] ... (v) shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property ..." (Article 4). The same Convention provides that the Conference of WIPO—that is, the assembly of all States members of WIPO—"shall ... establish the biennial program of legal-technical assistance" (Article 7(2)(iii)).

Most of the costs of the technical-legal assistance, or, using the terminology that has become current in the nineteen-seventies and nineteen-eighties, of the development cooperation activities, of WIPO are, as far as they concern matters of copyright, borne by the budget of the Berne Union. Development cooperation activities, in the nineteen-fifties and nineteen-sixties called "technical assistance," are activities designed to assist developing countries. The expression "developing country" has been used since around 1970. There is no official definition of the term or expression, and there is no official list of developing countries. In United Nations circles, in 1986, that is, the year of the centenary of the Berne Convention, the following countries were generally considered as being developing countries: in Africa, all countries except South Africa; in Asia and the Pacific, all countries except Australia, Japan and New Zealand; in the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THE UNITED INTERNATIONAL BUREAUS FOR THE PROTECTION OF INTELLECTUAL PROPERTY
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Americas and the Caribbean, all countries, except Canada and the United States of America. In Europe, there are three countries—Malta, Romania and Yugoslavia—that have been considered, for certain purposes, as developing countries.

The program of development cooperation being, as already stated, mainly financed from the budget of the Berne Union, *the Assembly*—functioning since 1970—of that Union has a decisive role in the formulation of the objectives and in determining the means that the International Bureau of WIPO can use for the obtaining of those objectives. Those objectives and means are specified in the program and the budget of WIPO which includes also the program and the budget of the Berne Union.

Another organ of the Berne Union that plays an important role in the monitoring of the development cooperation activities of WIPO in the field of copyright is *the Executive Committee* of the Berne Union. This body has met, since 1970, once a year in ordinary session and, in the period between 1970 and 1986, in nine extraordinary sessions. It is mainly in the extraordinary sessions that development cooperation activities are considered.

There is, since 1976, another body that deals with development cooperation activities. It deals *only* with those activities. It is called the "*WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights*" (hereinafter referred to as the "WIPO Permanent Committee (Copyright)"). It is not to be confused with the now defunct body called the Permanent Committee of the Berne Union: that body existed between 1948 and 1970 and was, in a way, the predecessor of what is, since 1970, the Executive Committee of the Berne Union.

The WIPO Permanent Committee (Copyright) was set up by a decision of the Conference of WIPO in 1976, that is, in the 90th year of the Berne Convention. So far—that is, during the last ten years of the centenary of the Berne Union—the said Committee has met six times: in 1977 (1977 CR 111), 1978 (1978 CR 130), 1979 (1979 CR 131), 1981 (1981 CR 167), 1983 (1983 CR 115) and 1985 (1985 CR 93).

The members of the WIPO Permanent Committee (Copyright) are States. Membership is open to all countries members of WIPO. It is voluntary and free of charge. By the beginning of 1986, the year of the centenary of the Berne Convention, the said Committee had 77 members. They were the following: Algeria, Angola, Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Egypt, El Salvador, Fiji, Finland, France, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Guatemala, Guinea, Honduras, Hungary, India, Israel, Italy, Japan, Jordan, Kenya, Malawi, Mali, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Senegal, Somalia, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Yemen, Zambia.

The WIPO Permanent Committee (Copyright) keeps the "Permanent Program (Copyright)" under review. The objectives of the Permanent Program (Copyright) are "to promote, in favor of developing countries, by all means within the competence of the World Intellectual Property Organization (WIPO),

"(i) the encouragement in developing countries of intellectual creation in the literary, scientific and artistic domain,

"(ii) the dissemination, within the competence of WIPO as defined in the WIPO Convention, in developing countries, under fair and reasonable conditions, of intellectual creations in the literary, scientific and artistic domain protected by the rights of authors (copyright) and by the rights of performing artists, producers of phonograms and broadcasting organizations ('neighboring rights'),

"(iii) the development of legislation and institutions in the fields of copyright and neighboring rights in developing countries" (Organizational Rules, Article 1(1)).

The Organizational Rules further provide that "such means shall in particular include, as appropriate, organizing meetings, providing advice, information, assistance and training, carrying out studies, making recommendations and preparing and publishing model laws and guidelines" (Article 1(2)).

The Joint Unesco/WIPO Consultative Committee on the Access by Developing Countries to Works Protected by Copyright (hereinafter referred to as "the Joint Consultative Committee") was set up under an agreement between WIPO and Unesco in November 1979 (1980 CR 62).

That agreement established a joint—WIPO-Unesco—"service" (hereinafter referred to as "the Joint Service") with the objective of facilitating access by developing countries to works protected by copyright. The twelve members of the Joint Consultative Committee are appointed by the Directors General of WIPO and Unesco.

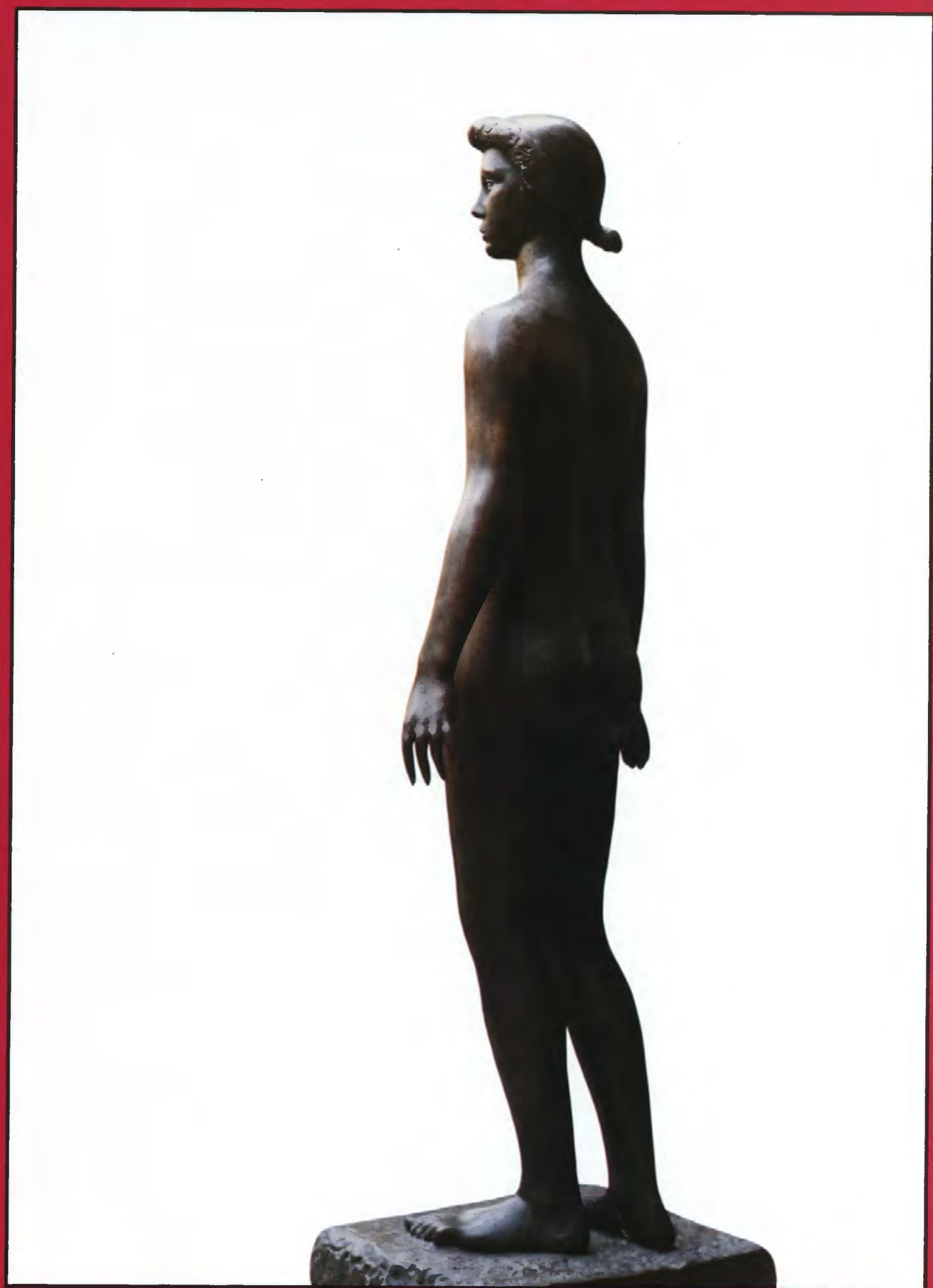
During the first five years of its existence, the Joint Consultative Committee met twice: the first time in 1981 (1981 CR 281), and the second time in 1983 (1983 CR 280).

As already stated, both the Berne Convention and the Universal Copyright Convention were revised in 1971 (in Paris) and, as a consequence of that revision, contain similar provisions allowing, under certain circumstances, the granting of compulsory licenses, *by developing countries*, for reproduction and translation. Those provisions can be made use of only by such developing countries that make a declaration to that effect.

At the beginning of 1986, the year of the centenary of the Berne Convention, there were only two such countries members of the Berne Union. These were India and Mexico.

One of the purposes, if not the main purpose, of the Joint Service is to facilitate the negotiation and conclusion of publishing and translation *contracts* between publishers in developing countries and copyright owners who are nationals of industrialized countries. Such a facilitation of the "access" to works protected by copyright should reduce the number of cases in which recourse would otherwise have to be made to compulsory licenses provided for in the 1971 texts of the two Copyright Conventions. According to information available to WIPO, no such licenses were granted either in India or in Mexico. During the period 1980-1985, WIPO and Unesco received less than a dozen requests for its Joint Service to intervene in trying to bring about a contractual, rather than a compulsory license, solution.

Development of Human Resources. One of the principal objectives of the development cooperation activities is the development of human resources or, in other words, the conveying of knowledge about matters of copyright that should be useful both



to the countries to whose nationals such knowledge is conveyed and to the individuals to whom the knowledge is conveyed.

The knowledge conveyed is, first of all, awareness of what copyright law is and why the protection of the rights of authors is good for the economy and the culture of each country. The knowledge conveyed concerns also the responsibilities that any government has in administering the copyright law of its country and the international copyright relations of that country.

The relevant information is mostly conveyed through courses, workshops, seminars and other essentially teaching meetings and through the on-the-job training of individual trainees.

The first introductory training course organized by the International Bureau was held in 1963 in Brazzaville. Two more courses were held before WIPO started functioning: one in New Delhi in 1967 and one in Geneva in 1968. Thereafter, copyright courses, workshops or seminars for essentially teaching purposes, were held each year, except in 1974. The years and the places in which they took place are the following: in 1971, Bogota; in 1972, Nairobi; in 1973, Tokyo; in 1975, Oaxtepec (Mexico); in 1976, Geneva and Sydney; in 1977, Bangkok, Geneva and Rabat; in 1978, Geneva and New Delhi; in 1979, Buenos Aires, Budapest, Stockholm and Zurich; in 1980, Munich, Bissau, Lomé, Stockholm and Zurich; in 1981, Conakry, Gisenyi, Kingston, London and Zurich; in 1982, Beijing, Budapest, Stockholm and Zurich; in 1983, Buenos Aires, Munich, Paris, Quito and Zurich; in 1984, Colombo, London, Manila, Maseru, Montevideo and Zurich; in 1985, Brasilia, Budapest, Cairo, Colombo, Cotonou, Mexico City, Nanjing (China), Stockholm and Zomba (Malawi); in 1986, San José (Costa Rica), Geneva, Paris and Zurich. For each of those 56 courses, the number of participants was between ten and 200, and the total number of participants is estimated to have been around 3,000. They were nationals of some one hundred different developing countries. Each course lasts one to three weeks. In most courses, the nationals of several or numerous countries participate together. The costs of their travel and living expenses during the course are covered by the budget of the Berne Union. Some of the courses are organized by WIPO in cooperation with governments, semi-governmental or private organizations, in which case some of the costs are borne by the co-organizer. For example, the courses in London were organized in cooperation with the British Copyright Council; those in Paris, with the French Government; those in Munich, with the Carl Duisberg Gesellschaft (CDG); those in Zurich, with the Swiss Society for Authors' Rights in Musical Works (SUISA); those in Budapest, with the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS); those in Stockholm, with the Government of Sweden and the Swedish International Development Authority (SIDA); those in Colombo, with the Government of Sri Lanka and the Sri Lanka Foundation.

Each year, the International Bureau writes to the governments of all the developing countries and certain intergovernmental bodies asking them to propose candidates, send information on the professional background and language ability of each candidate and identify the copyright field in which each candidate is particularly interested. The International Bureau makes the selection.

A similar procedure is followed in what is called, in WIPO parlance, "individual training." Individual training means on-the-job training of a national of a developing country for a few weeks or months. Such training is given usually in a government office that is responsible for copyright or in an authors' society that administers copyright revenues (e.g., "performing rights' societies"). In the last 20 years of the centenary of the Berne Convention, some 60 such individual trainings were accorded.

Here is the list of those countries whose governments and those organizations which have so far contributed to the development of human resources activities of WIPO in the field of copyright. *Countries*: Algeria, Angola, Argentina, Australia, Austria, Belgium, Benin, Brazil, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Czechoslovakia, Ecuador, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Guinea-Bissau, Hungary, India, Italy, Jamaica, Japan, Kenya, Lesotho, Malawi, Malaysia, Mali, Mexico, Morocco, Netherlands, Nigeria, Philippines, Portugal, Rwanda, Senegal, Soviet Union, Sri Lanka, Swaziland, Sweden, Switzerland, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, United Kingdom (and Hong Kong), United States of America, Uruguay, Zimbabwe. *Organizations*: Algerian National Copyright Office (ONDA), Argentine Society of Authors and Music Composers (SADAIC), Argentine Center of the Inter-American Copyright Institute, Australasian Performing Right Association (APRA), Australian Record Industry Association (ARIA), Belgian Society of Authors, Composers and Publishers (SABAM), British Broadcasting Corporation (BBC), British Copyright Council (BCC), Bureau for Copyright in Musical Works (BUMA)(Netherlands), Carl Duisberg Gesellschaft (CDG)(Federal Republic of Germany), Copyright Agency of the USSR (VAAP), European Broadcasting Union (EBU), German Foundation for International Development (DSE)(Federal Republic of Germany), Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS), International Federation of Actors (FIA), International Federation of Musicians (FIM), International Federation of Phonogram and Videogram Producers (IFPI), International Confederation of Societies of Authors and Composers (CISAC), International Publishers Association (IPA), Latin-American Integration Association (LAIA), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (Federal Republic of Germany), Mechanical Copyright Society Limited (MCPS)(United Kingdom), Musical Performing and Mechanical Reproduction Right Society (GEMA)(Federal Republic of Germany), National Union of Publishers of Phonograms and Videograms (SNEPA)(France), Performing Right Society (PRS)(United Kingdom), The Publishers' Association (United Kingdom), Society for the Administration of Neighboring Rights (GVL)(Federal Republic of Germany), Society of Authors, Composers and Music Publishers (SACEM)-(France), Sri Lanka Foundation, Swedish Broadcasting Corporation (Sveriges Radio), Swedish International Development Authority (SIDA), Swedish Performing Right Society (STIM), Swiss Society for Authors' Rights in Musical Works (SUISA), Swiss Society of Performing Artists (SIG), Union of Swedish Musicians (SAMI).

The contribution of the countries or organizations consisted of one or several of the following: furnishing of teachers or lecturers, writing and reproducing of teaching materials, payment of travel costs, furnishing of meals and lodging, furnishing of conference premises and interpretation, furnishing of recreational possibilities and participation in cultural events. Many

of the teachers or lecturers were professionals, lawyers in private practice, who received no remuneration for their work which they volunteered *pro bono publico*. In every course, one or more staff of the International Bureau is present to help in the carrying out as well as in the supervising of the program. Several of the lectures are delivered by such staff members in each course.

Advice on Legislation. One of the important development cooperation activities of WIPO in the field of copyright is the furnishing of advice on legislation. What solutions are in the best interests of a given country, taking into account its economic situation, the ideology followed by its government, its cultural traditions?

Such advice is given almost exclusively by staff members of the International Bureau. The advice is largely based on the "Tunis Model Law on Copyright for Developing Countries," a model law adopted in 1976 by a committee of experts coming exclusively from developing countries (1976 CR 139 and 165). The solutions recommended by the staff of WIPO are always solutions that are compatible with the Berne Convention since the primordial task of what is also the international secretariat of the Berne Union is to make sure that those countries that are already party to the Berne Convention have copyright laws that are compatible with that Convention and that those countries that are not party to the Berne Convention adopt laws that are, or amend their laws in such a manner that such laws become, compatible with that Convention so that—when the day comes on which they wish to accede to the Berne Convention—they can do so.

Giving such legislative advice, and/or giving advice on the establishment of institutions dealing with copyright, started in the late nineteen-sixties and, by 1986, the year of the centenary of the Berne Convention, was given, always at their express request, to the Governments of the following 56 developing countries: Angola, Antigua and Barbuda, Bangladesh, Barbados, Benin, Bolivia, Burundi, Cameroon, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Dominica, El Salvador, Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Honduras, Jamaica, Jordan, Lesotho, Madagascar, Malawi, Malaysia, Mali, Mauritius, Morocco, Mozambique, Niger, Philippines, Qatar, Rwanda, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Syria, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, United Arab Emirates, Yemen, Zaire, Zimbabwe.

Missions to Developing Countries. The first mission on copyright business to a developing country by a staff member of what was then BIRPI took place in 1963. During the 22 years that followed, that is, up to the hundredth anniversary of the Berne Convention (1986), altogether 53 developing countries were visited, on copyright business, by the Director of BIRPI, the Directors General of WIPO or the staff of BIRPI or WIPO. Such missions are not only useful but, since the International Bureau has no offices or resident representatives outside Geneva, indispensable. They allow the creation of an increased awareness in governmental circles of the importance of copyright in general and the Berne Convention in particular. They allow the discussion, face to face, of the problems that a government has and wishes to solve in the field of copyright, such as the revision of its copyright legislation or the modernization of the administration of the rights protected by copyright. Missions also allow the gathering of personal impressions by WIPO staff members on the needs and wishes of the countries visited as far as copyright matters are concerned.

The list of the developing countries so visited between 1963 and 1986 is the following: Algeria, Angola, Argentina, Bangladesh, Barbados, Benin, Brazil, Burkina Faso, Burundi, Cameroon, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Ecuador, Egypt, Ethiopia, Grenada, Guinea, Guinea-Bissau, Honduras, India, Indonesia, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Mauritius, Mexico, Morocco, Pakistan, Peru, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Sri Lanka, Sudan, Suriname, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, United Arab Emirates, Uruguay, Venezuela, Zaire, Zimbabwe.

Cooperation with Other Organizations

Copyright is one of the intellectual property rights. The proprietors of those rights are, in most countries and in the overwhelming majority of cases, individuals (the authors and their heirs) or privately owned enterprises (publishers of books, newspapers, journals, magazines; producers of motion pictures, phonograms, broadcast programs, etc.). It is, therefore, both natural and necessary for the Berne Union and the International Bureau to be in contact with those who represent the interests of the owners of copyright as well as with the representatives of those enterprises which, without being the owners of the copyright in the works, disseminate, perform, broadcast or otherwise use works as licensees of the owners. Such licensees or users are also, in most countries and in most cases, enterprises privately owned. There are, naturally, important exceptions. In some countries, publishing, and, in many countries, broadcasting, too, is owned or controlled by the government. But governments are *ipso facto* represented in meetings organized by WIPO.

Non-Governmental Organizations. Owners of copyright, users of works protected by copyright, and lawyers of both owners and users, have numerous national, regional or worldwide organizations. The present usage is to refer to such organizations —not controlled by the government—as "non-governmental," "private" or, in the case of organizations of lawyers, as "professional."

Non-governmental organizations play an important role in the activities of the International Bureau. They are invited to send representatives to almost every meeting that WIPO convenes and services in the field of copyright, whether they are meetings of the governing bodies of WIPO or the Berne Union or meetings dealing with a specific question of the law of copyright. The latter are usually called committees of experts or working groups. Even if the meeting is that of a committee of governmental experts, representatives of non-governmental organizations participate in it. Such representatives are called observers but they are allowed to speak in the meetings whenever they want to. The only respect in which their rights of participation are less than those of the representatives of governments is that they have no right to vote. But, then, voting happens very rarely in the meetings of the governing bodies, and there is

practically never a vote in the committees of experts or working groups.

In the last ten years of the first centenary of the Berne Convention, it has become customary that once a year the Director General of WIPO invites the non-governmental organizations to an informal meeting in which only the representatives of those organizations and the Director General participate. The principal aim of those meetings is to have an exchange of views on what topics the International Bureau should propose to the governing bodies for inclusion in the program of activities of WIPO and the Berne Union.

The International Bureau automatically, regularly and free of charge, sends, through the mail, to the interested non-governmental organizations the preparatory papers of all WIPO or Berne Union meetings to which such organizations are invited.

In exchange, the non-governmental organizations usually invite the International Bureau to their meetings if such meetings deal not only with the organizations' internal administrative matters but with matters of substantive copyright law.

Most of the non-governmental organizations which are invited by the International Bureau to the meetings organized by the latter have what is called official "observer status." Such observer status is accorded to them, on the proposal of the Director General of WIPO, by the competent governing bodies of WIPO and the Berne Union. Once such observer status is accorded, it lasts until it is revoked. None has been revoked so far. The Director General of WIPO may invite, to certain meetings, as observers, non-governmental organizations even if they have no official observer status. He has made use of such faculty from time to time, particularly in respect of non-governmental organizations that are not international or regional but national. It is to be noted that official observer status is accorded by the governing bodies only to non-governmental organizations that are international or, at least, regional.

The international non-governmental organizations which have an official observer status are usually divided into three groups: organizations essentially concerned with industrial property (there were 25 of them in 1986), organizations essentially concerned with copyright and neighboring rights (there were 40 of them in 1986), and organizations concerned with both industrial property and copyright and neighboring rights (there were 12 of them in 1986).

At the beginning of 1986, the year of the centenary of the Berne Convention, the following non-governmental organizations were in the second and third of the said three groups: *Organizations essentially concerned with copyright and neighboring rights*: Asia-Pacific Broadcasting Union (ABU), Council of the Professional Photographers of Europe (EUROPHOT), European Broadcasting Union (EBU), European Tape Industry Council (ETIC), Ibero-American Television Organization (OTI), Independent Film Producers International Association (IFPIA), Inter-American Association of Broadcasters (IAAB), Inter-American Copyright Institute (IIDA), International Alliance for Diffusion by Wire (AID), International Association of Authors of Comics and Cartoons (AIAC), International Association of Conference Interpreters (AIIC), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Council for Reprography (ICR), International Council on Archives (ICA), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Newspaper Publishers (FIEJ), International Federation of Phonogram and Videogram Producers (IFPI), International Federation of Translators (FIT), International Group of Scientific, Technical and Medical Publishers (STM), International Hotel Association (IHA), International Institute of Communications (IIC), International Literary and Artistic Association (ALAI), International P.E.N., International Publishers Association (IPA), International Radio and Television Organization (OIRT), International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU), International Union of Architects (IUA), International Union of Cinemas (UNIC), International Organization of Hotel and Restaurant Associations (HoReCa), International Writers Guild (IWG), Latin American Federation of Performers (LAFP), Union of National Radio and Television Organizations of Africa (URTNA), World Blind Union (WBU). *Organizations concerned with both industrial property and copyright and neighboring rights*: Afro-Asian Organization for Economic Cooperation (AFRASEC), European Computer Manufacturers Association (ECMA), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Chamber of Commerce (ICC), International Confederation of Free Trade Unions (ICFTU), International Confederation of Professional and Intellectual Workers (CITI), International Federation for Documentation (FID), International Law Association (ILA), International League for Competition Law (LIDC), International Organisation for Standardization (ISO), Law Association for Asia and the Western Pacific (LAWASIA), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law.

Intergovernmental Organizations. WIPO and the Berne Union maintain official and close relations with the United Nations and several of the specialized agencies of the United Nations system of organizations. They also maintain such relations with several regional intergovernmental organizations.

As far as the Berne Union is concerned, the closest relations exist with the United Nations Educational, Scientific and Cultural Organization (UNESCO). Those relations are regulated by a working agreement concluded between WIPO and Unesco. The programs of the two Organizations in the field of copyright and neighboring rights are coordinated in the following respects. Once every two years, the Executive Committee of the Berne Union (whose secretariat is the International Bureau of WIPO) and the Intergovernmental Copyright Committee established under the Universal Copyright Convention (whose secretariat is the Secretariat of Unesco) meet, for a week, at the same place (either in Geneva or in Paris) at the same time, and all matters that appear on the agendas of both Committees are dealt with in joint meetings of the two Committees.

Furthermore, the drafts of the future programs of WIPO and Unesco, respectively, for each two-year program cycle are discussed between the two secretariats before those drafts are finalized for presentation to the governing bodies of WIPO and

the Berne Union, on the one hand, and Unesco, on the other hand. During those discussions, the program items that the two Organizations plan to execute jointly, and those which they plan to execute separately, are identified and agreed upon.

Most of the substantive copyright law items on the program, in particular meetings of working groups or committees of experts dealing with copyright law subjects of topical interest, are items which the two secretariats propose to carry out jointly. (The decision lies, of course, with the governing bodies of each.) Such joint action means that most of the preparatory documents are published under the names of both secretariats even if the intellectual work that went into their drafting was the effort of only one of them. It further means that the meetings are convened by letters signed jointly by the Directors General of both Organizations, that the meetings are serviced by the staff of both secretariats and the draft reports on each meeting are presented under the responsibility of both secretariats.

On the other hand, all other items in the respective programs of the two Organizations are carried out separately by each secretariat. This is particularly true in respect of the development cooperation activities. Thus, for example, the courses organized and the fellowships awarded by WIPO are financed without any participation by Unesco.

The method of cooperation between WIPO and Unesco just described applies also, *mutatis mutandis*, to the International Labour Office in most matters concerning neighboring rights, particularly the neighboring rights of performing artists. As far as the Rome (Neighboring Rights) Convention is concerned, the cooperation is tripartite as the secretariat of the Intergovernmental Committee established under that Convention is to be furnished and is furnished by the secretariats of WIPO (the secretariat of WIPO is officially called the International Bureau of Intellectual Property), Unesco and the International Labour Organisation (called the International Labour Office).

Inscription On The Palais de Chaillot, in Paris,
Words by Paul Valéry (1871-1945)

"Within these walls, dedicated as they are to marvels,
I receive and preserve the works of the artist's prodigious hand which is the equal and the rival of his mind.
The one is as nothing without the other".
"Dans ces murs voués aux merveilles, j'accueille et garde les ouvrages de la main prodigieuse de l'artiste, égale et rivale de sa pensée. L'une n'est rien sans l'autre".

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of the

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SEPTEMBER 8 TO 19, 1884

PRELIMINARIES TO THE CONFERENCE

Literary and artistic property has the same cosmopolitan character as thought itself. It is therefore not surprising that, in our century of international conventions, one should have sought to unify the legislation of the various States on this subject, and to bring together the greatest possible number of the latter in a Union similar to the General Postal Union, which has already proved its worth.

This aim was mainly pursued by the Association for the Codification and Reform of the Law of Nations and by the International Literary Association. The latter Association, which was founded in 1878, took upon itself, as its main task, "to propagate and defend the principles of intellectual property in all countries, to study international conventions and to work on their improvement." In the Congress that it held in Rome in 1882, it decided that a Conference would meet in Berne in 1883 to lay the foundations of a programme that could serve as the formula for a universal convention. That Conference was to be composed of delegates of literary societies, universities, academies, associations, circles of men of letters, artists, writers and publishers belonging to the various nations, and to have the following as its programme:

(1) to consider the state of legislation on literary property in various countries;

(2) to consider the important points on which it is possible to achieve unification for the purposes of a Literary Property Union;

(3) to draft clear and concise articles, summarizing the principles acceptable to all nations, to constitute the text of a universal convention.

At the request of a committee composed of Swiss men of letters, artists, lawyers and publishers, the Federal Council offered the hall of the Council of States for the meetings of the Conference, and was represented at it by one of its members, Mr. Numa Droz, Head of the Federal Department of Commerce and Agriculture.

The Berne Conference lasted from September 10 to 13, 1883. Its work is summarized in the draft Convention on which it voted at its meeting on September 13. It regarded the draft as no more than a basis for discussion which it proposed to the Federal Council with a view to the consideration of a draft Convention to be submitted to a diplomatic conference for examination. The text of the draft follows:

DRAFT CONVENTION

for

the Establishment of a General Union for the Protection of the Rights of Authors in Their Literary and Artistic Works

Article 1. The authors of literary and artistic works that have appeared or been presented or performed in one of the Contracting States, on the sole condition that they comply with the formalities laid down by the law of that country, shall enjoy, for the protection of their works in the other States of the Union, regardless moreover of their nationality, the same rights as nationals.

Article 2. The expression "literary and artistic works" shall include: books, pamphlets or any other writings; dramatic or dramatico-musical works, musical compositions with or without words and arrangements of music; works of drawing, painting, sculpture and engraving, lithographs, maps, plans, scientific diagrams, and in general any literary, scientific and artistic work that may be published by any system of printing or reproduction.

Article 3. The rights of authors shall also apply to manuscripts or unpublished works.

Article 4. The lawful agents or representatives of authors shall in every respect enjoy the same rights as are granted by this Convention to the authors themselves.

Article 5. Authors who are nationals of one of the Contracting States shall, in all the other States of the Union, enjoy the exclusive right of translation throughout the duration of the rights in their original works.

That right shall include the rights of publication or performance.

Article 6. An authorized translation shall be protected in the same way as the original work. Where the translation is of a work that has fallen into the public domain, the translator may not object to the same work being translated by other writers.

Article 7. In the event of violation of the foregoing provisions, the competent courts shall apply the provisions, both civil and criminal, that have been enacted by the legislation concerned as if the violation had been committed against a national.

Adaptation shall be considered infringement and proceeded against in the same way.

Article 8. This Convention shall apply to all works that have not yet fallen into the public domain in the country of origin at the time of its entry into force.

Article 9. It is understood that the States of the Union reserve the right to make special arrangements between themselves for the protection of literary and artistic works, provided always that such arrangements in no way contravene the provisions of this Convention.

Article 10. A central and international Bureau shall be established at which the Governments of the States of the Union shall deposit those of its laws, decrees and regulations that have already been promulgated or will be in the future concerning the rights of authors.

That Bureau shall compile them and shall publish a periodical journal in French which shall contain all such documents and information as it is necessary to make known to those interested.

Having accepted the mission entrusted to it by the Conference, namely to endeavour to establish between the nations, for the protection of the rights of authors, a general Union based on the principles set forth in the draft Convention that had just been drawn up, the Federal Council addressed to the Governments of all civilized countries the following circular letter, dated December 3, 1883, with which it enclosed the text of the draft, and the minutes of the Conference:

"The protection of the rights of the authors of works of literature and art (literary and artistic property) is tending to become more and more the subject of international conventions. It is indeed in the nature of things that the works of man's genius, once it has seen the light, should not be allowed to be restricted to a single country and a single nationality; if it is of any value, it loses no time in spreading to all countries in forms that may vary to a greater or lesser extent, but which nevertheless allow the creative thought to subsist in essence and in its principal manifestations. That is why, now that all civilized States have recognized and guaranteed by domestic legislation the rights of the writer and artist in their works, there has appeared the pressing need to protect that right also in international relations, which are developing and increasing daily. It is to that need that one has striven to respond with the numerous conventions concluded in recent years between the principal States.

"However, whatever may be the advantages offered by those conventions, it has to be acknowledged that they are far from affording uniform, efficacious and full protection of authors' rights. This shortcoming is unquestionably related to the diversity of national legislation, which the system introduced by the Convention has necessarily had to take into consideration.

"The inequalities and indeed serious gaps in present international law were bound to have a serious effect on those concerned, authors, publishers or other entitled persons. This is why we see the utmost efforts being made on their part to bring about, on the one hand, the universal recognition of the rights of authors without distinction as to nationality, and on the other hand the desirable uniformity in the principles governing the subject.

"It is to a large extent for the achievement of this aim that the International Literary Association was founded in 1878; it numbers among its members eminent representatives of a great number of countries, and since that year has annually held a General Congress in various capitals of Europe.

"On the initiative of this Association, a Conference of delegates met in Berne last September to discuss the bases of a General Union for the Protection of Authors' Rights. It drew up a draft Convention for the purpose, to be submitted to the Governments of all civilized countries for their kind consideration, and it asked the Swiss Federal Council to convey it to them with the proposal that a diplomatic conference be convened to examine it.

"In view of the usefulness and greatness of the work undertaken, which is in response to a universally acknowledged sentiment of justice, the Swiss Federal Council did not hesitate to accept the mission. It is discharging that mission today by conveying to you the minutes of the International Literary Conference of Berne, which on page 19 contain the draft Convention that the Conference wishes to see adopted by all States.

"The Federal Council did not conceal from the initiators of the project that it could see difficulties facing its immediate achievement in full measure: conventions recently concluded or in force for a certain number of years are more or less in contradiction with one portion or another of the provisions of the draft, and those conventions should not be expected to be readily susceptible of amendment before they expire.

FIRST CONFERENCE IN BERNE, 1884 — PRELIMINARIES

"On the other hand, it would certainly be a great advantage if a general understanding could be achieved at the outset whereby that exalted principle, that principle so to speak of natural law, were proclaimed: *that the author of o literary or artistic work, whatever his nationality and the place of reproduction, must be protected everywhere on the same footing as the citizens of every nation.*

Once this fundamental principle, which is not in conflict with any existing convention, has been acknowledged, and once the General Union has been established on that basis, it is beyond doubt that, under the influence of the exchange of views that would take place between the States of the Union, the more blatant differences existing in international law would be removed one after another and would give way to a more uniform and hence more sure regime for authors and their successors in title.

It is with this in mind that the Swiss Federal Council feels able to impress upon the Governments of all countries its endorsement of the request made by the International Literary Association. If, as it hopes, this initiative is favourably received, it will be honoured and pleased to invite them to send representatives, in the course of the coming year, to attend a diplomatic conference which will consider which of the common provisions that the state of the domestic legislation of each country or alternatively the state of international law make it possible to adopt at the present time.

The Federal Council hopes that your Government will be so kind as to make its views known on this subject, and takes this opportunity, etc."

The initiative taken by the Federal Council was indeed favourably received. Germany, the Argentine Republic, Colombia, El Salvador, France, Great Britain, Guatemala, Italy, Luxembourg and Sweden and Norway immediately declared that they would be represented at the Diplomatic Conference.

Other States which had not replied to the first circular nevertheless sent delegates to the Conference, namely Austria-Hungary, Belgium, Costa Rica, Haiti, the Netherlands and Paraguay.

Greece and Denmark, the Republics of Santo Domingo and Nicaragua and the United Mexican States gave a negative reply, either in consideration of the state of their legislation on the subject or on account of the low level of development attained by their literature.

Bulgaria and the United States of America did not pronounce on their participation in the Conference. The latter country explained its position to the Federal Council in a note which in somewhat abridged form reads as follows: "The Government of the United States is in principle disposed to accept the rule that the author of a literary or artistic work, whatever his nationality and the place of reproduction of the work, must be protected everywhere as a national. In practice, however, the Government sees great obstacles to accommodating all countries within one and the same Convention. Differences of tariffs, and the fact that a number of industries in addition to the author or the artist are concerned with the production or reproduction of a book or a work of art, have to be taken into account when one considers the grant to the author of a work of the right to have it reproduced or to prevent its reproduction in all countries. There is a distinction to be made between the painter or sculptor, whose work goes on to the market in the form in which it left his hands, and the literary author, to whose work the paper manufacturer, the typesetter, the printer, the binder and many other persons in business all contribute."

Encouraged by the reception given to its approach, the Federal Council decided to convene a diplomatic conference in Berne on September 8, and to that end addressed to the various governments, on June 28, 1884, a circular letter worded as follows:

"On December 3, 1883, the Swiss Federal Council had the honour to convey to Your Excellency the draft Convention drawn up by the *International Literary Association* with a view to the establishment of a '*General Union for the Protection of the Rights of Authors in Their Literary and Artistic Works.*' On that occasion it voiced the idea that there would be a genuine advantage in the achievement, between the Governments of all civilized countries, of a general agreement on the great principle underlying the Association, according to which protection as efficacious as possible, transcending political frontiers, should be afforded to the products of the human mind in the exalted field of literature and art; moreover, it saw fit to indicate that a diplomatic conference seemed to it the best means of determining whether, and if so in what way, one could reach a common agreement on the international protection to be accorded to authors of literary and artistic works, and it added that, if its proposal were to meet with a favourable response from the High Governments, it would do itself the honour of inviting them to be represented at a conference that could be convened in the course of 1884.

"The Swiss Federal Council is now able to observe with pleasure that its initiative has been crowned with success. It feels duty-bound to express to the High Governments all its gratitude for the favourable reception that they have been kind enough to give to its proposal, and it does not despair of achieving, with their invaluable assistance, the exalted goal that it has set itself.

"It is apparent from the notes received that, in principle, there is general acceptance of the fundamental idea of the draft of the International Literary Association, according to which all

civilized States should extend to literary and artistic creations that see the light in another State the protection that they themselves grant to the products of indigenous work; this general agreement thus creates a broad foundation on which one must seek to build a new edifice. It will be a question first of considering in what way that can be done without encroaching too seriously on the domestic legislation of specific States, or on existing international conventions. The Federal Council considers that the projected conference must not take such resolutions as will bind the various States, but that it must have a preliminary character and set itself no task other than that of laying down the general principles that have the best prospects of being realized under present circumstances. The provisional results thus obtained would then be submitted to the High Governments for consideration, and then it would be ascertained whether there is a possibility of forming the projected General Union. Encouraged by the alacrity of the response received from the High Governments, the Swiss Federal Council has resolved to convene a diplomatic conference in Berne on September 8, to meet at 10 a.m. in the hall of the Council of States, and it has the honour to invite Your Excellency to be represented thereat. The Federal Council is pleased to hope that the common work of the distinguished delegates who will meet in Berne will succeed in achieving further progress with the great work that has been begun.

"The Federal Council takes upon itself to convey to the High Governments in due course a draft and such documents as might serve as a basis for the deliberations of the Conference.

"The Swiss Federal Council requests Your Excellency to be so kind as to inform it whether it may count on the participation of the Government of ... in the International Conference whose date is set above, and takes this opportunity to renew, etc."

Proceeding with the preparatory work on the Conference, the Federal Council has drawn up a draft Programme which may perhaps serve as a basis for it, and has submitted it to the various Powers with its circular letter of August 22, 1884. The text of this draft is to be found below.

Finally, in order that the honourable delegates may be given an overall view of legislation in the field that concerns us, the Federal Council has arranged for a *Concordance Table of Laws and Treaties on Literary and Artistic Property* to be drawn up, in which an attempt has been made to summarize as clearly as possible the present state of the subject in the civilized world. This Concordance Table has been printed separately.

PROGRAMME

PROPOSED

BY THE SWISS FEDERAL COUNCIL

FOR THE

INTERNATIONAL CONFERENCE

OF SEPTEMBER 8, 1884

IN

BERNE

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1. The Contracting States (listed) are constituted into a Union for the protection of the rights of authors in their literary and artistic works.

2. The subjects or citizens of any of the Contracting States shall enjoy in all the other States of the Union, with respect to the protection of the rights of authors in their literary and artistic works, such advantages as the laws concerned do now or may hereafter grant to their own nationals. Consequently they shall have the same protection as the latter and the same legal remedies against any violation of their rights, subject to compliance with the formalities and conditions prescribed by law in the country of origin of the work.

3. The subjects or citizens of States not forming part of the Union who are domiciled, or have their work published, on the territory of one of the States of the Union shall be treated in the same way as the subjects or citizens of Contracting States.

4. The expression "literary or artistic works" shall include books, pamphlets or any other writings; dramatic or dramatico-musical works, musical compositions with or without words and arrangments of music; works of drawing, painting, sculpture and engraving, lithographs, maps, plans, scientific diagrams, and in general any literary, scientific and artistic work that may be published by any system of printing or reproduction.

5. The rights of authors shall also apply to manuscript or unpublished works.

6. The lawful agents or representatives of authors shall in every respect enjoy the same rights as are granted by this Convention to the authors themselves.

7. Authors who are nationals of one of the Contracting States shall, in all the other States of the Union, enjoy the exclusive right of translation throughout the duration of the rights in their original works (with the possible addition of "if they have availed themselves of that right within a period of ten years").

That right shall include the rights of publication or performance.

8. An authorized translation shall be protected in the same way as the original work.

Where the translation is of a work that has fallen into the public domain, the translator may not object to the same work being translated by other writers.

9. Any infringing work may be seized on import into those countries of the Union where the original work enjoys legal protection.

The seizure shall take place in accordance with the domestic legislation of each country, at the request either of the Public Prosecutor or of the interested party.

10. Adaptation shall be considered infringement and proceeded against in the same way.

11. This Convention shall apply to all works that have not yet fallen into the public domain in the country of origin at the time of its entry into force.

12. It is understood that the High Contracting Parties reserve the right to make special arrangements between themselves for the protection of literary and artistic works, provided always that such arrangements in no way contravene the provisions of this Convention.

13. An international bureau shall be established, under the name of **"Bureau of the International Union for the Protection of Literary and Artistic Works."**

This Bureau, the expenses of which shall be borne by the administrations of all the Contracting States, shall be placed under the high authority of . . . . . , and shall work under its supervision. The functions of the Bureau shall be determined by common consent between the countries of the Union.

14. This Convention shall be subject to periodical revision for the purpose of introducing therein amendments intended to perfect the system of the Union.

To that end, Conferences shall be held successively in one of the Contracting States between delegates of those States.

The next meeting shall take place in . . . . . (place), in . . . . . (year).

15. States that have not become party to this Convention shall be allowed to accede to it on application.

Such accession shall be notified in writing to the Government of . . . . . , and by it to all the others.

Such accession shall imply full acceptance of all the clauses and admission to all the advantages provided for in this Convention.

16. The implementation of the mutual commitments written into this Convention shall be subject, as necessary, to compliance with the formalities and rules laid down by the constitutional laws of those of the High Contracting Parties that are bound to propose the application thereof, which they undertake to do within the shortest possible time.

17. This Convention shall be put in force as from . . . . . , and shall remain in force for an indefinite period until the expiry of one year from the day on which it is denounced.

Such denunciation shall be made to the Government authorized to receive accessions. It shall only take effect for the State making it, the Convention remaining in full force and effect for the other Contracting Parties.

18. This Convention shall be ratified, and the ratifications exchanged at . . . . . within one year at the latest.

Transitional Provision

Any conventions at present in force between Contracting States that may depart from this Convention on one point or another may nevertheless remain in force until the date specified by them for expiry. In such cases, the subjects or citizens of States of the Union not bound by those conventions shall be given the benefit, in the States concerned, of the most-favoured-nation treatment with respect to the protection of their authors' rights.

Final Protocol

At the time of effecting the signature of the Convention concluded this day, the undersigned Plenipotentiaries have agreed as follows:

1. It is understood that the final provision of Article 2 of the Convention is without any prejudice to the legislation of each of the Contracting States concerning the procedure to be followed before the courts and the competence of those courts.

2. The definition of the words "arrangements of music" (Article 4 of the Convention) shall not cover pieces reproduced by automatic instruments such as electric pianos, music boxes, fairground organs, etc.

3. The exact meaning of the word "adaptation" requires definition.

4. The International Bureau has to be organized; its budget and the contributions of the States of the Union have to be decided upon.

Functions. The International Bureau shall collect all kinds of information regarding the protection of the rights of authors in their literary and artistic works, and arrange them into a general statistical work to be distributed to all administrations. It shall receive from each administration a list of the works registered by it, and communicate that list to all the other administrations. It shall undertake studies on questions of general interest concerning the Union and, with the aid of documents placed at its disposal by the various administrations, shall publish a periodical review in French on the questions which concern the purpose of the Union.

FIRST CONFERENCE IN BERNE, 1884 — PROGRAMME

The manner of distribution of the periodical has to be decided upon.

The International Bureau shall always be at the disposal of members of the Union with a view to furnishing them with any special information that they may require concerning the protection of literary and artistic works.

The administration of the country in which the next Conference is to meet shall prepare the programme of the Conference with the assistance of the International Bureau.

The Director of the International Bureau shall attend the meetings of Conferences, and take part in the discussions without the right to vote. He shall make an annual report on his administration, which shall be communicated to all the members of the Union.

The official language of the International Bureau shall be French.

This Final Protocol, which shall be ratified at the same time as the Convention concluded this day, shall be regarded as forming an integral part thereof and shall have the same force, validity and duration.

MINUTES

OF THE

FIRST MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF AUTHORS' RIGHTS

SEPTEMBER 8, 1884

The meeting opened at 10.15 a.m. in the Hall of the Council of States.
The following were present:

Austria-Hungary	*For Austria:* Dr. **Emil Steinbach**, Ministerial Counsellor at the Ministry of Justice of Austria. *For Hungary:* Mr. **Jules Zádor**, Counsellor at the Ministry of Justice of Hungary.
Belgium	Count **G. Errembault de Dudzeele**, Counsellor at the Belgian Legation, Berne.
France	H.E. Mr. **Emmanuel Arago**, Senator, Ambassador of France to the Swiss Confederation, Berne. Mr. **Louis Ulbach**, President of the International Literary Association.
Germany	Mr. **Reichardt**, Private Legation Counsellor, Reporting Counsellor to the Foreign Affairs Department of the German Empire. Dr. **Meyer**, Private Regency Counsellor to the Department of Justice of the German Empire. Dr. **Dambach**, Senior Private Counsellor for Posts, Professor of Law at the University of Berlin.
Great Britain	H.E. Mr. **F.O. Adams**, C.B., Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty in Switzerland.
Haiti	Dr. **Louis-Joseph Janvier**, Diplomate of the School of Political Science of Paris.
Italy	(A Delegation was announced, but the names of the Delegates, who were not yet at Berne, had not yet been notified to the Federal Council)
Netherlands	Mr. **B.L. Verwey**, Consul General of His Majesty the King of the Netherlands to the Swiss Confederation.
Sweden and Norway	*For Sweden:* Mr. **A. Lagerheim**, Secretary General of the Ministry of Foreign Affairs. *For Norway:* Mr. **F. Baetzmann**, Honorary Vice-President of the International Literary Association.
Switzerland	Federal Councillor **Louis Ruchonnet**, Head of the Federal Department of Justice and Police. Federal Councillor **Numa Droz**, Head of the Federal Department of Commerce and Agriculture. Mr. **A. d'Orelli**, Professor of Law at the University of Zurich.

FIRST CONFERENCE IN BERNE, 1884 — MINUTES

Mr. LOUIS RENAULT, Professor of International Law at the Law Faculty of Paris, who had been appointed by the French Government to attend the Conference, was unexpectedly prevented from doing so, and was replaced by the Consul General, Mr. LAVOLLÉE, who was to arrive on the following day.

Federal Councillor **Numa Droz** opened the meeting with the following address:

"Gentlemen,

"The Swiss Federal Council has entrusted my colleague Mr. Ruchonnet and myself with opening this Conference and bidding you welcome.

"The first initiative for the holding of this meeting is due not to a Government wishing to settle international difficulties, but to the actual writers and artists of all countries and of all languages who have formed an association for the safeguarding and defense of their rights, and we have the pleasure of having in our midst the President of that Association in the person of Mr. Louis Ulbach, the Delegate of the French Government. Last year the Delegates of that Association met in this very hall to formulate the wishes that they addressed to the Governments of all civilized States. They then presented them to the Federal Council, more or less in the following terms: We are the workers of the mind; our work is unquestionably beneficial to mankind, which it has the effect of instructing, enlightening, elevating and civilizing still further; we consider ourselves entitled like other men to the fruits of our labour. We are appreciative of the efforts that the majority of Governments have made to ensure the protection of our rights either by domestic legislation or by means of international conventions. We do, however, take the liberty of saying that there exists between those various national and international laws so little conformity that we ultimately become decidedly unsure of our rights. We therefore request you to take our interests in hand and to impress upon other States how desirable it would be, in this field of art and letters which as a rule cannot be confined by political frontiers, to achieve the creation of a regime that genuinely protects rights, and to that end to lay the foundations of a universal Union whose purpose would be to establish, if not at the outset at least progressively, a uniformity of principles and of application of those principles which the organization of various States can provide.

"Gentlemen, the Federal Council did not hesitate to accept this honourable mission. It seemed to it that here was a work of international justice to which Switzerland should not refuse its support, all the less so as our country has always set great store, under such circumstances, by acting as intermediary in all aspirations of this kind, and thereby playing a role, albeit modest, yet which we consider useful, in the concert of nations.

"The favourable reception that our invitation was given by all States, and the favourable replies that the majority of them have sent us, are a testimony to the general interest in remedying the deficiencies complained of. While the places of certain States that we had hoped would be taking part are still empty, we are firmly convinced that they will not remain so for long. This gathering of so many eminent delegates, representing the principal and most ancient centres of literature and the arts, affords us safe assurance of that, at the same time as it augurs well for the outcome of this Conference.

"There is hardly any area of law, Gentlemen, that has as cosmopolitan a character and lends itself better to international codification than that with which we are going to concern ourselves. We are living in a century in which works of literary and artistic genius, regardless of their country of origin, very quickly spread all over the earth, making use of all civilized languages and all forms of reproduction. Is it not fair that the author, regardless of his origin, should retain a right in his work wherever it may be considered appropriate to make use of it? And can the situation be accepted where the nature of that right varies in its essence depending on the place in which the work is reproduced? No, Gentlemen, it has to be acknowledged that the more or less serious disparities between present laws are far less due to considerations of principle than to purely subjective assessments. It seems possible, and in any event desirable, to replace this diversity of arbitrary rules with one uniform rule based on a general awareness and sanctioned by the assent of the majority.

"This is the aim that we are going to strive to attain, but without any of us closing our eyes to the obstacles standing in the way of its attainment. We have to contend with domestic laws and with existing conventions. We cannot realistically expect them to be amended, from one day to the next as it were, in response to our resolutions. However, a great, a decisive step would have been taken if we were to assert here the solidarity of civilized peoples in the interest of the protection of authors' rights, and if, after having exchanged our individual experiences and views, we were to establish a body responsible for implementing our common aspirations.

"A first question that will present itself to you for consideration is that of the system that is to serve as a basis for a general convention. Should one agree to each State having to apply national treatment for foreigners, or, as certain legal advisors have proposed, to the author being as it were followed in every State by the law of his country of origin? If, as the Federal Council proposes, the first system is adopted, how is the term of protection, which varies so much from State to State, to be calculated? Will it be according to the law of the country of origin or according to national law? Alternatively will both be taken as the basis, on the principle that the term will not, in any State, exceed that granted in the country of origin? Or again, will this point be left to be dealt with in special conventions? Each of the systems has its advantages and drawbacks. Your enlightened discussion will serve to highlight

them all in turn, after which it will be easier to make an informed choice. Without wishing to encroach on the deliberations that are about to start, I take the liberty of saying that, if a uniform solution can be accepted, whatever it may be, it will be better than the diversity—or, dare I say it, the confusion—that reigns in the individual conventions at present.

"A second question is that of the formalities to be complied with for the recognition of rights. Writers and artists are demanding the utmost simplification in this connection. A country recently concluded 25 conventions on literary and artistic property; if its nationals bave to comply 25 times with the formalities of registration and deposit, the whole operation becomes overly intricate and costly. And yet that is not essential from the point of view of the recognition of rights which, once duly secured in the country of origin, can without any difficulty be accepted as being valid in all the other countries. You will determine, Gentlemen, whether it is possible to accede to this desire which, for my part, I consider to be a legitimate one.

"The questions concerning the right of translation will also be a subject of major concern to you. Literary people naturally wish to be protected for as long as possible; for them it is a matter of pride as well as interest. On the other hand, demands are being made in the name of a certain public interest, which also accommodates specific interests, for the freedom to translate such works as have not been translated, within a more or less variable period of time, with the author's consent. If that freedom is to continue to be granted, it is at the very least desirable that the term after which it may be enjoyed should be uniform. It is you, Gentlemen, who will see what can be done in this respect.

"However, whatever may be the resolutions that you adopt on these fundamental points, the Convention drawn up here, which will then have to be submitted for appreciation to the eminent Governments that you represent, will not, even after it has been finally ratified, be able to come into force throughout the territory of the Union. There is undoubtedly more than one point on which specific conventions at present in force will prevent that. Yet the Federal Council believes that this consideration is not such as will prevent us from committing ourselves to each other in a general convention. It will be sufficient to agree on a transitional provision reserving the validity of existing conventions until their expiry.

"Far be it from me, Gentlemen, to try and anticipate your deliberations by going into such detail. I merely wanted to outline, in a few broad strokes, the task before the Conference, a delicate task and one fraught with difficulties, yet a grandiose task and one worthy of the efforts of a gathering such as this one, and I have no doubt that, with the aid of all this enlightenment and all this goodwill, we shall accomplish it satisfactorily.

"And now it remains for me to say to you once again, in the name of the Federal Council, that we are proud and pleased to welcome you to our country, and that we will do our utmost to make your stay an enjoyable one.

"I declare the Conference open, and I ask you, Gentlemen, to appoint your officers, first by designating a President."

H. E. Mr. **Emmanuel Arago**, Ambassador of France, replied as follows:

"Gentlemen,

"Those of you who, in this same hall, followed last year the work of the Literary Association, whose efforts are so well directed by my friend Louis Ulbach, will not be surprised by the speech we have just heard; they know Federal Councillor Numa Droz, and value his straightforward mind, his sense of logic, his energy and his eloquence. All of you admire those qualities today, sure as you are that no better guide could be chosen for the attainment of the aim to which we are striving, which is the establishment of a form of ownership that represents human intelligence and realizes an ideal; however, I shall abstain from impressing on you in turn the great significance of the questions that have to be considered, according to our programme, being confident that the time will come when works of art are at home wherever they go. I merely wish to be your spokesman in expressing our respect and friendship to the Federal Council, and in thanking it for having appointed Mr.Droz and his eminent colleague Mr. Ruchonnet to join us.

"Finally I propose to you that you declare Mr. Droz President of the Conference by acclamation."

Mr. **Droz** accepted and thanked the delegates.

On a proposal by the **President**, the Conference decided to adjourn the matter of appointing one or more Vice-Presidents to the following day.

The **President** presented, as Secretaries, Mr. Charles Soldan, Judge at the Cantonal Tribunal of Vaud in Lausanne, and Mr. Bernard Frey, translator at the Federal Department of Commerce and Agriculture.

The **President** noted that the names of all the delegates present had been notified to the Federal Council by the governments concerned, so that their official status was duly established. With regard to the nature of the powers invested in them, as for the time being it had only to be considered whether it was possible to lay the foundations of a general agreement which would then have to be submitted to governments for examination and eventually, if appropriate, incorporated in a diplomatic convention,

First Conference in Berne, 1884 — Minutes

the President proposed, subject to whatever discussion might occur at the time of the draft Rules of Procedure (Rules 5 and 7), that the Conference confine itself to noting the fact that all the delegates had indeed received official instructions to represent their governments at the Conference.

The assembly declared itself in agreement with the above view.

The assembly having thus been constituted, the **President** submitted to it the draft Rules of Procedure drawn up by the Federal Council, which were discussed rule by rule and adopted in the following form, with an amendment to Rule 7 proposed by Counsellor **Reichardt**:

Rule 1

The French language is adopted for the discussions and for the Records of the Conference.

Rule 2

A general discussion shall take place on the principles that should form the basis for a convention. Then the Programme proposed by the Federal Council shall be referred for examination to a Committee on which each State shall be represented.

The amendments proposed by the Committee shall be printed before being debated. The same shall apply, as a general rule, to any individual proposal presented in the course of the discussions and taken into consideration by the Conference.

Rule 3

As a general rule, every proposal shall be handed to the President in writing.

Rule 4

Before proceeding to vote on an article or group of articles, the Conference may refer them back to the Committee for further examination.

Rule 5

Voting shall be by names of States, called out in their alphabetical order in French. Each delegation shall have one vote.

Rule 6

The minutes shall give a concise account of the deliberations. They shall report all the proposals made in the course of the discussion, with the results of votes; they shall also give a summary account of the arguments put forward.

Any member shall be entitled to demand the inclusion of his speech *in extenso*; in that case, however, he shall be bound to hand the text thereof to the Secretariat in writing, in the course of the evening following the meeting.

The minutes of meetings shall be submitted to the representatives of States in draft form, and shall not be published before the end of the Conference's work.

Rule 7

The draft Convention that results from the deliberations shall be subjected to final editing. Thereafter, if appropriate, a Protocol shall be signed recording the results of the deliberations and accompanied where appropriate by the draft Convention, which moreover shall remain subject to examination by the Governments concerned.

In the course of the discussion to which the Rules of Procedure gave rise, it was agreed that the title of "*International Conference for the Protection of Authors' Rights*" was only a provisional one, and that the adoption of a final designation was reserved.

In addition, the following reservations and declarations were made:

Following an exchange of observations between Mr. **Lagerheim** and the **President** on the subject of Rule 2, it was understood that delegations could, at their discretion, be represented on the Committee by one or more of their members, as each delegation in any case had only one vote.

On a comment by Dr. **Steinbach**, endorsed by Mr. **Lagerheim** and Mr. **Baetzmann**, the Conference decided that Austria, Hungary, Sweden and Norway would each have a separate right to vote (Rule 5).

H.E. Mr. **F.O. Adams**, Delegate of Great Britain, made the following statement:

"I have been empowered by my Government to attend the Conference in a purely advisory capacity, and I must neither vote nor bind my Government regarding the acceptance of any conclusions that might be adopted by the Conference. I am pleased to take part in it, and I shall not fail to make a report to my Government on its deliberations and conclusions."

Mr. **Verwey**, the Delegate of the Netherlands, declared himself to be in the same position as his counterpart from Great Britain.

Mr. **Lagerheim**, the Delegate of Sweden, declared that he would take part in the discussions and in the voting of the Conference, but that he could not commit his Government in any respect whatever.

Mr. **Baetzmann**, for his part, made the following statement as Delegate of Norway:

"The Norwegian Government, while warmly subscribing to the great principle whose general and progressive implementation is to be the purpose of this Conference, does not yet consider itself able to give to its Delegate the powers to make, in its name, final undertakings concerning the means by which such a result could be achieved. Norwegian legislation still has special characteristics that will make difficult the immediate accession of Norway to a Union such as the one at present envisaged. It is therefore only as a quite individual opinion that I take the liberty of expressing my conviction that it will be possible, in the not too distant future, to bring about the disappearance in Norway too of the obstacles still standing in the way of an organization whose usefulness is recognized almost everywhere. I feel able to state that the Norwegian Government, by choosing to be represented on this occasion, wished above all to shew its interest in the important question with which this Conference has to deal, and to keep itself informed through its Delegate of all that relates thereto."

Dr. **Steinbach**, the Austrian Delegate, having declared in his own name and in that of Mr. **Zádor**, his counterpart from Hungary, that his powers did not authorize him to sign a convention, and that their vote would therefore be only provisional, H.E Mr. **Emmanuel Arago** pointed out that the purpose of the Conference was not to draw up a final Convention, but to prepare a draft which would be submitted to the Governments concerned for consideration.

The **President** noted that it was indeed in that sense that the Federal Council had expressed itself in its circular of August 22, 1884, in which it said that: "In our opinion, the outcome of the deliberations of the Conference will thereafter be submitted for consideration to the High Governments, which will judge at another conference whether it should be made into a diplomatic instrument."

Counsellor **Reichardt** announced that, with a view to providing a sound basis for the deliberations, the German Delegation had drawn up a questionnaire that encompassed the most essential points with which the Conference had to concern itself.

After the questionnaire – the text of which is annexed to these minutes - had been read out to it, the Conference decided that it would be printed and included in the agenda of a forthcoming meeting.

Mr. **Reichardt** also raised the following question in the name of the German Delegation, which it regarded as requiring discussion before the questionnaire: "Instead of concluding a Convention based on the principle of national treatment, would it not be preferable to work from the outset towards a code providing for the uniform regulation, throughout the projected Union, within the framework of a Convention, of all provisions concerning the protection of copyright?"

The assembly having decided to consider the substance of the above question, it was understood that it would be included in the agenda of the next meeting, which was to take place on the following day, Tuesday, at 10 a.m.

The meeting rose at 11.30 a.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

FIRST CONFERENCE IN BERNE, 1884 — MINUTES

MINUTES

OF THE

SECOND MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF AUTHORS' RIGHTS

SEPTEMBER 9, 1884

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 10.10 a.m.

The following were present: the delegates who had attended the previous meeting, with in addition Mr. **René Lavollée**, Consul General of France, Dr. ès lettres, to whom the **President** adressed a few words of welcome.

The minutes of the first meeting, which had been handed to the delegates before the start of business, were adopted.

The **President** informed the Conference that he had received the following documents, which were at the disposal of delegates:

(l) *The draft Convention for the General Literary and Artistic Union*, a pamphlet by Commendatore Felix Carotti, representative of French authors in Italy, Florence 1884, together with three supporting leaflets;
(2) *Project for the Unification of Laws and International Conventions on Intellectual Property*, by Mr. Francescantonio De Marchi;
(3) A letter from the International Bureau of Press Correspondence, Frankfurt am Main, expressing its great interest in the work of the Conference and placing itself at the latter's disposal for any official communications that it might wish to make to the press.

The Secretariat of the Conference would acknowledge receipt of the above correspondence.

The agenda called for the appointment of one or more Vice-Presidents.

Counsellor **Reichardt** addressed the delegates as follows:

"Gentlemen,

"Our meeting does not have the character of an actual diplomatic conference. We have the task of preparing, by dint of conscientious and consistent work, what the diplomats will one day, we hope, be responsible for approving on behalf of their Governments.

"This character of our meeting seems to me to exempt us from certain procedures customary in diplomatic conference practice, being of more formal and ceremonial than practical significance. I consider the appointment of one or more Vice-Presidents to be one such procedure, at least in a case such as ours, where there is no question of dividing the Conference into sections.

"However, being practical people, we have to provide for the eventuality, which we hope will not materialize, of our most distinguished President being temporarily prevented from exercising his functions, and also the case of his seeing fit to take the floor himself.

"With this in mind, it appears to me to be appropriate to appoint a Vice-President, but at the same time sufficient to appoint just one Vice-President.

"Should the Conference endorse this view, which I emphatically advise it to do, I propose to you, Gentlemen, that His Excellency the Ambassador of France be asked to oblige us by taking on this sole Vice-Presidency, and thus to accept the tribute paid not only to a distinguished person and supporter of our work, but also to France, which as we know has always been the first to lend its powerful backing as soon as the question has arisen of proclaiming, promoting awareness of or perfecting the protection of copyright."

H.E. Mr. **Emmanuel Arago** accepted this post and thanked the Assembly for the trust thus placed in him.

The agenda then called for the discussion of the proposal made by the German Delegation at the first meeting, according to which the Conference was to pronounce first on the following question:

"Instead of concluding a Convention based on the principle of national treatment, would it not be preferable to work from the outset towards a code providing for the uniform regulation, throughout the projected Union, within the framework of a Convention, of all provisions concerning the protection of copyright?"

Counsellor **Reichardt** explained the reasons that had induced the German Delegation to ask for this question to be discussed first. While noting that the international codification of the provisions governing the subject was desired by all, he feared that it might not be possible to embark on it immediately, in view of the absence of representatives of a certain number of Governments, and also the transformations that the domestic legislation of a number of States was undergoing at present. What he wanted was that the codification in question be specified as an objective to be pursued in the draft that was to emerge from the work of the Conference.

While subscribing to that desire, H.E. Mr. **Emmanuel Arago** expressed the wish that the Conference should nevertheless proceed to the consideration of the questionnaire proposed by the German Delegation.

Professor **A. d'Orelli** indicated that the various kinds of legislation were a reflection of the national character of various peoples, and that they were still likely to evolve. As the time had not yet come for the drafting of universal legislation, it was advisable to abide by the Federal Council Programme, by means of which great progress could already be made.

Mr. **Louis Ulbach** believed that the Conference had to endeavour to give its desires the most immediately practicable form and not try to be ahead of its time. He proposed that any wish for future codification be temporarily set aside.

Mr. **Lagerheim** spoke on the same lines, considering at the same time that the basis for the Union could be established on condition that not too much unity was sought at the outset.

With a view to summarizing the ideas expressed up to that point, on which the Assembly appeared to agree, Federal Councillor **Louis Ruchonnet** proposed the following resolution:

"The Conference,

"Considering that, however desirable international codification of the principles governing the protection of the rights of authors may be, it is to be feared that such a project, in view of the difference of existing laws and conventions, may delay for a long time the conclusion of a general agreement;

"Considering further that the main objective to be achieved, for the time being, is the establishment of a Union whose subsequent development will bring the desired uniformity,

"*Resolve* that

"I. The foundations have to be laid of an international Convention to which the greatest possible number of States may accede immediately;

"II. Resolutions have to be made concerning the principles whose uniform introduction in laws and conventions is recommended to States."

Mr. **Reichardt** asked, on behalf of the German Delegation, that the above draft resolution be not voted upon at the present time, as his Delegation proposed to formulate another one itself in the course of the discussion.

Mr. **Ruchonnet** acceded to the desire expressed, and it was understood that the vote on the question would be deferred.

The **President** then opened discussions on the questionnaire proposed by the German Delegation.

Question 1

"Would it not be sufficient and indeed preferable to grant protection under the Convention only to those authors who are nationals of one of the Contracting States, in respect of their works, either in manuscript or unpublished form or published in one of those countries?" (See Articles 2,3 and 5 of the Programme; Article 1 of the 1883 draft)

Dr. **Dambach** criticized the provisions of Article 3 of the Programme proposed by the Federal Council, which in his opinion would favour States that remained outside the Union. He proposed, on behalf of the German Delegation, that protection be limited to the nationals of Contracting States alone, regardless moreover of their actual residence.

Mr. **Louis Ulbach** contested that view, considering that the advantages granted to the nationals of countries outside the Union in Contracting States could induce them to join it.

Mr. **Lagerheim** said that Swedish legislation protected foreigners in matters of artistic property (in so far as their works were in Sweden), but not in matters of literary property. He believed that the Swedish Government would be willing to accept the broader principle proposed by the Federal Council.

Mr. **Baetzmann** pointed out that in that respect Norwegian law rested on the broadest base, as it applied, in terms of its Article 45, "to works of national authors or composers, and also to works published by Norwegian subjects as publishers." The Norwegian Delegate therefore fully endorsed the opinion expressed by Mr. Lagerheim, and also by the Delegates of France, and expressed the desire that it be incorporated in the future Convention.

The **President** pointed out that the Programme of the Federal Council went less far than Article 1 of the draft by the Literary Association, as the right to enjoy national treatment was confined to foreigners who were resident in one of the countries of the Union or who had their work published there.

Following an exchange of observations between Mr. **Lagerheim**, Dr. **Dambach**, Mr. **Ulbach** and the **President**, it was decided that the first question would not yet be voted upon, but rather referred to the Committee for examination.

Question 2

"Should the matter of the formalities and conditions to be met by the author to secure protection under the Convention be governed by the legislation of the country to which the author belongs or by that of the country in which the publication of the work occurred (country of origin), or again by that of the country in which protection is claimed?" (Article 2 of the Programme; Article 1 of the 1883 draft)

After having decided that, with respect to unpublished works, it was the country to which the author belonged that would be regarded as the country of origin, the Conference adopted the principle written into Article 2 of the Federal Council Programme.

Question 3

"What reasons would there be for including arrangements of music in the enumeration of subject matter to be protected?" (Article 4 of the Programme; Article 2 of the 1883 draft)

After explanations had been provided by Mr. **Reichardt** and Mr. **Lavollée**, the Conference decided that arrangements of music would not be listed among the works to be protected, but would rather be given a special mention, for instance by means of an insertion in connection with the definition of the term "*adaptation*."

Question 4

"Should the enumeration not include three-dimensional works relating to geography, topography, architecture or the natural sciences?" (Article 4 of the Programme; Article 2 of the 1883 draft)

Dr. **Dambach**, Mr. **d'Orelli** and Mr. **Lagerheim** recommended an affirmative reply to the above question.

This view was endorsed by the Conference.

Question 5

*"As the term of protection is limited in a variety of different ways by national legislation, would it not be desirable and indeed urgent to settle this question uniformly for the whole area covered by the projected Union? Alternatively should one not abide by the principle established by former literary conventions, according to which **the protection reciprocally granted to the authors of the two contracting countries was guaranteed to them only during the existence of those rights in their countries of origin, while the duration of their enjoyment in the other country might not exceed that specified by its law for national authors?**"*

Counsellors **Meyer** and **Reichardt** laid stress on the need to settle the matter of the term of protection in a clear and simple manner. With the system of national treatment as proposed by the Federal Council, it could happen that a work was protected longer in a foreign country than in the author's country of origin, which did not seem fair and indeed could cause practical difficulties. That drawback could be avoided either by imposing a uniform term of protection for the whole Union, or by the adoption of the principle at present written into the majority of conventions, to the effect that the duration of protection could not exceed that granted to the author in his country of origin.

Contrary to the above proposal, Mr. **Louis Ulbach** and H.E. Mr. **Emmanuel Arago** recommended the national treatment system as being simpler and as obviating, for the judge, the knowledge of the laws of all foreign countries.

In support of the previous speakers, Federal Councillor **Ruchonnet** pointed out that the restriction sought by the German Delegates departed from a generally accepted principle of international law, namely the assimilation of foreigners to nationals, which operated both to their advantage and to their disadvantage.

At the request of the German Delegation, the entire question was referred to the Committee.

Question 6

"In line with what has been accepted for practically all literary conventions at present in force, would it not be appropriate to establish, for the whole Union, the reciprocal right:

"(a) To reproduce, without the author's consent, for scientific or teaching purposes, excerpts or whole sections of a work, subject to certain conditions?

"(b) To publish, under certain conditions, chrestomathies consisting of fragments of works by various authors, without the latter's consent?

"(c) To reproduce, in the original or in translation, articles excerpted from newspapers or periodical journals, with the exception of serialized novels and articles on science or art?

Taking due account of existing conventions, Mr. **Louis Ulbach** was not absolutely opposed to the reproduction of the works mentioned in the above question being authorized within certain limits; he did, however, ask for authors to be given a glimpse, in the future, of protection for literary masterpieces or works of high moral value that was as extensive as for those that belonged to light literature.

Mr. **Reichardt** pointed out that it was not in Germany's own interest that the Delegation of that country had proposed the restriction on copyright, as its legislation and the conventions that it had entered into allowed journalists and professors to draw on all works for the purposes of teaching.

Dr. **Janvier** asked for the removal from paragraph *(c)* of the words "*and articles on science or art,*" giving as the reason for his proposal the public interest that immediate reproduction of such articles might have under certain circumstances.

H.E. Mr. **Emmanuel Arago** insisted on a precise definition of the conditions to which the right of reproduction had to be subject.

On a proposal by Mr. **Lagerheim** and Mr. **Reichardt**, the Conference referred the whole of Question 6 to the Committee for examination.

Question 7

"Should the duration of the exclusive right of translation be equal to that of the author's rights in the original work? If not, should not that duration be fixed uniformly for the whole Union?" (Article 7 of the Programme; Article 5 of the 1883 draft)

Mr. **Lagerheim** explained that the above question was of the utmost importance to Scandinavian countries, and that the answer to it could be a decisive factor in their participation in the Union. Sweden, which at present allowed foreigners only very restricted protection against translation, would perhaps be willing to favour them somewhat more; in no event, however, could it allow the exclusive right of translation to be protected for the same duration as the original work. In order that agreement might be reached, he proposed that the minimum term of protection that States members of the Union had to grant in respect of the right of translation be specified. Those States that wished to go further, or were already bound by conventions providing for more extensive protection, would retain their freedom of action.

Mr. **Reichardt** believed that the German Government could support complete assimilation of the right of translation to copyright, but only on the condition that all other countries also supported it. In any event the German Delegation asked for authorized translation to be protected for at least ten years.

Mr. **Lavollée** was pleased that the Delegate of Germany should be so favourably disposed towards a matter that the French Government set great store by, and hoped that his declaration might induce the other countries to adopt in turn the assimilation that had long been an established feature of French legislation.

Federal Councillor **Ruchonnet** said that Switzerland would endorse the assimilation.

Mr. **Baetzmann**, while confirming the information given by Mr. Lagerheim on the absence, in Norwegian legislation, of any guarantees concerning the right of translation, pointed out that it could nevertheless be hoped that the gap would be filled in Norway. The Norwegian Government had not, in its instructions to him, committed its Delegate on this matter, and therefore considered the question open. The speaker hoped that it would be settled in the not too distant future, and in a way that would be conducive to Norway's membership of the projected Union.

At the request of the French Delegation, the vote on Question 7 was adjourned.

The next meeting was to take place on the following day, Wednesday, at 10 a.m.

The agenda called for the continuation of the discussion on the questionnaire proposed by the German Delegation.

The meeting rose at 1 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

FIRST CONFERENCE IN BERNE, 1884 — MINUTES

MINUTES

OF THE

THIRD MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF AUTHORS' RIGHTS

SEPTEMBER 10, 1884

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 10.15 a.m.

The following were present: the delegates who had attended the previous meeting.

The agenda called for the continuation of the discussion on the questionnaire proposed by the German Delegation.

Question 8

"With regard to the conditions to be met for the exclusive right of translation to be safeguarded, should they not be expressly made subject to the legislation of the country in which the original work appeared or, in the case of an unpublished work, to the legislation of the country to which the author belongs?"

Counsellor **Reichardt** was convinced that the discussion would prove the necessity of settling the conditions governing the exclusive right of translation uniformly for all the countries of the Union; he therefore accorded only a contingent value to the question, which moreover he proposed should be referred to the Committee.

Mr. **Lagerheim** supported that proposal, but, having misgivings regarding the principle itself, he asked that the question remain as it stood.

The proposal was adopted.

Question 9

"Does not the application of the same principle (8) to the conditions to be met for the safeguarding of protection against unlawful performance of musical, dramatic or dramatico-musical works result, in view of the difference of the legislation concerned, in the necessity of those conditions being regulated uniformly for the whole Union?"

After an exchange of explanations between Mr. **Lagerheim** and Mr. **Reichardt**, the question was referred to the Committee for examination.

Question 10

"In view of the difficulty of defining the term ***'adaptation'*** *precisely and unambiguously, should not the courts be preferably given exclusive competence to declare the reproductions concerned to be infringements, or not, as the case may be?"* (Article 10 of the Programme; No. 3 of the draft Final Protocol; Article 7(2) of the 1883 draft)

Mr. **Reichardt** pointed out that it was very difficult to define the word "*adaptation*" precisely, as provided in the Final Protocol of the Federal Council draft, which had borrowed it from the draft by the International Literary Association.

Mr. **Ulbach** believed that the term could be defined. Adaptation was the arrangement or disarrangement of the original work with a view to suiting it to the tastes or propensities of another public; it was a special, personal arrangement, which took the substance of the work without taking its form. Certainly there would always be different shades of meaning, which the courts would be required to evaluate; definition was possible, however.

Dr. **Dambach** contested the above view, and mentioned that in recent months a German committee of experts had recognized the impossibility of defining the term

concerned. Either adaptation was a disguised infringement—and in that case it was punished as such—or the changes made to the original work were so great that in fact a new work was involved, which itself was entitled to protection. The assessment of the question had in each specific case to be left to the courts, which so far had had no difficulty in settling them.

H.E. Mr. **Emmanuel Arago** said that it was not a question of giving a categorical and precise definition of the word "*adaptation*," but rather of adding to it an indication that enabled it to be more readily understood and conveyed the legislator's concept to the judge, by means of the addition for instance of terms such as: imitation, modification, arrangement, appropriation based on the original work.

Dr. **Meyer** supported the proposals of the German Delegation, mentioning especially the difficulties that the system advocated by the previous speaker would present in connection with musical works.

Professor A. **d'Orelli** said that he was of the same opinion as the German Delegation, and moreover observed that all States wished to repress disguised plagiarism, which was even more reprehensible than actual infringement.

Replying to Dr. **Steinbach**, Consul General **Lavollée** explained that in the scientific domain too there could be appropriations in bad faith, which consequently had to be punished. He joined the other French Delegates in demanding the retention and definition of the word "*adaptation*," as had been done in the Franco-Spanish Convention.

Mr. **Lagerheim** subscribed to the view of the German Delegation, unless there was some way of giving a very restricted and very clear-cut definition of "*adaptation*." All legislation allowed the courts sufficient latitude to treat as infringement a reproduction that contained even certain changes, where those changes were not essential.

Dr. **Damhach** feared that the introduction in the law of a new legal concept such as adaptation might be liable to cause confusion in the minds of judges, who so far had had no difficulty in distinguishing an infringement from a new work.

Mr. **Reichardt**, H.E. Mr. **Emmanuel Arago** and Mr. **Ulbach** took the floor again, after which the Conference decided to refer the question to the Committee, with a request to the advocates of introduction of the word "adaptation" that they present it with precise definitions.

Question 11

*"The question whether or not arrangements to be made separately between member countries of the Union would **contravene** the provisions of the projected Convention gives cause for considerable misgivings. In order to dispel those misgivings in advance, would it not be better to reserve for the Contracting Parties the right to enter into special agreements, in so far as those agreements conferred on authors or on their lawful representatives **rights that were more extensive** than those granted by the Union, **concerning the subject matter for protection, the duration of protection or the conditions to be met?**"* (Article 12 of the Programme; Article 9 of the 1883 draft)

On behalf of the German Delegation, Dr. **Meyer** proposed the adoption of the principle expressed above, in replacement of Article 12 of the Federal Council Programme, in view of the fact that Contracting States could not be deprived of the right to grant, reciprocally, more extensive rights to authors than to those that would be guaranteed by the General Convention.

H.E. Mr. **Emmanuel Arago** said that the French Delegation agreed to what had just been said.

The **President** pointed out that special conventions could relate to matters that were not provided for in the General Convention. One should therefore speak not only of more extensive rights, but also of *other* rights.

In the sense indicated by the President, the **Conference** replied affirmatively to Question 11.

Question 12

"Is it not in the light of the same considerations that the matter of the maintenance of conventions at present in force should be resolved?" (Transitional Provision of the Programme)

Following an exchange of comments between Mr. **Reichardt**, Mr. **Lavollée** and the **President** on the scope of the transitional provision proposed by the Federal Council, the question was referred to the Committee for examination.

Mr. **Reichardt** said that, in the opinion of the German Delegation, the decision to be taken on Questions 11 and 12 was contingent on the one that would be taken on Question 6.

Question 13

"Should it not be specified, subject to the usual reservations and conditions in favour of acquired rights, that the projected Convention will be retroactive?" (Article 11 of the Programme; Article 8 of the 1883 draft)

Mr. **Reichardt** explained that by acquired rights he meant those that related to copies of works, and also objects specially intended for reproduction that were

completed or in the process of being completed on the entry into force of the Convention, but that, apart from that, the Convention should be retroactive.

Question 13 was referred to the Committee.

Question 14

"As the formality of registration or deposit is not required by the legislation of all the Contracting States, would it not be appropriate to include a clause in the Convention exempting the persons concerned, in the event of judicial dispute, from providing formal proof of their copyright?"

Dr. **Damhach** said that German law had removed the formality of registration and replaced it with a set of legal presumptions, the effect of which was to give the author greater latitude for the assertion of his rights. A number of conventions had established the same principle, and it would certainly be a great step forward if it were written into the General Convention.

Mr. **Lavollée** said that the French Delegation agreed with the German on that point.

H.E. Mr. **F.O. Adams** made the following statement:

"According to present English law, works have to be duly registered in the United Kingdom, and copies of the works so registered have to be deposited with the British Museum. For translations, formalities also have to be complied with that are not required by the legislation of other countries. It is for that reason that Great Britain was recently unable to conclude a convention with Switzerland, where such formalities do not exist. I am not questioning the subject; I merely wish to give an account of the present state of English law."

The Conference decided to refer Question 14 to the Committee in line with the wish expressed by the German Delegation.

As the discussion of the questionnaire proposed by the German Delegation ended at that point, the **President** asked the German Delegates whether they were able to submit to the Conference the draft resolution announced at the first meeting, which concerned the international codification of the provisions governing copyright.

Mr. **Reichardt** announced that the draft would be presented at the time of the discussion of Article 14 of the Programme.

Proceeding to another matter, Mr. **Reichardt** asked the Conference whether it was understood, as he gathered it was, that admission to the Union would be granted only to those States whose legislation protected copyright.

The Conference declared its agreement with the above view.

The general discussion provided for in Rule 2 of the Rules of Procedure was closed. The Conference would proceed with the discussion of the Programme proposed by the Federal Council as soon as it had been considered by the Committee, in accordance with the provisions of the Rule mentioned.

The Conference was to meet on the following day, Thursday, at 9.30 a.m., to approve the minutes of the previous two meetings; after that the Committee would begin its work.

The meeting rose at noon.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

MINUTES

OF THE

FOURTH MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF AUTHORS' RIGHTS

SEPTEMBER 11, 1884

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 9.30 a.m.

The following were present: the delegates who had attended the previous meeting.

The minutes of the second and third meetings, which had been submitted to the delegates in draft form, were adopted with a number of amendments requested by Mr. **Reichardt** and Mr. **Lagerheim**.

The **President** arranged for the distribution to the participants in the Conference of a French translation of the Swedish law on literary and artistic property, which Mr. Lagerheim had handed to him for that purpose, and addressed the assembly's thanks to the Delegate of Sweden.

The meeting rose at 9.45 a.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

MINUTES

OF THE

FIFTH MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF AUTHORS' RIGHTS

SEPTEMBER 17, 1884

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 4.10 p.m.

The following were present: the delegates who had attended the previous meeting, with in addition Dr. **R. Thurmann**, former Rector of the National Institute of **Costa Rica** and Delegate of the latter country. The **President** welcomed him on behalf of the Conference.

The minutes of the fourth meeting, which had been handed to the delegates in draft form, were adopted.

The **President** made the following communications to the Conference:

(1) Mr. **Auguste Meulemans**, Legation Secretary and Consul General of **Paraguay** in Paris, had informed the President of the Conference by telegraph that he had been delegated to that Conference by the Government he represented, and had asked to be entered on the list of delegates.

(2) It had transpired from a note from the Ministry of Foreign Affairs of the Kingdom of **Italy** that circumstances had prevented the Government of that country from sending a delegation, as it had announced it would. It nevertheless reserved the right to accede to the International Union after consideration of the results of the Conference, and requested that the latter be communicated to it.

(3) The Minister for Foreign Affairs of **Brazil** had telegraphed that his Government could not take part in the Conference, and that he would await communication of the resolutions taken by it before deciding on accession.

(4) The Government of the **Argentine Republic** had announced that lack of time had prevented it from sending a representative to the Conference. It nevertheless asked to be informed of the resolutions that would be taken during the proceedings, in order that it might accede if it considered such a step appropriate.

(5) The **Spanish** Government had not been able to give instructions to a delegation.

(6) The Government of **Portugal** had not thought it necessary to be represented at the Conference; before taking a decision, it was awaiting the assessments made by governments more directly concerned with the question.

(7) Commendatore **Felix Carotti** of Florence and the **International Association of Lawyers** in Vienna had sent letters to the Conference expressing their support for the work that it was carrying out.

The **President** announced that, in accordance with Rule 2 of the Rules of Procedure, the Federal Council Programme had been considered by a Committee on which each State had been represented.

For examination of the subject in greater depth, two Sub-Committees had been appointed with the following membership, given in the alphabetical order of the French names of States:

(i) **Drafting Committee:**
Counsellor REICHARDT
Counsellor STEINBACH
Mr. LOUIS ULBACH
Mr. LAGERHEIM
Federal Councillor NUMA DROZ

(ii) **Special Committee to consider the organization and functions of the projected International Bureau:**
Dr. DAMBACH
Count G. ERREMBAULT DE DUDZEELE

Mr. René LAVOLLÉE
Mr. BAETZMANN
Professor D'ORELLI

The **President** announced that the Plenary Committee had held six meetings, and that the result of its discussions consisted of the following five documents, which he presented to the Conference:

(i) *Draft Convention Concerning the Creation of a General Union for the Protection of Authors' Rights;*
(ii) *Additional Article* to the above Convention;
(iii) *Final Protocol;*
(iv) *Recommended principles for subsequent unification;*
(v) *Final minutes of the Conference.*

The **President** presented the report of the Committee on the basis of the notes provided by the Secretariat.

I. Draft Convention Concerning the Creation of a General Union for the Protection of Authors' Rights

According to the proposals of the Committee, the title was adopted as transcribed above. The preamble was likewise accepted in the following form proposed by the Commission:

(Enumeration of the High Contracting Parties)

. . . . . .

Being equally moved by the desire to protect effectively and as uniformly as possible the rights of authors in literary and artistic works,

Have resolved to conclude a Convention to that end, and have appointed the following as their Plenipotentiaries:

. . . . . .

Who, after having exchanged their full powers, found to be in good form, have agreed on the following articles:

Constitution of the Union

Article 1

(Article 1 of the Programme)

In its Programme, the Federal Council had proposed the following:

"The Contracting States (listed) are constituted into a Union for the protection of the rights of authors in their literary and artistic works."

In a counter-proposal, the German Delegation had proposed the following text:

"The Contracting Countries are constituted into a Union for the protection of the copyright in literary and artistic works."

With regard to the title of the projected Convention, it had been observed within the Committee that it would not be accurate to speak of "*the rights of authors,*" as it was in no way a question of regulating *all* the rights accruing to authors in relation to their literary and artistic works, for instance in their relations with the publisher, but merely of protecting a very special right, which in certain countries was looked upon as a real right of ownership, whereas elsewhere it was regarded only as a personal right, albeit of a particular kind *("Urheberrecht")*. Moreover, as the French expression "*droit d'auteur*" was restricted by everyday language to the collection of the fee payable to the author, it seemed preferable to use a term that did not lend itself to misinterpretation. The use of the word "*authors' rights*" had been intended to avert any misunderstanding regarding the purpose of the Union.

The expression "*Contracting Countries*" had seemed preferable to "*Contracting States,*" in view of the diversity of the national constitutions of the Contracting Parties, and the terminology adopted in that respect by comparable conventions. For the same reasons it had also been considered unnecessary to list the High Contracting Parties in Article 1.

Consequently, the Committee proposed that the provision be worded as follows:

Article 1

The Contracting Countries are constituted into a Union for the protection of autbors' rights in literary and artistic works.

The above text was adopted without discussion.

Protection granted to authors; duration of that protection and conditions to which it is subject

Article 2

(Article 2 of the Programme)

The Federal Council Programme had proposed the following:

"The subjects or citizens of any of the Contracting States shall enjoy in all the other States of the Union, with respect to the protection of the rights of authors in their literary and artistic works, such advantages as the laws concerned do now or may hereafter grant to their own nationals. Consequently they shall have the same protection as those nationals and the same legal remedies against any violation of their rights, subject to compliance with the formalities and conditions prescribed by law in the country of origin of the work."

The following wording had been proposed by the German Delegation:

"Authors who are nationals of one of the Contracting Countries shall enjoy in all the other countries of the Union, in respect of their works, whether in manuscript or unpublished form or published in one of those countries, such advantages as the laws concerned do now or will hereafter grant to nationals.

"The enjoyment of the above rights shall be subject to compliance with the conditions of form and substance prescribed by the legislation of the country of origin of the work or, in the case of a manuscript or unpublished work, by the legislation of the country to which the author belongs."

The Committee had agreed with the Delegates of Germany that the words "*subjects or citizens*" did not correspond with perfect accuracy to the expressions used by the legislation of the various Contracting Countries. The term "*nationals,*" on which it had decided, indicated clearly that the Convention was intended to protect all those authors who were natives of one of the countries of the Union.

The addition of the words "*whether in manuscript or unpublished form*" was approved as a means of deleting the Article 5 proposed by the Federal Council.

By making the protection of a work subject to the condition that it be published in one of the countries forming part of the Union, the wording of the German Delegation made a restriction on the system proposed by the Federal Council. The Committee considered that such a restriction could be accepted, the word "*publish*" having moreover to be understood in the sense attributed to it hitherto by legislation and case law.

A question that arises in connection with the above Article is whether national treatment has to be applied to foreign authors purely and simply, or whether on the contrary one should establish the principle written into present literary conventions, according to which "*the protection reciprocally accorded to the authors of contracting countries shall be guaranteed to them only during the existence of their rights in their countries of origin, and the duration of the enjoyment of rights in the other country may not exceed that laid down by the law for national authors.*"

From the point of view of drafting, the Committee had first considered that the second part of the above clause was in any case unnecessary, as it was implicit in the national treatment principle written into the Convention that foreign authors could not be treated more favourably than nationals. As to substance, the Committee had acknowledged without hesitation that the setting of a uniform term of protection for the whole area of the Union would be a considerable step forward; it had therefore expressed the wish that the various States might concentrate their efforts in that direction, and they might at least agree to protect the work throughout the author's lifetime and for a certain time after his death. However, in view of the present diversity of all the various specific laws on that point, the Committee had had to disregard the solution concerned and pronounce on whether national treatment should be applied purely and simply to foreign authors or whether, on the contrary, it should benefit them only during the existence of their rights in their countries of origin. The latter alternative, proposed by the German Delegation, had originally been neither accepted nor rejected, the votes having been equally divided. Later it had been adopted by six votes to three. The Committee had moreover noted that, whatever the reply to the question might be, there was no escaping the drawbacks caused by a work having fallen into the public domain in one country while it was still protected in another.

With regard to the conditions required for the enjoyment of protection, the Committee had given preference to the wording proposed by the German Delegation; it had nevertheless substituted for the words "*conditions of form and substance*" the expression "*formalities and conditions,*" which had been proposed by the Federal Council, and which had seemed to it to encompass all the conditions and procedures specified in the country of origin for authors' rights to be secured.

In sum, the Committee proposed that Article 2 should have the following form:

Article 2

Authors who are nationals of one of the Contracting Countries shall enjoy in the other countries of the Union, for their works, whether in manuscript or unpublished form or published in one of those countries, the advantages which the laws concerned do now or may hereafter grant to nationals.

However, those advantages shall he reciprocally guaranteed to them only during the existence of their rights in their countries of origin.

The enjoyment of the above advantages shall be subject to the accomplishment of the formalities and conditions prescribed by the legislation of the country of origin of the work or, in the case of a manuscript or unpublished work, by the legislation of the country to whicb tbe antbor belongs.

On the subject of this Article Mr. **Baetzmann** made the following statement:

"Now that the result of the work of our distinguished Committee has become a draft that encompasses the subject area in its near entirety, and at the same time very explicitly defines the minimum of protection that has to be granted in each of the countries of the Union, I consider myself able to subscribe to the dual principle of

national treatment and country of origin treatment. At the outset there was reason to fear that the clause on country of origin treatment might become too great a restriction on protection. As a result of the changes undergone by the draft that will be submitted to Governments for consideration, this risk seems to me to have disappeared, and I am therefore able today to vote for the second paragraph of Article 2."

Mr. **Ulbach** said the following: "Gentlemen, you have rejected the wording that to us seemed the simplest and which was at the same time, on the part of the French Delegation, the expression of a disinterested sentiment, as we were offering foreign authors more than we ourselves receive from their countries. I have no intention to make you reverse the successive votes of the Drafting Committee and the Plenary Committee. I do, however, wish to have this misprision of our generosity recorded in the minutes.

"It seemed to us quite simple for an author to accept the conditions of the country that extended its hospitality to him. It was a simple rule for the courts in the event of dispute; it was the best way of bringing about this equality, this uniformity in the duration of rights, which you consider fair, and which we consider indispensable. The States of the Union would have been in all the more of a hurry to align themselves on France by setting at 50 years, like France, this protection after the author's lifetime.

"You have rejected this proposal with the mere expression of a wish that makes one hope for its realization. We thank you for that wish; we regret that, having found it necessary, you did not go further and make it unnecessary."

Mr. **Lagerheim** recalled that he had set out within the Committee the reasons which according to him militated for the insertion in the Convention of the requirement contained in the second paragraph. Such a requirement would be capable of obviating a large number of contentious cases that would inevitably result from national treatment pure and simple. However, he had had to demand the insertion of this clause also on the ground that Sweden would not have been able to join the Union if by doing so it had been obliged to protect works which, in their country of origin, had fallen into the public domain. For him therefore the adoption of the paragraph was an absolute condition.

Dr. **Meyer** said the following: "It is merely a question of noting that the wording proposed by the German Delegation, '*conditions of form and substance*,' has been replaced by the words '*formalities and conditions*,' and that the word '*formalities*,' being taken as a synonym of the term '*conditions of form*,' included, for instance, registration, deposit, etc.; whereas the expression '*conditions*,' being in our view synonymous with '*conditions of substance*,' includes, for instance, the completion of a translation within the prescribed period. Thus the words '*formalities and conditions*' cover all that has to be observed for the author's rights in relation to his work to come into being ('*Voraussetzungen*' in German), whereas the effects and consequences of protection ('*Wirkungen*' in German), notably with respect to the extent of protection, have to remain subject to the principle of treatment on the same footing as nationals."

The **President** noted that the Conference agreed with Dr. Meyer on the scope of the words "*formalities and conditions.*"

Mr. **Lavollée** drew attention to the deletion of the words with which, in the Federal Council draft, the second sentence of Article 2 started: "Consequently, they shall have the same protection as those nationals and the same legal remedies against any violation of their rights." That provision, which was to be found in practically all conventions at present in force, was indeed implicit in the general principle written into the first paragraph of the proposed Article; By formulating it expressly one might perhaps have prevented any uncertainty or hesitation in the mind of the authorities responsible for implementing the Convention. In any event, it had to be made clear that the change of form in no way altered the substance.

The **President** noted that the Conference agreed on the above point.

As no opposition had been expressed, Article 2 was adopted as proposed by the Committee.

Protection accorded to the publishers of works whose authors do not belong to a country of the Union

Article 3

(Article 3 of the Programme)

According to the Federal Council Programme:

"The subjects or citizens of States not forming part of the Union who are domiciled, or have their works published, on the territory of one of the States of the Union shall be treated in the same way as the subjects or citizens of Contracting States."

Originally, the German Delegation had proposed the outright deletion of this Article, on the ground that too-extensive facilities granted to foreigners would lessen the interest of accession to the Union for non-Contracting States. However, recognizing that the risk did not exist in relation to works whose publishers belonged to a country of the Union, the German Delegation had acknowledged in the course of the subsequent discussion that those publishers could be granted a direct right in respect of works whose author was not a national of a Contracting Country. That principle had been adopted by the Committee, which, taking account of a drafting amendment proposed by the French Delegation, had reinstated Article 3 in the following form:

Article 3

The provisions of Article 2 shall apply also to the publishers of literary or artistic works published in one of the countries of the Union, whose author comes from a country that does not belong to it.

On the subject of the above article, Mr. **Lavollée** made the following statement:

"The French Delegates were entrusted with supporting the original wording submitted by the Federal Council. In a treaty establishing an international union, it would have seemed preferable to retain a general formula recognizing the personal rights of authors rather than the restrictive provision that the specific demands of German legislation caused to prevail in the Franco-German Convention of April 19, 1883.

"In any event, the French Delegates would have wished to see the benefit of Article 3 extended to the works of authors resident on the territory of the Union, even where those works were published outside that territory. One example will suffice to justify our wish: a number of the works of Rossini, an Italian subject resident in France, have been performed for the first time in Italy. Had Italy not been a part of the Union, would those works of Rossini have had to be deprived of protection in France when, later, they were performed there? The fact of asking such a question seems to me to provide the answer.

"It should be pointed out moreover that the expression '*domiciled*' denotes not just residence, either temporary or secondary, but a principal and permanent establishment."

Apart from his observation on the general scope of the Article, Mr. **Lavollée** expressed the view that, in the wording proposed by the Committee, the word "*publisher*" should be understood in the broadest sense, so that it could, for instance, apply to the organizer of dramatic performances.

The Article was adopted in the form given above.

Definition of the expression "literary and artistic works"

Article 4

(Article 4 of the Programme)

The Federal Council had proposed the following wording:

"The expression 'literary or artistic works' shall include books, pamphlets or any other writings; dramatic or dramatico-musical works, musical compositions with or without words and arrangements of music; works of drawing, painting, sculpture and engraving, lithographs, maps, plans, scientific diagrams, and in general any literary, scientific and artistic work that may be published by any system of printing or reproduction."

The German Delegation had proposed the following:

"The expression 'literary and artistic work' shall include books, pamphlets or any other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of drawing, painting, sculpture and engraving; lithographs, illustrations, maps; plans, sketches and three-dimensional works relative to geography, topography, architecture or the natural sciences, and in general any production whatsoever in the literary, scientific or artistic domain."

In accordance with what had been decided at the second meeting of the Conference, the Committee had deleted the mention of "*arrangements of music*," as that point was to be dealt with expressly or by implication in connection with the provisions concerning infringement or adaptation.

It had moreover agreed with the German Delegation regarding the special mention of "*illustrations*," and also regarding the precise indication of what was covered by *plans, sketches and three-dimensional works*. On the other hand it had substituted the words "*in general*" for the adjective "*natural*" qualifying "*sciences*," which would have had the effect of restricting protection.

With regard to the phrase that ended the wording proposed by the German Delegation, it had been pointed out that it was not the purpose of the Convention to protect productions belonging to the *scientific* field that were not capable of being reproduced. In order to make that point clearer, it had been considered appropriate to complete the Article, using the drafting that ended it in the Federal Council proposal, with the word "*mode*" substituted for "*system.*"

Finally, as the French Delegation had insisted on *photographs* being added to the enumeration of the works to be protected, the German Delegates had explained that their legislation in its present state did not allow them to accept the mention of photographs in the projected Convention. However, recognizing that the protection of original photographs was appropriate, the Committee had decided to express the wish that it be introduced in the future.

As a result of the above decisions, the Committee had given Article 4 the following wording:

Article 4

The expression "literary or artistic works" shall include books, pamphlets and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of drawing, painting, sculpture and engraving; lithographs, illustrations, maps; plans, sketches and plastic works relative to geography, topography, architecture or science in general; in fact, every production whatsoever in the literary,

scientific or artistic domain which can be published by any mode of printing or reproduction.

Mr. **Ulbach** said the following: "It is understood that the words '*by any mode of printing or reproduction*' do not exclude photography when it is used for the purposes of art or science, or when it is used to illustrate an instructive work on travel, ethnography, natural history or archaeology. It is understood that, while you may not wish to protect ordinary commercial photography at this stage, you will consider an artistic photograph that reproduces a masterpiece as being a reflection of that masterpiece, and worthy of respect, albeit not in the same capacity but at least by virtue of a sort of remote relationship."

After an exchange of comments between Mr. **Lavollée** and the **President** it was understood that, while the enumeration in the above Article did not mention *photographs*, they nevertheless qualified for protection when they were the authorized reproduction of a work that was itself protected.

Article 4 was adopted.

(Article 5 of the Programme)

The Federal Council had proposed the following provision:

"The rights of authors shall also apply to manuscript or unpublished works."

In view of the mention of manuscript or unpublished works in Article 2, the German Delegation had proposed that Article 5 was unnecessary and should be deleted.

The Committee had agreed to that deletion, which was approved by the Conference.

The lawful agents or representatives of authors

Article 5

(Article 6 of the Programme)

The Federal Council proposal was as follows:

"The lawful agents or representatives of authors shall in every respect enjoy the same rights as are granted by this Convention to the authors themselves."

In view of the direct right of protection that Article 3 granted in certain cases to the publisher, the Committee had decided to complete the proposed wording with the additional mention of *publishers*.

Consequently, Article 5 had been drafted as follows:

Article 5

The lawful agents or representatives of authors, or, in the case provided for in Article 3, those of publishers, shall in every respect enjoy the same rights as are granted by this Convention to the authors or publishers themselves.

Article 5 was adopted in this form.

Exclusive right of translation

Article 6

(Article 7 of the Programme)

The Federal Council wording was as follows:

"Authors who are nationals of one of the Contracting States shall, in all the other States of the Union, enjoy the exclusive right of translation throughout the duration of their rights in respect of their original works [with the possible addition of 'if they have availed themselves of that right within a period of ten years'].

"That right shall include the rights of publication or performance."

The following proposal had been presented by the German Delegation:

"Authors who are nationals of one of the countries of the Union shall, in all the other countries of the Union, enjoy the exclusive right of translation in relation to their works during ten years following the publication of the translation of their work authorized by them.

"The translation must be published in one of the countries of the Union.

"In order to qualify for the application of this provision, the said authorized translation must appear in its entirety within three years following the publication of the original work.

"For works published in instalments, the three-year period specified in the foregoing paragraph shall be counted only as from the publication of the last instalment of the original work.

"Where the translation of a work appears in instalments, the ten-year term provided for in the first paragraph shall also be counted only as from the appearance of the last such instalment.

"It is understood that, for works composed of several volumes published at intervals, and also for bulletins or collections published by literary or scientific societies, or by private persons, each volume, bulletin or collection shall be considered a separate work with respect to the terms of ten years and three years."

For his part, Mr. **Lagerheim** had made the following proposal:

"Authors who are nationals of one of the countries of the Union shall enjoy in each of the other countries of the Union the exclusive right of translation in relation to their works for ten years following the publication of the *original work, provided however*:

"(i) that a complete authorized translation appears within three years following the publication of the original work;

"(ii) that the said translation is published in one of the countries of the Union.

"For works published in instalments, etc. (see the German draft).

"Where the translation, etc. *(ibidem)*.

"It is understood that, etc. *(ibidem)*.

"*It is understood that the exclusive right of translation shall extend only to the language or languages in which an authorized translation has appeared.*"

Finally, the French Delegation had proposed that the Article be worded as follows:

"Authors who are nationals of one of the Contracting Countries shall, in all the other countries of the Union, enjoy the exclusive right to make or authorize the translation of their works throughout the duration of their rights in those works, the publication of an unauthorized translation being in all respects assimilated to the unlawful reprinting of the original work.

"The translators of ancient works or modern works that have fallen into the public domain shall, with respect to their translations, enjoy the right of ownership and the guarantees deriving therefrom; they may not, however, object to the same works being translated by other writers.

"The authors of dramatic or dramatico-musical works shall enjoy reciprocally the same rights concerning the translation or the performance of translations of their works."

With respect to substance, the various wordings proposed diverged on the question whether or not the right of translation had to be assimilated to the exclusive right of reproduction with respect to its duration. Such assimilation had been emphatically demanded by the International Literary Association; it had been established by case law in France, and elsewhere by statute law, albeit with certain restrictions regarding the period within which the authorized translation had to have appeared. It had been argued in favour of outright assimilation that without it the protection of copyright would be illusory; moreover it was prejudiced to believe that the country that did not protect foreigners against translation was thereby doing a service to its nationals: it was indeed contrary to the nature of things for an author to refuse to authorize the translation of his work, but he did have an unquestionable interest in that translation being a good one, and that was what could not be secured otherwise than by protection. Those countries that had abandoned ancient prejudices to adopt the system of protection had recognized that, far from being harmful to national authors, on the contrary it favoured them strongly.

Acknowledging the validity of those arguments, the Committee had not hesitated to formulate the wish that the right of translation, with respect to its duration, be assimilated to the exclusive right of reproduction. It had noted however that, in view of the great diversity of specific legislation in that respect, it would hardly be possible to write the principle of assimilation into a general convention at the present time; there were moreover all the fewer drawbacks to the introduction of lesser protection in the area concerned since, for the time being, it was merely a question of setting a *minimum*, and since the greater advantages provided for in specific conventions in that respect had to continue to accord reciprocal benefit to authors belonging to the Contracting Countries.

Those considerations had led the Committee to give preference, with regard to the term of protection, to the proposal by the German Delegation, especially since Mr. **Lagerheim** had not pressed the proposal that he himself had made in opposition to it.

As for the actual drafting of the Article, the Committee had considered, like Mr. **Lagerheim**, that the exclusive right of translation should not extend beyond the language or languages in which the authorized translation had appeared.

It had also agreed, in accordance with a widely accepted practice, that the expression "*exclusive right of translation*" included not only the author's right to translate his work *himself*, but also his right to *authorize* its translation.

For the various reasons set forth above, the Committee had adopted Article 6 in the following wording:

Article 6

Authors who are nationals of one of the countries of the Union shall enjoy, in all the other countries of the Union, the exclusive right of translation in relation to their works for ten years after the publication, in one of the countries of the Union, of the translation of their work authorized by them.

In order to enjoy the benefits of the above provision, the complete authorized translation must appear within three years following the publication of the original work.

For works published in instalments, the period of three years specified in the foregoing paragraph shall be calculated only as from the publication of the last instalment of the original work.

Where the translation of a work appears in instalments, the ten-year term provided for in the first paragraph shall also be counted only as from the appearance of the last such instalment.

In the case of works composed of several volumes published at intervals, and also for bulletins or collections published by literary or scientific societies, or by private persons, each volume, bulletin or collection shall, with regard to the periods of ten and three years, be considered a separate work.

It is understood that the exclusive right of translation shall not extend beyond the language or languages in which an authorized translation has appeared.

Mr. **Lavollée** felt bound, with regard to the matter of translation, to refer to the considerations that he had put forward at the second meeting of the Conference. The observations that had been exchanged within the Committee on that subject, which had brought about the adoption of the compromise formula at present being discussed, had not altered his opinion on that point. He remained convinced that the Conference could have voted for the wording proposed in Article 7 of the Federal Council Programme, which provided for full assimilation of the right of translation to that of reproduction.

That principle, which France had been the first to establish in its case law, was no longer seriously contradicted anywhere in the world of letters, as demonstrated by the unanimous vote taken the previous year, also in Berne, by the International Literary Association. It had been given diplomatic consecration in a number of conventions: it was sufficient to mention those that France had signed in the last four years, namely with El Salvador (Convention of June 9, 1880, Article 5), with Spain (Convention of June 16, 1880, Article 3) and with Belgium (interpretative declaration of January 4, 1882). Switzerland had that day declared, in its proposal, its willingness to accept that same principle, and at the second meeting of the Conference the first Delegate of Germany had seen fit to express the opinion that the German Government might endorse full assimilation of the right of translation to copyright, provided that all the other countries also did so.

The fact of that agreement between five of the States in which intellectual development had made the most progress, and the formulation of the wish proposed by the Committee, were certainly substantial results; it would, however, have been desirable, and seemingly possible, to make fuller and more definite progress had the drafting presented by the Federal Council been endorsed. Therefore, without absolutely rejecting the compromise Article that was proposed, which in his opinion represented no more than a *minimum*, and without demanding a vote, the outcome of which could be prejudiced by the discussions of the Committee, Mr. **Lavollée** felt bound to abide by the point of view that the French Government had expressly entrusted its Delegates with presenting at the Conference. In its opinion, the right of translation could not and should not be considered a dismemberment of the right of reproduction, or a special form of the right of reproduction itself. Indeed in international relations translation was almost always the normal manner of reproduction. Consequently the objection based on contrary provisions in various domestic laws had very little value in the case in point because, when translation was involved, it was almost solely relations with foreign countries that had to be regulated, and because therefore the real domestic law was in fact international law. The fear had also been expressed that an author's groundless resistance to the translation of his work might be an obstacle to its dissemination, and thereby to the progress of civilization. Concern for such an eventuality indicated very little knowledge of human nature, and in particular the nature of authors. Whether inspired by lucrative considerations, by a desire for fame or by devotion to a cause or to an idea, the author would always be prone to accept, perhaps even too readily, any proposals that might be made to him regarding the translation of his work. The main thing was that he should not be cheated of the fruit of his work, and that he should be able to ensure that his thoughts were not misrepresented on the pretext of translation. In the latter respect his interest was in line with that of the public, which needed to be assured of the accuracy of the interpretation given to the original work.

On the various grounds set forth above, the French Delegates remained resolutely true, on behalf of their Government, to the system of full assimilation of translation to ordinary reproduction. They could not see any fair and rational solution to the question of translation outside that rule, which for them was a doctrinal principle whose universal recognition was being delayed solely by reservations deriving from the ancient institution of the right of escheat. Those reservations were moreover losing ground daily; it was already permissible to predict their complete disappearance, and indeed that result might well have been achieved very soon if the Conference had accepted the proposals of the Federal Council.

In view of the fact that no agreement had been reached on that basis, the French Delegates were not able to accept the proposed wording otherwise than as a *minimum*, and that with express reservations as to the eventual decision of their Government.

Mr. **Lagerheim** wished to give a very succinct recapitulation of the arguments that he had put forward within the Committee on this important Article. The population of the Scandinavian countries was small, but they had an avid desire to learn, and a need to secure for themselves the literary productions of great nations. In the past they had been able to do so without hindrance, and it was only recently

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that Sweden had sanctioned in a new law the principle of limited protection against unauthorized translations. Mr. **Lagerheim** acknowledged that the law was not a good one, and that in particular the term of protection of the exclusive right of translation should be extended somewhat. He had therefore proposed within the Committee that the duration be limited to ten years, grace period included. As that proposal had not been supported, he had accepted the present wording in a spirit of compromise, but with a formal declaration that that was the maximum concession that Sweden could make on that point, and moreover with reservations regarding the view of his Government, which he was in no way able to commit.

He asked in addition for it to be noted that protection so limited became in practice very real protection. If an authorized translation existed, it would almost always take precedence over other translations, and it was almost only in the case where it was out of print and where the publisher or the author did not concern themselves with having a new edition published that another translation would be made at all. Due account had also to be taken, however, of the possibility of the authorized translation being a bad one. In that case the public was entitled not to be deprived forever of any means of acquainting itself with the original work in the form that best reflected the thoughts of the author, and the honour of the author himself could only benefit from freedom of translation granted after a certain period of time.

Dr. **Steinbach** said the following in his own name and on behalf of Counsellor **Zádor**, his counterpart from Hungary: "We have to vote against Article 6 of the Convention, because new Hungarian legislation on authors' rights is in contradiction with that Article regarding the formalities to be complied with for the acquisition of the exclusive right of translation and as to the duration of that right."

Mr. **Reichardt** spoke as follows: "In the face of the proposals made by the French Delegation, I take the liberty of adding to the considerations expressed by the President some of the reasons that guided the majority of the Committee.

"The Committee was unanimous in its recognition that the current trend was towards assimilation of the duration of the exclusive right of translation to that of the rights in the original work.

"However, it was not to be overlooked that a number of countries still possessed provisions based on opposite principles, according to which the exclusive right concerned had a duration of five years only; and also that other countries of considerable literary importance had recently, and after very thorough research, extended the duration of that right from five to ten years; they had not done that without first having surmounted quite considerable difficulties.

"Now, it would be too great a leap, and indeed a potential *salto mortale* for the success of the projected Union, to attempt to establish the principle of assimilation at the outset.

"It was by placing itself at this vantage point that the Committee sought to progress towards the aim that we are all striving to attain, steering its proposal along the middle path, and leaving to the subsequent development of the Union the task of implementing more and more what I saw fit to mention as being a trend of our time."

The *proposal by the French Delegation*, reproduced above, was put to the vote.

There were **three** votes **in favour** of the proposal, namely those of **France, Haiti** and **Switzerland**.

There were **six** votes **against** it, namely the votes of **Germany, Austria, Hungary, Costa Rica, Sweden** and **Norway**.

The Delegates of **Belgium**, the **United Kingdom** and the **Netherlands abstained**.

Thereafter the *whole of Article 6* was put to the vote, and it was **adopted** as proposed by the Committee by **six** countries (**Germany, Costa Rica, France, Sweden, Norway** and **Switzerland**) to **three** (**Austria, Hungary** and **Haiti**).

The Delegates of **Belgium, Great Britain** and the **Netherlands abstained**, Count **de Dudzeele** declaring that his abstention was due to the fact that he had not received detailed instructions from his Government on the point concerned.

Article 7

Translations assimilated to original works

(Article 8 of the Programme)

The Federal Council had proposed the following provision:

"An authorized translation shall be protected in the same way as the original work.

"Where the translation is of a work that has fallen into the public domain, the translator may not object to the same work being translated by other writers."

On the subject of the above Article it had been pointed out that the proposed wording contained a loophole, in that it did not protect the author against the reproduction that might be made in a country of the Union of an unauthorized translation of his work.

Moreover, the Federal Council Programme did not distinguish between whether it was the work itself or the translation that had fallen into the public domain. That was explained by the fact that the Programme provided for full assimilation of the right of translation to the right of reproduction. As the Committee had pronounced against such assimilation, the Article had had to be completed in that respect.

Consequently, the Committee had drafted it as follows:

Article 7

Translations are expressly assimilated to original works. They shall therefore enjoy the protection provided for in Articles 2 and 3 with respect to their unauthorized reproduction in countries of the Union.

In the case of a work for which the right of translation is in the public domain, the translator may not object to the same work being translated by other writers.

Article 7 was adopted in the above form.

Mr. **Lagerheim** asked for the order of Articles 6 and 7 to be reversed, as in his opinion Article 7 was a statement of a general principle, whereas Article 6, like Article 8 onwards, contained specific provisions concerning the application of the principles on which the Convention was based.

On an individual vote, the above drafting proposal was **rejected** by **ten** votes to **four**.

Lawful reproduction of protected works in scientific or educational works

Article 8

(Article 8(a) as proposed by the German Delegation)

The German Delegation had made the following proposal, which referred to Question 6 of the questionnaire proposed by it:

"The publication in any of the countries of the Union of excerpts or whole passages of a work that has appeared for the first time in any other country of the Union shall be lawful, provided that the publication is specially designed and adapted for education, or has scientific character.

"The reciprocal publication of chrestomathies consisting of fragments of works by various authors shall also be lawful, as shall the insertion in a chrestomathy or in an original work published in one of the countries of the Union of the whole of a short writing published in another country of the Union.

"It is understood that the name of the author from whom, or of the source from which, the excerpts, passages, fragments or writings referred to in the above two paragraphs have been borrowed shall always be mentioned.

"The provisions of this Article shall not apply to musical compositions inserted in collections intended for schools of music; any insertion of such kind without the consent of the composer shall be considered an unlawful reproduction."

The inclusion of the above provision had been proposed by the German Delegation because there seemed to be a universal interest in certain borrowings from authors to be allowed, within reasonable limits, for educational purposes. The Committee had acknowledged the existence of that interest. It had further considered it preferable to provide for the reproduction right concerned in the General Convention rather than leave it to special conventions and the domestic legislation of each country.

From the point of view of drafting, the words "*whole passages*," used in the first paragraph, had been criticized as having too great a scope and as being capable of such broad interpretation that they might encroach seriously on the author's legitimate rights. In reply to that observation, it had been stated that the expression concerned was to be found in a number of the conventions in force at present, and that it had been inserted with the avowed intention that it should be given a *restricted meaning* only. Once that explanation had removed the risk that the use of a general term might have caused, the Committee had raised no objection to allowing the expression "*complete passages*."

In another context, attention had been drawn to the need to permit also, under the same conditions, the reproduction of fragments of artistic works. The Committee had inserted a provision on those lines, and had worded the whole Article as follows, amending the last paragraph slightly.

Article 8

The publication in any of the countries of the Union of excerpts, fragments or whole passages of a literary or artistic work that has appeared for the first time in any other country of the Union shall be lawful, provided that the publication is specially designed and adapted for education, or has scientific character.

The reciprocal publication of chrestomathies consisting of fragments of works by various authors shall also be lawful, as shall the insertion in a chrestomathy or in an original work published in one of the countries of the Union of the whole of a short writing published in another country of the Union.

It is understood that the name of the author from whom, or of the source from which, the excerpts, passages, fragments or writings referred to in the above two paragraphs have been borrowed shall always be mentioned.

The insertion of musical compositions in collections intended for schools of music shall be considered unlawful reproduction, however.

Mr. **Lagerheim** expressed very special reservations, based on the Swedish legislation on literary property, on the subject of the provisions written into the above Article.

Mr. **Lavollée** felt bound to make a special reservation regarding his Government's decision on Article 8, as the inclusion of such a provision, which was acceptable and indeed essential in an agreement between two powers such as France and Germany, could present certain drawbacks in a treaty establishing an international Union, the limits of which were still uncertain.

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Mr. **Reichardt** said the following: "Gentlemen, I cannot accept the views just expressed by Mr. Lavollée in support of his proposal that Article 8 of the draft Convention be deleted.

"This Article enshrines a principle recognized not only in practically all earlier conventions, but also, specifically, by the French Government in the Franco-German Convention of 1883, the purpose of which is to provide education and scholarship with the means of drawing, to a limited extent, on the literature of other countries without having to resort to the author's authorization.

"This way of thinking has its own justification in relation to every country, unless there is a desire to hamper the free development of education.

"This is therefore one of the most universal principles, and one whose inclusion in the General Convention Germany will never renounce, because through the application of the laws of the country of origin, provided for in Article 2 of the draft Convention, the deletion of Article 8, which introduces a restriction on copyright, would make all provisions comparable to Article 8 contained in existing conventions void by virtue of the Additional Article.

"I therefore hope that Mr. Lavollée's intention is merely to state a way of thinking, and not to bring about a vote on Article 8 of the draft, the rejection of which would very probably place the German Government in the position of having to renounce the projected Union completely."

Mr. **Ulbach** spoke as follows: "Gentlemen, allow me to revert one last time to an Article that is very important to me, and to defend once again the rights of the moral writer, who is less well protected against borrowings and plagiarism than the casual and immoral writer. One cannot quote a whole passage from a given novel, even if to give a taste or a distaste for naturalism, and yet one can take with impunity, using education as a pretext, not only the substance but also the actual expression of that substance by a writer who, producing little, condensing the work of his intellect in short sentences, can be robbed and can claim nothing in return. If France had a La Bruyère today, and if he were to set down his thoughts in *parts*, whole parts would be taken from him as they appeared, and when eventually the complete book came out it would already have been violated by the many borrowings that had been previously made from it.

"I am as sensitive as you, Gentlemen, to the rights of youth, and to those of universal education and progress; yet the best way of holding to their duty those whose vocation it is to effect intellectual emancipation is to shew respect for their efforts and to guarantee them reward for their work.

"Article 8 should be an expression of will, at the very most. One could long for a day to come when authors who write on moral issues are sufficiently well rewarded for them to waive their rights in favour of youth; one could wish that expropriation for reasons of moral value might one day apply to books; however, when we draw up a Convention guaranteeing the inviolability of the rights of authors, I should like us to confine ourselves to a statement of the principles, and to reserve for the future such departures from certain principles as may have been made necessary by experience and the public interest.

"I am not impressed by the argument that Article 8 is a reproduction of an article in the Franco-German Treaty of 1883. France and Germany sought agreement and found it; but it is precisely our purpose to improve and enlarge on the provisions of present treaties, and to inspire the countries of the Union with a desire to reform those treaties that offer advantages inferior to those that the principles laid down here lead one to expect.

"I am therefore maintaining my opposition and reiterating my regrets, and I do not believe that France is contradicting herself in wishing not to perpetuate, and one day to eradicate by common consent, a concession made to laws that are not her own."

In reply to Mr. Reichardt, Mr. **Lavollée** said that he interpreted Article 16 of the draft Convention establishing the Union differently from the first Delegate of Germany. According to him, Article 8 should not be regarded as an exception to the rule of protection, but rather as a specific provision which, if it remained part of the specific conventions while being excluded from the General Convention, should be regarded not as *contrary* to the latter Convention, but as relating to matters *other* than those governed by it.

Following these declarations, Article 8 was adopted in the above form.

Article 9

Lawful reproduction of articles excerpted from newspapers and periodical publications, and exceptions to that rule

(Article 8(b) of the Programme)

The German Delegation had made the following proposal (see Question 6 of its questionnaire):

Articles excerpted from newspapers or periodical journals published in one of the countries of the Union may be reproduced, in the original or in translation, in the other countries of the Union.

This right shall not however extend to the reproduction, in the original or in translation, of serialized novels or articles on science or art. The same shall apply to other articles of some length, excerpts from newspapers or from periodical journals where the authors or publishers have expressly declared, in the actual newspaper or

journal in which they have caused them to appear, that they prohibit the reproduction thereof.

In no case shall the prohibition specified in the above paragraph apply to articles of political discussion.

The right of reproduction provided for in this Article had been motivated by considerations comparable to those that justified Article 8(a). It had even been argued, in the public interest, that the faculty should be extended to *articles on science*. The Committee had not considered that extension of the right of reproduction to be dictated by a compelling practical interest; it had therefore adopted Article 8(b) as worded above.

Dr. **Janvier** made the following speech:

"Gentlemen,

"On several occasions I have asked for the word '*science*' in the second paragraph of Article 9 to be deleted, and I am asking for its deletion again. Do not look on my insistence as prejudice or as a quite uncalled-for obsession. It is the expression of a serious, scientific concern.

"A number of the nations that are going to join the Union and of those that will be joining it later have as yet no real science and practically no art. A purely literary article, however beautiful, magnificent or masterly it may be, may not have an immediate interest in being known to the public at large; more often than not it is a piece designed for the delectation of *cognoscenti*, and more a pleasure than a useful or necessary article for mankind. The same is true of an artistic object. Art and literature are moreover the intellectual flowers that blossom only for peoples who have themselves reached the age of maturity.

"Young, new nations set little store by articles of pure art and literature, because for them those articles are not of immediate, topical, absolute interest. The same is not true, for them, of an article on science. Among the sciences, one should include hygiene, veterinary and human medicine, modern chemistry and physics, the discoveries and processes of which, as they become daily more numerous and more ingenious, must be brought to the attention of all peoples of the globe for the greater benefit of each one of them, in as short a time as possible.

"Would it not be a real blow to French science if the research published by Professor Lefort, my esteemed master at the Paris medical faculty, on the improvements to be made on army camps and on the progress of military medicine, were not to be known everywhere?

"Would it not be a real blow to French science if the work of Mr. Pasteur, which is better known through magazine articles that have summarized and condensed it than through the original works of the scientist himself, had not been translated into all languages or reproduced immediately in the press of the most diverse countries?

"Would it not be a real blow to the dissemination of French science if, to mention only one's contemporaries, it were not possible to translate or reproduce magazine articles by persons such as Marey, Pierre Lafitte, Broca, Topinard, Quatefages, Gaston Boissier, Levasseur, Daubrée or Alfred Maury?

"That peerless financier Léon Say, one of the colleagues of the Ambassador of France, recently made a trip to Italy. He made a close study of the people's banks and mutual credit societies of that country. It was for him a matter of the greatest haste to publish the results of his research in *Débats*, as he wanted all to be acquainted with his opinion on such delicate matters. He for one would certainly object to any international code that prevented his science from being known throughout Europe.

"Similar studies have been made by him on the present economic situation in Germany and Great Britain. He has collected them together in one volume entitled *Le Socialisme d'Etat*. So does that really mean that under Article 8 I would have the right to quote from *Le Socialisme d'Etat*, and under Article 9 be prohibited from quoting opinions of the author of that book published in the *Journal des Débats*?

"It is restricting science, indeed denigrating it, to think of material interests before moral interests, which are the fundamental, vital interests.

"I could say the same of the latest book by Leroy-Beaulieu, *Le Collectivisme*.

"How could it ever be that a German, an Italian or an Englishman could quote passages from this book to enlighten his country, whereas the same passages published in the *Journal des Débats* or in *La Revue des Deux Mondes* could not be quoted?

"Come, Gentlemen, France is the mother of logic.

"How could it be that the articles by Mr. Anatole Leroy-Beaulieu published in *La Revue des Deux Mondes* and in *La Revue Bleue* could not be reproduced while they could be if they were taken from the work by the same Leroy-Beaulieu entitled *L'Empire des Tzars*?

"I call the very close attention of His Excellency the Ambassador of France to all these facts, and I present them to him with all the respect due to his maturity, his qualifications and the great name that he wears so well, which name would not have become so famous if the scientific articles in French magazines and newspapers, read, translated and reproduced everywhere, had not carried it to the very confines of the civilized world.

"I appeal to Consul General Lavollée, who is a Doctor ès lettres and who knows these things better than me; I appeal to Louis Ulbach, who has been given a very warm reception wherever he has been, even by sovereigns, who, by receiving him with friendship have honoured in him a man who was well acquainted with persons such as Littré, Renan, Berthelot and Wurtz.

"The French language owes its very universality to the fact that French scientists, ever desirous of improving their own renown and that of their country, have generously and patriotically given of themselves in order to propagate French science everywhere.

"If I dared, if I were qualified to do so, I would protest in their name, having been raised by the most eminent among them, when I hear that, if they were to write articles on science, they could forgo mentioning at the foot of those articles that they did not want them to be reproduced without permission.

"When Pasteur had succeeded in his admirable research on fermentation and beer, Denmark and the United States of America immediately made the counter-experience of his research and bowed before the superiority of French science. Thus it is that the name of Pasteur is as popular in those two countries as in France.

"Likewise the same Pasteur, after having conducted decisive research in Hungary on the diseases of horses and sheep, gave the benefit of his experience to all breeding countries, whether on this continent or overseas.

"I repeat, where would the greatness and notoriety of French science be before 20 years had passed if the daily newspapers of France, which give no more than analytical accounts of a book, sometimes too concise, usually inadequate, often without its 'innermost marrow,' if the daily newspapers and condensed works that not everyone can buy or has the time to read, if newspapers and books were the only two vehicles of thought; if above all the magazine article were not there to be translated, commented on and reproduced everywhere, and to indicate the current state of minds, systems and science at a given time.

"However prolific he may be, an author cannot write a full volume every time; if he is a conscientious and profound author, he will not like to prostitute his thought and expose it inadequately in a short article in a daily newspaper, which will be little read, hardly discussed at all and practically never reproduced.

"I have the honour to submit all these objections also to the great wisdom and to the eminent practical sense of Counsellor Reichardt.

"I would point out to him, as respectfully as I did a moment ago to His Excellency the Ambassador of France, that he is perhaps mistaken in affording too much protection to the monetary interests of German scientists at the expense of their renown.

"When I was a medical student, I knew everything that was taking place in Germany in the medical field; I was familiar with the most recent work of Helmholtz, Dubois-Reymond, Virchow and Gorup-Bezanez, simply through reading in France the reproductions of the articles that they published in the major magazines of Germany on specific scientific subjects.

"To give an example, it was Dubois-Reymond who gave the exact date of the death of Diderot. He did so in a speech at the Berlin Academy in July; in France we knew of this immediately, because the *Revue politique et littéraire* of Paris immediately translated and published the article by Dubois-Reymond, and certainly without asking his permission. Dubois-Reymond is sufficiently rewarded if he knows that his name, under the blue cover of that review, is now being taken to Australia, to China, to Canada and elsewhere.

"German science predominates in the universities of Russia. German scientists and German magazines are consulted in the Slavonic, Anglo-Saxon or Indo-Germanic parts of Europe.

"If the very honourable Mr. Reichardt does not want the word '*science*' to be removed from Article 8, we will have delivered a severe blow to German science: either German authors will continue to be quoted everywhere without being consulted on the desirability of such quotation, or they will no longer be quoted at all.

"I do not believe that German scientists will be grateful to our eminent colleague for this lessening of their scientific popularity. Moreover, from the political standpoint, the most loved, the most imitated and the strongest country is the one whose science is, becomes or is likely to become the most universal.

"I take the liberty of presenting, in the most respectful way possible, the same observations to the honourable Delegates of Belgium, Austria, Hungary, Switzerland and Norway, indeed to you all, Gentlemen.

"If you want the names of your most esteemed compatriots to go to Brazil, to Chile or to the Plate, to Australia, to India, to Egypt and even to the countries of Europe, there to generate daily more knowledge of and respect and love for your individual countries; if you want there to be neither contradictions nor ambiguity in the terms and in the spirit of the Convention that we are going to sign; if you want those compatriots, through rapid knowledge of their work, to become monetarily rich as quickly as they have become rich in fame; if you want this small country or that to shine as the little country of Greece shone in ancient times, you will, Gentlemen, remove the word '*science*' from the second paragraph of Article 9.

"And, Gentlemen, if my proposal continues to be unanimously rejected, it will seem curious that it should have been a Haitian who made a proposal such as this one, who supported, defended and reiterated it with stubborn persistence, whereas that honour was entirely reserved for the countries which, more than all the others, have the right, and I would even say the duty, to be generous and politic; I am referring of course to France and Germany, currently the two leading lights of mankind.

"Mr. President, I have the honour to ask that a vote be taken on my proposal."

Mr. **Reichardt** spoke as follows: "Gentlemen, if I were to reply in detail to the address that Dr. Janvier has just read out, I should be repeating, in Plenary, what I have had the honour to explain quite thoroughly within the Committee. I do however wish to say a few words, lest readers of the minutes reproducing the address by Mr. Janvier should make an inaccurate interpretation of the intentions of the majority.

"A remote country that felt the need, as mentioned by Mr. Janvier, to go further into the scientific findings of the scientists of Europe would, like us, be prepared to accept the conditions governing the propagation of science. All Article 9 does is set those conditions.

"Moreover, the Article does not in any way preclude the possibility of taking advantage of scientific results achieved by others, as a borrowing of that kind may be lawfully made not under Article 9, but under Article 8 of the draft.

"It is under Article 8 that everyone would have the right, in the example quoted by Dr. Janvier, to reproduce the discovery made by Mr. Dubois-Reymond regarding the setting of the date of Diderot's death.

"Dr. Janvier's desire that a free rein be given to the exercise of the right of appropriation in relation to whole scientific works, however ideal the motive might be, is impracticable for legislation."

Mr. **Lagerheim** repeated in connection with the present Article the reservations he had made regarding the previous Article.

A vote was taken on the deletion of the words "*on science or*" contained in the second paragraph of the above Article.

The deletion was **rejected** by **eight** votes (**Germany, Austria, Hungary, Costa Rica, France, Sweden, Norway** and **Switzerland**) to the one vote of the Delegate of **Haiti**. The Delegates of **Belgium, Great Britain** and the **Netherlands** abstained.

Consequently, Article 9 was adopted in the form given above.

Protection of musical works

Article 10

(Article 11(a) as proposed by the German Delegation)

In order to complete the draft Convention, the German Delegation had proposed the following provision concerning arrangements of music, which is to be found in a certain number of existing conventions:

"The right to protection for musical works shall entail the prohibition of pieces called arrangements of music, and also other pieces, or those composed without the author's consent on the basis of phrases taken from those works, or reproducing the original work with modifications, deletions or additions.

"Any disputes that should arise on the application of the above clause shall be within the jurisdiction of the courts concerned, in accordance with the legislation of each of the countries of the Union."

The Committee had expressed the view that something might be gained by settling the point concerned. On the subject of the second paragraph, it had recognized that the legislation applicable in the event of dispute was that of the country in which protection was claimed.

The final drafting adopted by the Committee was the following:

Article 10

The right to protection for musical works shall entail the prohibition of pieces called arrangements of music, and also other pieces which, without the author's consent, are composed on the basis of phrases taken from the said works or reproduce the original work with modifications, deletions or additions.

It is understood that such disputes as should arise on the application of the above clause shall be within the jurisdiction of the courts concerned, in accordance with the legislation of each of the countries of the Union.

The Article was adopted in this form.

Protection concerning the public performance of musical, dramatic or dramatico-musical works

Article 11

(Article 8 as proposed by the German Delegation)

The German Delegation had made the following proposal:

"The protection provided for in Article 2 shall apply to the public performance of dramatic or dramatico-musical works, whether published or not.

"The provisions of Article 2 shall also apply to the public performance of unpublished musical works or alternatively published musical works whose author has expressly declared, in the title or at the head of the work concerned, that he prohibits its public performance.

"The authors of dramatic or dramatico-musical works shall be mutually protected, during the life of their exclusive right of translation, against any unauthorized public performance of the translation of their works."

The French Delegation had proposed the following amendment:

"The provisions of Article 2 shall apply also to the public performance of musical works, and also to the public performance of dramatic or dramatico-musical works."

The second paragraph was to be like the third paragraph of the Article as presented by the German Delegation.

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The purpose of the above proposals was to regulate uniformly everything concerning the performance of dramatic, dramatico-musical and musical works. The Committee had considered a provision of that kind to be useful. It had considered furthermore that, for published musical works, only those authors should be protected who had expressely reserved for themselves the right of performance.

Consequently it had adopted the Article proposed by the German Delegation, having however reversed the various paragraphs and worded the provision as follows:

Article 11

The provisions of Article 2 shall apply to the public performance of dramatic or dramatico-musical works, whether published or not.

The authors of dramatic or dramatico-musical works shall, throughout the duration of their exclusive right of translation, be mutually protected against unauthorized public performance of translations of their works.

The provisions of Article 2 shall apply also to the public performance of unpublished musical works or those that are published but whose author has expressly declared on the title or in the heading of the work that he forbids their public performance.

Dr. **Steinbach** said the following in his own name and on behalf of Counsellor Zádor, his colleague from Hungary: "On the same grounds as I set forth in connection with Article 6, my colleague and I have to vote against the second paragraph of this Article."

Mr. **Lagerheim** expressed reservations regarding the third paragraph of the Article.

Mr. **Lavollée** observed that the French Delegation had withdrawn its amendment in the face of the explanation given by the German Delegation, the effect of which was that, as a result of the application of national treatment to foreign works (Article 2), musical works published in countries where no "*droit de mélodie*" existed would be deprived of protection in countries where that right was recognized, in cases where the authors of those works had not taken the precaution of expressly indicating their intention to prohibit public performance of the works. It was therefore in the interest of the authors to be made aware, by the actual Article under discussion, of the formalities to be met to avoid forfeiture of their rights.

The Article was adopted according to the proposals of the Committee.

Recognition of authorship

Article 12

(Article 11(b) as proposed by the German Delegation)

In accordance with the decision taken by Conference at its third meeting, regarding Question No. 14, the Committee had considered it appropriate to provide in the draft Convention for matters concerning the conditions required for action to be taken against infringement. Consequently it had adopted the following provision, which was already incorporated in a number of existing conventions:

Article 12

In order to provide all works of literature or art with the protection specified in Article 2, and in order that the authors of such works may, until proved otherwise, be considered such and consequently be eligible before the courts of the various countries of the Union to initiate actions for infringement, it shall be sufficient for their name to be indicated on the title of the work, at the foot of the dedication or preface or at the end of the work.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be empowered to safeguard the rights belonging to the author. He shall, without any other proof, be deemed to be the assignee of the anouymous or pseudonymous author.

Article 12 was adopted in the above form.

Seizure of infringing works

Article 13

(Article 9 of the Programme)

The Federal Council proposal was as follows:

"Any infringing work may be seized on import into those of the States of the Union in which the work is entitled to legal protection.

"Seizure shall take place at the request either of the public prosecutor or of the interested party, in accordance with the domestic legislation of each State."

The Committee had considered it necessary to maintain the above provision, in view of the fact that, owing to the different terms of protection, it was possible that the publication of the work would be lawful in one country and unlawful in another.

On a proposal by Mr. **Lagerheim**, the word "*countries*" was substituted for "*States*" in the first paragraph; also the word "*original*" was inserted before the words "*work is entitled to legal protection.*"

Consequently, the Article was adopted in the following wording:

Article 13

Any infringing work may be seized on import into those of the countries in the Union in which the original work is entitled to legal protection.

Seizure shall take place at the request either of the public prosecutor or of the interested party, in accordance with the domestic legislation of each country.

(Article 10 of the Programme – Adaptation)

The Federal Council had proposed the following Article:

"Adaptation shall be considered infringement and proceeded against in the same way."

In order to make clear what was to be understood by the word "*adaptation*," the French Delegation made the following proposal:

"Unauthorized indirect appropriations, such as adaptations, imitations said to be in good faith, transcriptions or arrangements of dramatic, musical or dramatico-musical works and generally any borrowing from literary, dramatic or musical works carried out without the consent of the author shall be prohibited.

"Adaptation means the alteration of the appearance of a work, either by deletions, or by changes of texts and intention, or again by developments that the original author had not intended, for the sole purpose of appropriating the work without seeming to translate or infringe it."

For his part, Mr. Lagerheim had proposed the following wording:

"Adaptation shall be prohibited when it is no more than the reproduction of an original work with alterations, additions or deletions that are not essential and would not constitute a new intellectual work capable of being regarded as being original."

The various proposals mentioned above originated in the idea that it was necessary to penalize certain reproductions which, through being disguised, were all the more improper. The Committee had agreed to recognize that necessity, and also to admit that it would be useful to give certain indications to the courts in that respect. Moreover it had been emphasized that the word "*adaptation*," even though it was used in certain recent conventions, did not yet have a finally established meaning, and that, by attempting to define it, the Convention would be running the risk of going beyond the intentions of the Contracting Parties. Under those circumstances, the Committee had preferred not to speak of adaptation in the Convention itself, but rather to include a declaration in the Final Protocol stating that the indirect appropriations that the term denoted were not to be considered lawful.

Mr. **Lavollée** recalled that, in accordance with their instructions, the French Delegates had proposed the insertion, after Article 7 of the draft Convention, of an additional Article concerning adaptation.

Unauthorized adaptation, like imitation said to be in good faith and various other comparable methods of disguised infringement, had been known and practised for a long time, and therefore the French Delegates did not think that the Conference should be allowed, in the draft Union treaty that it was drawing up, to pass them over in silence, and thereby in a sense legitimize them by pretermission. It would not be sufficient to refer to them in the Final Protocol; it would have been far preferable to name and prohibit them directly in a specific provision included in the Convention, like the one proposed by the Federal Council (Article 10 of the Programme) or the one in the Convention between France and Spain (Article 4, paragraph 2), which the French Delegates had done no more than reproduce.

As for the definition of "adaptation," the French Delegates did not have in mind to give such a definition in strict and final terms that dealt with every special case that might arise. That was for the judiciary, which would ultimately have to pronounce on it according to the circumstances of each dispute to be settled; however, if one were unable to formulate a definition, one could at least have added to the word "*adaptation*" explanations and indications that would have brought out the general meaning enough and would thereby have assisted the courts in the accomplishment of their tasks. That was how criminal legislation had proceeded when it had specified the characteristics of fraud, for instance, subject to the court's decision in each case whether the matter at issue possessed all the characteristics constituting the offense.

In accordance with the findings of the Committee, it was decided that the above question would be dealt with in connection with the Final Protocol.

Right of authorization, prohibition, etc., reserved to governments

Article 14

(Article 11(c) as proposed by the German Delegation)

The following provision had been adopted by the Committee as establishing a right which, while it did unquestionably belong to Contracting Countries, was nevertheless sufficiently important to warrant a special mention:

"Article 14

"The provisions of this Convention shall in no way be prejudicial to the right belonging to each of the High Contracting Parties to sanction, control or prohibit, by legislative or domestic policing measures, the circulation, performance or display of any work or production in respect of which the competent authority would be called upon to exercise that right."

On proposals by Mr. **Lagerheim** and Mr. **Reichardt**, it was decided that the Article would start with the words: "*It is understood that*, etc.," and that the words "*to each of the High Contracting Parties*" would be replaced by "*to the Government of each of the countries of the Union.*"

The Article was therefore adopted in the following form:

Article 14

It is understood that the provisions of this Convention shall in no way be prejudicial to the right belonging to the Government of each of the countries of the Union to sanction, control or prohibit, by legislative or domestic policing measures, the circulation, performance or display of any work or production in respect of which the competent authority would be called upon to exercise that right.

Retroactive application of the Convention to works not yet in the public domain

Article 15

(Article 11 of the Programme)

The Federal Council had proposed the following provision:

"This Convention shall apply to all works not yet in the public domain in the country of origin of the work at the time of its entry into force."

It was pointed out that the above Article had to do with the transitional provisions which the Final Protocol would rule upon. From the point of view of form, it was indicated that the proposed wording was incomplete in the sense that it did not mention "*manuscript or unpublished works.*"

As to substance, the Committee had acknowledged that it was very difficult, if not impossible, to specify at the outset matters that concerned acquired rights at the time of the entry into force of the Convention (see the minutes of the third meeting of the Conference, on Question 13). Consequently, it proposed reserving the settlement of the matter for conventions that had been or would be concluded, and to draft the Article as follows:

Article 15

This Convention shall apply, subject to such reservations and conditions as may have been made by common consent, to all works which, at the time of its entry into force, have not yet fallen into the public domain in their country of origin or, in the case of a manuscript or unpublished work, in the country to which the author belongs.

Count **de Dudzeele** expressed reservations concerning the above Article, after which it was adopted.

Right of governments of the Union to make special arrangements between themselves

Article 16

(Article 12 of the Programme)

The Federal Council had proposed the following:

"It is understood that the High Contracting Parties reserve the right to make special arrangements separately between themselves for the protection of literary and artistic works, in so far as those arrangements do not contravene the provisions of this Convention."

The word "*contravene*" used in the above wording was criticized in various quarters. As the purpose of the projected Union was to ensure a *minimum* of protection for authors, there was nothing against special arrangements conferring on them more extensive rights than those guaranteed by the Union, or providing for them differently, provided that there was no conflict with the General Convention. Recognizing the correctness of that observation, the Committee had given the above Article the following form:

"Article 16

"It is understood that the High Contracting Parties reserve individually the right to make special arrangements separately between themselves, in so far as those arrangements would confer on authors or their lawful representatives more extensive rights than those granted by the Union, or contain other provisions not contrary to this Convention."

On a proposal by Federal Councillor **Rnchonnet**, the Conference decided to replace the expression "*High Contracting Parties*" by "*Governments of the countries of the Union.*" The Article would therefore be worded as follows:

Article 16

It is nnderstood that the Governments of the countries of the Union reserve the individual right to make special arrangements separately between themselves in so far as those arrangements would confer on authors or their lawful representatives more extensive rights than those granted hy the Union, or contain other provisions not contrary to this Convention.

International Bureau

Article 17

(Article 13 of the Programme)

The Federal Council had proposed the following:

"An international bureau shall be established under the name of **International Bureau of the Union for the Protection of Literary and Artistic Works.**

"This Bureau, the expenses of which shall be borne by the administrations of all the Contracting States, shall be placed under the high authority of . . . . . , and shall work over its supervision. The functions of the Bureau shall be determined by common consent between the States of the Union."

In order to bring the title of the projected International Bureau into line with that of the Union of which it was the organ, the Committee had proposed drafting the Article as follows:

Article 17

An international hureau shall be established under the name of *International Bureau of the Union for the Protection of the Rights of Authors.*

This Bureau, the expenses of which shall be borne hy the administrations of all the countries of the Union, shall be placed under the high anthority of . . . . . , and shall work under its supervision. The functions of the Bureau shall be determined by common consent hy the conntries of the Union.

Article 17 was adopted in the above form.

Revisions of the Convention

Article 18

(Article 14 of the Programme)

The Federal Council had proposed the following provision:

"This Convention shall be subject to periodical revision for the purpose of introducing therein such improvements as may perfect the system of the Union.

"To that end, conferences shall take place successively in one of the Contracting States between delegates of those States.

"The next such meeting shall be held in . . . . . (place), in . . . . . (year)."

The drafting of the first paragraph of the above Article appeared somewhat absolute, in the sense that it provided for *mandatory* and *periodical* revisions of the Convention. The Committee had considered that it was sufficient to provide for the *possibility* of such revisions and to specify the procedure to be observed for the convening of a new Conference. Moreover, the setting of the next meeting had seemed to it to be more in place in the Final Protocol than in the Convention itself. Consequently, the Committee had drafted the Article as follows:

Article 18

This Convention may be subjected to revisions for the pnrpose of making therein such improvements as may perfect the system of the Union.

Questions of that nature, and those that concern the development of the Union in other respects, shall be dealt with in conferences that shall be held sncccssively in the countries of the Union between delegates of those conntries.

Article 18 was adopted in the above form.

Accession to the Convention

Article 19

(Article 15 of the Programme)

The Federal Council Programme provided as follows:

"States that have not become party to this Convention shall be allowed to accede to it on application.

"Such accession shall be notified in writing to the Government of . . . . . , and by it to all the others.

"Such accession shall imply full acceptance of all the clauses and admission to all the advantages provided for in this Convention."

In accordance with what had been agreed at the end of the third meeting of the Conference, the Committee had amended the provision as follows, in order to make it quite clear that accession to the Convention should be granted only to those countries whose domestic legislation protected authors against infringement:

Article 19

The countries that are not party to this Convention, and provide in their domestic law for legal protection against the violation of the authors' rights that are the subject of this Convention, shall be allowed to accede to it at their request.

Such accession shall be notified in writing to the Government of . . . . . ,* and hy it to all the others.

It shall, as of right, imply accession to all the clauses and admission to all the advantages provided for in this Convention.

Article 19 was adopted in the above form.

(Article 16 of the Programme)

The Federal Council had proposed the following Article:

"The implementation of the mutual commitments written into this Convention shall be subject, as necessary, to compliance with the formalities and rules laid down by the constitutional laws of those of the High Contracting Parties that are bound to propose the application thereof, which they undertake to do within the shortest possible time."

As the above provision appeared to be unnecessary, the Committee had pronounced in favour of deleting it.

The Committee's proposal was adopted.

Entry into force of the Convention; denunciation

Article 20

(Article 17 of the Programme)

The Federal Council draft read as follows:

"This Convention shall be put in force as from . . . . . , and shall remain in force for an indefinite period until the expiry of one year following the day on which it is denounced.

"Such denunciation shall be made to the Government authorized to receive accessions. It shall only take effect for the State making it, the Convention remaining in full force and effect for the other Contracting Parties."

The Committee had considered it appropriate to set a time limit on the entry into force of the Convention, and had considered three months to be entirely sufficient for the purpose. Consequently, it had drafted the Article as follows:

Article 20

This Convention shall be put into force three months after the exchange of ratifications, and shall remain in force for an indefinite period until the expiry of one year following the day on which it has been denounced.

Such denunciation shall be made to the Government authorized to receive accessions. It shall only take effect for the country making it, the Convention remaining in full force and effect for the other countries of the Union.

The Conference adopted the above Article, having however substituted the words "*has been*" for "**is**" in the first paragraph.

Exchange of ratifications

Article 21

(Article 18 of the Programme)

The following provision, proposed by the Federal Council, had been adopted by the Committee:

"This Convention shall be ratified, and the ratifications exchanged at . . . . . within one year at the latest."

With regard to the procedure to be adopted for the exchange of ratifications, the Committee had considered that it should be specified in the Final Protocol. In accordance with its proposals, the Article was adopted in the following wording:

Article 21

This Convention shall be ratified, and the ratifications exchanged at . . . . . within one year at the latest.

In witness whereof, etc.

Done at . . . . . , on . . . . . .

On a proposal by Mr. **Reichardt**, it was decided that the vote on the draft as a whole would be postponed to the next meeting.

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* See Article 17.

Conventions in existence on the entry into force of the International Convention

II. Additional Article

(Transitional Provision of the Programme)

The Federal Council Programme contained the following provision:

"Any conventions at present in force between Contracting States that may depart from this Convention on one point or another may nevertheless remain in force until the date specified by them for expiry. In such cases, the subjects or citizens of States of the Union not bound by those conventions shall be given the benefit, in the States concerned, as of right, the benefit of the most-favoured-nation treatment with respect to the protection of their authors' rights."

It was pointed out that the above provision did not, strictly speaking, have *transitional* character; the Committee had therefore preferred to make it into an *Additional* Article.

With regard to the purpose of the provision, the Committee had considered that the position to be taken by the Union with regard to specific conventions at present in force should be the same as that taken with respect to subsequent arrangements, dealt with in Article 12. Consequently, the Committee had drafted the Article as follows:

The Convention concluded this day shall in no way affect the maintenance of existing conventions between the Contracting Countries, provided always that such conventions confer on authors, or their lawful representatives, rights more extensive than those accorded by the Union, or contain other stipulations that are not contrary to this Convention.

Done at . . . . . , on . . . . .

The Additional Article was adopted in the above form.

Miscellaneous provisions concerning the application of the Convention

III. Final Protocol

The Federal Council had proposed the following wording for the preamble:

"At the time of effecting the signature of the Convention concluded this day, the undersigned Plenipotentiaries have agreed as follows:

"1. It is understood that the final provision of Article 2 of the Convention is without any prejudice to the legislation of each of the Contracting States concerning the procedure to be followed before the courts and the competence of those courts.

"2. The definition of the words '*arrangements of music*' (Article 4 of the Convention) shall not cover pieces reproduced by automatic instruments such as electric pianos, music boxes, fairground organs, etc.

"3. The exact meaning of the word '*adaptation*' requires definition.

"4. The International Bureau has to be organized; its budget and the contributions of the States of the Union have to be decided upon.

"**Functions.** The International Bureau shall collect all kinds of information regarding the protection of the rights of authors in their literary and artistic works, and arrange them into a general statistical work to be distributed to all administrations. It shall receive from each administration the list of the works registered by it, and communicate that list to all the other administrations. It shall undertake studies on questions of general interest concerning the Union and, with the aid of documents placed at its disposal by the various administrations, shall publish a periodical review in French on the questions which concern the purpose of the Union.

"The manner of distribution of the periodical has to be decided upon.

"The International Bureau shall always be at the disposal of members of the Union with a view to furnishing them with any special information that they may require concerning the protection of literary and artistic works.

"The administration of the country in which the next Conference is to meet shall prepare the programme of the Conference with the assistance of the International Bureau.

"The Director of the International Bureau shall attend the meetings of Conferences, and shall take part in the discussions without the right to vote. He shall make an annual report on his administration, which shall be communicated to all the members of the Union.

"The official language of the International Bureau shall be French.

"This Final Protocol, which shall be ratified at the same time as the Convention concluded this day, shall be regarded as forming an integral part thereof, and shall have the same force, validity and duration."

The Committee had considered first that item 1 was unnecessary and could be deleted without problem. It had moreover made a number of amendments to other items; finally, it had added some new declarations and stipulations to the Final Protocol.

Subject to certain drafting changes made to the text proposed by the Committee, that text was adopted by the Conference in the following wording:

At the time of effecting the signature of the Convention concluded this day, the undersigned Plenipotentiaries have declared and stipulated as follows:

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1. The common consent provided for in Article 15 of the Convention is specified as follows:

The application of the Convention to works that have not fallen into the public domain at the time of its entry into force shall take place according to the provisions relating thereto contained in such special conventions as may have been or may hereafter be concluded for that purpose.

In the absence of similar provisions between countries of the Union, the countries concerned shall regulate by domestic legislation, each as far as it is concerned, the relevant procedures for the application of the principle written into Article 15.

2. It is understood that the manufacture and sale of instruments serving for the mechanical reproduction of melodies that are in the private domain shall not be regarded as constituting musical infringement.

3. The attention of the Plenipotentiaries was drawn by several of their number to the question whether certain categories of unauthorized indirect expropriation should not be expressely prohibited, notably that which a member of conventions in force designate by the name of "*adaptation*."

The Plenipotentiaries agreed in their recognition that infringement included all types of unlawful violation inflicted on authors' rights, but they were of the opinion that, instead of listing and defining them, it was preferable to entrust to the courts the responsibility of evaluating, in each particular case, the prejudice caused by any particular form of infringement.

4. As the legislation of a number of the countries of the Union does not allow photographic works to be included among the works to which the Convention concluded this day applies, the Governments of the countries of the Union reserve the right to agree at a later date on the special arrangements to be made by common consent for the purpose of mutually ensuring the protection of those photographic works in the countries of the Union.

5. The organization of the International Bureau provided for in Article 17 of the Convention shall be determined by regulations which the Government of . . . . .* is responsible for drawing up.

The official language of the International Bureau shall be French.

The International Bureau shall collect all kinds of information regarding the protection of authors' rights in literary and artistic works. It shall coordinate them and publish them. It shall undertake studies on questions of general interest concerning the Union and, with the aid of documents placed at its disposal by the various administrations, shall publish a periodical review in French on the questions which concern the purpose of the Union. The Governments of the countries of the Union reserve the right to authorize the Bureau, by common consent, to publish editions in one or more other languages where circumstances have demonstrated the need therefor.

The International Bureau shall always be at the disposal of members of the Union with a view to furnishing them with any special information that they may require concerning the protection of literary and artistic works.

The administration of the country in which a Conference is to take place shall prepare the work of that Conference with the assistance of the International Bureau.

The Director of the International Bureau shall attend the meetings of Conferences, and take part in the discussions without the right to vote. He shall make an annual report on his administration, which shall be communicated to all the members of the Union.

The expenses of the International Bureau which, until such time as a new decision is made, may not exceed the sum of . . . . . per annum, shall be borne collectively by the Contracting Countries, in amounts proportionate to each country's population figures.

The administration of . . . . .* shall draw up the budget of the International Bureau and supervise its expenditure; it shall also provide the necessary advances and draw up the annual accounts, which shall be communicated to all the other administrations.

6. The next Conference shall take place at . . . . . , in . . . . . .

7. It is agreed that, for the exchange of ratifications provided for in Article 21, each Contracting Party shall present a single instrument, which will be deposited, together with those of the other countries, in the archives of the Government of . . . . .* Each party shall in return receive a copy of the record of the exchange of ratifications, signed by the Plenipotentiaries who take part in it.

This Final Protocol, which shall be ratified at the same time as the Convention concluded this day, shall be regarded as forming an integral part thereof, and shall have the same force, validity and duration.

In witness whereof, etc.

Done at . . . . . , on . . . . . .

The amendments made by the Conference to the draft submitted by the Committee were the following:

(a) In item 4, the words "*Contracting Governments*" were replaced by "*Governments of the countries of the Union.*"

(b) In the third paragraph of item 5, the expression "*Governments of the countries of the Union*" was likewise substituted for "*Contracting Parties.*"

* See Article 17 of the draft Convention.

(c) At the end of the same paragraph, the Conference preferred to say "*have demonstrated the need*," rather than the future tense used in the Committee's wording.

(d) Finally, in the fifth paragraph of the same item 5, the words "*the next Conference*" were replaced by "*a Conference*."

On the subject of the official language adopted for the publications of the International Bureau, the **President** explained the following:

"In the Special Committee of the Bureau, it was proposed that one add that, in case of need, such publications could be made in one or more languages other than French. Within the Special Committee this proposal, although opposed by Mr. Baetzmann, the Delegate of Norway, was nevertheless adopted by three votes to two. In the Plenary Committee, Mr. Baetzmann renewed his objections to any amendment made to the Federal Council draft in that respect. After the matter had been referred to the Drafting Committee, which accepted a wording that enabled Contracting States to authorize publication in several languages, Mr. Baetzmann stated that, whereas he maintained his position, he nevertheless considered it unnecessary to press the point."

On the subject of the same question, Dr. **Dambach** spoke as follows:

"The second paragraph of item 5 stipulates that the official language of the International Bureau will be French.

"In the Committee, we agreed to say that the stipulation in question meant merely that written matter and official instruments originating with the International Bureau had to be in French. On the other hand, authorities and individuals who sent letters, etc., to the International Bureau could make use of their own languages.

"The Committee decided to give that explanation in Plenary, and I request that it be included in the minutes, in order that all doubt may be removed as to the real meaning of the paragraph in question."

On the subject of the contributions of Contracting States to the International Bureau, the **President** explained that the system adopted for other international bureaux had the shortcoming of being quite complex, and that had seemed preferable to set the contributions in proportion to the population figures of each country, as had been done for the Metre Convention.

In the course of the discussion it was agreed that, in the fourth paragraph of item 5, the expression "*members of the Union*" denoted "*Governments of Contracting Countries*," and not the nationals of those countries.

IV. Recommended Principles for Subsequent Unification

The **President** recalled that, at the first meeting, the German Delegation had submitted a prior question to the Conference regarding the possible desirability of standardizing the provisions on copyright immediately.

In that connection a draft resolution had been proposed by Federal Councillor Ruchonnet, but it had been decided that the vote would be postponed until the end of the discussion. Since then the Committee had concerned itself with the point, and proposed to the Conference that it adopt the following resolution, which appeared to reply to the question raised:

The International Conference for the Protection of Authors' Rights,

Considering the diversity of the provisions in force in the various countries concerning several important points of legislation on the protection of authors' rights,

Considering also that, however desirable the unification of the principles governing the subject matter might be, a Convention embodying uniform provisions on those points might not win acceptance from a certain number of countries at the present time,

Considering, however, that international codification is in the natural order of things and will establish itself sooner or later, and that the ground should be prepared for that event with an indication, at the outset, of the direction in which it is desirable that such codification take place,

Sees fit to submit the following wishes to the Governments of all countries:

I. The protection granted to the authors of literary or artistic works should last for their lifetime and, after their death, for a number of years that should not be less than 30;

II. The trend towards full assimilation of the right of translation to the right of reproduction in general should be promoted as much as possible.

On the subject of the first wish, Mr. **Lavollée** said that the French Delegation would have preferred the term of protection after the death of the author to be extended to 50 years.

Mr. **Lagerheim** endorsed that statement.

On the subject of the second wish, Counsellor **Steinbach** declared in his own name and on behalf of his colleague, the Delegate of Hungary, that he could not endorse that wish in view of the new Hungarian legislation.

Mr. **Louis Ulbach** made the following declaration on behalf of the French Delegation:

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"It has been seen fit, in deference to the Governments that would refuse to assimilate the right of translation to the right of reproduction, to remove the words ending the expression of the wish, which presented it as the invocation of *a principle of justice*. I understand the scruple, but I do not share it. Every day a Government is asked to accede to a principle of justice and liberty, in the hope that it will find an opportunity to elevate its task, without that request or advice causing offence. One believes it worthy of greater progress. If it refuses to make that step forward, if it is held back by considerations of caution or political tact, it postpones the wish without actually having misconstrued it, and the principle of justice remains an argument for other, renewed wishes. I believe that we could have formulated this statement in a more diplomatic manner, without deleting it. I am mentioning it so that it will be reflected in the record of our deliberations."

As no one asked for a vote to be taken, the proposals of the Committee were adopted with one amendment consisting in the last part of the recital being worded as follows:

Considering, however, that international codification is in the nature of things and will establish itself sooner or later, and that the ground should be prepared for that event with an indication, at the outset, with reference to certain essential points, of the direction in which it is desirable that such codification take place.

V. Final Minutes of the Conference

After consideration of the proposals of the Committee, the final minutes of the Conference were finally adopted, after some explanations, in the following wording:

The undersigned, Delegates to the International Conference for the Protection of Authors' Rights, are convinced, after the examination in depth that they have undertaken, that it would be in the general interest to harmonize as much as possible the principles governing the subject in the various countries, and that a Union should be set up for the purpose that is similar to those existing for other subjects of eminently international character. Consequently, they have agreed to submit to their Governments, for consideration, a draft Convention specifying the minimum rights which, in the opinion of the Conference, the Contracting Countries could mutually guarantee to the authors of literary or artistic works.

The Conference also felt bound to record in an appended document the expression of its wishes regarding two essential points which it did not consider itself able to regulate uniformly at the present time.

The Delegates will exercise due diligence in handing to their Governments the result of their deliberations contained in the drafts appended hereto, and request the Swiss Federal Council to convey it also to those Governments that have not taken part in the Conference, and to continue to take such action as may be necessary for the conclusion of the agreement for which it has taken the initiative.

Done at BERNE, on September 18, 1884, in one copy which shall be deposited in the archives of the Swiss Confederation.

The Conference decided to proceed on the following day to a second reading of the other proposals made by the Committee, after which the final minutes would be signed.

The next meeting was to take place on the following day, September 18, at noon.

The meeting rose at 7.30 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

MINUTES

OF THE

SIXTH MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF AUTHORS' RIGHTS

SEPTEMBER 18, 1884

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 12.15 p.m.

All the members of the Conference were present.

Pursuant to the decision taken at the previous meeting, a second reading was made of the various drafts approved the previous day by the Conference, which were finally adopted, namely:

I(a) Draft Convention for the Establishment of a General Union for the Protection of Authors' Rights;
I(b) Draft Additional Article to the above Convention;
I(c) Draft Final Protocol;
II. Recommended Principles for Subsequent Unification.

As the Conference had at that point completed its task, the **President** made the following address to its members:

"Gentlemen,

"Before proceeding to the signature of the final minutes, permit me to summarize and give my appreciation in a few words of the outcome of the work of the Conference.

"Thanks to the friendly and conciliatory spirit that has prevailed at all times between us, and which each delegation has sought to demonstrate, it has been possible to overcome the main difficulties standing in the way of the work of unification for which we have established the groundwork.

"The Programme of the Swiss Federal Council had confined itself within the limits of an approach which you considered excessively cautious; we have been pleased to note that the Conference has not hesitated to propose to the Governments concerned that the Programme be broadened and completed on a large number of essential points. The draft Convention that has emerged from our deliberations has thus become a virtually complete code of international legislation on the protection of authors' rights. Once the Union has been established, it will not be difficult, in subsequent Conferences, to fill the gaps that the Convention still has with respect to the subject matter to be protected.

"In other respects, of course, the draft Convention has not been able to accede to all wishes. Whereas, for one thing, certain delegations might have wished for more extensive and more uniform protection of authors' rights, due account did also have to be taken of the fact that the ideal principles whose triumph we are working towards can only progress gradually in the so-varied countries that we wish to see joining the Union. Consideration also has to be given to the fact that limitations on absolute protection are dictated, rightly in my opinion, by the public interest. The ever-growing need for mass instruction could never be met if there were no reservation of certain reproduction facilities, which at the same time should not degenerate into abuses. These were the various viewpoints and interests that we have sought to reconcile in the draft Convention. Those of us whose wishes went further will have to remember that a number of delegations contested other points which to them seemed too advanced and too contrary to the legislation of their countries, and that they accepted the draft as a whole only in order to give evidence of their genuine desire for agreement. Our work is therefore the result of mutual concessions, and it is with that in mind that it is recommended to all Governments for approval.

"If it were otherwise, in other words if no country were called upon to make sacrifices in the interest of the common work, I take the liberty of saying that that work would not be necessary. For as soon as all laws are absolutely in agreement with each other, an international treaty would have no effect other than that of recording the fact of their agreement. But it is the very purpose of the Union that we want to form to bring about that agreement, by effecting the disappearance one after the other of the more or less arbitrary differences that exist in connection with the protection of literary and artistic works.

"Considering the results achieved as a whole, the International Literary Association is able and pleased to note that the majority of the wishes expressed by it in its 1883 draft have been satisfied. The only one that has not been satisfied to the extent advocated was that regarding the right of translation; we have, however, caused a significant step forward to be taken with the assimilation of that right to the right of reproduction in general, and with the introduction of a term of protection longer than that existing in a certain number of countries, and we should like to think that the wish expressed by our Conference on the subject, which figures among the recommended principles for subsequent unification, will not be a dead letter.

"And now, Gentlemen, we must not content ourselves with saying, like Propertius, *In magnis voluisse sat est*, as we have to convert our resolutions into realities. I like to think that we shall all do our utmost to bring about acceptance of our work on the part of the Governments that have sent us here. I like to think that the Governments of the countries not represented, all or almost all of which have hinted at their eventual accession, will also make a favourable appraisal of the result of our work. Finally, I hope that not too long a period will elapse before that day when the Plenipotentiaries of the Governments of all civilized countries, convened to a final Conference, will place their signatures at the foot of an instrument similar to the one that we have prepared for them.

"Having formulated this hope, I invite you, Gentlemen, to be so kind as to proceed, in the alphabetical order of the [French] names of States, with the signature of the final minutes of the Conference."

The delegates then proceeded with the signature of the final minutes adopted on the previous day, their names being called in the alphabetical order of the [French] names of the countries that they represented.

On completion of that operation, it was agreed, at the request of Mr. **Reichardt** and after an exchange of observations between him and Mr. **Lagerheim**, Mr. **Lavollée** and the **President**, that, in deference to the Governments represented, the decisions of the Conference would not be publicized before November 1, 1884. For the purposes of the press, however, the Officers of the Conference could nevertheless issue a concise account of the main resolutions submitted to the distinguished Governments for consideration.

The delegates undertook to abide by what had just been agreed.

The **President** adressed the assembly in the following terms:

"Gentlemen,

"Now that we have completed our work and that we have only to adopt the minutes of our last meetings, I wish to express once again, as I am sure you all do, my great satisfaction with these days that we have spent together. Whether during the hard work of our meetings, or in the few hours of leisure that we have allowed ourselves, we have learned to know and value each other as representatives of different languages and races. In the great republic of letters and the arts, in whose service we have all been attending this Conference, those differences have to merge in harmony; the spirit of intellectual brotherhood that has reigned between us will develop within the Union and become one of the most powerful factors of civilization and peace.

"I thank you, Gentlemen, for the honour you have done me by calling on me to conduct the work of a meeting of such eminent men. I thank you for the kindness that you have shewn me, which has rendered my task as easy as it has been agreeable.

"In the name of my country, I thank you for having accepted its invitation to come and meet here, and for having entrusted the Federal Council with the honourable task of implementing your resolutions by communicating them to the Governments of the other countries. I am authorized to tell you that the Federal Council will be pleased to continue its action with a view to bringing about the final establishment of the Union.

"I speak on behalf of the Conference in addressing to our two so-devoted secretaries, Mr. Soldan and Mr. Frey, all our gratitude for the excellent and expeditious manner in which they acquitted themselves of their difficult tasks.

"My final wish is that you should take home from Switzerland the same pleasant memories of your stay as you have left. May it come to pass that we will again meet to salute the advent of the creation to which we have devoted our efforts."

H.E. Mr. **Emmanuel Arago** replied in the following terms:

"Gentlemen,

"Each of us is going to report to his Government on the outcome of our work, completed today in the perfect agreement that all of us desired, without being absolutely sure of it beforehand. There is nothing more precious, more reassuring than this agreement on the future of a work whose first success will soon be bringing about the organization of a common homeland in which science, letters and the arts may prosper in brotherly companionship. So none will forget the sincere gratitude

that we have so frequently expressed to the Swiss Government, our generous host, and which we also owe to our able and valued President, Federal Councillor Numa Droz. So our thanks, Mr. Droz, our double thanks, to your country and to you."

Councillor **Reichardt** spoke as follows:

"Gentlemen,

"We are duty bound to address warm thanks to His Excellency the Ambassador of France, for having been so kind as to express, with all the depth and eloquence that we have have come to expect of him, the sentiments of gratitude that we feel towards our very honoured President.

"We have another duty to perform, which is to thank His Excellency Mr. Emmanuel Arago in his capacity as Vice-President of the Conference.

"Neither shall I accept His Excellency's possible objection that, strictly speaking, he has practically had no opportunity to perform his vice-presidential duties.

"Delegates, I think I am accurately interpreting your sentiments when I place alongside the *rigours* of the vice-presidency the *goodwill* which, in the person of Mr. Arago, has, if I may put it in that way, '*vice-presided*' over our meeting.

"It is his conciliatory spirit, his sympathetic assessments of the various opinions that have been expressed in the course of our debates, his skill in drafting, that in my view have set us an example of mutual understanding, while, by making agreement on our draft easier, he has efficiently seconded our President in the task of ensuring now, as far as possible, the future success of our work.

"Therefore, Gentlemen, in addressing our sincere thanks to Mr. Arago, we are accomplishing not a 'formality to be complied with' to qualify for membership of the Conference, but rather a 'condition prescribed by the legislation of the country,' which we shall call courage and conviction.

"Gentlemen, colleagues, friends, as a testimony to our gratitude towards our two Presidents, I would ask you to rise to your feet."

The Conference was unanimous in its endorsement of this expression of thanks, and H.E. Mr. **Emmanuel Arago** spoke a few words of thanks.

Mr. **Louis Ulbach** took the floor in his turn:

"Gentlemen,

"I should not take the liberty of taking the floor after the Ambassador of France if I did not have a special – I hesitate to say *personal* – word of thanks to address to the Federal Government which has received us so well, to Councillor Droz who has so admirably presided over us, and to you all, Gentlemen, who have been so valuable and sympathetic in your collaboration.

"However, I had the honour of being delegated by France only because I belong to the great Association whose initiative you have just commended, and also to that legion of writers to whom you have just opened up so many countries.

"When I return tomorrow to more modest pursuits, I shall retain a warmth of memory, a spirit of mutual emulation and a glow of mental awareness from this exalted gathering that will give me support and satisfaction until the end of my human task.

"We have worked hard, Gentlemen, and I shall never forget that inspired enthusiasm, fired by a unanimous resolution to achieve agreement on principles that are the most delicate and the most recently submitted to European diplomacy for discussion. You will take with you the conviction of having accomplished indelible work. I myself shall take some invaluable lessons back to my friends.

"It is often those most directly concerned who are most ignorant of the very nature of their professional ambition. In more than one respect you have confirmed my faith, and in many others you have actually increased it.

"It is therefore in the name of the *International Literary and Artistic Association* that I thank you for the honour bestowed on its President, and it is on behalf of my fellow men of letters and the artists of all countries that I thank you for all the good that you have done them."

After the above speeches, the **President** announced that the Conference would meet one last time, at 11 a.m. on the following day, to approve the minutes.

The meeting rose at 1.15 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

FIRST CONFERENCE IN BERNE, 1884 — MINUTES

MINUTES

OF THE

SEVENTH MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF AUTHORS' RIGHTS

SEPTEMBER 19, 1884

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 11.10 a.m.

All the members of the Conference were present with the exception of Dr. Dambach, Mr. Zádor, Mr. Louis Ulbach, Mr. Lavollée and Mr. A. d' Orelli, who had presented their apologies.

The agenda called for the approval of the minutes of the fifth and sixth meetings of the Conference, which had been distributed to the delegates in draft form.

The minutes were adopted with certain amendments proposed by the **President** and by Mr. **Reichardt**, Mr. **Ruchonnet**, Mr. **Lagerheim**, Mr. **de Dudzeele** and Mr. **Baetzmann**.

Mr. **Reichardt** subscribed, in the name of his colleagues, to the thanks that had been addressed to the Secretaries on the previous day.

The **President** addressed some words of farewell to the delegates, and announced the closure of the Conference.

The minutes of the present meeting were immediately read and adopted.

The meeting rose at 12.10 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

FINAL MINUTES

OF THE

INTERNATIONAL CONFERENCE

FOR THE

PROTECTION OF AUTHORS' RIGHTS

The undersigned, Delegates to the International Conference for the Protection of Authors' Rights, are convinced, after the examination in depth that they have undertaken, that it would be in the general interest to harmonize as much as possible the principles governing the subject in the various countries, and that a Union should be set up for the purpose that is similar to those existing for other subjects of eminently international character. Consequently, they have agreed to submit to their Governments, for consideration, a draft Convention specifying the minimum rights which, in the opinion of the Conference, the Contracting Countries could mutually guarantee to the authors of literary or artistic works.

The Conference also felt bound to record in an appended document the expression of its wishes regarding two essential points which it did not consider itself able to regulate uniformly at the present time.

The Delegates will exercise due diligence in handing to their Governments the result of their deliberations contained in the drafts appended hereto, and request the Swiss Federal Council to convey it also to those Governments that have not taken part in the Conference, and to continue to take such action as may be necessary for the conclusion of the agreement for which it has taken the initiative.

Done at BERNE, on September 18, 1884, in one copy which will be deposited in the archives of the Swiss Confederation.

Reichardt
Meyer
Dambach
Emil Steinbach
Jules Zádor
G. Errembault de Dudzeele
Dr. R Thurmann
Emmanuel Arago
Louis Ulbach
René Lavollée
F.O. Adams
Louis-Joseph Janvier
B.L. Verwey
A. Lagerheim
F. Baetzmann
L. Ruchonnet
Droz
A. d'Orelli

RECORDS

OF THE

SECOND INTERNATIONAL CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

CONVENED IN

BERNE

SEPTEMBER 7 TO 18, 1885

MINUTES

OF THE

FIRST MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

SEPTEMBER 7, 1885

The meeting was opened at 10.20 a.m., in the hall of the Council of States.

The following were present:

Belgium:
H.E. Mr. **Maurice Delfosse**, Envoy Extraordinary and Minister Plenipotentiary of Belgium, Berne.

France:
H.E. Mr. **Emmanuel Arago**, Ambassador of France to the Swiss Confederation, Berne.
Mr. **Louis Ulbach**, President of the International Literary Association.
Mr. **Rene Lavollée**, Consul General of France, Doctor ès lettres.
Mr. **Louis Renault**, Professor of Public International Law, Faculty of Paris.

Germany:
Mr. **Reichardt**, Private Legation Counsellor, Reporting Counsellor to the Foreign Affairs Department of the German Empire.
Dr. **Meyer**, Senior Private Regency Counsellor to the Department of Justice of the German Empire.
Dr. **Otto Dambach**, Senior Private Counsellor for Posts, Professor of Law at the University of Berlin.

Great Britain:
H.E. Mr. **F.O. Adams**, C.B., Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty, Berne.
Mr. **J.H.G. Bergne**, Superintendent of the Treaty Department of the Foreign Office.

Haiti:
Dr. **Louis-Joseph Janvier**, Doctor of Medicine of the Paris Faculty, diplomate of the Paris Medical Faculty, diplomate of the School of Political Science of Paris (administrative section and diplomatic section).

Honduras:
Mr. **Weder**, Doctor of Law.

Italy:
H.E. Count **Fè d'Ostiani**, Envoy Extraordinary and Minister Plenipotentiary of Italy, Berne.
Mr. **Enrico Rosmini**, Barrister, Vice-President of the Italian Society of Authors.
Mr. **Remigio Trincheri**, Section Head at the Ministry of Agriculture and Commerce.

Spain:
H.E. Senator Don **Melchior Sangro y Rueda, Count of la Almina**, Envoy Extraordinary and Minister Plenipotentiary of Spain, Berne.
Mr. **Manuel Tamayo y Baus**, Senior Head of the Corps of Archives, Libraries and Antiquities Faculties, Director of the National Library, member and life secretary of the Spanish Academy.

Sweden and Norway:
For Sweden:
Mr. **A. Lagerheim**, Secretary General of the Ministry of Foreign Affairs.
For Norway:
Mr. **F. Baetzmann**, Honorary Vice-President of the International Literary Association.

Switzerland:	Federal Councillor **Louis Ruchonnet**, Head of the Federal Department of Justice and Police. Federal Councillor **Numa Droz**, Head of the Federal Department of Commerce and Agriculture. Mr. **A. d'Orelli**, Professor of Law at the University of Zurich.
Tunisia:	Mr. **Louis Renault**, Professor of Public International Law at the Law Faculty of Paris.
Unites States of America:	Mr. **Boyd Winchester**, Resident Minister and Consul General of the United States of America, Berne.

Federal Councillor **Numa Droz** opened the meeting with the following address:

"Gentlemen,

"This is the third time that I have had the honour of greeting, in this hall, the representatives of various countries gathered together to address the great cause of literary and artistic property. My colleague Mr. Ruchonnet and I are particularly pleased to convey to you today, on behalf of the Swiss Federal Council, a cordial welcome to our country, as we have great expectations that there will emerge from this meeting a final work that accedes both to the wishes of the eminent governments that you represent and also to the legitimate aspirations of literary and artistic people throughout the world.

"The majority of the members of this Conference took part in our work last year. It is a real pleasure to see the faces of our friends again, and we look forward to renewing the agreeable relations that developed between us during the hard-worked meetings of the previous Conference. Those who are absent are few, yet we do not reproach them for that: on the contrary, we address to them our friendly greetings together with our hope that the countries they represented here a year ago will not remain in isolation outside the Union whose first foundations they helped us to lay.

"What strengthens our hopes is the fact that the numbers both of States and of delegates representing States have noticeably increased this year. The States represented at this Conference, with their colonies, comprise a total of 573 million inhabitants, which you will agree is a generous section of the human race, reflecting the excellence of the idea that we are seeking to realize. *Crescit eundo:* it grows by walking; there is therefore no doubt but that it will eventually conquer the whole universe, in the name of justice and for the satisfaction of aspirations and interests that are growing in proportion to civilization itself. It is therefore with double pleasure that we welcome the newcomers to this Conference; their support is invaluable to us, and our work will be enhanced by the new light that they shed on it.

"I have to report to you briefly, Gentlemen, on the mission that you entrusted to the Federal Council last year. The draft Convention that emerged from your wise deliberations was transmitted, together with the minutes of your meetings, to the governments of all civilized countries. We have received a favourable response from all sides. The constitution of a General Union for the Protection of Authors' Rights, based on the assimilation of foreigners to nationals and on the removal of the multitude of formalities now imposed, does not seem to have any detractors. Where there are differences of opinion, they relate to other, more or less important elements of the draft, especially those whose effect is to amend certain provisions of domestic legislation. Obviously, Gentlemen, the purpose of our Convention has to be to assure the citizens of the various countries of the Union of real mutual rights; consequently it is necessary, in order to fill whatever gaps there may be in national legislation, to unify to a certain extent the principles of literary and artistic property that have a genuinely international character. Each country is convinced of this, but there are differences as to the extent to which the unification is to take place. On the one hand, there are those that apply very advanced principles, which for other countries too are great providers of intellectual products, and which would like to see the work of unification achieve, at once, the fullness of their ideals on all the points on which they have set their hearts. And there are others, guided by the necessities of a situation for which allowance has to be made, that are quite willing to take a step forward, but cannot take such a great one at the very outset.

"These are indeed serious difficulties, but in my opinion and I should like to think in yours, they are not insurmountable. You will already have received, through us, some of these divergent proposals, and you will no doubt be hearing others in the course of your discussions. You will consider them with the care and mature judgement that such serious matters demand, and I have no doubt that you will succeed, such is your desire for understanding and your wisdom, in finding solutions capable of satisfying the interests at stake and safeguarding principles at the same time.

"It is not only in the ministries of the various States that our draft Convention has been examined: literary people, artists and lawyers have applied themselves to it, sometimes in a very energetic fashion, at their meetings and in the press. The expressions of opinion that have reached us from various quarters have also not been characterized by uniform, unreserved endorsement of our work. Here too it is understandable that we should come across aspirations that in some cases go much farther than the draft Convention. Writers and artists naturally demand as much protection as possible; lawyers and forensic experts, for their part, discuss the theoretical and practical aspects of the validity of the rights, some of them new, whose recognition is demanded of them. Nevertheless, what predominates, in this conflict of opinions and interests, both in these areas and in official spheres, is the feeling that a universal Union for the protection of authors' rights is an imperative necessity of our time.

"This very necessity accounts for my lack of anxiety regarding the outcome of our work. When all the States, all the thinkers of the world agree that the international protection of authors' rights is a matter of morality and justice, it is impossible not to find the means of giving legitimate satisfaction to interests of such a high order. The differences of domestic legislation are not so wide and deep that they cannot be bridged to bring about the desired *rapprochement*. Let us therefore apply ourselves, Gentlemen, as that is our task, to finding the points at which contact may be made as of today. The main thing, for the time being, is to establish the Union.

"The example of other international Unions is for us a sure guarantee that later, by the very force of principles, the differences that still divide us will tend to disappear and the near future will no doubt see the realization of that ideal of uniformity to which so many aspire. In the meantime, the work of our Conference, even if it should not result in agreement on all points, will serve as a valuable blueprint for future unification.

"It is this spirit of progress that inspires us all. We do not want any country to shy away from the national or international dimensions of literary and artistic property; on the contrary, we wish to lead the largest possible number forward with us.

"In expressing the wish that this may indeed come to pass, I declare open the second official International Conference for the Protection of Authors' Rights, or, which to me comes to the same thing, for Literary and Artistic Property."

H.E. Mr. **Emmanuel Arago**, Ambassador of France, replied as follows:

"Gentlemen, you have just heard an address which, for most of us, has served to reawaken our pleasantest memories. I trust therefore that I am the true spokesman of your unanimous wish when I propose to you that we elect Federal Councillor NUMA DROZ President of the Conference by acclamation."

Mr. **Droz** accepted and thanked the delegates.

Thereupon the nomination of the Vice-President of the Conference took place.

Mr. **Reichardt** spoke to the delegates as follows:

"Gentlemen,

"Even though this Conference takes on a somewhat different countenance from last year's — which moreover should be gratifying for us — our purpose remains the same, and the means of achieving it will also be the same.

"To my way of thinking, therefore, it will be not only in the interest of the success of our work, but also a good omen and at the same time an evocation of the pleasant memories to which the Ambassador of France has just alluded, if we unanimously ask His Excellency, once again, to be so kind as to take on the sole Vice-Presidency."

H.E. Mr. **Emmanuel Arago** accepted this function and adressed his thanks to the Assembly.

The **President** presented, as Secretaries, Mr. CHARLES SOLDAN, judge at the Cantonal Tribunal of Vaud in Lausanne, and Mr. BERNARD FREY, Secretary of the International Bureau of Industrial Property in Berne.

The **President** noted that the names of all the delegates present had been notified to the Federal Council by the Governments concerned, so that their official status was duly established. With regard to the nature of the powers invested in them, he proposed that it be dealt with later if necessary.

The assembly declared itself in agreement with the above view.

Mr. **Rosmini** made the following address:

"Mr. President, distinguished colleagues,

"In the capital of Belgium, which in times past did not seem to be the kindest protector of authors' rights, there nevertheless arose, not quite 30 years ago, the rallying-cry of the most noted figures of the time in the fields of science, literature and fine arts, to bring about the removal of a defect that afflicted most of the national laws of Europe on the subject of authors' rights. All honour to the Belgians!

"The echo of the Brussels Congress and its wise resolutions was heard everywhere: local legislation was improved, and the triumph of great principles was universally recognized; political barriers were overcome, a number of international treaties were concluded, and the day is no longer far off, we hope, when universal solidarity will be realized in this branch of law, for it is in this city, which several

centuries ago enfolded in its protecting wings the victims of local oppression or threats from abroad, whose dignity, wisdom and prudence has elevated it to the position of metropolis of one of the most charming countries of Europe, that practically all the great civilized States of the world are meeting to draw up the international covenant that is to guarantee the most sacred of properties and noblest of rights, namely the property of genius and the rights of the intellect.

"Please allow us therefore, Mr. President and distinguished colleagues, to convey to you, in the name of Italy and its Government which we have the honour to represent here, and which is following the development and progress of these great institutions with great interest, the most heartfelt congratulations and the most earnest thanks for the unselfish and noble initiative that you have been so good as to take in order to tighten the bonds of brotherhood and mutual protection that all nations feel they owe each other for the defence of the realm of thought and of the work of the mind."

The President submitted to the Assembly the draft Rules of Procedure drawn up by the Federal Council. The draft was discussed rule by rule and adopted in the following form, after an exchange of views between Mr. Reichardt, Mr. Ulbach, Mr. Renault and the President:

RULE 1

The French language is adopted for the discussions and for the Records of the Conference.

RULE 2

The draft Convention Concerning the Creation of a General Union for the Protection of Authors' Rights, drawn up by the International Conference held in Berne in September 1884, and the texts annexed thereto (draft Additional Article, draft Final Protocol and Recommended Principles for Subsequent Unification), shall, after a general discussion, be referred for consideration, if necessary, to a Committee on which each delegation may be represented by one or more of its members, the delegations having only one vote each.

If the nature of the work requires, the Committee may divide itself into several sub-committees.

The amendments proposed by the Committee shall be printed before being debated.

The same shall apply, as a general rule, to any individual proposals presented in the course of the discussions and taken into consideration by the Conference.

RULE 3

As a general rule, every proposal shall be handed to the President in writing.

RULE 4

Before proceeding to vote on an Article or group of Articles, the Conference may refer them back to the Committee for further examination.

RULE 5

Voting shall be by names of States, called out in their alphabetical order in French. Each delegation shall have one vote.

RULE 6

The minutes shall give a concise account of the deliberations. They shall report all the proposals made in the course of the discussion, with the results of votes; they shall also give a summary account of the arguments put forward.

Any member shall be entitled to demand the inclusion of his speech in extenso; in that case, however, he shall be bound to hand the text thereof to the secretariat in writing, in the course of the evening following the meeting.

The minutes of meetings shall be submitted to the representatives of States in draft form, and shall not be published before the end of the Conference's work.

RULE 7

The draft Convention that results from the deliberations shall be subjected to final editing, after which the Conference shall decide what action to take on the work thus produced.

With reference to Rule 5, Mr. **Lagerheim** noted that, the previous year, Sweden and Norway had each had a separate right to vote, and presumed that the same would be true of the present Conference.

The assembly declared itself in agreement with this practice.

The President invited those of the delegates who might have any statements to make to present them to the assembly.

H.E. Mr. **F.O. Adams**, Delegate of Great Britain, made the following statement:

SECOND CONFERENCE IN BERNE, 1885 — MINUTES

"I feel bound to present to the Conference, in a few words, the position of the British Delegation.

"You will recall, Gentlemen, that last year I was instructed by my Government to attend the preliminary Conference in a purely advisory capacity, and that I was unable to take part either in the discussions or in the votes.

"I nevertheless drew up detailed reports on the deliberations and conclusions of that preliminary Conference, and recently I was pleased to be able to announce to the Federal Council that my Government, recognizing the importance of this now-international question, has decided to be represented at the 1885 Conference by two delegates with more extensive powers. It appointed me for that purpose, together with Mr. Bergne, the head of a large Foreign Office department in London. We are authorized to take part in the deliberations and votes of the Conference, but on the strict condition that we may not in any respect commit our Government, which will remain entirely free either to subscribe to the conclusions of the Conference or not.

"The delegates will not be unaware that the present English law on literary and artistic property presents difficulties that would not allow Great Britain to accede to an International Convention without its Parliament having first sanctioned new legislation. The main task of the British Delegation will be to present, at the appropriate time, such observations as will lead the Conference to establish foundations for a Union that will facilitate not only the eventual accession of Great Britain, but also that of other States.

"With this in mind, we take the liberty of hoping that the foundations of the Union will take on as broad and liberal a character as possible, and that the Convention will contain principles rather than details. For it is essential not to overlook the fact that one single detail inserted in the Convention that does not conform to the domestic law of any State could well become an insurmountable obstacle to that State's accession.

"We should therefore like to think that the Conference will confine itself to laying down principles that will precisely shape the foundations of the Union, and that it will leave aside such details as might make it more difficult for States to align their legislation on the provisions of the Convention.

"Finally, if the result of the Conference should be a draft Convention of the kind that I have had the honour to outline, it would be for us the most agreeable of duties to submit to our Government the legislative amendments that would enable Great Britain to enter into the International Union, and we should be well pleased with having to some extent assisted in the grant of broader and more effective protection to the intellectual products of all the States forming part of this Union."

For his part Mr. **Tamayo**, the Delegate of Spain, spoke as follows:

"By outlawing adaptation and by setting the exclusive right of translation at the entire duration of the right of ownership of the original work, my country has given a striking testimony, in the Franco-Spanish Treaty, of its respect for author's rights and for modern conceptions of literary property. The Spanish Government therefore hopes to have no difficulty in acceding to the International Union; it does, however, feel bound to reserve fully the right to consider and accept or reject the conclusions of the Conference. As the Literary Delegate of Spain, I am not authorized to make final commitments on its behalf; and if I should express certain opinions in the course of the discussions, they will not be binding on my Government in any way.

"The Secretary of the Conference will no doubt be so kind as to record this statement in the minutes."

Pursuant to Rule 2 of the Rules of Procedure, the **President** observed that the time had come to proceed to the general discussion of the draft Convention, and asked the delegates whether they intended to embark on it immediately or postpone it until later.

The assembly decided to set the general discussion for an afternoon session, which would take place at 3 p.m. on the same day.

The President communicated to the Conference a letter from the Society of Men of Letters of London, accompanying a draft law on literary and artistic property, a certain number of copies of which had been distributed to the delegates.

The meeting rose at 11.10 a.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

MINUTES

OF THE

SECOND MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

SEPTEMBER 7, 1885

Presided over by the Federal Councillor Numa Droz, President

The meeting opened at 3.20 p.m.

The delegates who had attended the previous meeting were present.

Pursuant to Rule 2 of the Rules of Procedure, the **President** opened a general discussion on the draft as a whole.

Mr. **Lagerheim** asked whether States other than those mentioned in the circular from the Federal Council of April 24, 1885, had made comments on or proposed amendments to the draft Convention.

The **President** replied that, with few exceptions, the Governments had confined themselves to replies of general character, and that those replies were as a whole sympathetic to the aim pursued by the Conference. The Italian Government had made some special observations, however.

Mr. **Rosmini** explained that those observations were not, in principle, contrary to the draft, but merely sought to win support for a clearer drafting or an amendment of form, the exception being the discussion of the amendment concerning the right of translation.

Mr. **Lagerheim** said that his Government, for reasons attributable to Swedish legislation, would prefer authors not belonging to a country of the Union not to be protected. However, if the Conference were not to accept that way of thinking, it would, for the present, support the amendments proposed by the French Delegation for Article 3.

As for the right of translation, the Swedish Government had not changed its opinion; acceptance of the proposal of the French Delegation would result in the exclusion of Sweden and Norway from the projected Union. While understanding that France, being so generous towards authors of all nationalities, wished to enjoy reciprocal treatment in other countries, Mr. Lagerheim failed to see why it should refuse to allow in the Convention a principle that it had established in a large number of its specific treaties. It was not a question of achieving unity — it had been agreed the previous year that that was impossible — but rather a question of establishing the foundations of a Union. He therefore hoped that France would be so kind as to make it easier for the Scandinavian countries to reform their legislation, by not expecting of them a sacrifice that they would very probably be incapable of making. In conclusion, he made an appeal to France's spirit of generosity and fairness.

As no one wished to take the floor on the subject of the draft as a whole, the **President** opened the discussion on its various articles. It was understood that the discussion would be no more than an exchange of views on which there would be no voting and which would in no way prejudice questions of drafting.

The preamble of the draft Convention did not give rise to any observations.

On the subject of Article 1, Mr. **Reichardt** asked whether it would not be possible to delete the expression "*Union*" for the protection of authors' rights, in view of the difficulty that the translation of that term into German would present. It would be sufficient to speak of a "*Universal Convention.*" Moreover, it would be difficult to understand a "*Union*" composed of countries living under a highly divergent legislative regimes. Apart from that, the idea of the Union could be reintroduced when universal codification was achieved.

SECOND CONFERENCE IN BERNE, 1885 — MINUTES

Mr. **Renault** and Mr. **Lavollée** opposed the deletion of the word "*Union,*" which in their view would weaken the bond that had to exist between contracting countries. By sacrificing the expression, one would appear to be abandoning the actual idea. The divergency of legislation had not prevented States from setting up "*Unions*" in connection with posts and telegraphs. As for the proposed term, "*Universal Convention,*" it would correspond even less to physical reality than "*Union.*" Finally, there was no knowing how the International Bureau would be designated if the proposal by the German Delegation were adopted.

Mr. **Rosmini** said the following: "with regard to the proposal by the French Government that the words '*literary and artistic property (Urheberrecht)*' should be substituted for '*authors' rights,*' the Delegates of Italy have instructions not to oppose it, even though lawyers have to recognize that the term used in the draft is more accurate and more appropriate than that of the proposed amendment."

Mr. **Lavollée** and Mr. **Renault** pressed the French proposal, in view of the fact that the expression "*droits d'auteur*" in French did not have the same connotation as the German word "*Urheberrecht*" but rather indicated the sum that a dramatic author received for the performance of his play. As the Convention was drafted in French, it seemed necessary, in order to prevent misinterpretation, to adopt the expression customary in France.

Mr. **Reichardt** stated that Germany could not accept the French proposal, in view of the consequences that case law would draw from the word "*property.*" This expression had indeed caused much controversy and discussion; it should therefore not be used, and the term "*authors' rights,*" or, which would perhaps be even better, the expression "*copyright,*" neither of which gave rise to any ambiguity, should be used instead.

The **President** thought that the Convention would be authentic in the official wording that would be published in the statute books of the various countries. Each of them would therefore be free to choose whatever translation best corresponded, in its language, to the legal conception enshrined in the expression used in the Convention.

In the first paragraph of Article 2, the **French Delegation** proposed the replacement of the words "*whether in manuscript or unpublished form*" by the words "*whether published or not.*"

Mr. **Lagerheim** pointed out that if, as he supposed, the purpose of the amendment was not to change the principle embodied in the draft, one should preferably say "*either published in one of those countries, or unpublished.*"

The **French Delegation** declared that its amendment indeed did not have the purpose of changing the principle of the draft, and that it therefore endorsed the proposal by Mr. Lagerheim.

On the subject of the second paragraph of Article 2, Mr. **Reichardt** and Mr. **Renault** observed that the drafting of the paragraph was ambiguous and should be amended.

Mr. **Reichardt** expressed strong reservations as to the grounds given by the French Delegation in support of the amendment it proposed to the third paragraph of the same Article: it would appear to have the effect of allowing the publication of a literary work to occur by word of mouth; yet that would be a principle entirely contrary to what was recognized by German science and case law.

Mr. **Rosmini** desired it to be expressely stated that the term of protection granted to foreign authors could not exceed that of the protection enjoyed by nationals, and pointed out that it was a provision already written into Article 1 of both the Italo-French and the Italo-German Conventions.

Mr. **Reichardt** replied that that was sufficiently evident from the end of the first paragraph, which specified the application of national law to foreigners, and that it was for that reason that the 1884 Conference had deleted the sentence proposed by Mr. Rosmini as being unnecessary, although it did indeed appear in existing conventions.

Mr. **Bergne** announced that the British Delegation would be submitting a new drafting for Article 2 to the Conference on the following day.

With regard to Article 3, Mr. **Renault** pointed to what appeared to him to be a gap in the Convention: the protection granted by Article 3 to publishers seemed to refer only to the provisions of Article 2. In order to assimilate publishers fully to authors, the provision in Article 3 should be made general so as to cover all the rights afforded by the Convention, particularly those derived from Articles 6, 7 and 11. Mr. Renault felt moreover that the Conference agreed that assimilation had to operate for all the rights protected.

Dr. **Dambach**, while agreeing with the substance of Mr. Renault's way of thinking, did not think it was necessary to amend the draft: the desired interpretation followed necessarily from the combination of Article 3 with Article 1.

Mr. **Lagerheim** pointed out that Article 7 of the draft referred expressly to Article 3, and that Article 11 did so by implication. It was therefore only Article 6 that was not applicable to publishers. There there was clearly a gap to be filled.

In Article 4, the **French Delegation** proposed the inclusion of *photographs* among protected works.

While endorsing the above addition, Mr. **Rosmini** asked for protection to extend also to choreography. He justified the proposal by pointing to the importance that

the art form concerned had acquired in recent years. In that genre Italy, like France, Germany and other countries, possessed remarkable works in regard to which it was not a question of protecting just the libretto, which was only an outline, or the music, which was only an adjunct, but also the *choreographic action*, which was a creation by the author. Any choreographer worthy of the name was a poet and an artist: he created the subject; he organized the scenes, the decors, the costumes, the tableaux and the colours; likewise the sequence, the plot, the development of mimed passages and dances, which expressed the imaginary, mythological or historical drama concerned. All that was a genuine work of art, and the whole work was a dramatico-musical work. Thus there was a twofold reason for protecting *choreographic action*.

Mr. **Reichardt** said that Germany could not protect photographs as works of art. As for choreographic works, he pointed out that the wish expressed by Mr. Rosmini deserved the full attention of the Conference. In Germany, the matter had been seriously taken into consideration during negotiations prior to the conclusion of the 1884 Italo-German Literary Convention, and indeed with all the more interest since, as Mr. Rosmini had been kind enough to acknowledge, Germany had produced important works in the choreographic field. However, examination of the question in depth had shown that, instead of providing expressly and in general terms in the Convention itself for the protection of those works, it would be preferable, in the interest of development in that area, to leave the matter to the discretion of the courts. The Convention already protected ballet libretti and music under another heading. So what remained to be protected? That would be the dances, the poses, the tableaux by supernumerary actors, etc. By proclaiming the protection of choreographic works *without any reservation or distinction*, one was arguably running the risk of *implicitly* including in that production certain types of *pseudo*-choreography that did not deserve at all to be included among works of art. It would be opening the way to the protection of any mimed show or any choreographic scene, whether performed at a circus, at a fair, in side-shows or even in the street. It should rather be the dramatic or dramatico-musical nature of a choreographic work that should be its entitlement to protection. No clear definition of choreographic works yet existed in science or legislation or even, to the speaker's knowledge, in case law. In view of the pressing need to make the protection sought by the Italian Delegation contingent on certain distinctions, it should be left to the courts, at least until the problem of a definition was solved, to judge where appropriate whether, and if so under what conditions, the protection granted to dramatic or dramatico-musical works against unlawful reproduction should apply to choreographic works.

In general it was preferable not to enlarge the enumeration contained in Article 4, and to leave it to case law to develop the principles to be imposed. It was to praetorian jurisdiction rather than to legislation that the ancient Romans owed the classical development of their civil law; it should also be left to the courts of the countries of the Union to perfect, clarify and complete the legal subject matter at present before the Conference, which only very recently had been subjected to serious study.

The speaker reserved the right to present the Conference with an amendment that took account of the above way of thinking on the one hand, and of the desire expressed by the Italian delegate on the other.

Mr. **Renault** failed to see what disadvantage there could be to the express mention of photography and choreography, as those types of work would only enjoy protection to the extent that it was granted them by the national legislation of each country.

Mr. **Lavollée** also considered that Article 4 was restricted by Article 2, which confined itself to specifying the assimilation of foreigners to nationals.

Mr. **Reichardt** was unable to accept that way of reasoning. On the contrary, he considered that the unreserved inclusion of choreographic works in Article 4 would be binding, and that the works mentioned there would necessarily be protected in all the countries of the Union, at least in so far as the legislation of one country or another did not expressely or implicitly refuse such protection.

Mr. **d'Orelli** endorsed the opinion expressed by Mr. Reichardt. Admittedly the draft originally allowed specific legislation to prevail on all points; however, in the course of the work of the 1884 Conference, certain principles had been introduced that would be compulsory for all countries of the Union.

Dr. **Dambach** pointed that it would not be sufficient to insert the words "*photographs*" in Article 4 but that, in order to protect that kind of work, still other special provisions would be required: a distinction would have to be made from the legal point of view between a number of types of photograph, namely photographs of artistic works already enjoying protection, and photographs of works that were not protected. Due account would also have to be taken on the fact that various countries, including Germany, had made the protection of photographs subject to certain formalities, which would cause an amendment of the third paragraph of Article 2. Under those circumstances, it would be preferable to reserve the protection of photographs for a special convention.

Mr. **Lavollée** replied to Dr. Dambach that the position regarding photographs was the same as that regarding many other works mentioned in Article 4, lithographs and drawings for instance. It was clear that the unauthorized reproduction, by photography, of a work enjoying protection was an infringement and had to be punished as such.

Mr. **Lagerheim** noted that there had been a misunderstanding up to that point, and that the various Governments had not interpreted Article 4 in the same manner; it would therefore be necessary to specify its scope very clearly.

Mr. **Bergne** asked whether a text should not be adopted that replaced the enumeration in Article 4 with an entirely general drafting.

Article 5 and the amendment to it formulated by the French Delegation did not give rise to any comment.

The continuation of the discussion was adjourned to the following day, at 9 a.m.

The meeting rose at 5.45 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

MINUTES

OF THE

THIRD MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

SEPTEMBER 8, 1885

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 9.15 a.m.

The following were present: the delegates who had attended the previous meeting, with in addition Mr. **B. L. Verwey**, Consul General of His Majesty the King of the Netherlands to the Swiss Confederation, Delegate of the Netherlands, to whom the President adressed a few words of welcome.

The discussion of the draft Convention Article by Article resumed.

Mr. **Bergne**, on behalf of the British Delegation, spoke as follows:

"I have the honour of reading out to you the proposed text for Article 2 that I announced to you yesterday:

'ARTICLE 2

'Authors who are subjects or citizens of one of the Contracting Countries or their lawful representatives or agents shall enjoy in all the other countries for their works, whether published or not, the advantages that the laws concerned do now or may hereafter grant to nationals.

'However, those advantages shall be reciprocally guaranteed to them only during the existence of their rights in the country in which the work was published for the first time.

'The enjoyment of these advantages shall be subject to the accomplishment of the formalities and conditions prescribed by the legislation of that country.'

"As the British Minister said to you yesterday, the British Delegation's desire was to remove from the Convention, as far as possible, those details that could be in conflict with the domestic law of any State.

"We think that, if our wording were accepted, one might perhaps delete Articles 3 and 5 as being as unnecessary. The delegates are no doubt aware that present English law imposes the conditions of deposit and registration with respect to foreign works in England, but we do realize that the only means of arriving at an understanding in the interest of an International Union is to relieve authors of those formalities. We propose to draw our Government's attention to the necessity of new legislation on this point; but we cannot of course give assurances that the principle will receive Parliamentary sanction."

The discussion was opened on Article 6.

Mr. **Baetzmann** spoke as follows: "As the protection referred to in this Article is unknown, in general terms, in Norwegian legislation, it is important to us that the restrictions that our membership of the projected Union will impose on our translation literature should not be imposed abruptly.

"It will therefore be impossible for the Government of Norway to endorse the proposal to the effect that authors should be granted protection against unauthorized translation that has the same duration as protection against infringement.

"My Government therefore considers it preferable that, on this point, the Convention should be given the same content as that of last year's draft, namely a content whose legislative implementation would in all probability not encounter any too-great obstacles.

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"I would add that the instructions that my Government gave me on this point refer only to the draft emerging from last year's Conference and to the French proposal."

Mr. **Reichardt** noted that the statement made the previous year by Germany on the subject of assimilation of the right of translation to the right of reproduction had been criticized as inconsistent, because, while recognizing in principle the soundness of the French proposal, it had opposed it. This criticism was not justified; the German Delegates were authorized to allow the French amendment, which they regarded as conforming to a tendency of the times, but on condition that *all* the other countries also adopted it. That condition had not been fulfilled: a large number of countries would refuse to accede to the Convention if the right of translation were assimilated to the right of reproduction. Under those circumstances, Germany proposed to abide by the draft. It also had to be pointed out that the French amendment had little more than theoretical value for the time being: it was indeed very probable that, before the ten years granted by the Convention had expired, the term of protection granted for the right of translation would have been lengthened by a subsequent Conference. By adopting Germany's attitude, there was a chance that accession to the Convention might be secured from countries that would have shied away from the principle of assimilation.

Mr. **Lavollée** was pleased to be able to note the statement by the German delegates. The agreement existing between France and Germany on the principle of assimilation seemed to be a guarantee of success for the overall work. The objection put forward by Mr. Reichardt was only a factual objection; there was as yet no proof of his contention that, by assimilating the right of translation to the right of reproduction, one would be estranging a certain number of important States from the Convention. It seemed on the contrary that, when a step forward was to be made, advanced countries should set an example without awaiting the unanimous support of the others. That was what France had done up to the present, and in doing so it had acted in conformity with justice, and perhaps also, unintentionally, with its interests. It could not at the present stage abandon that line of conduct to adopt a restrictive principle. France would, however, have cause for reflection if its Delegation were convinced that the establishment of the principle advocated by it would estrange major countries from the Union; there was no proof of that so far. On the contrary, there was reason to hope that Great Britain would amend its legislation to accommodate assimilation: indeed there seemed to be little doubt, according to the statement by the British Delegates, that a bill for the amendment of English law would shortly be presented to Parliament, and it was noteworthy that, in the draft that had quite recently been jointly produced by the Society of British Authors and the Society of British Publishers, the text of which had been communicated to the Conference, the right of translation was assured on an equal footing with the right of reproduction. That proposal would acquire still more value, and a virtually sure prospect of success, if it were reinforced by a favourable vote from the Conference. There were therefore no serious obstacles to be seen to France and Germany, which agreed on the principle and moreover were assured of support from Belgium, Spain and Switzerland, establishing, on the basis of assimilation, a Union whose attractive force would be absolutely irresistible; if they were able to take advantage of that opportunity, they could, better than by the mere expression of a wish, ensure the acceptance at very short notice, not only by Great Britain, but also by all the great civilized peoples, of the system that they considered the most equitable, the most logical and the most in accord with the interest of authors and that of the public. However, in order to do that, they had to take over the leadership of the movement instead of contenting themselves with following it.

In reply to Mr. Lavollée, Mr. **Reichardt** mentioned Germany, Austria-Hungary, Sweden and Norway, Denmark and the Netherlands as having probably to abandon membership of the Union in the event of the principle of assimilation being introduced. And it was precisely with the latter States that a number of countries had for a long time desired to conclude conventions on authors' rights, and there were all the fewer grounds for keeping them at a distance since the French proposal had no practical importance from the point of view of urgency. Furthermore, Article 6 was complemented by the resolution formulated the previous year concerning the full assimilation of the right of translation to the right of reproduction in general. Finally, if experience were to show that the retention of the provision in Article 6 beyond ten years after the entry into force of the Convention was prejudicial to certain States, Article 20 would give them the option of denouncing the Convention.

The British Delegation, in the person of Mr. **Bergne**, saw fit to submit the following wording for Article 6 to the Conference for consideration:

"Authors who are nationals of one of the countries of the Union, or their lawful agents or representatives, shall enjoy, in all the countries of the Union, the exclusive right of translation in relation to their works, in so far as it is granted them by the law of the country in which protection is sought."

In support of his proposal, Mr. Bergne added the following:

"It seems to us that the differences of opinion that have arisen on this point lead one to hope that many difficulties will now be removed.

"Article 2 lays down the principle according to which the protection for original works is that granted by each country to its nationals.

"However, in international relations, translation is almost the only means of reproduction. So why, in that case, specify more than is in Article 2?

"Without this limitation, every country would profit by whatever was available in another country and, in terms of the second paragraph of Article 2, no country would receive abroad more than it would give at home. That in our opinion constitutes perfect reciprocity, which would not inconvenience any country in its task of bringing its legislation into line with the provisions of the International Convention.

"If one were to allow the exclusive right of translation for the full extent of the term set for the original work, several States would probably be prevented from acceding. Setting a term of ten years would be tantamount to consenting to the wish that protection should not go beyond that limit.

"If the proposed wording were to be accepted, one would be able to delete all the details following the first paragraph of the Article in question, which were liable to cause quite considerable difficulties to arise in Great Britain and in other States."

Federal Councillor **Ruchonnet** said that the Swiss Delegation would be only too pleased to subscribe to the French proposal, as Swiss law provided that literary property presupposed the right of translation. However, in order to create a Union, it was necessary to gather together the greatest possible number of States; so, in the face of the statements by Germany, Great Britain and Norway, the instructions given to the Italian Delegates and the absence of the Delegates of Austria-Hungary, the central core indicated by Mr. Lavollée would be reduced to not very much at all. Another area therefore had to be found, and in that respect it was important to note that the draft embodied two quite different things. On the one hand, Article 2 assured every member of the Union of national treatment in full measure, including also the right of translation, on the sole condition that the term of protection should not exceed that granted by the legislation of the country of origin. On the other hand, there were a certain number of provisions in the draft that amounted to the beginnings of universal codification. One of them was Article 6, whose purpose was to oblige contracting countries to protect the right of translation for a *minimum* of ten years, without precluding more extensive protection, if such were provided for in national legislation. The Conference of the previous year had sought in that respect to take a step in the direction of codification. From that it followed not only that the British proposal would have to be rejected, but also that the wording of Article 6 would have to be revised to state expressly that it was without prejudice to the provisions of Article 2.

Mr. Ruchonnet also criticized the provision to the effect that the exercise of the right of translation was subject to the condition that it be made use of within three years. That period was insufficient: before the need for a translation could be felt, before the fame of the work could spread to a country where another language was spoken, quite a considerable time had to pass, and still more time would be needed to trace a qualified translator, to translate the work and to publish it. It would need only a modicum of ill will on the part of the publisher or printer for the period to expire and for the author to forfeit his right. So in fact the exclusive right of translation written into the draft Convention amounted to very little. Consequently, Mr. Ruchonnet asked the delegates of the countries that were opposing assimilation whether one might not lengthen the periods, for instance, to five and twelve years instead of three and ten.

Mr. **Lavollée** supported Mr. Ruchonnet's observation regarding the insufficiency of the period for publication; the three-year period was an outright invitation to act in bad faith. Even if it were extended to five years, it would still be too short, and it would be preferable to increase it to ten years. Moreover, addressing the delegates of the countries whose literature was relatively undeveloped, or those that needed to borrow from producer nations, Mr. Lavollée expressed the fear that freedom of translation might deal a fatal blow to the development of national literature. In support of his observation he quoted a passage from a report from Mr. de Borchgrave, rapporteur of the Chamber of Representatives of Belgium, on the draft law at present under preparation on literary and artistic property.

Mr. **Rosmini**, in order to satisfy the wishes expressed by Mr. Ruchonnet and Mr. Lavollée, proposed the deletion of everything in Article 6 that had to do with the three-year period. On the other hand, the Italian Delegation could not accept full assimilation of the right of translation to the right of reproduction in general. The French proposal was too broad: something remained to be done for the benefit of society; it could not be forever deprived of the enjoyment of a work published in one country which the author or his heirs might not wished to have translated.

Mr. **Renault** insisted on the difficulties arising from the three-year period. They were particularly great for serious works, regarding which it was often unknown, at the beginning of the work, whether a translation was even feasible. Where the work was composed of a number of volumes published at intervals, the drawback mentioned was even more striking, because, according to the fifth paragraph, each volume would be considered a separate work with respect to the periods for translation, so that the author's exclusive right could be lost for the first volumes when, as a result of its completion, the work showed attributes that warranted its translation. Mr. Renault added that the provision under discussion was a provision of paramount importance and indeed essential to the draft; it was the one that would give it its real character. As translation was the normal manner of reproduction in relations between countries that did not speak the same language, it was a question of deciding whether one should strictly prohibit what no one would be tempted to do, while at the same time allowing quite considerable latitude for the very thing that was the most dangerous and indeed often the only thing possible.

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Mr. **Lagerheim** said that the Swedish Government was quite conscious of the fact that absolute freedom of translation was to a certain degree prejudicial to national literature. It was moreover partly for that reason that it had decided to direct its attentions towards reform. It was bound to take the President's position into consideration, however, and it could not bring itself, at the outset, to accept the amendment proposed by the French Delegation. It also had to be noted that the position of the Scandinavian countries was in fact not the same as that of the countries that were demanding the assimilation of the right of translation to the right of reproduction: as the knowledge of foreign languages was quite widespread in Scandinavian countries, there would be more publication of translations of foreign works than there would be of Scandinavian works in other countries. If Sweden were to accept the French proposal, it would not in fact be receiving protection equivalent to that granted to foreign authors, and from that point of view, even by adopting the provisions of the draft, it was already making a sacrifice beyond which it could hardly go.

Article 7 did not give rise to any comment.

On the subject of Article 8, Mr. **Baetzmann** announced that he would propose wording the beginning of the Article as follows:

"The publication in any of the countries of the Union of excerpts, fragments or whole passages of a literary or artistic work that has appeared for the first time ***in at least a year*** *in any other country of the Union shall be lawful, etc."*

The purpose of the amendment was to prevent the right of compilation from being abused. Mr. Baetzmann added that opinions might differ on the subject of the one-year period, but he hoped that the principle of the legitimacy of protection such as that just indicated by him would be acknowledged.

Mr. Baetzmann also said that he would be voting against the last paragraph of Article 8.

In the name of the British Delegation, Mr. **Bergne** subscribed to the wish expressed by the French Delegation that Article 8 should be deleted.

The **President** drew the Conference's attention to the question whether a foreign author would be exposed to borrowings whereas, according to national legislation, the national author would not be so exposed. If Article 8 were retained, it should be stated expressly that borrowings from a foreign author were lawful only in so far as the national author was exposed to the same thing.

Mr. **Reichardt** observed that Article 8 was a step towards unification of authors' rights, being a restriction of copyright that was binding on all the Contracting States. If Article 8 were deleted, specific legislation authorizing borrowings would subsist, and that would hardly be in conformity with the idea of a Union for the protection of authors' rights. The reason for the German Delegates' demand that Article 8 be retained was on the one hand precisely that it laid the groundwork for codification, and on the other hand that it also enshrined a fair principle, as borrowings were necessary for education and for the progress of science, and were in no way prejudicial to the development of authors' rights. In any case, if the Article were deleted, it would be necessary, in view of the provisions of Article 16 and the Additional Article, to introduce a special provision in order to preserve provisions comparable to Article 8 that were at present contained in special literary conventions, and to reserve the right of countries of the Union to conclude special conventions within the meaning of Article 8 in the future.

Dr. **Janvier** criticized the last paragraph of Article 8, and asked for it to be deleted, as it contradicted the rest of the Article. He spoke in favour of retaining the Article, and even preferred retaining it in its entirety to its complete deletion.

Mr. **Rosmini** said that Article 8 was a restriction on copyright, and that the exception was hardly justified with respect to chrestomathies; such books, being compulsory for schoolchildren, became very profitable for publishers; their main contents were drawn from the classics, which were already in the public domain; as for modern authors, it was only fair to ask for their consent. The Article could therefore be deleted without any risk for public education. The Italian Delegation did not, however, have any objection to its principle being maintained; but it did point to the contradiction existing between the last paragraph and the rest of the Article. It was not understood why music teaching should be treated differently from other branches of education.

Mr. **Lavollée** believed that the provision in the last paragraph, which was first included in the Franco-German Convention of 1883, was attributable to the fact that, for certain composers, the use of their compositions in music schools was one of their main sources of income, of which it would not be fair to deprive them.

Mr. **Reichardt**, while subscribing to the comment made by Mr. Lavollée, said that the provision criticized by Mr. Rosmini related only to music schools proper, such as "Conservatoires" and other such institutions. It did not by any means prevent the inclusion of pieces of music in song books used for ordinary schools. Germany might perhaps, in view of the provisions of its legislation, consent to the deletion of the entire Article, but, if it were retained, it could not allow the deletion of the last paragraph, which reinstated the general rule.

Mr. **Rosmini** noted that, if the scope of the last paragraph of Article 8 were that attributed to it by Mr. Reichardt, its wording was wrong. It should be revised to make it quite clear what borrowings were prohibited, namely compositions that the composer had intended for music schools; in any case, however, the deletion of the paragraph was preferable.

Mr. **Ruchonnet** pointed out that the deletion of Article 8 had been asked for on two sides and for two different reasons: by France, in order to prevent pirating, and by Great Britain in order to allow more freedom for national law. It would be helpful if an understanding could be reached. The Conference of the previous year had sought to provide for a maximum of codification; perhaps it might be wiser at the present stage to adopt the British proposal and to reserve unification on that subject for a subsequent Conference.

H.E. Mr. **F.O. Adams** subscribed to the view expressed by Mr. Ruchonnet.

Mr. **Reichardt** wished to know whether the right to make quotations of some length was sanctioned by French legislation.

Mr. **Renault** replied that French works, particularly works of science or criticism, made very extensive use of the right of quotation, and that to his knowledge the right in question, which was asserted by the legal writers who had addressed the subject, had never given rise to any litigation before the courts.

Dr. **Dambach** pointed out that the case law and legislation of the various countries could vary, and that consequently it seemed preferable to retain Article 8 and to specify in the Convention itself the right to make quotations, etc.

The **President** drew the assembly's attention to the consequences that there would be if Article 8 were retained. In particular, it had to be decided whether the specific provisions that encroached more than that Article did on the rights of authors could subsist in spite of its retention. If necessary it could be mentioned in the Additional Article that any more restrictive provisions on that point contained in national legislation or in specific Conventions would remain reserved.

On the subject of Article 9, Mr. **Baetzmann** said that he would later be submitting to the President an amendment that would simplify the wording of the Article, which seemed to him, in its present form, to be rather too complex. The amendment would aim to make the protection of all sorts of newspaper or magazine articles subject to an express declaration of reserved rights by the author. He then proposed the addition to Article 9 of the following paragraph: *"In any case, the source shall be specified."*

Dr. **Janvier** made the following speech:

"Gentlemen,

"I have some comments to make on Article 9.

"According to the draft Convention that I have before me, Article 9 allows the reproduction of articles of political discussion and prohibits the reproduction of articles on science.

"That seems to me hardly fair and indeed open to criticism. An article of political discussion, however important it might be or appear, is bound to have an interest that is either just national, or restricted from an international standpoint, or temporary. An article on science generally has a largely international, permanent, and sometimes universal character.

"In September of last year, I already had the honour to point this out to you. New circumstances have arisen since which bear out the arguments that I put forward at that time. I now repeat them, presenting them from another angle and completing them.

"You will have seen that Dr. Ferran claims to have discovered the means of making cholera benign by vaccination. Let us suppose that, instead of keeping his process to himself, and his secret for his country, he revealed them to the world in a note published in a Spanish newspaper, or in a letter published in a Spanish magazine; according to Article 9, the note or the letter could not be reproduced either in the original or in translation in any of the countries of the Union. On the contrary, owing to a singular irony which at best comes as something of a shock, they could be reproduced in a country that had refused to join the Union.

"I would ask you to bear in mind that cholera, an epidemic disease, can break out in the most diverse climates and under skies that are very different from each other. An article of political discussion may of course seem extremely interesting to one country; it may indeed be of interest to two or three areas of civilization with more or less similar political systems; yet an article on science can serve immediately after its publication in all the social conglomerations of the globe, because men are virtually the same everywhere, particularly with respect to their susceptibility to a zymotic disease such as cholera.

"What I have just said of medical science and the human race can apply to sciences either more exact or less exact than medical science, to breeds of domestic animals, and even to plant species, which, as you all know, are a matter of constant concern to a number of major countries of Europe and America.

"Scientific discoveries have to serve all mankind, all creation.

"If the authors or publishers of scientific articles do not formally prohibit reproduction, your Convention should not try to be more of a royalist than the king or more paternal than a father; it should not prohibit such reproductions.

"Your Convention proposes to unite all the countries of the planet in common agreement. It will achieve that aim all the more quickly for being liberal and humanitarian, and all the more readily for showing itself to be full of generosity and greatness.

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"I know quite well that the words of Article 9 whose deletion is desirable are to be found in conventions already concluded and signed between major European States whose intellectual powers and moral enlightenment are mutually balanced or compensated, being written into the Treaty of July 25, 1883, between France and Germany among others, but, Gentlemen, the clauses of a general international Convention must have, or at least must be able to assume, a less restrictive character than the clauses of an international bilateral treaty.

"An international Convention whose clauses are too restrictive from the scientific point of view or from the point of view of applied natural sciences, and above all from the point of view of the science of nature exploitation, will not be signed either by Latin America or by English-speaking America.

"Account has to be taken of the opinion of nations whose total population figure is in excess of a hundred million souls.

"Perhaps, as a matter of urgency, you should remove every ambiguous phrase from the instrument constituting your Convention; it is important to prevent all misunderstanding, and commendable to dispel in advance, through it, any confusion that might arise in the minds of governors who, later, might wish to apply the Convention to the countries under their administration.

"Article 8 says that the reproduction of excerpts, fragments or whole passages of a literary or artistic work is lawful, provided that the publication is specially designed and adapted for education or has scientific character.

"Either it is in flagrant or latent contradiction with Article 9, or it is not. If it is in contradiction, one should delete from Article 9 whatever contradicts the terms of Article 8; if the Articles do not actually contradict each other, it is better to delete everything that appears to be a contradiction, and all words that could be contradictory in the eyes of some people.

"Therefore, I have in any event the honour to propose to you that the wording of the first sentence of the second paragraph of Article 9 be as follows:

'This right shall not, however, extend to the reproduction, in the original or in translation, of serialized novels or articles on art.'

"Last year, one of the leading lights of the Conference maintained that scientists could not protect themselves: Dr. Ferran has just triumphantly proved the opposite. It was also said that scientists had to be protected despite themselves.

"For the time being, an excess of protection, and for that I apologize to my eminent colleague, would be fatal to the Union that we wish to establish. On the other hand, any lack of precision in the final text of the Convention would be prejudicial, not only in terms of ideals but also in material terms, to the general cause of science and that of humanity.

"Science can never be localized, any more than it can be taken to pieces. Its ultimate purpose is not enrichment, but rather enlightnment by all available means.

"If my proposal is approved, you will have resolved the question in its broadest sense, in its most philosophical sense and, Gentlemen, I take the liberty of adding, in its most distinguished sense for you, for the countries represented here and for scientists."

Mr. **Bergne**, in the name of the British Delegation, asked for the deletion of Article 9, for the same reasons as had induced him to propose the deletion of Article 8. It seemed preferable to leave all such details to be evaluated by the courts of each country. The impossibility of aiming at the present stage for full codification of international law had been recognized; so, without such codification, it seemed practically impossible to harmonize the minute stipulations of the draft with the laws of all the countries that one wished to see joining the Union.

The continuation of the discussion was adjourned to an afternoon meeting, which was to take place at 3 p.m. on the same day.

The meeting rose at 11.45 a.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

MINUTES

OF THE

FOURTH MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

SEPTEMBER 8, 1885

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 3.20 p.m.

The following were present: the delegates who had attended the previous meeting.

The **President** read out a letter from J.M. Torres Caicedo, Minister of El Salvador in France in which the sender announced that, owing to a change of Government, he had not received the necessary powers to take part in the Conference.

The President also announced that Mr. **Hector Alvárez**, Resident Minister of the Argentine Republic to the Swiss Confederation, and H.E. Mr. **José S. Decoud**, Minister for Foreign Affairs and Special Commissioner of the Government of Paraguay, had announced to him that they would attend the Conference.

H.E. Mr. **Maurice Delfosse**, Minister of Belgium, made the following statement:

"I have the honour to submit to the officers of the Conference, by way of information, the report of the central section of the Chamber of Representatives on the draft law for the protection of literary and artistic property presented by the Government of the King. This draft is based on broad and generous principles in international terms; on most points it approximates, as does the counter-draft of the central section, to the draft Convention on which the Conference is deliberating at the present time.

"The discussion of this draft law has not yet started, but it has been put at the top of the agenda of the next legislative session. Under such circumstances the Belgian Government cannot take part in the Conference otherwise than subject to the same reservations as it made at the first Conference, in 1884."

Mr. **Verwey**, Delegate of the Netherlands, declared that the Government of his country was following the work of the Conference with interest and was sympathetic towards it, but that its representative could only take part in the deliberations in an advisory capacity.

The discussion of the draft Convention article by article resumed.

In Article 10, Mr. **Rosmini** proposed deleting the words "*are composed on the basis of phrases taken from the said works...,*" which had the effect of prohibiting genuine original works that were products of intelligence, including the masterpieces of which every nation boasted, which it would be unfair and contrary to the freedom of intellectual production to prohibit or to restrict in any way. It was by virtue of those principles that Italian law protected the authors of such compositions (fantasies, caprices, concerti grossi, etc.).

On the subject of Article 11, Mr. **Baetzmann** pointed out that the Norwegian law contained an article worded as follows: "it is, however, permissible to declaim or play such works, provided that this takes place without scenic decoration." The Delegate of Norway was not absolutely committed to the wording of that legislative provision. However, when one was endeavouring to achieve real codification on the point in question, it seemed appropriate, and perhaps indeed necessary, to prepare oneself for exaggerations of the principle of protection. It would really be something of an exaggeration, for instance, if any declamation or reading of any dramatic work at a public meeting were considered an offence.

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Mr. **Lavollée** indicated that the attention of the French Government had been drawn to the disadvantages that might result from the present wording of the first two paragraphs of Article 11, particularly with regard to the performance of translations. Consequently, the French Delegation submitted the following wording to the Conference, the effect of which was not to alter the substance of the Article, but merely to make its form clearer and more complete.

"The right of dramatic authors and composers to prohibit or authorize the public performance of their works, whether in the original language or in translation, shall be reciprocally guaranteed to them, in accordance with the provisions of Articles 2 and 6 of this Convention, in each of the countries of the Union.

"This right shall apply both to manuscript or autographic works and to those that are printed, and they shall be assured of protection by law in each of the countries of the Union in the same way as national works.

"The right of publication of dramatic works and the right of their performance are absolutely distinct from each other, and the publication of a work shall not authorize anyone to present or perform it without the consent of its author, any more than performance shall authorize its publication."

Mr. **Reichardt** considered that the present wording was sufficient, and that it had the advantage of being concise; he failed to see why it should be replaced by that proposed by the French Delegation, which had the drawback of being long. The fact of the publication of a dramatic work not prejudicing the right of performance was not in doubt.

Mr. **Lavollée** replied that the question was indeed regulated with sufficient clarity by the Article under discussion as far as performance of the original work was concerned; but, with regard to performance of the translation, doubts could arise and actually had arisen in practice, and it was important to dispel them with as precise a wording as possible.

On the subject of Article 12, Mr. **Rosmini** pointed out that it was not in harmony with Article 2, which prescribed formalities to which the enjoyment of authors' rights was subject; consequently he proposed that there be a bracketed reference to Article 2 in Article 12.

The **President** subscribed to the comment by Mr. Rosmini.

Mr. **Reichardt** considered that there was no relation between the two Articles, which referred to two entirely different things. Article 2 specified the material conditions to be met for authors' rights to become effective, whereas Article 12 related only to a procedural question, namely the presumption that the person whose name was specified on the work was considered to be the author until proved otherwise.

While agreeing with Mr. Reichardt on the manner in which Articles 2 and 12 related to each other, Mr. **Renault** nevertheless thought that it would be useful if an express explanation were given.

Mr. **Lagerheim** did not see any possible ambiguity regarding the scope of Article 12 in relation to Article 2. It was, however, necessary to establish whether publishers, who were assimilated to authors in the cases specified in Article 3, should not be mentionned.

In the name of the British Delegation, Mr. **Bergne** proposed deleting Article 12, the effect of which would be to leave the whole subject to be legislated on by each country. He pointed out, moreover, that the present wording could not apply to works of art.

Dr. **Janvier** said the following:

"It is important to reconcile the spirit of Article 12 with that of Article 14.

"I propose the following amendment to the second paragraph of Article 12:

'For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be empowered to safeguard the rights belonging to the author.

'Elsewhere than in the country of origin of the author, the publisher shall, in the absence of any other proof, be deemed to be the successor in title of the anonymous or pseudonymous author.'

"The Government of a Union national has to have a better right to his works; it has to be able to prohibit effectively a work that the national in question has directed against it. In that case, when it asserts its territorial sovereignty in relation to one of its natives, no foreign publisher representing the author, whether or not he is really substituted for him with respect to his rights, should have the possibility of intervening and changing a matter of domestic policy into a diplomatic question.

"This observation is of some importance, as there is a need to prevent diplomatic difficulties from arising between the various countries of the Union as a result of the publication of political works written by one of their nationals."

On the subject of Article 13, Mr. **Lagerheim** said that Sweden regarded the provision contained in that Article as being essentially optional. He wished to make it clear that, in the event of Sweden signing the Convention, it would not by any means undertake to introduce seizure on its territory.

In the name of the British Delegation, H.E. Mr. **F.O. Adams** proposed that the second paragraph be drafted as follows:

"Seizure shall take place in accordance with the domestic legislation of each country."

The other words would then be deleted. In Great Britain seizure was within the jurisdiction of the Customs, and his country could not accept the wording of the draft

Convention without first changing the Act of Parliament entitled "*Customs Consolidation Act*."

Article 14 did not give rise to any comment.

In [the French text of] Article 15, Mr. **Renault** proposed replacing the words "*manuscrite ou inédite*" by "*non publiée*."

On the subject of Article 16, Mr. **Reichardt** noted that the effect of that provision was that it would not be lawful for the countries of the Union to restrict the rights granted to authors by those of the provisions of the Convention that had regulatory or unifying character, and that consequently the restriction resulting from the Convention itself would be binding on all those countries.

Articles 17 to 21 did not give rise to any comment.

In the name of the British Delegation, and in view of Great Britain's position in relation to its colonies, Mr. **Bergne** proposed completing the Convention with an additional article worded as follows:

"Accessions to this Convention shall constitute accession on the part of all the foreign colonies or possessions of the acceding country, except where a reservation to the contrary has been expressly made at the time of accession.

"The acceding country shall, however, have the right to exclude one or more of its foreign colonies or possessions from the effects of this Convention by declaring the fact at the time of its accession."

The Additional Article following the draft Convention did not give rise to any comment.

The Conference went on to discuss the Final Protocol.

On the subject of item 1, Mr. **Lagerheim** mentioned that the Federal Council circular of April 24, 1885, mentioned a reservation made by Belgium, and wished to know whether the Belgian Delegate intended to make a statement in that connection.

H.E. Mr. **Maurice Delfosse** replied that his instructions did not allow him to rely on the Belgian Government consenting to the signature of a Convention that enshrined the principle of retroactivity and would therefore make it lose the benefit of existing conventions.

Mr. **Reichardt** explained that the draft Convention did not actually enshrine retroactivity, and did not harm the interests of anyone: reproductions lawfully made or begun before the entry into force of the Convention would not be covered by its prohibitive provisions.

The **President** joined Mr. Reichardt in declaring that the transitional provisions of the Convention did not contain anything at all that might prevent any Government from acceding to it.

Item 2 did not give rise to any comment.

On the subject of item 3, Mr. **Lagerheim** said that he would not be able to vote on the French amendments, in view of the precise instructions that he had received on the subject. Moreover, the amendment in any case went too far, as it referred generally to any borrowing made without the author's consent, which would clearly have the effect of preventing all quotation, thereby making it impossible to publish certain scientific and other works of great importance that had been composed in all good faith.

Dr. **Dambach** subscribed to that way of thinking. He also pointed out that there was no way of defining the term "*adaptation*" satisfactorily. That was what the Conference had been obliged to acknowledge the previous year. The draft should therefore be adhered to, and the courts left to prosecute infringement in all its forms.

Mr. **Bergne** asked whether the French proposal applied to the dramatization of a novel.

Mr. **Lavollée** replied in the affirmative.

Dr. **Meyer** drew the Conference's attention to the consequences that adoption of the French proposal would have for musical works. There were certain musical works, notably variations, that borrowed a theme from another composer, but were nevertheless works of entirely original value.

Mr. **Lavollée** agreed that that kind of work was already sufficiently protected by Article 10.

On a comment by Mr. **Reichardt**, and following a request from the **President**, the **French Delegation** announced that it would indicate later the place in which the article proposed by it should be inserted.

Speaking in his own name, Mr. **Tamayo** considered that literary property could not be assimilated to any other kind of property. While the author always had the right to sell, he sometimes had the duty to give. Imitation in good faith should not be prohibited; it had frequently been an instrument essential to progress in art and letters. The Article under discussion could deprive a country's literature of a work like Corneille's "*Le Cid*," which France had borrowed from Spain. In the name of society, in the name of freedom of the intellect, Mr. Tamayo opposed any article whose implementation was bound to tyrannize the world of letters. There were imitations that were preferable to the original; care should therefore be taken not to

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make the Conference's work into a treatise on aesthetics or literary criticism, or to hamper men of good faith and talent.

Mr. Lavollée replied to Mr. Tamayo that he agreed with him in substance, but that a distinction had to be made between imitations that created a new work and imitation that was no more than disguised infringement. It was the latter that the French proposal wished to prevent, and it was for that reason that it spoke expressly of imitations "*said*" to be in good faith. The proposed provision was moreover no more than a reproduction of the second paragraph of Article 4 of the 1880 Franco-Spanish Convention, the conclusion of which had been hailed by the literary and artistic world as representing immense progress, and which the most enlightened minds of both countries regarded as the realization of an ideal.

Mr. **Tamayo** replied in the following terms:

"What I have just said, I said on my own behalf. Having declared at our first meeting that my country condemned adaptation, I was well aware that the Franco-Spanish Convention contained an article in that connection, the effect of which was bound to be a condemnation of imitation in bad faith, plagiarism and infringement, as I myself have just condemned them. Mr. Lavollée agrees with me in substance, and I believe that, in a universal Convention, a provision should be drafted on the subject and so worded as to rule out all misunderstanding."

Item 4 did not give rise to any comment.

In item 5, Mr. **Rosmini** proposed the addition of the words "*or certificates*" after "*information*" in the fourth paragraph. By granting the certificates that would replace those of the country of origin, the International Bureau would make it easier for authors to exercise their rights.

Mr. **Reichardt** replied that the Conference had already discussed that matter the previous year, and had come to the conclusion that the proposed arrangement would be too great a burden for the International Bureau. It was moreover understood that, when an author applied to the International Bureau for a certificate, the latter would take the necessary steps to procure one for him.

Mr. **Rosmini** said that he was satisfied with the above reply.

Neither items 6 and 7 of the Final Protocol nor the Recommended Principles for Subsequent Unification gave rise to any comment.

As the general discussion came to an end at that point, the Conference decided, pursuant to Rule 2 of its Rules of Procedure, to refer the further consideration of the draft Convention, and the various proposals formulated, to a Committee on which all the members of the Conference would be represented.

The meeting rose at 5 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

REPORT OF THE COMMITTEE

General Observations

The preliminary draft international Convention that the Federal Council had submitted to the 1884 Conference was primarily if not exclusively designed to assure foreign authors of the treatment granted to national authors by the domestic legislation of each country. The Conference, however, had considered that it could broaden the base of the projected Union by incorporating in the draft Convention certain provisions that constituted the beginnings of an actual codification of the substantive law applicable to authors; for instance, it had guaranteed the right of translation for a period of ten years, and also specified the conditions under which certain borrowings could be lawfully made from protected works.

Moved as it is by the desire to see the greatest possible number of countries joining the Union, the Committee considers today that, without actually confining itself to guaranteeing national treatment, the Convention to be concluded should nevertheless codify substantive law only to the extent that such codification is susceptible of acceptance by those of the countries concerned whose accession would be a guarantee of success for the Union.

For it is clear that, if a choice has to be made between a restricted Union that comprises only the countries that are the most advanced in the protection of literary and artistic works and a Union encompassing almost all countries of some importance in terms of literature and the arts, it is the latter alternative that presents the most advantages and to it that preference should be given.

Consequently, while maintaining the wishes that were formulated last year with a view to more extensive unification, and especially the one advocating full assimilation of the right of translation and the right of reproduction in general, the Committee, desiring above all to facilitate the accession of several countries, has considered it wise to renounce unification for the moment on certain points which, last year, seemed susceptible of it. It will be for the future, and for the future conferences that the draft Convention itself provides for, to elaborate still more on the work of codification which, at the present time, can only be sketched out.

It is also with a view to facilitating as far as possible the accession of all the countries represented at the Conference that it has seemed preferable not to sign at this stage, on behalf of the Governments concerned, a final Convention between those of the countries whose delegates might be empowered to do so. The final minutes proposed by the Committee confine themselves to noting that the delegates completed their work and submit the result of their deliberations to their individual Governments; they moreover invite the Swiss Federal Council to take the necessary action for the draft to be submitted to a diplomatic Conference whose purpose would be to transform it, within the period of a year, into a final Convention. At the present stage reached by the work of the Conference, it is permissible to believe that the draft has taken into consideration all the viewpoints expressed by the representatives of the various countries to an extent sufficient to allow the Governments concerned to pronounce, in full knowledge of the facts, either for acceptance pure and simple of the draft or for its rejection, without any further Conference of delegates being called upon to review it. It would therefore be understood that the new Conference, which would meet within a period of a year, would have no purpose other than to effect the signature of the diplomatic instrument. The terms in which the final minutes are couched are moreover so conceived that they enable all the delegates to affix their signatures to the instrument without committing the Governments that they represent.

Proceeding now to the special part of its report, the Committee will respect the order of articles proposed by it.

Title of the Convention

Before going on to discuss its various articles, the Committee had to concern itself with the title to be given to the draft Convention. The Conference of the previous year had settled on the following wording: "*Draft Convention Concerning the Creation of a General Union for the Protection of Authors' Rights.*" However, the French Delegates pointed out that the term "*authors' rights*" *[droits d'auteur]* had given rise to violent criticism in France, as everyday language in that country understood the expression concerned as meaning not the rights that it was the Convention's purpose to protect, but rather the remuneration payable to a dramatic author for the performance of his play. The French Government consequently proposed replacing the words concerned with "*of literary and artistic property,*" but with a bracketed mention that the expression, which was used in everyday language in France, was equivalent to the German word "*Urheberrecht.*" The first vote taken produced a majority in favour of the proposal of seven votes to five.[1] However, when the German Delegation indicated that the enforcement of that decision would very probably prevent Germany from acceding to the Convention, in view of the fact that it could not accept a name that was incorrect from the German legal viewpoint, the Committee realized that another expression had to be looked for. On a proposal by the Swiss Delegation, it settled on the term of "*protection of literary and artistic works.*" Even though this expression is not strictly accurate, as the Convention is designed to protect authors and not works, it is nevertheless used in a number of recent specific conventions, and it seems that it could also figure in the title of the general Convention without any difficulty. It was also agreed that an express mention in this report, and also where appropriate in whatever agreed statements might be set down in the minutes of the Conference, would define the exact scope of the expression "*protection of literary and artistic works,*" with an indication of the equivalent expressions in the main languages. In that way it was established that, by removing from the title of the Convention the expressions "*protection of literary and artistic property*" and "*protection of authors' rights,*" the Committee had in no way sought to pronounce in favour of either of the current theories concerning the legal nature of the rights that belonged to authors in relation to their literary and artistic works. From that it follows that, in the opinion of the Committee, the title of the Convention is equivalent to the words "*literary and artistic property,*" and should be translated in each country by the usual expression employed there to designate those rights, for instance "*Urheberrecht,*" "*copyright,*" etc. It was among other things agreed that the term "*protection of literary and artistic works*" was equivalent to "*droit d'auteur,*" which is to be found in the Belgian draft law, and also in the works of a number of French writers on the subject.

Finally, the Committee preferred the term "*International Union*" to "*General Union.*"

In conclusion, the wording for the title proposed by the Committee is as follows:

I. Convention Concerning the Creation of an International Union for the Protection of Literary and Artistic Works

Preamble

The draft adopted the previous year was worded as follows:

(Enumeration of the High Contracting Parties)

. . . . . .

being equally moved by the desire to protect effectively and as uniformly as possible *the rights of authors in literary and artistic works,*

Have resolved to conclude a Convention to that end, and have appointed the following as their Plenipotentiaries:

. . . . . .

Who, after having exchanged their full powers, found to be in good form, have agreed on the following articles:

The Committee declared itself in agreement with the above wording, but, in order to make it more precise, preferred to say **"the rights of authors in their literary and artistic works."**

Article 1

Constitution of the Union

The wording of the 1884 draft was as follows:

"The Contracting Countries are constituted into a Union for the protection of *authors' rights in literary and artistic works."*

In conformity with what was said above concerning the heading of the Convention, this wording was amended to read, like the preamble: **"the protection of authors' rights in their literary and artistic works."**

Article 2

Protection granted to authors; duration of that protection and conditions to which it is subject

The draft adopted the previous year contained the following provision:

"Authors who are nationals of one of the Contracting Countries shall enjoy in the other countries of the Union, for their works, whether in manuscript or unpublished form or published in one of those countries, the advantages which the laws concerned do now or may hereafter grant to nationals.

"However, those advantages shall be reciprocally guaranteed to them only during the existence of their rights in their countries of origin.

[1] The following voted *for* the French proposal: France, Great Britain, Haiti, Honduras, Italy, Sweden and Tunisia. The following voted *against* it: Belgium, Germany, Norway and Switzerland.

"The enjoyment of the above advantages shall be subject to the accomplishment of the formalities and conditions prescribed by the legislation of the country of origin of the work or, in the case of a manuscript or unpublished work, by the legislation of the country to which the author belongs."

With regard to the wording of the above Article, the Committee first adopted the amendment proposed by the French Government, which involved replacing the words "*whether in manuscript or unpublished form or published in one of those countries*" in the first paragraph by "*whether published in one of those countries or unpublished.*"

With regard to substance, the Italian Delegation proposed stating expressly in the second paragraph that the term of the enjoyment of rights granted to an author, in a country of which he was not a national, might not exceed that set by the law for national authors; it pointed out that the same clause was to be found notably in the Italo-German and Italo-French Conventions. The Committee did not see fit to accept that change, however, because it was already sufficiently clear from the first paragraph that the protection accorded to foreign authors was that enjoyed by nationals; it therefore went without saying that it could not be more extensive.

Moreover, the Committee considered the words "*during the existence of their rights in their countries of origin*" to be too absolute, as it could be concluded from them that, even outside the context of the term of protection, the courts would always be obliged to apply the law of the country of origin to an author, even when that law was less favourable to him than that of the country in which protection was sought. Yet such a system would have the serious drawback of requiring either the courts or publishers to have a thorough knowledge of all specific legislation, which would be contrary to the very concept of the Union to be created. The Committee therefore made the wording of the Article more specific by saying that the *term of protection* could not be longer, in the other countries of the Union, than that granted in the country of origin.

With regard to the term "*country of origin*" used in the second paragraph, it seemed essential to make it clear whether the expression referred to the country of which the author was a national or to the country in which the work was published. The Committee pronounced in favour of the latter alternative, which the British Delegation had recommended, in view of the practical difficulties that would result from the adoption of the opposite system: if it was acknowledged that the protection granted to the author, in the event of his work being published, was determined by the legislation of the country of which he was a national, the persons concerned, who might well be unaware of the author's nationality, would have a great deal of difficulty in establishing whether or not the work was still protected; moreover, cases of dual nationality would be a source of serious difficulties. By giving preference to the system that made the term of protection dependent on the law of the country in which publication had first occurred, the Committee also had to provide for the case in which such publication occurred in a number of countries of the Union at the same time, and it settled it by providing that the term of protection could not exceed that of the country in which the work fell into the public domain soonest. As for unpublished works, the Committee considered the country to which the author belonged to be their country of origin. It further agreed, as it had the previous year, to allow the protection deriving from Article 2 to extend to all authors who were *natives* of one of the Contracting Countries; it was therefore indigenity that had to be taken into account every time the Convention spoke of authors who were nationals of or who belonged to one of the countries of the Union. It went without saying moreover that indigenity was required only of authors, nationality being irrelevant for their legal representatives.

Finally, the protection specified by Article 2 in favour of authors was extended to their representatives, and that made it possible to delete Article 5 of the draft, which was worded as follows:

"The lawful agents or representatives of authors, or, in the case provided for in Article 3, those of publishers, shall in every respect enjoy the same rights as are granted by this Convention to the authors or publishers themselves."

With reference to the above text, the Committee considered that, strictly speaking, there could be no question of granting protection to the *legal agents* of authors, as such agents in themselves had no rights, merely being able to assert the rights of the authors that they represented. It was for that reason that the Committee proposed that there should be no mention of legal agents.

As for the term "*representatives*," it was understood that it applied to successors both in the universal sense and by specific provision.

As a result of all the above considerations, the Committee proposes that Article 2 should be given the following wording:

Article 2

Authors who are nationals of one of the countries of the Union, or their representatives, shall enjoy in the other countries of the Union, for their works, whether published in one of those countries or unpublished, the advantages which the laws concerned do now or may hereafter grant to nationals.

The enjoyment of the above advantages shall be subject to the accomplishment of the conditions and formalities prescribed by the legislation of the country of origin of the work; it may not, in the other countries, exceed the term of protection granted in the said country of origin.

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The country of origin of the work shall be that of first publication or, if such publication has occurred in several countries of the Union, the one among them whose legislation grants the shortest term of protection.

For unpublished works, the country to which the author belongs shall be considered the country of origin of the work.

Article 3

Protection accorded to the publishers of works whose authors do not belong to a country of the Union

The draft adopted in 1884 read as follows:

"The provisions of Article 2 shall apply also to publishers of literary or artistic works published in one of the countries of the Union, whose author comes from a country that does not belong to it."

The French Delegation first proposed the removal of the words "*the publishers of*," but it abandoned its amendment as a result of a discussion from which it emerged that the countries of the Union would have the right to apply more liberal principles to authors outside the Union than those that were written into their present or future legislation.

The Committee on the other hand decided to replace the words "*provisions of Article 2*" with "*provisions of this Convention*," in order to show more clearly that the publishers referred to in Article 3 enjoyed the same protection as was granted by the Convention to authors.

The Committee was moreover unanimous in acknowledging that, in the case provided for in the Article under discussion, the nationality of the publisher was absolutely irrelevant, provided that he had a real and permanent establishment in the Union. It also went without saying that the representatives of the publisher enjoyed the same rights, in the case provided for in Article 3, as were granted by that provision to the publisher himself.

Consequently the Committee has worded the Article as follows:

Article 3

The provisions of this Convention shall apply also to the publishers of literary or artistic works published in one of the countries of the Union whose author comes from a country that does not belong to it.

Article 4

Definition of the expression "literary and artistic works"

This provision was worded as follows in the 1884 draft:

Article 4

The expression "literary or artistic works" shall include books, pamphlets and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of drawing, painting, sculpture and engraving; lithographs, illustrations, maps; plans, sketches and plastic works relative to geography, topography, architecture or science in general; in fact, every production whatsoever in the literary, scientific or artistic domain which can be published by any mode of printing or reproduction.

An amendment proposed by the French Government called for the addition of the words "*photographs*" after "*lithographs.*" While subscribing to that proposal, the Italian Delegates insisted for their part that "*choreographic works*" should be specified among those protected by the Convention.

With regard to photographs, it was objected that the legislation of Germany, and that of a number of other countries, did not consider them artistic works, and that, consequently, those countries could not include them among the works protected by the Convention. Under those conditions it seemed preferable to the Committee to leave photographs out of the actual text of Article 4, but to state, by means of an express mention in the Final Protocol, that they would be given the benefit of the provisions of the Convention in those of the countries of the Union that did not refuse them the character of artistic works.

The Committee also agreed to allow the authorized photograph of a protected work of art to enjoy legal protection for as long as the right of reproduction of the work itself lasted, within the limits of such private arrangements as might have been made between the persons entitled to do so. That point would also be expressly mentioned in the Final Protocol.

Finally, as for choreographic works, one objection to the proposal of the Italian Delegation was that the definition of such works, whose protection had not been recognized until quite recently in some countries, still presented serious difficulties. The majority of the Committee consequently considered it preferable not to include that type of work among those mentioned in Article 9, but rather to specify in the Final Protocol that the countries whose legislation implicitly included choreographic works among dramatico-musical works expressly gave the former the benefit of the provisions of the Convention.

Subject to the indications to be inserted in the Final Protocol, the Committee proposes that the present wording of Article 4 should be retained.

(Article 5 of the draft)

See under Article 2 above.

Exclusive right of translation

Article 5

(Article 6 of the draft)

The Conference of the previous year had adopted this Article in the following wording:

"Authors who are nationals of one of the countries of the Union shall enjoy, in all the other countries of the Union, the exclusive right of translation in relation to their works for ten years after the publication, in one of the countries of the Union, of the translation of their work authorized by them.

"In order to enjoy the benefits of the above provision, the complete authorized translation must appear within three years following the publication of the original work.

"For works published in instalments, the period of three years specified in the foregoing paragraph shall be calculated only as from the publication of the last instalment of the original work.

"In the case of works composed of several volumes published at intervals, and also for bulletins or collections published by literary or scientific societies, or by private persons, each volume, bulletin or collection shall, with regard to the periods of ten and three years, be considered a separate work.

"It is understood that the exclusive right of translation shall not extend beyond the language or languages in which an authorized translation has appeared."

The French Government for its part presented an amendment whose effect was to assimilate the right of translation fully to the right of reproduction in general, as had been provided in the preliminary draft drawn up by the Federal Council.

The British Delegation on the other hand proposed that the term of the exclusive right of translation should not be set in the Convention, but rather that the whole matter should be made subject to the legislation of the country in which protection was sought.

Finally, the Italian and Swiss Delegations requested the deletion of the time limit of three years set on the publication of the translation; at the same time they proposed that the terms of ten and three years should be increased in order that the author might be given more extensive protection.

As for the amendment proposed by the British Delegation, the majority of the Commission considered that its adoption would leave too much latitude for specific legislation and would restrict the Union's role to excessively narrow limits. It therefore rejected the amendment by eight votes to four.[1] But on the other hand it also pronounced by six votes to five[2] against the principle of full assimilation of the right of translation to the right of reproduction, not because it was in principle opposed to such assimilation, but rather because its introduction could be expected to prevent a considerable number of countries that were important in terms of literature and the arts from acceding to the Union. It was also pointed out that the amendment presented by the French Government did not in fact have as much importance as might have been attributed to it at first, as it could be considered probable that, before the expiry of the ten-year period during which the Convention was to guarantee the exercise of the right of translation, the Convention itself would be revised so that fuller protection of that right could be afforded.

The two systems of full assimilation and of national treatment pure and simple having thus both been discarded, the Committee, after having rejected by six votes to five[3] the draft of the previous year, considered the amendment whereby the terms of three and ten years were to be increased to five and 12 years. The delegates of a number of countries declared that the adoption of the amendment would make it impossible for their Governments to accede to the Union, and so the amendment was withdrawn, and the Committee decided unanimously to remove the period of three years provided for in the draft for the publication of the translation. It appeared that the period was insufficient and liable to favour the use of unscrupulous methods on the part of ill-intentioned publishers. The uniform period of ten years guaranteed by a decision of the Committee had on the contrary the advantage not only of granting authors absolute protection, which therefore was more extensive, but also of simplifying the procedure, as the persons concerned would know in advance that, during the ten years following the publication of the work, it was the author or his representatives who owned the exclusive right to translate it or have it translated. In order to take a step further in the direction of simplification, the Committee also agreed that the ten years of the exclusive right of translation should not begin to run until the end of the year in which the work was published.

With regard to the calculation of the ten-year period, the Article had to make special provision for the case in which the work appeared in *instalments*. This expression, which the draft contrasted with *collections* or *bulletins*, was liable to give rise to difficulties of interpretation, so the Committee agreed to recognize that the term "*instalment*" denoted a part of a work appearing in the form of successive brochures, which did not itself constitute a separate publication but was so

[1] The following voted *for* the British amendment: Belgium, Great Britain, Sweden and Norway. The following voted *against* it: France, Germany, Haiti, Honduras, Italy, Spain, Switzerland and Tunisia.

[2] The following voted *for* full assimilation: Belgium, France, Haiti, Spain and Tunisia. The following voted *against* it: Germany, Honduras, Italy, Sweden, Norway and Switzerland.

[3] The following voted *for* the retention of the old Article 6: Germany, Honduras, Spain, Sweden and Norway. The following voted *against* it: Belgium, France, Haiti, Italy, Switzerland and Tunisia.

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inseparably tied up with the rest of the work, either in its page numbering or in its typographical layout, that the absence of just one instalment would make the whole work incomplete and defective. It was moreover agreed that any difficulties with instalments that might result from the application of laws whose terminology might have failed to follow all the progress of the book trade would be evaluated by the courts of each country, which would have to take due account of all the circumstances of the case.

In setting at ten years the period during which the author enjoys the exclusive right of translation, the Committee had occasion to wonder whether Article 5 was a strict, binding rule of law, or whether it allowed to subsist any more extensive rights than the domestic legislation of the countries of the Union or specific conventions concluded between them might grant authors against the unauthorized translation of their works. The Committee pronounced in favour of the latter alternative, as the purpose of the Union was to assure authors of a minimum of protection.

As the system of a single period of ten years had been accepted by the Committee, the last paragraph of the Article had to be deleted as having no further purpose.

Finally, taking due account of the deletion of Article 5 of the draft, the Committee inserted in the first paragraph the words "*or their representatives*" after "*authors who are nationals of one of the countries of the Union.*" It goes without saying, moreover, that the nationality of the authors' representatives is irrelevant.

In view of the foregoing, the Committee proposes that Article 5 should be given the following wording:

Article 5

Authors who are nationals of one of the countries of the Union, or their representatives, shall enjoy, in the other countries, the exclusive right to translate their works or have them translated until the expiry of ten years after the publication of the original work in one of the countries of the Union.

For works published in instalments, the period of ten years shall be calculated only as from the publication of the last instalment of the original work.

In the case of works composed of several volumes published at intervals, and also for bulletins or collections published by literary or scientific societies, or private persons, each volume, bulletin or collection shall, with regard to the period of ten years, be considered a separate work.

In the cases provided for in this Article, December 31 of the year in which the work is published is recognized as the date of publication for the calculation of the periods of protection.

Translations protected as original works

Article 6

(Article 7 of the draft)

The wording of the draft was as follows:

"Translations are expressly assimilated to original works. They shall therefore enjoy the protection provided for in Articles 2 and 3 with respect to their unauthorized reproduction in countries of the Union.

"In the case of a work for which the right of translation is in the public domain, the translator may not object to the same work being translated by other writers."

The Committee proposes that only drafting amendments should be made to the above Article, which would give it the following form:

Article 6

Lawful translations shall be protected as original works. Consequently they shall enjoy the protection provided for in Articles 2 and 3 with respect to their unauthorized reproduction in countries of the Union.

It is understood that, in the case of a work for which the right of translation is in the public domain, the translator may not object to the same work being translated by other writers.

Lawful reproduction of articles excerpted from newspapers and periodical journals, and exceptions to that rule

Article 7

(Article 9 of the draft)

The text adopted in the draft Convention was as follows:

"Articles excerpted from newspapers or periodical journals published in one of the countries of the Union may be reproduced, in the original or in translation, in the other countries of the Union.

"This right shall not, however, extend to the reproduction, in the original or in translation, of serialized novels or articles on science or art. The same shall apply to other articles of some length excerpted from newspapers or from periodical journals where the authors or publishers have expressly declared, in the actual newspaper or journal in which they have caused them to appear, that they prohibit the reproduction thereof.

"In no case shall the prohibition specified in the above paragraph apply to articles of political discussion."

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The British Delegation requested the deletion of the above Article, in view of the fact that it was in conflict with the domestic legislation of Great Britain, which required excerpts from newspapers to be accompanied by a mention of the source from which they have been taken. Also, the Delegate of Haiti found that the terms of Article 8 would give rise to ambiguity and dispute.

In order to avoid those drawbacks, the Delegate of Norway proposed the following amendment:

"Articles excerpted from newspapers or periodical journals published in one of the countries of the Union may be reproduced, in the original or in translation, except where the authors or publishers thereof have expressly prohibited it. Such prohibition may never, however, apply to articles of political discussion. In all cases the source must be mentioned."

Apart from the advantage of simplicity, the above text had that of maintaining as a rule the principle underlying the Convention, namely the privilege of the writer to dispose of his work as he sees fit. The wording was criticized, however, for restricting too much the right to make borrowings from newspapers, and for making periodical journals subject to the same rules as the ordinary press, by presupposing an express prohibition of reproduction for every article contained in any such journal.

Taking due account of the criticism expressed, the Committee, after having rejected the British proposal by ten votes to two,[1] pronounced in favour of the following wording:

Article 7

Articles from newspapers or periodical journals published in one of the countries of the Union may be reproduced, in the original or in translation, except where the authors of publishers thereof have expressly prohibited it. For journals, it may be sufficient for the prohibition to be stated in a general way at the head of each issue of the journal.

This prohibition may not in any case apply to articles of political discussion, or to the reproduction of news of the day or *miscellaneous information.*

At the request of the British Delegation, it was noted that the countries of the Union could always require of newspapers appearing on their territory that they mentioned the sources from which they took their news, it being understood, however, that the countries that did not so require would not be subject to any reciprocity in that respect.

In accordance with the views expressed by the German Delegation, it was understood that the term "*articles of political discussion*" applied only to writings on everyday politics, and not to essays or studies on political or socio-economic subjects.

It was also agreed that it would not be lawful to reproduce, for instance in the form of an anthology, a *series* of articles that had appeared in the same newspaper. Given the Committee's agreement on that point, the Delegate of Norway withdrew the amendment that he had presented, the purpose of which was to have the word "*singly*" inserted after "*may be reproduced.*"

Lawful reproduction of protected works in scientific or educational works

Article 8

(Article 8 of the draft)

The 1884 draft worded the above provision as follows:

"The publication in any of the countries of the Union of excerpts, fragments or whole passages of a literary or artistic work that has appeared for the first time in any other country of the Union shall be lawful, provided that the publication is specially designed and adapted for education, or has scientific character.

"The reciprocal publication of chrestomathies consisting of fragments of works by various authors shall also be lawful, as shall the insertion in a chrestomathy or in an original work published in one of the countries of the Union of the whole of a short writing published in another country of the Union.

"It is understood that the name of the author from whom, or the source from which, the excerpts, passages, fragments or writings referred to in the above two paragraphs have been borrowed shall always be mentioned.

"The insertion of musical compositions in collections intended for schools of music shall be considered unlawful reproduction, however."

This Article was discussed at length. The French and British Delegations asked for it to be deleted. The Italian Delegation considered that it could be deleted without any risk for public education, but that, if it were maintained with its essential provisions, it would be necessary to delete the last paragraph, which created an unwarranted disparity to the disadvantage of music teaching; the Italian Delegation insisted on the text being at least amended as follows:

"The insertion in collections intended for schools of music of musical compositions created by the author for the purposes of and for use by those schools shall be considered unlawful reproduction, however."

[1] The following voted *for* the deletion of the Article: Belgium and Great Britain. The following voted *against* it: France, Germany, Haiti, Honduras, Italy, Spain, Sweden, Norway, Switzerland and Tunisia.

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The German Delegation favoured the retention of Article 8 in its entirety, but preferred its deletion to the adoption of the Italian amendment.

In the vote, the Committee pronounced by nine votes to three[1] in favour of the deletion of the last paragraph of Article 8; and, when afterwards the whole Article had to be voted upon, it was rejected by seven votes to five.[2] It was therefore decided that the question of lawful borrowings had to be left to domestic legislation and specific arrangements between countries of the Union. Consequently, the Committee adopted the following wording, which was necessary for Contracting Countries to make special arrangements between themselves on that particular point, notwithstanding the provisions of Article 15:

Article 8

With regard to the right to make lawful borrowings from literary or artistic works for publications intended for education or of scientific character, or for chrestomathies, the effect of the legislation of the countries of the Union and of special arrangements existing or to be concluded between them is reserved.

In the discussion that took place on the subject of this Article, it was asked whether it covered the right of quotation, and the Spanish Delegation in particular wished to know whether such quotations as were necessary in commentaries, critical studies or other scientific or literary works were authorized under the Article concerned. The French Delegation said that, in spite of the lack of legal provisions concerning the right of quotation in the legislation of its country, that right had always been recognized by case law. The delegations of the other countries, several of which did have legal provisions on the subject, endorsed the above statement with respect to their countries.

The Spanish Delegation also proposed the addition of the words *"or study"* to *"especially intended for education."* The amendment did not seem necessary, as the Committee had already agreed that the term *"education"* applied both to elementary education and to higher education, and that works intended for self-teaching were covered by the words *"of scientific character."*

In view of the present content of Articles 8 and 9 of the draft, the first of which establishes a rule of positive law, whereas the second introduces a provision departing from that rule, the Committee proposes reversing the order of the two Articles in the Convention, as indeed it already has done in its report.

Article 9

(Article 11 of the draft)

Protection for the public performance of musical, dramatic and dramatico-musical works

The provisions of Article 2 shall apply to the public performance of dramatic or dramatico-musical works, whether published or not.

The authors of dramatic or dramatico-musical works, or their legal representatives, shall, throughout the duration of their exclusive right of translation, be mutually protected against unauthorized public performance of translations of their works.

The provisions of Article 2 shall apply also to the public performance of unpublished musical works or those that are published but whose author has expressly declared on the title or in the heading of the work that he forbids their public performance.

In order to complete the above text, the French Delegation had originally proposed substituting for the first two paragraphs the following wording, which was primarily intended to establish a clear distinction between the right of publication and the right of performance of dramatic works in translation:

"The right of dramatic authors and composers to prohibit or authorize the public performance of their works, either in the original or in translation, is mutually guaranteed to them, in accordance with the provisions of Articles 2 and 6 of this Convention, in each of the countries of the Union.

"This right applies not only to manuscript or autographic works but also to those that are printed, and they are assured of protection by law, in each of the countries of the Union, as are national works.

"The right of publication of dramatic works and the right of their performance shall be absolutely distinct from each other, and the publication of the work shall not authorize anyone to present or perform it without the consent of its author, any more than performance authorizes its publication."

As a result of the removal of the double time limit of three years and ten years, and the setting of a single ten-year period for the exercise of the right of translation reserved to the author, the above amendment, the principle of which had moreover been unanimously accepted, became superfluous and the French Delegation therefore withdrew it.

As no other amendment was presented the original wording was maintained.

In the course of the discussion on the above Article, it was agreed that its provisions would apply also to the representatives of the authors of dramatic or dramatico-musical works, so that was added to the original text.

[1] The following voted *for* the deletion of the last paragraph of Article 8: Belgium, France, Great Britain, Honduras, Italy, Sweden, Norway, Switzerland and Tunisia. The following voted *against* it: Germany, Haiti and Spain.

[2] The following voted *for* the retention of Article 8: Haiti, Honduras, Spain, Sweden and Norway. The following voted *against* it: Belgium, France, Germany, Great Britain, Itaty, Switzerland and Tunisia.

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Indirect appropriations included among unlawful reproductions

Article 10

(Article 10, and item 3 of the Final Protocol, according to the 1884 draft)

The draft adopted the previous year contained the following provision:

"The right to protection for musical works shall entail the prohibition of pieces called arrangements of music, and also other pieces which, without the author's consent, are composed on the basis of phrases taken from the said works or reproduce the original work with modifications, deletions or additions.

"It is understood that such disputes as should arise on the application of the above clause shall be within the jurisdiction of the courts concerned, in accordance with the legislation of each of the countries of the Union."

The Italian Delegation asked for the deletion of the words "*are composed on the basis of phrases taken from the said works or.*" In support of the amendment it pointed out that the wording of the draft was too absolute, in the sense that it amounted to a prohibition on genuine original works. The comment seemed sound to the Committee.

Also, the French Government had asked for the insertion in the Convention of a new article worded as follows:

"The following shall be prohibited: arrangements, adaptations, imitations said to be in good faith, or transcriptions of dramatic, musical or dramatico-musical works, and in general any borrowing from literary, dramatic, artistic or musical works, without the consent of the author."

The Conference of the previous year had already discussed the question of imitations said to be in good faith, adaptations, etc., and, in order to do justice to a certain extent to the way of thinking expressed by the French Delegation, it had introduced the following in the Final Protocol, as item 3:

"The attention of the Plenipotentiaries was drawn by several of their number to the question whether certain categories of unauthorized indirect appropriation should not be expressly prohibited, notably that which a number of conventions in force designated by the name of ***adaptation.***

"The Plenipotentiaries agreed that infringements included all kinds of unlawful violation inflicted on authors' rights, but they were of the opinion that, instead of listing and defining them, it was preferable to entrust to the courts the responsibility of evaluating, in each particular case, the prejudice caused by any particular form of infringement."

The Conference of the previous year had considered that it did not need to go any further in the direction indicated by the French Delegation, in view of the impossibility of defining precisely the meaning of the word "*adaptation,*" which moreover did not have an exact equivalent in a number of languages. The same objection was made this year to the amendment proposed by the French Government, reproduced above. It was further pointed out that, by prohibiting "*any borrowing from literary, dramatic, artistic or musical works, without the consent of the author,*" the amendment overstepped its own target and effected total elimination of the right of quotation.

The above reasoning induced the Committee to pronounce, by eight votes to four,[1] against the amendment proposed by the French Government. It did, however, recognize that it should not be permissible to reproduce a work, either in the same or in another form, with unessential changes, additions or deletions, when in other respects the reproduction did not have the character of a new, original work. It was on that same principle that the provision in Article 10 of the draft of the previous year, which expressly prohibited arrangements of music, was based.

The Delegate of Sweden, looking for a means of reconciling the views of the Committee with those of the French Delegation, proposed replacing item 3 of the former Final Protocol with the following wording:

"The ***adaptation****, like any other unauthorized indirect appropriation of a literary or artistic work, shall be prohibited when it is no more than the reproduction, in the same or another form, with unessential changes, additions or deletions that do not constitute a new, original work.*

"It is understood that any disputes that should arise on the application of the above clause remain subject to the appreciation of the courts concerned, in accordance with the legislation of each of the countries of the Union."

The above wording had the advantage of not defining "*adaptation,*" but of confining itself to mentioning it as one of the forms of unauthorized indirect appropriation. Yet the Committee was nevertheless reluctant, on the grounds already indicated, to use the word as the main subject of a prohibitive provision. It considered furthermore that a more comprehensive wording should be chosen which referred to all the unauthorized indirect appropriations and therefore could be applied also to arrangements of music.

Consequently, the Committee proposed the following Article, which would correspond both to Article 10 of the draft Convention and to item 3 of the draft Final Protocol:

[1] The following voted *for* the French amendment: France, Haiti, Honduras and Tunisia. The following voted *against* it: Belgium, Germany, Great Britain, Italy, Spain, Sweden, Norway and Switzerland.

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Article 10

The following shall be especially included among the unlawful reproductions to which this Convention applies: unauthorized indirect appropriations of a literary or artistic work, designated by various names, such as adaptations, arrangements of music, etc., when they are no more than the reproduction of such a work, in the same or another form, with unessential changes, additions or deletions which moreover do not give it the character of a new, original work.

It is understood that, in the application of this Article, the courts of the various countries of the Union will, where appropriate, take due account of the reservations written into their respective laws.

Following a question raised by the British Delegation in the course of the discussion, it was agreed that the kind of indirect appropriation known as "*dramatization*" could, under certain circumstances, be regarded as constituting unlawful indirect reproduction.

The Committee also proposes reversing the order of Articles 10 and 11 of the draft, so that they become Articles 10 and 9 of the Convention respectively.

Article 11

Legal presumption of authorship

(Article 12 of the draft)

In the 1884 draft this provision was drafted as follows:

"In order to provide all works of literature or art with the protection specified in Article 2, and in order that the authors of such works, may, until proved otherwise, be considered such and consequently be eligible before the courts of the various countries of the Union to initiate actions for infringement, it shall be sufficient for their name to be indicated on the title of the work, at the foot of the dedication or preface or at the end of the work.

"For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be empowered to safeguard the rights belonging to the author. He shall, without any other proof, be deemed to be the assignee of the anonymous or pseudonymous author."

It was pointed out in various quarters that the provisions of Article 2, which made the enjoyment of the rights granted to authors by the Convention subject to the accomplishment of the conditions and formalities prescribed by the legislation of the country of origin of the work, should be reserved in this Article.

Even though the wording of the draft already indicated that Article 11 referred only to a question of procedure, as distinct from the material conditions and formalities whose accomplishment was required by Article 2, the Committee thought that there would be some use in stating expressly that the court could, where appropriate, demand the production of a certificate issued by the competent authority attesting that the formalities prescribed in terms of Article 2 by the legislation of the country of origin had been observed. The presumption in favour of the author would also be applicable to the publisher in the case of Article 3.

Also, it seemed that there was no need at all to specify in detail and in a somewhat limitative fashion how the author's name should be given on the work, but that one could be content with speaking in that regard of the customary manner.

It was asked whether one might not delete as being unnecessary the last sentence of the second paragraph, according to which: "*he [the publisher] shall, without any other proof, be deemed to be the assignee of the anonymous or pseudonymous author.*" It was replied that it was important for the author's rights to be susceptible of protection by the courts as well as those of the *publisher*, and without the former being obliged to state his real name. Yet it was possible for the *authors' rights* to have been violated, in which case the *first* sentence of the second paragraph provides that the publisher named on the work is empowered to safeguard the rights belonging to the author. On the other hand, it was possible for the *publisher* to have to assert his own rights. For that second eventuality, the *last* sentence of the second paragraph provides that, without any other proof, he is deemed to be the representative of the anonymous or pseudonymous author. If the Article were deleted, the publisher would be obliged, in the event of litigation, to provide proof that his right came to him from the author in the proper way. He could do so by producing his contract with the latter or otherwise, but in any event the name of the author would then be disclosed, which was unfortunate. It was argued also that the provisions of the second paragraph were contained in the German law and in a number of recent Conventions.

In view of the above circumstances, the second paragraph was adopted in its entirety.

The Committee proposes wording the Article as follows:

Article 11

In order that the authors of the works protected by the Convention may, until proved otherwise, be considered such and consequently be eligible to institute proceedings before the courts of the various countries of the Union against infringement, it shall be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be entitled to safeguard the rights belonging to the author. He shall, without other proof, be deemed to be the lawful representative of the anonymous or pseudonymous author.

It is nevertheless understood that the courts may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article 2.

Seizure of infringing works

Article 12

(Article 13 of the draft)

The 1884 draft Convention contained the following provision:

"Any infringing work may be seized on import into those countries of the Union in which the original work is entitled to legal protection.

"Seizure shall take place at the request either of the public prosecutor or of the interested party, in accordance with the domestic legislation of each country."

The British Delegation pointed out that the second paragraph of the above Article was not in conformity with the legislation of Great Britain, in view of the fact that, in that country, seizure could be effected ex officio without any request, by the Customs authorities.

On a proposal by the same Delegation, the Article was worded as follows:

Article 12

Any infringing work may be seized on import into those of the countries of the Union in which the original work enjoys legal protection.

Seizure shall be effected in accordance with the domestic legislation of each country.

Right of authorization, prohibition, etc., reserved to Governments

Article 13

(Article 14 of the draft)

This Article was retained in its original wording, which reads as follows:

Article 13

It is understood that the provisions of this Convention shall in no way be prejudicial to the rights belonging to the Governments of each of the countries of the Union to sanction, control or prohibit, by legislative or domestic policing measures, the circulation, performance or display of any work or production in respect of which the competent authority would be called upon to exercise that right.

The Committee wondered whether the words "*any works or production*" should not be completed in the same way as at the end of Article 4, but it has decided that it is better to refrain from an addition of that kind, which moreover would not add anything to the right conferred by the Article on the Governments of the countries of the Union.

Retroactive application of the Convention to works not yet in the public domain

Article 14

(Article 15 of the draft)

This Article was worded as follows in the 1884 draft:

"This Convention shall apply, subject to such reservations and conditions as may have been made by common consent, to all works which, at the time of its entry into force, have not yet fallen into the public domain in their country of origin or, in the case of a manuscript or unpublished work, in the country to which the author belongs."

As noted below, in connection with the Final Protocol, the implementation of the above Article will be left to each country of the Union, which will decide on the conditions of retroactivity according to its own laws or specific conventions. However, that reservation having been made, the fact remained that the question had to be regulated in each country in terms of Article 15.

The scope of the term "*country of origin*" having been specified in Article 2, both for published and for unpublished works, the Committee was able without difficulty to remove the last sentence on manuscript or unpublished works. Article 14 was therefore adopted in the following wording:

Article 14

Subject to reservations and conditions to be decided upon by common consent, this Convention shall apply to all works which, at the time of its entry into force, have not yet fallen into the public domain in their country of origin.

Right of Governments of the Union to make special arrangements between themselves

Article 15

(Article 16 of the draft)

This Article was adopted without change in the following form:

Article 15

It is understood that the Governments of the countries of the Union reserve the individual right to make special arrangements separately between themselves in so far as those arrangements would confer on authors or their lawful representatives more extensive rights than those granted by the Union, or contain other provisions not contrary to this Convention.

The German Delegation asked whether an exception should not be written into the above Article concerning Article 7, in view of the fact that otherwise certain countries of the Union might make special arrangements between themselves to restrict the borrowings that it was permissible to make from newspapers. This idea was abandoned, however, as the Committee had decided that such arrangements could only bind the countries that had made them without committing the other countries of the Union in any way.

Article 16 International Bureau

(Article 17 of the draft)

The Committee adopted this Article in the wording of the 1884 draft, merely aligning the name of the International Bureau on the new title given to the Convention.

Article 16 has therefore been worded as follows:

Article 16

An international bureau shall be established under the name of International Bureau for the Protection of the Rights of Authors.

This Bureau, the expenses of which shall be borne by the administrations of all the countries of the Union, shall be placed under the high authority of . . . . . , and shall work under its supervision. The functions of the Bureau shall be determined by common consent by the countries of the Union.

Article 17 Revision of the Convention

(Article 18 of the draft)

The text of the draft Convention was as follows:

This Convention may be subjected to revisions for the purpose of making therein such improvements as may perfect the system of the Union.

Questions of that nature, and those that concern the development of the Union in other respects, shall be dealt with in Conferences that shall be held successively in the countries of the Union between delegates of those countries.

On an observation by the British Delegation, supported by other Delegations, to the effect that the legislative authorities of various countries would perhaps be reluctant to amend domestic legislation to adapt it to the International Convention if there were a risk of it being revised at short notice, it was understood that the present Convention would constitute the charter of the Union, so to speak, and that it could only be amended with the agreement of all the Contracting Countries. Countries that agreed on improvements to be made on the Convention, but failed to secure the endorsement of the other countries of the Union, would be free, within the limits of the general Convention, to make special arrangements in terms of Article 15.

In order to make the above point clearer, the Committee has added the following paragraph to Article 7:

It is understood that no change to this Convention shall be valid for the Union without the unanimous consent of the countries composing it.

Article 18 Accession to the Convention

(Article 19 of the draft)

This Article was retained in the wording of the draft, with a small amendment of form to substitute the word "*rights*" for "*authors' rights*," the latter having been removed from the Convention. The Article adopted by the Committee is thus worded as follows:

Article 18

The countries that are not party to this Convention, and provide in their domestic law for legal protection against the violation of the rights that are the subject of this Convention, shall be allowed to accede to it at their request.

Such accession shall be notified in writing to the Government of . . . . . , and by it to all the others.

It shall, as of right, imply accession to all the clauses and admission to all the advantages provided for in this Convention.

Article 19 Accession of foreign colonies and possessions

(New article)

The British Delegation proposed the following new Article:

"Accessions to this Convention shall constitute accession on the part of all the foreign colonies or possessions of the acceding country, unless an express reservation to the contrary has been made at the time of its accession.

"The acceding country shall, however, have the right to exclude one or more of its foreign colonies or possessions from the effects of this Convention, by making the appropriate declaration at the time of its accession."

Realizing the importance of regularizing the position of colonies within the Union, the Committee adopted the above Article in principle. It gave it the following wording, however:

Article 19

Countries acceding to this Convention shall also have the right to accede to it at any time on behalf of their colonies or foreign possessions.

They may do this either by a general declaration whereby all their colonies or possessions are included in the accession, or by expressly naming those that are included, or by confining themselves to specifying those that are excluded.

The Committee does not propose any amendment to the last two Articles of the Convention, the text of which follows:

Entry into force of the Convention; denunciation

Article 20

This Convention shall be put into force three months after the exchange of ratifications, and shall remain in force for an indefinite period, until the expiry of one year following the day on which it has been denounced.

Such denunciation shall be made to the Government authorized to receive accessions. It shall only take effect for the country making it, the Convention remaining in full force and effect for the other countries of the Union.

Exchange of ratifications

Article 21

This Convention shall be ratified, and the ratifications exchanged at . . . . . within one year at the latest.

In witness whereof, etc.

Done at . . . . . , on . . . . . .

II. Additional Article

Conventions existing on the entry into force of the international Convention

The Committee recommends the text adopted the previous year to the Conference for acceptance. The text of the Article follows, with in addition a preamble stating that it is signed by the Plenipotentiaries who signed the Convention:

The Plenipotentiaries convened for the signature of the Convention concerning the creation of an international Union for the Protection of Literary and Artistic Works have agreed on the following Additional Article, which shall be ratified at the same time as the instrument to which it relates:

The Convention concluded this day shall in no way affect the maintenance of existing conventions between the Contracting Countries, provided always that such conventions confer on authors, or their lawful representatives, rights more extensive than those accorded by the Union, or contain other stipulations that are not contrary to this Convention.

In witness whereof, etc.

Done at . . . . . , on . . . . . .

III. Final Protocol

The preamble was retained by the Committee in the following wording, which is that of the draft:

At the time of effecting the signature of the Convention concluded this day, the undersigned Plenipotentiaries have declared and stipulated as follows:

For ease of reference, the Committee proposes that the various items of the Final Protocol should be arranged according to the numbers of the Articles of the Convention to which they relate.

Photographic works

I.
(Item 4 of the draft)

Item 4 of the earlier draft was worded as follows:

"As the legislation of a number of the countries of the Union does not allow photographic works to be included among the works to which the Convention concluded this day applies, the Governments of the countries of the Union reserve the right to agree at a later date on the special arrangements to be made by common consent for the purpose of mutually ensuring the protection of those photographic works in the countries of the Union."

On the subject of the above item, reference is made to the part of this report relating to Article 4 of the Convention.

The text proposed by the Committee establishes clearly that photographic works are eligible for the benefits of the provisions of the Convention, throughout the whole Union, when they are the lawful reproduction of a protected work. The text follows:

1. On the subject of Article 4, it is agreed that those of the countries of the Union in which the character of artistic work is not denied to photographic works undertake to make them eligible, as from the entry into force of the Convention concluded this day, for the benefits of its provisions. They shall moreover not be bound to protect the authors of such works further than is permitted by their legislation, subject to existing or future international arrangements.

It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention, for the same period as the principal right in the work itself subsists, and within the limits of private agreements between the holders of legal rights.

Choreographic works

2.
(New item)

2. On the subject of Article 9, it is agreed that those of the countries of the Union whose legislation implicitly includes choreographic works among dramatico-musical works expressly admit the said works to the benefit of the provisions of the Convention concluded this day.

It is moreover understood that any disputes that should arise concerning the application of the above clause shall be within the jurisdiction of the relevant courts.

On the subject of choreography, reference is made also to what was said earlier on the subject of Article 4 of the Convention.

Instruments for the mechanical reproduction of melodies

3.
(Item 2 of the draft)

3. It is understood that the manufacture and sale of instruments serving for the mechanical reprodnction of melodies that are in the private domain shall not be regarded as constituting musical infringement.

In view of the difficulty of settling the question of sound reproduction, the Committee proposes that the Conference should not pronounce on whether or not the public performance of any musical work by means of one of the instruments mentioned in item 3 is lawful.

Application of the Convention to works not in the public domain on its entry into force

4.
(Item 1 of the draft)

4. The common consent provided for in Article 15 of the Convention is specified as follows:

The application of the Convention to works that have not fallen into the public domain at the time of its entry into force shall take place according to the provisions relating thereto contained in snch special conventions as may have been or may hereafter be concluded for that purpose.

In the absence of similar provisions between countries of the Union, the countries concerned shall regulate by domestic legislation, each as far as it is concerned, the relevant procedures for the application of the principle written into Article 14.

The Committee proposes that this item could be adopted without amendment.

5.
(Item 5 of the draft)

With regard to item 5 of the former Final Protocol, the Committee proposes that the system of apportionment of the expenses of the International Bureau in proportion to the population figures of the various countries of the Union should be replaced by another system that divides the countries into six classes, as has been done for the Union for the Protection of Industrial Property. In that case, each of the countries of the Union, on signing the Convention, would have to specify the class in which it asked to be placed. In addition the Committee proposes that the maximum annual expenditure of the Bureau should be set at sixty thousand francs, it being possible, however, to increase that figure by a mere decision of one of the periodical Conferences provided for in the draft Convention, without it being necessary to seek ratification by the various parliaments.

Consequently, the Committee proposes that item 5 of the Final Protocol should be worded as follows:

5. The organization of the International Bureau provided for in Article 16 of the Convention shall be determined by regulations which the Government of . . . . . is responsible for drawing up.

The official language of the International Bureau shall be French.

The International Bureau shall collect all kinds of information regarding the protection of anthors' rights in literary and artistic works. It shall coordinate them and publish them. It shall undertake studies on qnestions of general interest concerning the Union and, with the aid of documents placed at its disposal by the various administrations, shall publish a periodical review in French on the questions which concern the purpose of the Union. The Governments of the conntries of the Union reserve the right to authorize the Bureau, by common consent, to pnblish editions in one or more languages where circumstances have demonstrated the need therefor.

The International Bureau shall always be at the disposal of members of the Union with a view to furnishing them with any special information that they may require concerning the protection of literary and artistic works.

The administration of the country in which a Conference is to take place shall prepare the work of that Conference with the assistance of the International Bureau.

The Director of the International Bureau shall attend the meetings of Conferences, and take part in the discussions without the right to vote. He shall make an annual report on his administration, which shall be communicated to all the members of the Union.

The expenses of the Bureau of the International Union shall be borne collectively by the Contracting Countries. Until such time as a new decision is made, they may not exceed the sum of sixty thousand francs per annum. This sum may be increased as required merely by means of a decision of one of the conferences provided for in Article 17.

In order to determine the contribution of each of the countries to this total amount of expenditure, the Contracting Countries and those that should later accede to the Union shall be divided into six classes, each contributing in proportion to a certain number of units, namely:

Class 1 . . . . . 25 units
Class 2 . . . . . 20 units
Class 3 . . . . . 15 units
Class 4 . . . . . 10 units
Class 5 . . . . . 5 units
Class 6 . . . . . 3 units

The above coefficients shall be multiplied by the number of countries in each class, and the sum of the products thus obtained shall give the number of units by which the total expenditure is to be divided. The quotient shall give the amount of the unit of expenditure.

Each country shall specify, at the time of its accession, in which of the above classes it desires to be placed.

The administration of . . . . . shall draw up the budget of the International Bureau and supervise its expenditure; it shall also provide the necessary advances and draw up the annual accounts, which shall be communicated to all the other administrations.

Finally, with regard to item 6 and 7 of the Final Protocol, the Committee proposes that they should be retained in the following form:

Next Conference

6. The next conference shall take place at . . . . . , in . . . . . .

Exchange of ratifications

7. It is agreed that, for the exchange of ratifications provided for in Article 21, each Contracting Party shall present a single instrument which shall be deposited, together with those of the other countries, in the archives of the Government of . . . . . Each party shall in return receive a copy of the record of the exchange of ratifications, signed by the Plenipotentiaries who take part in it.

This Final Protocol, which shall be ratified at the same time as the Convention concluded this day, shall be regarded as forming an integral part thereof, and shall have the same force, validity and duration.

In witness whereof, etc.

Done at . . . . . , on . . . . . .

Item 3 of the Final Protocol, concerning adaptation, has been deleted as a result of the mention of adaptation in Article 10 of the Convention.

Recommended Principles for Subsequent Unification

In the previous year's draft, the text of the Convention and Final Protocol was followed by the following declaration, concerning the principles recommended for subsequent unification:

["The Conference for the Protection of Literary and Artistic Works,]

"Considering the diversity of the provisions in force in the various countries concerning several important points of legislation on the protection of authors' rights,

"Considering, however, that international codification is in the natural order of things and will establish itself sooner or later, and that the ground should be prepared for that event with an indication, at the outset, of the direction in which it is desirable that such codification take place,

"Sees fit to submit the following wishes to the Governments of all countries:

"I. The protection granted to the authors of literary or artistic works should last for their lifetime and, after their death, for a number of years that should not be less than 30.

"II. The trend towards full assimilation of the right of translation to the right of reproduction in general should be promoted as much as possible."

SECOND CONFERENCE IN BERNE, 1885 —
REPORT OF THE COMMITTEE

While noting that the present Conference agrees with the previous one on the above principles, the Committee believes that it is unnecessary to reproduce the text after the final Convention.

The Italian Delegation would have wished that, in order to assure the authors of dramatic or dramatico-musical works of effective protection, the Conference formulate the desire to have the system of prior authorization introduced throughout the Union. Under that system, the person who wishes to have one of the works mentioned above performed has to apply to the competent local authority for authorization, enclosing with his application and authentic document attesting that the author has delegated to him his right of performance in relation to the work, failing which the authorization cannot be granted.

While abiding by its decision not to add the text of the Recommended Principles for Subsequent Unification to the final Convention, the Committee considers that the system concerned does deserve to be given careful attention by all Governments, as it is one of the systems which, by affording preventive protection, are most sure of preventing the unlawful performance of dramatic or dramatico-musical works.

MINUTES

OF THE

FIFTH MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

SEPTEMBER 17, 1885

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 6.30 p.m.

The following were present: all the members of the Conference with the exception of Mr. **Ulbach**, who sent his apologies.

The minutes of the first four meetings, which had been submitted to the delegates in draft form, were adopted.

The **President** informed the Assembly that the Committee, to which the Conference had decided to refer the draft Convention, had held numerous meetings since September 9, and that it had completed its work. He tabled the report of the Committee, which had already been communicated to the members of the Conference, and announced that it would be included in the Records of the Conference.

Pursuant to Rule 2 of the Rules of Procedure, a Drafting Committee had been appointed, which was composed as follows, in the [French] alphabetical order of States:

Counsellor **Reichardt,**
Mr. **Tamayo,**
Mr. **Renault,**
Mr. **Bergne,**
Mr. **Rosmini,**
Mr. **Lagerheim,**
Federal Councillor **Numa Droz.**

The President then opened discussions on the final minutes proposed by the Committee, including the following drafts:

I. *Convention for the Creation of an International Union for the Protection of Literary and Artistic Works;*
II. *Additional Article;*
III. *Final Protocol.*

At the time of the enumeration of the representatives that had taken part in the work of the Conference, the **President** informed the Assembly that the Delegates of the Argentine Republic and Paraguay[1] had informed him that they were not empowered to sign the final minutes.

H.E. Mr. **Maurice Delfosse** made the following statement;

"The Belgian Government has already made it known that it is not prepared to accede to provisions that would make it lose the benefit of the specific conventions that it has recently concluded. Being moreover engaged in the comprehensive and imminent revision of its domestic legislation on literary and artistic property, and not wishing to seem to anticipate, as it were, the eventual resolutions of the legislative chambers, it has instructed me to abstain from signing the Final Act of the Conference, reserving the right to accede to the Union in due course, if appropropriate, by virtue of Article 18."

[1] See Appendix, page 69.

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Mr. **Tamayo** spoke as follows:

"The Spanish Delegation will sign, but without committing its Government in any way."

Mr. **Winchester**, for his part, made the following statement:

"Mr. President,

"On August 31 I sent a note to His Excellency the President of the Swiss Confederation in which I informed him that, in response to an invitation addressed by the Minister of Switzerland in Washington to the Government of the United States to send a representative to a second, final Conference for the Protection of Literary and Artistic Works, that was to meet in Berne on September 7, 1885, the Secretary of State had done me the honour of appointing me Delegate of the United States, with precise instructions as to the scope and extent of my powers. I communicated the content of those instructions to His Excellency the President in the note just mentioned.

"However, I considered that it would be proper to explain to the Conference the circumstances that induced my Government to give me a limited mandate, and also to indicate what the powers of its representative were in this important meeting.

"When, last spring, the invitation to take part in this Conference reached the Government of the United States, the Minister of Switzerland had been informed by the Secretary of State that, as the question of international literary and artistic property had for some time been under consideration in the Congress of my country, the Government did not feel authorized to take any steps that might prevent or hamper the free discussion or action of the Congress in connection with a question that was entirely within its jurisdiction. The Government was therefore not prepared to take part in an international agreement that had the character of a general, formal Convention before the Congress had declared its wishes on the subject. However, since the Congress and the people have for years shown a great and growing interest in the question of international literary and artistic property, the Government of the Unites States would be pleased to take part in the consultative deliberations of the proposed Conference, and to benefit from the exchange of opinions that would take place at it. If therefore this Government could be represented at the Conference by a delegate, at the same time reserving the right to subscribe later to the results that might be achieved in so far as they were in line with its interests and policy, that delegate would be named.

"In reply to the foregoing, the Government of the United States has been assured that the Conference would receive with pleasure a delegate endowed with cooperative and consultative powers. It is as a result of that understanding and within those limits that I am authorized to take my place here.

"The Honourable Secretary of State has not instructed me regarding the specific views of my Government on the subject of international literary and artistic property, or on the details, which are as varied as they are important, that enter into that sphere. Neither did he indicate the manner of proceeding which, in all probability, would be the most appropriate for the formation of the basis for a general agreement whose purpose would be to include all countries in one system of protection for literary and artistic works. However, even though my Government has not seen fit to make proposals to the Conference and has conferred only limited powers on its representative, the very fact that it is represented here by an authorized delegate is to be accepted as having real significance, and as the expression of the great importance and the keen interest that it attaches to the serious question that has brought us together today. I am not authorized to vote on any question, and would not take the liberty of exercising that privilege. I feel that I shall have fully accomplished my duty and mandate by giving my close attention to the work of this Conference, and, after its completion, by submitting the results to my Government for consideration. At the same time, it will be a pleasurable duty for me give a testimony of the great intelligence that has presided over the hard and wide-ranging work of the Conference, which in turn should give its resolutions great weight and a decisive influence.

"However, I do not believe I am overstepping the limits of my powers when I say that 'the Government of the United States is favourably disposed towards the principle that the author of a literary or artistic work, whatever his nationality, and whatever the place of reproduction, should be protected everywhere on the same footing as the citizens or subjects of every nation.'

"It is true that such an arrangement could come up against serious difficulties; but, in a spirit of mutual concession, those difficulties should give way to an international agreement that would be at once equitable, fair and enlightened."

H.E. Mr. **F.O. Adams** made the following statement in his turn:

"Mr. President,

"At the first meeting of the Conference, I explained that the main task of the British Delegation would be to present observations with a view to the establishment of a basis for a Union that would facilitate not only the eventual accession of Great Britain, but also that of other States, and that we took the liberty of hoping that the Convention would contain principles rather than details.

"Within the Committee, I saw fit to repeat those observations, and I stated that we were consequently bound to propose quite considerable amendments to a number of articles. I have little need to point out that, in proceeding in this way, we had not the slightest intention of damaging the draft that was so carefully drawn up last year,

but the British Delegation did naturally have to take into consideration the present state of legislation and public opinion in Britain, not to mention the need to obtain Parliamentary approval of the amendments that would have to be made to our legislation before Great Britain could accede to the projected Union. We therefore expressed the fear that, if the amendments proposed by us were not favourably received, the Convention would contain provisions that would prevent us from recommending to our Government the necessary amendments to our own laws, or that, if we were in a position to recommend them, the Government would perhaps find itself obliged to reject them; and that, if that were to happen, the whole question could be indefinitely postponed in our country and all hope of seeing Great Britain acceding to the Union in the near future would be lost.

"The British Delegation is pleased to acknowledge, Gentlemen, that you have been kind enough to take my observations into consideration and that, in a true spirit of conciliation, you have given your consent to concessions which, we sincerely hope, will facilitate our dealings with Her Majesty's Government. In this respect, we ask you to accept our sincere thanks. Be assured, moreover, that we shall be extremely pleased to convey to our Government the friendly sentiments that you have all been so kind as to show us.

"It only remains for me to add that the British Delegation is authorized to sign the Final Act of the Conference, provided that it is clearly understood that this does not bind Her Britannic Majesty's Government to any degree, or give any indication of its opinion."

Dr. **Janvier** made the following statement on behalf of his Government:

"In spite of the content of Article 13, the Delegate of Haiti feels bound to point out to the Conference, and wishes that it be expressly set down in the final texts of the Records of the Conference, that, in those cases in which his Government would have to assert its territorial sovereignty, either against the works of one of its natives residing abroad, or against a foreign publisher who might claim to be the owner of a work, anonymous, pseudonymous or of another nature, directed against the Government of Haiti, the legislative or domestic policing measures that it might take against that work could never be the subject of foreign intervention, through either diplomatic or other channels, the purpose of such measures being to obstruct, disturb or criticize in any way the action of the Haitian Government."

Mr. **Verwey**, in his turn, made the following reservation:

"I wish to subscribe to the statement made by the Delegate of Great Britain, and wish to place on record, by my signature at the foot of the final minutes, both my presence within the Conference and the interest that the Government of the Netherlands has in its successful outcome; I do, however, insist on the minutes recording that my Government intends to remain entirely free regarding its accession to the Union."

Finally, Mr. **Lagerheim**, the Delegate of Sweden, made the following declaration in his own name and in that of his colleague from Norway:

"The Government of His Majesty the King of Sweden and Norway has already made known to the Government of the Swiss Confederation the reasons that have prevented it from conferring on the delegates of our United Kingdoms full powers in due form for the signature of a Convention, so it remains for me to state, at the present time, that my colleague from Norway and I are willing to sign the final minutes that have been submitted to us by the Committee, and by which we undertake to submit to our Governments the draft Convention with its annexes, on which the Conference will, I hope, agree in the course of this meeting."

After the above declarations, the preamble to the final minutes was adopted.

The Conference then proceeded to the discussion, Article by Article, of the draft *Convention* proposed by the Committee.

With reference to the title, Mr. **Lavollée** said the following:

"The French Delegation notes the comment given in the report of the Committee on the title of the Convention, from which it emerges that the expression '*protection of literary and artistic work*' is equivalent to '*protection of literary and artistic property*.'

The title proposed by the Committee was then adopted.

The preamble to the Convention, and also Articles 1 to 4, were adopted without discussion.

Article 5 gave rise to the following statements.

Mr. **Lavollée**: "The French Delegation feels bound to recall, before the vote on the Article concerning the right of translation, under what circumstances the compromise solution that prevailed was in fact adopted, and on what grounds the French Delegation has been authorized to subscribe to it.

"We are pleased to acknowledge that the Conference was kind enough to give partial satisfaction to France's wishes by the deletion of the three-year period. For its part, the French Government, while keeping its convictions on the subject intact, has, in its very keen desire for conciliation, authorized its delegates to accept the proposed solution. It has been driven to do this by the desire to afford access to the Union to a number of States, notably Great Britain. It has, moreover, been pleased to observe that the principle of assimilation is written into the draft law that the British Societes of Authors and Publishers have drawn up and which has been presented to us.

"It is the taking of a further step towards the triumph of this rule of justice that the Conference itself, in its wishes expressed last year and confirmed this year, has unanimously recommended to the sympathetic attention of all Governments. We are pleased to acknowledge the considerable progress that has been made this year in the direction and towards the objective indicated by the Conference. Not only has the draft Convention been improved with respect to the exercise of the right of translation, but also the principle of assimilation, supported by France and already written into the Spanish and Swiss laws, is on the point of being likewise included in the Belgian law, if the Belgian Parliament, as it is expected to do, adopts the so-wise and so-liberal draft that has been prepared by the central section of the Chamber of Representatives. At this Conference, the French Delegation is pleased to note that the amendment that it presented to that effect secured not three votes, as last year, but five out of eleven, in other words almost a majority, and, among those votes, those of Spain and Belgium. Moreover, Switzerland, while having rejected the amendment in order to facilitate the establishment of the Union, has declared that, as far as it was itself concerned, it was willing to vote for it. For its part, the German Delegation has not made any fundamental objection to the system; it has even declared its desire to see that system eventually triumph; it has, however, stated that it would only be authorized to vote for it on condition that the other countries also adopted it.

"This combination of votes and statements allows the French Government to hope that the day is near when the wish of the Conference, which is also its own, will be realized.

"It confidently awaits this definite step forward from the combined operation of time and the spontaneous determination of the Powers represented in this building."

Mr. **Bergne**: "With reference to the observations that Mr. Lavollée has just made, I wish to make it clear that the draft law he mentions has been drawn up by a British literary society, and in no way issues from the Government of Her Britannic Majesty."

Mr. **Lagerheim**: "In the name of my colleague from Norway and also in my own name, I wish to place on record that the Governments of Sweden and Norway would have preferred to maintain the provisions of Article 6 of the 1884 draft Convention intact. It was only as a result of the formal declaration by the French Delegation that it could not accept any compromise other than that contained in the Italo-Swiss amendment, that we were authorized to endorse that solution. By acceding in that way to the desires of France, the Scandinavian countries have reached the maximum of concessions on this point that their particular circumstances allow them to make at the present time. We feel able to add that the protection granted by the Convention to the authors of all the countries of the Union against unlawful translations will thus become very genuine and will fully meet their requirements while also doing justice, in full measure, to the *trends of our times*."

Article 5 was then adopted as proposed by the Committee.

Articles 6 and 7 were also adopted.

On the subject of Article 8, Mr. **Reichardt** said the following:

"In the opinion of the German Delegation, it would have been preferable, in the interest of education and science, to retain the corresponding Article contained in last year's draft. The German Delegation's renunciation of its insistence on the retention of the draft in question, and its acceptance of the wording before us now, is solely due to the desire to see Great Britain accede to our Convention."

H.E. Mr. **F.O. Adams** warmly thanked the Delegate of Germany for his kind words.

Article 8 was adopted according to the proposals of the Committee.

The same was true of Article 9.

On the subject of Article 10, Mr. **Lavollée** made the following statement:

"The French Delegation is pleased to recognize that, as far as adaptation is concerned, the new wording of Article 10 is much preferable to the provision that was inserted in the Final Protocol last year. However, it feels bound to observe that the present provision is a compromise to which the French Government consented in a spirit of conciliation and in order to avoid hampering the establishment of the Union. Neither can it avoid recalling that, for any direct or indirect reproduction, as for any translation, the main condition to be met should, in the opinion of the French Government, be the securing of the authors's consent. That is a necessary consequence of the principle of literary and artistic property that France is pleased to recognize."

Article 10 and also Articles 11 to 15 were adopted.

On Article 16, H.E. Mr. **Emmanuel Arago** made the following proposal:

"The French Delegation has asked to speak on Article 16 in order to fill a gap. Instead of saying that the *Bureau of the International Union for the Protection of Literary and Artistic Works* is placed '*under the high authority of ...*,' we propose saying: '*under the high authority of the senior administration of the Swiss Confederation.*' It is unnecessary to justify our amendment by recalling the services rendered to the world by the International Postal Bureau, by the Telegraph Bureau and by the Bureau of Industrial Property, and I am certain of being the true spokesman, in this matter, of all my distinguished colleagues."

The Assembly expressed its unanimous approval.

Mr. **Ruchonnet** replied in the following terms:

"Gentlemen,

"You will understand that the Swiss Delegation does not have instructions to accept, without the special authorization of its Government, the exalted mandate that the members of the Conference by unanimous assent wish to entrust to Switzerland, on the proposal of the honourable Vice-President of this Assembly.

"The Swiss Delegation will not fail to convey to the Federal Council the decision that has just been taken and on which the Federal Authority will pronounce at the same time as it ratifies the Convention that we are going to conclude; however, we feel, my colleagues and I, that we are not committing ourselves too much when we say at the outset that Switzerland will accept with gratitude this new token of the trust of the States represented here, and that it will endeavour to justify that trust by accomplishing to the utmost of its ability the mandate which you have been pleased to confer on it."

Following the adoption of the proposal by H.E. Mr. Emmanuel Arago, it was decided that the blanks left in Article 18 of the Convention and in Articles 5 and 7 of the Final Protocol, which had to do with the International Bureau or the Government under whose supervision it was placed, would be filled according to the decision that had just been taken.

Articles 17 to 21 of the Convention, the Additional Article and the Final Protocol were then adopted without discussion.

The same was true of the last part of the final minutes of the Conference.

Finding itself unanimous on all the texts proposed by the Committee, the Conference decided to forgo voting on the draft as a whole.

The **President** made the following address:

"Gentlemen,

"Now that we have come to the end of our discussions, allow me to cast a rapid glance over the stage of intense effort that our collective work has just passed through. The hope that I expressed on opening this Conference has been fully realized: thanks to your spirit of understanding, your enlightenment and the dedicated cooperation of all of us, we have been able to overcome or set aside the numerous difficulties that have stood in our way. Even though there are still diplomatic and constitutional formalities to be accomplished, I feel able to say at this juncture that the International Union for the Protection of Literary and Artistic Works has been established, and that it has been established on foundations that are acceptable to all countries of the world.

"Today's date is a milestone in the history of international law: it has taken a great step forward in one of the most difficult of areas, but also one of the most useful, and we cannot but congratulate ourselves mutually on the results achieved.

"Of course, like any convention between sovereign States, our work does have the character of a compromise. It was not in our power, neither could it be our intention, to effect the disappearance of the legislative peculiarities of all Contracting States, which after all are due to differences of doctrine, practice and procedure and tied up with the institutions of each country and its legal culture. On no point, therefore, have we encroached on the essential principles on which the legal conception of copyright rests; thus no country will have to choose here between a painful doctrinal sacrifice and abstention pure and simple. On the contrary, all are enabled to enter the Union and at the same time retain those features of their statute and case law to which they are attached, provided that they also consent to assure authors of effective protection on the points settled by the Convention. We did not want to differ over mere words when there was a possibility of our securing the thing itself.

"One fact that should be given prominence is that our Convention is destined to bring about progress all along the line; it is a minimum to be attained by those countries that do not yet grant all the rights introduced by it, but which will not fail, we have no doubt of that, to reform their legislation without delay in order to bring into line with the principles proclaimed by the Union. It gives the other countries the certain security that their authors will be protected over a much wider area and to an extent that in some respects is greater than under existing conventions. So even for them there is no backward step, but on the contrary, in international terms, a substantial move forward. The laws and conventions that are the most liberal towards authors will be maintained, while the others will be improved by the very operation of the Convention. Is that not a result to delight even the most difficult?

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"I have said and I repeat that progress has been made all along the line. The creation of the Union, which establishes a bond between all countries and will be a stimulus for them is, in my view as no doubt it is in yours, the first and the most important element of this progress; it is a striking affirmation of universal awareness in favour of copyright. Then there is the removal of the multitude of formalities that an author still has to comply with if he wishes to secure protection everywhere, the removal of the period of three years within which a translation had to have appeared in order to be protected, the standardization of the right of reproduction for articles in newspapers and periodical journals, the express protection of dramatic and dramatico-musical works, the treatment as slavish infringement of those numerous indirect appropriations which, in an insidious manner, have the effect of robbing the author of the fruit of his work, the introduction of clear and precise presumptions for the initiation of legal proceedings, the express recognition of select unions such as those for the protection of photographic and choreographic works, which, by virtue of the very force of the principles involved—the example of the Postal Union is proof of this—will experience no delay in becoming as universal as the parent Union; finally, without mentioning other progress of lesser importance, there is the organization of an International Bureau which will be an impartial and enlightened body responsible for watching over the general interests of the Union and working towards the achievement of further progress; who would dare say, Gentlemen, that that was not a most satisfactory set of results, a work of brotherly *rapprochement* between peoples, and an International Convention that fully deserves the approval of the Governments to which we are going to submit it?

"I have no doubt regarding the favourable reception that awaits it, and I am pleased to see this foreshadowed by the unanimity which, following the mutual concessions that we have made, has been shown within the Conference for the approval of the work as a whole.

"I venture to hope that the countries represented that have not felt able to join us at this time for signature will not delay long in doing so, and that our work will also win acceptance on the part of countries that have not been represented.

"Gentlemen, I shall stop here. While our discussions may be at an end, our work is not. As we await the signature of the final minutes and the close of the Conference, I cannot help conveying to you the feeling of sincere satisfaction that came over me as I witnessed our hard work coming to such a gratifying conclusion. I am certain that you all share this feeling, and that you will not take it amiss if I have my expression of it recorded in the minutes of this meeting."

A last meeting was to take place at 11 a.m. on the following day for the signature of the final minutes and the approval of the last minutes of the Conference.

The meeting rose at 7.50 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

MINUTES

OF THE

SIXTH MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

SEPTEMBER 18, 1885

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 11.30 a.m.

The following were present: all the members of the Conference with the exception of Mr. **Louis Ulbach**, who sent his apologies.

The minutes of the fifth meeting, which had been distributed to the delegates in draft form, were adopted.

Before proceeding to the signature of the final minutes of the Conference, a second reading was made of that document, which included the draft Convention, an Additional Article and the Final Protocol. Those texts were finally adopted.

At the invitation of the **President**, the delegates then proceeded to sign the final minutes, their names being called in the [French] alphabetical order of the countries that they represented.

At the request of the French Delegation, the place reserved for the name of Mr. **Louis Ulbach**, who at that time was away from Berne, was left blank until such time as the Delegate in question could return to Berne and sign the final document.

Pursuant to what had been agreed the previous year, it was understood, following a comment by the **President**, that, in deference to the Governments represented, the decisions of the Conference would not be publicized until November 1. The secretariat could nevertheless make a concise summary of the main resolutions of the Conference for the purposes of the press.

The delegates undertook to abide by what had been agreed.

The **President** addressed the Assembly in the following terms:

"Gentlemen,

"The time has come for us to part. First, however, I wish to thank you most sincerely once again, in very few words, for the support that you have given me and the goodwill that you have shown me, which has made the accomplishment of my presidential duties most agreeable. In particular, I thank our kind Vice-President, His Excellency Emmanuel Arago, whose conciliatory influence greatly facilitated the work of the Conference, as it did last year; also our two Secretaries, Mr. Soldan and Mr. Frey, who really excelled themselves with the combination of intelligence and energy that they also demonstrated last year. I should like to think, Gentlemen, that you will take away friendly memories of our country, which has been so pleased to receive you. There will doubtless be no lack of future opportunites for us to see each other again and cultivate the good personal relations that have been created or renewed at this time; this is the hope of every one of us. Until then, Gentlemen, it remains for me to express the hope that our work will be well received by the Governments that we represent. I have no doubt that that will indeed be the case."

H.E. Mr. **Emmanuel Arago** replied with the following words:

"Mr. President,

"Today we shall not express thanks in reply to the kind address that you have just made. Charmed by that rare quality which has led us forward towards our common goal without upsetting anyone and without ever discrediting any essential principle, we congratulate you for having so well served this noblest of causes. It fell to you yesterday to make a striking analysis of the useful work that we have done; and also to state clearly that the desire to extend our sphere of action, to assure the genius of art and letters of new protectors, can never be allowed to cost us the very smallest sacrifice of principle. So, let us persevere; the Droz Conference—forgive me, it slipped out . . . and yet I should like to keep it!—marks a decisive step along the great road of progress."

Professor **d'Orelli** made the following address:

"Mr. President, Gentlemen,

"Allow me to say a few more words to you, not officially but in a quite personal capacity: I have set my heart on telling you what I feel at this time.

"On several occasions, His Excellency Mr. Emmanuel Arago, Ambassador of the French Republic, has expressed words that are kind and friendly towards Switzerland. We are very grateful to him, and as Vice-President of the Conference he has demonstrated his great interest in our work.

"We can indeed be pleased with the very satisfactory result that we have achieved, in spite of the great difficulties that have resulted from the divergent instructions and viewpoints of the various delegations.

"We owe this satisfactory result to the hard work that we have all done; we owe it to the thorough studies undertaken by the German Delegation, which, in the same way as it did last year, has so frequently clarified doubtful matters and averted misunderstandings through the agency of its three wise interpreters; we owe it to the spirit of conciliation that has been shown by the French, British and Italian Delegates; we owe it above all—if I may say so, Swiss though I am—to the admirable talent of our valued President, Mr. Droz, who has so ably conducted our debates and who has always found a way out of awkward situations and a wording for resolutions that are satisfactory to all.

"While commending you on your work, I take the liberty of thanking you, Gentlemen, *in the name of legal science and in the name of the law faculties of our four Universities* of Zurich, Berne, Basle and Geneva. Science is always receiving new impetus from life. I believe that I am perfectly in tune with my distinguished counterparts from Berlin and Paris, Dr. Dambach and Mr. Renault, when I state that we have really taken a step forward in international law. However, it is no more than the first step towards the aim to which we are all striving, namely the international codification of the law on the protection of literary and artistic works.

"I also thank you, Gentlemen, *in the name of my country*. Switzerland is honoured and pleased to be the headquarters of a number of international bureaux and thereby, as a neutral territory, to become the center of all the aspirations that make for progress, peace and brotherhood between the various peoples. Switzerland itself has the utmost interest in cultivating and protecting international law, which guarantees to the weaker, smaller States the same rights and the same position as the major Powers.

"Gentlemen, I wish you a pleasant return to your countries and to your homes. May you keep a favourable memory of Switzerland and of your Swiss colleagues!"

The minutes of the present meeting were immediately read and adopted.

The **President** addressed a few words of farewell to the delegates, and pronounced the Conference closed.

The meeting rose at 12.30 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

RECORDS

OF THE

THIRD INTERNATIONAL CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

CONVENED IN

BERNE

SEPTEMBER 6 TO 9, 1886

MINUTES

OF THE

FIRST MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

SEPTEMBER 6, 1886

The meeting was opened at 11.10 a.m., in the hall of the Council of States.

The following were present:

Belgium:	H.E. Mr. **Maurice Delfosse**, Envoy Extraordinary and Minister Plenipotentiary, Berne.
France:	H.E. Mr. **Emmanuel Arago**, Senator, Ambassador of the French Republic to the Swiss Confederation, Berne.
Germany:	H.E. Mr. **Otto von Bülow**, Private Legation Counsellor in Office and Chamberlain to H.M. the Emperor of Germany and King of Prussia, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Confederation, Berne.
Great Britain:	H.E. **Sir Francis O. Adams**, K.C.M.G., C.B., Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty, Berne. Mr. **J. H. G. Bergne**, C.M.G., Director at the Foreign Office, London.
Haiti:	Mr. **Louis-Joseph Janvier**, Doctor of Medicine of the Paris Faculty, diplomate of the Paris Medical Faculty, diplomate of the School of Political Science of Paris (administrative section and diplomatic section).
Italy:	Mr. **C.E. di Beccaria dei Marchesi d'Incisa**, chargé d'affaires of H.M. the King of Italy to the Swiss Confederation, Berne.
Japan:	Mr. **Kurokawa**, Counsellor of the Legation of Japan in Rome, Delegate *ad audiendum*.
Liberia:	Mr. **Guillaume Koentzer**, Imperial Counsellor, Consul General of the Republic of Liberia, member of the Chamber of Commerce of Vienna.
Spain:	H.E. Senator Don **Melchior Sangro y Rueda, Count of la Almina**, Envoy Extraordinary and Minister Plenipotentiary of Spain, Berne. Don **José Villa-Amil y Castro**, Head of the Intellectual Property Department of the Ministry of Public Education.
Switzerland:	Federal Councillor **Numa Droz**, Vice-President of the Federal Council, Head of the Department of Commerce and Agriculture. Federal Councillor **Louis Ruchonnet**, Head of the Department of Justice and Police. Mr. **A. d'Orelli**, Professor of Law at the University of Zurich.
Tunisia:	Mr. **Louis Renault**, Professor at the Law Faculty of Paris and at the Free School of Political Science.
United States of America:	Mr. **Boyd Winchester**, Resident Minister and Consul General of the United States of America, Berne.

Federal Councillor **Numa Droz** opened the meeting with the following address:

"Gentlemen,

"It was three years ago that there was held, in this hall, under the auspices of the International Literary and Artistic Association, a meeting of men of letters, artists and legal experts of various countries, the purpose of which was to study the basis

on which a universal convention for the protection of authors' rights could be founded. A draft was drawn up by common consent and submitted to the Swiss Federal Council, which agreed to take upon itself the mission of communicating it to the Governments of the other States, and which at the same time took the initiative of a Diplomatic Conference for the establishment of an International Union similar to those already existing in other spheres, notably in connection with the protection of industrial property.

"This initiative was generally well received. The following year, on September 8, 1884, I had the honour of welcoming here, in the name of the Federal Council, representatives of Austria-Hungary, Belgium, Costa Rica, France, Germany, Great Britain, Haiti, the Netherlands, El Salvador, Sweden and Norway and Switzerland. Other States that had declared their sympathy towards their projected work had been unable, owing to various circumstances, to send their delegates to Berne.

"The Federal Government had substituted for the rudimentary draft by the International Literary and Artistic Association a more complete programme, which was elaborated on further by the Conference. A draft Convention emerged from these strenuous deliberations; it, together with final minutes signed by all the delegates present, were transmitted by the Federal Council to the Governments of all civilized countries, with the request that they examine it and give final instructions to their delegates for a new Conference.

"On September 7, 1885, we had the pleasure of greeting the representatives of the following countries: Belgium, France, Germany, Great Britain, Italy, Haiti, Honduras, the Netherlands, Spain, Sweden and Norway, Switzerland, Tunisia and the United States of America.

"The work had made rapid progress in the minds of those concerned. In fact, the more the moment of concluding approached, the more the difficulty of general agreement grew. The most advanced countries in the field of the protection of literary and artistic works naturally wished for international codification that corresponded as closely as possible to their ideals. Others declared themselves unable to go so far at one stroke. Moreover, each country was attached to certain peculiarities of its domestic legislation and objected to sacrificing too great a portion of its autonomy. The work of the Conference had to be even more painstaking, more intense than the first time. Mutual concessions had to be made; and when, after a great number of meetings, agreement was eventually reached, we had the impression of having drawn up a Convention that deserved to be approved by all concerned as an example of genuine progress, which wisely took account of the possibilities of the time, granting authors real protection, and capable, without substantive reworking, of being improved as experience and future developments might dictate. It was unanimously recognized that the text eventually drawn up had to be final, and consequently not susceptible of amendment.

"Today, Gentlemen, you as Plenipotentiaries are called upon to convert this draft Convention into a diplomatic instrument with your signatures. Allow me to pay a well-deserved tribute to all those, both present and absent, who have collaborated effectively in the making of this important treaty, which is destined to stimulate the intellectual effort of mankind through the legitimate protection of his work.

"Yes, Gentlemen, the achievement of this satisfactory result made demands on the legal expertise, the practical skills, the spirit of conciliation and the conscientious, hard work of the delegates at the two Diplomatic Conferences that preceded this one. To be fair, I should name each one of them and indicate what part he played in the overall or detailed discussions. Yet I feel obliged to confine myself to addressing our thanks to them collectively, nevertheless asking your permission to give a special mention to the eminent services rendered in the course of this work by certain of our colleagues.

"We were pleased to have as our sole Vice-President for the previous Conferences His Excellency Mr. Emmanuel Arago, Ambassador of France, whom Counsellor Reichardt, the Delegate of Germany, had nominated for that post, 'as a tribute,' he said, 'not only to a distinguished person and supporter of our work but also to France, which has always been among the first to lend its powerful support whenever the protection of copyright has needed to be proclaimed, publicized or perfected.' Mr. Arago brought to the post a most gracious and conciliatory spirit: he strove to bring about the acceptance – and indeed fully succeeded in doing so – of such solutions as were most apt to win collective approval, and applied himself to restraining, both here and outside, that impatience that could have compromised the very success of the Convention, and this to the greater detriment of authors whose works we wish to see protected in the greatest possible number of countries.

"Very special credit is also due to the British Delegate, His Excellency Sir Francis Adams and his colleague Mr. Bergne, head of the Treaty Department of the Foreign Office. The accession of Great Britain was of paramount importance to the success of the Union, yet almost insurmountable obstacles attributable to the state of its domestic legislation seemed liable to dash all hopes of including that country among the immediate signatories of the Convention. However, last year, Sir Francis and Mr. Bergne gave us assurances that they would neglect no opportunity of bringing closer the moment of British accession. They have shewn that there was little space in their dictionary for the word 'impossible,' for today they have brought us not only the accession of Great Britain but also that of its colonies, representing a total population of more than 300 million souls. This magnificent result is due to hard work, to perseverance and to a sureness of eye for which today we address our most sincere congratulations to our two colleagues.

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"As constituted in its initial stages, Gentlemen, the International Union for the Protection of Literary and Artistic Works represents a substantial portion of mankind. It will govern authors' rights in a territory comprising approximately 500 million inhabitants. In Europe it encompasses the main countries that produce literary and artistic works, and soon, we sincerely hope, it will also register the accession of the United States of America, which occupies such a distinguished position in this connection: the declaration of support contained in a recent message from President Cleveland, and the presence in our midst of Minister Winchester give us confidence that this will soon come to pass.

"Of the States that have remained outside, we regret to see that they include all those of Slavonic language. And yet the literary and artistic movement is growing more and more in those countries and is attracting interested attention on the part of peoples of more ancient culture. We should like to think that the day is not far off when their Governments will recognize that the protection of authors' rights is one of the best means of developing letters and the arts, which are the source of all civilization and the way to all real greatness.

"We also regret not seeing the representatives of two countries that took part in the previous Conferences, namely Austria-Hungary and the Netherlands; however, the state of their legislation does not allow them to accede at the present time. They will no doubt lose no time in joining us.

"So far we have no news of Sweden and Norway, whose representatives played a prominent part in the previous Conferences.

"We imagined that it was merely a question of delay and that, if those countries were not to figure among the signatories of the Convention, they would be the first to accede to it. Our surmise was fully confirmed by a communication from the Ministry of Foreign Affairs of Stockholm, received this very morning, from which I quote the following passage:

" 'As it has not been possible to complete the necessary legislative work either in Sweden or in Norway in the 1885 parliamentary session, the Government of the King regrets that it is unable to take part in the new Conference, but it wishes to address to the Federal Council, and through it to the States represented at the Conference, its firm hope that it will be able, before the expiry of the period set for the exchange of ratifications, to accede to the provisions of the Convention and its attachments.'

"Finally, some States have declared that the Convention was a matter of no interest to them, that they had no national literature and that they wished to be able to profit freely by the intellectual products of others. For my part I think that those States are on the wrong track, and that they are misguided as to their real interests. By recognizing authors' rights, they would encourage national production and would cease to be simply the dependants of other peoples and to be subjected exclusively to intellectual influences from outside; soon ideas would be exchanged between them and us that would benefit both, as letters and the arts need to be incessantly renewed: modern man is becoming more and more accustomed to seek food for his mind as well as for his body in all parts of the world and in all climates, and who knows what treasures could be revealed by the literary and artistic genius of new peoples, if it were sufficiently stimulated and supported?

"Be that as it may, Gentlemen, we ourselves can trust in the future of our work. It is the solemn consecration of a principle of law and justice, and its effect is to tighten the bonds that should unite mankind, apart from which it will certainly contribute to the encouragement and multiplication of the noblest products of human ingenuity; in all these respects, therefore, it is a work of civilization that does honour to our time.

"Switzerland is proud, Gentlemen, to have presided over the development of this work and to have been considered worthy by you of proceeding more directly with its realization by becoming the headquarters of the international body that is to serve as the centre of the Union. I wish to address to you our heartfelt gratitude, and in the name of our people I am pleased to salute the new creation, the offspring of an ideal and the future mother of further progress, which is going to emerge from this Conference.

"I declare this Conference open, and request you as to be so kind as to constitute yourselves, first by appointing a President."

H.E. Mr. **Emmanuel Arago** replied in the following terms:

"We all expected that the distinguished speaker whom we have just heard, when expressing his kind memories of the hard-worked International Conferences of 1884 and 1885, would not fail to overlook almost completely the one who so wisely conducted their useful work. I feel therefore that we should remedy that oversight unanimously; and we could not do that better than by electing Federal Councillor NUMA DROZ once again President of our meeting by acclamation."

Mr. **Droz** accepted and thanked the Delegates.

H.E. Mr. **Otto von Bülow**, proposed that H.E. Mr. **Emmanuel Arago** should be appointed to the sole Vice-Presidency of the Conference, as he had been in previous years.

This proposal was adopted by acclamation.

H.E. Mr. **Emmanuel Arago** accepted and addressed his thanks to the Assembly.

Sir **F.O. Adams** addressed the Conference in the following terms:

"I first wish to thank you most sincerely, on behalf of the British Delegation, for the excessively complimentary words that you were kind enough to say about us. All that we can say for certain is that we have done our best to achieve the object of our wishes, which is indeed now on the point of attaining fruition.

"In the second declaration that I made to the 1885 Conference, I thanked my distinguished colleagues for the genuine spirit of conciliation that they had shewn when they gave their consent to amendments proposed by the British Delegation with a view to facilitating our task in our dealings with Her Majesty's Government. The report drawn up by Mr. Bergne and myself, which was published in the British Blue Book, records that we emphatically recommended to our Government that it should make the necessary amendments to the country's legislation to enable Great Britain to become one of the original signatories of the International Convention. The Conferences that took place at the Foreign Office in London during the first months of this year, under the chairmanship of Mr. BRYCE, then Under-Secretary of State, resulted in strenuous discussions, but they did eventually finish satisfactorily, and the draft legislation that resulted has been adopted by the two Houses of Parliament without serious opposition. The Queen has graciously given her assent. As for the British colonies, they wasted no time in giving their support to the draft legislation, one after the other.

"So at the present time, Gentlemen, the task of all of us is about to be completed; our last act will be the signature of this International Convention, under which we will be setting up a new Union which, we hope and trust, will take on ever broader proportions from year to year, until such time as it gathers together all the civilized nations of the world, and thereby becomes not just an *international* but a *universal* Union.

"That, Gentlemen, is I think our collective wish, pleased as we are to be the founders of a real work for peace.

"This work for peace is going to tighten the bonds between nations. There will be one more Union with its headquarters in Berne, in Switzerland whose position of neutrality has gradually turned it, with the sincere consent of other peoples, into the '*home* of international unions.'"

The **President** presented the Secretaries in the persons of Mr. CHARLES SOLDAN, Judge at the Cantonal Tribunal of Vaud in Lausanne, and Mr. BERNARD FREY, Secretary of the International Bureau of Industrial Property in Berne.

On a proposal by the **President**, the presentation of credentials was postponed to a later meeting.

The assembly proceeded to the discussion of the addition proposed by the Swiss Federal Council to the first paragraph of Article 7 of the draft Convention, shown in italics in the text below:

"Articles from newspapers or periodical journals published in one of the countries of the Union may be reproduced, in the original or in translation, *in the other countries of the Union*, except where the authors or publishers thereof have expressly prohibited it. For journals, it may be sufficient for the prohibition to be stated in a general way at the head of each issue of the journal."

The **President** pointed out that the above words, which were in the draft adopted in 1884, had been omitted in the text adopted the previous year, but that their absence could present drawbacks.

H.E. Mr. **Otto von Bülow** was of the opinion that the addition was not absolutely necessary to clarify the scope of Article 7, and recalled that it had been agreed the previous year that nothing would be changed in the 1885 draft. He added that he had instructions to vote against the proposed edition.

Sir **Francis Adams** declared that he could accept the amendment.

Mr. **Renault** and Mr. **di Beccaria** made the same declaration with regard to themselves.

The **President** put the proposed addition to the vote, which was adopted by all except Germany.

The Conference embarked on the Declaration proposed by France, which was worded as follows:

"In view of the fact that some doubts have arisen regarding the meaning of Articles 5, 7, 9 and 10 of the Convention concluded this day, the undersigned Plenipotentiaries have recognized that they required clarification, and to that end have, by common consent, adopted the following declaration:

'(1) The second paragraph of Article 5 is applicable to serialized novels.

'(2) As serialized novels take the form less of a newspaper article than of a literary work published in a special manner, it is understood that, with regard to their reproduction, either in the original or in translation, they are governed not by Article 7 but by Articles 2, 5, 10 and 11 of the Convention concluded this day.

'(3) The right of publication of dramatic and dramatico-musical works, either in the original or in translation, and the right of performance of such works, either in the original or in translation, are entirely distinct one from the other; consequently, the publication of such a work does not authorize any person to perform without the consent of its author, any more than performance authorizes publication.

THIRD CONFERENCE IN BERNE, 1886 — MINUTES

'(4) Unauthorized indirect appropriations, which Article 10 declares to be unlawful reproductions, include especially dramatization, that is, the transformation of a novel into a play, or vice versa.'"

Mr. **di Beccaria** said that Italy considered the first three items of the Declaration to be purely explanatory, and therefore unnecessary; as for the fourth item, however, it regarded it as entailing an amendment of the Convention, and therefore did not feel able to accede to it, lest a result already achieved should have to be rediscussed.

H.E. Mr. **Emmanuel Arago**, faced with the opposition of the Delegate of Italy, and with a view to securing unanimous signature, announced that he withdrew the draft Declaration.

Mr. **Renault** made the following statement:

"The French Government regarded its draft Declaration as not making even the slightest amendment to the Convention, but as doing no more than formulate expressly solutions that were already written into it. Its purpose was to enlighten the numerous persons concerned (men of letters, newspaper or magazine editors, etc.) who would have to comply with or invoke the treaty. We consider that only a few words would be sufficient to show that the proposed solutions derive from the Convention and from the deliberations that prepared for it; we are pleased to note that the Federal Council, which is well placed in every respect to know the text and the spirit of the provisions drawn up last year, recommended the adoption of our draft Declaration when it communicated it to the contracting Governments. Faced as we are by the doubts and misgivings expressed by the representatives of a number of countries, we should reopen the discussion; yet we do not want to. We shall abide by the undertaking made last year to consider the discussions closed; moreover, we wish to bring about as soon as possible the final conclusion of the treaty that is going to set up the International Union for the Protection of Literary and Artistic Works. While fully defending the position taken up by the French Government when it proposed its draft, we therefore feel obliged to withdraw it in order to avoid delaying the signature of the Convention."

Mr. **Bergne** made the following statements:

"In the light of the observations made by Mr. Renault, it seems appropriate to me to explain the position of Great Britain regarding the Declaration proposed by France.

"It was not possible during the last session of Parliament to present a Bill for the complete codification of our legislation on literary and artistic property. We had to confine ourselves to effecting the adoption of a law introducing amendments such as would enable Great Britain to join the International Union.

"Under our present legislation, it is possible to perform on stage a novel dramatized without the consent of the author; one cannot, however, publish the dramatization as a book.

"We are prepared to recommend to our Government that, should draft legislation for the codification of the present law be later presented to the British Parliament, it include a clause prohibiting the performance as well as the publication of an unauthorized dramatization of a novel; clearly however, given the present state of our domestic legislation, we cannot today sign a Declaration to that effect.

"As for the principles set out in the first three paragraphs, our Government has no objection to them: it considers them to be purely explanatory."

H.E. Mr. **Otto von Bülow** declared for his part that his Government considered the draft Declaration to be not fully in conformity with the 1885 Convention, and that he would have had to vote against the French proposal if it had been maintained.

In view of the withdrawal of the proposed Declaration, it was not voted upon.

The **President** mentioned that the blank left in item 6 of the draft Final Protocol had to be filled, and opened discussions on the setting of the date and place of the next Conference, and also on the following proposal made by the British Delegation:

"The next meeting of the Conference shall take place within ten years following the signature of the Convention, unless all of the signatory Powers jointly request that such meeting take place at an earlier date."

Sir **Francis Adams** explained the proposal in the following terms:

"The British Delegation has been entrusted by its Government with making the proposal before you on the subject of the date on which it would be appropriate to convene the next Conference.

"The reasons are as follows:

"Our Government considers that revisions of the Convention that might call for amendment of the domestic law of Contracting States should not take place too frequently.

"If the state of things introduced by the present Convention is not allowed to prevail for quite a considerable period, it will never be possible to ascertain precisely what changes should be incorporated in it. Every addition or amendment to the Convention would require corresponding changes in the law of certain Contracting States if the Union were to continue to be a harmonization of principles. Quite considerable difficulties could result.

"In Great Britain, for instance, we have succeeded, not without considerable difficulty, in effecting the adoption of a law based on the actual text of the Convention, and it will be impossible to go back on the provisions of that law before a quite considerable time has passed.

"In our opinion it would be very beneficial to allow the Convention to subsist as it is now for a period of ten years following signature, in order that the laws of each State may be assured of sufficient stability in relation to it.

"If, however, in the intervening period, four signatory powers should jointly request the convening of the Conference at an earlier date, our Government would be willing to accede to their opinion."

H.E. Mr. **Otto von Bülow** declared his acceptance of the above proposal, subject to the following addition:

"However, no such request may be formulated until four years have elapsed following signature of the Convention."

On behalf of the British Delegation, Sir **Francis Adams** endorsed the above proposal.

Mr. **Renault** objected to the setting of such a remote time limit. While understanding the proposal made by Great Britain, which had just amended its domestic legislation, he considered that that country was sufficiently protected against the eventuality of a revision of the Convention that might run counter to its wishes by the third paragraph of Article 17, according to which no change to the Convention would be valid for the Union as a whole unless it won the unanimous consent of the countries constituting it. He considered that there was no ground for departing from what had been done in that connection by other international unions. The setting of the next Conference at an early date had the twofold advantage of encouraging signatory countries to implement the Convention, and of inducing other States to take advantage of the convening of the Conference to effect their accession to the Union. Those arguments were all the more applicable to the German proposal, which would block the convening of a new Conference, even if the contracting countries were virtually unanimous in considering it necessary. Consequently, Mr. Renault proposed rejecting the British proposal, and setting the date of the next meeting at the present time.

Mr. **Ruchonnet** also considered that a date should be set, but that it should not be an early one in order to avoid the convening of the Conference before a sufficient amount of experience had provided it with subject matter for its work. He proposed setting the date of the next Conference in 1892.

H.E. Mr. **Emmanuel Arago** and Mr. **Renault**, while agreeing to the above date, asked that a majority of the countries of the Union be allowed to decide on the convening of the Conference at an earlier date.

The **President** pointed out that it was preferable to take as the starting point the date of entry into force of the Convention rather than the date of signature, as did the British and German proposals. In order to satisfy all the various opinions expressed, he proposed saying that the next Conference would take place within a period of four to six years from the entry into force of the Convention, and that its date would be set, within those limits, by the Government of the country in which it was to take place on the prior advice of the International Bureau.

The Conference unanimously adopted the above proposal, then decided, also unanimously, on a proposal by Sir **Francis Adams**, that the next meeting would take place in Paris.

Consequently, item 6 of the Final Protocol was worded as follows:

"The next Conference shall be held at Paris between four and six years from the date of the coming into force of the Convention.

"The French Government will fix the date within these limits after having consulted the International Bureau."

H.E. Mr. **Maurice Delfosse** regarded it as fully understood that the amendments that the Conference might later make to the Convention, if they were to be binding on all the countries of the Union, would have to be written into Conventions concluded in the same diplomatic form as that which was about to be signed, and subjected to the same ratification procedure as it.

The Conference declared its agreement with this view.

On a proposal by the **President** it was agreed that a Record of Signature would be drawn up, that it would be signed and printed separately from the text of the Convention, and that it would contain the declarations regarding the accession of colonies and the classification of the Contracting States according to their contributions to the expenses of the International Bureau. Moreover, in order to avoid unnecessary work the Conference decided that the seals of the Plenipotentaries would be affixed only at the foot of the Convention, and not on the attachments.

The Conference then verified the enumeration and designation of the contracting parties.

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Mr. **Winchester** took this opportunity to make the following statement:

"Mr. President, Delegates,

"In a circular from the Swiss Federal Council the Government of the United States of America was invited, as were the other Powers represented at the literary conference that took place in this city in September 1885, to confer on a delegate the necessary instructions and powers for attendance of this Conference and for the signature, on behalf of his country, of the International Convention for the Protection of Literary and Artistic Works, the text of which had been drawn up *ad referendum* by the Conference of the previous year.

"Once again, the Government of the Unites States of America does not feel bound to be represented by a delegate with full powers: it feels obliged to abstain from participation as a signatory in the International Convention resulting from the 1885 deliberations, and from contributing thereby, as far as it is itself concerned, in the transformation of this draft Convention into a diplomatic instrument. However, as a testimony of its sympathy for the principle of the international protection of literary and artistic works, the Government of the United States of America wishes, with the agreement of the Conference, to be represented within it, and it has done me the honour of delegating me for the purpose. My presence will nevertheless be subject to the recognition and acceptance of my position of Delegate without full powers, and also of the right for the United States of America, which will not at the present time become a contracting party to the projected Convention, to accede to it later by virtue of the provisions of Article 18, according to which 'countries that have not become party to the present Convention and provide in their domestic laws for the protection of the rights to which this Convention refers shall be allowed to accede thereto at their request.' Even though it is prevented from taking part in the Convention as a signatory, my Government wishes that it should by no means be considered, for that reason, to be opposed to the measure concerned; on the contrary, it is intent on keeping intact its right to accede to the Convention later, if it should appear expedient to do so. And, should the question arise whether the participation of the United States of America in the Conference, within the restricted limits that I have just mentioned, was sufficient to exclude that country from those 'that have not become party' to the Convention, and thereby to deprive it of the right to accede to the Convention later, it may be helpful to underline the fact that my Government does not intend to have any part in the outcome of the Conference, in the sense of either acceptance or rejection of the proposed text. The attitude of the United States of America is one of cautious expectation. The Constitution of our country mentions, among the prerogatives expressly reserved to the Congress, the 'power to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries,' which means that the initiative for action to be taken and the setting of limits to be respected in that regard are dependent on the legislative authority rather than the Executive. Authors' rights and patents are placed on the same footing by Federal legislation, and the Executive cannot lose sight of the fact that questions concerning literary property are always pending before the legislative authority, or misconstrue the constitutional right belonging to the latter to conclude international treaties on this important subject. The question of the international protection of authors' rights is of great importance to the United States of America: how many nations could accord more interest to it than this conglomeration of 60 million people, distinguished as it is by an active and enlightened intellectual movement? Therefore, without wishing to encroach upon the constitutional prerogative of Congress, which consists in drawing up legislation on authors' rights and laying down the rights of both foreigners and nationals, who are also under its jurisdiction, the Executive expresses its emphatic and full agreement with the principles written into the projected Convention. It also hopes that the time is no longer far off when the property rights in creations of the mind may be ensured everywhere, in such a way as to give equal satisfaction to the requirements of the author and to the right of every man to profit by the dissemination of ideas. The man who applies his brain to creation is entitled to lawful and full remuneration, that being a principle founded on a quite natural sentiment of equity. Up to a point, literary property has been recognized at all times and is today guaranteed by the domestic legislation of almost all States. That right has to be recognized and guaranteed without any distinction as to nationality and regardless of political frontiers. Thanks to the persistent efforts of the Government of the Swiss Confederation, which has so effectivcly taken the initiative in this movement, and thanks also to the patient and intelligent work of the Conferences that it has convened in this city, the protection of works of literature and art, which has been delayed without reason for so long, is henceforth assured by virtue of a uniform, effective and complete international Convention. That is a result for which we congratulate the Federal Government, and which does it the greatest honour."

The **President** thanked Mr. Winchester for his statement and assured him, in the name of the Conference, that the accession of the United States of America would be received with the greatest pleasure by all the Contracting States. With regard to the scope of Article 18 of the Convention, to which Mr. Winchester had referred, it did indeed provide for accession on the part of only those States that were not party to the Convention; that, however, could not be allowed to prevent the United States of America from later entering the Union, as, by delegating Mr. Winchester with the limited powers that he had just mentioned, it had taken part in the *Conference*, and not in the *Convention*.

Mr. **Koentzer**, for his part, said that he was authorized to sign the Convention, but that, having no instructions as to the class in which the Republic of Liberia wished to be placed, he would make a reservation to that effect in the Record of Signature.

The meeting rose at 1 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

THIRD CONFERENCE IN BERNE, 1886 — MINUTES

MINUTES

OF THE

SECOND MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

SEPTEMBER 7, 1886

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 5.15 p.m.

The delegates who had attended the previous meeting were present.

The Conference proceeded to collate the proofs of the Convention and its attachments, which were found to be in conformity with what had been adopted.

According to what had been agreed the previous day, the **President** invited the delegates to make the statements that were to be set down in the Record of Signature.

With regard to the accession to the Convention of colonies or foreign possessions of contracting countries, the **Count of la Almina** reserved to his Government the right to make its decision known at the time of the exchange of ratifications.

H.E. Mr. **Emmanuel Arago** announced that the accession of France constituted accession by all its colonies.

For his part, **Sir Francis Adams** declared that the accession of Great Britain to the Convention included the United Kingdom of Great Britain and Ireland and all the colonies and foreign possessions of Her Britannic Majesty. However, the British Government reserved the right to notify the denunciation thereof at any time, separately and for either one or more of the following colonies or possessions, in the manner provided for in Article 20 of the Convention: India, The Dominion of Canada, Newfoundland, Cape Colony, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia and New Zealand.

With regard to the classification of the countries of the Union for the purposes of their contributions to the expenses of the International Bureau, the Delegates declared that their countries were to be placed in the following classes:

Class 1: France, Germany, Great Britain, Italy;
Class 1: Spain;
Class 3: Belgium, Switzerland;
Class 5: Haiti;
Class 6: Tunisia.

Mr. **Koentzer** declared that the powers that he had received from the Government of Liberia authorized him to sign the Convention, but that he had received no instructions regarding the class in which that country intended to be placed for the purposes of its contributions to the expenses of the International Bureau. Consequently he reserved his Government's decision on that question, which it would make known at the time of its ratification.

The text of the Record of Signature reflecting the above statements was immediately adopted.

The Plenipotentiaries then presented their full powers to the secretariat, which were found to be in due form.

The meeting rose at 6.30 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

MINUTES

OF THE

THIRD MEETING

OF THE

CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

SEPTEMBER 9, 1886

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 11.30 a.m.

All the members of the Conference were present.

At the invitation of the **President**, the delegates proceeded to sign the Convention and its attachments, and also the Record of Signature, the text of those documents having been read and approved by the assembly at the previous meeting.

The Delegates of Spain had just received from their Government authorization to accede to the Convention and to its attachments on behalf of all the territories dependent on the Spanish Crown, so the Conference noted this declaration and asked the Spanish Delegates to request their Government to renew it at the time of the exchange of ratifications.

The minutes of the first and second meetings, which had been distributed to the delegates in draft form, were then read and adopted, as were these minutes.

The **President** addressed a few words of farewell to the delegates, after which the meeting rose at 12.30 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

INTERNATIONAL UNION
FOR THE PROTECTION
OF LITERARY
AND ARTISTIC WORKS

RECORDS OF THE CONFERENCE

CONVENED IN

PARIS

APRIL 15 TO MAY 4, 1896

REPORT

PRESENTED ON BEHALF OF THE COMMITTEE BY THE FRENCH DELEGATION

At the beginning of this report which the Committee was kind enough to entrust to it, the French Delegation thinks it ought to point out that the proposals made by the French authorities and the International Bureau did not shake any of the basic foundations of the Berne Convention. Ten years' experience had revealed a few imperfections, some doubts had arisen on certain points, compromises deemed necessary in 1886, at the beginning of the Union, might seem pointless after an already sufficiently long period of communal life. It was simply a question therefore of dispelling the doubts, of clarifying certain provisions, of making some progress by continuing the forward march in order to achieve the so-ardently desired aim of a really complete and effective protection of authors' copyright in their literary and artistic works. To the proposals made by the French authorities and the International Bureau were joined those which the various delegations presented to the Conference and which, with perhaps one exception, sought to amend the French authorities' proposals; they did not go beyond the range of questions raised when the Conference was actually convened and to which each of the Union countries had been able to direct its attention. The Committee thus considered these various proposals and it is on the outcome of its deliberations that we are reporting here, our aim being to present briefly, but as clearly as possible, the reasons for the solutions adopted.

The Committee was even more reserved than the French authorities had been; it spared no effort in order to achieve a desirable unanimity; the majority agreed to defer certain solutions to which it was particularly attached. The Committee made some slight modifications to a small number of articles; it thinks it has removed certain obscurities; it made an improvement of some importance in relation to the right of translation. It is not a question of a revolution therefore but a modest evolution. The discussion to which the 1886 Convention was subjected has proved, we believe, that, on the whole, it was good; all the Union States are satisfied with the association they formed and most of them only ask to strengthen the ties which bind them. Is not this observation a highly appreciable result of our Conference meeting and are we not entitled to hope that it will have some influence on the decisions of those States which have remained outside our Union but whose delegates were good enough to attend our working sessions?

We shall now examine in turn the various proposals submitted to the Conference by relating them to the provisions they aim to amend or complete.

Article 2 of the Convention

Various proposals had been made by the French authorities as well as by the German, Belgian and Swiss Delegations to amend the second paragraph of this Article. They sought to remove a difficulty raised before some courts concerning the import of the provision contained in this second paragraph with regard to the conditions and formalities to be accomplished in order to enjoy protection. Furthermore, the Swiss Delegation proposed amending the terms of the rule concerning the term of protection. The vast majority of the Committee would have readily amended the paragraph in question along the lines of these various proposals. This idea was abandoned on the British Delegation's declaration that it could not agree to these amendments and that it was obliged to keep to Article 2 as it was worded. The Committee thus proposes letting Article 2 remain as it is in its entirety except for two changes on which no difficulty arose.

In the first paragraph it will be mentioned expressly that works must have been *first* published in a country of the Union. The underlining was perhaps not really necessary; the requirement of *first publication* in the Union followed inevitably from the spirit and even the text of the Article, but after all an addition which helps to emphasize the rule cannot be a bad thing.

A fifth paragraph will be added to the Article to indicate that *posthumous works* are included among the works protected by the Convention. No objection was raised to accepting this proposal, which had been made by the French authorities and the Italian Delegation, as it appeared to be fully within the spirit of the Berne Convention. There is no reason why the principles of this Convention should not apply to posthumous works nor why those works should simply be left to be governed by national laws and specific treaties. As doubts have arisen, it is better to be absolutely clear.

While the Committee did decide not to amend the text of Article 2, paragraph 2, itself, it has not abandoned the ideas which inspired the various proposals mentioned above and which it will now discuss.

A few words first of all about the sentence proposed by the Swiss Delegation concerning the duration of rights.

Under the present text, the enjoyment of copyright *must not exceed*, in the other countries, the term of protection granted in the country of origin. This rule, in conjunction with the principle of national treatment, leads to the consequence that, in the relations between two countries whose legislation lays down different terms of protection, it is the shorter term which is applied, for example the term of 30 years from the author's death as regards the relations between France and Germany or Switzerland. However, although there would be no question of claiming more than 30 years' protection for a French work in Germany or Switzerland, nothing prevents France, if it wishes to, from granting protection to a German or Swiss work for 50 years pursuant to its own law, without taking account of the shorter term fixed by the law of the country of origin. The Convention gives the Union States the *option* of not granting complete national treatment on this matter of duration; it does not and could not *compel* them to act in this way. They are always free to go further and to let works published in the territory of the Union enjoy a longer term of protection than that which is provided for in the law of their countries of origin. The Swiss proposal sought to formulate this idea expressly. No objection was raised within the Committee, which thought that it sufficed to explain this in the report without it being necessary to touch the text of the Convention.

The other proposals concerning the second paragraph were of greater importance in that they related to a question which has, in fact, arisen in practice. Under the text of the Convention, the enjoyment of copyright *shall be subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work*. The meaning of this provision does not seem to be seriously debatable. As a result of it the author needs only to have complied with the legislation of the country of origin, to have completed in that country the conditions and formalities which may be required there. He does not have to complete formalities in the other countries where he wishes to claim protection. This interpretation, which is in keeping with the text, was certainly in the minds of the authors of the 1886 Convention, and they had considered the removal of the need for multiple formalities to be one of the most invaluable advantages of the joint achievement. Nevertheless, several courts in one of the Union countries thought it possible to accept that works published in the other Union countries were subject in that country *to the same formalities as national works*, the Convention having only exempted them from the formalities which could be imposed on *foreign works*. The Committee could not accept such an interpretation which, moreover, from the explanations which the British Delegation was kind enough to give us, would seem to have been abandoned by the most recent case law. Without wishing to amend the text of Article 2 itself for the reasons indicated earlier, it asks the Conference that the meaning it attributes to this text be recorded in a separate Declaration which would not have the slightest character of a new provision but simply that of an authentic interpretation of the Convention. It will be clearly understood between the countries which sign this Declaration that, under the second paragraph of Article 2, the protection afforded by the Convention depends solely on the accomplishment, in the country of origin of the work, of the conditions and formalities which may be prescribed by that country's legislation.

Article 2 refers to *works published* in one of the countries of the Union without indicating what is meant by this. When may it be said that there is *publication* in a country of the Union and that, consequently, the condition to which protection is subject has been accomplished? The question was not raised directly about Article 2 but in connection with Article 3. However, as Article 2 is the first Article in the Convention in which *publication* is mentioned, it may be useful if the explanations concerning publication are to it.[1]

No one questioned the usefulness of precisely determining what constitutes *publication* within the meaning of the Convention, but certain delegates thought that it would be better to let the various legislations solve the question, the more so as the question was in itself a very difficult one and an agreement would be hard to reach. Nevertheless, the majority of the Committee was of the opinion that there was here an essentially *international* question to be resolved. Publication does not only produce effects in the country where it takes place but also in the other countries of the Union. A Union author has a dramatic work performed in Paris, then has it issued in Switzerland. Which is the country of origin of the work? Is it France, where the work was first performed, or Switzerland where it was issued? The answer to this question is of interest to the various countries of the Union since the legislation of the country of origin influences the term of protection. The majority of the Committee thus thought that there was every reason to seek the interpretation which should be given to the Convention with regard to publication and to record the solutions adopted in a separate Declaration.

The question does not present itself in the same terms for literary works, where the author only derives benefit from the work being printed, for dramatic, musical or dramatico-musical works, where there is a public performance right distinct from the reproduction right, and, lastly, for artistic works.

[1] See below, on p. 189 and p. 191, the Memoranda presented by the German and French Delegations in this regard.

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As far as literary works are concerned, what constitutes *publication* for them, in a given country, is the fact of having been *issued* there, of having been directly brought out or put on sale there by someone who assumes the costs and responsibility of publication. The fact of being printed in that country will accompany it in most cases, but not necessarily so. In fact, the author negotiates with a publisher for the conditions of publication of his work without being concerned about who will print it and where it will be printed. this is a detail which is a matter for the publisher and which could not exert an influence on the application of Article 2. The country in which a work is thus brought out derives from this fact itself sufficient material and moral advantages for protection to be guaranteed in its territory and in the territory of the States with which it is in association.

For dramatic, musical or dramatico-musical works no question arises if, before being made accessible to the public, they have been *issued* for the first time in a country of the Union. The result of combining Articles 2 and 9 is that, by the very fact of this edition, the two copyrights—for the reproduction and also for the public performance—are fully protected. However, it is possible to imagine public performance taking place without the work which is thus performed having been issued. If this has occurred in the territory of the Union, the author who is a national of that territory is protected there whatever character is attributed to the performance, since protection is afforded to *published* or *unpublished* works. In addition, assuming that the first *edition* of the musical, dramatic or dramatico-musical work is also made in the territory of the Union, no difficulty will arise as to the application of the Convention, as it is quite certain that it will be possible to claim the benefit of the Convention; there will still be some interest in knowing in which of the countries of the Union first publication of the work will be considered to have taken place, because of the influence of the legislation of the country of origin on the term of protection (paragraphs 2 and 3 of Article 2 combined).

However, the circumstances will not always be the same. A national has his work first played or performed in a country outside the Union and then has it issued in a Union country. Or, alternatively, after having it played in a Union country first, it is in a country outside the Union that he has it issued. To know what will be his situation in these two hypothetical cases, it is absolutely essential to take a stand as to whether or not public performance constitutes *publication* within the meaning of Article 2; this is what a special Memorandum from the German Delegation has very clearly shown.

The majority of the Committee considers that, in the case of a dramatic, musical or dramatico-musical work, public performance should no more constitute publication within the meaning of the Berne Convention than for a literary work —a piece of poetry, for example—it merely being read in public. This seems to follow, almost inevitably, from the combination of Articles 2 and 9 of the Convention and especially from the third paragraph of Article 9. What is more, the fact of public performance may or may not be difficult to ascertain whereas the fact of edition is apparent. The majority of the Committee thinks therefore that a Union author who has his play first *issued* in a country of the Union could not be blamed for having had it performed previously in a country outside the Union. On the other hand, a Union author would not be conforming to the Convention if, after having his work first performed in the territory of the Union, he had it first issued outside this territory.

The conclusion is thus that, for literary, dramatic, musical or dramatico-musical works without distinction, publication results only from *edition*.

The British Delegation wished to point out that, under English law, the first performance of a dramatic or dramatico-musical work is publication. That is why it could not associate itself with the majority's decisions.

With artistic works (paintings, statues, etc.), the question may also be posed as to what constitutes publication. A French painter or sculptor exhibits his painting or his statue at the annual Salon; will his work be considered *published* as a result? It is quite certain that unauthorized imitations will be suppressed in the territory of the Union whatever response is given to this question since protection is afforded to *published* or *unpublished* works; the situation is the same as for musical or dramatic works performed and not printed. But this French painter subsequently sends his painting to a country outside the Union; there it is printed or reproduced by another method. Could the Convention's protection be claimed for these prints, lithographs, etc.? Yes, if exhibition at the painting Salon really does constitute *publication*, since then the condition required by the Berne Convention has been satisfied, first publication having taken place in Paris, i.e. in a country of the Union. No, if there is no real publication other than by reproduction of the work, since then this first publication has been effected outside the Union. The question would present itself in similar terms for the opposite case, that is the case where a French painter, after exhibiting his painting outside the Union, then has it printed or photographed in France. The majority of the Committee thought that the solution adopted for public performance—which derives from the text of the Convention—would lead to the solution for the exhibition of a work of art. This exhibition could not constitute publication of a dramatic work.

Needless to say this interpretation of the words *publication* or *works published*, which the majority proposes recording in a separate Declaration, applies not only to Article 2 but to all the Articles of the Convention in which these words are used. It would therefore be understood between the countries which signed this Declaration that *works published* are *works issued* in one of the countries of the Union and that,

consequently, the representation of a dramatic or dramatico-musical work, the performance of a musical work and the exhibition of a work of art do not constitute *publication* within the meaning of the Convention.

Article 3 of the Convention

Under this Article, the Convention's provisions apply to the publishers of literary or artistic works which are published in one of the countries of the Union when the author belongs to a country which is not a party to it. Thus, for these works, protection is granted not to the author but to his publisher who publishes the work in a Union country. The French authorities were only proposing to add a paragraph to the Article whereby the Convention's provisions would have applied under the same conditions to organizers of performances of musical, dramatic or dramatico-musical works. Other delegations wanted the present Article 3 to be replaced by a new wording. The German Delegation, departing from the viewpoint accepted by Germany in its 1883 Convention with France as well as in the 1884 and 1885 Conferences, proposed granting protection directly to authors who were not nationals of one of the countries of the Union but who had their literary or artistic works issued by a publisher domiciled in one of those countries. It was apparent from this formula, as well as from the explanations contained in a special Memorandum,[1] that the German Delegation did not mean to consider publication the fact of a dramatic or musical work being publicly performed. On the other hand the Belgian and Swiss Delegations, in proposals differing only in nuances in wording, granted protection to authors of literary works first published or performed in one of the countries of the Union even though those authors were not nationals of Union countries.

Agreement was reached quite easily, and the Committee proposes to the Conference that Article 3 as it stands be replaced by an entirely new provision worded as follows:

"Authors who are not nationals of one of the countries of the Union, who first publish, or cause to be first published, their literary or artistic works in one of those countries, shall enjoy, in respect of such works, the protection granted by the Berne Convention, and by this Additional Act."

It will be noted that it is no longer a question of *publishers* but of *authors*; it is directly on the latter that the right is conferred. No one supported the system of Article 3 in its present form; the German Delegation's Memorandum brilliantly outlined the legal difficulties which are encountered in the design of a right specific to the publisher. It was not even accepted that an author who was not a Union national should be obliged to have recourse to a publisher domiciled in one of the countries of the Union; he is at liberty to publish his work himself and thus to be his own publisher. But then a question naturally arises. How does the Convention, which would appear only to have to determine the situation of nationals of the Contracting States, come to deal with individuals outside the Union?

This is quite easily understandable under the system of Article 3 as it stands, whereby protection is granted, not to the author outside the Union, but to the publisher who is assumed to be established on a permanent basis in the territory of the Union. The Convention thus provides for someone who has ties with the Union, in most cases through the dual link of nationality and domicile; at the very least, in all cases, through the link of domicile. But if this point of view is abandoned the question may be posed as to whether there really are grounds for dealing with non-nationals and whether each State should not be left to determine its situation as it thinks fit.

However, the Union has an interest in encouraging the publication, in its territory, of works of authors who are nationals of non-Contracting States, and in order to do so there must be guaranteed protection not only in the country where publication has actually taken place but also in the other contracting countries. It is agreed therefore that, provided certain conditions to be determined are satisfied —and on which explanations will be given—the non-national author will be protected both in the country where these conditions have been met and in the other countries of the Union. If we are stressing this point it is because, in this way, the normal sphere of the Convention right is being enlarged somewhat. Indeed, if we take the case of a Russian author publishing his work in Berlin, the question of whether or not he will be protected in Germany appears to be outside the scope of the Berne Convention since Russia is not party to it. But if it is accepted that this publication in Germany affords the author protection in the other countries of the Union, how can it not be accepted that he will also be protected in Germany where first publication has taken place? Protection extends quite naturally from the country of origin to the other countries with which it is in association, but an absence of protection in the country of origin would be difficult to reconcile with the existence of protection in the other countries. It has to be agreed therefore that the protection granted will apply throughout the territory of the Union without restriction.

Having said this, what should be the position of non-national authors? Reasons of justice and reasons of usefulness seem to demand that their position should not be identical to that of nationals, that there should be quite notable differences so that

[1] See this Memorandum on p. 195 below.

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countries outside the Union are induced to join it not only from a desire to pay tribute to the right but in the very interest of their nationals.

There will first be the difference that protection will not be granted to non-nationals for their unpublished works. Consequently, pursuant to what has been said earlier on the meaning which, in the view of the majority of the Committee, should be attached to the word *publication*, a dramatist, a composer, a painter, a sculptor from a country outside the Union will not be protected by the Convention in respect of any work of his which is performed or exhibited—even for the first time —in a Union country.[1] To be entitled to protection *first publication* of their works must have taken place there. To reinforce the difference in situation one could imagine them being treated more strictly than a national as regards this publication. If, for a national, publication follows from *issue* in a Union country without the place where the work is actually printed being a matter of concern, for the non-national protection could have been made subject to the condition that the work had not only been issued in a country of the Union but had also been printed, engraved or reproduced there as the case may be. What complaint could have been made about such a condition? It would only rest on the will of the non-Union States to remove the difficulties which their writers, composers or artists might suffer. The doors of the Union are wide open to them. A provision of the kind which has just been indicated as possible ought not to be confused therefore with the provisions of legislation which subordinate protection to manufacture in the country while not offering to remove this requirement for States willing to subscribe to them. Nevertheless, on reflection, the Committee decided not to enter into ideas of this kind. It proposes protecting authors who are not Union nationals simply on the basis that they have published their works or have had them published in a Union country, publication to be understood here as for the application of Article 2. For those countries which sign the Interpretative Declaration to which reference was made earlier, the definition of *publication* which is found there applies to all the articles of the Convention in which this word is used.

By the fact of first publication in a country of the Union, non-national authors shall enjoy *the protection granted by the Convention* in respect of their works thus published. It follows from this that they not only have the right to prevent their translation under Article 5 and their public performance under Article 9. The observation could be made that the only difference which exists then between nationals and non-nationals is in respect of unpublished works and that the Union is thus generous indeed towards the nationals of countries which are not party to it. This is true, but the Committee thought that such generosity was more worthy of the high principles which govern the Convention and might in the end have a similar effect to that of the measure by which France, almost half a century ago, granted unconditional protection to works published outside its territory.

Article 4 of the Convention

The Committee's view is to make no amendment to the text of this Article. However, some words of explanation should be given about the amendments which were proposed.

The French authorities, supported by the Belgian Delegation, proposed adding *works of architecture* and *photographs* to the list of works protected by the Convention; for its part, the Italian Delegation asked for *choreographic works* to be added. In the latter regard, the question presented itself in the same terms as at the 1885 Conference. The Italian proposal came up against an objection on a matter of principle from the German Delegation; in its view, there was as yet no satisfactory definition of choreographic works in science, legislation or case law; furthermore, there is no agreement on the limits of the protection to be afforded to these works. Under those conditions the Committee could only maintain the *status quo* by not inserting choreographic works in the list set out in Article 4 and by letting No. 2 of the Final Protocol subsist.

The French and Belgian proposal on *works of architecture* also met with an objection as to principle raised by several delegations, notably those of Germany and Great Britain, whose laws do not protect works of architecture as such, but only the plans or drawings relating to architecture. As it proved impossible to come to an understanding in this regard, the idea of amending Article 4 had to be abandoned. However, the Committee proposes inserting in the Final Protocol a provision under which, in those countries where protection is granted to works of architecture themselves, such works shall be admitted to the benefits of the provisions of the Convention. Therefore, on the part of the countries in question, a concession without reciprocity is made to the countries of the Union whose legislation does not protect works of architecture themselves. If this concession produces effects, it is possible that the protection thus granted may determine a change in legislation in the countries whose nationals profit from it.

As to *photographs*, which had already been left out of Article 4 in 1885, agreement still could not be reached on introducing them, as several laws refuse to recognize them as having the character of artistic works, while nevertheless affording

[1] Sir Henry Bergne expressed the opinion that, under the Berne Convention, it is very doubtful that protection in a country of the Union may be denied to works which, through a first public performance, have acquired a right to statutory protection in another Union country.

them special protection. The German Delegation however made a proposal which happily enabled the present situation to be improved.

Under No. 1 of the present Final Protocol, it is agreed that *those countries of the Union where the character of artistic works is not refused to photographs* undertake to admit them to the benefits of the provisions of the Convention; it was therefore only in the countries granting or, at least, not denying photographs the character of artistic works that protection could be claimed by virtue of the Convention. Where the character of artistic works was excluded it was not permissible to take advantage of the special protection which could be established by the law. It was on this point that the German Delegation was proposing an addition under which, in those countries which do not grant photographic works the character of works of art, photographs will be protected pursuant to the provisions of those countries' legislation, without those who claim this protection having to meet other conditions and formalities than those laid down by the laws of the country of origin.

The Committee proposes combining the first paragraph of the Final Protocol's present No. 1 and the additional paragraph proposed by Germany by means of the following clause to be inserted in the Final Protocol:

"Photographic works and works produced by an analogous process shall be admitted to the benefits of these provisions in so far as the laws of each State permit, and to the extent of the protection accorded by such laws to similar national works."

Thus, in the relations between Union countries, it will be possible to claim the protection as such that is granted photographs or works produced by an analogous process. While granting national treatment to the Union countries, no country is sacrificing its principles. The most important thing is that some form of protection is guaranteed; the exact nature of the protection is of secondary importance.

In protection being claimed by virtue of the Convention, it follows, on the one hand, that protection may not be claimed for a longer period than in the country of origin and, on the other, that it is enough to satisfy the conditions and formalities laid down in that country, in accordance with the interpretation given earlier of Article 2, paragraph 2, of the Convention. On these two points the German Delegation's amendment gave an explicit explanation to this effect. To remove any doubt on the question of conditions and formalities—which is of great practical importance—the Committee proposes an express reference in the Interpretative Declaration.

It is useful to observe that, under the clause submitted to the Conference, the countries of the Union in which, at present, the legislature would not be willing to grant any protection to photographs are not obliged to protect the photographs of other Union countries but will, however, benefit from the protection which might be granted in these other countries.[1] Here again a concession is made without reciprocity which is explained in the same way as the concession referred to earlier. It is to be hoped that this situation will not continue. The Committee asks the Conference to express the *wish* that in all the countries of the Union the law may protect photographic works or works produced by analogous processes and, furthermore, that the term of protection may be at least 15 years. In this last part the *wish* concerns those countries in which protection already exists but for a period of less than 15 years, as is the case, for example, in Germany and Switzerland.

Article 5 of the Convention

The question of translation is, as has often been said, the international question *par excellence*. For literary and scientific works, between countries which do not speak the same language, copyright has little import if it is limited to reproduction and does not include translation. France has always declared that translation is just a method of reproduction and that, consequently, as long as the author and his lawful representatives may prohibit the reproduction of the work they can prohibit its translation. However, it has had to reckon with the ideas and interests of other countries and, in most of its conventions, copyright, as far as translation is concerned, is kept within fairly narrow limits. When the question of forming the international Union arose, France repeated its argument which did not win acceptance. The 1884 Conference had merely expressed the wish that it would be appropriate to encourage as far as possible the tendency towards complete assimilation of the translation right to the reproduction right in general. The system adopted by the 1885 Conference and which is formulated in the present Article 5 of the Convention is simply this, that for ten years from publication of the original work, authors shall enjoy the exclusive right of making or authorizing the translation of that work. No condition is imposed on them. Their right is absolute during this period. On the other hand, once the period has expired the exclusive right disappears; irrespective of whether or not the author has made or authorized a translation, anyone may translate, provided of course that

[1] The Swiss Delegation bad asked for photographic works to be admitted to tbe benefits of the provisions of the Convention in so far as national legislation permitted it, while stipulating at the same time a 20-year minimum term of protection. The essential part of the proposal was accepted; as to fixing a period, it would have been difficult to reach agreement and, in addition, the observation was made that, since the countries of the Union were not all being required to protect photographic works, it was not logical to impose any period of protection on those which did protect them.

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the work of the previous translator, which is protected by Article 6 of the Convention, is not appropriated.

This system, the result of a compromise between very conflicting views, had generally been considered only a transition; the wish expressed by the 1884 Conference had shown the direction in which the Union ought to go, the goal towards which it should strive. Thus the French authorities thought that, on this important point, it was impossible to maintain the *status quo*. They proposed therefore as a principal objective to assimilate translation to reproduction. The German Delegation submitted an amendment to Article 5 to the Conference along the same lines. The Belgian and Swiss Delegations accepted this same solution. Regrettably, it had to be acknowledged that it would be impossible, at the present Conference, to achieve what those Delegations regarded as definitive progress. It proved necessary to make do with a compromise on which agreement could be reached. The French authorities had added to their main proposal: "*Subsidiarily*, it could be decided: (1) that the period granted to the author for translation is increased to a minimum of 20 years; (2) that the author will be protected against unauthorized translations for the entire duration of his copyright in the original if he makes use of the translation right himself within the stipulated period." It was this last system which won acceptance as having two advantages: it enables the principle of assimilating translation to reproduction to be asserted while only subjecting it to one condition; it accords with British legislation and with a proposal from the Italian Delegation. Mr J. de Borchgrave couched it in terms which we consider most felicitous because they assert first of all the principle of assimilating translation to reproduction while only subjecting this principle to one condition which it is hoped will soon disappear. Accordingly the Belgian Delegate proposed the following wording:

"Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works during the entire term of their right over the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it in one of the countries of the Union before the expiration of ten years from the date of the first publication of the original work."

In the mind of the author of this proposal there was no point in adding that the author, to retain his exclusive right of translation, must avail himself of it in the languages for which he might wish to claim protection. The translation right, which necessarily includes the right to translate in all languages, implies no less necessarily a distinct right in respect of each language. Hence the consequence that the author who does not authorize a translation in a given language within the ten-year period inevitably lets the translation right in that language fall into the public domain.

However, as controversies had arisen in Germany on this last point, the majority of the Committee thought it preferable to adopt a different wording in order to remove all doubt.

Accordingly, the Committee proposes to the Conference that the first paragraph of Article 5 of the Convention be replaced by the following provision:

"Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works during the entire term of their right over the original work. Nevertbeless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is to be claimed."

Thus the principle of assimilating translation to reproduction is clearly stated in the first sentence of the new paragraph, and our successors will only have to delete all that follows that sentence.

To enjoy the exclusive right of translation, the author must have accomplished the conditions and formalities laid down for the original work in conformity with Article 2, paragraph 2, but he is exempted from any special formalities which may relate to exercising the translation right, such as imposed by the German law, for example.

The text only refers to authors who are *subjects or citizens of any of the countries of the Union*. However, there is no doubt that, by first publishing their works in a country of the Union, non-Union authors are thus guaranteed, pursuant to the new Article 3 as discussed above, the full enjoyment of copyright and consequently the translation right just as the reproduction right.

After stating the principle, the new provision adds a restriction. The exclusive right of translation only subsists for as long as the reproduction right if the author has had a translation published within ten years of publication of the original work. If this condition is not met the translation right falls into the public domain. The present situation remains unchanged but, of course, if, in such a case, the author's exclusive right ceases, it is only for the future. Action may always be taken against non-authorized translations which are published before the ten years have expired.

If publication of an authorized translation within the ten-year period guarantees the exclusive right, this only applies to the language in which this translation has been issued. The translation right falls into the public domain as regards all the languages in which no authorized translation has been issued within the ten years.

As the ten-year period still exists, paragraphs 2, 3 and 4 of Article 5, which indicate how it is to be calculated, are maintained without change.

Finally, it is important to note that the restriction in Article 5 to nationals' exclusive right of translation concerns only their published works. As far as their unpublished works are concerned, the translation right does not fall into the public domain for the simple reason that no use has been made of it within the ten-year period, since that period only commences on publication. Consequently, as regards unpublished works, the translation right is fully assimilated to the reproduction right, the ten-year period only beginning to run, in accordance with the provisions of Article 5, on publication. This observation is of great practical interest for dramatic or dramatico-musical works which are performed but are not published. The absolute protection granted to unpublished works only concerns subjects or citizens of countries of the Union; it has been explained earlier, in connection with Article 3, that non-Union nationals only enjoyed protection in respect of published works.

Article 7 of the Convention

Under this provision, the principle is that articles from newspapers or periodicals published in any of the countries of the Union may be reproduced in original or in translation in the other countries of the Union, unless the authors or publishers have expressly forbidden it. Thus there is a general entitlement to reproduction unless this is forbidden. It should be added that this prohibition cannot apply to articles of political discussion, to news of the day and to *miscellaneous facts*.

This provision has been criticized from various viewpoints, and several amendments were submitted to the Committee. The French authorities wanted to limit the extent to which copyright was undermined by Article 7. They therefore proposed reversing the rule to state that pieces of writing published in newspapers or periodicals could not be reproduced or translated without their authors' authorization, while continuing to allow reproduction with respect to articles of political discussion, news of the day or *miscellaneous facts*. This was the most absolute proposal in terms of copyright.

The Norwegian Delegation was proposing a very simple system. In its view, copyright was not infringed by the reproduction in newspapers or magazines of articles in original or in translation taken from other papers or magazines if the reproduction right had not been specifically reserved. The source would always have to be clearly indicated. Thus the principle of Article 7 as it stands was generalized in that the reservation could apply to any articles, even articles of political discussion or news of the day. Furthermore, when reproducing, the source must be indicated—which the present Article does not require. It should be added that the Norwegian Delegate acknowledged that serial stories did not fall within the application of the Article he had proposed, and thus no reservation would be necessary to prohibit their reproduction.

Monaco's Delegation made a proposal which was very similar to the one which has just been analyzed. The difference lies mainly in that the traditional provision is maintained as regards articles of political discussion, news of the day or *miscellaneous facts*.

The Belgian Delegation's proposal, supported by the Italian Delegation, differed more from the present right. It first stated the principle that serial stories or any articles, whether from newspapers or periodicals, published in a country of the Union, may not be reproduced or translated without the sanction of the authors. Then, as a qualification to this rule, it was stated that, nevertheless, *any newspaper may reproduce an article published in another newspaper*, provided that the source is indicated, unless the article bears an express notice to the effect that its reproduction is forbidden. What characterizes the Belgian proposal is first the distinction made between newspapers and periodicals; protection is absolute for articles published in periodicals, and no reservation is necessary. As regards newspaper articles, the proposal is very similar to the Norwegian one: reproduction is permitted in other newspapers unless forbidden.

The German proposal attempted to reconcile the different interests by means of a tripartite division: (1) articles which may not be reproduced without authorization; (2) articles which may be reproduced unless this is forbidden; (3) articles which may always be reproduced. The difficulty lay in precisely distinguishing between the articles which fell into the first category and those which fell into the second.

After a lengthy discussion, the Committee managed with some difficulty to reach an agreement, the main lines of which are as follows:

Serial novels, including short stories, are set apart. They may not be reproduced without the sanction of the authors and no reservation is required from the latter. Serial stories did not present any difficulty and there is no real innovation as far as they are concerned; the provision is merely explanatory, as the French Delegation always upheld and as had been accepted by the British, Italian and Swiss Delegations in 1886. Serial novels are not strictly speaking newspaper articles; they are works which are published in a particular way and all the proposals agreed to treat them separately. It was not such an easy matter for *short stories*; first it was claimed that the expression was too vague and that the articles to which it applied were not distinguished clearly enough. The objections came from the British and Norwegian Delegations in particular. However, it was observed that the words *short stories*, linked with serial novels and as opposed to *news of the day*, to which reference is made in the last paragraph of the Article, had a sufficiently precise meaning, that they denoted novelettes, short tales and works of fantasy often combined in a single newspaper or magazine article. The term is equivalent to the English expression *works of fiction* and the German word *Novellen*.

Except for serial novels and short stories, the Committee maintains the system of the present Article 7, i.e. the entitlement to reproduce articles from newspapers or periodicals unless this is forbidden.

The Committee did not accept therefore the distinction proposed between newspapers and periodicals. Although this is not expressly stated, it thinks that the reproduction which may thus take place in the absence of any reservation is reproduction in other newpapers or periodicals. It would not be permissible to publish a volume comprising a series of articles without the author's consent.

If the Committee is maintaining the system of reproduction being permitted when there has not been any prohibition, it nonetheless adds a qualification: the need to indicate the source. At the request of the Italian Delegation, it has been understood that the notice of the source shall include not only an indication of the newspaper or periodical in which the article had appeared but also the author's name if the article is signed.

Article 9 of the Convention

The Committee is not proposing any amendment to this Article, but it did give rise to discussions which ought to be recalled. Under the third paragraph, the author's consent is only necessary for the public performance of published musical works where the author has expressly declared on the title page or commencement of the work that he forbids the public performance thereof. The stipulation is certainly rather odd; it is reminiscent of the old provisions which required the translation right to be expressly reserved. Should the author be compelled to affirm that he intends to exercise his rights? Should it be assumed from his silence that he abandons them? In theory there is no reason why the author should be obliged to declare in some form that he means to avail himself of one particular right and not another. The 1886 Convention had to take account of the *de facto* situation in certain countries of the Union, especially Germany and Great Britain. If, under French legislation, the composer's authorization is always required, under German legislation (Act of 1870, Article 50, paragraph 2) and the British (Act of 1882, Section 1), such authorization is only necessary if it is expressly reserved. Besides being contrary to the principle of copyright, this requirement has practical drawbacks in that the composer's rights may be compromised by his publisher's intentional or unintentional negligence. Thus the French authorities proposed deleting the third paragraph of Article 9 and simply stating that the stipulations of Article 2 apply to the public performance of musical works in the same way as to the public performance of dramatic or dramatico-musical works. This proposal, supported by the Belgian Delegation, met with total opposition from the German and British Delegations. They asserted in particular that, in their countries, public opinion would not accept that, in the absence of any express reservation, the author or his agents could prevent the public performance of his musical works under certain circumstances (non-profit making concerts, performances of musical works by social clubs, students, military bands).

It would perhaps be appropriate to make a distinction between the different cases. Authorization could have been required in principle except for allowing a number of exceptions. But the distinction was very difficult to make and a position had not yet been reached in which it could be reliably established. No one questioned the fact that there was progress to be made in this regard, but such progress seemed to be dependent on preliminary work being done by the national legislatures because the customs particular to certain countries needed to be taken into account. It is for them to reconcile the rights of authors and those of the public. When this work has been done it will be possible to save authors the formality which is imposed on them at present. The Committee confines itself therefore to recommending to the Conference that it express the wish that the legislators of the countries of the Union should fix the limits within which the next Conference could adopt the principle that musical works be protected against unauthorized performance without the author being obliged to give notice of reservation. The French Delegation could only express its regret that it had not proved possible to state the principle of the author's right without accepting a fairly large number of exceptions. The Belgian Delegation wished to be expressly associated with this sentiment.

Article 10 of the Convention

The French authorities requested the deletion of the second paragraph of this Article as being superfluous or harmful and for the *transformation of a theatre play into a novel and vice versa* to be mentioned among the unauthorized indirect appropriations of a literary or artistic work. A German amendment agreed to these two proposals which the two Delegations did not consider to be innovations but a simplification and an interpretation. It was not possible to make these changes which other delegations, notably the Belgian one, also accepted, because of opposition from the British Delegation.

It pointed out that in actual fact the English law did not allow a novel to be drawn from a theatre play but it did allow a theatre play to be drawn from a novel. The British Delegation thus agreed to including the transformation of a theatre play into a novel among the unauthorized appropriations but not the opposite case. This could not be accepted in these terms; it would have been strange to protect what anyone is rarely tempted to do and to allow, on the other hand, what is particularly dangerous. Until British legislation is amended on this point of great interest to authors, the Committee can but propose stating in a separate Interpretative Declaration that the transformation of a novel into a theatre play or a theatre play into a novel is governed by the provisions of Article 10.

Article 12 of the Convention

This Article states that any pirated work *may be seized on importation* into any country of the Union where the original work enjoys legal protection. The outcome of the explanations given within the Committee is first that the expressions used should not be misunderstood in the belief that, in the case in point, seizure constitutes an optional measure for the countries of the Union. It is for the interested parties that this option exists: they have recourse to seizure or not as they think fit. But if they wish to seize they must be able to do so and the legislation of the Union countries is bound to enable them to do so; these may, however, lay down as they wish the forms such seizure will take and determine the authorities which are competent to effect it.

The French authorities asked for the words "*on importation*" to be deleted so that it would be understood that seizure was possible not only on importation but also inside the country—which would indeed seem to be what the authors of the Convention had in mind. Amendments from Germany, Belgium, Italy and Monaco accepted the French viewpoint. The Committee proposes to the Conference that Article 12 of the Berne Convention be replaced by the provision contained in the German Delegation's amendment.

Note should be taken, on this point, of the British Delegation's reservations. It did not question the proposal in itself but declared that it could not confirm that there were laws in all the British colonies enabling internal seizure. If therefore it should be the case that in a colony internal seizure is not permitted by the legislation in force there, the British Delegation does not wish its Government to be able to be criticized for non-fulfilment of the Convention.

The Swiss Delegation had proposed an amendment whereby works authorized in the country of origin cannot be seized when they are passing in transit through a country in which these works are illicit. It did not press for acceptance of its proposal when the observation was made that it was not appropriate to resolve such a delicate question as that of transit in relation to a case which must rarely occur (*shared publishing right*, see the Franco-German Convention of 1883, Article 11).

Article 14 of the Convention and Final Protocol, No. 4.

Pursuant to Article 14, the Convention, *under the reserves and conditions to be determined by common agreement*, applies to all works which at the moment of its coming into force have not yet fallen into the public domain. There had been a desire to take account of the *de facto* situation existing in certain countries at the time the Convention came into force, of the interests of those who might have lawfully reproduced or performed foreign works without their authors' authorization. Under No. 4 of the Final Protocol, application of the Convention on this point was to be determined either in conformity with the special stipulations contained in such literary conventions as existed or were to be concluded to that effect, or, in the absence of such stipulations, in accordance with the provisions of the domestic legislation.

The French authorities had thought that the transitional period had been long enough, since the Convention has been in force for almost nine years, and that there was no reason for not now ensuring the full and complete application of the Convention throughout the territory of the Union. Such is also the view of the Belgian Delegation. The French authorities thus proposed purely and simply asserting the principle by deleting the reference to reserves and conditions.

This proposal met with opposition from the German and British Delegations who affirmed that, despite the passage of time, absolute retroactivity might harm legitimate interests; that in order to avoid this it would be necessary to embark on distinctions which would be difficult to make; that, consequently, it was best to maintain the *status quo*. The Committee does not propose amending Article 14 therefore.

On the other hand, it is proposing a new wording for No. 4 of the Final Protocol.

In the first paragraph it has reinstated the words *within the country of origin* which had almost certainly been inadvertently omitted since they appear in Article 14. There should not be any doubt as to the meaning; the Convention must apply to works which have not fallen into the public domain in their country of origin. It seems that some quarters may have thought that what were involved were works which have not fallen into the public domain in the country where protection is claimed, which is inadmissible. The new wording, which does no more than copy the formula of Article 14, will remove all pretext for such an error.

Paragraph 2 remains unchanged.

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A third paragraph has been added in order to apply retroactivity with its compromises to the exclusive right of translation, such as it is admitted in the new wording of Article 5, paragraph 1. If, on the date of this latest text coming into force, ten years have not yet elapsed since publication of a work and if an authorized translation of this work has been published—all this in a country of the Union—the exclusive right of translation will be maintained, pursuant to the new Article 5, as regards the language for which use has been made of it. On the other hand, the expiration of the ten-year period, even very shortly before the new Article 5 has come into force, without an authorized translation having been issued, will mean the translation right falling into the public domain.

Finally, in a fourth paragraph, it is stated that "the above-mentioned temporary provisions shall apply in case of new accessions to the Union." It is considered that countries joining the Union all need to take transitional measures just as much as countries which have been a party to it from the outset. The desire was to urge acceding countries to take measures which were both in their own interest and in that of the other Union countries. To this end it had been proposed stating that "countries which have not taken measures within a period of two years will be deemed to have purely and simply accepted the principle of retroactivity." It seemed that there were only advantages to be gained from such a proposal since acceding countries were given the option of declining the Convention's pure and simple application to works published before accession for two years. This length of time seemed more than sufficient particularly as, before acceding, a Government will consider the consequences of accession and what measures to take. Nevertheless, doubts arose. It was feared that a fixed time limit might be considered awkward and might dissuade certain States, whose accession to the Union was considered particularly desirable, from doing so. The vast majority of the Committee did not share these fears; however, it did not want to carry on regardless and not take account of the scruples of one of its members. It therefore deleted the sentence in question.

Final Protocol, No. 3

Under this provision, "the manufacture and sale of instruments for the mechanical reproduction of musical works in which copyright subsists shall not be considered as constituting an infringement of musical copyright." The French authorities were asking for a paragraph to be added, worded as follows: "The benefit of this provision shall not apply to instruments which can only reproduce tunes by the addition of perforated strips or cards or other systems which are separate from the instrument, are sold apart and constitute musical editions with a particular notation." As the Belgian Delegation observed, if the principle of the proposal had been accepted, its working would have had to be altered given that it was a matter not of prohibiting the manufacture of the instruments themselves but of subjecting the perforated strips and cards, considered to be editions of a specific nature, to the Convention.

According to the French Delegation, the proposal's aim was not so much to introduce a new principle but rather to interpret the present provision sensibly and to set reasonable limits on it. In granting an immunity the Convention had in mind those instruments which include their own notation and have a reproduction capability limited to certain airs. The immunity should not in fairness apply to instruments which are capable of playing an infinite number of tunes by introducing —in the form of perforated cards—notations which are external to them, movable and unlimited in number. There is no longer a fusion between instrument and notation, the latter being but an edition in a particular form, which cannot be lawful without the author's consent.

The Delegations of Belgium, Italy and Monaco supported the French Delegation's observations.

The German Delegation, which had been good enough to present the Committee with a special Memorandum on the question,[1] and the Spanish, British, Norwegian and Swiss Delegations fought against the proposal in an animated discussion in which even some of the offending instruments played their part. It may be said that some of the reasons of principle invoked in favour of the freedom of manufacture requested could rebound on ideas which are particularly dear to the Union countries. The interest of manufacturers of instruments does not differ greatly from that of printers who wish to be able to reproduce freely; translators say they do a service to the reputation of the authors they translate just as manufacturers claim that they contribute to the fame of the composer whose pieces are played by their instruments. The industry in question—which is thriving, it would seem—will not die due to the fact that authors' rights are better respected. It will be possible for it to dip into the public domain or come to terms with authors who, in most cases, will be content with a modest fee.

Particular stress should be placed on the practical objections raised against the proposal. The question is of great interest to certain countries whose manufacturers would offer strong resistance to the restriction of what they consider to be their right; if this industry is impeded within the Union it will develop outside it, the more so as the instruments in question are produced mainly for export overseas. The question is not ripe for an international solution. Case law is uncertain; courts in Germany

[1] See this document on p. 199 below.

and France have reached opposite verdicts. It is not being proposed that the freedom granted in 1886 should be withdrawn but that it should be limited. How then is a line to be drawn between widely varying instruments? Will interchangeable cylinders be considered special editions? Is this not going very far? Details were given on the relatively high prices of the instruments in question and the perforated cards. For example, the most advanced, the "pianista," was said to retail at 780 francs and the cards for it cost 1.50 francs per meter; The "Tannhäuser" overture, published in this way, costs 90 francs whereas the ordinary edition sells at 4 francs.

We wanted to recall the main arguments put forward on either side. Agreement was impossible. The Committee could therefore only note the difference in views which prevents any amendment whatsoever being proposed to the provision of the Final Protocol. The French Delegation and those which supported it can only regret this.

New Article Proposed by Germany

The German Delegation proposed adding an Article 4*bis* to the Convention which would have read as follows:

"Any reproduction of a work which enjoys protection under the present Convention that has not been authorized by the author or his lawful representatives is illicit and shall entail the respective civil and criminal consequences, even if the country's legislation permitted such reproduction of national works against the payment of royalty fees."

The same principle would have applied to public performances and, indeed, it was especially in this regard that it was of interest because, under certain legislation, a dramatic, dramatico-musical or musical work may be publicly performed without the author's consent for a modest royalty payment.

The German Delegation declared that it was simply a question of confirming a principle and that it was for national legislation to determine the civil and criminal consequences which would ensue.

The Swiss Delegate expressed his regret that the proposal had not been conveyed to the various Union authorities sooner, so that the Governments directly involved could have presented observations and given instructions to their delegates. For Switzerland in particular it is a very serious question which has given rise to long and difficult negotiations with France. Under the Swiss Federal law, national works may be freely performed against the payment of fees. The principle of the Convention is precisely the assimilation of foreigners to nationals. It would thus mean that here foreigners would be given a better situation or it would entail an important amendment to the national legislation. The Swiss Delegate is not authorized to enter into discussion on such a delicate issue.

After an exchange of observations, it was noted that the proposal was indeed outside the Conference's programme and should be left aside pursuant to the precise rules of the regulations adopted at the beginning of our working sessions. The French Delegation wished to note, however, that it was bound to adopt the principle itself of the proposal, which was aimed at seeing copyright better respected.

Consideration of the Resolutions

The French authorities had first drawn attention to the appropriateness of forming limited Unions between countries disposed to guarantee literary and artistic property more extensive protection in their respective relations than that which was afforded by the provisions of the general Convention. This is not strictly speaking a resolution, and the Committee is not making any proposal to the Conference in this regard. The latter is not being asked to make any general statement on the advantages and drawbacks of limited Unions. It is for each country to take a stand on this point and to avail itself or otherwise of the option reserved to it under Article 15 of the Convention.

It is useful to observe that if the provisions adopted by the Conference are not signed or ratified by all the Union countries, a limited Union will in fact be formed as a result by those which accept these new provisions. Even if the idea of limited Unions is not favoured, it may prove necessary to form one in order to achieve certain essential results and not to be totally prevented from doing so by the need to obtain the unanimous consent of the contracting parties.

It even follows from this that when, in the provisions of the *Additional Act* which will be discussed later, reference is made to the countries of the *Union*, it is those countries which accept this Additional Act, or accept it at a future date, which will thus form this limited Union whose existence has just been established.

We do not pretend this is simplicity itself but it is often necessary to accept temporary complications and difficulties in order to achieve what must be our goal —international regulations for the members of a single Union.

Under the heading *second resolution*, the French authorities drew attention to *the measures to be taken to facilitate communication to the Berne Office of the instruments of registration or deposit of literary or artistic works*. The authorities recalled wishes expressed in various Congresses—which showed the interest there was in the question —but did not put forward any proposal. During the Conference's second session Mr. Baetzmann, the Norwegian Delegate, asked for a *resolution* to be adopted worded as follows:

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"It is desirable that the various States of the Union take measures to facilitate communication to the Berne Office of the acts of registration or deposit of literary and artistic works, where such formalities exist.

"It shall be for the Berne Bureau to coordinate the information which it is thus furnished by adding all the documents it is able to procure in relation to publication of literary and artistic works, in all its forms, in the various Union States."

A discussion began within the Committee in this regard; Chevalier Descamps asked it to reject the resolution as worded and rather to recommend to the Conference a proposal which might read as follows:

"The Conference draws the attention of the Governments to the advantages, from the viewpoint of ascertaining the *de jure* situation of literary and artistic works, which the publication of good national bibliographies would present and it expresses the wish that, in those countries where this is necessary, Governments publish or advocate the publication of such bibliographies as documents they would deem useful from this same viewpoint."

Moreover, Mr. Baetzmann had purely and simply withdrawn his proposal after explaining that what he had had in mind was to organize a practical information service which could not compete in the slightest with the International Bibliography Institute set up in Belgium. At the end of an exchange of observations, the Committee considered that it was not appropriate to express a wish along any lines. In view of this decision as well as the withdrawal of the Norwegian Delegate's proposal, there would be no point in going into details on the import and nature of this proposal nor on the measure indicated by Mr. Descamps. Suffice it to say that from Mr. Morel's explanations it was apparent that the International Bureau simply plans to consider how it could best satisfy the numerous requests for information it receives concerning the first publication or the translation of literary or artistic works. There is no question whatsoever of creating a *Universal Directory* or a structure which could be compared to any extent to such a considerable undertaking. The International Bibliography Institute has embarked on this task in Belgium; it will thus render an invaluable service and there is no question of competing with it.

Finally, the French authorities expressed the wish that individual legislation enact criminal sanctions with a view to curbing usurpation of names or imitation of signatures or symbols appearing on literary and artistic works. Frauds are frequently committed, particularly where paintings are concerned, and it is in the general interest that they should be curbed; artists are calling for it as a matter of urgency. The Committee recommends that the Conference adopt this *resolution*.

Resolution Proposed by the German Delegation

Just as, by virtue of Article 15, the Union countries may enter into separate and particular arrangements between each other, provided that these arrangements confer more extensive rights on authors or their lawful representatives than those granted by the Union or embody other stipulations not contrary to the general Convention, the *Additional Article* to the Berne Convention declares that its conclusion shall in no way affect the maintenance of existing Conventions between the contracting States in so far as specific arrangements could subsequently be entered into. The German Delegation drew the Committee's attention to the difficulties and complications resulting from the Berne Convention being combined with earlier conventions.[1] Frequently doubts arise as to whether certain provisions of these are still in force. The German Delegation thinks therefore that it would be useful if the various Governments of the Union examined the conventions they may have entered into with one another before the Berne Union came into force from this aspect and for the outcome of this examination to be recorded in a special act. Depending on the circumstances, some old conventions will be negated by general agreement or annulled, while others will be replaced by simpler conventions specifying only those clauses which retain their usefulness in the light of the existence of the Union. The outcome of the examination which the Governments would thus be invited to undertake would be notified to the countries of the Union by the International Bureau before the next Conference met.

The Committee approved the idea which inspired the German Delegation's proposal and it asks the Conference to express a wish along these lines.

Finally, without asking the Conference to express a formal wish, the Committee, in conformity with the desires already expressed by the 1884 Conference, is of the opinion that it would be useful if agreement could be reached between the Union countries with regard to the duration of the copyright granted to authors of literary or artistic works.

Furthermore, the 1884 Conference had expressed the wish that the trend towards the complete assimilation of the translation right to the reproduction right in general should be encouraged as much as possible. The views of the vast majority of the Committee in this regard are sufficiently apparent from the explanations given earlier in connection with the new wording of the first paragraph of Article 5.

[1] See the list of these conventions on p. 201 below.

Form to be Adopted for the Conference's Decisions

It remains for us to outline the procedure which the Committee recommends to the Conference for the recording of the end result of its discussions.

Two systems are possible.

The first is to make a new Convention in which the provisions of the 1886 Convention would be combined with the new provisions accepted by the present Conference. Attached to it would be a Final Protocol likewise recast in which the observations of the official minutes would be recorded. Once this new Convention with the Final Protocol had come into force, the 1886 Convention with its annexes would have been repealed.

The second system consists in maintaining the various Acts signed in 1886 and simply signing an *Additional Act* containing the various amendments adopted by the present Conference.

The vast majority of the Committee did not hesitate between these two systems; all its preferences were for the first one which has the great advantage of simplicity and clarity. For both judges and ordinary individuals it is far easier to consult a single text than to have to combine two texts of different dates, the more so as sometimes the amendment concerns only one paragraph. Quoting becomes complicated and the Committee could see this at once.

To its great regret, the Committee is not proposing this system; it met with absolute opposition to which it had to bow in order not to destroy, for reasons of form, the agreement reached after great efforts. The delegates in favour of the system of an *Additional Act* are fully aware of the advantages of the other system. It is for purely practical reasons that they have rejected it. It is essential not to seem to be calling everything into question and to give those who might not be in favour of the Convention a pretext to attack it as a whole. In those countries where the Convention has to be submitted to Parliament, dissatisfaction about the adoption of this or that new provision might lead to the Convention itself being rejected whereas, if the *Additional Act* is rejected, the Berne Convention will still subsist. This was what happened in Lisbon in 1885 at the Postal Congress; the Paris Convention of 1878 was not recast, the amendments adopted were assembled in an *Additional Act*. Finally, this is again what has just been done by the International Railways Conference which met in Paris to revise the 1890 Berne Convention and which signed a final report on May 2, containing a draft *Additional Convention*.

The Committee is therefore submitting to the Conference:

(1) A draft *Additional Act*;
(2) A draft *Interpretative Declaration*.

The Declaration contains the various interpretations which the majority of the Committee recommends to the Conference and to which reference has been made in this report. As regards those countries which adhere to this Declaration, no changes are made to the texts concerned which are merely given an authentic interpretation. This interpretation will be compulsory by the very fact of the Declaration being ratified; that is why no time limit is indicated for implementation.

Article 1 of the draft *Additional Act* contains the various amendments made to the 1886 Convention and Article 2 the amendments to the Final Protocol. The *official minutes* remain unchanged.

In the Committee's opinion, the Additional Act forms a whole; it should be accepted or rejected outright. The Union countries represented at the Conference which might not feel able to sign it or which might not ratify it, continue to be governed by the 1886 Convention with its annexes. Moreover, they may always accede to it by notifying the Swiss Federal Council; but they may not single out certain of the amendments adopted at the present Conference and accept them while rejecting the others. Otherwise the complexity would become truly inextricable.

As regards those countries which already belong to the Union, the option of continuing to be governed by the unamended Convention follows from the principles as well as from the formal text of Article 17, paragraph 3, of this Convention, under which "it is understood that no alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries which are members of it." The situation is different for countries which might ask to join the Union; to simplify matters, we might have thought of deciding that henceforward it will only be possible to accede to the revised Convention. However, this is not the solution which the Committee is asking the Conference to adopt. For promotional purposes its view is to leave the choice open to the countries which might like to join. If any particular provisions adopted in Paris frighten them at this time, they may confine themselves to acceding to the 1886 Convention; they will thus be in the same position as any Union countries which do not sign or ratify the Additional Act; like the latter they will always be at liberty to accede to it later.

The Interpretative Declaration does not form a single whole with the Additional Act. Just as, amongst the countries represented at the Conference, not all those which sign the Additional Act will sign the Declaration, in the same way those countries which subsequently accede to the Additional Act will not be obliged at the same time to adhere to the Declaration. Not only this, those countries which accept, or which

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subsequently accept, only the 1886 Convention may adhere to the Declaration in that it interprets the provisions of this Convention. There is no need to be put off by the reference made in it to the Additional Act.

Needless to say, the Interpretative Declaration must be accepted as a whole and it is not enough to say that some interpretations are accepted and not others.

If the Conference adopts the Committee's decisions it will not be possible to criticize it for having been intransigent. It will have sacrificed many ideas which were dear to it in the desire for agreement and in the hope of enlarging the Union. However, there is no harm in expressing the desire that this rather complicated situation, which is little in keeping with the idea of union, does not continue indefinitely, that the outcome of the deliberations of the next Conference—more privileged in this respect than the Paris Conference—is a single Convention text governing all the Contracting States. The Committee asks the Conference expressly to state a *wish* to this effect.

The *Additional Act* must have the same force and duration as the Convention of September 9, 1886. This is what is stated in Article 4 of the draft. The Committee understands that, by ratifying the Additional Article, this will form but one whole with the Convention to which it relates so that the Additional Act may not be denounced separately.

Article 4 also deals with the exchange of ratifications and the effective date.

For the French Delegation

LOUIS RENAULT

INTERNATIONAL UNION
FOR THE PROTECTION
OF LITERARY
AND ARTISTIC WORKS

RECORDS OF THE CONFERENCE

CONVENED IN

BERLIN

OCTOBER 14 TO NOVEMBER 14, 1908

REPORT

PRESENTED TO THE CONFERENCE ON BEHALF OF ITS COMMITTEE[1]

Pursuant to Rule 4, paragraph 1, of its Rules of Procedure, the Conference decided at its second session to refer the questions before it to a Committee for prior examination. The aim of this report is to record the proceedings of this Committee, which held ten sessions. As the Rules of Procedure authorize the Committee to sub-divide into Sub-Committees, this option was exercised and two Sub-Committees were set up. One[2] was asked to examine the German Government's proposal to set up a pension fund for officers of the Berne International Bureau; this Sub-Committee's decisions, which were approved by the Committee, will be presented to the Conference in a special report. The other[3] studied the questions concerning mechanical musical instruments; its conclusions were submitted to the Committee, were approved by it and are recorded within the present report. Finally, it should be added that, to comply with Rule 7 of the Rules of Procedure as much as with the nature of things, the texts emerging from the Committee's successive votes were submitted to a Drafting Committee which carefully revised them in eight sessions; it was after that revision that they were presented to the Committee which passed them definitively at its session on November 11, 1908. The Conference is therefore in a position to come to its decisions in full knowledge of the facts.

At a time when it is a question of revising the work accomplished in Berne in 1886 and in Paris in 1896, it may be worth indicating in a few lines the Union's progress over 22 years.

When, at the request of the *International Literary Association*, later to be called the *International Literary and Artistic Association*, whose intelligent, persevering activity could not be forgotten without ingratitude, the Swiss Federal Government kindly invited the various Governments to be represented at a Conference which was to deal with the international protection of authors of literary or artistic works, no one thought that agreement would be easy to reach as the various Governments' views still differed widely. However, after two arduous Conferences in 1884 and 1885, it proved possible to sign the Convention of September 9, 1886, which is still our Union's charter today. This Convention, signed by Germany, Belgium, Spain, France, Great Britain, Haiti, Italy, Liberia[4] Switzerland and Tunisia, contained two provisions of great importance for the internal and external development of the Union which had just been founded. The first is that of Article 17: "The present Convention may be submitted to revisions with a view to the introduction of amendments designed to improve the system of the Union. (...) *Questions of this kind, as well as those which in other respects are of interest to the Union, shall be considered in Conferences to be held successively in the countries of the Union among the delegates of the said countries.* (...) It is understood that no alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries which are members of it". It is by virtue of this provision that a first revision Conference took place in Paris in 1896 and that the present Conference has met. It is by means of these discussions between people who are familiar with these delicate problems that real progress can be achieved because they correspond to realities which have been fully perceived; light is shed mutually on the import and *raison d'être* of the respective legislations which are often criticized because they are not understood; we see to what extent it is possible to enact an international rule which is superimposed on the various national laws, and to what extent it is essential to confine ourselves to referring matters back to them. The happy outcome of such discussions could be seen in 1896 and we should like to think that the same will also be seen in 1908.

The other beneficial provision referred to above is that of Article 18 which allows countries that have not become party to the Convention to accede to it at their request. It is the progressive expansion of the Union which is thus facilitated. In 1886 the Union's power of attraction had perhaps been somewhat overestimated. The accession of some States represented at the 1884 and 1885 Conferences appeared imminent. And yet, between 1886 and 1896, the Union was enlarged by Luxembourg, Monaco, Montenegro and Norway. From 1896 to date, while it has lost Montenegro, it has gained some notable new members, namely Denmark, Japan and Sweden. Is

[1] This report was submitted first to a Drafting Committee comprising Messrs. Dungs and von Goebel (*Germany*), de Borchgrave (*Belgium*), G. Lecomte and Renault (*France*), Sir Henry Bergne and Askwith (*Great Britain*), Ferrari (*Italy*) and Baron de Ugglas (*Sweden*) and then to the Committee, which approved it at its session on November 11, 1908.

[2] It comprised Messrs. von Goebel (*Germany*), Breton (*France*), Askwith (*Great Britain*), Ottolenghi (*Italy*), Hoel (*Norway*) and Kraft (*Switzerland*).

[3] It comprised Messrs. Robolski and Osterrieth (*Germany*), Wauwermans (*Belgium*), Ferraz (*Spain*), Breton and Gout (*France*), Sir Henry Bergne and Askwith (*Great Britain*), Ferrari (*Italy*) and Kraft (*Switzerland*).

[4] The State of Liberia did not ratify the 1886 Convention, but has just acceded to it at the very beginning of the Berlin Conference.

it not entitled to hope to gain others? By virtue of a sensibly liberal practice, non-Union States are invited to send representatives to the Union's Conferences, and many accept the invitation. Thus 20 such States currently have delegates at our Conference. If the majority only show interest in the Union by their presence and the attention they are kind enough to pay to our discussions, there are some that have made kind declarations, that have taken part in the deliberations to which they have contributed useful observations; doubtless they were thinking that their countries would not always stand aloof from the work they were seeking to improve. It will be permissible to note a few declarations of which the Conference has appreciated the great interest, especially those of the Netherlands, Russia and the United States of America.

The Netherlands was represented at Berne in 1884 and 1885; it did not sign the 1886 Convention and did not even take part in the 1896 Conference. Its representation at this Conference and the number and quality of its delegates therefore have an importance which has been highlighted to great effect by Dr. SNYDER VAN WISSENKERKE. The Dutch Government seriously wishes to end its country's present state of isolation in this regard, and it is hoping that the Conference's decisions will enable it to achieve this end.

The Russian Government, for its part, thinks that the time has come for the exchange of literary, artistic and musical productions to be governed by international arrangements and, amongst these arrangements, there is no doubt that those brought about by the work of the International Union hold pride of place.

The Conference's applause bore witness to the satisfaction which greeted these declarations, which are quite the opposite of polite, banal promises. It will be seen that the Conference is perfectly aware of the difficulty that these countries, which have hitherto remained outside the Union, are experiencing in making up the ground it has itself covered, and in achieving at their first attempt the goal we are going to attain. The transitions will be contrived and time will be left to do its work.

Mr. THORVALD SOLBERG, the Head of the Copyright Department at the Library of Congress, for his part read a declaration which does not allow the same hopes to be entertained as the previous two declarations, but which, nevertheless, is of interest in that it comes from a country which plays such an important role in literary and scientific production. The United States Government shows its sympathy for the goal pursued in general by the Berne Union and wishes to be informed about the Conference's discussions. In undertaking such a long journey for the sole purpose of being with us, Mr. SOLBERG has testified to his personal interest in and his admiration for our work which he is helping, and will go on helping, to make known in his country; we can only be grateful to him for this.

The preceding observations are of value from two viewpoints: they enable us to hope for a further extension of our Union; they show us that the nature of our regulations must be flexible enough to adapt to greatly differing situations.

In the speech he made at the Conference's inauguration, His Excellency Mr. DE SCHOEN said that he considered the Berlin Conference, as a whole, to be a continuation of the Paris one. "You know the so very important results of that memorable meeting. The wishes it expressed have set in advance the task before the Berlin Conference and have laid its foundations." The starting point for our discussions was the proposals presented by the Imperial Government, preceded by explanatory memoranda drawn up with the assistance of the International Bureau; special proposals from France and Japan were added to them. During the Conference various proposals were formulated relating to the German ones. This report will attempt to give an exact physiognomy of the debates. First the result of the elaboration indicated above should be noted in its essential features.

In 1896, an *Additional Act* established that amendments had been made to Articles 2, 3, 5, 7, 12 and 20 of the 1886 *Convention* and to Nos. 1 and 4 of the *Final Protocol* which is attached to it; in addition, a *Declaration* interpreted certain provisions of the 1886 Convention and the 1896 Additional Act. It had been necessary to have two distinct Acts because some States, while accepting one, were unwilling to accept the other. Thus the Union's Convention rules currently result from a combination of the 1886 Convention and Final Protocol and the 1896 Additional Act and Interpretative Declaration. Obviously this is not simple, but the complexity was imposed by circumstances.

The outcome of your Committee's discussions has been to amend or replace Articles 2 to 7, 9 to 12, 14 and 18 of the 1886 Convention and Nos. 1, 2, 3 and 4 of the Final Protocol, that is to say, in actual fact, all the provisions which are of some interest and on which a query may arise. The Paris Additional Act would disappear because the provisions it contains are again amended or replaced by others; finally, the Interpretative Declaration would also disappear because the rules it contains have been incorporated in the actual text of the provisions to which they refer.

Is the Union undergoing a *revolution* in other words? We do not think so any more in 1908 than in 1896. The principles laid down at the beginning are developing, they produce consequences before which the Union had first retreated, they are relieved of awkward restrictions which had been deemed necessary in the short term, they are applied to new cases which were hardly contemplated in 1886. This, we believe, is the general characteristic of the work that has been accomplished. Naturally it is not to everyone's complete satisfaction; agreement necessarily implies sacrifices which must be reciprocal. Occasionally agreement could not be reached and that is easily understandable, each country having its interests, its legal, moral, social and political conceptions which naturally influence the solution to the various international issues. In such cases the majority cannot lay down the law for the minority, since our assembly does not constitute the expression of a will which must be the only one, but the juxtaposition of separate wills which can only be effective if they are in agreement. What is to be done then? We can either totally abandon what was proposed or accept it while allowing dissidents the option of departing from it. The first system is certainly the simpler since it maintains uniformity within the Union, but it impedes the relations between a number of States; the second introduces a complication but reconciles the rights of all the parties; those wishing to move on are not obliged to mark time until their companions are ready to accompany them. This is what explains the procedure of *limited Unions* which may doubtless be criticized but which has rendered great services in various spheres: it mitigates the drawbacks of a Union which imposes the same limits on all its members, so that the particular ideas of a small group would check the whole. The purpose of these considerations is to justify several of the Committee's proposals which, although establishing a rule, only require it to be applied to the extent that individual legislation allows it. Again it is easy to mock and to say that no country will thus be committed unless it chooses to be. This is doubtless true, strictly speaking, but it is nevertheless useful to lay down the rule because it indicates the direction it is desirable for the Union to take; it will have a *de facto* influence even if it is not binding. If a great association is to last and expand, the ties between its members must not be too rigid; it is enough for there to be uniformity on the essentials which are the Union's very condition and *raison d'être*.

What form should our decisions be given? This is certainly a delicate question. It has already been seen to what a combination of texts we have to have recourse in order to ascertain the present state of the Convention right in our sphere. If we take the form of another *Additional Act* we add to the complexity which is already quite sufficient. What is more, an Additional Act to the Berne Convention which introduced amendments to almost all its articles and, it may be said, to all those which are of some importance, would look rather odd. Lastly, if we are the Paris Conference's successors and perpetuators, should we not have some consideration for the wish it expressed? At its Session on May 1, 1896, it said: *"It is desirable that the outcome of the deliberations of the next Conference should be a single Convention text."* The vast majority would have liked to have adopted there and then a totally new Convention which would have introduced simplicity and clarity to the Union; it bowed to reasons of opportuneness. these reasons no longer appear to exist or, at least, precautions can be taken to remove them and to ensure that the single text has only advantages and no serious drawback. This text will naturally only replace the previous texts for the Powers which adopt it in its entirety; for those which do not adopt it at all or which do not adopt it outright, the present texts will subsist either in whole or in part. It is also appropriate to lay down the conditions under which new States can join. Explanations will be given when it is time to present the provisions which aim to deal with these various points (see Articles 25 *et seq.* of the draft). We wanted to justify at the outset the order of the report, which will not necessarily be that of the 1886 Convention because sometimes, to be methodical and to introduce new rules, it has been necessary to alter the old order. We trust we will also be forgiven the length of this work, which has to make up for the absence of minutes for the Committee's sessions, and which will attempt to comment on the whole of the revised Convention.

It is only right to thank the German authorities who undertook to facilitate the accomplishment of the Paris wish by submitting to our deliberations a complete *provisional text*, the articles of which are kept in line with the existing articles of the Convention.

Principle of the Union

Article 1 of the Berne Convention, which does not call for any comments, needs only to be maintained.

ARTICLE 1. The contracting countries constitute a Union for the protection of the rights of authors in their literary and artistic works.

Protected Works

It is natural to give now the definition of literary and artistic works which, in the original Berne Convention, only appears in Article 4.

We might have thought and we did think of replacing a list by a concise formula which would cover the various works to be protected. The German authorities rightly considered that, as a rule for courts and as a guide for new accessions to the Union, the usefulness of a list has been proved and hence it would be better merely to complete it by taking into account the wishes expressed in various quarters. But before examining the proposals made to this effect, it would be appropriate to resolve an important preliminary question which has arisen with regard to the Berne Convention's Article 4, not amended in Paris. What value does this enumeration have? Two opinions are possible. The contracting countries are obliged to protect the works in question so that if their legislations are inadequate, they must complete them to satisfy the Convention. Conversely, it is said that, if every country is required to protect what, under its legislation, are considered to be literary and artistic works,

it would not be obliged to protect a work, even if listed in Article 4, if, under its legislation, it was not recognized as having the character of a literary or artistic work. The contracting countries are only obliged to protect works in so far as their legislation permits it; nothing compels them to complete their legislation.

The question was raised by the Belgian Delegation which dealt with this and other questions in a special Memorandum (appended to the minutes of the second session). The Italian Delegation joined the Belgian Delegation, the two considering that the enumeration in Article 4 did indeed have a compulsory character; they asserted notably that if, under certain circumstances, the introduction of works of one kind or another in Article 4 had been strongly urged, it was because it was thought that the protection of those works would be guaranteed throughout the territory of the Union by the fact of their introduction; thus it was that in 1886 choreographic works were not included in the list, because certain countries declared that their legislation made no provision for them, and they were only mentioned in the Final Protocol, No. 2. This point of view raised objections particularly with regard to the proposed additions; several delegates declared that their legislation would not allow them to commit their countries to protecting some of the works in question.

Finally, agreement was reached on the need to avoid any ambiguity. It was thus understood that a clear distinction would be made between the works in respect of which the contracting countries *would have* to guarantee protection and the works for which it would be enough for them to grant the protection which existed for national works under their legislation.

Various proposals were made to complete Article 4.

The German authorities asked for the insertion of *works of art applied to industrial purposes, collections of works by different authors, adaptations and other reproductions in an altered form of a work*; they replaced the last sentence by the following words: *and any other* production whatsoever in the literary, scientific or artistic domain, *whatever the mode of reproduction.* The reasons for those additions or changes are as follows: "There did not seem to be any need to mention chromolithographs specifically, these being most certainly included within lithographs, but this is not the case of works of art applied to industrial purposes or industrial art; when legislative revisions were undertaken recently in some important countries this category of works was formally assimilated to works of art; this is understandable as their production has expanded rapidly and the artificial limits established between pure art and art which is put to the use of real or ordinary life can no longer be maintained either from the doctrinal point of view or that of practical necessities."

The French and Italian Delegations supported the German proposal as regards art applied to industrial purposes, adding, to avoid any difficulty in application, *whatever their merit and purpose.* These three Delegations also asked for "works of architecture" to be inserted.

The Italian Delegation proposed a very comprehensive formula: the expression "literary and artistic works" shall include any production in the literary, scientific and artistic domain, whatever may be its merit and mode or form of reproduction, such as books, pamphlets and other writings; dramatic or dramatico-musical works, choreographic works and entertainments in dumb show; musical compositions with or without words; works of drawing, painting, architecture, photography or those obtained by a process analogous to photography; works of sculpture, etc. These works had to be protected in all the countries of the Union while works of art applied to industrial purposes had to be protected only to the extent that each country's domestic legislation allowed it.

The British Delegation asked for the words *art applied to industrial purposes* to be deleted and the Swiss Delegation seconded this request. The British Delegation observed that the term "works of art applied to industrial purposes" has a very wide meaning. In its opinion, most works to which that expression applied hardly fell within the scope of "artistic protection" as such. Industrial designs already enjoyed protection under the domestic legislation of the majority of countries by virtue of a set of provisions which had nothing in common with those concerning the protection afforded literary and artistic works.

These various proposals gave rise to lengthy discussions of which it suffices to indicate the conclusion.

Choreographic works and entertainments in dumb show were mentioned only in No. 2 of the Final Protocol and in a rather restrictive form; "As regards Article 9 it is agreed that those countries of the Union whose legislation implicitly includes choreographic works amongst dramatico-musical works expressly admit the former works to the benefits of the Convention"; the German authorities proposed amending the Protocol in this regard: "It is agreed that the stipulations of the present Convention shall also apply to choreographic works and entertainments in dumb show of which the dramatic action is fixed in writing." The proposal coincided with the Italian one in that both aimed to grant protection to choreographic works and entertainments in dumb show; they seemingly differed as to where the provision should be placed; it was obvious that, since there was agreement, matters were simplified by including the works in the list. To avoid great difficulties of proof, the German proposal added a specification by requiring the action to be fixed *in writing*. The Italian Delegation accepted this provided the words *or otherwise* were added, because sometimes the action is fixed by a drawing or any other process which would not constitute writing.

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"Works of architecture" had hitherto met with opposition. It was recognized that *plans and sketches* should be protected, but it was said that "the work of architecture" itself, i.e. the construction, was not required to be protected and some legislation refused to grant such protection. In 1896, the Belgian and French Delegations had asserted that there is no reason to distinguish between the sculptor and the architect, that the latter's work deserved protection just as much as the former's. They had to content themselves with a reference inserted in the Final Protocol, No. 1, whereby "it is agreed ... [that] in countries of the Union where protection is accorded not only to architectural plans, but also to the architectural works themselves, these works shall be admitted to the benefits of the Berne Convention and of this Additional Act." It was observed that, on the part of the countries in question, a concession was made in this regard to the countries of the Union whose legislations did not protect works of architecture themselves. The German authorities, which had been against protecting works of architecture in 1896, abandoned their initial viewpoint in their proposals to the Conference. The text of the Final Protocol as given earlier would be replaced by the following; "The stipulations of the present Convention shall also apply to works of architecture." It was logical then to ask, as the German, French and Belgian Delegations did, for works of architecture to be mentioned in Article 4 next to works of drawing, painting. The objection was raised that there was little point in doing so because difficulties never seemed to have arisen in that connection and, furthermore, because it was unacceptable that a building contractor or an architect who built a house with a façade comprising a door and six windows could complain because another building also had a door and six windows. In response, legal decisions were produced which established, first, that difficulties were indeed possible and, second, that they could be settled rationally by the courts. All protection would be denied to a very ordinary building in which the creator's personality is not revealed; it was the original, artistic work that was to be protected. In the end, the inclusion of works of architecture in the list of protected works was accepted without opposition; only the Swedish Delegation made reservations. The desires expressed on numerous occasions by the societies of architects of various countries have thus been rightfully met.

A person's individual work may have someone else's work as its starting point; it should nonetheless be protected in itself. The most obvious example is that of a translation. The translator has accomplished intellectual and often difficult work; he is entitled to protection. Of course he may have to consider the author of the original work, and may have to obtain authorization without which the publication of his translation would be unlawful. This does not mean, however, that he is not entitled to prevent someone else from appropriating his work, and to take infringement action against anyone who reproduced it. Article 6 of the present Convention appears to be in disagreement; indeed, it states that "*lawful* translations shall be protected as original works," which would imply that *unlawful* translations are not protected and may be reproduced with impunity. It was to remove this consequence that the German authorities proposed amending Article 6 by stating: "Subject to the rights of the author of the original work, translations shall be protected as original works." The second paragraph of the present Article 6 should be considered superfluous: it is obvious that, if a translator cannot avail himself of the author's copyright, his only right is to prevent others from appropriating his work, but he could not oppose another translation being made of the same work.

Adaptations, musical arrangements and other reproductions in an altered form of a literary and artistic work may be compared to translations. The work done in this respect may be lawful or unlawful depending on whether or not it has been authorized by the author of the original work but it must also be protected in both cases pursuant to what has just been said for translations.

The German authorities proposed inserting *collections of works by different authors* in Article 4, saying that this was a fairly common form of publication with an international market. The nature of the proposal was clearly explained in the Committee. What was to be protected was the task which consisted in assembling various works according to a definite plan and following a more or less ingenious method of grouping them. If the plan, if the combination constituted a piece of work which was individual, protection was due regardless of the nature of the materials used. They might have been taken from the public domain; for example, the collection might be an anthology of works by Voltaire, Goethe or Schiller. They might have been taken from the copyright domain, in which case, to be lawful, the consent of the author or authors was required and infringement action could be taken if it had not been obtained, but that was another aspect, as had been explained for translations and adaptations. The principle of the German proposal was accepted; the working was slightly amended because it was observed that a collection could comprise works by one and the same author. A *publisher* might undertake a series of publications in the same form and under the same name (*Collection* or *Bibliothèque*, *Sammlung*, *Series*); there could be unfair competition on the part of another publisher who appropriated this form and name; it would not be an infringement of a copyright which does not exist.

All the works which are thus listed in the first two paragraphs of Article 2 of the draft are entitled to protection, and the contracting countries must guarantee them that protection. This is what is stated in paragraph 3 so as to remove any doubt. If, by chance, protection is requested for one of these works in a country of the Union, and refused there because the legislation does not protect works of that kind, the

government of the country would be at fault for not having taken the necessary steps to apply the Convention.

It has been said earlier that agreement could not be reached on including *works of art applied to industrial purposes* in the list which has just been discussed, despite the efforts made by the German, Belgian, French and Italian Delegations in particular. The opponents only consented to these works being placed in a second category so as to guarantee them the national legislation's protection, such as it is. To avoid difficulties which have occasionally arisen before the courts, the French Delegation notably would have liked *whatever their merit and whatever their purpose* to be added in order to indicate clearly that the label *work of art* cannot, any more than the label *literary work*, cannot be dependent on a judge's aesthetic opinions or the purpose to which the object to be protected is to be put. Reference was made to France's experience. A law was adopted there in 1902 along the lines which have just been indicated; it was welcomed as a good thing and it put an end to numerous difficulties. It was only ever a matter of protecting an individual, original, new work which had been appropriated probably because it was recognized as having some value. These reasons were taken into consideration by several delegations but, in the face of the implacable opposition of some others, we had to confine ourselves to mentioning works of art applied to industrial purposes under the conditions indicated earlier. The benefit of national treatment, whatever its nature, may be invoked by virtue of the present Convention.

At the Paris Conference, on a proposal by the French and Italian Delegations, a paragraph had been added to Article 2 of the Convention to state that *posthumous works* shall be included among those to be protected. This cannot create any difficulty and, although the Committee did not think it necessary to reproduce the provision, it considers that the situation has not changed in the slightest. The draft deals with the term of protection of posthumous works (Article 7, paragraph 3) and implies by that very fact that the protection exists.

ARTICLE 2. The expression "literary and artistic works" shall include any production in the literary, scientific or artistic domain, whatever may be the mode or form of its reproduction, such as books, pamphlets, and other writings; dramatic or dramatico-musical works, choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; works of drawing, painting, architecture, sculpture, engraving and lithography; illustrations, maps; plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

Translations, adaptations, arrangements of music and other reproductions in an altered form of literary or artistic works as well as collections of different works, shall be protected as original works without prejudice to the copyright in the original work.

The contracting countries shall be bound to make provision for the protection of the above-mentioned works.

Works of art applied to industrial purposes shall be protected so far as the legislation of each country allows.

(Cf. Articles 4 and 6 of the 1886 Convention; Final Protocol No.2; 1896 Additional Act, Article 2)

With regard to *photographs*, the Union legislation has followed a course which it is worth noting.

In certain countries, photographic works do not enjoy specific protection but are assimilated to artistic works and consequently benefit from the protection afforded to them. Such countries naturally asked for photographs to be included in the list of works to which the Convention applied. This was refused by the countries which did not protect photographs or only protected them on a specific basis, not as artistic works. Thus, in 1886, the following provision was merely put in the *Final Protocol*: "As regards Article 4, it is agreed that those countries of the Union where the character of artistic works is not refused to photographs engage to admit them to the benefits of the Convention concluded today, from the date of its coming into force. They shall, however, not be bound to protect the authors of such works further than is permitted by their own legislation except in the case of international arrangements already existing, or which may hereafter be entered into by them. (...) It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as provided for by the said Convention, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private agreements between owners of rights." It should be noted at the outset that this last paragraph is totally unnecessary. A copyright work of art, such as a painting or a statue, cannot be reproduced by means of photography, any more so than by any other means, without the author's permission. If a sculptor has given a photographer the exclusive right to reproduce his statue, the photographer may take legal action against unauthorized photographs; he exercises a *derived right*, irrespective of the right he may have in his own name. This provision—maintained in 1896—was rightly considered to be superfluous by the German authorities; they asked for its deletion, which was accepted by the Committee without any difficulty.

Let us return to the main rule of the 1886 Final Protocol. As a result of it, it was only in those countries where the character of artistic works was granted, or, at least, not refused to photographs that protection could be claimed by virtue of the Convention. Where the character of artistic works was excluded, advantage could not be taken of whatever specific protection might be established by law. At the Paris Conference significant progress was made on the German Delegation's initiative. The first paragraph of No. 1 of the Final Protocol as quoted above was replaced by the following text: "Photographic works and works produced by an analogous process shall be admitted to the benefits of these provisions [*1886 Convention and 1896 Additional Act*] in so far as the laws of each State may permit, and to the extent of the protection accorded by such laws to similar national works." Thus, in the relations between the countries of the Union, it was possible to claim the protection, as such, granted to photographs or works obtained by a process analogous to photography. Each country maintained its principles while nonetheless granting national treatment to the Union countries. The essential thing is that some form of protection is granted; the exact nature of the protection is of secondary importance.

The consequence of the clause adopted in 1896 was that those countries of the Union where the legislator did not grant photographs any protection were not obliged to protect the photographs of the other Union countries, and yet benefited from the protection granted by the latter countries. A concession was thus made here without reciprocity. The hope had been expressed that this situation would not last, and the Conference had adopted the following *resolution*: "It is desirable (...) that in all the countries of the Union the law should protect photographic works or works obtained by analogous processes, and that the term of protection be at least 15 years."

It was left for the Berlin Conference to make another step forward. Agreement was quite easily reached on the need for photographs to be protected in all the countries of the Union, and thus satisfaction was given to the first part of the Paris wish. No explanation is provided about the nature of the protection, which may vary from country to country. As the German authorities state: "Although opinions on the intrinsic nature of photographs still differ a great deal, it matters little whether they are considered to be works of art under the domestic regime or whether they are subject to any particular treatment; the main thing is that, in every country of the Union, they are guaranteed such protection as exists." But there must be protection; the contracting countries are bound in this respect; this is the difference which is established in relation to the Paris resolution.

From protection being guaranteed to photographs by virtue of the Convention it follows that it is not subject, under the present system, to any special conditions and formalities other than those which may be required in the country of origin. The Paris Interpretative Declaration had thought it necessary to point this out formally (No. 1 *in fine*); there can be no doubt about it. We should add that, in future, Article 4, paragraph 2, of the draft will be applicable.

As for the second part of the Paris resolution, a number of delegations were willing to comply with it by establishing in the Convention itself that photographs would be protected for at least 15 years from the date of publication. A variety of objections were made in relation to either the term or the starting point and, despite the great interest there would be in having a uniform duration for the international protection of photographs, it proved necessary to remain silent on this point, which implies, as will be explained later (in connection with Article 7, paragraph 3), that in each country the term laid down by the national legislation may be claimed without it being possible to require protection for a longer period than in the country of origin.

Certain delegates, notably the French ones, observed that it would be advantageous to complete these provisions on photography in the various countries by organizing the recognition of the signatures and symbols which photographers placed on their works (See, by analogy, Paris resolution IV). It emerged from the discussion that the question was not one to which the present Conference could provide a solution.

ARTICLE 3. This Convention shall apply to photographic works and to works produced by a process analogous to photography. The contracting countries shall be bound to make provision for their protection.

(1886 Final Protocol, No. 1; Paris Additional Act, Article 2)

Protected Authors. Nature and Scope of the Protection

Preliminary remark: it will only be a question of *authors*, and no reference will be made anywhere to their *successors in title*. It was deemed unnecessary to mention *successors in title* as this makes the sentence cumbersome and gives rise to a doubt if, by chance, the reference has been omitted. *Copyright* is not exclusively personal: the author may dispose of it; by virtue of an agreement, a will or the law, his successors in title may exercise the rights which are granted to him personally. There is no need to mention them explicitly. In 1886 all reference to contractual or legal agents, which appeared in the old conventions, had been deleted; the work of simplification is being completed by deleting that of successors in title.

Protected authors may be nationals of Union countries and nationals of countries outside the Union. The two cases must be distinguished.

[1] It was not being suggested that it was always lawful to make chrestomathies without the consent of the authors; this question is dealt with in Article 8 of the Berne Convention. See Article 10 of the draft.

National Authors

At present the position of national authors is determined by Article 2 of the 1886 Convention, in respect of which the German authorities are proposing important amendments; the Delegations of France, Great Britain, Italy, Monaco, Sweden and Switzerland also submitted amendments. The questions are complex and an overall exposition of these various proposals would cause confusion. It is thus necessary to proceed by means of analysis.

The general principle is fairly simple. Nationals are protected (to the extent that will be indicated) in respect of their published or unpublished works. As far as the latter works are concerned, there are no conditions; as regards the former, on the other hand, *they must have been first published in a country of the Union* (this makes the question of what constitutes *publication* of great interest, as will be stated later). This latter condition has always been required and, until now, has never given rise to any objection. Mr. DE BORCHGRAVE has criticized it, however, saying that it seemed to him to be in the spirit of the Union Convention that nationals should be protected whatever the country in which they had been led by circumstances to publish their works. However, it was felt that the Convention was quite liberal enough, and that the territory of the Union should at least have the advantage of a publication to which it guarantees effective protection, not to mention that the consequence of the proposed amendment would be to favour publishers in non-Union countries.

The protection provided by the Union comprises:

(1) the rights which the respective laws do now or may hereafter grant to nationals,

(2) the rights specially granted by the Convention.

The principle is thus that, as regards an unpublished work or a work published in a Union country, a national may first claim *national treatment* in each of the other Union countries; the Convention did not stop there: it enacted certain rules which must be applied whatever the case and irrespective of the national treatment, for example in relation to translation. What is called, in short, *Union treatment* is thus made up of these two elements.

So far we have not introduced any innovation to the existing right. The wording we are proposing, following the German authorities, introduces only changes of pure form in Article 2, paragraph 1, of the 1886 Convention, intended to make the thinking clearer; Article 4, paragraph 1, of our draft would thus read as follows: "Authors who are nationals of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which the respective laws do now or may hereafter grant to nationals as well as the rights specially granted by this Convention." The additional words inserted at the beginning of the paragraph clearly show, as Germany's preamble explains, that, in the case of published works, it is the country of first publication which becomes the country of origin of the work; even when he is not one of its nationals, the author is subject in that country to the system applicable to national authors, and it is in the other countries, including his own, that he enjoys the benefit of Union treatment. The work of a Belgian published in France is a work which is considered to be French by the country's legislation; it is protected by the Convention in all the countries of the Union, including Belgium; in France, it is protected by the national law. The wording added at the end brings out the second element of the protection.

The enjoyment and exercise of these rights shall not be subject to any formality. It should be noted that it is exclusively the rights claimed by virtue of the Convention that are involved here. The legislation of the country in which the work is published and in which it is nationalized by the very fact of publication continues to be absolutely free to subject the existence or the exercise of the right to protection in the country to whatever conditions and formalities it thinks fit; it is a pure question of domestic law. Outside the country of publication, protection may be requested in the other countries of the Union not only without having to complete any formalities in them, but even without being obliged to justify that the formalities in the country of origin have been accomplished. This is what results, on the one hand, from a general principle which is going to be stated and explained and, on the other, from the deletion of the third paragraph of Article 11 of the 1886 Convention. This paragraph provides that: "It is, nevertheless, agreed that the courts may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, in accordance with Article 2." That Article does indeed state, at the beginning of its paragraph 2, that "the enjoyment of these rights shall be subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work" and, to remove difficulties which had arisen in certain countries, the Paris Interpretative Declaration had emphasized this idea—which was evidently that of the authors of the 1886 Convention—that protection depends solely on the accomplishment, in the country of origin, of the conditions and formalities which may be required by the legislation of that country. This was already a great simplification which will be appreciated if it is recalled that there was a time not so long ago when, to guarantee a work protection in a foreign country, even by virtue of an international convention, it was necessary to register and often even to deposit that work in the foreign country within a certain time limit. The new Convention simplifies matters still further since it requires no justification. Difficulties had arisen with regard to the production of a certificate from the authority of the country of origin—this production having been considered, occasionally, as the preliminary to infringement action, which caused delays. The new provision means that a person who acts by virtue of the Convention does not have to provide proof that the formalities in the country of origin have been accomplished, as the accomplishment or non-accomplishment of these formalities must not exert any influence. However, if it is in his interest to produce a certificate to establish a particular fact, he cannot be prevented from doing so (the Article in the draft only refers to *formalities*, but this is meant to cover the *conditions and formalities* to which the 1886 Convention refers).

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We now come to a very important question.

The German authorities proposed making a radical change to the existing right whereby there is a link between the protection in the country of origin and the protection in the country in which it is claimed; this link is certain as far as the duration is concerned since, after stating that the enjoyment of the rights accorded authors shall be subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, paragraph 2 of Article 2 continues in the following terms: "[it] must not exceed in the other countries the term of protection granted in the said country of origin." Does this relationship exist only in connection with the duration? The German authorities' preamble states in this respect: "According to an opinion which is accepted in practice, the work is required, moreover, by its constituent characteristics, to be one of the works which the legislation of the country of origin protects as literary and artistic works." And yet the 1885 Diplomatic Conference, which created the Convention, had already warned the courts against a too restrictive interpretation of this Act—as can be seen from the following passage out of its Committee's report: "The Committee considered the words 'during the existence of their rights in their countries of origin' to be too absolute, as it could be concluded from them that, even outside the context of the term of protection, the courts would always be obliged to apply the law of the country of origin to an author even when that law was less favourable to him that that of the country in which protection was sought. Yet such a system would have the serious drawback of requiring either the courts or the publishers to have a thorough knowledge of all specific legislation which would be contrary to the very concept of the Union to be created. The Committee therefore made the wording of the Article more specific by saying that the *term of protection* could not be longer, in the other countries of the Union, than that granted in the country of origin." What is the real meaning which should be attached to the Convention in this regard? There is room for doubt: the German authorities themselves, although convinced that, in practice, the Convention has been misinterpreted, accept that this interpretation is fairly widely adopted; they wish to remove any doubt by means of an explicit rule which would go far beyond what the 1885 Committee wanted. Indeed, they propose stating without restriction: "The enjoyment and the exercise of these rights are *independent of the existence of protection* in the country of origin of the work.... Apart from the express stipulations contained in the present Convention, *the extent and term of protection*, as well as the means of redress secured to the author to safeguard his rights shall thus *be governed exclusively by the laws of the country where protection is claimed.*" There would thus be complete independence, from all points of view, between the legislation of the country of origin and the legislation of the country where protection is claimed. For example, for a work published in Germany, protection could be claimed in France for 50 years after the death of the author whereas it will have fallen into the public domain in Germany after 30 years; on the other hand, a French work would be protected in Germany for only 30 years.

According to the German authorities, "the proposed new ruling may be considered to be the development of the fundamental idea behind the Berne Convention whereby, in all the countries of the Union, the Union author should be treated as a native author with, additionally, the guarantees stipulated by the Convention. Even now, it is the legislation of the country in which the author requests protection that determines each of the exclusive rights to which he is entitled, whether or not the author enjoys similar rights in the country of origin of the work. Even now, the Convention grants its protection in this respect without taking the question of reciprocity into account at all; no objection drawn from the differences between the legislations of the various countries of the Union could thus be produced against the proposal for amendment. Doubtless, in those countries where works of art applied to industrial purposes are protected, for example, protection will have to be granted to such works even if they are not protected in the country of origin, that is to say, without any condition of reciprocity. But the laws hardly differ between one another as to the legal conditions for protecting the work. Differences in relation to the term of protection are much greater. However, the number of works for which these divergences have any real importance is relatively limited. In view of this situation, it would truly be showing too much narrow-mindedness to want to measure the value of the guarantees which the countries of the Union accord each other reciprocally in the copyright sphere according to the broad or not so broad provisions of their legislation. In actual fact, what is decisive in this respect is the size of the market which the works of one country find in another, as it is this which determines the extent to which they may be exploited by the author or his successors in title in the foreign territory, whether they disseminate copies of the work there or whether they find equitable compensation there in exchange for assigning the right of reproduction, translation or public performance."

The German proposal was fought with regard to its principle first and then with regard to its consequence in relation to the duration. It was said that it went against the nature of things; indeed, protection must extend from the country of origin to the other countries, and it is hard to imagine absence of protection in the country of origin combining with protection in the other countries. Reference was also made to the idea of the personal status and, on behalf of the dignity of the legal profession, an argument was rejected which was based on the difficulty for judges—unfamiliar with questions as complicated as those of copyright—to interpret foreign laws.

In fact, only in a fairly small number of cases will works be found which are totally bereft of protection in one country while being protected in another and, consequently, the question of the independence of the two legislations is of more theoretical than practical importance. But this is not the case as regards the duration. Thus the strong opposition which the German proposal met in this regard is understandable. It was observed that in no country public opinion would readily accept that, for works which people wished to reproduce or perform, it would be necessary to reckon with the rights of the authors' heirs many years after those works had fallen into the public domain in the country of origin. An advantage would be granted here without reciprocity by the countries which protect authors the best to those which protect them the least and it would not encourage those countries to amend their legislation to lengthen the term of protection.

The French Delegation accepted the principle of the independence of protection but adding that the term of protection would be the same in all the countries of the Union, and that it would comprise the life of the author and 50 years after his death. It linked the two things because, although it was claimed that the two questions of independence and duration were totally separate, they were really connected in that the question of independence could not be settled without thinking about the major consequence of the solution adopted.

The Swedish Delegation proposed accepting that the enjoyment of rights was subject to the accomplishment of the conditions and formalities prescribed by the country of origin of the work, and also that the term would be the same in all the countries of the Union (French proposal on this point).

To make the vote easier, the Italian Delegation made two proposals, one repeating the principle of the German proposal and the other appropriating the French proposal in respect of the duration. The two proposals were passed by the majority so that, if the majority could bind the minority, it would be the French Delegation's draft which we would have submitted to you. This is not the case and the compulsory fixing of the duration met with opposition in the face of which it was necessary to give way. The French Delegation and those which supported its viewpoint agreed to separate the two solutions given for independence and duration. This result is in conformity with a proposal made by Monaco's Delegation.

Reference will be made later to the duration which is governed by a special Article (Article 7 of the draft). It suffices at this stage to note the very clear rule that the enjoyment and the exercise of the author's rights are independent of the existence of protection in the country of origin of the work. Is it in keeping with real principles? An attempt was made to argue the rule adopted for patents, but it would seem that the argument does not hold. A patent is a title issued by a country's authority; this title naturally has consequences only where this authority has control and, conversely, it produces effects without there being reason to take account of whether or not the invention is patented abroad. With copyright it is the work itself which is protected and it is more easily understandable that, pursuant to international conventions, the country of origin's protection extends into the other countries. However, it is not a question of principle which is involved here but one of practice. Indisputably the rule of independence is easier to apply; it prevents quarrels over nothing which the owner of rights might face from quibblers who asked him to bring back clear justification of the existence of his right in the country of origin while, before a foreign court, a rule of custom or case law is fairly difficult to establish. The first two paragraphs of Article 4 of our draft are thus explained.

Under Article 9, paragraph 2, of the draft, the copyright in newspaper articles is occasionally subject to a prohibition to reproduce which the author has to give. This is not a *formality* within the meaning of Article 4 and the accomplishment of the *condition* is necessary to guarantee the right.

ARTICLE 4. Authors who are nationals of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which the respective laws do now or may hereafter grant to their nationals as well as the rights specially granted by this Convention.

The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(*Article 2, paragraphs 1 and 2, 1886 Convention as revised at Paris*)

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With the principle stated in the second paragraph of Article 4, it is of less interest to determine the country of origin of the work, since that country's legislation is no longer important as regards the existence and the scope of protection. Nevertheless, it is still useful as far as the duration is concerned, as will be seen later, and also in terms of the first condition required in order to be entitled to the benefits of the Convention, i.e. that first publication has been effected in the territory of the Union. It is necessary therefore to know what constitutes publication.

We propose maintaining the existing right, as established by the Berne Convention and the Paris Interpretative Declaration, with a few amendments or additions.

First of all, a distinction is required between unpublished and published works. As regards the former, the country of origin is that of which the author is a national; in the case of the latter, it is the country of first publication. It was necessary to provide for the relatively frequent case of simultaneous publication in several Union countries; here it is the country whose legislation grants the shortest term of protection which is taken; this relates to a rule on duration which will be encountered later. The British Delegation drew attention to the hypothesis of a publication effected simultaneously, i.e. on the same day, in a country of the Union and in a non-Union country, for example, in Berlin and Vienna, in London and New York. It would appear that difficulties have been raised as to how to solve this hypothesis. The solution was considered to be easy by the Committee, which adopted the Britisb Delegation's viewpoint. Under such circumstances—assuming the publication in a Union country is genuine and not fictitious—there is no reason to take account of the publication effected in a non-Union country whose legislation cannot have any influence over the position of a work which is published in the Union.

In the definition of *published works*, we have reproduced the Paris Interpretative Declaration while adding a reference to the *construction of a work of architecture* which corresponds to the exhibition of a work of art. This definition was adopted after a serious discussion; it was accepted by the Powers which signed the Declaration; it was not challenged in our Committee. Only it is clearly understood, as the Italian Delegation observed, that this definition is only compulsory in international relations and a slight addition is intended to indicate this. Each country's domestic legislation may have other rules for works published in its territory; thus, in certain countries, the performance of a dramatic work constitutes publication.

ARTICLE 4, PARAGRAPH 3. The country of origin of the work shall be considered to be: in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; and in the case of works published simultaneously in several countries of the Union, the country whose legislation grants the shortest term of protection. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin.

The expression "published works" means, for the purposes of this Convention, works copies of which have been made available to the public. The performance of a dramatic or dramatico-musical work, or of a musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute publication.

(*Article 2, paragraphs 3 and 4, of the 1886 Convention; 1896 Interpretative Declaration, No.2*)

The provision of Article 4 strictly suffices for nationals. Indeed, the first paragraph guarantees them protection in the countries of the Union other than the country of origin of the work. If they are nationals of that country, naturally it is not for the Convention to deal with the situation governing them, which comes within the province of the domestic law in every respect; if they are not subjects or citizens of that country, their works are naturalized there by the very fact of their publication, and such authors are assimilated to national ones under the legislation of almost all the Union countries. The German authorities nevertheless proposed settling this situation expressly. "The question of whether or not the work will be protected in the country of origin would appear at first glance to be a matter which does not concern the Convention. But since the latter establishes first publication in the territory of the Union as an indispensable condition of all protection, it seems abnormal that it should take no interest at all in the situation reserved to the work in the very country where this work will be nationalized, so to speak." The proposal was accepted without difficulty; it is set out in a separate Article because Article 4 is long enough.

ARTICLE 5. Authors who are nationals of one of the countries of the Union, who first publish their works in another country of the Union, shall have in tbe latter country the same rights as authors who are nationals of that country.

Non-National Authors

The position of non-national authors has not always been the same. Under Article 3 of the 1886 Convention, the provisions of the Convention apply to the publishers of literary or artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to it. Thus, as far as these works are concerned, protection is not for the author but for his publisher who publishes the work in a country of the Union. This odd solution, which could give rise to real legal difficulties, as the German Delegation had brilliantly shown, was fortunately amended by the Paris Conference, which granted a right directly to the authors themselves. Under Article 3 as revised in 1896, "Authors who are not

nationals of one of the countries of the Union, who first publish, or cause to be first published, their literary or artistic works in one of those countries, shall enjoy, in respect of such works, the protection granted by the Berne Convention, and by this Additional Act." The German authorities observed that this wording lets doubts subsist as to whether an author who is not a national of one of the Union countries enjoys, for his works which are published in the territory of the Union, the protection of the Convention even in the country where the work has been published or whether he only enjoys it in the other countries. Only the latter solution is fair; it is in keeping with the one which has been given in respect of a work published by a national of another Union country. This work should be treated in the same way as those of national authors. It may be felt that by laying down a rule in this regard we are stepping outside the sphere of the conventional right. If we take the case of a Russian author publishing his work in Berlin, the question of whether or not he will be protected in Germany appears to be outside the scope of the Berne Convention, since Russia is not yet a party to the Convention. But if it is accepted that, by this publication in Germany, the author will be protected in the other countries of the Union, how can it not be accepted that he will also be protected in Germany where first publication has taken place? Protection extends quite naturally from the country of origin to the other countries with which it is in association, but an absence of protection in the country of origin would be difficult to reconcile here with the existence of protection in the other countries. It must be decreed therefore that protection applies throughout the territory of the Union; this is what the Paris Conference had done by not making any express distinction between the situation in the country of publication and the situation in the other countries. This distinction is made for the sake of principles; it will not have any great practical consequences.

One would thus arrive at the following rule:

ARTICLE 6. Authors who are not nationals of one of the countries of the Union, who first publisb their works in one of tbose countries, shall enjoy in that conntry the same rights as authors who are nationals of that country, and in the other countries of the Union the rights granted by this Convention.

(Article 3, 1886 Convention and Paris Additional Act, Article 1)

This wording calls for two observations, one concerning the form and the other the substance. In the case of publication in a country of the Union, the work is protected in the same way, whether its author is a national or a non-national; this is what ensued from a combination of Article 4, paragraph 1, Article 5 and Article 6. This being so, could there not have been a single text for both cases? Yes, just; however, the distinction provides greater clarity, and also Article 6 has a history which should not be erased; this Article 6, linked to Article 3 of the 1886 Convention, testifies to the progress achieved.

As regards the substance, the question was raised as to whether nationals and non-nationals should be assimilated in this way. Do reasons of justice and reasons of usefulness not seem to demand that their situation should not be identical, that there should be quite notable differences so that countries outside the Union are induced to join it not only from a desire to pay tribute to the right but in the very interest of their nationals? Assimilation is not total. There will first be this difference that protection will not be granted to non-nationals for their unpublished works. Consequently, pursuant to the very definition of publication (Article 4, paragraph 4), a dramatist, a composer, a painter, a sculptor, an architect of a country outside the Union will not be protected by the Convention in respect of any work of his which is performed, executed or constructed—even for the first time—in a Union country; first *publication* of their works must have taken place there. The difference is not very marked, and it may be felt that the Union is generous indeed towards nationals of the countries which are not parties to it. This is true, but the Paris Conference thought —and the Berlin Conference will not disagree with it in this respect—that this generosity was worthy of the high principles which govern the Convention and might in the end have a similar effect to that of the measure by which France, more than half a century ago, granted unconditional protection to works published outside its territory.

Term of Protection

Reference has already been made to the French Delegation's proposal to harmonize the term in the relations between the Union countries. The Delegation could not accept that the author's copyright should be governed solely by the legislation of the country where protection was claimed, if the term of protection was not uniform, in view of the outrageous absence of reciprocity which would result. It has been seen that the two questions had been separated. As to the duration, the rule is that it comprises the life of the author and 50 years after his death; it is already to be found in several of the Union countries' legislations. In their majority, the delegations of the countries which have a shorter term agreed to this rule being introduced in the Convention as a general principle; they merely reserve the action of their legislation and do not wish to make any firm promises on it being amended. The British Delegation was even more reserved, and the fact that it will sign the Act in which Article 7, paragraph 1, appears does not in any way imply that the duration thus fixed has its *a priori* approval; the British Government wishes to retain its complete freedom of assessment with regard to the proposals it may make to its Parliament.

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The rule is very clear therefore. The term of 50 years after the death of the author will only apply at this stage in the relations between those countries whose legislation conforms. *It is desirable* that the other countries adopt this rule and probably most of them will do so, but they are not committing themselves. What will be the situation until uniformity is established? A work will only be protected in a country for the period laid down by that country's law, for example, 30 years in Germany until the 1901 law has been amended; but it is not enough to be content with this, because then a German work would have to be protected for 50 years in France or in Belgium, which would be excessive, as shown earlier. It is necessary to add therefore that protection may not be claimed for a longer period than in the country of origin. In other words, as far as the duration is concerned, we maintain the interdependence, removed in other respects, of the legislation of the country of origin and the legislation of the country where protection is sought; we maintain the rule which results from a combination of paragraphs 1 and 2 of Article 2 of the 1886 Convention.

ARTICLE 7. The term of protection granted by this Convention shall be the life of the author and 50 years after his death.

However, in case such term of protection sbould not he nniformly adopted by all the countries of the Union, the term shall be governed by the legislation of the country where protection is claimed, and must not exceed the term fixed in the country of origin of the work. Consequently the contracting countries shall only be bound to apply the provisions of the preceding paragraph in so far as such provisions are consistent with their national legislation.

This last rule has a general scope of application, and it permits satisfaction to be given to certain countries which, although having a normal term of 50 years for copyright in general, give a shorter term for some forms of this right. Thus the Norwegian Delegate observed that the Norwegian law permits a published work to be read aloud three years after its publication and the Swedish law only protects the performance of a dramatic or dramatico-musical work for the life of the author and 30 years after his death. He asked whether these two exceptions could be maintained and, if so, whether a few words should not be included to place the solution beyond doubt.

The Committee thought that no amendment was necessary as it expressly stated that each country is only bound to apply the provisions of paragraph 1 *in so far as they are consistent with its national legislation.* Consequently, for as long as the rules mentioned earlier subsist in Norwegian or Swedish legislation, the general rule of paragraph 1 will not be able to apply in those countries, since their domestic laws do not permit it.

This same principle means that we are spared the necessity of resolving very delicate questions in respect of which there are many differences between the laws of the Union countries.

Thus for posthumous works which come within the province of the Convention and which, as was explained earlier, it was not deemed necessary to mention expressly amongst protected works, the duration is fixed in very different ways (e.g. 30 years from the death of the author or ten years from publication in Germany, 50 years in France). There may also be difficulties for anonymous works or works published under a pseudonym. It would be difficult and without sufficient interest to seek an international rule. Let us rely on the law of the country where protection is claimed, subject to the influence of the law of the country of origin along the lines which have just been explained.

It was seen earlier that it had not been possible to agree on a uniform duration for the protection afforded to photographs. The consequence is that we confine ourselves to what has just been explained. Those countries in which photographs are protected as artistic works will grant them the duration they afford to the latter— which will apply, for example, in the relations between France, Belgium and Italy. If protection is claimed in Germany for a French photograph, it will only be granted for the limited period established by the German law; if protection is claimed in France for a German photograph, the latter will not be protected there for a longer period than in Germany.

ARTICLE 7, PARAGRAPH 3. For photographic works and works produced by a process analogous to photography, for posthumous works, for anonymous or pseudonymous works, the term of protection shall be governed by the legislation of the country where protection is claimed, provided that the said term shall not exceed the term fixed in the conntry of origin of the work.

On Translation

We come to one of the most important points in the Convention. As it has often been said, for literary and scientific works, between countries which do not speak the same language, copyright has little import if it is limited to reproduction and does not include translation. When the reputation of an English or French work has spread into Germany we may be tempted to translate it so that it will be accessible to German readers; we will not think of simply reprinting it. If, therefore, reproduction is forbidden and translation is permitted, this amounts to protecting the author by prohibiting something which will never happen while allowing the only possible breach of his right.

It is perhaps in relation to translation that we can gain the best idea of the progress accomplished in the process of the international recognition of copyright.

Under the treaty concluded on August 2, 1862, between France and Prussia, the author could prevent the publication of any translation he had not authorized for five years, but provided he had indicated his intention to reserve the translation right at the beginning of his work and had availed himself of that right by having an authorized translation published, at least in part, within a year and in its entirety within three years; the formality of registration had to have been completed for both the original work and the translation. There was thus a veritable plethora of conditions imposed on the author and, even if he succeeded in satisfying them, he was only protected for five years from publication of the translation. Those who negotiated treaties of this kind seem to have been thinking mainly about occasional works which must be translated almost immediately after the original publication. These conditions could hardly be met for serious works of science or history where there is no telling immediately if they will interest a foreign public, and which take a long time to translate.

The French legislation does not contain any provisions on translation. But authors and the courts had no hesitation in accepting that translation was only a method of reproduction and that, consequently, it could not be carried out without the author's permission. This is the thesis for which the French Delegation had tried to win acceptance at the 1884 Berne Conference, but without success. The Conference had considered only that it should submit the following wish to the Governments of all the countries: "It would be appropriate to encourage as far as possible the tendency towards complete assimilation of the translation right to the reproduction right in general." The system adopted by the 1885 Conference, which is expressed in Article 5 of the 1886 Convention consists in this, that for ten years from publication of the original work authors shall enjoy the exclusive right of making or authorizing the translation of that work. No condition is imposed on them and their right is absolute during that period. On the other hand, once the period has expired the exclusive right disappears: whether there has been no translation or whether the author has made or authorized one, anyone may translate provided, of course, that the work of the author of the translation which has already been published is not appropriated, this work being protected in its own right.

This system had generally been considered only as a transition, the 1884 Conference having indicated the goal towards which the Union should strive. In 1896, the German Delegation, the Belgian Delegation, the French Delegation and the Swiss Delegation asked for translation to be assimilated to reproduction; but it still proved necessary to make a compromise. The Conference adopted the following rule: "Authors who are nationals of any of the countries of the Union, or their successors in title, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works throughout the term of their right in the original work." Here we have the principle clearly asserted, but it includes a restriction: "Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is to be claimed."

The 1896 rapporteur stated: "Thus the principle of assimilating translation to reproduction is clearly stated in the first sentence, and *our successors will only have to delete all that follows that sentence*". He certainly had no idea that he would be given the honour of actually recording the deletion.

Noting the progress of the 1884 idea, the existence of statutory and Convention provisions seen since 1896 which purely and simply assimilate translation to reproduction, and the acceptance of the reform without protest or difficulties, the German authorities thought the time had come to introduce this both equitable and logical rule in the Union. The proposal was supported by a very interesting memorandum from Dr. OSTERRIETH, who showed that the innovation was not only justified by theoretical considerations but had the backing of experience. Germany went through various systems in this regard, that of 1886, that of 1896 and, finally, the system of assimilation resulting from the 1901 Copyright Law and from various conventions concluded by Germany recently with Belgium, France and Italy. The public and publishers cannot help but be pleased about the protection granted the author, and this is understandable. Doubtless, it would appear to be easier to make a translation of a successful work cheaply without having to ask the author who may require remuneration, but the publisher is not guaranteed against competition from other translations issued by publishers who also wish to take advantage of the success. On the other had, if the publisher has negotiated with the author and if he thus obtains a guarantee against competition, he will not only be able to remunerate the author —who does not usually ask for much—but also pay more for the translation which the author will be able to check. The public will therefore be likely to have better translations, which is the important thing. Dr. Osterrieth summarized the result of an inquiry by stating that the denial of copyright sometimes increased the *quantity* of translations but to the detriment of their *quality*.

The number of French works translated was said to have greatly increased over the last 12 years.

Mr. GEORGES LECOMTE, on behalf of the French Delegation, looked at the situation particularly from the point of view of the author's right, his moral right as much as his economic one, in supporting the German proposal, in keeping with traditional French doctrine. The author is the best judge of whether his work can be translated, and which translator is the most competent to do so: in this way he is in a position to prevent any distortion of his thought. The obligation to publish within a given time would be unjust for a number of those serious works which take a long time to spread in their country of origin first and then in other countries and which require prolonged work on the part of the translator.

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Mr. HOEL, the Norwegian Delegate, outlined the evolution of his Government's ideas about translation. It was precisely because of the translation question that Norway did not sign the Convention in 1886, although it had been represented at the 1884 and 1885 Conferences. An 1893 law having granted the author an exclusive right for ten years, it was able to accede to the 1886 Convention. At the Paris Conference the experience was too recent, and the Norwegian Government did not accept the Additional Act. Recently the question was studied again; The Danish publishers consulted by Mr. HOEL on the effect that the extension of the translation right had had in their country told him that there was a lot to be gained from being protected against competing translations and that, moreover, authors were not in the habit of making exaggerated claims. The Norwegian Delegation has therefore been instructed to accept the principle of assimilation.

These explanations are intended to show that the Union's forward march is determined by experience and, consequently, that there is no reason to be afraid of an innovation which is of great importance in terms of the complete recognition of copyright.

The principle of assimilation gave rise to fears on the part of the Netherlands Delegation; the Japanese Delegation made a proposal which was quite the opposite.

The Netherlands Delegation said that too strict a rule on translation might be an obstacle to the Netherlands joining the Union; the reasons of justice indicated in favour of the author's copyright were fully recognized, but the transition needed to be carefully contrived. A similar observation was made on behalf of the Russian Delegation. The reply we should give is that, while it desires the Union's progress, the Conference does not claim that all nations will go forward at the same pace as those whose relations have been developed by association; it understands that they want to pass through the same stages and to advance only after the same experiences. A clause will enable non-Union States to join on the basis that they confine themselves to the rules laid down either in 1886 or in 1896 (see Article 25 of the draft).

The situation could not be the same for Japan, which is a Union State. It made an extremely simple proposal: "The translation into Japanese of a work written in a European language and vice versa shall be completely free." What is involved here is no longer a general principle but a provision aimed at Japan's particular situation in relation to the other countries of the Union. The Japanese Delegation was kind enough to present the Conference with a *Preamble* (appended to the minutes of the second session) which was confirmed orally in the Committee. It laid stress on the difference which cannot be denied between the customs, practices, religion and traditions of the Japanese, on the one side, and the European and American peoples, on the other, on the difficulty of becoming acquainted, of understanding one another, which could create misunderstandings. The remedy would be the reciprocal freedom to translate, which would not have the harmful consequences for authors that it could produce in the relations between the European peoples, but rather would be to their advantage by making Western works known and even, if the translation were successful, inspiring the desire to read the original work and thus facilitating the sale of original editions. The Delegation insisted also on the difficulty of translating European works into Japanese—a difficulty which is due to the fact that the Japanese language is fundamentally different from the other languages.

We followed with great interest the ingenious arguments, presented with much art by the Japanese Delegation in support of its proposal. If we were not convinced, it was by no means for the reason which the preamble imagines: "I am well aware," he states, "of the objection which will immediately be made: we Europeans, it will be said, can be proud of possessing a literary heritage which is almost inexhaustible in its wealth. If we open this treasure to you, what will you give us in exchange? The freedom to translate would be a fool's bargain from which you alone would benefit since you Orientals have no literature as such." No, we most certainly do not think of saying any such thing and, to be prevented from doing so, we did not need the eloquent protest which follows: "Gentlemen, it is precisely in this respect that one can judge just how necessary it is to raise barriers and facilitate intellectual contacts. Our literature is as rich as Europe's, as are also our artistic productions. It possesses sublime beauties, it abounds in remarkable works but, regrettably, it does not exist in Europe's eyes because, regrettably, it is not known. It is easy to count those who have taken the trouble to study our language and our literature, and even more so, those who have revealed their beauties to their compatriots.... No obstacle must prevent European genius from coming into contact with the works of nations which are latecomers to the international concert. If to the difficulties of translation resulting from natural differences in idioms and customs you also add the restrictions of the Convention on literary property, translators, disheartened, will give up the struggle."

We can promise our colleagues from Japan that we certainly do not have the disdain they imagine for their country's literature and art, that we very much wish to know them more and more, but we think that the remedy they propose would far from facilitate the exchanges of ideas they desire. If a Japanese person is disposed to undertake the translation of a European work, is it likely that it is the demands of

the author or the publisher which prevent him from executing his plan? Sincerely, we think not. The experience noted for translations in Europe is decisive. The very difficulties of translating European works into Japanese which our colleagues pointed out so well show that such a delicate task must not be entrusted to just anyone, that it is essential for the author to have the possibility of finding out if he can have confidence in the knowledge and intelligence of the person who offers to interpret his thinking. Otherwise, the Japanese public will run a great risk of being deceived. Thanks to the author's authorization, the translator is recommended to readers; under the Union's system, he is protected against competition from other translators; it cannot be said therefore that this system is liable to discourage translators and to prevent intellectual relations between the West and the Far East. Finally, as Dr. Osterrieth showed so well, there would be no reason why the exception claimed by Japan should not apply to other languages which, even in the Union, are difficult to translate. A fundamental principle would thus be overturned. We draw the attention of our Japanese colleagues to these considerations and we should be happy to see their opposition disappear.

ARTICLE 8. The authors of unpublished works, who are nationals of one of the countries of the Union, and the authors of works first published in one of those countries shall enjoy, in the other countries of the Union, throughout the term of the right in the original work, the exclusive right of making or authorizing a translation of their works.

(Cf. Article 5, paragraph 1, Berne Convention as revised in Paris)

The deletion of the second paragraph of the former Article 6 will be noted, on grounds which have already been given in the preceding explanations. The above provision aims to establish the protection of the author in relation to translation; the translator's right and the scope of this right are not involved. The translator has the right to be protected for his personal work pursuant to Article 2, paragraph 2, of the draft. Can he prevent another translation of the same work? It depends. If the author, having retained the translation right, has assigned it in full to a translator for a particular language, the translator has a monopoly and can prevent any competition. If he has simply been authorized to translate, another translation may be made providing it is not the reproduction of his. The observation applies in particular to works which have fallen into the public domain. Under the rule laid down in Paris and especially as it had been laid down in Berne, the work could frequently be copyright as far as reproduction was concerned and in the public domain as regards translation; it was especially in view of this last hypothesis that it had been deemed appropriate to include the provision—which is deleted by us as totally superfluous.

Newspaper Articles

The question of newspaper articles has always given rise to long discussions. The Berlin Conference has nothing to envy its predecessors in this regard.

Under Article 7 of the Convention as revised in Paris, the subject matter of periodicals may be divided into three categories: (1) serial novels and short stories, which are protected like any literary work, that is to say, without the author's copyright being subject to the obligation to make any sort of reservation; (2) articles in newspapers or periodicals, which are duly protected in that the author may forbid their reproduction but their reproduction is lawful (provided their source is indicated) if he has not expressly forbidden it; (3) articles of political discussion, news of the day and miscellaneous information, which may be freely reproduced and for which prohibition cannot apply; it is not even necessary to indicate the source for this category.

Objections were raised in various quarters, where greater respect was sought for the rights of journalists. Why was an article of political discussion, which might constitute a literary work of great value, thus left to the public in such a way that it might be freely appropriated without it even being necessary to mention the newspaper and the author's name? It was absolutely scandalous.

The German authorities made a proposal containing several lines of thinking. There would be no change for serial novels and short stories about which, moreover, everyone was in agreement; they were literary works which were published in newspapers but were not *newspaper articles* as that expression was usually understood. Articles of political discussion would no longer be distinguished from other articles; they could all be reproduced if the author had not forbidden it, but the source would have to be clearly indicated. The reproduction of news of the day and miscellaneous information could not be forbidden, but the source would have to be indicated "with regard to news of the day described in their first publication as telegraphic or telephone communications when they are reproduced, in full or in a modified form, within 24 hours, whether or not they constitute works to be protected" (these last words clearly show that the proposal departs somewhat from the sphere of the Convention). Finally, the legal consequences of failing to provide a clear indication of the source would be determined by the domestic laws of the country where protection was claimed.

The Italian Delegation's proposal was quite different. It extended the rule laid down for serial novels and tales to all newspaper articles, including articles of political discussion, i.e. their reproduction should be subject to the author's express authorization. News of the day and miscellaneous information could be reproduced, but if the reproduction took place, even in a modified form, within 24 hours of their first publication, the source had to be clearly indicated; this corresponded to the same concern as the German proposal in this regard. The German rule was adopted for the legal consequences concerning the obligation to indicate the source.

The British Delegation drew close to the Italian Delegation by stating the following principle: "Serial novels, short stories and all other works, whether literary or artistic, whatever their object, published in the newpapers or periodicals of one of the countries of the Union may not be reproduced, in original or translation, in the other countries without the authorization of the authors or their successors in title." Where it differed was in that it permitted articles of political discussion to be reproduced provided the source was indicated. News of the day and miscellaneous information could be reproduced under the same condition; but that would not apply to the exact reproduction of such information when they were presented in the first publication in a form which gave them a literary character.

The Belgian Delegation kindly presented a special Memorandum to the Conference (appended to the minutes of the second plenary session) in support of a proposal aiming to settle the matter. It approves the spirit of the German proposal but makes a few amendments to it. It asks the Berlin Conference to take a further step in applying the ordinary right to any work whatsoever in the literary or artistic sphere, whatever its form of publication, without other restrictions than those demanded by the very interests it is sought to protect. It therefore asserts the principle that serial novels, short stories or any other articles, whatever their object, published in the newspapers or periodicals of one of the countries of the Union, may not be translated or reproduced in the other countries without the author's authorization —which is the ordinary right for any literary or artistic work. The purpose of this express application of the ordinary right is notably to affirm that articles appearing in newspapers or periodicals are not allowed to be reproduced in off-prints, pamphlets or volumes without the authorization of their authors. After asserting the principle, the Belgian Delegation proposes a restriction to it; it accepts that any newspaper may reproduce an article published by another newspaper provided the source and the author—if the article is signed—are indicated unless the article bears an express notice that its reproduction is forbidden (to avoid any misunderstanding, it should be stated that, in the discussion, the Belgian Delegation explained that it was not proposing any change for serial novels and short stories which, in its view, were not newspaper articles). This system of the author's *presumed authorization*, the Delegation said, corresponds to the wishes expressed by the corporations concerned; it serves the interests of author-journalists, the reproduction of their articles by other newspapers being the best—and most desired—reward for their intellectual work. The option reserved for them to prohibit reproduction by a special notice safeguards their right in any eventuality. But the restriction is not justified for articles in periodicals; there are no legal grounds for applying different rules to the copyright in a literary work depending on whether it has been published on its own or in a periodical. As far as news of the day and miscellaneous information are concerned, the German proposal creates a special protection for them which is inspired, not by copyright, but by the need to protect newspapers against the plagiarism of their most rapid and dearly purchased news. The reproduction of press news should only be forbidden if it constitutes an act of unfair competition. "The reproduction of any telegraphed or telephoned information received from a special correspondent which is indicated as such in its first publication shall be considered to have this character if the news is reproduced without indicating the source or before at least 24 hours have elapsed since its first publication."

The discussion thus began on these various proposals.

Agreement was reached fairly easily on certain points.

Newspapers must be clearly distinguished from *periodicals*. The reasons which may be put forward in favour of a greater or lesser degree of facility to be allowed for reproducing daily newspaper articles does not apply at all as far as periodicals are concerned. There would thus be no need to mention the latter in an article intended to restrict copyright to some extent; silence in their regard would imply that they simply come under the system of the ordinary right. However, account must be taken of the fact that periodicals have always been mentioned, and that there could be a misunderstanding about the consequence to be drawn from the deletion of a reference to them. They thus appear in the part of the Article in which the author's copyright is clearly asserted, and they do not appear in the part in which the right is subject to a restriction. No notice of reservation will therefore be necessary in future for articles in periodicals; this is a step forward which we owe to the Belgian Delegation.

There was also agreement not to change the system for serial novels and short stories, which will continue to enjoy complete protection. It might just have been possible not to mention them any longer, since they are not true newspaper articles; but this latter expression is often given a very wide meaning and it is better to provide a formal explanation. The meaning of the term "short stories" is less clearly apparent at first than that of the established expression "serial novels." Your Committee repeats what the 1896 report said on this subject: "It was observed that the words *short stories*, linked with serial novels and as opposed to *news of the day*, to which reference is made in the last paragraph of the Article, had a sufficiently precise meaning, that they denoted novelettes, short tales and works of fantasy often combined in a single newspaper or magazine article. The term is equivalent to the English expression *works of fiction* and the German word *Novellen*." In the Committee, short dialogues, short historical narratives, etc. were indicated as coming within the same line of thinking.

Agreement was also reached on articles of political discussion. The present rule, which does not allow their reproduction to be prohibited, was abandoned; their reproduction will only be permitted if the author has not expressly forbidden it. When reproduction is effected the source and, if the article is signed, the author's name must be clearly indicated. Indeed, the rapporteur only has to repeat what he already outlined in this regard in the report presented to the 1896 Conference (p. 171 of the Paris Records) in the following terms: "... it has been understood that the notice of source shall include not only an indication of the newspaper or periodical in which the article had appeared but also the author's name if the article is signed." There is an improvement on two points: the author's copyright is no longer ignored as it is in the present text.

The Belgian proposal applied the rule it laid down—reproduction being permitted unless expressly forbidden—to *drawings*, and this proposal was supported by the Swedish Delegation. It was not adopted. The Conference is seeking rather to extend copyright; this would be a restriction which has not been thought of before now, and in support of which it is not possible, it seems, to put forward the reasons given for certain articles. The Belgian and Swedish Delegations kindly withdrew their proposal.

The reproduction of news of the day and miscellaneous information, which are simply press news without any literary character, cannot be forbidden. It is an accepted point; they do not come within the subject matter of copyright. Press news may have been obtained by a newspaper at great expense; an unethical act may be committed by a competitor who takes them and reproduces them without indicating the source and as if he had procured them by his own means. It was this act that various proposals sought to curb: but it had to be acknowledged that, on the one hand, it would be very difficult to lay down fairly precise rules, to distinguish, for example, between the methods by which information reaches a newspaper and that, on the other, we were departing from our sphere and were entering that of unfair competition. The provisions proposed along these lines were abandoned. The Committee's view was shown by a significant vote. It had first accepted that the reproduction of news of the day and miscellaneous information should be accompanied by an indication of the source. It ended up by adopting an entirely different proposal after a further discussion in which it was asserted in particular that the obligation would be imposed by the idea, not of protecting the copyright, but of protecting a commercial interest, which was just what we had wanted to avoid. Finally, with regard to news of the day and miscellaneous information, the Committee is proposing a formula which differs from those adopted hitherto and which it thinks is more in keeping with the truth. It is not a question of stating that their reproduction is always permitted or cannot be forbidden—which would prevent any claim even in relation to acts which quite obviously constituted unfair competition; we merely declare that the protection of the Convention does not apply here because this does not come within the province of copyright. Commercial questions may arise in this regard but they are outside our sphere.

Lastly, no difficulty arose in accepting the final part of the German proposal whereby "the legal consequences of failing to provide a clear indication of the source shall be determined by the domestic laws of the country where protection is claimed." For example, in the absence of any prohibition, an article of political discussion may be freely reproduced but the source must be indicated. What will happen if an article of this type is reproduced without any such indication? It may be held that there is unauthorized reproduction or piracy since the condition under which the reproduction was lawful has not been met. Legislators may judge that this strictly logical consequence is too severe and that a fine or even a civil compensation may suffice. Each country will be free to proceed as it thinks fit.

The French expression *"la sanction de cette dernière obligation"* is a more concise reproduction of the words *the legal consequences of the breach* of this obligation. Several delegations observed that their languages did not contain any word which corresponded exactly to *sanction*; needless to say that in such a case it may be replaced, in the official translations, by the words underlined which have exactly the same meaning.

Leaving aside these various points on which agreement was easily reached, the Committee was faced with two conflicting proposals:

(1) "Serial novels, short stories and all articles, whether literary, scientific or artistic, whatever their object, published in the newspapers of one of the countries of the Union, may not be reproduced in the other countries without the authorization of the authors.

"Articles of political discussion published in a newspaper may be reproduced in another newspaper unless the authors or publishers have expressly declared that they forbid their reproduction. The source and, if applicable, the author's name must be clearly indicated. The legal consequences of the breach of this obligation shall be determined by the legislation of the country where protection is claimed."

The principle of this proposal is thus that the author's express authorization is required for all newspaper articles. There is a dispensation for articles of political discussion, in respect of which authorization is presumed unless formally prohibited, and for news of the day and miscellaneous information, which may always be reproduced.

(2) "Serial novels, short stories and all other works, whether literary, scientific or artistic, whatever their object, published in the newspapers or periodicals of one of the countries of the Union may not be reproduced in the other countries without the authorization of the authors.

"Nevertheless, as regards the reproduction by a newspaper of an article published in another newspaper, the author is presumed to have given his authorization in the absence of any express prohibition; but reproduction may only take place if the source and, if applicable, the author's name are indicated. The legal consequences of the breach of this obligation shall be determined by the legislation of the country where protection is claimed."

It is the opposite point of view. Apart from serial novels and short stories which, it would seem, enjoy the same status as before, the author would be presumed to have given authorization in the absence of any formal prohibition. It was principally the Belgian Delegation which defended this opinion on the grounds outlined earlier.

The majority of the Committee had adopted the first formula. An attempt was made to agree on a compromise text which everyone could accept. This attempt had been inspired by a declaration from the German Delegation that its Government would not refuse to accept for foreign newspapers what was accepted in respect of German newspapers by the 1901 Empire Law. Article 18 of that Law reads: "The reproduction of single newspaper articles shall be lawful, provided that these articles do not bear a notice that the copyright is reserved and as long as their sense is not distorted and the source is clearly indicated. The reproduction of work of a scientific, technical and recreative nature is prohibited even in the absence of any notice that the copyright is reserved. Miscellaneous information relating to real life and news of the day included in newspapers and magazines may be lawfully reproduced." In a spirit of conciliation, the German Delegation had accepted the following text which departed from the one it had proposed initially:

"Serial novels, including short stories, and all work of a scientific, technical or recreative nature, published in the newspapers of one of the countries of the Union, may not be reproduced in the other countries without the authorization of the authors.

"The same shall apply for other newspaper articles, including articles of political discussion, when the authors or publishers have expressly declared in the newspaper itself in which they have had them published, that they prohibit their reproduction. The source must be clearly indicated. The legal consequences of the breach of this obligation shall be determined by the legislation of the country where protection is claimed.

"The reproduction of news of the day and miscellaneous information cannot be forbidden."

The majority of the Committee's delegations had accepted this text, which did not give complete satisfaction to their ideas, since the principle of absolute protection was not laid down for articles in general but only for certain categories of articles. The attempt to reach a compromise failed as the members of the minority did not rally to the proposed text. It is thus the principle of the second proposal which must be considered adopted.

With one accord we came to a wording which indicates the solution accepted in an unequivocal fashion. The principle is that serial novels, short stories and all other literary, scientific or artistic works published in the newspapers or periodicals of one of the countries of the Union may not be reproduced without the consent of the authors; their right is thus very clearly asserted. Then comes the restriction: *a newspaper article may be reproduced by another newspaper* unless its reproduction is expressly forbidden. Two points should be noted: (1) only *newspaper* articles are involved; *periodicals* are not included therefore and, as stated earlier, protection is absolute as far as they are concerned; in addition, the provision cannot apply to serial novels and short stories which, as explained, are not true newspaper articles: but, to remove any doubt, it was deemed necessary to say so formally; (2) only reproduction *by a newspaper* is involved. This is a clarification and not an innovation as this emerges from the 1896 report.

ARTICLE 9. Serial novels, short stories and all other works, whether literary, scientific, or artistic, whatever their purpose, and which are published in the newspapers or periodicals of one of the countries of the Union shall not be reproduced in the other countries without the consent of the authors.

With the exception of serial novels and short stories, any newspaper article may be reproduced by another newspaper unless the reproduction thereof is expressly forbidden. Nevertheless, the source must be indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

The protection of this Convention shall not apply to news of the day or to facts having the character of mere items of press information.

(*Cf. Article 7 of the 1886 Convention as revised in Paris.*)

Chrestomathies

The question of chrestomathies gave rise to a very animated discussion at the 1884 Conference; it was settled there by an Article which was eventually rejected in 1885. The provision included in the 1886 Convention amounts to saying that the attempt to reach agreement on this subject was abandoned; it refers the matter back to domestic legislation and to special arrangements existing or to be concluded between the Union States. This provision may seem superfluous but, on the one hand,

the Conference had wanted to show that it had duly considered a point dealt with in most conventions and, on the other, it had wanted to remove an element of doubt which could have arisen in that the *Additional Article* of the 1886 Convention stipulates the maintenance of existing Conventions between the contracting countries *provided always that such Conventions confer on authors, or their successors in title, rights more extensive than those granted by the Union*; obviously, when provisions are laid down on chrestomathies, it is to limit the copyright of the authors whose writings are included in these collections and not to extend it. As the Convention affirmed the author's absolute right in relation to reproduction, it could have been maintained that it negated the earlier provisions restricting it.

Since the 1886 provision is to be retained in the new Convention, it is worth including a passage here from the 1885 report: "During the discussion that took place in connection with this Article, it was asked whether it covered the right of quotation, and the Spanish Delegation in particular wished to know whether such quotations as were necessary in commentaries, critical studies or other scientific or literary works were authorized under the Article concerned. The French Delegation said that, in spite of the lack of legal provisions in the legislation of its country, concerning the right to quote, that right has always been recognized by case law. The delegations of the other countries, several of which did have legal provisions on the subject, endorsed the above statement with respect to their countries."

ARTICLE 10. As regards the right to include excerpts from literary or artistic works for use in publications for teaching purposes, or having a scientific character, or for chrestomathies, the effect of the legislation of the countries of the Union and of special arrangements existing or to be concluded between them is not affected by this Convention.

(*Article 8 of the 1886 Convention*)

Public Performance of Musical Works
Performance of Dramatic or Dramatico-Musical Works

Article 9 of the 1886 Convention was not amended in 1896. It had given rise to a discussion, however. Under the third paragraph of this Article, the author's consent is not required for the public performance of published musical works unless the author has expressly declared on the title page or commencement of the work that he forbids the public performance thereof. It was argued that the author should not be compelled to affirm that he intends to exercise his rights and that it should not be assumed from his silence that he abandons them. The French authorities proposed deleting this requirement but they met with total opposition from certain delegations which asserted in particular that, in their countries, public opinion would not accept that, in the absence of any express reservation, the author or his agents could prevent the public performance of his musical works under certain circumstances (non-profit-making concerts, performances of musical works by social clubs, students, military bands); nobody questioned the fact that there was progress to be made in this regard, but such progress seemed to be dependent on preliminary work being done by the national legislatures, because the customs peculiar to certain countries needed to be taken into account. The 1896 Conference confined itself to stating (Resolution No. II): "*It is desirable* (...) that the legislation of the countries of the Union should fix the limits within which the next Conference could adopt the principle that published musical works must be protected against unauthorized performance without the author being obliged to give notice of reservation."

Today the German authorities propose deleting the notice of reservation, and they rightly present this deletion as a return to the ordinary right, in view of the fact that, as the other right derived from the principal right—the right of translation and the right of representation—are guaranteed without any special condition, there are no doctrinal grounds for maintaining this requirement in respect of the performing right which is just as worthy of respect. This will also have the advantage of removing certain particular *de jure* or *de facto* difficulties. As the requirement only concerns published works, in the present circumstances it is necessary to establish a precise distinction between published and unpublished works. The compulsory affixing of the notice creates conflicts between authors and publishers, it being in the latter's interest to avoid affixing the notice in order to facilitate the sale of the work.

Since, by deleting the requirement, the ordinary right applies, it would seem possible not to specify anything in this regard. However, the German authorities deem it useful to give a formal explanation because, first, it is a good thing to show clearly that a very old practice has been abandoned and, second, it must be fully understood that the reserved rights notice cannot be required in the country where protection is claimed by virtue of the Convention, even if the country's legislation still makes provision for it where nationals are concerned.

The British Delegation recognized the merit of the proposed innovation; it also wants authors to be protected. But it is concerned about the situation of people who—guided by old habits—might believe in good faith that they were entitled to perform musical works on which they saw no reserved rights notice; it did not want them to be liable to severe punishment. The reply given was that the Convention required authors to be protected without specifying the form of protection. Each country is free to legislate in this regard; it may take account of the circumstances in which infringements are committed and graduate the penalties according to the circumstances. The only thing it could not do legitimately would be to make a distinction according to whether the works to be protected were national or foreign, as the same protection must be guaranteed to them all. Adoption of the proposal will not prevent Great Britain therefore from maintaining the viewpoint indicated by its Delegation.

The proposal had only met with opposition from Sweden and Switzerland, which asked for paragraph 3 of Article 9 to be retained. In a spirit of conciliation, the two Delegations withdrew their opposition.

Notable progress has thus been achieved; however, composers of music, whose copyright is thus better asserted, must not think that, henceforward, their works can no longer be publicly performed without their authorization in the territory of the Union. They have to reckon with national legislation which may authorize such performance under certain conditions and to which, in this respect, the 1886 Convention confines itself to referring the matter, as does our draft. As an example we can give the provision contained in Article 27 of the German Copyright Law of June 19, 1901: "The copyright owner's consent shall not be required for public performances of a published musical work which are not organized for any gainful purpose and which the audience may attend free of charge. Furthermore, similar performances to which the copyright owner has not given consent shall be permissible in the following cases: (1) when they take place at fairs and festivals, with the exception of musical festivals; (2) when the proceeds are to go exclusively to a charity and the performers obtain no remuneration for their services; (3) when they are organized by societies or clubs and the audience is confined to members, including their families. These provisions do not apply to the stage performance of an opera or another musical work with a text." This text was introduced in the German Law to comply with the wish expressed by the Paris Conference, and to make it possible to delete the reserved rights notice.

An amendment was made in the second paragraph of Article 9 of the 1886 Convention to take account of the reform introduced in relation to the right of translation. The author is henceforward protected against the unauthorized public performance of the translation of his work throughout the existence of the right in the original work.

The Swiss Delegation presented a Memorandum to the Committee concerning the translator's rights in the performance of his translation. It observes that, as the Convention classes translations amongst protected works in principle, the logical consequence of this would appear to be that the translator also possesses, notably, the right to perform the translation publicly, subject to the restrictions placed on his right by that of the original author. However, neither the present Convention nor the German proposals seem to settle the question. It is desirable that it should be settled, states the Swiss Delegation, which is not putting forward any proposal but wants a solution to be provided and to be established by an unequivocal text.

We must thank the Swiss Delegation for having drawn our attention to this point; we are going to try and give it satisfaction without a text appearing necessary.

The situation must be examined by considering the relations between the author of the original work and the translator and the relations between the translator and third parties.

The translator has negotiated with the author of a dramatic work; the latter may have granted him only the right to publish the translation or, alternatively, both the right to translate and the right to have it performed. To determine their relations we need not look beyond their agreements.

The translator has a right of his own in his translation, as stated in Article 6 of the 1886 Convention and as repeated in Article 2, paragraph 2, of our draft. This individual right exists in all cases, that is to say, even if the translator has infringed the author's copyright; this is what follows from the latter provision. Since the translation is protected as an original work, the translator can claim all the author's copyright. As the author of a dramatic work enjoys the right of reproduction and the right of performance, the translator must also enjoy these two rights, without prejudice always to the rights of the author of the original work, as Article 2, paragraph 2, of the draft states. If he has translated the work without the necessary authorization, action may be taken against him by the author in respect of the publication of the translation as well as any performance he gave of it. This would not deprive him of the right he would have to take action against a third party who appropriated his own translation in order to publish it or have it performed. In our view, this results quite clearly from assimilating a translation to an original work, as our draft does.

It seems to us that this should also come under Article 6 of the 1886 Convention, the first paragraph of which states that "Lawful translations shall be *protected as original works*." There we have the principle; afterwards only unauthorized *reproduction* is mentioned, it is true, and no reference is made to Article 9 which deals with the *right of representation*. However, we think that to refuse the translator the benefit of the right of representation, even under the system of the 1886 Convention, would be to interpret the provision too strictly. Article 9, paragraph 2, does indeed only refer to the protection of the *original author* against the unauthorized public representation of a translation, but this is of little consequence since a translation is protected as an original work.

ARTICLE 11. The provisions of this Convention shall apply to the public performance of dramatic or dramatico-musical works, and of musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works shall be protected during the term of their right in the original works against the unauthorized public performance of translations of their works.

In order to enjoy the protection of this Article, authors shall not be bound in publishing their works to forbid the public performance thereof.

(*Article 9 of the 1886 Convention*)

Indirect Appropriations

Article 10 of the 1886 Convention was not amended in Paris; its purpose was to indicate the most common unlawful reproductions other than material ones; it only referred expressly to *adaptations* and *musical arrangements*. The German and French Delegations had proposed mentioning the transformation of a novel into a theatre play and vice versa; they regarded this as involving not an *innovation* but an interpretation. The majority accepted it willingly but had to bow to a formal objection and make do with a reference in No. 3 of the Interpretative Declaration. The same objection was not repeated this year and it was possible to include the interpretation, with a slight addition (*short story or poem*), in the Article itself.

Article 10 contains a second paragraph worded as follows: "It is agreed that, in the application of this Article, the tribunals of the various countries of the Union shall, if there is occasion, conform themselves to the provisions of their respective laws." In 1896, the French authorities asked for this paragraph to be deleted as being superfluous or harmful; they did not obtain satisfaction. The French Delegation made the same request to the Committee and no objection was raised. The provision was superfluous if it meant that the courts assess in fact whether the offending piece is indeed drawn from a novel; the power of assessment is natural and necessary, authors being fairly prone to complain of plagiarism. The provision was dangerous if the consequence of it was that a judge, acknowledging that a play has indeed been drawn from a novel, could refuse to accept the claim because his law conflicts with it. The Convention must take precedence over domestic legislation here. Of course if, under a country's constitutional provisions, the Convention has not been incorporated in legislation, or if the domestic legislation has not been amended along the lines of the Convention, a judge is bound to apply his own law, but there would be justified grounds for complaint against his Government, which would not have taken what steps were required to ensure that the Convention it had signed was respected in its territory.

We would call to mind that, pursuant to Article 2, paragraph 2, of our draft, the appropriations involved here are protected as original works without prejudice to the rights of the author of the original work.

ARTICLE 12. The following shall be especially included among the unlawful reproductions to which this Convention applies: unauthorized indirect appropriations of a literary or artistic work, such as adaptations, musical arrangements, transformations of a novel, short story, or poem into a dramatic play and vice versa, etc., when they are only the reproduction of that work, in the same form or in another form without essential alterations, additions, or abridgements, and do not present the character of a new original work.

(*Cf. Article 10 of the 1886 Convention*)

Mechanical Musical Instruments

The Final Protocol of the 1886 Convention states, in No. 3: "It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical works in which copyright subsists shall not be considered as constituting an infringement of musical copyright." We find in this regard the following reference in the report of the 1885 Conference: "In view of the difficulty of settling the question of sound reproduction, the Committee proposes that the Conference should not pronounce on whether the public performance of any musical work by means of the instruments mentioned in No. 3 is lawful or not."

This provision, which has raised so many difficulties, was taken from a French law of 1866, enacted to keep a promise made to Switzerland in a commercial treaty dating from June 30, 1864. It has not been amended to date, but it did give rise to a discussion at the 1896 Conference. The French Delegation observed that, in granting such immunity, the Berne Convention had in mind those instruments which included their own notation and had a reproduction capability limited to certain airs. The immunity should not, it said, apply in fairness to instruments which were capable of playing an infinite number of airs by introducing—in the form of perforated cards —notations which are external to them, movable and unlimited in number. There was no longer a fusion between instrument and notation, the latter being but an edition in a particular form, which could not be lawful without the author's consent. The proposal gave rise to quite an animated discussion and it did not prove possible to come to an agreement.

Since 1896 the manufacture of mechanical musical instruments has undergone an unexpected development; substantial industries have formed in various countries, and thousands of copies of pieces of music in ever-increasing numbers have been reproduced. The German authorities considered it entirely appropriate to look at the question again, the more so as the divergences which exist at present in this regard in the legislation and case law of the various countries create a degree of insecurity in the international trade of this industry's products.

CONFERENCE IN BERLIN, 1908 — REPORT (LOUIS RENAULT)

Before examining the proposals made by the German authorities, an outline should be given of the principal questions which have arisen in theory and practice concerning these musical instruments (phonographs, gramophones, talking or singing machines, etc.).

First of all, the right to manufacture and sell instruments reproducing tunes in which copyright subsists implies that public performances are allowed without the consent of the authors and without paying them anything at all! We saw earlier that the 1885 Conference had not wished to come to a decision in this regard. In certain countries, France in particular, it was considered that the provision constituted a restriction of copyright and could therefore not be extended. Any unauthorized performance of tunes in which copyright subsists would thus constitute an unlawful performance.

Should the provision of the 1886 Protocol be regarded as interpreting or restricting copyright? We can understand the very different solutions which will be given to the unexpected difficulties, depending on whether this general question is resolved along the former or the latter lines.

Finally, does the Protocol concern all the instruments by means of which tunes can be mechanically reproduced or just the limited number of instruments which were known in 1886 and which the negotiators could have had in mind?

Long papers can be and are written on all these questions, defences, lectures and petitions have been made, legal decisions have been rendered, wishes have been expressed. It is not for us to give an account of them here when all the elements will be found in the Union's excellent mouthpiece, *Le Droit d'auteur*. We must look at the matter from the practical point of view and try to reconcile the conflicting interests equitably, without losing ourselves in theoretical considerations.

The German authorities proposed the following text: "The authors of musical works, or their successors in title, shall have the exclusive right in the countries of the Union in which their works are protected by the present Convention: (a) to transcribe these works on parts of musical instruments for the mechanical reproduction of musical works; (b) to authorize their public performance by means of such instruments."

The general principle of the right of the author of musical works is asserted as far as reproduction and public performance are concerned; the two questions are linked together whereas, in the Berne Protocol, reference is made only to reproduction.

After a discussion within the Committee, it was considered appropriate to make use of the option of setting up a Sub-Committee whose decisions, explained in an oral report by Dr. OSTERRIETH, were approved by the Committee.

With the exception of the Swiss Delegation which had proposed that No. 3 of the 1886 Final Protocol should simply be maintained, there was general agreement to assert the author's copyright in this regard, and very strong reasons, couched in excellent terms, were given in support. The right of the author and the right of the inventor of instruments must not be weighed against each other; the latter may have achieved wonders, shown true genius, but his right stops at that of others; he cannot appropriate a raw material which does not belong to him and, in this case, the raw material is precisely the musical expression. It matters little what method is used and how difficult it may or may not be to read the disk or the cylinder, the musical expression is nonetheless incorporated in that disk or that cylinder. Why should the author's consent not be just as necessary for this particular type of incorporation as it is for the reproduction of a musical work by means of printing? We see no reason to make a distinction.

Authors thus suffer a material injury, since large profits are made from the reproduction of their works without them receiving any remuneration; their interest seems to be at least as deserving as that of the manufacturers. In addition, authors suffer a moral injury as, more often than not, their works are distorted by the necessities of adaptation to the mechanical instrument; occasionally the orchestration of a piece has to be rewritten, melodies are altered because certain notes record badly; scenes have to be cut and arranged owing to the limited length of the disks. Is it acceptable that the author should have to suffer such a distortion of his work in spite of himself? He will often prefer no remuneration to a travesty. The manufacturers of phonographs claimed of course that authors were ungrateful, that the circulation of the disks or cylinders did them a twofold service by spreading their names far and wide and by making people want to procure copies of the printed edition. Authors replied that they were the best judges of their interest.

Agreement was easily reached on the principle itself to be posed and those delegations which would have preferred, to begin with, that the question of performance be kept separate did not press their point.

ARTICLE 13, PARAGRAPH 1. The authors of musical works shall have the exclusive right of authorizing: (1) the adaptation of those works to instruments which can reproduce them mechanically; (2) the public performance of the said works by means of these instruments.

(*Cf. 1886 Final Protocol, No. 3*)

We must not consider only one side of the problem and adopt too rigid a stand. Strictly speaking, we could have confined ourselves to laying down the preceding principle: the authors' copyright is recognized, how will they exercise it? That is their business, it may be said: authors of literary works also have a right which they exercise

in their best interests by publishing themselves—which is rare—or by going through a publisher under agreed conditions. Why should phonograph manufacturers not do the same as publishers and negotiate with the composers whose works they wish to reproduce? In the Conference itself, some delegates were in favour of this solution. After asserting the author's copyright, the German authorities added: "Once the author has used his work or has permitted its use under the aforementioned conditions, any third party shall be able to claim the rights of transcription and public performance defined under letters (a) and (b) of the preceding paragraph, by offering equitable compensation. It shall be a mattter for the domestic legislation of the countries of the Union to determine the way in which the amount of compensation will be fixed in cases of dispute." As they state in their *preamble*, the German authorities were seeking to safeguard the interests of small manufacturers by protecting them both against the too heavy costs they could face as a result of excessive estimates on the part of authors and publishers and against the danger of the establishment of monopolies in favour of some manufacturers with large amounts of capital at their disposal. This is what the obligation to grant licences would aim to do.

Thus the author's right would continue to be absolute in that he could prohibit *all* reproduction by a mechanical instrument; but if he had authorized a reproduction of this kind in favour of a manufacturer, other manufacturers could ask for a similar concession *in return for an equitable compensation*; if an agreement was not reached, each country's legislation would determine the way in which the compensation would be fixed.

This system of compulsory licences which exists in the German patent legislation gave rise to quite strong opposition on the part of a number of delegations whose legislation contained nothing of the kind. It was quickly ascertained that it would be impossible to come to an agreement on the terms of the restrictions which it would be suitable or opportune to place on the author's copyright. In view of this impossibility, the British Delegation proposed replacing paragraphs 2 and 3 of the German proposal by the following text: "The reservations and conditions relating to this Article shall be determined by domestic legislation in the Union countries, each in so far as it is concerned." A country could thus adopt the compulsory licence system with this or that method, or place another form of restriction on the author's clearly asserted copyright, or, alternatively, let this right produce its natural consequences—which would be the case if legislation was silent. Only, the British Delegation observed, it was necessary to guard against a danger and to avoid any surprise. A country could make rules in the manufacturers' favour, permit them to reproduce tunes under conditions which were very mild for the manufacturers and very harsh for the authors. Adaptations made in compliance with these rules will obviously be *lawful* in that country, but could they, as such, freely enter the other countries of the Union? It is not admissible because a country which protects authors cannot be forced to suffer the import of objects which are prejudicial to their rights and particularly to the rights of its own authors. This is what the British proposal meant by the words *each in so far as it is concerned*. The idea was accepted without difficulty by everyone but it was considered that it should be expressed even more formally. First it was proposed that the provision should state that instruments manufactured in this way *could not be imported into the other countries*. This seemed too absolute. It would depend on the conventions that were concluded between the Governments or between the parties. Even in a country whose legislation took little account of authors' rights, a manufacturer could deal directly with a composer and obtain authorization from him to reproduce this or that work; there would be no reason to refuse to allow disks or cylinders manufactured under these conditions access to the country in which the authors were guaranteed the better protection. It was necessary and indeed enough for the effect of the reservations and conditions established along the lines we have in mind to be—*by virtue of our Convention*—strictly limited to the country which has put them in force.

ARTICLE 13, PARAGRAPH 2. Reservations and conditions relating to the application of this Article may be determined by the legislation of each country in so far as it is concerned; but all such reservations and conditions shall apply only in the countries which have imposed them.

For many people, the rule in the first paragraph of our Article does not introduce a new right but is simply declarative of the existing right. For others, this is not the case and a real innovation is being made; moreover it is certain that, at least for certain instruments, the situation created in 1886 is being altered. As the German proposal's preamble states, this proposal aims to *remove the privilege* established by No. 3 of the Final Protocol. A part *de jure*, part *de facto* situation is changed if various opinions are to be taken into account. Are there not therefore legitimate *interests* and even, to some extent, established *rights* which must be respected? It is permissible to think so. Thus the French Delegation declared that its adherence to the principle of the German proposal was subject to the non-retroactivity of this principle. This did not raise any objection as to its substance, and agreement was reached quite easily on the wording we are submitting to you.

The new rule will apply first of all to all the works which are published after the Convention comes into force. As to works published earlier, those which have been lawfully adapted to mechanical instruments will not be able to benefit from the Convention. The character of the adaptations which have already been made will have to be determined pursuant to the legislation of the country where the adaptation has taken place. If it is in a country whose legislation prohibited the use of the work without the author's consent, the adaptation will obviously continue to be unlawful. It is understood, moreover, that the option left open to the countries of the Union by paragraph 2 extends to the rules laid down on the retroactive effect.

However, in those countries where the public performance by means of these instruments was considered to be unlawful in the absence of the authors' consent, the protective provision of paragraph 1(2) fully applies, even for works which have already been adapted, i.e. the performance will not become lawful by application of paragraph 3.

ARTICLE 13, PARAGRAPH 3. The provisions of paragraph 1 shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of this Convention.

The Italian Delegation asked for Article 13 of the draft to be completed by a provision recognizing the right to seize adaptations made pursuant to paragraphs 2 and 3 of this Article and imported, without the authorization of the interested parties, into a country in which they would not be lawful. This concerned the situation in Italy where the authors' copyright is clearly recognized and where adaptations to musical instruments cannot be made without their consent. It does not wish to be obliged to allow in adaptations which might be lawful in the countries where they were made, by application of paragraph 2 or paragraph 3 of Article 13, but which, in the absence of the authors' consent, would be unlawful under Italian legislation. The concern of our colleagues in this regard is perfectly legitimate; nobody wants to force a country to allow adaptations which it considers unlawful into its territory. This emerges in the clearest of terms from a provision which was included in the draft at the request of the Italian Delegation itself. The latter had a paragraph introduced in Article 12 of the Berne Convention (Article 16 of our draft) which ran: *In these countries* [where the work enjoys legal protection] *the seizure shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.* It seemed to us that this provision was literally applicable to the case the Italian Delegation had in mind and that, consequently, an express provision added to Article 13 was totally unnecessary. However, on the insistence of our colleagues from Italy we agree to propose a fourth paragraph to Article 13 which would be worded as follows:

ARTICLE 13, PARAGRAPH 4. Adaptations made in accordance with paragraphs 2 and 3 of this Article, and imported without permission from the interested parties into a country where they are treated as infringing works, shall be liable to seizure.

Article 13 of the draft was worded with No. 3 of the 1886 Final Protocol in mind—which it aims to replace. But we must not hide the fact—and precisely due to this—that it only partly resolves the matter. Our Article only refers to *musical works* because the Protocol itself only refers to musical works, but phonographs do not just reproduce musical works, as the commonly used expressions *talking machines* or *singing machines* indicate. What rule should be followed for literary or dramatico-musical works which are reproduced in this way? Does the principle laid down in paragraph 1 of Article 13 not apply in full? What justification could be given for a different rule in respect of the reproduction of a tune and the reproduction of a ditty, a piece of singing, a monologue? Agreement would easily have been reached in this regard, but difficulties soon arose. Should reference be made both to performance and to reproduction, as in Article 13? Should we confine ourselves, in the case of works other than purely musical ones, to the principle itself, or add to the principle the restrictions deriving from paragraphs 2 and 3 of Article 13? This latter solution met with very strong resistance. Those who, by way of a compromise, had accepted Article 13 of the draft because it was necessary to take account of the *de facto* situation created by the 1886 Protocol, did not want to consent to restrict copyright in cases which were not covered by the Protocol, that is to say, take a veritable step backwards in the protection of authors. It clearly follows from the principles of the Union that only the author of a literary work has the right to reproduce his work and that any unauthorized reproduction constitutes piracy; a domestic law which ignored this principle would be violating the Convention. For tunes, a certain degree of dispensation was introduced by the 1886 Final Protocol, but this dispensation cannot extend beyond the terms of the text which establishes it. *Tunes* do not include words on their own or even accompanied by music. And the scope of the expression is also fixed by the fact that in 1886 what were in mind were principally music boxes and barrel organs, which only reproduced tunes. Consequently, we noted with regret that courts sometimes misunderstood this. Thus, in a decision rendered by the Brussels Court on December 29, 1905, in proceedings instituted by the composers Massenet and Puccini against a phonograph company, we find the following passage: "Considering that the respondents argue that the phonograph or gramophone reproduces both the music and the words which are adapted to it; but that when, as in the present proceedings, it is a question of words which are written for the music and are inseparable from it, the tunes with words are no less musical works, coming under the terms of the Final Protocol which has not distinguished between instrumental and vocal music; that, moreover, if it were to be decided otherwise, the authors of the words would alone have grounds for complaint, whereas it is not being alleged that the respondents, who are composers of music, are at the same time the authors of the words reproduced by the appellant companies' machines; considering that the fact cannot be ignored that the mechanical musical instruments industry, and

in particular that of phonographs and their accessories, has undergone an unexpected expansion which calls for the attention of Governments; that it seems hardly equitable that, except in the case of public performances, authors should neither be able to derive any benefit from the reproduction of their works, nor oppose such reproduction as may be prejudicial to them under certain circumstances; *but that it must be ruled that authors have no right as long as the Berne Convention has not been amended or denounced.*" By a decision of May 2, 1907, Belgium's Supreme Court rejected the appeal for special reasons, the judgement pronounced being upheld by *de facto* findings, "*even assuming that the Court of Appeal was wrong to extend the aforementioned Article 3 to words instead of restricting it to music.*" Thus Belgium's Supreme Court did not come to a decision on the issue, but neither did it adopt the grounds of the appeal decision. We wish to make a point of affirming that the Berne Convention does not need to be amended for the authors of words to be protected against the reproduction of these words by a phonograph or a gramophone; that Article 13 of our Convention which refers to *musical works* should be understood in the same way as the 1886 Protocol which refers to musical airs. The reproduction of words—with or without music—is outside the cases provided for in our draft.

We wanted to make a point of giving these explanations because people might have been surprised at the draft's silence on such an important part of the matter. The question concerning the reproduction or performance of sung pieces or literary pieces is left untouched by the provision of Article 13 on musical works; it must be resolved by the general principles of the Convention.

Cinematographs

In the last few years, cinematographs have undergone an extraordinary development and, although it may rightly be maintained that there is less reason to enact completely new rules for them than to apply to them the general principles on the matter, the French authorities thought that specific provisions should be laid down to put an end to regrettable uncertainties. That is why they asked for the questions concerning them to be included in the programme for the Berlin Conference.

A literary work can be appropriated by means of the cinematograph; this is the case when the cinematograph produces scenically an idea taken from a novel or a dramatic work. This then comes under the terms of Article 10 of the 1886 Convention and Article 12 of our draft. By means of the cinematograph, there may well be an indirect appropriation which is only the reproduction of a literary work in the same form or in another form without essential additions or alterations. To show clearly how the questions arise in practice and how they are liable to be judged, we think it necessary to reproduce the essential part of five judgements rendered on July 7 last by the Civil Court of the Seine (First Chamber) in proceedings instituted by various authors who complained that their works had been reproduced without their authorization by means of cinematographic adaptation:

"Considering, juridically, that the Law of July 19-24, 1793, must not be interpreted in a narrow and restricted sense, that its provisions are only enunciative; that the legislator, in fact, did not mean to protect only editions in the strict sense —which are printed or engraved—but also all methods, whatever their nature, of publication of the work which is the personal property of its author;

"Considering that the cinematographic strip or film on which the various happenings, whether of a dramatic work, a fairy tale, a pantomime or an opera, are represented by means of a sequence of photographs and which can be read and understood by anyone by itself, without adaptation to a mechanism of some sort, must be considered to be an edition coming under the application of the law of July 19-24, 1793;

"Considering, furthermore, that if, in the absence of dialogue, the cinematographic projection is most certainly incapable of reproducing, in all its subtleties and its nuances, the analysis of characters, the psychological study to which the author of a dramatic work would have devoted himself, in certain cases and while only reproducing mimed scenes of a purely material nature, it can nevertheless constitute a performance within the meaning of the Law of January 13-19, 1791, if it brings the author's work to life before the eyes of the viewer by means of the unfurling of successive scenes; that this is especially true in the case of fairy tales, pantomimes and opera—with settings—which particularly lend themselves to cinematographic projection;

"Considering, without a doubt, that an author could not claim an exclusive right of property in an idea taken in itself, as this belongs, in reality, to the common fund of human thought, but that the same could not be said when, by the composition of the subject, the arrangement and the combination of the episodes, the author presents an idea to the public in a concrete form and gives it life; that the creation in which a dramatic author can claim a right of personal property consists, apart from the material form he gives this conception, in the sequence of situations and scenes, i.e. in the structure of the plan, comprising a starting point, an action and a denouement; that any undermining of this monopoly of exploitation, in whatever form it is concealed, constitutes piracy."

Having stated these premises, the Court ruled that, in the cases which had been submitted to it, there was piracy and it based its decision on *de facto* considerations which differ for each judgement.

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For Gounod's *Faust*, for example, the Court finds "that the scenes represented by the cinematographic shots reproduce exactly all the scenes of the plaintiffs' work, with décors, costumes and the accompaniment of music and singing taken from the opera, and are, so to speak, the near-slavish copy of it; that these projections, however imperfect and rapid the form in which they are reproduced, are nonetheless an adaptation of the plaintiffs' opera and constitute therefore an infringement of the aforementioned laws, those which protect authors against the reproduction and against the performance of their works."

The Court establishes analogies in each of the cases, and finds that the differences are not significant enough to constitute an original work.

For cinematographic projections accompanied by phonographic sound or not, this corresponds exactly to the application of the rules adopted by the Berne Convention for adaptations. The addition of a word in Article 12 would have just sufficed, but it was considered preferable to make an Article concerning cinematographs which would be complete in itself. It will be more convenient for the parties concerned who have not necessarily penetrated the depths of our subject.

The situation which has just been outlined could be regulated by the following provision:

ARTICLE 14, PARAGRAPH 1. Authors of literary, scientific or artistic works shall have the exclusive right of authorizing the reproduction and public performance of their works by cinematography.

We have just seen the cinematograph being used for purposes of reproduction or adaptation. It can also serve to give form to a creation. The person who takes the cinematographic shots and develops the negatives will also be the person who has imagined the subject, arranged the scenes and directed the moves of the actors. For example, one may wish to represent the life of Mary Stuart by means of the cinematograph; there is intellectual work consisting in choosing the principal episodes of her life—those which are of interest in themselves or which lend themselves the best to scenic action—and placing the characters in an appropriate setting. Whether the characters speak by a combination of the cinematograph and the phonograph or whether they do not speak, we have here a dramatic work of a particular genre which it must not be possible to appropriate with impunity. Doubtless a competitor could take the Mary Stuart story in his turn and combine the episodes which will take place before the eyes of the spectator, but he cannot merely reproduce someone else's work. It is still the ordinary right which applies, as the judgement quoted earlier shows very well. It is not a question of monopolizing an idea or a subject but of protecting the form given the idea or the development of the subject. Judges will assess the matter in the same way as for ordinary literary and artistic works; they are perfectly able to make such an assessment, as we have seen.

ARTICLE 14, PARAGRAPH 2. Cinematographic productions shall be protected as literary or artistic works, if, by the arrangement of the acting form or the combinations of the incidents represented, the author has given the work a personal and original character.

Finally, to complete the parallel established between the questions concerning cinematographs and the other questions concerning literary and artistic works, it would be appropriate to introduce here a provision similar to that of Article 2, paragraph 2, of our draft. A novel has been used to plan a cinematograph's scenes; if this work has been done without the novelist's consent, it constitutes an act of piracy. Nevertheless, there is no reason why a competitor should appropriate a pirate's work with impunity. This is what was explained earlier in respect of a translation.

ARTICLE 14, PARAGRAPH 3. Without prejudice to the copyright in the original work the reproduction by cinematography of a literary, scientific or artistic work shall be protected as an original work.

As can be seen, Article 14 which has just been explained is merely the application of the ordinary right and the principles laid down by our Convention.

The above also applies to processes analogous to that of cinematography, whatever development this industry may undergo and the inventive means at its disposal; this explains the last paragraph of the Article which runs as follows:

ARTICLE 14, PARAGRAPH 4. The preceding provisions apply to reproduction or production effected by any other process analogous to cinematography.

Justification to Be Given in Case of Proceedings

In connection with Article 4, paragraph 2, of the draft it was explained that, in addition to the country of publication, protection may be requested in the other countries of the Union not only without having to complete any formality in them, but even without being obliged to justify the accomplishment of such formalities as may be required in the country of origin. This is what followed from the general principle laid down in Article 4, paragraph 2, as well as from the deletion of the third paragraph of Article 11 of the 1886 Convention, undertaken, at the request of the German authorities, as a consequence of this principle.

There are grounds for maintaining the other two paragraphs of this same Article 11 which merely establish very simple presumptions. It is desired that the author's copyright can be protected without him being obliged to indicate his real name.

ARTICLE 15. In order that the author of a work protected hy this Convention shall, in tbe absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the various countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner.

. For anonymous or pseudonymous works the puhlisher, whose name appears on the work, shall be entitled to protect the rights belonging to the author. He shall, in tbe absence of proof to tbe contrary, be deemed to be tbe lawful representative of the anonymous or pseudonymous author.

(*Cf. Article 11 of the 1886 Convention*)

Seizure of Infringing Works

Under Article 12 of the 1886 Convention, "Infringing copies of a work shall be liable to seizure on importation in any country of the Union where the work enjoys legal protection." At the Paris Conference it was explained that the import of the expressions used should not be misunderstood in the belief that, in the case in point, seizure constitutes an optional measure for the countries of the Union. It is for the interested parties that the option exists; they have recourse to seizure or not as they think fit. But if they wish to seize they must be able to do so and the legislation of Union countries is bound to enable them to do so; they may, however, lay down as they wish the forms such seizure will take and determine the authorities which are competent to effect it. The words *on importation* were deleted in Paris so that it would be fully understood that seizure was possible not only on importation but also inside the country.

At the Italian Delegation's request, a new paragraph was inserted without difficulty in order to reserve the right of seizure in a country on the basis of a work which is protected there even though the reproduction comes from a country where the work was not, or has ceased to be, protected. This may arise in fairly numerous cases, notably by application of the new principle of Article 4, paragraph 2, of the draft; it will also arise in respect of adaptations of musical works which may be lawful in a country by virtue of the rules laid down pursuant to Article 13, paragraph 2, of the draft, while being unlawful in another country which is more respectful of authors' copyright.

ARTICLE 16. Infringing copies of a work shall be liahle to seizure hy the competent authorities of any country of the Union where the work enjoys legal protection.

In these countries the seizure shall also apply to reproductions coming from a country wbere the work is not protected, or has ceased to be protected.

The seizure shall take place in accordance with the legislation of each country.

(*Cf. Article 12 of the 1886 Convention as revised in Paris*)

The Individual Country's Regulatory Right

The aim of the Berne Convention is to regulate private rights and interests; it does not interfere in any way with a Government's regulatory right, the freedom of the press, etc. In actual fact, it was unnecessary to provide any explanations in this regard. As the 1886 Convention thought it right to do so, there is no reason for not maintaining its provision while deleting, however, the first words *it is understood that* which add nothing to the sense (the same deletion has been made in other Articles).

ARTICLE 17. The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit, hy legislation or regulation, the circulation, presentation, or exhihition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

(*Cf. Article 13 of the 1886 Convention*)

Retroactivity

Pursuant to Article 14 of the 1886 Convention, the Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain, under the reserves and conditions to be determined by common agreement. Account had to be taken of the *de facto* situation existing in certain countries at the time the Convention came into force, of the interests of those who might have lawfully reproduced or performed foreign works without their authors' authorization. Under No. 4 of the Final Protocol, application of the Convention on this point was to be determined either in conformity with the special provisions contained in such literary conventions as existed or were to be concluded to that effect, or, in the absence of such stipulations, in accordance with the provisions of domestic legislation. The Paris Conference did not touch Article 14 of the Convention but it did complete the Final Protocol on two points: (1) Retroactivity was applied with its provisos to the right of translation as emerging from the new wording of Article 5, paragraph 1. If, on the date of this latest text coming into force, ten years had not yet elapsed since the publication of a work, and if an authorized translation of this work had been published—all this in a country of the Union—the exclusive right of translation would be maintained, pursuant to the new Article 5, as regards the language for which use had been made of it. On the other hand, the expiration of the ten-year period, even very shortly before the new Article 5 had come into force, without an authorized translation having been issued, would have permitted a lawful translation to be made, and the new provision would not have rendered it unlawful; but, without prejudice to this translator's right, the author could invoke the provision against anyone who wanted to translate without his authorization. (2) The temporary provisions were declared to be applicable with regard to new accessions to the Union. Countries joining the Union may need to take transitional measures just as much as countries which have been party to it from the outset.

The general rule remains the same: it is appropriate to take account of the new principle laid down in Article 4, paragraph 2, of the draft, under which protection may be claimed in a country for a work which is not or which is no longer protected in the country of origin, barring a reservation in respect of the duration (Article 7, paragraph 2). Thus account no longer has to be taken of the fact that a work has fallen into the public domain in the country of origin, for example due to the failure to complete certain conditions or formalities; this will not prevent the benefit of the Convention being invoked for it in the other countries where it would be legally protected. But, of course, this would no longer be applicable if the work had fallen into the public domain in the country of origin due to the expiration of the general term of protection, because in that case it would be necessary to keep to Article 7, paragraph 2. Let us take the case of two countries, one of which provides for a term of 30 years and the other 50 years after the author's death. By the interplay of two principles, as explained earlier, it is the shorter term which serves as the norm for the relations between these two countries; consequently, as far as the latter country is concerned, a work published in the former has fallen into the public domain after 30 years, whether protection is claimed in the one or the other.

Let us now assume that the country which has a term of 30 years increases it to 50; this will not bring back the protection for those works whose authors have been dead for more than 30 years when the new term comes into force, since those works have already fallen into the public domain, but the works for which the 30-year period has not expired will benefit from the extension.

The rule particularly applies to the translation right which is assimilated under Article 8 of the draft to the reproduction right. If a work has been published for less than ten years when the Convention comes into force, it will benefit from the new protection; if it has been published for more than ten years and if, by virtue of the Convention, translations have been lawfully published in the country where protection is claimed, it will not be possible to invoke the provision of Article 8 against the translations; that apart, the author will enjoy the benefit of the new provision.

Needless to say, in the case of an accession to the Union, the benefit of this accession will be enjoyed by works which have already been published in countries other than the acceding one; under the terms of Article 18 below, the country may regulate the transitional situation but not claim that works which were not previously protected in its territory are to be considered to have fallen into the public domain there.

ARTICLE 18. This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the puhlic domain in the country of origin through the expiration of the term of protection.

If, however, through the expiration of the term of protection which was previously granted, a work has fallen into the puhlic domain of the country where protection is claimed, that work shall not be protected anew.

The application of this principle shall be suhject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In tbe absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.

The preceding provisions shall also apply in the case of new accessions to the Union, and also to cases in which the term of protection is extended hy the application of Article 7.

(*Cf. Article 14 of the 1886 Convention and No. 4 of the Final Protocol*)

Combination of the Convention and National Legislations

This combination relates to a proposal by the Belgian Delegation, developed in a special Memorandum (appended to the minutes of the second session). This proposal, to which the Italian Delegation expressly subscribed, is summarized in the following formula: the Convention comprises *only a minimum of protection*. Consequently, the Belgian Delegation states, its provisions cannot hinder the application of wider provisions established by the national law of a country of the Union and they do not in any way affect current conventions, or those which may be concluded, under the conditions provided for by Article 15 (of the 1886 Convention). The second part of the proposal, which relates to Article 20 of the draft, will not be dealt with here.

In connection with Article 4 of the draft, it was explained that the protection guaranteed by the Convention involved two elements: (1) national treatment; (2) the benefit of the Convention's special provisions. As the Belgian Memorandum observes, the first element is variable, since it depends on a great diversity of domestic legislation; the second is fixed, since it is laid down in a uniform way by the Convention itself. On the points regulated by the Convention, can Union nationals, in a country, only claim the rights expressly guaranteed by the Convention itself, or can they not benefit from the more liberal treatment guaranteed to foreigners by domestic legislation? In order not to confine ourselves to abstractions and,

accordingly, to show clearly the import of the proposal, we only have to imagine that protection is requested today in Belgium for an English work which has been translated when the translation right has fallen into the public domain in Belgium by the operation of Article 5 of the Berne Convention as revised in 1896. The claim would not be justified if that Convention alone were applicable. But is it not possible to invoke the liberal provision of the 1886 Belgian Law, which assimilates translation to reproduction, and let foreign works in general benefit from this assimilation regardless of any treaty and any reciprocity, or must it be said that only the rules of the Convention are applicable? If this latter solution is accepted, the Convention then forms an indivisible whole, but it would lead to the consequence, which would be odd at least, of a non-Union author being treated better than a Union one as regards the right in question. The Dutch, by joining the Union, would hence be protected less in Belgium than they are at present, at least as far as translation is concerned.

The Belgian and Italian Delegations think that the spirit of the Convention is contrary to a result of this kind, and that an explanation should be given, because doubts have been expressed in this regard by a number of courts.

The proposal did not meet with any objection. The Committee is submitting the following wording to you:

ARTICLE 19. The provisions of this Convention shall not preclnde the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union in favour of foreigners in general.

Right of Union Countries to Conclude Special Agreements

By Article 15 of the 1886 Convention, the Governments of the countries of the Union reserved to themselves respectively the right to enter into special arrangements among themselves. This is the system of *limited Unions* to which reference has been made in this report's general considerations. A group of States could be formed, for example, in order to afford authors greater protection against adaptations of their works by phonograph.

An *Additional Article* was along the same lines. "The Convention concluded this day shall in no way affect the maintenance of existing Conventions between the contracting countries, provided always that such Conventions confer on authors, or their successors in title, rights more extensive than those granted by the Union, or contain other provisions which are not contrary to this Convention." It was France which had insisted on this provision, because it had conventions which afforded authors better protection than the Berne Convention, notably in relation to translation; it agreed not to go as far as it would have liked, but not to step backwards.

Difficulties and complications can result from the Berne Convention being combined with earlier conventions: frequently doubts arise as to whether certain of their provisions are still in force. On a proposal by the German Delegation, the Paris Conference expressed the following wish: "*It is desirable* (...) that the special conventions concluded between countries which belong to the Union should be examined by the respective contracting parties with a view to determining the clauses which may be considered to have remained in force pursuant to the Additional Article of the Berne Convention; that the outcome of this examination should be established by an authentic act and notified to the countries of the Union by the International Office before the next conference meets." What effect was given to this wish? We think we should insert here the note delivered to us by the International Bureau:

"Only one group of treaties was submitted to the examination which the above-mentioned *wish* recommended conducting; it was the group of special literary treaties concluded in 1883 and in 1884, thus before the creation of the Union, by Germany with Belgium, with France and with Italy. In conjunction with the Governments of these countries, Germany replaced these treaties by new acts drawn up on a simpler, clearer and wider basis and which determine more precisely the transitional right as it is called (conventions of April 8, 1907, with France, of October 16, 1907, with Belgium and of November 9, 1907, with Italy). Once these new treaties had been ratified and enacted, the change which thus occurred in the international relations between Union countries was conveyed to the authorities of the signatory States of the Berne Convention by a circular from the International Bureau dated July 27, 1908."[1]

We thought it possible to combine the provisions of Article 15 of the 1886 Convention and the Additional Article in a single Article; it corresponds to the same idea.

ARTICLE 20. The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Union, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

(*Cf. Article 15 of the 1886 Convention; 1886 Additional Act*)

[1] The treaties and agreements between Union countries which still subsist will be listed in a separate table which will be published in the "Records of the Conference," and it is to be hoped that the movement of simplification inaugurated on Germany's initiative will be imitated, that all the texts which become superfluous or are duplicated following the enactment of this Convention will disappear, that the number of special agreements subsisting alongside the Union Convention will diminish and that the provisions maintained will be reduced to the strict minimum. There is no doubt that the countries which observe this rule will facilitate the task of their courts by making the application of the Convention easier.

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International Bureau

It can only be a question of consolidating an institution which has rendered so many services and which, by its intelligent activity, has contributed a great deal to the progress of the Union. We have only to retain the existing provisions which appear either in the 1886 Convention itself or in the appended Final Protocol by including all of them in the text of the new Convention, which will simplify matters. To do so, we are using the text prepared by the German authorities.

Reference should not be made to the creation or the institution of a Bureau which has now been in operation for over 20 years, but to its maintenance.

ARTICLE 21. The international office established nnder tbe name of the "Bureau of the International Union for the Protection of Literary and Artistic Works" shall be maintained.

That Bureau is placed under the high authority of the Government of the Swiss Confederation, whicb shall regulate its organization and supervise its working.

The official language of the Bureau shall be the French language.

(*Cf. Article 16 of the 1886 Convention; Final Protocol No. 5, paragraph 2*)

The International Bureau's role is clearly indicated in the Final Protocol, the provisions of which are reproduced in the following Article.

We merely note that this Article obliges the Bureau to supply information to the members of the Union alone: in actual fact, it supplies such information with a great deal of good grace to all those who apply to it, and this can only be useful to the Union itself.

ARTICLE 22. The International Bureau shall collect information of every kind relating to the protection of the rights of authors over their literary and artistic works. It shall coordinate and publish such information. It shall conduct studies of general utility concerning the Union, and by the aid of docnments placed at its disposal by the different Administrations, it shall edit a periodical publication in the French language on questions relating to the objects of the Union. The Governments of the countries of the Union reserve the right to authorize, by common agreement, tbe publication by the Bnreau of an edition in one or more other languages, if experience shonld show tbis to be necessary.

The International Bureau shall always place itself at the disposal of members of the Union in order to provide them with any special information which they may require relating to the protection of literary and artistic works.

The Director of the International Bureau shall make an annual report on his administration, which shall be communicated to all the members of the Union.

(*Cf. 1886 Final Protocol, No. 5, paragraphs 3, 4 and 6*)

The distribution of the Office's expenses is obviously determined on an arbitrary basis, but it cannot be otherwise, and no State is entitled to complain of this, since it is at liberty to choose the class in which it wishes to be placed. Not without reason was trust placed in the dignity and self-esteem of the States to ensure that the classification is effected as it ought to be.

ARTICLE 23. The expenses of the Bureau of the International Union shall be shared by the contracting countries. Until a fresh arrangement is made, they cannot exceed the sum of 60,000 francs a year. This amount may be increased, if necessary, by the simple decision of one of the Conferences provided for in Article 24.

The share of the total expense to be paid by each conntry shall be determined by the division of the contracting and acceding countries into six classes, eacb of which shall contribute in the proportion of a certain number of units, viz.:

Class I	**25**	**units**
Class II	**20**	**»**
Class III	**15**	**»**
Class IV	**10**	**»**
Class V	**5**	**»**
Class IV	**3**	**»**

These coefficients shall be multiplied by the nnmber of countries of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unit of expense.

Each country shall declare, at the time of its accession, in which of the said classes it wishes to belong.

The Swiss Administration shall prepare the budget of the Bureau, supervise its expenditure, make the necessary advances, and draw up the annual account which shall be communicated to all the other Administrations.

(*Cf. 1886 Final Protocol, No. 5, paragraphs 7 to 11*)

Revision; Periodical Conferences

International Unions are destined to progress. No institution achieves perfection from the very start. This is especially true of an association which includes members who have not reached the same point, who are all willing to embark on the same course but who do not all want to go all the way to the end. It will be necessary to go in stages; the most advanced members will have to be patient, will have to resign themselves to stop half way in order to be more numerous there, then wait for experience, reflection and the contagion of the good example to lead to a general

march forward. This report has made a point of showing the evolution which had taken place in the Union on many important points. It is precisely in the periodical Conferences that the mutual education of the partners takes place. It goes without saying that each State can only be bound by its own will.

ARTICLE 24. This Convention may be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

Questions of this kind, as well as those which in other respects concern the development of the Union, shall be considered in Conferences to be held successively in the countries of the Union among the delegates of the said countries.

The Administration of the country where a Conference is to meet shall prepare, with the assistance of the International Bureau, the programme of the Conference. The Director of the Bureau shall attend the sessions of the Conferences, and shall participate in the discussions without the right to vote.

No amendment to this Convention shall be binding on the Union except by the unanimous consent of the countries which are members of it.

(*Cf. Article 17 of the Convention; Final Protocol, No. 5, paragraphs 5 and 6*)

Accessions

The principle is that States outside the Union may join it at their request, and it is our keen desire that the circle of our association should widen. We have already mentioned a difficulty which then arises. Our Union has been functioning for 21 years; it has grown stronger; it ensures the protection of literary and artistic works in an increasingly effective manner. Is it going to require that the States in which this protection is not yet as effectively guaranteed, in which practices exist which conflict with the international recognition of copyright, should reach the point it has reached by stages at their first attempt? Some of our associates have not yet followed the main body of the company; should newcomers be treated more harshly? We could have let the original Convention subsist and allow those who, on certain points, for example on that of translation, do not wish to go any further for the time being, to accede to it. This is what we had thought to begin with. But is it not preferable for the States to accede to our new Convention subject to reservations on the points which they do not feel able to accept for the moment? Thus they will be able to benefit from all the improvements we think we have made in the Union's system, and we too will benefit from these in our relations with them. In notifying their accession they will indicate the provisions to which, provisionally, they do not think they can subscribe. Does this mean that they could replace these provisions with others which suit them? Of course not, that would be anarchy. They will be able to choose the provisions they prefer in the 1886 Convention or the 1896 Additional Act. Obviously this will not be a very simple situation, but we must hope that the acceding States do not abuse this power to make reservations, and that gradually they will come to adopt the Union's statutes as a whole. It is essential not to want to go too fast and to let matters take their course.

ARTICLE 25. States outside the Union which make provision for the legal protection of the rights forming the object of this Convention may accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, which shall communicate it to all the other countries of the Union.

Such accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention. It may, however, contain an indication of the provisions of the Convention of September 9, 1886, or of the Additional Act of May 4, 1896, which they may judge necessary to substitute, temporarily at least, for the corresponding provisions of this Convention.

(*Cf. Article 18 of the 1886 Convention*)

Accession of Colonies

The Convention does not extend automatically to colonies. However, contracting States may extend it to them by a declaration of their wish to do so when signing or ratifying the Convention or by a subsequent notification. The principle of Article 18 of the 1886 Convention should be maintained with the added proviso that the accession of colonies subsequent to ratification must be the subject of a notification in the same way as the accession of a State. Needless to say that the declarations made in 1886 and 1887 by Spain, France and Great Britain concerning their possessions or colonies (Record of Signature of September 9, 1886, and Protocol of the Exchange of Ratifications of September 5, 1887) remain fully valid.

ARTICLE 26. Contracting countries shall have the right to accede to this Convention at any time for their colonies or foreign possessions.

They may do this either by a general declaration comprising in the accession all their colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.

Such declaration shall be notified in writing to the Government of the Swiss Confederation, which will communicate it to all the other countries of the Union.

(*Cf. Article 19 of the 1886 Convention*)

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Effect of the New Convention as Regards Its Earlier Acts

The Convention we are preparing is meant to replace the Acts which have preceded it. Obviously it will only be possible for this effect to be produced in the relations between those States which accept the new Convention in its entirety. As to those which remain ouside it, the relations between them and with the other States will continue to be governed by the previous Acts, that is to say, by the Acts of 1886 and 1896 or by the 1886 Convention alone, as the case may be.

One could imagine a State which had acceded to the 1886 and 1896 Acts for its colonies signing the new Convention for itself alone, and leaving its colonies under the earlier system.

An intermediate situation is also possible, that of a Union State which duly accepted the new Convention as a whole but made reservations on this or that point. It is to be desired and even to be hoped that our associates will not be tempted to make numerous reservations of this kind, as considerable sacrifices have been accepted in order to reach an agreement. But after all, a State may not wish to accept one or two of the new solutions. Can it be told all or nothing? You will accept the new Convention in its entirety or you will remain under the previous system. This does not seem possible. We cannot treat a Union State worse than a non-Union one. Since we are allowing the latter to accede to the new Convention subject to reservations, a Union State will be able to do the same. However, the situation is not identical in that we can indeed agree to a Union State not following us and stopping at the point at which it is at that moment, but not to it stepping backwards. For instance, a State is currently bound by the 1886 Convention and the 1896 Additional Act; it is not happy with the rule laid down by the new Article 8 on the right of translation; it may confine itself to Article 5 of the 1896 Additional Act, which will govern its relations with the other States, but not return to Article 5 of the 1886 Convention.

The reservations, should they be necessary, would be made on exchanging ratifications, which would permit reflection and could give reason to hope that, on considering the work as a whole, a State would consider it sound, despite the regret it might have felt at the time that its opinion did not prevail on this or that point.

ARTICLE 27. This Convention shall, as regards relations between the contracting States, replace the Berne Convention of September 9, 1886, including the Additional Article and the Final Protocol of the same date, as well as the Additional Act and the Interpretative Declaration of May 4, 1896. These Acts shall remain in force in relations with States which do not ratify this Convention.

The signatory States of this Convention may declare at the exchange of ratifications that they desire to remain bound, as regards any specific point, by the provisions of the Conventions which they have previously signed.

Ratification and Implementation

The clauses on this subject cannot present any difficulty and do not require any comment. We are proposing to give a fairly long time limit for the exchange of ratifications.

ARTICLE 28. This Convention shall be ratified, and the ratifications exchanged at Berlin, not later than July 1, 1910.

Each contracting party shall, as regards the exchange of ratifications, deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederation. Each party shall receive in return a copy of the *records* of the exchange of ratifications, signed by the Plenipotentiaries who took part.

(*Cf. Article 21 of the 1886 Convention and No. 7 of the Final Protocol*)

ARTICLE 29. This Convention shall be put in force three months after the exchange of ratifications, and shall remain in force without limitation as to time until the expiration of a year from the day on which it has been denounced.

Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country making it, the Convention remaining in full force and effect for the other countries of the Union.

Notification of the Decisions Taken by the Contracting States with Regard to the Term of Protection and the Renunciation of Their Reservations

Developments may take place in the various countries of the Union which they all have an interest in knowing about, because they have consequences for the relations governed by the Convention.

Thus, under Article 7 of the draft, the term of protection comprises the life of the author and 50 years after his death. Not all the States are ready to apply this provision, because the legislation of some of them only recognizes a shorter term, 30 years for example. Until such legislation is changed, it is the 30-year term which will be taken into consideration in those States' relations with those which have a 50-year term. But let us suppose that a State which hitherto had only 30 years amends its legislation and introduces the 50-year period; it is a development which interests all the other States of the Union, especially those which already have 50 years since, in

future, that 50-year period will apply in their relations with the State whose legislation has just been amended. It is essential therefore that this development is properly notified to everyone.

Some Union States may only ratify the Convention subject to reservations, maintaining the existing rule on this or that point. It is to be hoped that this will only be a temporary situation and that, after a time, they will abandon their reservations and accept the new Convention in its entirety. The same thing may take place as regards the non-Union States which, although anxious to join the Union, wish to make some intermediate stops before joining us. Tomorrow, for certain points which are of special interest to them, it will be the 1886 rule that they prefer; the day after it will perhaps be the 1896 one, unless they go beyond this stop to arrive at 1908 immediately. It is also essential that the various decisions taken along the lines which have just been indicated should be brought to everyone's attention.

Needless to say the Union's mouthpiece, *Le Droit d'auteur*, will most certainly announce the matter in its *Official Part*, and draw attention to developments of such interest to the Union, but its notice cannot replace a diplomatic communication which must motivate official action on the part of the various Governments.

The States thus notified will take such measures as are necessary to enable the new situation to produce its effects in their territories. For example, an official promulgation will inform the courts and individuals.

Accordingly, we are submitting the following wording to you.

ARTICLE 30. The States which shall introduce in their legislation the duration of protection for fifty years provided for in Article 7, first paragraph, of this Convention, shall give notice thereof in writing to the Government of the Swiss Confederation, which shall immediately communicate it to all the other States of the Union.

The same procedure shall be followed in the case of the States withdrawing the reservations made by them in accordance with Articles 25, 26 and 27.

In conformity with a practice adopted in recent years, a sole copy of the Act will be made, bearing the signatures of the various Plenipotentiaries; certified true copies will then be remitted to the various Powers through diplomatic channels. This simplifies matters considerably.

We confidently submit to you the draft which, after you have adopted it, will become the Union's charter. It is the result of great labour which was accomplished during the Conference and also before it. It is a work of tradition and of progress at the same time; we have remained faithful to the spirit of our predecessors; on many points we have followed their indications, given satisfaction to their wishes; we have been fortunate enough to eliminate a number of restrictions to which they had to resign themselves. It will suffice to cite the case of some works of art which, after spending a period in the Final Protocol, have gone on to enter the Convention itself; the right of translation recognized with the scope the 1884 Conference had already assigned to it; the notice of reserved rights required for the performance of musical works, which we have succeeded in eliminating. For the really new matters dealt with, for phonographs and cinematographs, we were inspired above all by the general principles which had already been laid down in 1886 and 1896. We have respected the autonomy of domestic legislation as far as possible. It is to be noted, indeed, that the Convention does not ask any State to sacrifice a fundamental principle. Ideas are still very divergent as to the nature of the copyright belonging to the author of a literary or artistic work. Is it a concession on the part of legislation or does it merely recognize and regulate it? As members of the international Union, it is not for us to take a stand on this serious question. That is why, in 1885, it was decided not to use the expression *literary and artistic property*, which some preferred and the majority had adopted. Reference was made to the *protection of literary and artistic works* because in that way nothing is prejudged. It is enough for us that a State protects the works with which we are concerned, without us needing to know on what basis it protects them. If, in some of our texts, reference is made to rights *granted* by domestic legislation, it should not be thought that we have taken a stand on the serious question of the nature of copyright: from the position we take here, *rights granted* and *rights recognized* are absolutely synonymous expressions.

In appearance it would seem that we have achieved maximum simplicity, since we are providing you with the *single text* called for by the wishes of the Paris Conference. The reality is not so brilliant, and we do not hide the fact. The new Convention will only put an end to the previous Acts in the relations between the States which sign it and, consequently, it is to be feared that these Acts will subsist for some. Furthermore, we have accepted the fact that signatory States, on ratification, could make reservations and that non-Union States, on joining, could also prefer the earlier right. This will necessarily produce something of a mixture, while we do have the Union, we do not have unity. This should not come as a surprise: simplicity is not achieved at the first attempt and complexity should not be regretted when it is the only means of guaranteeing the freedom of some and of bringing about the accession of others. Time will do its work, the *anomalies* will disappear, the notifications referred to in our last article will announce their gradual disappearance and a time will come when all the provisions of our Convention will be the only ones to apply. Let us also hope that our Union will develop externally, that it will come to include all the European States and even gain members from across the seas. It would be a glorious triumph for international law in a limited but extremely interesting sphere.

CONFERENCE IN BERLIN, 1908 — REPORT (LOUIS RENAULT)

And now permit the Rapporteur to end with a personal word. He would like to make a point of expressing his sincere gratitude for the kindness you have all shown him in carrying out his duties as Chairman, for the assistance which the members of the Drafting Committee have given him especially, and thanks to which he hopes to have succeeded in providing you with an exact commentary on your decisions. He would add his particular gratitude to our devoted Secretary General, Mr. RÖTHLISBERGER, who, with tireless zeal, has been his real collaborator in an often delicate task. It is not without a touch of melancholy that, after participating in the creation and development of a piece of work which is dear to him, the Rapporteur sets down his pen and sincerely hopes that his successors will receive the same kind assistance.

LOUIS RENAULT

Committee Chairman and Rapporteur

INTERNATIONAL UNION
FOR THE PROTECTION
OF LITERARY
AND ARTISTIC WORKS

RECORDS OF THE CONFERENCE

CONVENED IN

ROME

MAY 7 TO JUNE 2, 1928

REPORTS

I. MEMORANDUM BY THE ITALIAN DELEGATION

CONCERNING THE

PROTECTION OF THE PERSONAL (MORAL) RIGHTS OF THE AUTHOR

The Italian Delegation proposes the addition to the Convention of the following text:

**"Article 6*bis*

"Independently of the protection of economic rights provided for in the following articles, and notwithstanding any assignment, the author shall at all times have:

(a) *the right to claim authorship of the work,*

(b) *the right to decide whether the work should appear,*

(c) *the right to object to any alteration of the work that would be prejudicial to his moral interests.*

"It shall be a matter for the domestic legislation of the Contracting Parties to introduce provisions to regulate the above rights, and especially to reconcile the exclusive right of publication with the dictates of the public interest, as well as to reconcile the right mentioned under (c) *with the right of the owner of the physical object embodying the work.*

"After the death of the author, these rights shall be exercised by the persons or bodies designated by the legislation of the country of origin of the work.

"The means of redress for safeguarding these rights shall be regulated by the country in which protection is claimed."

We believe that it would be permissible to maintain that the idea of extending Union protection to the author's personal rights has already been acknowledged in principle in Article 7 of the Convention, which makes the licence to reproduce newspaper articles subject to the condition of "mentioning the source." What really is this "mention of the source" other than rudimentary recognition of the personal right of the author to claim authorship of his work?

The demand for international protection of the personal rights of authors dates back a long way, moreover.

In 1899, almost 30 years ago, here in Rome, the International Press Congress expressed the wish "that it should be laid down as a matter of principle in all legislation that the author of a literary or artistic work, even where he has transferred full ownership of that work, yet without renouncing his authorship, has transferred only the right of using it and reproducing it such as it is, without any modification, and that he retains in relation to it a moral right that permits him to object to any reproduction or public display of the work after alteration or modification; and also that an article should be incorporated in the Berne Convention at its next revision which establishes the same principles."

The same wishes have been repeated at more recent congresses,[1] and, as we mentioned in the explanatory memorandum that accompanied our proposal, the Commission of the International Institute of Intellectual Cooperation decided, at its July 1927 session, to submit a recommendation to the Conference in favour of the introduction in national legislation of the "right to respect." The French Administration has also proposed to the Conference a wish that Union countries introduce formal provisions as soon as possible in their national legislation whose purpose would be to establish the moral rights of authors in relation to their works; and that it be declared desirable that the rights be made inalienable and the procedures surrounding them laid down in identical form in each country.

[1] See the long list of those wishes in the brochure of the International Institute of Intellectual Cooperation, "*La protection internationale du droit d'auteur*," Paris, 1928. To that list should be added the wishes of the Lugano Congress of the International Literary and Artistic Association (1927) and those of the Brussels Congress of the International Federation of P.E.N. Clubs (1927).

Conference in Rome, 1928 — Memorandum by the Italian Delegation (Moral Rights)

The question has been stirred up a number of times within our Conferences. At the Berlin Conference it seems to have been taken into consideration more in the sense that personal rights strengthened the justification of exclusive economic rights. For instance, in the Renault report, on the question of assimilating the right of translation to the right of reproduction, the following is noted:[1]

"Mr. Georges Lecomte looked at the situation particularly from the point of view of the author's right, his moral right as much as his pecuniary one, in supporting the German proposal, in keeping with traditional French doctrine. The author is the best judge of whether his work can be translated and which translator is the most competent to do so: in this way he is in a position to prevent any distortion of his thought."

It should be mentioned that the shift of focus that has occurred in legal doctrine in favour of the protection of personal copyright has recently taken on a more general, more uniform and more precise character, in spite of the divergent theories on the nature of copyright. For, regardless of whether this right is assimilated to the right of physical ownership, or conceived as a new economic right in immaterial or intellectual property, or if the opposite view is held to the effect that the right represents no more than a branch of the group of rights of the private person, or, finally, if the right is conceived as being a *sui generis* right which, in the course of its development and according to the various prerogatives that make up its content, operates as a personal right and as an economic right by turns, it is agreed today that, independently of the exclusive rights of economic character, which are essentially temporary and transferable, the author does own one right, or a set of rights strictly inherent in his person, that are intransferable and without limitation in time, and which mainly concern the absolute right to publish or not to publish the work, to recognition of authorship and finally to the protection of the integrity of the work.

The courts of countries of the Union have recognized these rights on many occasions.

Indeed this unanimity of doctrine and case law has even led to the argument that ultimately the rights do not need to be regulated by law, the common principles that operate to safeguard the rights of the private person being sufficient to guarantee them.

This opinion is a mistaken one, however. The analogy with the rights of the private person is not a conclusive one, not only on account of the difference of content of these two categories of rights, but also on account of the diversity of the interests with which they are in conflict. The personal interests of authors, particularly with regard to control over the publicity given to the work and resistance to any alteration or deformation, are very often at odds with the equally respectable interests either of the assignee of the exclusive rights or of the public in the case of works that have fallen in the public domain or permissible reproductions (rights of quotation and borrowing). In the field of the figurative arts, moreover, the conflict between the author and the owner of the work, which is the material embodiment of the intellectual or artistic concept, often presents itself as a conflict of a complex and very delicate nature. How can one, under such circumstances, rely on the discretionary assessment of a court, and put up with the inevitable uncertainties of case law?

We take the liberty of drawing the attention of the Conference to another very interesting point, from which emerges another argument in favour of the need for the legislative control that we are advocating.

The system of exclusive rights, as we know, is not the sole form adopted for the protection of the economic rights of authors. Two other forms have long been incorporated in the legislative provisions of a number of States of the Union, namely the system of the *"domaine public payant"* and that of compulsory licences, both of which restrict economic rights to a percentage share of the commercial exploitation of the work. The pros and cons of the two systems have been widely discussed. What is certain is that they have enabled Great Britain to prolong the protection of rights up to a full term of 50 years after the death of the author. There is moreover no proof that they cannot, if they are carefully regulated, afford as great benefits to the author's purse as those that might result from the exploitation of exclusive rights, and at least more reliable benefits. Apart from that we should not forget that the rise in the standard of living of the broad masses of the population, which has been one of the results in the European War in a number of countries of the Union, has created very extensive intellectual and cultural needs that have to be taken in hand by the State, and which militate in favour of the systems concerned. Finally there are certain works and certain modern means of reproduction and means of communication to the public in general which, by virtue of their particular nature, suggest new arguments in support of those systems that aim towards the more intensive and wide-ranging dissemination of the work.

We do not wish to anticipate the viewpoint of the Italian Delegation in the great question of radio broadcasting, but we do wish to establish quite simply that it is at the very least highly probable that the compulsory licence and *"domaine public payant"* systems will remain in force, and in the future may indeed be given broader and more widespread application in the territory of the Union.

If that should be true, the result is a new reason for recognizing and safeguarding the personal rights of authors as being independent rights completely separate from the economic rights. For while the system of exclusive economic rights also covers, up to a point and within certain limits, the personal interests of the author, the systems

[1] *Records of the Conference*, page 246.

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mentioned above, on the other hand, leave those interests without any protection; they even increase the risk of prejudice precisely owing to the sheer intensity of the industrial exploitation that they aim to bring about.

The wishes of the Congresses, the trends of doctrine and case law and the need to protect the author against abuses of the compulsory licence and *"domaine public payant"* systems are all evidence that the matter of the protection of the personal rights of the author is ripe for legislative solutions. What is more, those legislative solutions already exist.

The range of laws enacted after the Great War that recognized and regulated these personal rights with more acute sensitivity to modern realities is already quite considerable.

We would mention the Romanian Law of June 28, 1923, the Italian Law of November 7, 1925, the Polish Law of March 29, 1926, and the Czechoslovak Law of November 24, 1926.[1] In a number of other States draft legislation on the same lines has been presented to the parliaments concerned or is under consideration, for instance in France (Plaisant draft), in Norway, in Yugoslavia, etc.

Could one object that the example of the above laws is not conclusive in that they are domestic laws, whereas the question to be solved is whether international regulation is necessary?

Such an objection—we feel bound to say it—would really be lacking in seriousness.

As much as the exclusive economic rights, and indeed more than it, the author's personal rights call for international protection.

It should be sufficient to point out, with regard to principles, that, while these rights are not identified with the generic rights of the human personality, as eminent writers have argued, they are at the very least strictly related to those rights, which at all times have enjoyed protection by international law. From that point of view, personal rights demand Union protection by virtue of a claim that is even older and stronger than that of exclusive economic rights.

It is certain that for banal works, or those which by their nature are destined exclusively for the national intellectual market, the question does not even arise. However, for intellectual works that transcend the limits of State frontiers and elevate the personality of the author to the heights of international renown, the protection of that personality cannot be anything but international.

Moreover, the subjective, intellectual value of the work is closely tied up with its objective, commercial value. The protection of the personal rights of the author is therefore justified as being an adjunct and also an accessory of the protection of his economic interests. The authors' rights to claim authorship of the work, to decide whether and under what conditions the work is to appear, and to object to any alteration that would prejudice his moral interests, are designed to protect his credit, his reputation, his renown; however, by a natural repercussion they have the effect of also protecting his present and future economic interests.

If, finally, we relate this problem to the questions specifically submitted to the Conference for discussion, we see clearly how much the proposal that we are advocating will help solve the matters at issue.

First, the general matter of *reservations*.

It is to be hoped that reservations will disappear completely from the Convention both for the present and for the future. It is however possible that they will not disappear completely, and above all that a certain, more or less extensive right to make reservations will have to be retained in order to attract new accessions, particularly on the part of countries at a lower level of progress. Under these circumstances, who can fail to see the desirability of making the reservation faculty subject to respect for the author's personal rights? One need only consider the reservation concerning the limits of the exclusive right of translation to concede this point.

And then, proceeding to some of the main amendments on the Conference table, who can fail to see that absolute, complete respect for the personal rights of the author has to be the *sine qua non* for granting exceptions to exclusive rights, either in connection with the press or in the licensing of quotations and borrowings?

Moreover, how can it be doubted that the system of compulsory licences for the adaptation of musical works for phonographs, which has already been recognized within certain limits in Article 13, and which it is proposed should be maintained and indeed broadened, has to be subject to the condition that the integrity of the work is respected?

And what sound structure of rules can we hope to erect in order to reconcile contrasting interests in the so-delicate and so-complex question of radio broadcasting if we do not start by safeguarding first the interests of the author's personality?

We are profoundly convinced that the protection of the author's personal rights has to be ensured first. Once these rights have been guaranteed, we can discuss the problems of the Conference more freely.

We believe that we have in this way demonstrated the fairness and necessity of international protection for the author's personal rights. A short address would be sufficient to clarify the proposed text, subject to the provision of such more detailed explanations as may be necessary in the course of the discussion.

[1] A number of other laws could also be mentioned that have likewise recognized the personal rights of the author, albeit in an indirect or fragmentary fashion.

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In any event the text is very simple. Care has been taken in drafting it to ensure that this first official recognition of international protection is limited to the contents of the rights, which seemed the most elementary and the least liable to engender dispute. Moreover the text confines itself to stating general principles, and refers to national legislation to establish the procedure and also such limits as may need to be placed on the application of those principles.

The proposed new article should have the number 6*bis*, as it should occupy an intermediate position in the sequence of articles after the first six, which contain general provisions applicable to the regulation of copyright in its double, personal and economic content, and before the subsequent articles which deal with exclusive economic rights.

The self-contained and independent character of this protection of personal rights is apparent in the first words of the text: "*independently of the protection of copyright governed by the articles which follow....*"

The text continues with the mention of the two fundamental characteristics of the rights concerned, mainly those of being not susceptible to any assignment and of being not subject to the limitation in time that affects economic rights. Indeed the Article continues as follows:

"*... and notwithstanding any transfer, the author shall always have*:

(a) *the right to claim authorship of the work;*

(b) *the right to decide whether the work may be published;*

(c) *the right to object to any modification of the work which is prejudicial to his moral interests.*"

The first right, mainly that of claiming authorship of the work, is really the primary and elementary right that necessarily and exclusively arises from the intimate and personal fact of creating the work. Other, secondary and derived rights follow from this one. For instance, taking the Italian law as an example, there follows the author's right to demand that any reproduction, whether authorized or allowed by the law as an exception to his exclusive rights, or because his exclusive rights have lapsed, should always mention the name of the author and the title of the work reproduced. There also follows the right of the author of an anonymous or pseudonymous work to disclose his identity and oblige those who are handling the publication or reproduction of the work to mention the name of the author in subsequent publications, reproductions, etc., notwithstanding any provision to the contrary. We are asking for the organization of these and other, secondary rights to be entrusted to national legislation.

The second personal right, which is also of an elementary nature, is given in the phrase "*to decide whether the work should appear.*"

These words encompass the whole status of the work, from its creation and purpose to its publication; that status is so closely, so delicately and so intimately linked to the person that the writers of old, hypnotized by the assimilation of copyright to the right of ownership, had even doubted whether it actually belonged to the sphere of legal relations. It does belong to it, but in the form of a set of personal rights that establish a sovereignty over the work that is far more absolute and unlimited than would belong to the author after it has been designated for publication. Thus, during this period, the work is protected against any attachment by creditors, and also, in general, against all encumbrances or limitations that are imposed on the published work in the public interest. There is no time limitation on this right of publication before it is exercised, as the very fame or obscurity of the author can depend on it, indeed the very success or failure of an entire scientific, literary or artistic career. Universal doctrine therefore tends to safeguard the exercise of that right until such time as publication has actually occurred, and indeed afterwards (right of withdrawal).

The third element is

"*The right to object to any alteration of the work that would be prejudicial to his moral interests.*"

This right has been and still is abundantly discussed. There is no option of denying the author the right to prevent his work from being altered, deformed, transformed or mutilated, to the detriment not only of his economic interests but also of the more delicate interests of his scientific, literary or artistic personality, which is represented by the work itself, and we have indicated the great importance of guaranteeing that right, not only after the term of protection has expired but also during it, when the exercise of the exclusive right has been assigned or replaced by the attenuated form of compulsory licensing or the *"domaine public payant."*

The importance of and the justification for this right of prohibition, with which some legal writers even identify the entire content of the author's personal rights (in that case called the right to "respect" or "regard"), are beyond dispute. One should not, however, exaggerate to the extent of protecting what would not be a legal interest so much as excessive sensitivity on the part of the scientist, artist or writer. Moreover, in the field of figurative art, this right has to be reconciled with the opposing right of the owner of the *corpus mechanicum*, namely the physical object in which the artistic conception is embodied. The delicate problem of the limits on the application of this right therefore arises as a problem still more obviously in need of solution than in relation to the other personal rights, and that solution too should also be referred to national legislation.

The next paragraph of the proposed text precisely refers to that question of the procedure for and limitations on the application of those rights, by providing as follows:

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"It shall be a matter for the domestic legislation of the Contracting Parties to introduce provisions to regulate the above rights, and especially to reconcile the exclusive right of publication with the dictates of the public interest, as well as to reconcile the right mentioned under (c) *[right to oppose alterations of the work that would prejudice the author's moral interests] with the right of the owner of the physical object embodying the work."*

The need to leave the States of the Union free to regulate these new rights as they see fit appears obvious to us. It would no doubt be desirable to have uniform rules in this area, as mentioned in the resolution proposed by the French Administration, but it does not seem possible to us to impose such uniformity from the outset.

The last two paragraphs of the Article concern the exercise of the right after the author's death and the means of redress.

It is generally acknowledged that the personality of the author has to be protected even after his death. Close relatives have a personal interest in asserting this protection not only on account of its connection with the exercise of the economic rights that have passed to them, but also on account of the reflected honour and standing that the author's renown sheds on his family.

Certain laws, such as the Italian one, recognize that the author may entrust the provision of that protection to a specific person, and that the State may always intervene in cases where no action is taken by heirs. Some other laws entrust the provision of protection directly to a special body, for instance an academy. That has to be a problem for domestic legislation to solve. But of which country? We felt that a situation where sole competence belonged to the country of origin of the work should be preferred, but we do recognize that one could just as well confer the right on the country of which the deceased author was a national.

According to the principles of the rule indicated at the end of the seventh paragraph of Article 4 of the Convention, and pursuant to it, it is stated at the end of the text that the means of redress to safeguard the rights will be regulated by the legislation of the country in which protection is sought.

We would conclude as follows: the wishes of the Congresses, the deliberations of the previous Conferences, the trends in doctrine and case law, the example of the most recent laws on copyright and, finally, the nature of the questions presented to the present Conference for consideration prove, in our opinion, not only that the problem of the international protection of the personal rights of authors has matured, but also that the Convention's formal recognition of those rights as bringing self-contained rights, independent of the international protection of economic rights, is imperative for the purposes of the revision of the Convention in relation to the questions included in the deliberations of the Conference.

The draft text that the Italian Delegation has the honour to submit to the Conference moreover contains very simply and very broadly formulated provisions that refer only to the most elementary and least contentious aspects of those personal rights, leaving the national legislation of countries of the Union to organize procedures and limits for the application of that protection.

The Italian Delegation is confident that its proposal will be accepted. It has vigorously defended it in this Memorandum for three reasons at the same time:

First, because it seems that such formal recognition of the personal or moral content of copyright elevates the task of the Union or throws it into relief, and in turn seems to point the way to a new and beneficial turning point in the progress of protection.

Secondly, because the new protection will considerably benefit the interests of letters and the arts, and most especially the interests of musical works, to which Italy has to pay particular attention.

Finally, because the new protection corresponds to the principles that have inspired the new copyright law of the new Italian national regime. This new law, which was promulgated in November 1925 in the course of the parliamentary session that sanctioned the fundamental laws of the Fascist regime, proves of itself, and on account of the very efficacious protection that it gives to the personal interests of authors, to what great extent Fascism intends to support and further the efforts of intellectual workers.

In the name of common ideals, in the legitimate interest of authors and, for Italy, those of its performing and other artists above all, we wish that the Conference may see fit to place personal rights under the wing of international protection.

CONFERENCE IN ROME, 1928 — REPORTS OF THE SUB-COMMITTEES

II. REPORTS OF THE SUB-COMMITTEES

1. SUB-COMMITTEE ON MORAL RIGHTS

This report can be brief, because, in the course of two discussion meetings, complete agreement emerged not only on the matter of principle, but also on the manner in which the amended Italian proposal had ingeniously succeeded in condensing the essence of the various proposals formulated by national delegations. A number of delegates would admittedly have preferred more clear-cut and detailed affirmations, such as are already written into some recent legislation, but a great desire for union, a common will to bring about the international establishment of a new principle of the noblest and most elevated order, made for mutual concessions and the achievement of agreement. We would note that the concessions relate only to drafting and possible applications, but that the principle is fully established, and that it is henceforth beyond doubt that the creator of a literary and artistic work retains rights in the product of his intellectual effort that are above and outside all agreements on disposal. Those rights, which for want of a more adequate expression are called moral rights, are distinguished from economic rights, and assignment of the latter leaves the former intact. The Conference has not considered it necessary to specify them, as any enumeration introduces a risk of limitative interpretation. It intends to leave national legislation and jurisprudence to take care of the exercise, extent and conditions of those rights, which circumstances can make infinitely diverse. Everything in the sphere of moral rights, as in all spheres, is governed by measure and moderation. In future the courts will find that the ratified Convention is the very text that they lacked to determine the consequences imposed by the nature of things and common equity in order that the author's honour and reputation may be fully safeguarded.

The Sub-Committee did not think it necessary, in its text, to go beyond the protection of the personal rights of the author. As for what would happen after his death, it acknowledged in principle that the right to respect could be exercised even against the owners of the economic rights, but thought it wise not to choose between the various systems proposed to determine who should be given responsibility for ensuring respect of that right: academies, scientific bodies, States, etc. The writer of this report is convinced that, sooner or later, the broadest conception will be worked out, which is that adopted by the Commission of the International Institute for Intellectual Cooperation, which confers on every citizen the right to claim respect for works that are the common heritage of mankind.

Whatever might be thought of that individual opinion, it was with a real and growing enthusiasm that the Sub-Committee heard the various delegations give their support to the recognition of moral rights, and its rapporteur hopes to find the same conciliatory spirit, the same appreciation of the greatness of the progress made in the protection of literary and artistic works, within the Plenary Committee.

It therefore has the honour to propose to the Conference that it finally adopt the text below:

"Article 6*bis*

"(1) *Independently of the economic rights of the author, and even after assignment of those rights, the author shall retain the right to claim authorship of the work, and also the right to object to any distortion, mutilation or other modification of the said work which would be prejudicial to his honour or reputation.*

"(2) *The determination of the conditions under which these rights shall be exercised is reserved for the national legislation of the countries of the Union. The means of redress for safeguarding these rights shall be regulated by the legislation of the country in which protection is claimed.*"

"Resolution

"The Conference expresses the wish that the countries of the Union consider the possibility of introducing, in such of their legislation as does not contain provisions in that respect, such rules as would prevent the author's work, after his death, from being distorted, mutilated or otherwise modified in a manner prejudicial to the author's reputation and the interests of literature, science and the arts."

JULES DESTRÉE

Reporting Chairman

2. SUB-COMMITTEE ON BROADCASTING

The Sub-Committee took as the basis for its discussions the proposals contained in Article 11*bis* as formulated by the Berne Bureau and the Italian Administration.

A general agreement emerged, following an examination in depth of the proposals made by the various administrations and delegations on the necessity of protecting the author's moral rights as well as his economic rights, even with regard to broadcasting.

However, because national legislation has, in various guises, given broadcasting services a markedly social character, it is difficult, precisely when the tendency seems destined to increase more and more, to anticipate the manner in which broadcasting services and the laws governing them are going to develop.

A number of delegations consequently laid stress on the necessity of proceeding with great care in the international regulation of this important problem, and proved ill-inclined to make undertakings that might hamper the development of broadcasting as a social service. It was therefore considered essential to adopt principles that both safeguarded the rights of authors and also reconciled them harmoniously with the social purposes of broadcasting.

Those were the ideas that guided the drafting of Article 11*bis*, which is worded as follows:

"(1) *Authors of literary and artistic works shall enjoy the exclusive right of authorizing the communication of their work to the public by broadcasting.*

"(2) *The national legislation of the countries of the Union may regulate the conditions under which the right mentioned in the preceding paragraph shall be exercised, but the effect of those conditions shall be strictly limited to the countries which have put them in force. Such conditions shall not in any case prejudice either the moral rights of the author, or the right which belongs to the author to obtain equitable remuneration which shall be fixed, failing amicable agreement, by the competent authority.*"

In its first paragraph, the above Article emphatically confirms the author's right; in the second, it leaves national legislation to regulate the conditions under which the right concerned is exercised, at the same time recognizing that, in the light of the general public interest of the State, limitations may be imposed on copyright; it is understood, however, that a country must not make use of the possibility of introducing such limitations unless the need for them has been shown by that country's own experience; in any case the limitations may not diminish the moral rights of the author, neither may they prejudice the right to such equitable compensation as may be either amicably agreed upon or, in the absence of agreement, fixed by the competent authorities. The Sub-Committee thus wished to bring the author's rights into harmony with the general public interests of the State, the only ones to which specific interests are subordinate.

The Sub-Committee feels bound to point out in this connection that, if a reproduction is lawful (for instance, the reproduction of an article in the press under Article 9), the author could never be allowed to file a claim for indemnification on account of the reproduction being effected by means of broadcasting.

In the second paragraph, it is also said that the conditions laid down in national law will have an effect "strictly limited to the countries which have put them in force," which means of course that they do not bind other States.

The Sub-Committee considers that the proposed rules, while reconciling the general public interest of the State with the interests of authors, give useful guidance for the international protection of the author's rights regarding broadcasting.

GIANNINI

Reporting Chairman

3. SUB-COMMITTEE FOR CINEMATOGRAPHY AND PHOTOGRAPHY

It was generally agreed that cinematographic works would be mentioned in Article 2(1) (proposal by the French Government). As for the new wording of Article 14(2) proposed by France ("cinematographic works shall be protected in the same way as literary, artistic or scientific works"), and the proposal that the words "and performance" in paragraph (1) should be replaced by "adaptation and presentation," the United Kingdom, Yugoslavia and Norway resisted them. As for the British proposal whereby the word "scientific" should be deleted from paragraph (1), it was mainly opposed by the French Delegation. The proposals by the Italian Government and the Berne International Bureau regarding the text of Article 14(2) were approved.

In the discussion on the paragraphs (3) to (5) that France had proposed should be inserted ((3): intangibility of the work consisting of the positive of the finally edited film; (4): copyright of the intellectual creators of a film and the original author; (5): mention of the intellectual creators), there was a great divergency of opinion, so that no unanimity was possible in this area.

As for photographic works, it was unanimously agreed that they should be dealt with in Article 3, as hitherto, and not in Article 2. However, according to majority opinion, the second paragraph should be worded as follows: "these works shall, regardless of their merit or purpose, enjoy protection in all the countries of the Union" (proposal by the Italian Government and the Berne International Bureau).

The wording proposed by Ireland, which wished to place the words "to cinematographic productions not provided for in Article 2, to photographic productions and to works produced by processes analogous to cinematography or photography" in the first sentence instead of the words "to photographic works and to works produced by a process analogous to photography" was not approved.

France and Switzerland had proposed setting a minimum term of protection for photographs of 20 years following their publication. Japan declared that it could not endorse anything other than a ten-year term. A French proposal to permit the prosecution of infringement according to criminal procedure only where the name of the author and the date of publication were added to the photograph met with objections from a large number of delegations. While noting that such a provision incorporated in the text of Article 3 was not to be regarded as an obligation on a country to provide for such formalities in its domestic legislation, the majority of the member States of the Union opposed such a measure, even in optional form, all the more so since the question of the legal consequences of failure to add the name and date remained in doubt.

Many objections were made to the proposal made by Hungary on the subject of Article 9, the purpose of which was to allow the free reproduction of photographs accompanying news of the day and miscellaneous items of information, as it was pointed out that such photographs could equally well have artistic merit and for that reason should be given protection.

GEORG KLAUER

Reporting Chairman

CONFERENCE IN ROME, 1928 — REPORTS OF THE SUB-COMMITTEES

4. SUB-COMMITTEE ON THE MECHANICAL REPRODUCTION OF MUSICAL WORKS

Report on the Question as a Whole

At its meeting on May 9, the Sub-Committee decided not to adopt the draft submitted by the Austrian Delegation for a new Article 13*bis*, and entrusted Mr. Barduzzi with presenting a report to that effect.[1]

* * *

The general discussion on Article 13 took up the meetings of the Sub-Committee of May 11, 15 and 18, during which the proposals by the Berne Bureau and the Italian, German, British, Hungarian, Dutch, French, Norwegian and Bulgarian Delegations were discussed.

At the end of the last meeting is was decided to refer the Article to the Drafting Committee, which would endeavour to find a satisfactory formulation.

A text was submitted to the General Committee by the Drafting Committee on May 29, which contained solely modifications of form according to which, in particular, it was made clear that "works" were to be understood as pieces of music. However, as a result of a number of interventions, it was eventually agreed that the Article would not be amended, and the General Committee decided to submit Article 13 to the Conference in its Berlin version.

M. PESSOA DE QUEIROS

Reporting Chairman

Report on a Specific Item
(Draft of a new Article 13*bis*)

The Delegation of Austria has proposed the insertion in the Convention of a new Article numbered 13*bis* and worded as follows:

"Article 13*bis*

"(1) Any person shall have the right to apply for authorization, against payment of equitable indemnification, to adapt a musical work for instruments whereby it may be performed mechanically if the author of the work has already given such authorization, and in so far as mechanical instruments of the kind for which the work is adapted are available on the market, or the work is published in another manner.

"(2) Procedures for the application of paragraph (1) may be provided for in specific agreements existing or to be made between countries of the Union or by the legislation of each country as far as it is concerned."

The proposal by the Austrian Delegation thus submits to the Conference for consideration the system of "compulsory licensing" or "legal licensing" in connection with the application of a musical work to mechanical instruments. Three arguments are put forward in support of the proposal:

(a) The first is general, based on the social necessity, in the interest of culture, of permitting wider dissemination of musical works;

(b) The second is of a more restricted nature, being based on the supposition that the exclusive right of the author to agree to mechanical-musical applications could be a threat to or a restriction on the development of the phonomechanical industries, in which so many economic and financial interests are involved;

(c) The third is of private character, being based on the assertion that the compulsory or legal licence system would dramatically increase the profits of authors and their successors in title.

The Italian and French Delegations have formally declared their opposition to the proposal by the Austrian Delegation on the following grounds:

1. The spirit of the International Convention and its provisions call for and propose the unification of copyright as far as possible, for the purpose of "its protection," and of the author's exclusive right to use his work as he sees fit.

There are already "reservations" that encroach partly on this fundamental principle of the Convention in the field of national legislation. The efforts of the Conferences for the revision of the Convention have been directed towards removing those reservations. It would be a backward step for the world history of the formation and recognition of copyright if an international rule clearly opposed to that fundamental principle were to be allowed, even in part.

2. The arguments of a general nature derived from the social need for dissemination of musical culture have no particular influence on the phonomechanical question, as it is one presented to the Conference for consideration under the same conditions as all the other forms of expression and exploitation of copyright.

[1] See the next report.

The term of protection of copyright is already a sufficient limitation on private rights in the social interest of broader dissemination of culture.

3. The risk, which is expected, that the further development of the phonomechanical industries will be hampered by the right given to the author to use his work as he sees fit is disproved precisely by the development of those industries under the present system.

4. On the contrary, the compulsory licensing system would in practical terms constitute a dangerous monopoly, almost exclusively favouring existing industries which are already grouped in consortia that cover the whole world.

By allowing free disposal of the raw material—the products of the intellect—and in view of the vast financial, commercial and technical strength of present phonomechanical organizations, one would be making practically impossible the creation and growth of new industries powerful enough to mitigate the consequences of the existing monopoly.

5. Those nations that do not yet have sufficiently developed phonomechanical industries on their territory would find themselves in a position of obvious inferiority. Yet the interest of every nation demands freedom for such development, for exalted reasons that have to do with the dissemination and protection of national culture, and for all the other social reasons associated with the formation and day-to-day life of national industries.

6. The compulsory licence system cannot increase the profits of authors, for both material and moral reasons:

(a) Material reasons, namely the practical impossibility of controlling production and sale, left as they are—throughout the world—to private organizations that would have interests contrary to those of authors.

There is also the impossibility of fixing really equitable prices, which cannot be determined otherwise than by free operation of the law of supply and demand, which would be lost if one were to promote the formation of an industrial monopoly of world character.

(b) Moral reasons, namely the impossibility, for the author, of protecting his moral right to the integrity of his work and to its interpretation, performance and broadcasting.

To summarize, the system of exclusive protection seems to be the only one that, in the greater interest of all nations, and in the specific interest of copyright, affords the fairest protection to products of the intellect.

BARDUZZI

Rapporteur

CONFERENCE IN ROME, 1928 — REPORTS OF THE SUB-COMMITTEES

5. SUB-COMMITTEE FOR WORKS OF ART APPLIED TO INDUSTRY

The Sub-Committee entrusted with the study of the question of works of art applied to industry held four meetings, in the course of which the opinions of the delegations present at the Conference were confronted on the subject of the protection to be given to the works concerned by the Convention.

The proposal by the Italian Administration and the International Bureau was for the insertion of works of art applied to industry in the third paragraph of Article 2, which contains the list of protected works; it also proposed to make it clear, in the third paragraph, that the works in question should be protected regardless of their merit or purpose, and finally to delete the fourth paragraph, which in 1908 had prompted a reservation on the part of France.

This proposal, supported by the French Delegation and endorsed by the Delegations of Belgium, Germany, Austria, Netherlands, Poland and Czechoslovakia, was vigorously countered by those of Norway, the United Kingdom and Japan, which, on account of the legislation of their countries, declared that they could not agree to works of art applied to industry being assimilated to the artistic works protected by the Convention.

The proposal by the Norwegian Delegation, whereby paragraph (4) was to be replaced with a provision under which the specific legislation of each country would have the task of setting the criteria according to which works eligible for the benefits of the Convention would be distinguished from those that could only be protected by the laws on designs, was rejected by the French Delegation. It declared expressly that it could not accept a situation where France would be obliged to afford to the works of applied art of all the signatory countries of the Convention the very broad protection that was provided for in its legislation, whereas in certain countries French works actually enjoyed no protection at all or only a ridiculously low level of protection.

In a conciliatory move, the Delegations of Belgium, Poland and Czechoslovakia each presented proposals, which also met with opposition from the Delegations of Norway, the United Kingdom and Japan.

At the last meeting of the Sub-Committee, following a further exchange of views, the United Kingdom Delegation expressed the opinion that it could probably, after having examined it, subscribe to a new compromise solution suggested by the French Delegation, and which Japan would probably be also likely to endorse.

In addition, the Italian Delegation stated that, in the face of the protracted discussions to which the subject has given rise without any result so far, it would purely and simply withdraw the proposal submitted jointly with the International Bureau, and asked for the *status quo* to be maintained.

Under these circumstances it was agreed, by way of conclusion to the work of the Sub-Committee, that the General Committee could possibly be asked to pronounce on the compromise proposal that would be presented to it in good time by agreement between the British and French Delegations, or failing that on the maintenance of the *status quo*.

DROUETS

Acting Reporting Chairman

III. GENERAL REPORT OF THE DRAFTING COMMITTEE

PRESENTED AT THE PLENARY MEETING OF FRIDAY, JUNE 1, 1928

Importance of the Conference of Rome

The remarkable importance of the Conference of Rome is apparent from the following figures:

Taking part in the Conference were the delegates of 57 countries, namely:

34 Union countries and
23 non-Union countries,

in addition to the representatives of the following bodies:

League of Nations (General Secretariat);
International Institute of Intellectual Cooperation;
International Bureau for the Protection of Literary and Artistic Works.

The total number of those delegates, representatives and experts was 169 and this number, together with the eminence, ability and personal merit of these members and experts is proof of the importance which the Governments represented attached to the problems submitted to the Conference.

Fifty-seven sessions were held, namely:

4 of the Conference;
13 of the General Committee;
13 of the Drafting Committee;
27 of the Sub-Committees and Commissions.

Over 150 amendments to the Convention were proposed and discussed, these being contained in 115 documents, namely:

7 documents distributed before the opening of the Conference by the Berne Bureau;

108 documents distributed in the course of the work by the Conference Office.

Several memoranda were presented in support of the most important amendments.

Organization of the Work of the Conference

In general, the Rules of Procedure of the 1908 Berlin Conference were adopted for the organization of the Conference.

In July 1927, pursuant to Article 24 of the Convention, the Italian authorities and the Berne Bureau prepared and distributed a series of proposals for amending the Convention, accompanied by a preamble, to the authorities of the countries invited to the Conference. During the following months, the Bureau communicated the proposals, counter-proposals and observations which were presented to it by the Governments of several Union countries (Austria, France, Germany, Great Britain, Hungary, Italy, the Netherlands, Norway, Poland, Sweden and Switzerland).

At the formal opening meeting of the Conference the nomination of the Vice-Chairmen and the Conference Office took place.

At the first plenary meeting of the Conference the following business was conducted:

(1) approval of the Rules of Procedure of the Conference by adoption of the Berlin Conference Rules with some slight variations;

(2) constitution of four Sub-Committees (the Conference having decided that there would be only one Committee):

on moral rights;
on broadcasting;
on photography and cinematography;
on mechanical reproduction of musical works.

Subsequently, other Sub-Committees or Commissions were created: on art applied to industry, on reproduction of press articles, on the Berne Bureau, on "reservations," on Article 27*bis*, on Article 7, on Article 9, on Article 10 and on oral works.

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At the start of its work, the Committee appointed its Drafting Committee as follows:

Messrs. Maillard (France), Chairman;
Piola Caselli (Italy), Rapporteur-General;
Wauwermans (Belgium), Mintz (Germany),
Beckett (Great Britain), Alker (Hungary),
Giannini (Italy), Akagi (Japan), Zoll (Poland).

Alternate delegates:

Karel Hermann-Otavski (Czechoslovakia), Linant de Bellefonds (Egypt), Grunebaum-Ballin (France), Martin (Great Britain), Raestad (Norway).

Results of the Work of the Conference

They consist of the following amendments to the articles of the Convention and also of the resolutions approved by the Conference which are appended to the text of the new Convention.

Title and Preamble of the Convention

Title. The title adopted at Berlin was retained, with the addition of the reference to the revision just undertaken at the Rome Conference.

Preamble. The wording adopted at the Berlin Conference was retained except for:

(a) the amendments in the list of the representatives of the contracting countries resulting either from the accession of new States or from changes in the political constitutions of the signatory States of the Berlin Act, or, in the case of Great Britain, from the decisions of the 1926 Imperial Conference;

(b) an alteration to paragraph 3 owing to the fact that, except where the right of reservation is exercised, the Berlin Act replaced the previous Acts, which therefore no longer need to be mentioned.

The title and preamble would be worded as follows:

BERLIN TEXT	ROME TEXT
Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, revised at Berlin on November 13, 1908.	Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, revised at Berlin on November 13, 1908, and at Rome on June , 1928.
His Majesty the Emperor of Germany, King of Prussia, in the name of the German Empire, His Majesty the King of the Belgians, etc.	The President of the German Reich; His Majesty the King of the Belgians, etc.
Being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works;	*(No change)*
Have resolved to conclude a Convention for the purpose of revising the Berne Convention of September 9, 1886, the Additional Article and Final Protocol attached to the same, and also the Paris Additional Act and Interpretative Declaration of May 4, 1896;	Have resolved to revise and to complete the Act signed at Berlin on November 13, 1908.
Consequently, they have appointed their Plenipotentiaries, namely... (see the signatures);	*(No change)*
Who, having presented their full powers, recognized as in good and due form, have agreed on the following Articles:	Who, being duly authorized so to have agreed as follows:

ARTICLE 1

At the request of the British Delegation, which observed that the expression "contracting countries" was not in keeping with the present conception of the constitutional law of the British Empire, these words were replaced by "countries to which this Convention applies."

Moreover, since the Article establishes the state of Union between those countries, it was decided that the same words "contracting countries" should be replaced by the words "countries of the Union" in all the other Articles in which the expression was used.

The amendment introduced is thus the following:

BERLIN TEXT	ROME TEXT
ARTICLE 1	ARTICLE 1
The contracting countries constitute a Union for the protection of the rights of authors in their literary and artistic works.	The countries *to which this Convention applies* constitute a Union for the protection of the rights of authors in their literary and artistic works.

ARTICLE 2

In the preliminary proposals which were adopted as the Conference's discussion programme, the Italian authorities and the Berne Bureau had observed in relation to the first paragraph of Article 2:

"A slight inaccuracy ought to be corrected in the first sentence which refers to the form of reproduction, whereas, in the case in point, it is a question of 'production.' It stems from the text of the original Convention of 1886 which, in its Article 4, listed amongst the works which enjoyed protection, 'every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of printing or reproduction.'

"To avoid any doubts as to whether oral works (for example, speeches delivered in legal proceedings, sermons, university lectures) are included in the Convention's listing, it would seem useful to adopt the wording which appears in the Syro-Lebanese law of January 17, 1924, and to replace the words 'whatever may be the mode or form of its reproduction' by '*whether it be written, plastic, graphic or oral.*'"

There was no difficulty in reaching agreement on the usefulness of correcting the inaccuracy in the first sentence of this Article. On the other hand, objections were raised in relation to the other question involved—that of adding *oral works* to the list of protected works. Several delegations, and in particular the Australian, Brazilian, British, German, Japanese and Norwegian ones, insisted either on having some further detail in the list of those works or on national legislation being reserved the right to decide on certain limitations relating to the exercise of the exclusive right for its own purposes.

After numerous sessions, the following wording was adopted for the first part of paragraph 1 of Article 2 to which was added an Article 2*bis* containing the reservations called for.

The clarity of these provisions, which correspond moreover to those adopted by the legislation of several Union States, spares me the need to make any comments. I shall therefore confine myself to reproducing the provisions adopted.[1]

BERLIN TEXT	ROME TEXT
ARTICLE 2, *paragraph 1*	ARTICLE 2, *paragraph 1*
The expression "literary and artistic works" shall include any production in the literary, scientific or artistic domain, whatever may be the mode or form of its reproduction, such as books, pamphlets, and other writings; dramatic or dramatico-musical works, choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; works of drawing, painting, architecture, sculpture, engraving and lithography; illustrations, maps; plans, sketches, and three-dimensional works relative to geography, topography, architecture or science.	The expression "literary and artistic works shall *include every production* in the literary, scientific and artistic domain, whatever may be the mode or form of its *expression*, such as books, pamphlets and other writings; *lectures, addresses, sermons, and other works of the same nature*; dramatic or dramatico-musical works, choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; works of drawing, painting, architecture, sculpture, engraving and lithography; illustrations, maps, plans, sketches, and three-dimensional works relative to geography, topography, architecture or science.
	ARTICLE 2*bis* (*new*)
	(1) It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protection provided by the preceding Article, political speeches and speeches delivered in the course of legal proceedings.
	(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press. Nevertheless, the author alone shall have the right of making a collection of the said works.

[1] The amendments to Article 2, paragraph 1, are in italics.

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Several other proposals for amendment were presented on Article 2, and, amongst others, one which the French Delegation strongly urged concerning the protection of works of the arts applied to industry. With regard to these proposals I refer to the report of the discussions of the Conference prepared by the Berne Bureau, since the short amount of time available before the Conference closes compels me to confine myself to commenting on the provisions which were unanimously approved.

I should also like to add, and in this I voice the Drafting Committee's unanimous feeling, that we were very sorry not to be able to take into consideration a series of amendments of pure wording proposed by the distinguished Professor Zoll of the Polish Delegation. However, we felt that, apart from exceptional cases, it was not appropriate to make alterations designed only for improvements of this kind.

ARTICLE 6

BERLIN TEXT	ROME TEXT
Authors who are not nationals of one of the countries of the Union, who first publish their works in one of those countries, shall enjoy in that country the same rights as authors who are nationals of that country, and in the other countries of the Union the rights granted by this Convention.	(*No change*)
	New paragraphs:
	(2) Nevertheless, where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not effectively domiciled in one of the countries of the Union.
	(3) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.
	(4) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Government of the Swiss Confederation by a written declaration specifying the countries in regard to which protection is restricted and the restrictions to which rights of authors who are nationals of those countries are subjected. The Government of the Swiss Confederation shall immediately communicate this declaration to all the countries of the Union.

Thus it was that, on a proposal by the British authorities, the provisions contained in No. 1 of the Additional Protocol to the Revised Berne Convention, dated March 20, 1914, were introduced into this Article, together with some amendments of form relating to the decision taken on Article 1.

It ought to be added that, since the Convention merely confirms the provisions of this Additional Protocol of March 20, 1914, there can be no doubt that the countries which have already adopted the restrictions which are involved in the application of this Protocol are not obliged to repeat the declaration to the Swiss Confederation provided for therein. In fact, only Canada has made use of the Protocol to date.

ARTICLE 6*bis* (*new*)

PROTECTION OF LITERARY AND ARTISTIC WORKS
WITH RESPECT TO AUTHORS' PERSONAL OR MORAL INTERESTS

The question of extending the protection of the Berne Convention to authors' personal or moral interests, irrespective of the exclusive privilege concerning a work's

economic exploitation, was brought up for discussion at the Conference by the French, Italian and Polish authorities or Delegations and by the International Institute of Intellectual Cooperation.

Before the opening of the Conference the authorities and Delegations in question presented and communicated the following proposals through the intermediacy of the Berne Bureau:

FRENCH PROPOSAL

"The Conference expresses the wish that all the signatory countries of the Berne Convention introduce as soon as possible in their respective legislation formal provisions whose object is to institute the moral rights of authors in their works.

"It seems desirable for this right to be declared inalienable and for its conditions to be fixed in an identical manner in every country."[1]

ITALIAN PROPOSAL

The Italian Delegation proposed adding the following text to the Convention:

ARTICLE 6*bis*

"Independently of the protection of copyright governed by the articles which follow and notwithstanding any transfer, the author shall always have:

(a) the right to claim authorship of the work;
(b) the right to decide whether the work may be published;
(c) the right to object to any modification of the work which is prejudicial to his moral interests.

I should like to mention that Mr. Grunebaum-Ballin, a member of the French Delegation, distributed a very interesting pamphlet to the Conference participants entitled "The Moral Rights of Authors and Artists," containing a report he had presented at the session of the International Literary and Artistic Association on April 24, 1928.

"It is reserved for the national legislation of the Contracting Parties to draw up provisions to regulate the aforementioned rights and, in particular, to reconcile the exclusive right of publication with the demands of public interest as well as to reconcile the entitlement mentioned under *(c)* with the right of the owner of the physical copy of the work.

"After the author's death, these rights shall be exercised by the persons or bodies so designated by the legislation of the country of origin of the work.

"The means of redress for safeguarding these rights shall be regulated by the legislation of the country where protection is claimed."

POLISH PROPOSAL

The Polish authorities asked for the provisions on the right to respect along the lines of those proposed by the Commission of Intellectual Cooperation (see below) to be introduced into the Convention with the following amendments:

"(1) The author shall have the right, despite any stipulation to the contrary, to object to any attempt to undermine his character of author as well as to any transformation or mutilation whatsoever which might distort the way in which his work was intended to be presented to the public.

"(2) [See the proposal presented by the Commission of Intellectual Cooperation.]

"(3) This right carries with it the sanction of prohibiting a third party from assuming the authorship of a work or from preserving or reproducing a distorted work, and possibly also damages either for the author's or for the community's benefit."

The same authorities also proposed the following resolution relating to the author's moral rights, to be included in the Final Protocol of the Rome Conference:

"The Delegates of the Union States at the Conference of Rome, recognizing that the author's moral rights, being rights attaching to his person, should enjoy protection in all civilized countries, independently of any international treaty, in the same way as the other rights of the private person—right to life, to physical integrity, to freedom, to honour, to one's physiognomy, etc.—do not wish to confine themselves to introducing the new Article 15, which only partially settles the question, in the text of the revised Convention, but consider it necessary to recommend to all the States of the Union that they safeguard and defend the full extent of these the author's moral rights by the measures enacted in their legislation without making any differentiation between authors' nationalities or as to whether or not they are nationals of one of the States of the Union, and regardless of the existence or otherwise of the economic copyright and, especially, whether or not the economic copyright has fallen into the public domain, and whether or not it has been relinquished by the author."

For its part, the Institute of Intellectual Cooperation distributed a pamphlet entitled "International Copyright Protection," page 8 of which contained the following proposal for submission to the Conference:

[1] This text corresponds to the one presented at the Lugano Congress by the International Institute of Intellectual Cooperation.

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"The author shall have the right, notwithstanding any provision to the contrary, to guard the integrity of his work and to object to any transformation or mutilation whatsoever which might distort the way in which he wished to present it to the public.

"The same right shall belong to every citizen and may be exercised even against the author's successors in title.

"It carries with it the sanction of prohibiting the preservation or reproduction of the distorted work, and possibly also damages either for the author's or for the community's benefit."

At the first plenary meeting the author of this report, as the second Italian Delegate, spoke on behalf of his Delegation in support of the proposal it had presented and concluded with the following words:

"I feel I must say, on behalf of the Italian Delegation, that we attach very great importance to this proposal. It would be a matter of ineffable pride for us if we could obtain from you, in this Conference which is being held in Rome, in this eternal city where so many human ideals have been attained, the recognition of this principle that a work of the mind does not only have a market value, but especially a spiritual and moral value; if we could obtain from you that the chapter which it lacks is added to the Berne treaty, that chapter which would serve to interpret, to complete, to ennoble all the others: the chapter on the protection of the author's intellectual personality."

At the same session the Conference appointed a Sub-Committee to examine the question of the protection of moral rights. The Sub-Committee was chaired by Mr. Destrée, the second Belgian Delegate.

The Sub-Committee held two meetings, on May 8 and 18, taking the Italian Delegation's proposal as a basis for discussion.

In the course of these sessions the following proposals were presented:

ROMANIAN PROPOSAL

(1) With regard to the new Article 6*bis* presented by the Italian Delegation, the last two paragraphs would be replaced by the following text:

"After the author's death, his rights shall be exercised by the persons so designated by the legislation of the country of origin of the work.

"Independently of those persons, the moral right of control shall belong to the State which may exercise it, either through the Ministry of Fine Arts, in those countries where that authority exists, or through the most important academic institute recognized by national legislation, in those countries where there is no Ministry of Fine Arts."

(2) Article 15 as worded at present would be replaced by the following text:

"Notwithstanding any provision to the contrary, the author shall have the right of control over his published works and shall be entitled to object to any modification or distortion whatsoever which might be prejudicial to his reputation."

CZECHOSLOVAK PROPOSAL

In case it should not prove possible to find a formula to settle the question *jure conventionis*, the Czechoslovak Delegation proposes accepting at least a *resolution* recommending that Union States *ensure the ideal mission of works of general importance for the art, the education and the culture of peoples by protecting the integrity of the work, for an unlimited period, against any utilization, even by the author's successors in title, which might be prejudicial to the work's aforementioned mission.*

BELGIAN PROPOSAL
ARTICLE 6*bis*

National legislation shall determine the conditions of exercise of the inalienable rights which the author shall have despite any agreement to the contrary, notably:

(a) the right to be recognized as the author and to sign any work created by him; that of authorizing its reproduction and of determining the conditions attached thereto;

(b) the right to designate the persons who, after his death, may exercise his personal rights in those works which are not yet published;

(c) the right to share in the successive prices attained by his works at public auctions;

(d) the right to object to any mutilation, transformation or modification whatsoever which alters the character of the work.

On the author's death, this last right shall pass over to the community and may be exercised by any citizen, even against the author's heirs, if necessary.

The Italian Delegation supported its proposal with a memorandum drafted by the author of this report, in which were outlined the reasons explaining that the problem of the recognition of "moral rights" was ripe for legislative solutions and that the Union's international protection should be extended to those rights as a matter of urgency; there was also a brief commentary on the proposed text. However, as certain passages in the memorandum had led some delegates to believe that the matter was one of protecting a pure right of the private person, an additional memorandum was presented to show that it was still very much a matter of the copyright in the work, the latter being considered in relation to the author's personal interests.

The English-law delegations objected very strongly, however, to the proposed text's incompatibility with the general principles of English law and with the particular provisions of English copyright legislation. However, thanks to the conciliatory and enlightened spirit of Mr. Beckett of the British Delegation and to the great legal ability of Sir William Harrisson Moore, an Australian Delegate, it proved possible to overcome these difficulties and to draw up a compromise text which was approved by the Sub-Committee at its meeting of May 18, and by the General Committee at the meeting on May 23, after a few formal amendments had been made by the Drafting Committee.

The text as approved is thus the following, which it is useful to compare with the original:

ORIGINAL TEXT OF THE ITALIAN PROPOSAL	APPROVED TEXT
ARTICLE 6*bis*	ARTICLE 6*bis*
Independently of the protection of copyright governed by the articles which follow and notwithstanding any transfer, the author shall always have:	(1) Independently of the author's economic rights, and even after transfer of the said rights, the author shall have the right to claim authorship of the work, as well as the right to object to any distortion, mutilation or other modification of the said work, which would be prejudicial to his honour or reputation.
(a) the right to claim authorship of the work; *(b)* the right to decide whether the work may be published. *(c)* the right to object to any modification of the work which is prejudicial to his moral interests.	
It is reserved for the national legislation of the Contracting Parties to draw up provisions to regulate the aforementioned rights and, in particular, to reconcile the exclusive right of publication with the demands of public interest as well as to reconcile the entitlement mentioned under *(c)* with the right of the owner of the physical copy of the work. After the author's death, these rights shall be exercised by the persons or bodies so designated by the legislation of the country of origin of the work. The means of redress for safeguarding these rights shall be regulated by the legislation of the country where protection is claimed.	(2) It should be a matter for the national legislation of the countries of the Union to determine the conditions under which these rights shall be exercised. The means of redress for safeguarding these rights shall be governed by the legislation of the country where protection is claimed.

A comparison of the two texts shows that the main alterations to the original text consist in:

(a) deleting the reference to "the right to decide whether the work may be published"; it seemed, above all, that the very interesting, but also very delicate and complex problem of harmonizing the author's personal or moral interests with those of the assignee of the copyright in the work, in relation to both the first as well as successive publications of the work and its transformations or adaptations, was outside the scope of the Convention;

(b) deleting any reference to protection of the work, in the same connection, after the author's death; it does indeed seem advisable, at least for the time being, to reserve the solution to this problem for the national legislation, in view of the differences of opinion which still exist and which are confirmed by the provisions of the more recent copyright laws, both as regards determining the person or body whose right or obligation it would be to exercise this protection and as regards the means by which or the conditions under which this protection should be achieved.

However, in order to encourage the countries of the Union to deal with the problem, which is obviously of the utmost interest for the preservation and respect of the great conquests of the human mind, the Committee approved the following formal wish:

"The Conference expresses the wish that the countries of the Union envisage the possibility of introducing rules in their legislation, where it does not contain provisions in that regard, which, after the author's death, will prevent his work from being distorted, mutilated or otherwise modified to the prejudice of his reputation and the interests of literature, science and the arts."

Mr. Destrée, the Sub-Committee's distinguished rapporteur, presented a most interesting report, inspired by the highest conception of the content of copyright, which effectively completes this brief summary.

May I, however, be permitted to add the following brief considerations, in order to establish clearly the legal basis of this right to which the Convention has just granted the high sanction of international protection.

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(1) Leaving aside all doctrinal apriorism, it is in fact clear that, although they are economic goods which enjoy the exclusive privilege of publication and reproduction, works of the mind are distinct from all other economic goods in that they are the product of acts of intellectual creation and, because of this, they are *representative* in character of their authors' personalities. To say the author "lives in his work" is not an entirely metaphorical expression: in point of fact, the literary, scientific or artistic idea contained in the work or, at the very least, the literary, scientific or artistic form which the author has been able to give it to present it to the public, reveal and reflect his personality and thus the degree of his intellectual capacities, his culture, his spiritual or moral leanings and, in those works which do not belong to the sphere of pure art, his personal—for example, political or scientific—opinions. Moreover, the link between the work and the author's person is apparent, in practice, from the fact that often the work is not commercially exploited but represents merely an instrument or factor in, for example, a scientific or political career. Well, it is precisely works of the mind not only as economic goods of a material nature but also as reflecting or representing their authors' intellectual personalities which the "moral right" covers and protects.

(2) When positive law recognizes and protects this intimate link between the author and his work and the interests deriving from it, it thus creates or recognizes a very different right or rights from those which relate to the intellectual work's exploitation as an economic article, while still remaining within the framework proper to copyright, i.e. within the framework of the legal relations of the author to his work.[1]

(3) As is henceforward generally recognized, and as the discussions at the Conference have confirmed, the need to protect works of the mind in this particular respect is no longer at issue. And this need becomes more and more serious as new means or forms of communication or dissemination by phonograph, cinema and radio make works known to an ever-wider public and as, furthermore, the rules adopted by domestic laws in these fields—especially those to control broadcasting—weaken the exclusive exercise of the rights of publication and reproduction.

(4) By stating that "independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right...," the first paragraph of Article 6*bis* clearly indicates that this is a right which is different and distinct from the exclusive privilege and confirms its fundamental, specific nature as a right which *inhaeret personae* and which is thus non-transferable.[2]

(5) The paragraph continues by fixing, as the first element of this right, the entitlement "to claim authorship of the work"; this is a primordial right which stems from the act of creation. The Italian Law determines its exercise in detail (see Article 14). In my opinion, just as it is not transferable, it cannot be effectively relinquished; the agreements which Martial condemned in the well-known epigram,

Carmina Paulus emit, recitat SUA *carmina Paulus*
Nam quod emas possis jure vocare TUUM (Martial II, 20),

amount to deception of the public, which a properly policed society would not tolerate.

(6) In stating "as well as the right to object to any distortion, mutilation or other modification of the said work, which would be prejudicial to his honour or reputation," the end of the paragraph sets out the second element of this right recognized by the Convention. This second element, or second right, is of such fundamental importance in the application of copyright that it is often regarded as constituting the sole content of the entitlements in question—under the name of the "right to respect," which has replaced the earlier name of "moral rights" in most recent French doctrine.[3]

(7) However, as I had already observed in the memorandum supporting the Italian proposal, it would be wrong to go too far and protect what would not be a legal interest but an excessive sentimentality on the part of the scholar, artist or writer. In the original proposal the limit on this right was indicated by referring, as in the Italian Law, to "any modification of the work which is prejudicial to *his* (the author's)

[1] The eminent Professor Zoll, in supporting the Polish Delegation's amendments, asserted the old theory that a pure right of the private person is involved. However, the fact that modern copyright legislation lays down these rights is obviously proof that the movement of legal consciousness is tending towards the complete or unitary conception of copyright, which I have been defending in Italy for the last 20 years, namely a single right in which, as Mr. Ruffini's aptly puts it ("Int. Copyright Protection in Lit. and Artistic Works," Carnegie Academy, Lectures 1926, p. 566), personal elements and economic ones, moral elements and purely material ones intertwine and merge indissolubly, constituting a single whole.

[2] In English law, protection of this right should in my view be sought in common law, both the rules and principles of equity of which are recognized in Section 7 of the Fine Arts Copyright Act 1862 (24 a. 26 Vict. c. 68) as supplementing the legal remedies under copyright law where paintings, drawings and photographs are concerned.

[3] I have in this report avoided the thorny question of the nomenclature of these new rights which modern copyright has recognized. However, I should like to observe that, really, the name "moral rights," which has now come into such widespread use, may be retained, although literally speaking incorrect, as an elliptical expression of the idea that the rights in question are intended to protect certain interests that have a moral content, albeit transformed by this protection into legal interests. Besides, the new Article 11*bis* has adopted this name.

moral interests." But, following the talks conducted by me with the English-law delegations, it was recognized that there was a need to devise a more easily intelligible wording by referring to any distortion, mutilation or other modification of the work which would be *prejudicial to his honour or reputation*.

(8) The object of the second paragraph of this Article is to grant the domestic laws of the countries of the Union wide powers to regulate these new rights, the extent of which may be assessed in quite different ways by each nation's legal consciousness. The last part of the paragraph, which refers the means of redress for safeguarding these rights, available under the legislation of the country where protection is claimed, merely applies the rule sanctioned in Article 4, paragraph 2, relating to protection of the economic copyright.

ARTICLE 7

Article 7 of the Convention, which concerns the term of copyright, gave rise to most interesting discussions with regard to which I refer to the summary of the proposals and the discussion, drawn up by the Berne Bureau, which is appended to this report.

I shall confine myself to commenting on the results achieved and also on an amendment of particular interest which came very close to being adopted.

It should be recalled that even today, in view of the differences in the systems on the term of protection adopted by the various countries of the Union, the provision of Article 7, paragraph 2, still remains effective. Under this provision the term of international protection is fixed on the basis of the law of the country where protection is claimed, provided, however, that this term does not exceed the one fixed in the country of origin of the work; in such a case it is the latter term which must be applied.

In the last part of this paragraph the Convention adds:

"Consequently, the countries of the Union shall only be bound to apply the provisions of the preceding paragraph (which establishes in principle the term of 50 years after the author's death) in so far as such provisions are consistent with their national legislation."

Seeking to take a step further to extend the effects of international protection, the Italian authorities and the Berne Bureau had proposed replacing the aforementioned paragraph by the following one:

"A difference between the extent of protection granted in the country of origin and that which is established in the country where protection is claimed shall not prevent the application of this provision."

As explained in the explanatory memorandum, the intention was to establish, by a sort of authentic interpretation of Article 7, paragraph 2, coupled with Article 4, that in fixing the term of international protection in the various cases, the sole consideration should be the material one of the term of protection, accepted equally in both countries, i.e. in the country of origin of the work and in the country where protection was claimed, without any account being taken of a possible difference in the content and extent of the protection.

The explanatory memorandum stated that "for as long as the right claimed in a country has not fallen into the public domain in the country of origin as a result of the expiry of the term of copyright, any restrictions on this right in the country of origin have no bearing on the protection in the other country; the more extensive right conferred by the legislation of the country of import must be granted for as long as the same right normally lasts in the country of origin, even if its extent is restricted there. Thus the British Law, for example, only affords complete protection to works for 25 years *post mortem*; the following 25 years are given up to the '*domaine public payant*.'[1] Nevertheless, these British works must enjoy in France the full protection granted by the French law for 50 years *post mortem*, and therefore also during the second 25-year period when the work is protected in the country of origin only in the reduced form which has been called the '*domaine public payant*.' The same solution is called for with regard to any restrictions placed on protection in the country of origin which do not exist in the country where protection is claimed, and the courts of the latter country are not entitled to refuse to grant all the special effects conferred on copyright by their legislation under the pretext that some of those effects are not granted by the law of the country of origin of the work."

The proposal in question was supported by the German Delegation from the more restricted standpoint of drawing up uniform regulations governing international protection in cases where the legislation of one of the two countries fixed the final period of protection in the reduced form of the "*domaine public payant*." After long discussions the majority of delegates reached agreement to the effect that these rules

[1] The British delegation wishes to observe, however, that the expression "public domain," as applied to the system operating under the English Act, is equivocal in its view. The English Act of 1911 (Section III) establishes only that, during the second period of 25 years after the author's death, it is permissible to reproduce a work without infringing the rights of copyright but only for sale, and provided that the owner of the rights is notified and is paid a "royalty" of 10% of the price indicated on the work.

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should be based on the principle of reciprocity, so that works which had fallen into the final period of protection, during which the legislation of one of the two countries granted only the reduced protection, would enjoy equal treatment in the two countries.

However, wording the text was not easy. Finally, agreement was reached on adding a paragraph 2*bis*, after paragraph 2, couched in the following terms:

"If in a country of the Union, the term of protection includes a period, after the death of the author, in which reproduction of the work, for sale, is lawful, provided that a royalty is paid to the author's successors in title, the other countries of the Union are only bound to apply the same treatment during this period as that which is granted in the said country to works originating therein. However, the duration of the exclusive right shall never be less than 25 years."

However, this proposal, which had received the votes of the great majority of delegations at its first and second reading, did not obtain the necessary unanimity to enter into the Convention, thus leaving the question which was to have been settled still open.

With regard to paragraphs 2 and 3, the Belgian Delegation had proposed replacing the words "*pourra*" and "*puisse*" (may) by the words "*devra*" and "*doive*" (must) with a view to bringing the texts into line with Article 19. But this amendment was not found to be necessary, since it is true to say that nothing in the terms of the Convention obliges those countries whose domestic legislation is more liberal than the Convention to limit the effects of that legislation.

ARTICLE 7*bis*

WORKS OF JOINT AUTHORSHIP. The Italian authorities and the Berne Bureau had proposed regulating the term of protection for works of joint authorship.

"In order to take account of a wish expressed at the International Literary and Artistic Association's Congress in Warsaw in 1926," the explanatory memorandum stated, "we propose adding another paragraph at the end of Article 7 worded as follows: '*The rights of the successors of the author who dies first shall subsist until the expiration of the copyright of the last surviving author.*' This principle is recognized in a large number of the most modern laws (Italy, Section 28; Germany, Section 30; Great Britain, Section 16; Romania, Section 40, etc.). It is justified by the indivisible nature of a work to which two or more people have contributed, which prevents the work from falling into the public domain in part only. In French case law, a different opinion has been expressed in passing by a Court of Appeal, despite doctrine being in opposition. That is why there is some usefulness in the Convention ruling on the subject in a formal provision. It would be futile to argue that hitherto the Convention has not been concerned with any of the questions concerning joint authorship. The proposal that we are making comes within the sphere of the term of protection and has its proper place here even though the other questions concerning joint authorship are not resolved by international provisions."

However, the proposal met with opposition, in particular from the British Delegation which, taking the English Act as its inspiration, proposed the following text:

"*In the case of works of joint authorship, copyright shall subsist during the life of the author who dies first and for 50 years after his death, or during the life of the author who dies last, whichever is the longer of the two periods.*"

After discussion it was agreed, as a compromise measure, on a proposal by the French Delegation, to add to Article 7 a new Article 7*bis* in which the principle of calculating protection *post mortem auctoris* from the date of the death of the last surviving author is laid down as a general rule, but it is accepted, however, that a shorter term may apply where the legislation of the country of origin of the work recognizes only a shorter term of protection itself. Nevertheless, that shorter term may not be less than the duration of the period which ends with the death of the last surviving author. The text adopted was thus as follows:

APPROVED TEXT

Article 7bis

(1) In the case of a work of joint authorship the term of protection shall be calculated according to the date of the death of the last surviving author.

(2) Authors who are nationals of the countries which grant a term of protection shorter than that mentioned in paragraph (1) cannot claim a longer term of protection in the other countries of the Union.

(3) In no case may the term of protection expire before the death of the last surviving author.

ARTICLE 9

The regulation of copyright in the periodical press attracted the attention of the Conference of Rome just as it had attracted the attention of the preceding Conferences.

The question assumed particular importance as some States had made use of the right of reservation to avoid applying the rules adopted by the Berlin Act and had instead, in their own case, kept either the Berne Convention or the Paris Additional Act in force.

In the explanatory memorandum mentioned earlier on several occasions, the Italian authorities and the Berne Bureau made a point of informing the Conference of the position as it stood, in the following terms:

"Under the original Convention of 1886, even if they were literary or artistic works, articles published in newspapers or periodicals were only afforded protection if the authors or publishers expressly prohibited their reproduction, and articles of political discussion were not protected at all. This is still the rule applicable today in Greece, Norway and Sweden since, in their reservations, those countries declared that they wished to continue to be bound by Article 7 (now Article 9) of the 1886 Convention. Under the Additional Act of 1896, unconditional protection was granted to serial novels and short stories. As to other articles in newspapers or periodicals, their reproduction without authorization continued to have to be expressly forbidden; if not declared forbidden, their reproduction was permitted provided that the source was indicated. Pursuant to their reservations, Denmark and the Netherlands continue to be bound by the old Article 7, as revised by the Additional Act of 1896. Finally, the Berlin Conference in 1908 laid down first as a principle that serial novels, short stories and all other literary, scientific or artistic works published in newspapers or periodicals enjoy unconditional protection. As for *newspaper articles*, they may be reproduced by other *newspapers* provided that their reproduction is not expressly forbidden. Thus a newspaper article may never be reproduced in a book or pamphlet. No excerpts may be taken from periodicals; on the other hand, newspaper articles which are neither serial novels nor short stories may be excerpted if their reproduction has not been expressly forbidden.

"The latter provision has raised serious difficulties of interpretation. The unconditional protection granted in the first paragraph to any literary, scientific or artistic *work* published in a newspaper seems to be in contradiction to the restrictive protection enjoyed by newspaper *articles* under the second paragraph. It is the view of some well-qualified interpreters that the right to reproduce portions of another work does not apply to *work* of a scientific, technical or recreative nature and that, for work such as that, it is not necessary for reproduction to be expressly forbidden since the provision only concerns newspaper *articles* proper. It is difficult to find a basis for such a restrictive interpretation in the present text. It seems justified, in any event, that scientific and technical *articles* which appear with increasing frequency in specialist papers and even in the main daily press and which transcend the ephemeral interest of a political article, should not be freely available for reproduction even if no express prohibition is given in the newspaper. The same is true of articles of literary or artistic criticism. By thus granting all articles of lasting interest unconditional protection and bearing in mind, moreover, that any articles which are not literary and artistic works are immediately excluded from protection, the end result is bound to be that only articles of political discussion—this notion being understood in the widest sense—are actively subjected to the right to reproduce excerpts provided for in the second paragraph. This would correspond to the proposal made at Berlin by the majority of the Committee (see Berlin Records, p. 289). Furthermore, it would not seem possible to maintain the distinction made in Article 9 between newspapers and periodicals as no factors exist which might make it possible to establish this distinction clearly, and we all know that notions which are imprecise can be the cause of numerous proceedings. In particular, non-political papers, of which there are a large number, deserve to be treated in law on the same footing as periodicals.

"In short, the first and third paragraphs of Article 9 should stay, while the second paragraph would be amended so that a distinction is no longer made between newspapers and periodicals and so that *all* articles, not only on political issues but also on economic, religious and other topics of the same genre, may be reproduced from periodical to periodical if they do not bear a notice indicating that reproduction is reserved. This solution would have the advantage of avoiding the difficulties of interpretation raised by the existing text and by the words 'of a scientific, technical or recreative nature' which were the subject, at Berlin, of a subsidiary proposal by the minority of the Committee (see Berlin Records, p. 290). Furthermore, the first part of it would probably make it easier for Denmark, Greece, the Netherlands, Norway and Sweden to abandon the reservations expressed by them in respect of Article 9. Indeed, all those countries have treated periodicals in the same way as newspapers in their national laws and have made the two categories of periodicals subject to the right to reproduce excerpts. On the other hand, there are other points on which the domestic regulations of some of these countries differ from those of the Convention. Thus, in Greece and Norway, all articles, including serial stories and tales, are subject to the right to reproduce extracts in the absence of any notice expressly forbidding this; in Sweden scientific memoranda, then all literary works and works of a more extensive nature are subject, under the same conditions, to the right to reproduce excerpts.

"If the main proposal as formulated above were not to be favourably received, it would appear desirable to insert scientific and technical work (or studies) after serial stories and tales in the second paragraph."

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PRESENT TEXT	PROPOSAL
ARTICLE 9	
(1) Serial novels, short stories, and all other works, whether literary, scientific, or artistic, whatever their purpose, and which are published in the newspapers or periodicals of one of the countries of the Union shall not be reproduced in the other countries without the consent of the authors.	*No change.*
(2) With the exception of serial novels and short stories, any newspaper article may be reproduced by another newspaper unless the reproduction thereof is expressly forbidden. Nevertheless, the source must be indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.	(2) Replace the first sentence by the following: "Articles on political, economic or religious topics and others of the same genre may be reproduced from periodical to periodical unless the reproduction thereof is expressly forbidden."
(3) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.	*No change.*

This proposal was supported by the French Delegation which presented a similar amendment in which, however, the words "and others of the same genre" were deleted. But objections were raised by the delegations of some States which had expressed reservations. Finally, it proved possible to establish the following compromise text on the basis of which most of the aforementioned delegations declared their intention to propose to the countries they represented that they withdraw their reservations.

ARTICLE 9, *paragraph 2*

Text adopted

(2) Articles on current economic, political or religious topics may be reproduced by the press unless the reproduction thereof is expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the laws of the country where protection is claimed.

The need to give notice of reservation has been restricted therefore (and even more so than in the original proposal put forward by the Italian authorities and the Berne Bureau) to those articles which meet the following two conditions:

(1) that they are articles of *topical interest*, that is to say they are of the nature of those studies—often of limited extent—which concern a subject that attracts the public's attention at a particular moment in time and of which the free reproduction in other periodicals, in the absence of any formal prohibition on the part of the author, is justified in the light of the practices and interests of the press and the interests of the public;

(2) that they deal with economic, political or religious questions, so that articles on literary, artistic or scientific subjects are excluded by preterition.

Moreover, by referring to *articles* without specifying "newspaper" and by replacing the words "may be reproduced by another newspaper" in the Berlin text by the words "may be reproduced by the press," it was intended that the new provision should apply not only to newspapers proper but also to periodicals.

We have already seen in Article 2*bis* that the new Convention has left it to national legislation to determine the conditions under which lectures, addresses, sermons and other works of the same nature which are delivered publicly may be reproduced by the press.

ARTICLE 11*bis* (*new*)

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the communication of their works to the public by broadcasting.

(2) The legislations of the countries of the Union shall determine the conditions under which the right mentioned in the preceding paragraph may be exercised, but the effect of those conditions shall apply only in the countries where they

have been prescribed. This shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain an equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

With the recognition of the protection of the moral right, the introduction of this new text in the Convention represents without doubt the most important achievement of the Rome Conference.

The problem was presented to the Conference by the Italian authorities and the Berne Bureau in the preliminary proposals adopted as the Conference programme (see p. 176, above). At the first plenary session an *ad hoc* Sub-Committee was formed and was chaired by Mr. Giannini of the Italian Delegation.

From Mr. Giannini's report (see p. 183 above) it can be seen that the adopted text represents a compromise between two opposing tendencies—that of completely assimilating the radio broadcasting right to the author's other exclusive rights (a tendency defended especially by the British and French Delegations) and that of considering the matter subject to intervention on the part of the public authorities in order to protect the cultural and social interests linked to this specific new form of popular dissemination of intellectual works, particularly musical ones (a tendency defended especially by the Australian and New Zealand Delegations).

The discussions on this issue continued throughout the entire duration of the Conference, and it was only after a new proposal by the British Delegation and thanks to Mr. Giannini's efforts that, in the closing days, agreement was finally reached on this text, the justification for and import of which are explained in the report made by the aforesaid Chairman of the Sub-Committee.

It only remains for me to add that, in the same proposal, the Italian authorities and the Berne Bureau had asked at the same time that one resolve the problem of the protection to be given to performing artists' artistic creations or interpretations which have acquired a new economic value as a consequence of the radio and the phonograph and, through the latter, even a sort of physical materialization capable of publication. The Italian authorities and Berne Bureau had also extended the problem of this new protection to the area covered by Article 13 in which precisely the adaptation of musical works to mechanical instruments is regulated.

However, the Committee considered that this new problem, which in general has not been settled to date by national legislation, had not yet matured sufficiently for the purposes of an international convention. The Committee therefore confined itself to expressing a formal wish that the countries of the Union consider this interesting question.

ARTICLE 13

The summary of the discussions prepared by the Berne Bureau to which we have referred several times, outlines the various proposals and the interesting debates held on the revision of this Article (see p. 261 below). However, the discussions did not lead to any agreement, and the Drafting Committee had to confine itself to proposing two purely formal textual amendments (see p. 187 above, the report by Mr. Pessoa de Queiroz, the Sub-Committee's Chairman and rapporteur).

The first of these amendments involved the words "before the coming into force of this Convention" in the third paragraph being replaced by "before the coming into force of the Convention signed at Berlin on November 13, 1908." The date of November 13, 1908, is the date "of the present Convention" according to the Berlin text, whereas, had that phrase remained in the text of the Rome Convention, it would have had the effect of changing the date to June 1928—which has indeed become the *date of the new Convention*—and thereby altering the substance of the provision in question by extending its transitional effect by 20 years.

The second modification removed a doubt which might possibly arise with regard to the application of this provision to new accessions after 1908, by stating that "the provisions of paragraph (1) shall not be retroactive ... in the case of a country which has acceded to the Union since that date, or accedes in the future, before the date of its accession." Thus the new text is worded as follows:

BERLIN TEXT	ROME TEXT
ARTICLE 13, *paragraph 3*	ARTICLE 13, *paragraph 3*
The provisions of paragraph I shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of this Convention.	The provisions of paragraph (1) shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of the Convention signed at Berlin on November 13, 1908, and in the case of a country which has acceded to the Union since that date, or accedes in the future, before the date of its accession.

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ARTICLE 14

In connection with the protection of cinematographic works, which is already recognized in the Berlin Act, the Italian authorities and the Berne Bureau had made the following observation in the discussion programme mentioned earlier on several occasions:

"The Congress of the International Literary and Artistic Association, which was held in Paris in 1925, had asked for cinematographic works to be protected without restriction, that is to say even if they did not meet the originality condition, set out in paragraph (2), for a cinematographic production to be considered a literary or artistic work. This wish goes too far in our view. A film which reproduces street scenes without any staging does not deserve any protection other than that which is afforded by the law to photographs. The protection enjoyed by other works of art should be reserved for cinematographic productions which meet the requirements of originality laid down in paragraph (2). In order to show clearly that the only requirement concerned here is that of the originality with which every work of the mind must be endowed, we propose deleting, in paragraph (2), the words 'personal and' and adding to the present text a sentence worded as follows: '*If this character is absent, the cinematographic production shall enjoy protection as a photographic work.*'

"It remains obvious that a simple topical scene (happening in the street, etc.) may play an integral part in an original film within the meaning of Article 2. In such a case it enjoys the protection afforded by Article I4 and not just that which is conferred on photographs."

Other proposals were presented at the Conference, notably by the French Delegation, which wanted this protection to be regulated in greater detail. However, the text which was adopted, as set out below, remained within the limits of the original proposal except for some formal improvements and an express reference to the exclusive right of cinematographic adaptation, which previously was apparent only from an extensive interpretation of the provisions of Article 12.

BERLIN TEXT	ROME TEXT[1]
ARTICLE 14	ARTICLE 14
Authors of literary, scientific or artistic works shall have the exclusive right of authorizing the reproduction and public performance of their works by cinematography.	(1) Authors of literary, scientific or artistic works shall have the exclusive right of authorizing the reproduction, *adaptation and public performance* of their works by cinematography.
Cinematographic productions shall be protected as literary or artistic works, if, by the arrangement of the acting form or the combinations of the incidents represented, the author has given the work a personal and original character.	(2) Cinematographic productions shall be protected as literary or artistic works if the author has given the work an original character. *If this character is absent, the cinematographic production shall enjoy protection as a photographic work.*
Without prejudice to the copyright in the original work the reproduction by cinematography of a literary, scientific or artistic work shall be protected as an original work.	(3) Without prejudice to the rights of the author of the work *reproduced or adapted, a cinematographic work* shall be protected as an original work.
The preceding provisions apply to reproduction or production effected by any other process analogous to cinematography.	(4) The preceding provisions apply to reproduction or production effected by any other process analogous to cinematography.

ARTICLE 18

In the programme proposals referred to several times, a complete revision of this Article had been drafted by the Italian authorities and the Berne Bureau with a view to achieving a more precise and clearer definition of the vested interests to be respected. However, the Committee confined itself to approving an addition to the last paragraph to explain that the provisions of the Article apply equally in the event that, as a consequence of the abandonment of its "reservation," a country of the Union becomes subject to a provision of the Berlin Act which it has not accepted, as can be seen from the following text:

BERLIN TEXT	ROME TEXT
ARTICLE 18, *paragraph 4*	ARTICLE 18, *paragraph 4*
The preceding provisions shall also apply in the case of new accessions to the Union, and to cases in which the term of protection is extended by the application of Article 7.	(4) The preceding provisions shall also apply in the case of new accessions to the Union, and to cases in which the term of protection is extended by the application of Article 7 *or by abandonment of reservations.*

[1] The amendments adopted are in italics.

ARTICLE 23

In recognition of the Berne Bureau's increased needs and of the importance of the services it renders to the Union countries, the Committee unanimously approved raising its endowment from the 60,000 Swiss francs mentioned in this Article to 120,000 Swiss francs. In fact, by a circular from the Federal Council dated June 20, 1921, which was either tacitly or expressly accepted by the Union countries, the endowment had already been increased to 100,000 Swiss francs in December 1921 (see p. 126 above, the Italian authorities' and the Bureau's explanatory memorandum on this Article).

In the same Article it is stated that the endowment may only be increased by a unanimous decision of one of the Conferences of revision and not, as worded in the text in force, "by the simple decision," in order to bring this provision into line with Article 13 of the Paris Union Convention for the Protection of Industrial Property as revised by the 1925 Conference of The Hague.

Finally, on a proposal by the Japanese Delegation, the fourth paragraph was amended so as to enable Union countries to change their classification in relation to the endowment at any time, on the understanding that the new classification may only take effect from the following financial year.

ARTICLE 25

Two amendments were written into this Article.

The first, in paragraph 3, sets a time limit for new accessions to take effect.

The second—of greater importance—considerably restricts the scope of the right of reservation introduced by this Article in the Berlin Act, which authorized the acceding country, on its accession, to choose to apply one or several provisions of the Acts prior to that one, namely the actual Berne Convention or the Paris Additional Act, instead of the corresponding provisions of the Berlin Act.

We should recall that this so-called "right of reservation" system was sanctioned by the Berlin Act in favour of Union States or of new acceding States as a provisional measure. It was intended to facilitate, without too much strain, the gradual adoption of this new Convention which sought to unify the two preceding Acts of Berne and Paris, but at the same time it introduced a number of new rules. There is no doubt that this sort of "safety valve" served to a certain extent to persuade Union States to accept the new Convention and to facilitate new accessions. But on the other hand, as Mr. Renault observed in his report on the Berlin Act, there was unification without unity. In the explanatory memorandum accompanying the proposals put forward by the Italian authorities and the Berne Bureau, stress is laid on the disadvantages resulting from this lack of a single right in the Convention. Moreover, favourable experience with the provisions of the Berlin Act and the fact that, in both Union and non-Union States, new legislation or case law are tending to draw gradually closer to these provisions make it easier to abandon this system. The spirit of the Rome Conference was entirely in harmony with this.

Nevertheless, it was thought appropriate to tone down, as it were, this abandonment. As far as new accessions were concerned, it was thought that the right of reservation could be maintained with respect to the translation right. It is indeed understandable that States hitherto outside the Union, and in particular countries with very different languages and often different forms of civilization (occasionally at a lower level) from those of the Union countries might be somewhat distrustful of a system which grants the exclusive right of translation to the author throughout the normal duration of his right. On the face of it, this entitlement seems to hinder the spread of culture and, as regards the countries of the Far East, the assimilation of Western civilization, although, in actual fact, the contrary is true, as Mr. Renault showed in the above-mentioned report.

In any event, the Conference considered it advisable to maintain the right of reservation for translations. However, in order to prevent abuses, it was specified that the option concerns only translations into the language or languages of the country which makes the reservation, i.e. the language or languages which are in fact spoken and written in the country in question.

The third and fourth paragraphs of Article 25 were thus drawn up as follows:

BERLIN TEXT

ARTICLE 25, *paragraph 3*

Such accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention. It may, however, contain an indication of the provisions of the Convention of September 9, 1886, or of the Additional Act of May 4, 1896, which they may judge necessary to substitute, temporarily at least, for the corresponding provisions of this Convention.

ROME TEXT[1]

(3) Such accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention, *and shall take effect one month after the date of the notification made by the Government of the Swiss Confederation to the other countries of the Union, unless a subsequent date has been indicated by the acceding country.* It may, however, contain an indication *that the acceding country wishes to substitute, temporarily at least, for Article 8, concerning translations, the provisions of Article 5 of the Union Convention of 1886 as revised at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into the language or languages of that country.*

[1] The amendments adopted are in italics.

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ARTICLE 26

The wording of this Article was amended at the request of the British and Japanese Delegations so as to determine the information which must be contained in the declarations of accession made on behalf of colonies, protectorates, etc., in conformity with the political circumstances of such countries in relation to the metropolitan State.

The new text was therefore worded as follows:

BERLIN TEXT

ARTICLE 26

Contracting countries shall have the right to accede to this Convention at any time for their colonies or foreign possessions.

They may do this either by a general declaration comprising in the accession all their colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.

Such declaration shall be notified in writing to the Government of the Swiss Confederation, which will communicate it to all the other countries of the Union.

ROME TEXT

ARTICLE 26

(1) Any country of the Union may at any time in writing notify the Government of the Swiss Confederation that this Convention shall be applicable to all or part of its colonies, protectorates, territories under mandate or any other territories subject to its sovereignty or to its authority, or any territories under suzerainty, and the Convention shall thereupon apply to all the territories named in such notification. Failing such notification, the Convention shall not apply to any such territories.

(2) Any country of the Union may at any time in writing notify the Government of the Swiss Confederation that this Convention shall cease to apply to all or part of the territories which have been made the subject of a notification under the preceding paragraph, and the Convention shall cease to apply in the territories named in such notification twelve months after its receipt by the Government of the Swiss Confederation.

(3) All notifications given to the Government of the Swiss Confederation in accordance with the provisions of paragraphs (1) and (2) of this Article shall be communicated by that Government to all the countries of the Union.

ARTICLE 27

The first paragraph contains amendments purely of wording.

In the second paragraph the text is modified so as to drop the right of reservation in relation to the new Rome Act by maintaining only the right of Union countries to retain the benefit of the reservations they have previously formulated, on condition that they make a declaration to that effect at the time of the deposit of their ratifications. The importance of and justification for this amendment have already been explained in the comments on Article 25. The fact that several delegations have indicated their intention of proposing that the countries they represent withdraw the reservations formulated when ratifying the Berlin Act further underlines the import of the measure adopted in this regard.

A third paragraph was added establishing the following two rules:

(1) Union countries may always accede to the Rome Act even if they have not signed the Convention within the time limit indicated in the following Articles;

(2) In view of the fact that they continue to be members of the Union by virtue of the Berlin Act, those countries which accede later may, on acceding, still assert the right to retain the benefit of the reservations they have previously formulated.

Thus the text of Article 27 was worded as follows:

BERLIN TEXT	ROME TEXT
ARTICLE 27	ARTICLE 27
This Convention shall, as regards the relations between the contracting States, replace the Convention of Berne of September 9, 1886, including the Additional Article and the Final Protocol of the same date, as well as the Additional Act and the Interpretative Declaration of May 4, 1896. These Acts shall remain in force in relations with States which do not ratify this Convention. The signatory States of this Convention may declare at the exchange of ratifications that they desire to remain bound, as regards any specific point, by the provisions of the Conventions which they have previously signed.	(1) This Convention shall, as regards relations between the countries of the Union, replace the Convention of Berne of September 9, 1886, and the subsequent revisions thereof. The Acts previously in force shall continue to be applicable in relations with countries which do not ratify this Convention. (2) The countries on whose behalf this Convention is signed may retain the benefit of the reservations which they have previously formulated, on condition that they make a declaration to that effect at the time of the deposit of their ratifications. (3) The countries which are at present members of the Union, but on whose behalf the present Convention is not signed, may accede to the Convention at any time. In that event they may enjoy the benefit of the provisions of the preceding paragraph.

ARTICLE 28

Article 28 has been completely redrafted to replace the system of exchanging ratifications by that of depositing ratifications as adopted at the revision of The Hague of the Convention on Industrial Property. A time limit for deposits is laid down, to expire on July 1, 1931. But if, before this date, at least six countries have already deposited their ratifications, the Convention will come into force immediately between them.

Moreover, until August 1, 1931, countries outside the Union may accede to the Union by acceding either to the Berlin Act or to this Convention. However, from August 1, 1931, they may only adhere to this Act.

The text was therefore drafted as follows:

BERLIN TEXT	ROME TEXT
ARTICLE 28	ARTICLE 28
This Convention shall be ratified, and the ratifications exchanged at Berlin, not later than July 1, 1910. Each contracting party shall, as regards the exchange of ratifications, deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederation. Each party shall receive in return a copy of the records of the exchange of ratifications, signed by the Plenipotentiaries who took part.	(1) This Convention shall be ratified, and the ratifications deposited at Rome, not later than July 1, 1931. (2) It shall enter into force, between the countries which have ratified it, one month after that date; however, if before that date it has been ratified by at least six countries of the Union, it shall enter into force between those countries one month after the notification to them by the Government of the Swiss Confederation of the deposit of the sixth ratification and, in the case of countries which ratify thereafter, one month after the notification of each of such ratifications. (3) Until August 1, 1931, countries outside the Union may join it by acceding either to the Convention signed at Berlin on November 13, 1908, or to this Convention. On or after August 1, 1931, they may accede only to this Convention.

ARTICLE 30 AND ENDING OF THE CONVENTION

In paragraph 2 merely formal amendments were introduced, and in the last part "the Government of the Swiss Confederation" was replaced by "the Government of the Country in whose territory the Convention is signed (Italy)" as depositary of the copy of the Convention; the wording of the text thus remains as follows:

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BERLIN TEXT	ROME TEXT
ARTICLE 30	ARTICLE 30
Paragraph 2 and ending	*Paragraph 2 and ending*
The same procedure shall be followed in the case of the States withdrawing the reservations made by them in accordance with Articles 25, 26 and 27. WITNESS WHEREOF the Plenipotentiaries concerned have signed this Convention and have affixed their seals thereto. Done at Berlin, on November 13, 1908, in a single copy which shall be deposited in the archives of the Government of the Swiss Confederation and of which certified copies shall be sent to the contracting countries through diplomatic channels.	(2) The same procedure shall be followed in the case of the countries renouncing the reservations made or maintained by them in accordance with Articles 25 and 27. WITNESS WHEREOF the Plenipotentiaries concerned have signed this Convention. Done at Rome, on June , 1928, in a single copy which shall be deposited in the archives of the Royal Government of Italy. A certified copy shall be sent to each country of the Union through diplomatic channels.

RESOLUTIONS

In keeping with an established practice at such Conferences, the Rome Conference approved a series of resolutions inviting national legislation to adopt, or at the very least to consider, the possibility of adopting certain provisions in the interest of copyright protection.

Those resolutions do not require special comment, as their interest is sufficiently clear from the text.

CONCLUSIONS

An unenquiring mind comparing the effort made by the Rome Conference with its visible, material results, might be inclined to think that the Conference was a failure, or something approaching it.

Indeed, the importance of the Conference—considered in terms of the proposals discussed and meetings held as well as the number of States represented— does not at first sight seem to be in direct relation to the small number of amendments actually adopted.

Briefly, disregarding the amendments of pure form or those which do not bear any direct relation to the extent of copyright protection, the proposals adopted amount to:

(1) the express mention, amongst protected works, of a category of works (speeches, sermons, addresses and other works of the same nature) which was very widely considered to be already included in the general expression "production in the literary, scientific or artistic domain" used in the Article 2 in force (see new Article 2 and 2*bis*);

(2) the protection of moral rights (see new Article 6*bis*);

(3) a slight extension to the international rules on the term of protection so that, for works of joint authorship, the initial date of protection *post mortem auctoris* is fixed at the death of the last surviving author (see Article 7*bis*);

(4) a few improvements in the provisions on works published by the press through limitation of the mandatory declaration of reserved rights to articles on current economic, political or religious topics (see Article 19);

(5) more precise and more extensive rules on cinematographic works, affording protection to "adaptations" and also to any original new work even if it does not have a personal character and is not achieved by the arrangement of the acting form (see new Article 14);

(6) the recognition of the exclusive right of radio broadcasting, it being left to national legislation to regulate the exercise of this right (see new Article 11*bis*);

(7) finally, the limitation of the "right of reservation": to the right of translation for new accessions and to those reservations already made for countries already belonging to the Union (see Articles 25 and 27).

Nevertheless, despite these seemingly modest achievements, I think the Rome Conference has had results of significant import.

In the first place, it has removed any danger of the Union being dissolved, and indeed has strengthened its foundations and authority.

Twenty years had elapsed following the last revision Conference, and during that interval one of the most formidable crises ever experienced by mankind had taken place. New representatives of old States, but States whose political or social structures had been greatly affected or influenced by this crisis, were meeting again in Rome, and with them the representatives of new States. Would they be able to draw close again and reach an understanding on the revision of this old Union treaty? Furthermore, was it not true that, during that long interval, substantial changes had occurred in the world's legal consciousness regarding the conception of social interests and the authority of the State which could endanger the preservation of the author's exclusive right as established by the Convention?

Conference in Rome, 1928 — General Report (Edoardo Piola Caselli)

However, after the inevitable hesitancy of the first meetings, the representatives of the 34 States of the Union meeting in Rome quickly related to and understood one another; they worked together on the revision of the Convention with a great spirit of mutual understanding, and they succeeded in joining hands once again for the maintenance and confirmation of the fundamental precepts of this great international Union.

This in itself is a remarkable achievement. Moreover, the system of protection sanctioned by the Convention emerges from this Conference not only preserved but also strengthened, especially in relation to the new discovery of broadcasting, which has introduced such a dramatically different and new vehicle for the communication of thought. The application of the principle of the exclusive privilege to radio broadcasting, for which the French Delegation fought so valiantly with the aid of Mr. Maillard's persuasive eloquence—whatever may be the conditions governing the exercise of the privilege that national legislation adopts—represents a victory for copyright of considerable importance.

The international authority of the Berne Union thus emerges from this Conference preserved and strengthened; and the accession of new States, especially that of the United States of America, for which we have been hoping so long and which today seems really probable and close at hand, will be the symbol of it.

Even with regard to certain questions on which it has not been possible to reach agreement there is still a favourable result since, in the discussions which our diligent Office summarizes in the minutes appended to this report, the problems were posed and the objections and difficulties standing in the way of their solution were intelligent and enlightened. From this point of view, therefore, the Rome Conference will have been a preparatory Conference for the next one, which may perhaps be able to meet within a very short period in order to bring about agreement on solutions to the problems still outstanding.

Finally, Gentlemen, allow me to stress the great importance of the recognition of the moral rights of authors, which raises the international Convention to the level of the most recent legislative provisions of several States of the Union and really marks another turning point in the Union's history.

Unless the tiny share of responsibility that I have for this reform is clouding my judgement, I think I am right in saying that the recognition of the moral rights of authors is the statement of a principle whose importance and efficacity transcend even the limits of our Conference.

For all its modest appearance, Article 6*bis* sets against the materialistic currents which dominate present-day society that the right to respect for intellectual ideals in the name of which thousands of writers and artists, those artisans of civilization's real progress, work, suffer and struggle, indeed also fall, as men fall at their desks as well as on the battlefields, in the agonizing fatigue of the unattained ideal.

This modest Article 6*bis* thus affirms that ideals are immanent conditions of progress, and that the rights of the intellectual hierarchies which effect that progress must be respected.

By thus completing and ennobling all our work, this recognition of moral rights dispels any doubts which might still remain regarding the results achieved by the Rome Conference, and enables us to assert that this Conference too marks a new phase of substantial importance in the international protection of works of the mind.

Rome, June 1, 1928.

E. PIOLA CASELLI

Vice-Chairman and Rapporteur-General
of the Conference

I should particularly like to express my warm thanks to Professor Gariel, Senior Deputy Director of the Berne Bureau and Secretary-General of the Conference, and also to Mr. Linant de Bellefonds, Royal Adviser to the Egyptian Government and a member of the Egyptian Delegation, who were kind enough to assist me in the final revision of the text of this report.

INTERNATIONAL UNION
FOR THE PROTECTION
OF LITERARY
AND ARTISTIC WORKS

RECORDS OF THE CONFERENCE

CONVENED IN

BRUSSELS

JUNE 5 TO 26, 1948

GENERAL REPORT

on the Work of the Brussels Diplomatic Conference
for the Revision of the Berne Convention

Presented by

MARCEL PLAISANT
Rapporteur-General

to the General Committee on June 25, 1948
and Approved in Plenary on June 26, 1948

Ladies and Gentlemen,

The importance of the Brussels Conference will have been the same as that of the Berlin and Rome Conferences. Thirty-five Union countries have participated in your deliberations. Bulgaria sent observers. The non-participating Union countries and participating non-Union countries were 18. And, finally, we benefited from the presence of Unesco.

You have held three meetings in plenary assembly, 27 General Committee meetings, 12 Drafting Committee meetings and, finally, for the organization of your work, the officers of the meeting, to which posts Belgian personalities were appointed, thought that it was more expedient to set up sub-committees to consider specific subjects: thus it was that the Applied Art Sub-Committee held three meetings under the chairmanship of Mr. Coppieters de Gibson, that the Sub-Committee on Broadcasting and Mechanical Instruments held eight meetings under the chairmanship of Mr. Bolla, and that the Sub-Committee on Photography and Cinematography held five meetings under the chairmanship of Mr. Julio Dantas.

Finally, it became clear in the course of the discussions that the complexity of the problems was so acute that the General Committee had to set up a further six Sub-Committees: for the coordination of texts, on Article 4(4), on Article 6*bis*, on Articles 11 and 11*ter*, on Article 14(3) and on Article 23. More than 80 supporting documents have been presented in the course of these discussions, and you are all witnesses to the sheer hard work that has been done by all representatives in the course of the General Committee or Special Sub-Committee meetings.

The text that is proposed to you for final voting will not be the subject of any observations on our part except to the limited extent that it has undergone amendment.

The title of the Convention includes the mention of the revision that has just taken place at Brussels, but also recalls the Berlin revision of November 13, 1908, and the Rome revision of June 2, 1928.

The introductory enumeration of Heads of State that precedes the preamble to a diplomatic instrument has undergone one change: on a proposal by the honourable Delegate of Ireland, the titles of the Heads of State have been replaced by the names of the contracting countries of the Convention: the Conference had no difficulty in acceding to that request in the light of recent treaties, notably the treaty between Italy and the Allied and Associated Powers signed in Paris on February 10, 1947, which itself gives only the names of the Contracting States. We shall therefore conform to this recent custom and give only the names of the States concerned.

The principle of the Union is stated by Article 1. This is the Article that governs protection under the Convention; it has not been changed in any way. Indeed the exchange of views that took place concerning it seems to have highlighted even more compellingly the essential vocation of the Union, which is to ensure the protection of the rights of authors.

The program, which is the result of the enlightened and alert collaboration of the International Bureau of Berne and the Belgian Government—to which we shall not revert, according to the theory of excess praise being prejudicial to value—proposed the introduction of cinematographic works in its enumeration of the works eligible for protection. It met with favourable proposals from the United Kingdom and France.

At the very first meeting it was unanimously agreed that protection of equal rank should be accorded to cinematographic works.

At the request of France, which had already made the same appeal at Rome, the General Committee gave favourable consideration to the principle of incorporating photographic works, which thus have also reached the supreme rank of general protection.

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In both cases the mention is completed with the clause "and works produced by a process analogous to cinematography" or "analogous to photography," which has the virtue of encompassing all the possible derived forms of these two arts that the inventive mind may engender and which our present minds are powerless to anticipate.

You have not considered it necessary to specify that those works constitute intellectual creations because, as the Delegate of Hungary pointed out, if we are speaking of literary and artistic works, we are already using a term which means that we are talking about personal creation or about an intellectual creation within the sphere of letters and the arts.

Works of applied art have also been given promotion to the general enumeration in Article 2. That is the result of a protracted effort of mutual understanding; they already featured in the Berlin programme; at Rome the eloquence of Mr. Georges Maillard won them a considerable number of votes. They are henceforth assured of equal protection, as works of applied art have been written into the frontispiece of the Brussels Act of the Convention.

Nevertheless, paragraph (5) leaves it to national legislation to determine the scope of the laws concerning works of applied art and industrial designs, and also the conditions governing the protection of those works.

The first sentence of paragraph (2) of Article 2, on translations and alterations, has been amended on a matter of form. The meaning of the second sentence, on translations of official texts of a legislative, administrative and legal nature, is that such works of common interest do not, according to the wish of the United Kingdom and of a certain number of other countries, enjoy Convention protection. It is on the contrary a matter for the legislation of individual States to arrange for such distribution as will ensure their efficacy.

Collective works and anthologies, which were merely mentioned in the Rome text, were the subject of a program proposal. They now appear in Article 2(3). The discussion on them served to make it clear that protection was assured whenever the selection and arrangement of the contents of the works had the character of an intellectual creation. While newspapers, magazines and periodicals are not actually specified, as the United Kingdom Delegation had originally proposed, they are nevertheless included in so far as they constitute artistic creations by reason of the distribution and presentation of their subject matter.

These rights in the collective work could not be recognized without a mention of the rights of the authors in each of the works that form part of the collection, and that was done on a suggestion by the Danish Delegation.

The new paragraph (1) of Article 2 of the Convention affords protection directly based on the Convention itself. In proposing this text the programme rightly indicated that many Convention requirements that established rights directly, without any intervention being necessary on the part of national legislation, already existed; thereupon, by giving only a purely indicative list, it sought to make it clear that the rights in Articles 4, 5, 6*bis*, 7, 8, 9, 10, 11*bis*, 12, 13, 14, 15 and 18 already made up the body of a sort of treaty code.

Of course in all States the implementation of a treaty requires first the ratification of a diplomatic instrument and its legislative promulgation. In a certain number of countries, even before ratification may take place, laws will have to be passed to adapt the provisions of ordinary national law to the Convention. That will be true of the United Kingdom, Sweden, Norway and many other countries that remain true to such constitutional safeguards. Yet those countries have no problem of contradiction with their basic provisions in accepting the new paragraph (4), which introduces direct protection. The Delegates of Norway, the United Kingdom, Canada and Sweden have therefore been able to give their agreement to this very comprehensive formula, which should not offend their principles in any way.

The fact remains that the text of this paragraph (4) bespeaks striking progress in treaty law in the space of just 20 years, and we are the artisans responsible for it. The nationals of all those countries which accept the principle of immediate application of a treaty will be wise to seek the direct protection of their interests in treaty law, which is to take its appointed place in domestic legislation and increase the latter's authority by virtue of the new provisions thereby introduced.

Even though we have always regarded the protection of the rights of authors proclaimed by the Convention as including successors in title, and even though Article 6*bis*, by mentioning rights that survive transfer, recognizes the transferees by implication, there was nevertheless a discussion on the express mention of the rights of successors in title.

As the United Kingdom Delegation had insisted in very emphatic terms on the inclusion of those rights somewhere in the Convention, they are now the subject of the second sentence of paragraph (4), which assumes general scope. The term "successors in title" refers to all those who for one reason or another are invested with the author's rights, and the United Kingdom Delegation has thus secured the equivalent of the new Article 2*ter* which it was itself advocating.

It should be noted, however, that Article 6*bis* refers to the author alone, and that Article 14*bis*(1) considers persons or institutions who may be different from successors in title. The same comment applies to paragraph (2) of Article 6*bis*.

Article 2*bis*, on oral works, has not changed in relation to the Rome text with respect to its first two paragraphs, which make it a matter for national legislation to determine both the protection of political speeches and speeches delivered in the course of legal proceedings, and also the protection of lectures, addresses, sermons and other works of the same nature.

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With the exception of political speeches, the reproduction of which should be free out of a supreme respect for liberty, the French Delegation would have liked to have all other oral works, namely lectures, addresses and sermons, placed under the aegis of the Convention.

The United Kingdom, Netherlands, Czechoslovak, Swiss, Portuguese, Danish, Finnish, Norwegian and Swedish Delegations felt unable to accept this.

Greece, Italy and Spain supported the French proposal, however.

It remains for us to hope that the seed of this concept, sown in such a propitious environment, will one day germinate and flourish.

The right reserved for the author alone to make a collection of his works mentioned in the preceding paragraphs is the subject of a third paragraph, in order to establish quite clearly that the right belongs not only to the political speaker and attorney, but also to the lecturer, the writer and the preacher.

The clarifications effected by the observations of the United Kingdom Delegation have made it possible to state that this right of the author is in no way an obstacle to the traditional uses of the legal records that contain accounts of pleadings and deliberations.

Article 4, the purpose of which is to establish the basis of protection on which authors may rely for the assertion of their rights, caused some of the most arduous discussions of the Conference.

Paragraph (1) retains the form it had in the Berlin text, as confirmed at Rome. It establishes the principle that Union nationals may expect to enjoy two kinds of rights in the countries of the Union:

(i) the rights of nationals by virtue of the respect for acquired rights and the assimilation of Union members to nationals;

(ii) the speeial rights of Convention origin.

Paragraph (2) is also unchanged.

Paragraph (3) defines the country of origin of the work, which, as you know, underlies the whole concept of copyright. It does this by distinguishing between published works, with regard to the place of first publication, and works published simultaneously in countries granting different terms of protection, which calls for a comparison of terms and the adoption of the shorter, and finally works published in countries outside the Union.

In this respect a liberal provision was accepted that regarded as published simultaneously any work having appeared in two or more countries within 30 days of its first publication.

As you will remember, almost insurmountable difficulties were to arise in connection with paragraph (4), when a definition of published works had to be given.

Not wishing to evade discussion, the programme declared that there was no reason not to assimilate the recording of a work on apparatus intended for mechanical reproduction or on cinematographic film to publication by printing; it was for that reason that it proposed adding, after the words "published works," the words "whatever may be the manner or form of publication: by printing, on a disc or on film."

The United Kingdom Delegation could not accept either that formula or that conception, and it was unable to grasp the distinction between the two French terms *"publication"* and *"édition."* In spite of the persuasive eloquence of Mr. Forns, the honorable Delegate of Spain, and the efforts of the French Delegation, no compromise seemed possible.

The Conference had to resort to the assistance of a special Sub-Committee to attempt to reconcile these opposing views. Mr. Forns pointed out very rightly that, in addition to printing, the multiplication of copies of discs deserved to be considered equivalent to publication.

There then remained the removal from the expression of the idea of those words that offended the clarity of understanding of our learned colleague from the British Delegation, Mr. Crewe.

It was in the process of following the ins and outs of the various reasonings that the honourable Belgian Delegate, Mr. Walckiers, and our French colleague, Mr. Puget, succeeded in working out a formula for accommodation by giving the published work the meaning of any work "whatever may be the means of manufacture of the copies, and which have been made available in sufficient quantities to the public."

This definition is sufficiently expletive to be understood by all: what is more, it is completed with the following negative affirmations: "The performance of a dramatic, dramatico-musical or cinematographic work, of a musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication."

The country of origin, in the case of unpublished works, is in principle that to which the author belongs; that is what paragraph (5) provides. However, with works of architecture and works of graphic or three-dimensional art incorporated in a building—on a proposal by the Italian and Portuguese Delegations—practical experience has dictated to us a more equitable solution which consists in locating origin in the country in which the works have been built or incorporated in a building. Article 5, which introduces the equivalence of rights between nationals of Union countries who publish their works for the first time in another country of the Union and the nationals of the latter country, has been retained in the same wording as at Berlin and Rome.

Article 6, which sets out the restrictions susceptible of being imposed on the works of a non-Union author published for the first time in a country of the Union, has not been amended with respect to its general arrangement. However, the program did propose specifying the possibility available to the other countries of the Union of adopting the same penalties as could have been inflicted in the country of first publication. This provision adopted by the Conference is thus added to paragraph (2), so that the sanction is capable of spreading its effect throughout the territory of the Union, which is as it were prevailed upon as a whole in the interest of the broader protection of the rights of authors.

It is to the Italian Delegation, at Rome, that we owe the writing of Article 6*bis* into the Convention, which provides for the moral rights of the author in his work. The first wish expressed by France had at once received enthusiastic support from the Polish, Czechoslovak and Belgian Delegations, and the effect of that had been to generate a favourable atmosphere among all their counterparts.

The omens were equally good for the Brussels debate. In addition to the Delegations already mentioned, Austria, Hungary, Norway, Spain and Switzerland proposed amendments worthy of consideration.

After a general discussion, which was no lower in tone on the part of those who had reservations than on the part of those who proposed extension, the General Committee appointed a special Sub-Committee to reconcile the various viewpoints. It was presided over by Mr. Piloti with uncommon skill.

The Delegation of France was asking for moral rights to be inalienable, for them to allow the author to defend the integrity of his work to the extent of causing all infringements to cease in an appropriate manner. While it failed to secure the actual terms of its request, it did at least win acceptance for an extendable conception of moral rights, which in fact was in the minds of all the delegates on condition that it did not go beyond the generally accepted basic notion of copyright.

It is henceforth provided in paragraph (1) that the author retains throughout his lifetime, notwithstanding any transfer, the right to claim authorship of the work and to object to any distortion.

The author will have the right to bring action against any acts prejudicial to his honour or reputation, and the scale of the discussion revealed that the author has to be protected not only in his capacity as a writer, but also in the role that he plays on the literary stage: it is for that reason that you have added that he could object to any other derogatory action, that being understood to mean any action that would be liable to harm the person through distortion of his work.

Paragraph (2) establishes the continuation of moral rights after the author's death, at least until the expiry of the economic rights: this formula, without actually introducing a compulsory correlation between moral rights and economic rights, will enable national legislation to have a free hand in introducing, if it wishes, a longer or even perpetual duration of moral rights after death. Whereas the Rome text reserved to national legislation the right to determine the conditions for the exercise of moral rights in general, the Brussels text provides this faculty only for moral rights *post mortem*.

If there was to be some sort of public action to ensure respect for moral rights, it was natural for national legislation to be entrusted with specifying the persons or institutions eligible to bring such action, and also with laying down the conditions for the exercise of the right. Finally, paragraph (3) provides that the means of redress for safeguarding their rights are governed by the legislation of the country where protection is claimed.

Certain delegations, responding to an eminently respectable concern, seem to have feared that the concept of this personal right might be an obstacle, in the future, to accession to our Convention on the part of certain countries that have a conception of copyright more closely attached to the exploitation of the work. The care with which we have drafted the provision leads us to believe that such fears are groundless. The Delegation of Finland made a very apposite intervention in which it pointed out that, in the United States of America, the courts gave a degree of recognition to the author's moral right to protect the work against any mutilation, namely by the operation of the principle of equity.

While the destruction of the work has not been expressly made punishable, as the Delegate of Hungary requested by virtue of a logical deduction, it at least emerged from the subsequent discussion that the Conference was of a mind to protect the work efficaciously against all violations.

Thus the Brussels Conference, while it has increased copyright by surrounding it with new guarantees and by conferring more extensive scope on the operation of the law deriving from the author's moral rights, has succeeded in giving a testimony to the humanistic conception of the private person who is entitled to respect not only through the tribute paid by words, but also through the efficacy of conventions and laws.

The Brussels Conference will be characterized by the new effort it has made towards the unification of the normal term of protection. The uniform term of 50 years is considered a minimum, because at the same time Spain protects for 80 years, Brazil for 60 years *post mortem* and Portugal without any limitation in time.

In the face of the liberal declarations made by the United Kingdom concerning complete and unconditional protection, the International Bureau has been able to accept the removal of the new paragraph (3) from the programme, which it proposed in anticipation of the specific features of British legislation. For its part, the Swedish Government has renounced its term of less than 50 years after the author's death. The Swiss Delegation has declared that it is not opposed to the extension of the term of protection to 50 years.

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The United Kingdom Delegation withdrew its amendment consisting in the insertion, in paragraph (1), of the words "at least 50 years," which seemed to have no further purpose inasmuch as reciprocity has not been abandoned with respect to the longest term of protection.

Paragraph (1) thus remains unchanged in relation to the Rome text.

Paragraph (2) was inspired by an Italian suggestion: it is the necessary consequence of the principle stated in paragraph (1), and requires a comparison of periods: where one or more countries of the Union grant a term longer than that provided in paragraph (1), the term is governed by the law of the country where protection is claimed, but may not exceed the term fixed in the country of origin of the work.

The new paragraph (3) sets the term of protection for cinematographic and photographic works, and also for works of applied art, which will be governed by the law of the country in which protection is claimed, provided that the term may not exceed that set in the country of origin of the work.

Anonymous or pseudonymous works will from now on enjoy protection set at 50 years following their publication. Two exceptional cases are contemplated, however: when the pseudonym leaves no doubt as to the author's identity, the term of protection is that of paragraph (1), namely 50 years following death; the same favorable solution has been adopted if the anonymous author discloses his identity.

Paragraph (5) accords to posthumous works a term of protection in favour of the heirs and other successors in title of the author that ends 50 years after the author's death. In this way the terms have been standardized for all categories of works.

The Conference has had the satisfaction of being able to settle on the most concise formula for the term of copyright belonging jointly to the co-authors of a work of joint authorship, which is calculated according to the date of the death of the last surviving co-author. Paragraphs (2) and (3) disappear.

Article 8, on the right of translation, has undergone little apart from drafting amendments. The Conference has been pleased to be able to lighten the form of this Article by establishing in favour of the author the exclusive right of making or authorizing the translation of his works.

The Convention does not contain a specific set of provisions governing the right of reproduction of authors in relation to the publication of their works by the daily and periodical press, and the French Delegation would gladly have filled the gap with its proposal for a complete set of provisions affording the most extensive protection and specifying the content of the rights of journalists: that is why it proposed an explicit text for Article 9.

However, a movement developed between the Delegations of the Scandinavian countries and those of Poland, the Netherlands and Czechoslovakia that was against any restriction of the freedom of information, and they declared themselves opposed to all change.

Consequently we have had to content ourselves with the Berlin text, which was already substantially improved at Rome by the introduction of the reserved reproduction concept and by the requirement of a clear indication of source.

By retaining the former text, a number of delegations wanted to underline the fact that Convention protection does not extend to news of the day or to miscellaneous information having the character of mere items of news. Speaking on behalf of the Belgian, Netherlands, Luxembourg and Nordic Delegations, Mr. Walckiers even suggested that the Conference insert a note in the General Report. Pursuant to this suggestion, we therefore acknowledge that the recording of sounds or images carried out in the course of a photographic, cinematographic or radio news report at a public or patriotic ceremony is outside the purview of the Convention.

Such records are exceptional and fragmentary, and as such they will be tolerated. This text certainly does not correspond to the ideal that we had of the genuine literary work published in the press, or of the respect due to it as such, but, as the faithful interpreters of the sentiments expressed by the majority of the Conference, we are bound to agree that the growing importance acquired by the freedom of information, and the very authority of the press, do not allow us to go any further.

The question of borrowings from known works has always been a source of abuses; moreover it is very difficult to bridle the right of quotation which, without actually affording evidence of culture, remains a habit of writers who in addition are cultured persons.

The French Delegation proposed an explicit text which provided for a sort of lawful borrowing licence. In order to avoid disturbing established practices, it has had to show more moderation and content itself with some substantial drafting amendments.

Thus short quotations from newspaper articles and periodicals are lawful.

The right to take excerpts from literary and artistic works for teaching or for chrestomathies is a matter for legislation in the countries of the Union.

The actual permission given by the second paragraph is broader than the mere tolerance in the first; it is justified by the purpose of the borrowing, which is for an educational or scientific work or a chrestomathy.

Finally, quotations are always accompanied by an acknowledgement of the source and by the name of the author. The wording of Article 10 adopted at Brussels will reconcile the rights of authors with the needs of a public eager to draw on the treasures of human knowledge.

The purpose of the new Article 10*bis* is to extend the right to make borrowings and short quotations to cover recording and reproduction in the case of reporting current events by means of photography or cinematography or by broadcasting. Here

is another concession granted to the freedom of information. We are convinced that we are interpreting the general sentiment of the Conference, after the observations of the Delegates of Spain and the Netherlands, when we say that only short fragments can be involved, the borrowing of which seems essential to the accurate reporting of current events.

The right of performance is written into Article 11. Under the earlier wording adopted at Berlin and confirmed at Rome, the protection of the right of performance admittedly could not be disputed in all good faith. However, this essential form of copyright needed to be formally established in the Convention and given the character of an exclusive right to authorize public performance. That was the reasoning worked out by the program in support of the new wording, divided into specific propositions, which was eventually adopted by the Conference.

We are bound to draw the following conclusions from the debate, and in particular from the last discussion inspired by the report of the Sub-Committee: the right of performance has not been substantively altered in either character or extent. Its form is now beyond discussion, and it is protected against tendentious interpretation. It takes the form of an exclusive right in favour of the author to authorize public performance and transmission. However, at the end of paragraph (1), the application of the provisions of Articles 11*bis* and 13 is reserved.

Your Rapporteur-General has been entrusted with making an express mention of the possibility available to national legislation to make what are commonly called minor reservations. The Delegates of Norway, Sweden, Denmark and Finland, the Delegate of Switzerland and the Delegate of Hungary have all mentioned these limited exemptions allowed for religious ceremonies, military bands and the needs of child and adult education. These exceptional measures apply to Articles 11*bis*, 11*ter*, 13 and 14. You will understand that these references are just lightly pencilled in here, in order to avoid damaging the principle of the right.

Paragraph (2) establishes the equivalence of rights with respect to the translation of works.

Paragraph (3) reproduces the earlier text. In the course of the discussions there was talk of codification of the right of performance in connection with Article 11: the term is perhaps somewhat pretentious, but the right of performance henceforth features in a decisive entry in the text of the Convention.

The Rome Conference takes the credit for having created, in Article 11*bis*, the author's exclusive right of authorizing the communication of his work by broadcasting. By laying down the principle in an elliptical fashion, the Convention wording was appropriate for the state of an invention whose development was only just starting at the time.

Taking due account of the prodigious development of radio, the program proposed a new article that broke down the right according to the latest forms of its exploitation: thus provision had to be made for broadcasting proper, rebroadcasting as distinct from relaying, deferred broadcasting after recording, communication by loudspeaker and finally television, with an attempt to encompass the improvements or extensions that could yet be made to the latter medium.

Chairman Plinio Bolla is to be commended for having conducted with singular skill the work of a Sub-Committee that had to clarify the most complex problems submitted to you for consideration, and for having drawn up a report which served as a discussion basis for the General Committee.

The French proposal, which speaks of the exclusive right of authors to authorize the broadcasting of their works or their communication to the public by any other means of diffusing signs, sounds or images, was adopted at the outset as being the most far-sighted in an area in which technology was liable to produce surprises. It now constitutes item (i) of paragraph (1).

The author also has rights in any communication to the public made by a body other than the original one. Those are in fact rights in an extension of broadcasting for which at least two processes are known today: relaying and wire distribution, as Mgr. Picard judiciously remarked in the name of the Vatican: these rights are written into item (ii) of paragraph (1).

Finally the author is invested with a third right in the communication to the public by loudspeaker or any other similar instrument transmitting, by signs, sounds or images, the broadcast of the work. This right is written into item (iii) of paragraph (1). It is a very real right, but also a virtual right if one considers the infinite capacity of inventive genius. As was so eloquently highlighted by Mr. Forns, Delegate of Spain, and also as our President made clear, while loudspeakers are mentioned and television is implied at the end of paragraph (1), they are nevertheless capable of giving rise to different rights. Whenever an instrument is used, and thereby a transmission made, there is a case for authorization. While paying tribute to the warmth of the words of the Spanish speaker, it is only fair to mention that, after having contended with the reservations of Brazil, France, Italy and Portugal, he agreed to abstain in order to make a unanimous vote possible.

Pursuant to an observation made by Mr. Pilotti, President of the International Institute for the Unification of Private Law, and according to sound legal interpretation, paragraph (1), with its three separate items, is inseparable from paragraph (2), which makes it a matter for national legislation to determine the conditions under which the rights mentioned in paragraph (1) may be exercised. Those conditions may, as the Nordic and Hungarian Delegations observed, relate to free-of-charge exceptions made for religious, patriotic or cultural purposes. These

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possible conditions are placed within a fairly broad framework: they may not in any circumstances be prejudicial to the moral rights of the author or to his right to obtain just remuneration which, in the absence of agreement, is fixed by the competent authority. Interpreting the impassioned debate that took place on this subject within the Committee, we venture to say, in general terms, that each country may take whatever action it considers appropriate for the avoidance of all possible abuses, as after all the role of the State is to arbitrate between excesses, from whatever quarter.

The disagreements seem to have reached their most extreme point when it came to determining the relative legal rights of authors and exploiting agencies with respect to programmes received and recorded in one stage but delayed or deferred for broadcasting within an unspecified period. There the rights of reproduction and performance overlap and merge. There is moreover no way of disregarding the inexorable technical demands which are acquiring ever-greater importance, and it is difficult to draw the line between the recording of a deferred performance that is perishable through use and the durable recording backed by the solid potential of the law. It was not without difficulty that the Conference managed to reach unanimity on a text for paragraph (3), the first version of which was taken from a Benelux proposal: "In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast."

The second and third sentences of paragraph (3) make it a matter for national legislation to provide for ephemeral recordings intended for subsequent performance:

"It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation."

National legislation will therefore have the option of declaring that permission to broadcast does or does not imply permission to record for the purpose of broadcasting, provided that the recording is made by the broadcasting organization itself, by means of its own facilities and for its own purposes, and that the recording is of ephemeral character.

It will be for national legislation to define what recordings are ephemeral and to determine their legal regime in a general way, including for instance the possibility of their preservation in official archives owing to their exceptional documentary character.

If national legislation does not make use of the faculty conferred on it by the last sentence of Article 11*bis*(3), the question whether or not permission to broadcast implies permission to record and, assuming the former, whether or not it implies it only for ephemeral recordings or also for others, is determined by the contract concluded between the author and the broadcasting organization.

If interpretation of the contract fails to determine the agreement of the parties on that point, the presumption of the first sentence of Article 11*bis*(3) is applicable: authorization to broadcast does not imply authorization to record, even if the recording is only ephemeral.

If we could write subtitles for these two sentences of paragraph (3), the importance of which you will appreciate, we would say that the first comes under the heading of contractual freedom and the second under that of controlled legislative freedom. In that form Article 11*bis* remains the compromise reached at the end of a long debate in which all interests, whatever they were, were explained and acknowledged. It is a compromise achieved notably thanks to the conciliatory spirit of the Delegation of Monaco, whose interventions were decisive.

Article 11*ter*, introducing the right of public recitation, has been adopted as proposed in the programme. Recitation should be taken to mean the reading or reciting of a literary work that does not take the form of a dramatic performance.

Indirect appropriations such as adaptations, arrangements and alterations did enjoy protection, in favour of the original author, in the text of Article 12 as adopted at Berlin and confirmed at Rome, but it was not clearly expressed. The programme sought to remedy that defect by proposing a text that established the right of the original author by reference to Article 2(2), so that the relative areas of the first creator and of the adapter might be exactly defined.

In the course of the discussion, after observations by the Spanish, Norwegian and United Kingdom Delegations had been taken into account, it appeared that the more concise text proposed by France had won the support of most of the delegations. Our colleague Marcel Boutet summarized its structure in the following terms: exclusive authorization given by the author to carry out the alteration of his work; non-exclusive right to inspect the alteration, as obviously the right belongs also to the maker of the alteration, but nevertheless the original creator's right of inspection exists alongside the right of the maker of the alteration.

The programme had hoped to lay down the whole set of rights belonging to the authors of musical works in relation to recording and to the new forms engendered by that industry. The French Delegation had supported and strengthened that hope: a distinction had to be made between recording, the distribution of mechanical reproduction apparatus and the use of that apparatus, in broadcasting or any other performance.

The Article adopted is more modest in form, but nevertheless contains substantial guarantees.

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According to paragraph (1) of the new Article 13, the author enjoys the exclusive right of authorizing recording by instruments for mechanical reproduction, instead of "adaptation," which was imprecise and liable to ambiguous interpretations. Under item (ii) of paragraph (1), he enjoys the same right in respect of the public performance, by means of such instruments, of works thus recorded.

The distribution of discs or apparatus was not taken into consideration by the Conference, but it did entrust its Rapporteur-General with mentioning that the author could specify by contract that the distribution of apparatus or recorded discs was liable to generate liability to payment of a royalty or compliance with a formality. This is an attribute of copyright that should be highlighted here as a source of revenue specific to the author.

Paragraph (2), which has to do with the reservations concerning the application of the rights deriving from national legislation, reproduces the former paragraph but with the addition of an important amendment, which was written in after a protracted debate between opposing views. It says that the reservations "shall not, in any circumstances, be prejudicial to the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority." Your Rapporteur considers that a text of this kind is incompatible with the system of compulsory licences, and that in any event it strengthens the author's position considerably vis-à-vis publishers of discs in any equitable negotiation of their relative rights.

Considering the conjectures to which the program and the proposals of delegations gave rise, we might have thought that Article 14 would be accompanied by a detailed set of regulatory provisions, and that it would make a discrimination between films. The differences of opinion that emerged in the course of the discussions obliged us to content ourselves with a more sober, but no less valuable text.

True to the analytical method, paragraph (1) clearly sets out two rights in favour of the author:

(i) The cinematographic adaptation and reproduction of works, with as a rider the distribution of the works reproduced, which is liable to give rise to a specific right.

(ii) The public performance of the works thus adapted or reproduced.

Paragraph (2) is worded as follows: "Without prejudice to the rights of the author of the work reproduced or adapted, a cinematographic work shall be protected as an original work." This text has to be interpreted to mean that there is no reason to make any discrimination in the protection of films, and that the Convention abstained from proposing a criterion concerning the nature of cinematographic production. The very conception of a work entails an intellectual effort.

The Delegate of the United Kingdom asked for his statement, which was supported by France, to be placed on record, to the effect that the time had come, in view of the progress made by the film industry, to deal with all cinematographic productions on an equal footing, without any discrimination regarding either the nature or the duration of protection.

The Sub-Committee endorsed the French proposal for a new paragraph (3) worded as follows: "The adaptation into any other artistic form of cinematographic production derived from literary, scientific or artistic works shall remain subject to the authorization of the author of the original work."

It also adopted paragraph (4) of the program text, the effect of which was to rule out the reservations and conditions referred to in Article 13(2) in respect of cinematographic adaptations. However, it expressed the wish that, in the interest of information, the subject matter of newsreels might be given a special mention favouring the application of national laws in the General Report of the Conference.

With regard to paragraph (5), the Sub-Committee decided in favour of retaining the text at present appearing under (4), at the same time indicating the interest of preserving the correlation between Article 14(5) and Article 11*bis*(1) of the program.

This brief entry instead of an excessively long commentary cannot of course give any idea of the protracted discussions that took place in the Sub-Committee, so masterfully presided over by our esteemed colleague Mr. Dantas, but is not the conciseness of the text in itself a tribute paid to the potency of the law that it expresses?

The *droit de suite* is a conditional legacy left by the Rome Conference, which had subscribed to the principle advocated so eloquently by Jules Destrée in the form of Rome Resolution III.

This illustrates the value of the resolutions of our Conferences: they are in the nature of incubators for ideas that are liable to mature under the beneficial influence of this first stage of exposition and consideration. Since that time, the *droit de suite* has found its way into a number of national laws more or less inspired by the Belgian and French legislation, which dates back to 1920. We have thus taken cognizance of the Czechoslovak, Polish, Italian and Uruguayan laws, which are analyzed in the programme's explanatory memorandum. The delegates to this Conference have been kind enough to give a favorable reception to the work of our colleague Raymond Weiss, one of the first advocates of the *droit de suite*, and also to the remarkable work by Mr. Duchemin, who has condensed the lessons of experience and general documentation into a vast tableau which cannot be improved upon. The discussions have revealed some very judicious reservations and observations by the honourable United Kingdom Delegate, Mr. Crewe: far from putting up opposition on principle, he has perhaps presented criticism that is worthy of consideration. The same is true of Sweden. The Delegates of Portugal, Czechoslovakia, Italy, Belgium and Hungary gave their support, which made it possible to draw up a text that states the principle in its paragraph (1), and reserves the area of national legislation in paragraphs (2) and (3), and also the conditions of reciprocity.

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The careful drafting of Article 14*bis*, which asserts, in favor of the author or the persons or institutions that succeed him, an inalienable right to an interest in any sale of the work subsequent to its first disposal, thus strikes us as having rather the function of a magnet: the future will show whether in fact it has exerted its attractive force on national legislation.

The Conference was willing to adopt almost without discussion the proposal made by France for Article 15, asserting that the protection of the author's right to the recognition of his name is applicable even if that name is a pseudonym, provided that it leaves no doubt as to his identity.

Paragraph (2) acknowledges that the publisher may be regarded as representing the author in respect of anonymous works and works of unknown pseudonymous authors.

The matters dealt with in Articles 16, 17 and 18 of the Convention did not give rise to any comment.

The Rome texts are thus adopted without change.

Relations Between the Convention and National Legislation

Article 19 is one of the most important in terms of the general theory of the Convention. It has been mentioned that a doubt had subsisted at the Berlin Conference regarding the extent of the right conferred by Article 19. As Louis Renault, our distinguished predecessor, had said that the Union Convention constituted a minimum of protection, that implied that authors were entiled to claim the benefits of national legislation in various countries, even if that legislation was more favourable than the text of the Convention; and that indeed is still our way of thinking, based on the assumption that the national law in question would be at a more advanced stage of development than the text of the Convention.

Authors will have the benefit of national laws, but, when the Berlin texts were drafted, instead of referring to national laws purely and simply, they read "by legislation in a country of the Union in favour of foreigners in general." It could be believed that authors were only allowed to claim; under the domestic law of a given country, those provisions concerning foreigners that were more favourable than the text of the Convention. Clearly this would be at variance with Article 4 of the Convention: in that Article, as you know, all foreigners are eligible for the enjoyment of rights in all the countries party to the Convention. In order to align Article 19, in its final form, with Article 4, it has to be said that the minimum of protection consists in the author being allowed to claim, in every country of the Union, not only all rights under the Convention, but also the advantages of domestic laws in general, whatever those laws may be, and whether they apply to nationals or to foreigners.

Thus, by means of the deletion that you are going to make in Article 19, you will of course be according to all authors the benefits of Convention law, which is the very basis of this Union, and at the same time you will be recognizing in their favour the internal applicability of all domestic laws in so far as they are more advantageous than the provisions of the Convention. This is subject to the principles that will constitute the very substance of the Convention. In this way we achieve the harmonization of the whole structure of Article 19 with the principle, stated in Article 4, of the entitlement of foreigners to equivalent rights.

Reservation of Special Agreements;
Status of the Bureau, Language of the Bureau and Responsibilities of the Bureau;
Unanimity Clause

Articles 20, which reserves the right to enter into special agreements, 21, which gives the Bureau of the International Union, whose official language is French, its vocation, and 22, which specifies its responsibilities, have not undergone any change. The Berlin text as confirmed at Rome is once again retained.

Article 23, which governs the expenses of the International Bureau, gave rise to a discussion whose terms were to be expected on account of the circular already distributed by the Bureau, which received a telling response from Delegations.

As the United Kingdom Delegate has not insisted on the outlined principle of the equal distribution of expenses, we shall therefore be provisionally retaining the system of proportional distribution.

The expenses of the Bureau have amounted to 120,000 gold francs per annum.

I take this opportunity to say that the Berne Bureau has always been extremely frugal in its use of public funds; it seems to have lived up to the vocation of such an institution, and has never failed to show impartiality; its has always concerned itself with informing all contracting countries as much and as amply as possible. We express the wish that it may remain true to these salutary rules, and we ask the Swiss Government to take such action as may be necessary for the Bureau and its staff to be treated, notably with respect to their status and employment conditions, according to standards comparable to those applied to the other Unions; the Swiss Delegation has declared that its Government is prepared to accede to this wish, on condition that States members of the Paris Union but not of the Berne Union also declare their agreement, and that the taxation status of Swiss officials of the Bureau remains reserved.

The program proposed replacing the unanimity rule for changes to be made to the Convention with a 5/6 majority rule, in the light of the example set by the Pan-American Conference of Washington held in June 1946, which seems to have been obsessed with the risk of the veto right being exercised. Czechoslovakia, Poland

and Hungary declared their loyalty to the unanimity principle. The Hungarian Delegation gave as its reason the fact that, for those States, relegation to a minority position could affect their very adherence to the Convention, and that therefore the unanimity principle was a guarantee against its disintegration. The Bureau withdrew its proposal.

In addition to the traditional arguments that may be put forward in favour of the unanimity rule, it should be mentioned here that the Union Convention is more of a legislative treaty than a contractual treaty.

Moreover, following the adoption of Article 2(4), there is a possibility for all countries of deriving direct copyright protection from the Convention. We are experiencing the formation of a body of treaty law equivalent to domestic law, which will be acquiring growing importance. Clearly unanimity is called for, over and above any other reasons, between those States that accept this new source of legislation.

Rights of Accession

Article 25 remains unchanged in relation to the Berlin text as confirmed at Rome.

Conditions Governing Territories Under Trusteeship and Special Regimes

Article 26, which gives States the possibility of informing the Swiss Goverment in writing of the application of the Convention to colonies, protectorates and territories under special regimes, naturally called for amendments as a result of the observations of the Delegate of the United Kingdom.

Those amendments have been incorporated, due account having been taken of the requests made and of the style used in the United Nations Charter in 1945.

Substitution of the Brussels Act for the Berne Convention

Article 27, which is concerned with a matter of form, is an abridgement in relation to the Rome text.

It establishes the replacement of the original Berne Convention and the successive Acts that revised it by the Brussels Act in relations among those countries that have ratified the latter Act.

The previous Acts will remain in force among countries that do not ratify the present Act.

Clause Concerning International Jurisdiction; Languages of the Convention

The new Article 27*bis* introduces a clause concerning international jurisdiction for the interpretation or application of the Convention in the event of a dispute arising between two or more countries.

This text is the end result of a long doctrinal campaign, marked at various stages by proposals of the same kind, submitted to the 1925 Conference of The Hague on industrial property protection, and to the 1928 Rome Conference. Those proposals came from the International Institute of Intellectual Cooperation, and also from the Norwegian Delegation, and they were already supported by Mr. Raymond Weiss, who became the zealous advocate of this extension of international justice in the field of the Unions concerned. The proposal was repeated at the 1934 London Conference.

The present proposal is due to the initiative of the Swedish Delegation, which kindly invited the French Delegation to make a combined effort with it. A number of other delegations gave it enthusiastic support.

The competence of the International Court of Justice and its procedure, governed by the Statute annexed to the United Nations Charter of June 26, 1945, is stated without being imposed. Contracting countries still have the option of arbitration or any other form of settlement.

The *res judicata* principle will continue to be respected.

The dispute will be circumscribed, and of course may only arise between such States as are acceptable to the International Court of Justice.

At the request of the Delegation of the Netherlands, expressed by its representative Mr. Bodenhausen, the International Bureau will be informed of the dispute, and will bring it to the notice of the other countries of the Union; this provision is in conformity with Articles 62 and 63 of the Statute of the International Court of Justice, which provides for spontaneous or instigated intervention. On a highly useful question that was raised by the honorable United Kingdom Delegate, Mr. Crewe, it was explained that the Court's decision could never embody any condemnation, but that it would confine itself to stating the law, whereupon, according to custom, it would be for States to draw the appropriate consequences through diplomatic or legislative channels, as they saw fit.

A new Article 31 has been inserted in the Convention, worded as follows:

"The official Acts of the Conferences shall be established in French. An equivalent text shall be established in English. In case of differences of opinion on the interpretation of the Acts, the French text shall always prevail. Any country or group of countries of the Union shall be entitled to have established by the International Bureau an authoritative text of the said Acts in the language of its choice, and by agreement with the Bureau. These texts shall be published in the Acts of the Conferences, and next to the French and English texts."

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(MARCEL PLAISANT)

The United Kingdom Delegation had three times asked, with the most pressing insistence, for the text of the Convention to be drawn up in French and in English, both texts being equally authentic. Its request was strongly supported by all the Dominions represented at the Conference. France could have asserted its 62 years of State possession and invoked the actual text of the Berne Convention, which had always been written in French as a single language throughout three revision conferences, in support of refusal to accept this substantive change which required unanimity.

In the interest of good international relations, it has chosen not to adopt an inflexible attitude, even though it regrets the loss of the single text, which was an unambiguous guarantee of general understanding for countries that speak all other languages and refer to the French language. Conscious of acting in the general interest, the French Delegation consented to the present solution only on condition that the French text continued to be authentic.

However, once the Conference had departed from the principle of the single language, it was only fair to provide the possibility of obtaining authorized texts of the Acts in other languages, some of which are still the most widely spoken and the richest in culture of the universe.

These texts are published in the records of the Conference, as annexes to the French and English texts, the term "authorized" meaning, for those texts other than the English and French ones, that they have authentic character in the countries to which they apply.

CONCLUSION

We do not think that it would be fair to compare the results achieved by the Brussels Conference with the amendments introduced by the Rome Conference. The old French saying, *"Comparaison n'est pas raison,"* has long been repeated: the times are not the same; morality has evolved, and indeed the maintenance of certain permanent positions is sometimes more commendable than certain advances.

However, confining ourselves to the visible record of amendments to the text of the Convention, we would point out the following:

The introduction of cinematographic and photographic works in Article 2(1); the promotion of works of applied art. These new forms of creation now grace the threshold of the Convention.

The rights in collections of works have been specified.

The mention of the successors in title of the author establishes their status.

The concept of publication is clarified in Article 4, as are the relations between publication, making available to the public and recording and between the right of reproduction and the right of performance, and the fact of their coming into being at the same time.

Direct protection has been written into the Convention, with all the prospects that it offers for the development of the general provisions of treaty law.

The scope and exercise of moral rights have been broadened.

The 50-year term is tending to establish itself more widely through the vicissitudes of comparison.

Posthumous works and anonymous and pseudonymous works are provided for.

The right of quotation and borrowing is given a cautious degree of licence. The new Article 10*bis* takes account of the needs of the press and news reporting.

The right of performance is stated in unambiguous terms.

The right of public recitation takes its place in Article 11*ter*.

Article 11*bis* has been completely reworked, as has Article 13: the relations of authors and composers with the broadcasting and mechanical reproduction industries are laid down in equitable terms.

The status of cinematography is specified.

The *droit de suite* makes its first appearance in the Convention in Article 14*bis*.

The principle of the minimum of protection is established, and allowance made in Article 19 for the possibility of broadening it.

Finally, the Convention now has a clause concerning international jurisdiction.

On closing his report after the 1908 Berlin Conference, my eminent predecessor Louis Renault declared himself pleased, on behalf of his colleagues, to have remained true to the spirit of his predecessors.

I shall certainly not boast of having done the same thing, and indeed, in absolute terms, it is perhaps not desirable to do so.

In international law more than in any other law, it is important to reconcile the inner voice of tradition with the urge for movement, but, when it is a question of writing a law that suits such a variety of peoples, whose mentalities are all equally respectable, one has above all to draw inspiration from the lessons of life.

For 20 years we have been witnessing such a prodigious development in inventions and the means of communicating thought that we are continually dismayed by the revolutionary achievements of science, and the unforeseeable forms that it is capable of imposing on intellectual exchanges.

At the same time our world, and most especially Europe, has undergone such profound political and social transformations as a result of this long war and its aftermath that we are powerless to imagine its configuration at any one time in a society caught up in a spate of development.

Our task was to ensure the protection of copyright at a time when books have been left far behind by electrical and mechanical means of exploitation and will be by still others that are germinating in future inventions.

This Conference has been above all the Conference of broadcasting, discs, cinema and artificial or natural screens.

Your great work is to have reconciled copyright, a spiritual concept, to these at once so powerful and so changeable material realities.

At another level you have had to make allowance for the arrival of new forces on the world stage.

The literary salons are closed; they have been closed by radio, by the screen, one might say by the operation of all these waves and their mysterious reflections; it is no longer just amateurs but whole peoples, avid crowds who want to drink at the fount of knowledge and are demanding a free place at the banquet. To this we should add that, in all States, communities are organizing themselves and information, teaching and even culture are starting to take on national—I hesitate to use the barbaric word "nationalized"—forms.

On a number of occasions you have been obliged to take these modern needs into consideration. It is to your credit that you have both understood them and kept them in proportion: it is in this respect, I think, that the Conference will be regarded by posterity as a success.

And yet, while acceding generously to these contemporary aspirations, you have at the same time remained the heirs to a tradition.

You have sensed that copyright is one of the manifestations of human rights and, having emerged from the turmoil, you have still wanted to ensure its protection through all its metamorphoses.

Those of us who have remained true to individualistic philosophy may regret these transformations, which are liable to alter the communication and interchange of ideas between civilized peoples.

Yet we would not be genuine humanists if, in spite of these obstacles and apprehensions, we were not concerned above all with safeguarding the dignity of mankind and ensuring that the most precious product of his intelligence shines forth to be reflected in the mirror of other men.

I should like to think that you have succeeded in doing this by virtue of that admirable feeling of international understanding that has so often enabled this Conference to rise above its own destiny and for which your latest servant has to give you credit, being as it is your supreme testimony to men, who come and go, and to ideas, which are immortal.

MARCEL PLAISANT

Member of the Institute

REPORTS BY THE SUB-COMMITTEES

Preliminary note: We are publishing first the reports by the three Sub-Committees set up at the beginning of the Conference and are observing in this regard the chronological order of their creation. Then come the reports by the Sub-Committees set up during the debates in the order of the articles of the Convention that they were asked to consider.

For the composition of the Sub-Committees, see pp. 88-89 above.

REPORT BY THE SUB-COMMITTEE ON PHOTOGRAPHY AND CINEMATOGRAPHY

(June 14, 1948)

I. PHOTOGRAPHY

1. *Principle of Protection*

The Sub-Committee decided unanimously in favour of the principle of protecting photographic works.

Referring to the decision taken in this regard by the General Committee, it notes that "photographic works and works produced by a process analogous to photography" should be inserted in the list in Article 2(1). This reference would be placed after "books, pamphlets and other writings."

The Sub-Committee discussed whether it should be specified in the text that only photographic works having the character of personal creations were protected.

There was doubt as to the appropriateness of such a step, and no agreement could be reached. It was not that the idea thus expressed was incorrect, but it seemed that a criterion which applied to all the productions governed by the Convention should not be mentioned in connection with a particular category of works such as photographic works.

That being the case, the question arose as to whether it was not advisable to define a literary or artistic work in explicit terms, by means of a general provision. In the face of opposition from the *United Kingdom* Delegate, who observed that such a provision could lead to discrimination between works according to their merit, which would be contrary to the spirit of the Convention, the Sub-Committee preferred to let the General Committee decide on this point.

The decision to mention photographic works in Article 2(1) means deleting the present Article 3.

This was the conclusion eventually reached by the Sub-Committee, subject to observations presented notably by the *Czechoslovak* and *Italian* Delegates to the effect that national legislation should be left to fix the conditions under which news photographs would be protected.

2. *Term of Protection*

Faced with the impossibility of achieving agreement on a uniform duration—even a minimum one—the Sub-Committee is proposing that the present text of Article 7(3) be maintained in so far as it concerns photographic works or those obtained by a process analogous to photography.

II. CINEMATOGRAPHY

1. *Principle of Protection*

The Sub-Committee unanimously adopted the principle of protecting cinematographic works.

It refers, in this respect, to the General Committee's decision to include cinematographic works in the list in Article 2(1).

The principle of protection being thus established, the Sub-Committee wondered whether a distinction should be made between cinematographic works or whether, on the contrary, the words placed between brackets in the text of the programme, "with the exception of those governed by Article 14(3)," should be deleted.

From the discussion it emerged that agreement had been reached on the deletion of the words although no formal decision had been taken.

However, having been taken up again when Article 14(3) was considered, the question remained open, following the objections expressed by the *Czechoslovak* and *Italian* Delegations, which wanted to make the protection system for news films subject to national legislation.

2. *Scope of Protection*

This is the subject matter of Article 14.

As regards the first paragraph, the Sub-Committee adopted the text proposed in the programme subject to the following amendment:

(1) "the cinematographic adaptation of these works *and* the distribution of the works thus adapted";

(2) "the public presentation and performance of the works thus adapted."

In view of the impossibility of defining the author of a cinematographic work and the need to protect the original work, the Sub-Committee is proposing the replacement of paragraph (2) of the programme text by paragraph (3) of the present text.

As regards the programme's paragraph (3), the Sub-Committee was confronted with four solutions, but no agreement was reached on any of them:

— the first, presented by the *French* Delegation, was purely and simply to delete the programme's paragraph (3);

— the second, from the *Czechoslovak* Delegation, also entailed deletion of the paragraph subject to the artistic or literary character of the protected work being specified in one of the Convention's initial articles;

— the third, presented subsidiarily by the same Delegation and supported by the *Italian* Delegation, left it to domestic legislation to determine the protection of cinematographic *productions* which do not have the character of a cinematographic *work*;

— finally, the fourth was similar to the text of the programme's paragraph (3), but proposed improving its wording either by replacing *in initio* the word "work" by the word "production" or by adopting a new text worded as follows: "if the cinematographic production consists only of a series of photographs not presenting the character of a cinematographic work, it shall enjoy the protection afforded to photographic works."

The *United Kingdom* Delegate requested formal acknowledgement of his declaration, supported by *France*, that the time had come—in view of the film industry's progress—to treat all cinematographic productions on an equal footing, without establishing any discrimination whatsoever, as regards both the nature and the term of protection.

The Sub-Committee subscribed to the *French* proposal concerning a new paragraph (3) worded as follows: "The adaptation to any other artistic form of cinematographic productions made from literary, scientific or artistic works shall remain subject to the authorization of the author of the original work."

It also adopted paragraph (4) of the programme text to exclude, in respect of cinematographic productions, the reservations and conditions under Article 13(2). However, it expressed the wish that, for information purposes, a special reference be made to news films in the Conference's General Report in favour of the application of national laws.[1]

With regard to paragraph (5), the Sub-Committee decided in favour of maintaining the present text, appearing under No. 4, while indicating the interest there was in maintaining concordance between Article 14(5) and Article 11*bis*(1) of the programme.

The new paragraph (6) proposed by *Italy* was rejected.

However, the Sub-Committee expressed the desire that the *Italian* proposal be considered within the context of Article 6*bis*.

Another proposal from *Italy* concerning a new paragraph (7) as well as a *United Kingdom* proposal relating to it, presented in connection with paragraph (2) and concerning the right of the owner of the original negative, did not win unanimous endorsement from the Sub-Committee, which did nevertheless express the opinion that these proposals could usefully be discussed in connection with the examination of Article 15.

3. *Term of Protection*

As it was unable to decide unanimously in favour of a uniform term of protection, the Sub-Committee agreed to the *United Kingdom* proposal in so far as it concerned the establishment of the period's starting point, i.e. the date of completion of the original negative, the duration itself being fixed by national law subject to the principle of the comparison of the periods.

Consequently, the Sub-Committee adopted the programme text in so far as it concerned cinematographic works, but completed it with a provision which the *Czechoslovak* Delegation expressed in the following terms: "the period of protection shall begin to run from the date of completion of the original negative of the film."

[1] See General Report, p. 101.

CONFERENCE IN BRUSSELS, 1948 — REPORTS BY THE SUB-COMMITTEES

REPORT BY THE SUB-COMMITTEE ON BROADCASTING AND MECHANICAL INSTRUMENTS

A. REPORT BY THE CHAIRMAN OF THE SUB-COMMITTEE ON BROADCASTING AND MECHANICAL INSTRUMENTS

(June 13, 1948)

The Sub-Committee held its meetings on June 7, 8, 9, 10, 11, 12 and 14, 1948. It dealt with Articles 11*bis*, 13 and 13*bis* of the program.

ARTICLE 11*bis*
BROADCASTING RIGHT

The Sub-Committee unanimously considered that the exclusive right granted to authors by the Rome Conference "of authorizing the communication of their works to the public by broadcasting" should remain inviolable.

However it considered, as did the programme, that it was preferable to refer more concisely to the right of authorizing broadcasting in order to indicate clearly that only the emission was determinative, to the exclusion of reception and listening or viewing.

Whereas the programme also includes television in the term "broadcasting" (argument Article 11*bis*(1)(iii) and Article 11*bis*(3) concerning the transmission and fixation of images), the Sub-Committee decided unanimously in favour of television being mentioned separately in Article 11*bis*(1)(i), either by using the technical term itself or by adopting a general expression. On the latter lines, the *French* proposal in particular, which refers to authors' exclusive right of authorizing "the broadcasting of their works or the communication thereof to the public by any other means of diffusion of signs, sounds and images," caught the Sub-Committee's attention; this text might, if the case were to arise, prove more provident than the Conference in a field in which technology could hold surprises in store for us. The Drafting Committee will have to choose. If it decides in favour of the *French* proposal, the use of the word "communication" will not in any way imply the need for reception or for listening or viewing, any more than it would imply it in the Rome text (idem with regard to Article 11*bis*(1)(ii) and (iii) in the Sub-Committee's text).

Needless to say, in the rest of Article 11*bis*(1), the "broadcast of the work" should be understood not only as the work broadcast in the strict sense which Article 11*bis*(1)(i) gives to the term broadcasting, but also the work which has been communicated to the public by any other means of diffusion of signs, sounds and images, regardless of whether or not it is by wire.

The programme proposes that the authors of literary and artistic works be granted a second exclusive right: the right of authorizing "any new communication to the public, whether by wire or not," of the broadcast of the work. It thinks it thus resolves satisfactorily the problem of subsequent uses of the original broadcast. According to the explanatory memorandum prepared by the Belgian authorities and the Bureau of the Union, any broadcast aimed at a new circle of listeners or viewers, whether by means of a new emission over the air or by means of a transmission by wire, must be regarded as a new act of broadcasting, and as such subject to the author's specific authorization. The Sub-Committee considered that this criterion did not emerge with the desired clarity from the proposed text and moreover that it was far too vague; it felt that a mere change in the means of emission or transmission should not entail the need for a further authorization. Consequently, the majority (12 votes to six) decided in favour of a *Belgian* proposal presupposing the intervention of a body other than the original one as a condition for the requirement of a new authorization. A *French* proposal which sought to require the author's specific authorization for any "communication to the public," whether by wire or not, of the broadcast of the work, when that communication went beyond the framework of the terms of the original contract, was rejected by 13 votes to five. But of course, despite this rejection, the application of the *clausula rebus sic stantibus* principle in the contractual relations between author and broadcasting organizations continues to be reserved as long as national legislation or case law accepts such a principle.

A *Czechoslovak* proposal to exclude television from the application of Article 11*bis*(1)(ii) was withdrawn.

The third exclusive right in favour of authors recognized by the programme in relation to broadcasting, namely the right of authorizing "the communication to the public by loudspeaker or any other similar instrument transmitting, by sounds or images, the broadcast of the work" (signs ought to be mentioned with sounds and images), did not meet with any serious opposition within the Sub-Committee. However, some Delegations (*Hungary, Monaco, Netherlands*) would have liked to introduce limitations on this right *jure conventionis* by excluding it either when the loudspeaker or other transmitting instrument is not used for financial gain (*the*

Netherlands and *Monaco*), or when it is used "within a family or domestic circle or for the purposes of teaching in schools" (*Hungary*). But these Delegations declared themselves satisfied when, as we shall see, the Sub-Committee decided, in connection with Article 11*bis*(2), in favour of allowing national legislation to determine the conditions under which the right granted in Article 11*bis*(1)(iii) may be exercised.

A *French* proposal to add a provision to the first paragraph of Article 11*bis* whereby authorization to exploit the work by one of the means indicated in the first paragraph of Article 11*bis* would not have implied authorization to use one or other of these means, was not accepted by the Sub-Committee; the latter considered, generally speaking, that it was not for the Union Convention to set rules for the interpretation of the contracts which authors entered into with their assignees. The Sub-Committee did, however, recognize that, in the case in point, the rule of interpretation proposed by *France* was sound and judicious.

Monaco's Delegation would have liked the Convention itself to place a limitation on the exclusive right granted authors in Article 11*bis*(1)(i) by introducing a compulsory licence in favour of the broadcasting organizations for works which had been accessible to the public for over a year; this compulsory licence would not have been prejudicial to the moral right or to the author's right to obtain equitable remuneration, to be fixed, in the absence of agreement, by the competent authority. The Sub-Committee rejected this proposal by 15 votes to two with three abstentions as too dangerously prejudicial to authors' copyright.

On the other hand, the Sub-Committee failed to decide to follow the *French* Delegation, which would have liked to delete the reservation in favour of national legislation in Article 11*bis*. On the contrary, departing from the programme and conforming to the desire expressed by numerous countries (*Austria*, *Czechoslovakia*, *Hungary*, *Italy*, *Luxembourg*, *Monaco*, *Netherlands*, *New Zealand*, *Poland*, *Switzerland*, *United Kingdom*), it considered that the right in Article 11*bis*(1)(iii) should also be subject to the reservation in paragraph (2). Reference was made in this regard to the important role that loudspeakers played in the countries which had suffered destruction in the war.

The Sub-Committee departed from the programme on another point by providing that the reservations in paragraph (2) could also apply to the right to authorize television broadcasting (hence the deletion of the words "as to literary and musical works" in paragraph (2)). This is a new field, little known still, in which Governments wish to retain some freedom of action.

However, it goes without saying that, as in the Rome text, the conditions of exercise laid down by national legislation will be strictly limited to the country which has laid them down and will in no circumstances be prejudicial to the author's moral rights, or to his right to receive equitable remuneration to be fixed, in the absence of agreement, by the competent authority.

The programme suggests that a third paragraph might be added to Article 11*bis* whereby the authorization to broadcast would not imply, *in dubio*, that of recording the broadcast work on records or tapes. This was one of the most debated provisions. During the preparatory work, *Austria*, *Norway* and *Finland* had requested its deletion; *Monaco* and *the Netherlands* had gone further by proposing that the requirement of the author's authorization for recordings intended solely for the needs of broadcasting should be excluded *jure conventionis*. *Poland*, *Switzerland*, *Hungary* and *Italy* had suggested intermediate solutions. After a detailed discussion, the Sub-Committee found itself faced with four solutions:

— a *Dutch* proposal, which took up a proposal made by *Switzerland* in 1935, consisting in adding the following phrase to the programme's paragraph (3): "The latter authorization shall not be required in respect of recordings made by a broadcasting organization and intended exclusively for their subsequent broadcast";

— a new *Swiss* proposal consisting in replacing the programme's paragraph (3) with the following text: "The authorization granted in accordance with the first paragraph shall imply, for the organization which has obtained it, the right to record the work by means of instruments recording sounds or images if, for technical or timing reasons, the broadcast of the work has to be delayed; in such a case, the aforesaid instrument must be destroyed or rendered unsuitable for any further use once it has served to broadcast the work within the framework of a single programme."

— a proposal from *France* and the *United Kingdom* simply to approve the programme's paragraph (3);

— a proposal by *Denmark* to delete the same paragraph (3).

The *Dutch* proposal was rejected by nine votes to six with three abstentions; the *Swiss* one by ten votes to four with four abstentions; that of *France* and the *United Kingdom* by nine votes to three with six abstentions. It was thus the solution defended by *Denmark* which prevailed.

The *Dutch* Delegation declared that its attitude towards Articles 11*bis* and 13 of the revised Convention depended on the solution adopted for this problem.

Efforts should continue, in the General Committee, to reach agreement on a compromise solution. The great difficulty is to find the demarcation line between a recording of a transitory nature for the purposes of a broadcast which is simply delayed, on the one hand, and a lasting recording, on the other: the *Swiss* attempt in this direction was not successful as the *Swiss* proposal, in the view of the majority of the Sub-Committee, entangled itself in a detailed regulation which did not seem to have its place in the Convention.

CONFERENCE IN BRUSSELS, 1948 — REPORTS BY THE SUB-COMMITTEES

On behalf of the Nordic countries, *Denmark* drew the Sub-Committee's attention to the fact that the new inter-Nordic draft Bill provides that a musical or literary work may be freely performed in church services or elsewhere for religious education, provided that the people listening are admitted free of charge. The Sub-Committee thought that the General Committee should discuss the question raised by this regulation in connection with Article 11.

The *French* Delegation did not insist on its proposals concerning the broadcasting of works published by the press and the broadcasting of translated works. As regards the latter, the Sub-Committee considered that the protection of translations resulted from the general principles of the Convention (Article 2(2)).

Mechanical Rights (Musical Works)

First of all, the Union Convention grants the authors of musical works the exclusive right to authorize "the adaptation of those works to instruments which can reproduce them mechanically." The Sub-Committee is proposing to replace the word "adaptation" with the word "recording" so as to avoid the word "adaptation" being used with several meanings in the text of the Convention (cf. Articles 2(2) and 12). The Sub-Committee is of the view that it is pointless to add, as the programme proposes, the phrase "or any adaptation of those works to such instruments" to the word "recording"; it is true that recording sometimes implies adapting the work, but the original author's right in his relations with the adapter is sufficiently guaranteed by the general provisions of the Convention (Article 12 in relation to Article 2(2)).

The programme proposes granting the authors of musical works, under Article 13(1)(ii), the exclusive right of authorizing the "distribution" of the instruments on which such works have been recorded. This innovation met with a certain amount of opposition. In short, the Sub-Committee found itself faced with two proposals:

1. a *Swiss* proposal to combine subparagraphs (i) and (ii) of Article 13(1), and to state in subparagraph (i) that "the recording of such works by instruments capable of reproducing them mechanically and the distribution of those instruments" (by analogy with what the Cinematography and Photography Sub-Committee decided in respect of Article 14);

2. a *Czechoslovak* proposal to delete subparagraph (ii) of Article 13(1).

The *Swiss* proposal obtained ten votes against four given to the *Czechoslovak* proposal, with four abstentions.

The majority of the Sub-Committee thought it should be indicated that, in the normal course of events, authorization was given for the recording with a view to its sale, but that the author might have a legitimate interest in dissociating the authorization to record from the authorization to distribute (concession to distribute records for a given territory only, etc.).

The maintenance of the author's exclusive right to authorize public performances by means of recordings did not give rise to any difficulties.

The proposal from *Austria* and *Germany* that the right to authorize the broadcasting of his works by means of recordings be added to the list of the author's exclusive rights was withdrawn, as was *Monaco's* proposal that, on the contrary, the authorization to broadcast should cover the use, for the purposes of transmission, of instruments capable of reproducing sounds and images mechanically. The Sub-Committee did not wish to prejudge the disagreements which apparently existed in this regard in several countries of the Union on account of national legislation.

The *United Kingdom* proposal in favour of the manufacturers of mechanical musical instruments was likewise withdrawn, the *United Kingdom* Delegation reserving the possibility of proposing to the Conference that it either express a wish in favour of recognizing this right—related to copyright—or make it the subject of an Additional Act.

The interpretative rule suggested by the programme in the last two sentences of Article 13(1) met with the same fate, and for the same reasons, as the one proposed by *France* in Article 11*bis*.

With regard to the reservations and conditions in Article 13(2), the Sub-Committee decided to continue to permit them, contrary to *France's* proposal; it even decided, contrary to the programme, that the reservations and conditions could also affect the exclusive right under Article 13(1)(ii) (public performance). However, the Sub-Committee, following the *United Kingdom* delegation, thought it should be specified here not only that the effect of the reservations and conditions would be strictly limited to the countries which had put them in force, but also, as in Article 11*bis*(2) that they would not, in any circumstances, be prejudicial to the author's right to obtain just remuneration, to be fixed, in the absence of agreement, by the competent authority. Thus the reservations and conditions cannot completely negate one of the rights granted authors under Article 13(1). The Sub-Committee considered that the reservation in respect of moral rights went without saying, and that it was not necessary to include it expressly as in Article 11*bis*(2).

The third paragraph of Article 13 was not amended by the Sub-Committee. *Austria* withdrew its proposal to the effect that the non-retroactivity should not exist *jure conventionis*, but only in accordance with national legislation, reserved in this regard by the Convention. The *French* proposal according to which "The provisions of paragraph (1) shall not be retroactive; consequently, they may not be asserted in a country of the Union against manufacturers or their successors in title in respect

of any recordings or adaptations of works to mechanical instruments which were lawfully made by such manufacturers or their successors in title before the entry into force of the Convention signed at Berlin on November 13, 1908, and, in the case of a country having acceded to the Union since that date or acceding to it in the future, before the date of its accession," gave rise to interpretation difficulties with regard to the position of manufacturers who made recordings between the date mentioned in the text and that of the entry into force of the Convention to be signed at Brussels or of the relevant country's accession to it; several delegations thought it prejudicial to the rights which were considered to be established by virtue of their national legislation. *France* reserved the possibility of taking the matter up again before the General Committee.

ARTICLE 13*bis*

MECHANICAL RIGHTS (LITERARY WORKS)

The Sub-Committee was unanimously in favour of introducing a new Article in the Convention concerning the recording of literary works but excluding them from the possibility of the reservations and conditions under Article 13(2).

On a proposal by the *United Kingdom*, however, it decided by a very large majority (12 votes to two, with one abstention) to introduce an exception concerning mixed works. When text is combined with music in such a way that the two elements form the work together, the Sub-Committee was of the view that national legislation should be reserved the possibility of having the same situation apply to the words as to the music.

As for the transitional provisions, the programme proposes, in Article 13*bis*, a simple reference to paragraphs (3) and (4) of Article 13. The Sub-Committee agreed with the *Austrian* and *Swiss* Delegations that it ought to be pointed out, in any event, that the date of the entry into force of the Berlin Act or of a country's accession to it should be replaced, as regards Article 13*bis*, by the date of the entry into force of the Brussels Act or of a country's accession to it. The Rapporteur considers, however, that this question—which was examined somewhat hurriedly by the Sub-Committee because of the necessities of the programme—should be studied attentively by the General Committee: before Berlin, the recording of musical works was lawful; before Brussels, the recording of literary works was not; as far as literary works are concerned, Article 13*bis* merely confirms a rule which follows from the general principles of the Union Convention; under these circumstances, it will perhaps be possible to delete any transitional provision in Article 13*bis*.

P. BOLLA

Chairman

N.B. Lack of time made it impossible to submit this report first to the Sub-Committee.

B. TEXTS PROPOSED BY THE SUB-COMMITTEE ON BROADCASTING AND MECHANICAL INSTRUMENTS

(June 15, 1948)

ARTICLE 11*bis*

(1) Authors of literary and artistic works shall have the exclusive right of authorizing: (i) the broadcasting of their works or the communication thereof to the public by any other means of diffusion of signs, sounds or images; (ii) any communication to the public, by wire or wireless means, of the broadcast of the work, when this communication is made by an organization other than the original one; (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain just remuneration which, in the absence of agreement, shall be fixed by the competent authority.

ARTICLE 13

(1) Authors of musical works shall have the exclusive right of authorizing: (i) the recording of such works by instruments capable of reproducing them mechanically, and the distribution of those instruments; (ii) the public performance by means of such instruments of works thus recorded.

(2) Reservations and conditions relating to the application of the rights mentioned in the preceding paragraph may be determined by legislation in each country, in so far as it may be concerned; but all such reservations and conditions shall apply only in the countries which have prescribed them and shall not, in any circumstances, be prejudicial to the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by the competent authority.

(3) The provisions of paragraph (1) shall not be retroactive, and consequently shall not be applicable in a country of the Union to works which, in that country, may have been lawfully adapted to mechanical instruments before the coming into force of the Convention signed at Berlin on November 13, 1908, and in the case of a country which has acceded to the Convention since that date, or accedes to it in the future, before the date of its accession.

(4) Recordings made in accordance with paragraphs (2) and (3) of this Article, and imported without permission from the parties concerned into a country where they are not lawful, shall be liable to seizure.

ARTICLE 13*bis*

(1) The authors of literary works shall have the same exclusive rights as those granted to authors of musical works by paragraph (1) of the preceding Article.

(2) Nevertheless, when a work comprises words and music forming an inseparable whole, paragraph (2) of the preceding Article shall also apply to the literary work.

(3) Paragraphs (3) and (4) of the preceding Article shall apply by analogy; however, the date of the coming into force of this Convention and, in the case of a country which has acceded to the Union since that date, or accedes to it in the future, the date of its accession shall apply instead of the date indicated in the aforesaid paragraph (3).

C. TEXTS PROPOSED BY THE SUB-COMMITTEE ON BROADCASTING AND MECHANICAL INSTRUMENTS

(June 17, 1948, first edition)

ARTICLE 11*bis*(3)

In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast.

It shall, however, be a matter for national legislation to determine the regulations for recordings carried out by a broadcasting organization by means of its own facilities, and for the sole purpose of its recorded broadcasts.

D. TEXTS PROPOSED BY THE SUB-COMMITTEE ON BROADCASTING AND MECHANICAL INSTRUMENTS

(June 17, 1948, second edition)

ARTICLE 11*bis*(3)

It shall be a matter for national legislation to determine the regulations for recordings carried out by a broadcasting organization by means of its own facilities and for the sole purpose of its recorded broadcasts.

E. SUPPLEMENTARY REPORT BY THE CHAIRMAN OF THE SUB-COMMITTEE ON BROADCASTING AND MECHANICAL INSTRUMENTS

(June 22, 1948)

As it had proved impossible to obtain the unanimous agreement of the Union States on the wording of Articles 11*bis*(3) and 13(2) as emerging from the

deliberations of the General Committee, the Chairman of the Sub-Committee convened the Delegations of the following States: *Belgium, Czechoslovakia, France, Italy, Monaco, Netherlands, Poland, Spain, United Kingdom.*

The *Italian* and *United Kingdom* Delegations could not take part as they were detained by other Conference discussions.

The Delegations present reached agreement on a proposal to the General Committee that it retain the wording of Article 13(2) as already adopted and word Article 11*bis*(3) as follows:

(3) In the absence of any contrary provision, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast.

It shall, however, be a matter for national legislation to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities.

P. BOLLA
Chairman

CONFERENCE IN BRUSSELS, 1948 — REPORTS BY THE SUB-COMMITTEES

REPORT BY THE CHAIRMAN OF THE APPLIED ART SUB-COMMITTEE

(June 18, 1948)

The Sub-Committee held its meetings on June 14, 16, 17 and 18, 1948.

It devoted its attention to examining paragraph (1) (items 1 and 4) of Article 2 of the Union Convention and the amendments to it proposed by the programme, as well as the text proposed by the programme consisting in the addition of a paragraph (4) to Article 2.

It came to the following conclusions:

ARTICLE 2
Paragraph (1)

(a) After the words "whatever may be the mode or form of its expression," add the words "the merit or the purpose" and after the words "(and) lithography," the words "and applied art."

(b) Replace the text of paragraph (4) of the present text of Article 2 by the following text:

"It shall be a matter for legislation to determine the relative conditions of protection and extent of application of their laws concerning works of applied art and industrial designs and models, subject to reciprocity as regards the conditions, extent, nature and term of protection."

(c) Delete the paragraph (4) proposed in the programme.

COMMENTS

(a) The programme envisaged adding the words "and of art applied to industrial purposes." The *United Kingdom* Delegation observed that this reference was too restrictive since art applied to other areas as well as to industry ought also to be envisaged. In view of this observation, the Sub-Committee thought that the addition "applied art" was preferable and should be adopted.

Moreover, the Sub-Committee deemed it preferable and simpler to delete paragraph (4) as proposed in the programme, and to insert the substance of that paragraph, i.e. the words "whatever may be the merit and the purpose," in the first paragraph of Article 2.

(b) While subscribing to the amendments provided for under (a) above, certain Delegations, notably those of *Italy* and the *United Kingdom*, asked for account to be taken of the situation obtaining in countries where productions of form only came within the scope of application of different laws that subjected works of applied art and industrial designs and models to different regulations.

Furthermore, the *French* Delegation insisted on the need to introduce the principle of reciprocity for the conditions, extent, nature and term of protection, with the just and equitable aim of applying, in Union countries, only such protection to the works concerned as was specified for those works in their countries of origin.

It was after an in-depth discussion that all the delegations taking part in the Sub-Committee's work agreed on the text reproduced above.

We should stress by way of conclusion that, although the addition of the word "purpose" was accepted unanimously in the text of Article 2(1), the *Italian* Delegation asked for a mention to be made in the General Report that, while it agreed to the addition of the word, it was because the text adopted by the Sub-Committee for paragraph (4) of Article 2 had the effect of allowing certain national laws to continue to exclude certain purposes under their copyright laws. That would allow the national provisions of that nature not to be in contradiction to the new text proposed for the Union Convention.

D. COPPIETERS DE GIBSON
Chairman

FIRST REPORT BY THE SUB-COMMITTEE ON ARTICLE 4(4)

(June 11, 1948)

ARTICLE 4

Paragraphs (1) and (2): present text.

Paragraph (3):

(3) The country of origin of the work shall be considered to be: (...) in the case of published works, the country of first publication or, in the case of works published simultaneously in several countries of the Union, the country whose legislation grants the shortest term of protection; in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin.

A work shall be considered as having been published simultaneously in several countries when it has been published in two or more countries within 30 days of its first publication.

Paragraph (4):

(4) For the purposes of Articles 4, 5 and 6, the expression "published works" means works copies of which have been issued and effectively made available to the public, whatever may be the means or the form of production of the copies. The performance of a dramatic or dramatico-musical work, or of a musical work, the public recitation of a literary work, the communication by telephone or the broadcasting of literary and artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

Paragraph (5):

(5) The country of origin shall be considered to be, in the case of unpublished works, the country to which the author belongs. However, in the case of works of architecture, or of graphic and three-dimensional art, forming part of a building, the country of the Union where these works have been built or incorporated in a building shall be considered as the country of origin.

CONFERENCE IN BRUSSELS, 1948 — REPORTS BY THE SUB-COMMITTEES

SECOND REPORT BY THE SUB-COMMITTEE ON ARTICLE 4(4)

(June 15, 1948)

As the Sub-Committee's first proposal met with some objections from the *United Kingdom* Delegation, the Sub-Committee reconsidered several questions. After contacting the Delegation in question, it now proposes the following texts for Article 4, paragraphs (3), (4) and (5):

Paragraph (3):

(3) The country of origin of the work shall be considered to be: (...) in the case of published works, the country of first publication or, in the case of works published simultaneously in several countries of the Union, the country whose legislation grants the least long term of protection; in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin.

A work shall be considered as having been published simultaneously in several countries which has been published in two or more countries within 30 days of its first publication.

Paragraph (4):

(4) For the purposes of Articles 4, 5 and 6, the expression "published works" means works copies of which have been issued and effectively made available to the public, whatever may be the means or the form of production of the copies. The performance of a dramatic or dramatico-musical work, or of a musical work, the public recitation of a literary work, the transmission or broadcasting of literary and artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

Paragraph (5):

(5) The country of origin shall be considered to be, in the case of unpublished works, the country to which the author belongs. However, in the case of works of architecture or of graphic and three-dimensional art forming part of a building, the country of the Union where these works have been built or incorporated in a building shall be considered as the country of origin.

REPORT BY THE SUB-COMMITTEE ON ARTICLE *6bis*

(June 19, 1948)

The Moral Rights Sub-Committee, created by the General Committee on June 11, met on June 14, 16 and 17.

It took into consideration the various proposals for amendment concerning Article *6bis* of the Union Convention presented either to the Berne Bureau for the purposes of the Brussels Conference or to the Conference itself in the course of the General Committee discussion.

It thought it appropriate to depart as little as possible from the text of the Convention in force, which had been ratified by the experience of the last 20 years, while acceding to the desire expressed by the *French* Delegation and several others to let national legislation develop the protection granted to authors' interests in connection with their moral rights, which interests are not economic in nature.

The Sub-Committee nevertheless considered that there was nothing to be gained by referring expressly in the text to spiritual, moral or personal interests, those being the various expressions proposed in this regard.

Indeed the *Portuguese* Delegation rightly observed that the term "spiritual interests" would be open to misunderstanding in certain countries where it had a religious significance.

Furthermore, the terms "moral interests" and "personal interests" would require a subsequent explanation which would not be easy to establish since, as the *Dutch* Delegation observed, it could not be a question here of interests relating to one particular work by the author, in view of the fact that those interests seemed adequately protected by the other expressions in the text, but of interests relating to his works as a whole. As they could not be accompanied by an explanation of that kind, the terms in question would come up against the objection raised by the *United Kingdom* Delegation, which found them too vague.

The above considerations led the Sub-Committee to accept a new *French* proposal to insert in the text in force a general reference to prejudice to the author's interests.

In addition to that insertion, the Sub-Committee thought it could recommend that the General Committee adopt an addition to the text to cover possible cases which did not strictly speaking constitute either a distortion, or a mutilation or an alteration of the work, but which were nonetheless actions prejudicial to the author's interests.

On the other hand, the overly broad idea of "use of the work which may have prejudicial effects" was rejected because of the *Czechoslovak* and *United Kingdom* Delegations' legitimate worries.

To coordinate better the first and second paragraphs of the present text, the Sub-Committee thought it should stress that the rights recognized in the first paragraph belonged to the author during his lifetime. It would have liked it to be possible to safeguard those same rights at least for the duration of the economic rights.

The *United Kingdom* Delegate objected, however, saying that in his country there were cases in which such protection was not guaranteed. Consequently, he could only agree to a solution which left each country sufficient freedom of assessment, as had been accepted for the *droit de suite* introduced in Article 14*bis*.

As for the matter of extending the rights beyond the expiry of the period established for the economic rights, it emerged from our discussions that certain delegations could not agree to such an extension being actually written into the Convention. Consequently, although sympathetic to the principle of the desired extension, the Sub-Committee did not feel it could endorse the proposals made to that effect.

It is for these various reasons that, in the text which the Sub-Committee is proposing to the General Committee for approval, the second paragraph comprises three sentences, each of which mentions the competence of national legislation. The first of those sentences concerns the duration and the transmissibility of moral rights after the author's death; in substance, the other two reproduce the provisions of paragraph (2) of the former text.

The Sub-Committee has the honour of submitting these proposals to the General Committee, and observes that all the decisions concerning them were taken unanimously, after mature reflection.

CONFERENCE IN BRUSSELS, 1948 — REPORTS BY THE SUB-COMMITTEES

ARTICLE *6bis*

Former text	*Proposed text*
(1) Independently of the author's economic rights, and even after transfer of the said rights, the author shall have the right to claim authorship of the work, as well as the right to object to any distortion, mutilation or other modification of the said work, which would be prejudicial to his honour or reputation.	(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right, during his lifetime, to claim authorship of the work, and to object to any distortion, mutilation or other modification of, or any other derogatory action in relation to, the said work, which would be prejudicial to his honour, his reputation or his interests as author.
(2) It shall be a matter for the national legislation of the countries of the Union to determine the conditions under which these rights shall be exercised. The means of redress for safeguarding these rights shall be governed by the legislation of the country where protection is claimed.	(2)*(a)* In so far as the legislation of the countries of the Union permits, the rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the said legislation. *(b)* It shall be a matter for the national legislation of the countries of the Union to determine the conditions under which the rights mentioned under *(a)* shall be exercised. *(c)* The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

REPORT BY THE SUB-COMMITTEE ON ARTICLES 11 AND 11*ter*

(June 18, 1948)

PROPOSED TEXT

ARTICLE 11(1)

"Authors of dramatic, dramatico-musical or musical works shall enjoy the exclusive right of authorizing:

(i) the public performance of their works;
(ii) the communication to the public of the said performance of their works by any means, the provisions of Article 11*bis* being reserved."

The other provisions of the Article in question remain unchanged in relation to the programme.

REPORT

The various delegations in this Sub-Committee formally declared that their agreement and hence unanimity on this text were subject to the condition that the following statement should appear in the general report: "The wording as now adopted in Article 11(1) makes no substantive change to the import of the text as it appears in the Berne Convention according to the Berlin and Rome revisions, given that certain exceptions admitted by some Union countries for clearly defined cases have no international import."[1]

Furthermore, it will be noted that no reference is made in the text presented above to the *Hungarian* proposal to add, after the words "musical works," the words "choreographic works and entertainments in dumb show," because the latter are included in the notion of the works to which the right of performance, with which this Article is concerned, applies.

ARTICLE 11*ter* (new)

The new Article 11*ter* was also accepted on the sole condition that a similar declaration would be made concerning it in the general report.

Mutatis mutandis the following text would be proposed for the declaration:

"Those countries which insisted on the inclusion of the above statement concerning Article 11(1) in the general report also wish to be able to allow similar exceptions to the application of this Article in the same clearly defined cases, on the understanding that those exceptions will not have any international import."[2]

[1] See General Report, p. 100.
[2] See General Report, p. 102.

CONFERENCE IN BRUSSELS, 1948 — REPORTS BY THE SUB-COMMITTEES

REPORT BY THE SUB-COMMITTEE ON ARTICLE 14(3)

(June 19, 1948)

At the June 16 meeting of the General Committee, it was suggested that paragraph (3) of Article 14 as proposed in the programme be deleted, as it no longer had any purpose, the protection of cinematographic and photographic works being henceforward governed in exactly the same way.

The *Italian* Delegation intervened to request that the question of the freedom to reproduce literary and artistic works in connection with a news report be nevertheless settled in relation to cinematography.

It became clear that this question was of wider scope. It also concerned reporting by wireless broadcasting. The Sub-Committee is therefore proposing the deletion of Article 14(3), and the endorsement of a proposal by the *Nordic* and the *Benelux* countries that a new paragraph (4) be added to *Article 9*, on the grounds of a certain affinity of subject. The paragraph would run thus:

"It shall be a matter for legislation in the countries of the Union to determine the possibility of reproducing and presenting literary and artistic works to the public by recording sounds or images in connection with a photographic or cinematographic report, or a report by wireless broadcasting."

This proposal was not supported unanimously when it was presented, because certain delegations considered that it was a minor exception which would not have international implications. The Sub-Committee feels bound to observe that this attitude is debatable. The significant number of delegations which have looked into the question is in itself an indication of the interest it arouses. Then, especially as regards news films, it certainly cannot be said that the freedom to reproduce literary and artistic works is of purely national interest, since news films are very often exported.

Moreover, the Sub-Committee observes that Articles 9(3) and 10 include similar provisions in related spheres.

The Sub-Committee thinks therefore that this question should be regulated in the manner it proposes.

The Sub-Committee also considered the question whether it was necessary to introduce a special provision in the Convention concerning the question of films of current interest and news films. It does not consider that such a solution need be adopted, because the protection of cinematographic works provided for in Articles 2 and 14 is sufficient, given that current-interest films and news films generally possess the character of a work. It will be for the courts to settle this question *in concreto*.

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

RECORDS OF THE INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM

JUNE 11 to JULY 14, 1967

VOLUME II

Report

on the Work of Main Committee I (Substantive Provisions of the Berne Convention: Articles 1 to 20)

by

Svante BERGSTRÖM, Rapporteur
(Member of the Delegation of Sweden)

Introduction

1. The Plenary Assembly of the Berne Union, which met on June 12, 1967, under the chairmanship of Mr. Gordon Grant (United Kingdom), set up Main Committee I (hereinafter referred to as " the Committee ") with the task of considering the proposals for revising the substantive copyright provisions of the Berne Convention (Articles 1 to 20), with the exception, however, of the proposals for the establishment of an additional Protocol Regarding Developing Conntries, consideration of which, according to the Rules of Procedure of the Conference, came within the province of Main Committee II.

2. The Plenary Assemhly of the Berne Union agreed without opposition to the proposals put forward hy the Delegation of Sweden that a member of the Delegation of the Federal Republic of Germany be elected as Chairman of the Committee, that a member of the Delegation of Tunisia be elected as Vice-Chairman of the Committee, and that Professor Svante Bergström (Sweden) he elected as Rapporteur.

3. The Officers of the Committee were therefore the following: Professor Eugen Ulmer (Federal Republic of Germany), Chairman; Mr. Mustapha Fersi (Tunisia), Vice-Chairman; Professor Svante Bergström (Sweden), Rapporteur. In accordance witb Rule 19, paragraph (1), of the Rules of Procedure of the Conference, Mr. Claude Masouyé (BIRPI) was appointed Secretary of the Committee.

CONFERENCE IN STOCKHOLM, 1967 — REPORT ON THE WORK OF MAIN COMMITTEE I (SVANTE BERGSTRÖM)

4. The Committee elected a Drafting Committee, comprising, under the chairmanship of Mr. William Wallace (United Kingdom), representatives of the following countries: Australia (Mr. J.L. Curtis), Czechoslovakia (Mr. V. Strnad), France (Mr. Marcel Boutet), India (Mr. R. S. Gae), Mexico (Mr. Rojas y Benavides), Netherlands (Professor S. Gerhrandy), Rumania (Mr. T. Preda), Senegal (Mr. O. Goundiam), and Sweden (Professor S. Strömholm). The French representative pointed out that, in respect of those questions to which the Committee had adopted solutions not accepted by the French Delegation, bis participation in tbe work of the Drafting Committee did not imply approval of the texts prepared by that Committee. The same observation applied to the French participation in the Working Group mentioned under paragraph 7 below.

5. In the course of its discussions, the Committee deemed it advisable to set up Working Groups to make a detailed examination of certain matters of special importance. Four Working Groups were thus estahlished.

6. The first, under the chairmanship of Mr. De Sanctis (Italy), bad the task of studying the content of certain exceptions to the right of reproduction mentioned in Articles 9 (new paragraph (2)) and 10 (paragraph (2)). This Working Group consisted of representatives of the following countries: Austria, Czechoslovakia, France, Italy, Ivory Coast, Japan, Sweden, United Kingdom.

7. The second, under the chairmanship of Professor Ulmer (Federal Republic of Germany), was responsible for examining the régime of cinematographic works. This Working Group consisted of representatives of the following countries: Belgium, Brazil, Bulgaria, Congo (Kinshasa), Czechoslovakia, Denmark, France, Federal Republic of Germany, Italy, Japan, Monaco, Spain, Sweden, Switzerland, United Kingdom.

8. The third, under the chairmanship of Mr. Strnad (Czechoslovakia), was entrusted with consideration of the possibility of inserting in the Convention special provisions relating to folklore. This Working Group consisted of representatives of the following countries: Brazil, Congo (Brazzaville), Czechoslovakia, France, Greece, India, Ivory Coast, Monaco, Netherlands, Sweden, Tunisia, United Kingdom.

9. The fourth, under the chairmanship of Mr. Cavin (Switzerland), had the task of finding a formula specifying the conditions mentioned in Article 2^{bis}, paragraph (2). This Working Group consisted of representatives of the following countries: Bulgaria, France, Federal Repuhlic of Germany, Monaco, Sweden, Switzerland.

10. The Officers of the Committee attended, ex officio, the meetings of the Drafting Committee and of the four Working Groups.

11. The Committee decided to consider the proposals for revision in the following order, the numbers of the Articles referred to being those of the text submitted in the *Programme* document S/1):

(a) Articles 4, 5 and 6 (eligibility criteria, country of origin), with the exception of the provisions concerning cinematographic works;

(b) Articles 9 (right of reproduction), 10 (quotations), 10bis (current events);

(c) Article 2, paragraph (2), Article 4, paragraphs (4) and (6), Article 6, paragraph (2), Article 7, paragraph (2), Article 14 (régime of cinematographic works);

(d) Article 2, paragraph (1) (choreographic works); Article 2bis, paragraph (2) (reproduction of speeches by the press); Article 6bis (moral rights); Article 7 (term of protection); Article 7bis (works of joint authorship); Article 8 (right of translation); Article 11 (right of public performance); Article 11bis (right of broadcasting); Article 11ter (right of recitation); Article 13 ("mechanical" rights); Additional Protocols Regarding (i) Stateless Persons and Refugees, (ii) the Works of Certain International Organizations;

(e) proposals submitted with regard to other provisions of the Convention.

12. Having regard to the course of events during the Conference, this Report will follow a somewhat different order. Item *(a)* will be dealt with under I, item *(b)* under II, items *(d)* and *(e)*, in so far as they refer to Articles in the Convention, under III, and item *(c)* under IV. Part V deals with joint meetings with other Committees, and Part VI with the recommendations expressed by the Committee, miscellaneous proposals, and the Additional Protocols. The Articles and paragraphs in the headings refer, where possible, to the numbering in the *Programme* of the Conference, as this was the basis for the proposals submitted by the countries and for the discussion during the Conference. If the Articles and paragraphs have been numbered differently, however, in the draft finally adopted by the Committee, the corresponding Articles or paragraphs will be indicated in brackets.

13. It should first be mentioned that the Committee took a decision on a question of general import, affecting the Convention as a whole. It had been pointed out that the expression "literary, artistic, and scientific works" appeared in

some Articles, whereas only the adjectives "literary and artistic" were used in other Articles. Following a proposal by the United Kingdom, the Committee decided to delete the word "scientific" wherever it was used in the Convention to qualify works, considering that the use of different expressions in different places was liable to give rise to misunderstandings. It was thought sufficient that Article 2, paragraph (1), should give a general definition of the term "literary and artistic works" as including "every production in the literary, scientific and artistic domain."

14. Two general remarks seem justified here concerning the interpretation of the text of the Convention. The Drafting Committee was unanimous in adopting, in the drafting of new texts as well as in the revision of the wording of certain provisions, the principle *lex speciolis legi generoli derogot:* special texts are applicable, in their restricted domain, exclusive of texts that are universal in scope. For instance, it was considered superfluous to insert in Article 9, dealing with some general exceptions affecting authors' rights, express references to Articles 10, 10bis, 11bis and 13 establishing special exceptions. Similarly, Articles 11, 11ter, 14 and 14bis (new) do not refer to Article 11bis. On the other hand, it was thought advisable to insert such references in cases where exceptionally, the principle *lex specialis legi generoli derogot* is not applicable. Such a reference is to be found in Article 14(3), where reference is made to Article 13(1).

15. Secondly, the adoption of English as one the official languages of the Berne Convention (cf. paragraph 17 below) makes it necessary to clarify an expression appearing several times in the text: "*législation notionale*" ("national legislation"). According to the English view, which was adopted by the Drafting Committee, these words refer not only to statute law but also to common law.

16. The Committee based its discussions on the *Programme* presented in document S/1 (with the exception of the draft Protocol Regarding Developing Countries) and the proposed amendments submitted in accordance with Rule 33 of the Rules of Procedure of the Conference.

17. Lastly, it should be pointed out that, in accordance with a decision taken by Main Committee IV, the Berne Convention will henceforward have two official languages, English and French. Consequently, Main Committee I has also had to adopt an official text in English. In establishing the latter, the text contained in document S/1 and including a revision of the wording of the Brussels text prepared by a group of experts (document S/1, page 8) was used as a basis.

I. Eligibility Criteria and Country of Origin

(Articles 4, 5 and 6, or Articles 3 to 6) with the exception of the provisions concerning cinematographic works

18. Articles 4, 5 and 6 of the Brussels text deal essentially with two fundamental questions.

19. The first relates to eligibility criteria, that is to say criteria for the application of the Convention. The main criterion differs according to whether the work is published or not. If it is not published, the criterion is the nationality of the author: he is protected if he is a national of a country of the Union (Article 4(1)). If the work is published, the only criterion is that of first publication: the author is protected if he first publishes his work in a country of the Union, irrespective of whether he is a national of a country of the Union (Article 4(1)) or whether he is not (Article 6(2)).

20. The second question relates to the basic principles of the protection of a work under the Convention: the principles of national treatment and protection *jure conventionis*. In some cases the author enjoys both national treatment and *jus conventionis* (Article 4(1), Article 6(1)). In other cases he benefits only from national treatment (Article 5, Article 6(1)). In what is called the country of origin of the work, he may not be protected at all under the Convention (Article 4(1)).

21. In addition to these two questions, the Brussels text includes a definition of two concepts closely related to the above questions, namely, publication (Article 4(4)) and country of origin (Article 4(3) and (5)). Furthermore, it contains a provision excluding formalities as a condition for protection (Article 4(2)) and other provisions permitting countries in certain cases to take retaliatory measures against countries outside the Union (Article 6(2) to (4)).

22. The *Programme* of the Conference submitted proposals on the eligibility criteria and on the definitions of the concepts of publication and country of origin. No amendment was proposed regarding the principles of protection or the provisions contained in Article 4(2) and Article 6(2) to (4) of the Brussels text.

23. As Chairman of the Committee, Professor Ulmer proposed a new draft of Articles 4 to 6 (document S/44). A new Article 3 would indicate the main criteria for the application of the Convention, with the definition of the concept of publication. Article 4 would contain certain special criteria for the application of the Convention (cinematographic works and works of architecture). Article 5 would state the principles of

protection, with the definition of the concept of country of origin, and Article 6 would reproduce the special provisions already existing in Article 6(2) to (4).

24. The Committee approved the new presentation of Articles 4 to 6 in principle, but preferred to proceed according to the order adopted in the *Programme* of the Conference. This Report also follows that order.

Article 4(1) (Article 3(1)(o)) (Article 5(1))

25. The *Programme* proposed that the nationality of the author should be the general criterion for protection under the Convention. Protection would he granted to authors who were nationals of one of the countries of the Union, according to Article 4(1), not only for their unpnblished works but also for their works first puhlished inside or even outside the Union. The proposal in the *Programme* was adopted unanimonsly.

Article 4(2) (Article 3(2))

26. The *Progromme* proposed a new provision in Article 4(2) whereby authors who are not nationals of one of the countries of the Union hut are domiciled in one of tbem sball, for the purpose of the Convention, he assimilated to the nationals of that country.

27. The *Progromme* also proposed that an additional protocol should he adopted, enabling countries whicb so desire to assimilate to national authors stateless persons or refugees not domiciled hut having tbeir habitual residence in one of the countries of tbe Union.

28. After discussion, the Committee decided to adopt the proposal made hy several delegations that the term "domiciled" should he replaced hy the wider expression "having their habitual residence." The consequence of this decision would he that the proposed Additional Protocol concerning the Protection of the Works of Stateless Persons and Refugees would become superfluous. The Committee accordingly decided not to adopt that Protocol.

29. The question was raised as to when habitual residence should become a criterion for protection, as an autbor migbt change his habitual residence from time to time. This point mnst he determined hy tbe Courts in the conntry in which protection is claimed. It is prohable, however, that the decisive date will he the date when the work, without having been publisbed, was first made available to the puhlic. If at that date the author of tbe work has his habitual residence in a conntry

of the Union, he is protected in respect of his work under the Convention. If the work was first made available to the public hy an unauthorized person, the author can claim protection under the Convention against that unauthorized person, if he has his habitual residence in a conntry of tbe Union at that date.

30. It is obvious that the same prohlem may he raised — and solved in the same way — as regards the date when the author's nationality should become a criterion for protection; the nationality of the author may also change from time to time.

Article 4(3) (Article 5(2))

31. This provision corresponds to Article 4(2) of the Brussels text. No amendment was proposed in the *Progromme* and none was suhmitted during the Conference.

Article 4(4) (Article 5(4) and Article 3(4))

32. In the *Progromme*, it was proposed to combine paragraphs (3) and (5) of the Brussels text in a new paragraph (4) containing, in its first suhparagraph, the definition of tbe country of origin both for published works and for unpublished works and, in its second suhparagraph, a definition of the concept of simultaneous publication. It was merely proposed to make a few minor adjustments to the first suhparagraph and to draft the text accordingly.

33. According to the *Progromme*, the first criterion for country of origin should he, as in the Brussels text, the country of first publication and, in the event of simnltaneous publication in several countries of the Union, the country of which the legislation grants the shortest term of protection (*(o)*).

34. In the case of works puhlished simultaneously in a country outside the Union and in a country of the Union, the latter, according to the *Programme*, should he considered as the country of origin (*(b)*).

35. As regards unpuhlished works or works first puhlished in a country outside the Union, without simultaneous publication in a country of the Union, the general criterion, according to the *Programme*, should be the nationality of the author (*(c)*(iii)).

36. The *Progromme*, however, provided for two exceptions to this principle. The first relates to cinematographic works in respect of whicb the country of origin was considered to he the country of which the maker was a national or in which he had his domicile or headquarters (*(c)*(i)). Only in the absence of such a criterion would tbe nationality of the author be deci-

sive as regards the country of origin. In the same way, the country where a work of architecture and some other works of the same nature were erected or affixed to land or to a hnilding would be the criterion for their country of origin (*(c)*(ii)), and only in the absence of such a criterion would it be the nationality of the author.

37. Switzerland proposed (document S/63) that the nationality of the author should be the general criterion for the country of origin, even in respect of puhlished works. This proposal was, however, withdrawn after discussion.

38. India suhmitted a similar proposal (document S/41) providing that the nationality of the author should be the general criterion for the country of origin, either from the time when the work is made lawfully available to the public, or even before. The first part of the proposed alternative was hased on the presumption that protection should begin from the date on which the work was made lawfully available to the puhlic.

39. France proposed (document S/27) that the special criterion for cinematographic works in paragraph *(c)*(i) should he deleted.

40. These proposals were not accepted. The *Programme* was adopted hy the Committee with the following minor amendments. An amendment was made to the provision in *(c)*(i) and will he mentioned later in the part of the Report dealing with cinematographic works. During the discussion on Article 6(3), which parallels Article 4, (4)*(c)*(ii), the Committee decided to make a few changes in the English version which do not affect the French text.

41. Lastly, a purely drafting amendment to suhparagraph *(c)* was accepted hy the Committee. Instead of giving the general principle of nationality as the criterion for the country of origin in the last sentence (*(c)*(iii)), subparagraph *(c)* would begin with this general rule, followed by the two exceptions regarding cinematographic works (*(c)*(i)) and works of architecture (*(c)*(ii)).

Article 4(5) (Article 3(3))

42. The definition of "puhlished works" contained in Article 4(4) of the Brussels text was incorporated in the *Progromme* (Article 4(5)) with two small amendments.

(o) According to the Brussels text, the definition of published works was valid only "for the purposes of Articles 4, 5 and 6." These words in inverted commas were excluded from the *Programme*, which meant that the definition was to relate to the whole Convention.

(b) The *Programme* introduced into Article 4(5), as an element in the definition of the concept of publication, the condition that the work should have been "lawfully" published.

43. No proposal was submitted to the Committee regarding the first of these two amendments.

44. As regards the second, the United Kingdom proposed (document S/42) that the word "lawfully" should be replaced by the phrase "with the consent of the author."

45. Some proposals were submitted regarding other points of the definition of published works. France proposed an additional sentence (document S/27) giving a special rule for the publication of cinematographic works.

46. India proposed (document S/41) a narrower definition excluding from "publication" as defined in the Convention the publication of gramophone records, photographs, paintings or engravings of works of architecture or other three-dimensional works.

47. Proposals submitted by the Netherlands (document S/49) and by South Africa (document S/53), and a joint proposal by South Africa, the Federal Republic of Germany, Luxemhourg and Monaco (document S/60), were designed to give a wider general definition of published works than that contained in the Brussels text.

48. The Committee adopted the first amendment proposed in the *Programme*, namely, the deletion of the words "for the purposes of Articles 4, 5 and 6," thus making the definition of "published works" (and of publication) applicable to the whole Convention.

49. The Committee decided, in accordance with the United Kingdom proposal, to substitute the words "with the consent of the author" for the word "lawfully" proposed in the *Programme*.

50. Lastly, the Committee adopted a new general formula broadening the definition of published works. This formula, which was prepared by the Drafting Committee on the basis of the joint proposal referred to above, provides that the expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been sufficient to satisfy the reasonable requirements of the public, having regard to the nature of the work. This new and wider definition implies, inter alia, new conditions for the publication of cinematographic works, including television films.

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Article 4(6) (—)

51. The *Programme* proposed inserting a new paragraph (6) giving a definition of the "maker of the cinematographic work." This proposal was rejected. It should be pointed out here, however, that, in a new provision inserted in Article 15(2), the Committee adopted the principle that the person or corporate body whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of that work.

Article 5 (Article 5(3))

52. The Brussels text stipulates that an author who is a national of one of the countries of the Union and who first publishes his work in another country of the Union shall have national treatment in the latter country, the country of origin. This rule was retained in the *Programme* with a slight modification in the English version, where the word "native" was changed to "national." No amendment was proposed to this provision.

53. The actual substance of this rule was also maintained by the Committee, with the above modification. The rule was, however, redrafted and combined with the other rules regarding protection in the country of origin of the work. This is at present the subject of the new paragraph (3) of Article 5.

54. This last-mentioned new paragraph contains a rule, implicit but not expressly mentioned in the Brussels text, that protection, in the country of origin, of a work of which the author is a national of that country is governed solely by national legislation. Protection is therefore entirely outside the Convention. Other authors, of whose works that country is the country of origin, are entitled under the Convention to benefit from national treatment. This rule is applicable either in cases where the author is a national of another country of the Union (as stipulated in Article 5 of the Brussels text) or in cases where he is not (as stipulated in Article 6(1) of the Brussels text).

Article 6(1) (Article 3(1)(b) and Article 5(1) and (3))

55. In the Brussels text, this Article deals with *(a)* first publication as an eligibility criterion for works published by nationals of countries outside the Union, and *(b)* the principles of protection in respect of such works. On this last point, the author enjoys national treatment in the country of publication, that is to say, the country of origin, and in the other countries of the Union "the rights granted by this Convention."

56. In the *Programme*, two amendments were proposed in respect of *(a)* above. In the first place, the text stated

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explicitly that it referred also to cases of simultaneous publication in a country outside the Union and in a country of the Union. In the second place, the text stated clearly that an author who is a national of a country outside the Union should be protected only in respect of those works first published or published simultaneously in a country of the Union.

57. India proposed (document S/41) deleting the whole of Article 6.

58. The amendments proposed by the *Programme* were adopted by the Committee. The substance of the provision as amended was transferred, as regards publication as a criterion of eligibility, to the new Article 3(1)*(b)* and, as regards the principles of protection, to the new Article 5(1) and (3), thus giving a text that makes the content of the provision in question clearer.

Article 6(2) (Article 4(a))

59. The *Programme* proposed inserting a new criterion for protection in respect of cinematographic works, namely, the nationality, domicile or headquarters of the maker. Subject to replacing the concept of domicile by that of habitual residence and deleting the reference to the nationality of the maker, and subject also to the principle that account should be taken in the first place of the headquarters of the maker, this proposal was adopted and the corresponding provision is contained in the new Article 4*(a)*.

Article 6(3) (Article 4(b))

60. The *Programme* also proposed including a new criterion for protection in respect of works of architecture or graphic and three-dimensional works affixed to land or to a building.

61. Australia proposed (document S/52) the amendment of the text of the *Programme* by deleting the reference to graphic and three-dimensional works.

62. The Committee adopted the *Programme* except that, on the proposal of the Drafting Committee, the English version was worded slightly differently. This provision was included in the new Article 4*(b)*.

63. It was decided that the Report should state that the criterion for the location of works of architecture and other artistic works in a country of the Union would apply only in respect of the original work. No protection under the Berne Convention could be claimed in respect solely of a copy of the work erected in a country of the Union if the original were still located in a country outside the Union.

II. Right of Reproduction
(Articles 9, 10 and 10bis)

64. In the Brussels text, Articles 9, 10 and 10bis deal with some of the aspects of the author's right of reproduction, but a general right of reproduction is not explicitly conferred on the author under the Convention. Article 9(1) provides for a right of reproduction in respect of works published in newspapers or periodicals. Paragraph (2) provides for an exception to that right: articles on current economic, political or religious topics may be reproduced by the press unless the reproduction thereof is expressly reserved; nevertheless, the source must always be clearly indicated. Paragraph (3) provides that protection shall not apply to news of the day or to miscellaneous information having the character of mere items of news.

65. Article 10(1) states that it shall be permissible to make short quotations from newspaper articles and periodicals, as well as to include them in press summaries. Under paragraph (2), the right to include excerpts from literary or artistic works for educational or scientific purposes or in chrestomathies is to be a matter for national legislation. According to paragraph (3), quotations and excerpts are to be accompanied in principle by an acknowledgement of the source and by the name of the author.

66. Lastly, according to Article 10bis, it is to be a matter for national legislation to determine the conditions under which short extracts from works may be used for the purpose of reporting current events by means of photography or cinematography or by radiodiffusion.

67. The *Programme* proposed that a general right of reproduction should be inserted in Article 9(1). In paragraph (2), the *Programme* provided for some general exceptions to that right. Article 9(1) of the existing text was omitted since it was included in the new paragraph (1) proposed. According to the *Programme*, it was no longer necessary to maintain paragraph (2) of the Brussels text, which was accordingly also omitted. Paragraph (3) was transferred unchanged to Article 2 as paragraph (7).

68. The *Programme* proposed broadening the rule on quotations contained in the existing Article 10(1) so as to make it a general rule applying to all categories of works. Paragraphs (2) and (3) were unchanged. Lastly, some minor amendments were made to Article 10bis.

69. The Committee adopted in principle the order proposed in the *Programme*, which will be followed in this Report. Accordingly, Article 9(3) of the Brussels text on

items of news will be discussed under Article 2(8) (a new paragraph was added to Article 2, so that paragraph (7) of the *Programme* becomes paragraph (8) in the text adopted by the Committee). Nevertheless, the Committee included: (i) a new paragraph (3) in Article 9, clarifying the meaning of "reproduction"; and (ii) a new paragraph (1) in Article 10bis, corresponding to Article 9(2) of the Brussels text, which the *Programme* had proposed to omit. Consequently, the present provisions of Article 10bis become the second paragraph of that Article.

Article 9(1)

70. The *Programme* proposed that a general right of reproduction should be recognized in Article 9(1): authors of protected works would have the exclusive right of authorizing "the reproduction of these works, in any manner or form."

71. The principle thus stated was contested by India in a proposal (document S/86) containing an alternative: either retain the Brussels text, or permit the countries of the Union to introduce a compulsory general license with remuneration, which would be inserted in a new subparagraph *(d)* of paragraph (2).

72. Austria, Italy and Morocco submitted an amendment (document S/72) with a view to extending the protection provided in paragraph (1) by adding the right of circulation.

73. Several proposals were submitted which may be regarded as purely drafting points. Austria proposed (document S/38) adding a sentence defining "reproduction" as consisting of the material fixation of the work by all methods that permit of indirect communication to the public. Some examples were also indicated in that sentence. The Federal Republic of Germany proposed (document S/67) inserting after the words "these works" the following phrase "including the recording of these works by instruments capable of reproducing them mechanically." The United Kingdom recommended (document S/42) that it should be expressly stated in the Convention that the right of reproducing a work also included the right to reproduce "substantial parts" of the work. France proposed (document S/70) inserting after the words "in any manner or form" the words "and for any purpose."

74. The Committee rejected the proposal that a general right of circulation be included in paragraph (1). Some delegations considered that such a right would make the dissemination of a work too difficult and others thought that the preparatory work on this point was not sufficient to enable the

Conference to take a decision, for example, on the exceptions to such a general rule.

75. As regards the drafting amendments, Austria withdrew its proposal on condition that the two ideas contained in it appeared in the Report: (i) reproduction does not include public performance; (ii) reproduction includes recordings of sounds or images. There seems no doubt that such clarification is consistent with the general trend of opinion in the Committee. Furthermore, the idea expressed under (ii) was finally incorporated in a new paragraph (3) in Article 9.

76. As it was emphasized that all rights granted in respect of works under the Convention are applicable, without this being explicity stated, either to the whole work or to parts of it and that to refer to parts of a work in one Article might imply contrary conclusions in respect of other Articles, the United Kingdom withdrew its proposal.

77. The Committee decided to adopt the text of the new Article 9(1) as proposed in the *Programme*.

Article 9(2)

78. In the *Programme*, this paragraph contained the general exceptions to the right of reproduction. It provided that it would be possible for national legislation to permit the reproduction of the works referred to in paragraph (1) in three cases: *(a)* for private use; *(b)* for judicial or administrative purposes; *(c)* in certain particular cases, provided (i) that reproduction is not contrary to the legitimate interests of the author, and (ii) that it does not conflict with a normal exploitation of the work.

79. Various tendencies appeared in the proposals submitted. One of these was to restrict the exceptions indicated in the *Programme*. For instance, France proposed (document S/70) that the expression "private use" should be replaced by "individual or family use." The Netherlands made the same proposal (document S/81) in respect of item *(a)* and proposed, in respect of item *(b)*, the expression "for strictly judicial or administrative purposes" and, in respect of *(c)*, another general formula. It further proposed that exceptions should apply only if they were expressly provided for in the Convention itself and in the national legislation concerned as well. The Federal Republic of Germany proposed (document S/67) inserting in item *(c)* a third condition for exceptions to the general rule in paragraph (1), namely, that reproduction should not conflict with the author's right to obtain equitable remuneration.

80. Another tendency was to extend the exceptions indicated in the *Programme*. Thus, India proposed (document

S/86) that, if the Brussels text was not maintained, it would be expedient to add after item *(c)* a clause to appear as item *(d)*, permitting a compulsory general license for reproduction, with the right for the author to obtain remuneration. Rumania submitted a similar amendment (document S/75) under which, however, the compulsory license was to apply only in the country in which it was prescribed.

81. There was also a tendency to group all the exceptions in a single formula and thus to eliminate items *(a)* and *(b)* of the *Programme* text. A proposal to that effect was submitted by the United Kingdom (document S/42). Instead of the expression used in the *Programme*, namely, "in certain particular cases where the reproduction is not contrary to the legitimate interests of the author," the following phrase was to be used: "in certain special cases where the reproduction does not unreasonably prejudice the legitimate interests of the authors."

82. A purely drafting point was raised by Monaco (document S/66). Paragraph (2) should include an express reference to the special exceptions contained in other provisions of the Convention, such as Articles 10, 10[bis], 11[bis](3) and 13(1) (Article 13(2) of the existing text).

83. The Committee decided in the first place that the exceptions should be included in a general clause corresponding to item *(c)* and then referred the problem to the Working Group on Articles 9(2) and 10(2), to which reference was made in the Introduction to this Report.

84. The Working Group decided to adopt the amendment proposed by the United Kingdom, with some slight alterations in the English version (document S/109). It proved very difficult to find an adequate French translation for the expression "does not unreasonably prejudice." In the Committee, it was finally decided to use the expression "ne *cause pas un préjudice injustifié*."

85. The Committee also adopted a proposal by the Drafting Committee that the second condition should be placed before the first, as this would afford a more logical order for the interpretation of the rule. If it is considered that reproduction conflicts with the normal exploitation of the work, reproduction is not permitted at all. If it is considered that reproduction does not conflict with the normal exploitation of the work, the next step would be to consider whether it does not unreasonably prejudice the legitimate interests of the author. Only if such is not the case would it be possible in certain special cases to introduce a compulsory license, or to provide for use without payment. A practical example might be photocopying for various purposes. If it consists of pro-

ducing a very large number of copies, it may not be permitted, as it conflicts with a normal exploitation of the work. If it implies a rather large number of copies for use in industrial undertakings, it may not unreasonably prejudice the legitimate interests of the author, provided that, according to national legislation, an equitable remuneration is paid. If a small number of copies is made, photocopying may be permitted without payment, particularly for individual or scientific use.

86. The Committee finally adopted the following wording for paragraph (2) of Article 9: "It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."

Article 9(3)

87. Article 13(1) of the Brussels text provides that authors of musical works shall have the exclusive right of authorizing: (i) the recording of such works by instruments capable of reproducing them mechanically; (ii) the public performance by means of such instruments of works thus recorded. Since the Committee decided to delete this paragraph (1) of Article 13, it was considered appropriate to include in Article 11(1) and in Article 11[ter](1) a reminder that the right of performance and the right of recitation include, among other things, the right at present referred to in Article 13(1). In order to coordinate the provisions of the Convention, the Drafting Committee proposed the insertion of a reminder of the present Article 13(1) also in Article 9(3), stating that for the purposes of the Convention any sound or visual recording shall be considered as a reproduction; even the making of copies of the recording is, of course, regarded as reproduction. The Committee accepted the Drafting Committee's proposal.

Article 10(1)

88. The *Programme* proposed an extension of the existing rule in Article 10(1) which deals with the right of quotation and refers only to newspaper articles and periodicals: its application would be extended to all categories of works. The *Programme* also proposed the deletion of the condition according to which only "short" quotations are permitted. On the other hand, the *Programme* introduced certain conditions restricting the freedom of quotation: (i) the works quoted were to have already been "lawfully made available to the public," (ii) the quotations were to be "compatible with fair

practice," and (iii) they were to be made only "to the extent justified by the purpose."

89. France proposed (document S/45) reintroducing the condition that only "short" quotations should be permitted. Switzerland made the same proposal (document S/68) and suggested in addition that the phrase "justified by the purpose" relating to condition (iii) should be replaced by the phrase "that they serve as explanation, reference or illustration in the context in which they occur." Czechoslovakia, Hungary and Poland submitted a proposal (document S/51) providing that the work could also be quoted in translation.

90. After discussion, the Committee decided to leave the French text as proposed in the *Programme*, but to make a slight change in the English version. It was felt that the reasons for replacing the word "lawfully" in connection with condition (i) by the words "with the consent of the author" were not valid here, and the word "lawfully" was therefore retained. It was also pointed out that the last phrase, referring to press summaries, gave rise to some ambiguity. It was felt, however, that it would be difficult to get rid of that ambiguity, which the Courts would be able to decide upon, and that it was not absolutely essential to do so.

91. The question of the right to translate quotations will be considered in connection with Article 8.

Article 10(2)

92. The *Programme* proposed no substantial change in Article 10(2) of the Brussels text. According to that provision, it is a matter for national legislation or for special agreements concluded between the countries of the Union to permit the inclusion of excerpts from protected works in "educational or scientific publications" or in "chrestomathies" in so far as this inclusion is justified by the purpose. The only change proposed in the *Programme* concerned the wording of the English text, the French text remaining unchanged; the word "excerpts" was replaced by the word "borrowings," which was felt to correspond better to the French word "*emprunts*."

93. The Netherlands proposed (document S/108) that this paragraph be deleted. In a joint proposal submitted by Bulgaria, Czechoslovakia, Poland and Rumania (document S/83), it was suggested that the scope of this paragraph be broadened to include radio and television broadcasts and phonograms.

94. After some discussion, in the course of which suggestions were made that this provision should be restricted slightly, the question was referred to the Working Group set up to study Article 9(2) and Article 10(2).

95. The Working Group submitted a proposal (document S/185) which considerably restricted the utilization referred to in paragraph (2). The word "borrowings" was no longer mentioned. The provision referred to the "utilization" of works "to the extent justified by the purpose," but only "by way of illustration for teaching," provided that such utilization was "compatible with fair practice." The Working Group also suggested — as an alternative in square brackets — that the authorization might extend to "broadcasts" and to "phonograms."

96. After an amendment submitted jointly by Brazil, Mexico and Portugal (document S/216) substituting the word "recordings" for "phonograms," the Committee adopted the Working Group's basic proposal and the extension to broadcasts and recordings. It subsequently decided to add the words "sound or visual" before "recordings," thus eliminating any doubt as to the possibility that this provision might not apply to visual recordings as well as sound recordings.

97. The wish was expressed that it should be made clear in this Report that the word "teaching" was to include teaching at all levels — in educational institutions and universities, municipal and State schools, and private schools. Education outside these institutions, for instance general teaching available to the public but not included in the above categories, should be excluded.

Article 10(3)

98. The *Programme* made no change, apart from slight amendments to the English text, in Article 10(3) of the Brussels text dealing with the obligation to mention the source and the name of the author in the case of utilization under paragraphs (1) and (2). The Committee decided to adopt the new text submitted by its Drafting Committee, which made no changes of substance but merely some drafting amendments in the English and French versions.

Article 10bis (Article 10bis(1) and (2))

99. In a joint proposal submitted by Czechoslovakia, Hungary and Poland (document S/51), and in a proposal by Japan (document S/80), the reintroduction was suggested, in a new paragraph (3) of Article 9, of the provision at present contained in Article 9(2) dealing with borrowings from newspaper articles. According to the *Programme*, that provision was to have been deleted.

100. The above proposals also provided that the right to borrow articles should apply not only to reproduction by the

press but also to broadcasting. In addition, the first of the two proposals stated that, in the cases referred to in the provision in question, articles could be used not only in the original but also in translation.

101. The Committee adopted three of the concepts contained in the two amendments referred to above — namely, the reintroduction of the existing provision of Article 9(2) concerning borrowings from newspaper articles, its extension to broadcasting, and — at first — the insertion of such provisions in a new paragraph (3) of Article 9.

102. It was decided, however, on the proposal of the Drafting Committee, to change the opening words in order to bring them into line with the corresponding words in paragraph (2) of the new version, so as to avoid the impression that it is compulsory for countries to insert in their legislation such a restriction on the author's right of reproduction.

103. The Drafting Committee later made three other proposals: (i) to insert in the new paragraph (3) the words "which are published in the newspapers or periodicals," which are taken from Article 9(1) of the Brussels text and which obviously impose upon the meaning of the word "articles" a restriction judged necessary, after the deletion of Article 9(1), so as to retain the meaning of the new paragraph; (ii) to give the press the possibility of borrowing material of the same nature from broadcasting programs, thus restoring the balance between the rights of the two media concerned; (iii) to insert the new paragraph, not in Article 9 as paragraph (3) of that Article, as previously proposed, but in a new paragraph (1) of Article 10bis, since it was felt that in dealing also with broadcasting this provision had more in common with the present provision of Article 10bis than the provisions of Article 9 dealing only with reproduction. The Committee agreed to these three proposals of the Drafting Committee and inserted the new provision, thus amended, in Article 10bis(1).

104. The question of the right to translate articles used in this way will be considered in connection with Article 8 dealing with the general right of translation.

105. With regard to the provision of Article 10bis in the Brussels text concerning the reporting of current events, the *Programme* suggested four minor changes: (i) the restriction concerning "short extracts" from works was to be deleted; (ii) this provision was to be extended to cover "communication to the public by wire" in addition to photography, cinematography and broadcasting; (iii) utilization was to be permitted only "to the extent justified by the informatory purpose"; (iv) it was clearly stated that the facility referred

to in this paragraph applied only to works "which are seen or heard in the course of the event."

106. Monaco proposed some drafting amendments (document S/76). The word "record" should disappear and the words "communicate to the public" should be replaced by the words "made available to the public."

107. These two suggestions were approved by the Committee, which adopted the text of the *Programme*, thus amended, but in the form of paragraph (2) of Article 10bis.

III. Other Provisions in the Text of the Convention

Title and Preamble

108. The *Programme* made no change in the Title and Preamble of the Convention, merely adding the Stockholm revision to the list of revisions in the Title and the Brussels revision in the Preamble.

109. Brazil proposed (document S/210) that a formula should be included in the Preamble laying down the basis for protection. This formula reads as follows: "The subject of the protection granted by the present Convention, in regard to authorship and the moral rights of the author, is any production of the mind possessing features of originality, apart from inventions and discoveries, which are protected by legislation on patents and marks." A reference to that provision of the Preamble would then have had to be included in Articles 1, 4 and 6bis.

110. This proposal was rejected and the text of the *Programme* was adopted.

Article 1

111. Article 1 lays down that the countries to which the Convention applies constitute a Union for the protection of the rights of authors over their literary and artistic works. The *Programme* suggested only a slight modification of the English version, the words "the rights of authors over" being replaced by "authors' copyright in," as it was considered that the term "copyright" was much more widely known in English-speaking countries.

112. The Drafting Committee considered, however, that there might be some doubt as to whether the word "copyright" included moral rights. It was therefore decided to revert to the original wording with a minor amendment to the English version.

Article 2

113. In the Brussels text, the works protected are enumerated in paragraph (1) of Article 2. Paragraph (2) states

that adaptations of a work shall be protected as original works, without prejudice to the rights of the author of the original work. It also contains a special provision concerning translations of official texts. Paragraph (3) confers a specific copyright on the authors of collections. Paragraph (4) provides that the works mentioned in this Article shall enjoy protection in all countries of the Union and that such protection shall operate for the benefit of the author and his legal representatives and assignees. Finally, paragraph (5) contains special provisions for the protection of works of applied art and industrial designs and models.

114. In the *Progromme*, the order of the paragraphs was changed slightly. A new paragraph (2) was inserted to deal with the assimilation of certain works to cinematographic works and photographic works. For that reason, the numbering of the subsequent paragraphs was changed, so that paragraph (2) became paragraph (3), and so on down to paragraph (6). The provision concerning items of press information, which appears in paragraph (3) of Article 9 of the Brussels text, was inserted in a new paragraph (7).

115. In the draft adopted by the Committee, further changes were made to the order of the paragraphs. The content of paragraph (2) was inserted in paragraph (1). A new provision dealing with fixation as a condition for protection was inserted as paragraph (2). Paragraph (3) was divided into two paragraphs, (3) and (4). Paragraph (4) of the *Programme* became paragraph (5), and so on down to paragraph (7), which became paragraph (8). This Report will follow the order of the *Programme* (except in regard to paragraph (2)).

Article 2(1) (paragroph 1))

116. The *Programme* suggested only two essential changes in the list of works in paragraph (1): (i) a change in the text concerning choreographic works and entertainments in dumb show; (ii) an amendment to the provision concerning cinematographic works and its inclusion in a new paragraph (2). Consequently, the provision on photographic works, which was drafted in a similar manner, was incorporated in this new paragraph (2), without any change of substance. These two questions will be dealt with under different headings.

117. Some countries suggested that new categories of works should be included in the list of protected works. These proposals will be examined under a separate heading.

Choreographic works and entertainments in dumb show

118. The Brussels text expressly listed among the protected works choreographic works and entertainments in dumb

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show "the acting form of which is fixed in writing or otherwise." The *Programme* suggested that this condition of fixation should be deleted. Choreographic works and entertainments in dumb show are the only works included in the Convention for which a condition of this kind is laid down.

119. France proposed (document S/136) that the Brussels text should be maintained.

120. After a preliminary discussion in the Committee, the United Kingdom submitted a compromise proposal (document S/191). It contained two suggestions: (i) that fixation should not be required for choreographic works, but only for entertainments in dumb show, and (ii) that a new sentence should be added at the end of paragraph (1), stating that national legislations should be entitled to make fixation a general condition for protection. As this second suggestion was adopted by the Committee and inserted in a paragraph (2) (see paragraph 130 below), it was considered that the first suggestion was superfluous.

121. Finally, in view of the new provision in paragraph (2), the Committee adopted the proposal put forward in the *Progromme* to delete the words "the acting form of which is fixed in writing or otherwise."

Cinematogrophic and photogrophic works

122. The *Programme* suggested a new provision for cinematographic works in the form of a new paragraph (2). The Committee decided to alter the proposed text slightly and to restore it to paragraph (1) (see paragraph 277 below).

123. The Brussels text mentioned among protected works "photographic works and works produced by a process analogous to photography." In the *Progromme*, this phrase was transferred to the new paragraph (2), with a slight drafting amendment.

124. The United Kingdom proposed (document S/100) that this phrase should also include a condition concerning fixation.

125. The Committee, considering that a photographic work must by definition be fixed, adopted a wording similar to that proposed in the *Progromme*, and moved it back — like the phrase dealing with cinematographic works — to paragraph (1).

New categories of works

126. India proposed (document S/73) that works of folklore should be included in the list of protected works. Furthermore, some countries proposed that televisual works should be included in this list (see paragraph 274 below).

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127. The Committee did not consider it necessary to add any new categories of works to those already mentioned in the list, since the suggested categories appeared to be protected in principle under the terms of the Convention. Nevertheless, as will be indicated later, the Committee deemed it advisable to undertake a thorough study of the régime for works of folklore.

Article 2(2) (new)

128. India proposed (document S/73) inserting as a subparagraph after paragraph (1) a phrase permitting domestic laws to decide that certain specified categories of works should be fixed in some material form.

129. After a preliminary discussion on choreographic works and entertainments in dumb show, the United Kingdom submitted a similar proposal (document S/191 mentioned above in paragraph 120).

130. The Committee decided to introduce a new principle into the Convention. The terms adopted by the Drafting Committee to express this come very close to the text proposed by the United Kingdom. They read as follows: "It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form." This wording allows countries to prescribe fixation as a general condition for protection or to demand fixation only for one or more categories of works, such as choreographic works and entertainments in dumb show.

Article 2(3) (paragraphs (3) and (4))

131. The Brussels text (paragraph (2)) and the *Programme* (paragraph (3)) — which made no change to the existing text — contain an opening sentence which provides that translations and all other types of adaptation of a work are protected as original works, without prejudice to the rights of the author of the original work. No change was proposed to this sentence, but it was decided that the sentence by itself should constitute paragraph (3).

132. The second sentence of the Brussels text and of the *Programme* provides that it shall be a matter for national legislation to determine the protection to be granted to translations of official texts of a legislative, administrative and legal nature.

133. The Federal Republic of Germany proposed (document S/92) that the option given to national legislation should apply not only to translations of official texts but also

to those texts in their original form. It also proposed a restriction, namely, that only *official* translations should he taken into consideration for that purpose. Finally, it suggested that the new wording should he incorporated in a new paragraph.

134. Italy submitted a similar amendment (document S/161) which did not, however, contain the limitation in regard to *official* translations.

135. The Committee decided to adopt a wording in conformity with the proposal of the Federal Republic of Germany.

136. In accordance with the desire expressed by the United Kingdom, it must be clearly stipulated in this Report that the reference made in the Convention to texts of an administrative nature does not permit countries to refuse protection to all Government publications, for instance, textbooks.

Article 2(4) (poragraph (5))

137. Paragraph (3) of the Brussels text confers a specific copyright on the authors of collections. The *Programme* placed that provision in paragraph (4), but without change. As no proposal was submitted to the Committee, the paragraph was left as it was.

Article 2(5) (paragraph (6))

138. It is laid down in paragraph (4) of the Brussels text and, without change, in paragraph (5) of the *Programme* that the works mentioned in Article 2 shall enjoy protection in all countries of the Union and that this protection shall operate for the benefit of the author and his legal representatives and assignees (successors in title). As no proposal was submitted to the Committee this paragraph was left unaltered.

Article 2(6) (paragraph (7))

139. According to the first sentence of paragraph (5) of the Brussels text, domestic legislation is free to determine the protection of works of applied art and industrial designs and models. The second sentence implies an exception to the principle of national treatment: if the country of origin protects works of applied art solely as designs and models, those works shall he entitled in other countries only to such protection as is there accorded to designs and models.

140. Only one alteration was suggested by the *Programme*. Countries should not be completely free to determine protection: they should observe the minimum term of protection — twenty-five years from the making of the work — which had been inserted in Article 7(4) for works of applied art protected as artistic works.

141. Denmark proposed (document S/99) that paragraph (5) of the Brussels text should he entirely deleted and that works of applied art should thus be treated in all respects like other artistic works.

142. The Netherlands proposed (document S/140) that the second sentence of the paragraph in question should he deleted and that works of applied art should thus be submitted without restriction to national treatment.

143. Italy proposed (document S/161) that a provision in the following sence should be added at the end of the second sentence of the paragraph under consideration: the principle enunciated in this second sentence shall apply only if the legislation of countries other than the country of origin where protection is claimed accord special protection to designs and models. If that were not the case, works of applied art should he protected within the framework of the copyright law in force in the country concerned.

144. The Committee adopted the change proposed in the *Programme:* in determining the protection of works of applied art, national legislation should have regard to the provisions of Article 7(4). The Committee also adopted the principle suggested hy Italy, namely, that a country which did not have special protection for designs and models should always protect works of applied art in accordance with the law of copyright.

Article 2(7) (poragroph (8))

145. The Brussels text stipulates in Article 9(3) that the protection of the Convention shall not apply to news of the day nor to miscellaneous information having the character of mere items of news. By introducing a general right of reprodnction in Article 9 and hy deleting the first two paragraphs of Article 9 of the Brussels text, the *Programme* transferred that provision, which is more concerned with the works protected, from Article 9 to Article 2(7), without effecting a change of suhstance, but with a slight alteration in the English version.

146. According to the commentary given in the *Programme*, the meaning of this paragraph was as follows: the Convention does not protect mere items of information on news of the day or miscellaneous facts, hecause such material does not possess the attrihutes needed to constitute a work. That implies *a fortiori* that news items or the facts themselves are not protected. The articles of journalists or other "journalistic" works reporting news items are, on the other hand, protected to the extent that they are literary or artistic works. It did not seem essential to clarify the text of the Convention on this point.

147. The United Kingdom proposed (document S/171) that this paragraph should read as follows: "The protection of this Convention shall not apply to the facts constituting news of the day or having the character of mere news items."

148. The Committee decided to adopt the text of the *Programme* with a slight alteration of the English version: the word "press" was inserted before the word "information."

Article $2^{bis}(1)$

149. The Brussels text stipulates in this paragraph that domestic legislation may exclude wholly or in part from protection political speeches and speeches delivered in the course of legal proceedings. The *Progromme* suggested some purely formal alterations of the English version.

150. No proposal was submitted to the Committee on this paragraph. The Drafting Committee modified the proposed English version so as to bring it back to the Brussels version.

151. It was noted that this paragraph did not, like some other provisions (see paragraph 205 below), raise any special difficulty with regard to translation. As domestic legislation can refuse all protection to the works in question, it can obviously also exclude the author's exclusive right of translation.

Article $2^{bis}(2)$

152. According to this paragraph as it appears in the Brussels text, domestic legislation can determine the conditions under which lectures, addresses, sermons and other works of the same nature may he reproduced hy the press. The *Programme* did not propose any modification.

153. India proposed (document S/73) that the works could he reproduced in the original form or in translation, not only hy the press hut also hy cinematography or broadcasting.

154. It was suggested in a joint proposal by Bulgaria, Poland and Czechoslovakia (document S/79) that the right of utilizing the works should be extended to hroadcasting.

155. The Federal Republic of Germany proposed (document S/92) that this right should be extended to hroadcasting and to communication by wire to the public hut that, in those two cases, utilization of the works should be permitted only when they refer to news.

156. Having considered the result of the discussions of the Working Group referred to in the Introduction to this Report, the Committee decided to amend this paragraph in four respects: (1) sermons were excluded from the application of the provision; (2) lectures, addresses, etc., may he

used only if they have been "delivered in public"; (3) not only may the works be reproduced by the press, but they may also be broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11bis(1); (4) this use must be justified by the informatory purpose, that is to say, the character of news must apply not to the subject dealt with in the lecture, address, etc., but to the actual utilization with the object of informing the public.

Article 2bis(3)

157. Paragraph (3) of the Brussels text provides that the author alone shall have the right of making a collection of his works mentioned in paragraphs (1) and (2). No change was proposed in the *Progromme* and no proposal was submitted to the Committee.

158. It was decided to maintain this text with a few alterations in the French and English versions to make the sense clearer.

Article 6bis (Moral rights)

159. According to the Brussels text, it is compulsory for the countries of the Union to protect the author's moral rights during his lifetime. That principle is stated in paragraph (1) of Article 6bis. Paragraph (2) provides that moral rights shall be maintained after the author's death *at leost* until the expiry of the economic rights "in so far as the legislation of the countries of the Union permits." Paragraph (3) contains a provision concerning the means of redress for safeguarding moral rigbts.

160. It was proposed in the *Programme* that the countries of the Union should be obliged to maintain the moral rights until the expiry of the economic rigbts.

Article 6bis(1)

161. The provision of the Brussels text on the protection of moral rights during the author's life was transformed in the *Programme* to a general provision on moral rigbts that does not stipulate any express limitation on the term of those rights. The modification was effected by deleting the words "during his lifetime."

162. No proposal was submitted at the Conference on paragrapb (1). It should be noted, bowever, that proposed amendments submitted during the discussion on paragraph (2) (see below) also had some bearing on paragrapb (1).

163. The Committee adopted paragraph (1) as it appeared in the *Progromme*.

Article 6bis(2)

164. The main change, as regards paragraph (2) of the Brussels text, which was proposed in the *Progromme* was to delete the first words of the first sentence: "In so far as the legislation of the countries of the Union permits." As a result of that amendment to the text the moral rigbts were to be maintained after the death of the author "at least until the expiry of the economic rights." The *Programme* also provided for the amendment and simplification of the provisions contained in the last part of the paragraph regarding the persons and institutions competent to exercise the moral rights after the death of the author. Among other things, the last sentence of the paragraph was deleted.

165. Some countries proposed the elimination of the limitations on the term of moral rights. Proposals to that effect were submitted by Bulgaria (document S/197), and jointly by Greece and Portugal (document S/151).

166. Furthermore, Greece proposed (document S/183) that "literary and artistic works over whicb economic rights do not exist shall be protected against all use in a manner prejudicial to tbe cultural heritage of mankind." That proposal was to appear in a new paragraph of Article 6bis. An Austrian proposal (document S/147) providing for the insertion in Article 6bis of a new paragraph concerning the deposit of a facsimile copy of the earliest and most autbentic availahle text or score of literary, musical, or dramatico-musical works will he analyzed later.

167. India proposed (document S/73) that the extension of protection provided for in the *Progromme* shonld be so restricted that after the death of the author protection should not comprise the right to claim authorship of the work.

168. In order to facilitate the adoption of provisions extending tbe protection of moral rights *post mortem auctoris* in countries of the Union whose legal system does not, in principle, protect moral rights within the framework of copyrigbt and which, for that reason, bave considerahle difficulties in providing complete protection of sucb rigbts after the death of the author, a joint proposal (document S/232) was presented hy Australia, Denmark, Finland, Ireland, Norway, Sweden and the United Kingdom. That proposal provided for tbe insertion of a new sentence at the end of paragrapb (2), according to which tbe legislation of a country of the Union may provide that some of the rights granted to the author under paragraph (1) shall not be maintained after his death.

169. After further discussions, a new proposal (document S/247) was submitted jointly hy Anstralia, Austria, Denmark,

Finland, the Federal Republic of Germany, Norway, Sweden and the United Kingdom. That proposal, hased in principle on the same idea as document S/232, restricted the scope of the exception made in favor of the countries of the Union which did not protect all the moral rights of the author after his death. That exception was to be allowed only in the case of countries whose legislation in force at the time of their ratification of or accession to tbe Stockholm Act does not contain provisions ensuring the protection *post mortem auctoris* of all the rights recognized under paragraph (1).

170. The Committee adopted, for the first sentence of paragraph (2), the text proposed in the *Progromme;* the provision proposed in document S/247 was adopted as the second sentence of the paragraph. It was understood tbat the rights maintained in accordance with the second sentence of paragraph (2) should not necessarily be protected by rules within the domain of copyright.

Article 6bis(3)

171. In the Brussels text, paragraph (3) of Article 6bis provides that the means of redress for safeguarding the moral rights shall he governed hy the legislation of the country where protection is claimed.

172. No amendment was proposed either in the *Progromme* or at the Conference. Paragraph (3) is tberefore maintained as it appears in the Brussels text.

Article 7 (Term of protection)

173. Article 7 deals with the term of protection of authors' rigbts. According to paragraph (1) of the Brussels text, the general term of protection is established as being tbe life of the author and fifty years after his death. Paragraph (2) deals with regulations governing cases where a country of the Union grants a term of protection in excess of that prescribed in paragraph (1). Paragraph (3) contains exceptions to the general rule prescribed in paragrapb (1) for certain categories of works: cinematographic works, photographic works, and works of applied art. The term of protection granted for anonymous or pseudonymous works is specified in paragraph (4). Paragraph (5) deals with the term of protection of posthumous works in general. Finally, paragraph (6) defines the method of determining the terms of protection prescribed in Article 7.

174. The *Programme* provides for amendments in all the paragraphs of the Brussels text except paragraph (1). Paragrapb (2) of the *Programme* introduces a special term of protection in the case of cinematographic works. Paragrapb (3)

corresponds to paragraph (4) of the Brussels text. Paragraph (4) corresponds in part to paragraph (3) of the earlier text. Similarly, paragraph (5) deals with the same questions as paragraph (6) of the Brnssels text. Finally, paragraphs (6) and (7) contain in principle provisions governing the same questions as paragraph (2) of the Brussels text.

175. In this Report, the paragraphs appear in the same order as that adopted in the *Programme* (see paragraph 12).

Article 7(1)

176. The general term of protection, the life of the author and fifty years after his death, as prescribed in this paragraph of the Brussels text, had not been changed in the *Programme*.

177. No amendment directly relating to this paragraph was submitted to the Committee. A proposal by the Federal Republic of Germany (document S/205) to the effect that negotiations should be continued between the countries concerned for the conclusion of a special agreement on the extension of the term of protection will be dealt witb nnder the heading of "Recommendations expressed by the Committee" (see paragraph 329 below).

Article 7(2)

178. Here the *Programme* prescribes a new provision concerning the term of special protection for cinematographic works. The proposal referred to above concerning cinematographic works was adopted by the Committee with a slight change in the wording only.

Article 7(3)

179. Paragrapb (4) of the Brussels text deals with the régime for anonymous and pseudonymous works in three sentences: (i) the term of protection is fixed at fifty years from the date of the publication of the work; (ii) the term of protection provided in paragraph (1) applies when tbe psendonym adopted by tbe author leaves no donbt as to his identity; (iii) the general term of protection provided in paragraph (1) also applies if the author of an anonymous or pseudonymons work discloses his identity during the period ending fifty years after the date of publication. Paragraph (5) provides that in principle posthumous works are subject to tbe various provisions of Article 7.

180. The *Programme* proposed that the first sentence should be amended by fixing the end of the term of protection at fifty years "after the work bas been lawfully made available to tbe public." The second and third sentences were left nn-

changed. A fourth sentence was added, however, making a new exception to the general term of protection of anonymous and pseudonymous works provided in the first sentence. The countries of the Union would not be required to protect anonymous or pseudonymous works of which it was reasonable to suppose that their author had been dead for fifty years. Lastly, the *Programme* proposed omitting paragrapb (5) on posthumous works, which was regarded as superfluous.

181. The United Kingdom proposed (document S/42) that the word "lawfully" in the first sentence should be replaced by the phrase "with the consent of the author." India proposed (document S/73) that works of folklore should form a separate category from anonymous works and should be dealt with in a separate subparagraph of paragraph (3). The protection of works of folklore would last for a period of fifty years at least from the date of publication of the work, bnt for this purpose the issue of any record reproducing a work of folklore would not be deemed to be publication. According to a joint proposal by Greece and Portugal (documeut S/151), paragraph (5) of the Brussels text relating to posthumous works should be maintained.

182. The Committee decided to adopt the text proposed in the *Programme*, but replaced the word "lawfully" in the first sentence by "with the consent of the author"; this means that the first sentence of the Brussels text was amended as indicated in the *Programme* (with the above minor alteration), that a fourth sentence was added and that paragraph (5) of the Brussels text was deleted. (As regards the decision on works of folklore, see below, under Article 15(4), paragraphs 249 to 253.)

183. When cousidering tbis paragraph, the Drafting Committee thought that there might be cases where the term of protection should begin from the moment when the work was lawfully made available to the public, but not necessarily with the consent of its author. The Committee bad in mind in particular works of folklore which have been made available to the public by the authority designated under the provision proposed in Article 15(4). The action of tbis authority is obviously lawful, but bas not been taken with the consent of the author in the strict sense. The Drafting Committee therefore proposed to revert to the word "lawfully" used in the first sentence of the *Programme*. This proposal was accepted by the Committee.

Article 7(4)

184. Paragraph (3) of the Brussels text provides that the term of protection of cinematographic and photographic works and of works of applied art shall be governed by the law of the

country wbere protection is claimed, but shall not exceed the term fixed in the country of origin of the work.

185. The *Programme* proposed that a minimum term of protection should be introduced in principle for those three categories of works. The provision regarding cinematographic works was transferred to paragraph (2). The minimum term of protection of pbotographic works was fixed at twenty-five years from the making of the work. The same term was provided for works of applied art, but only for tbose protected as artistic works.

186. India proposed (document S/73) that paragraph (4) should state specifically that national legislation also provided for a term of protection for industrial designs and models. Hungary proposed (document S/91) that cinematographic works shonld be restored to the paragraph in question and thns made subject to the term of protection proposed therein. Denmark further proposed (document S/99) that works of applied art, in so far as they are protected as artistic works, should he excluded from tbis paragraph and thus made subject to the general term of protection in paragraph (1). Portugal proposed (document S/152) that a period of ten years should be substituted for the period of twenty-five years proposed. The United Kingdom proposed (document S/192) that tbe term of protection should last, in respect of photographs, for at least fifty years from the making of the photograph and, in respect of works of applied art, for at least fifteen years from the making of the work.

187. The Committee decided to adopt the text proposed in the *Programme*.

Article 7(5)

188. Paragraph (6) of the Brussels text providing for the method of calculating the term of protection was included in the *Programme* as paragraph (5), with some drafting amendments to bring it into line with the other paragraphs of Article 7.

189. As no proposal had been submitted to the Committee, it adopted the text proposed in the *Programme*.

Article 7(6) (paragraphs (6) and (7))

190. The *Programme* transferred to paragraph (6) a provision which appears in paragraph (2) of the Brussels text, namely, that the countries of the Union may grant a term of protection in excess of those provided in the various paragraphs of the Article in question.

191. As already stated in connection with paragraph (1) of Article 7, the Federal Republic of Germany invited tbe

Conference (document S/205) to express the wish that negotiations should be continued between the countries concerned for the conclusion of a special agreement on the extension of the term of protection in such countries. This point will be discussed helow (see paragraph 329).

192. Bulgaria and Poland proposed jointly (document S/50) that a new sentence should be added to paragraph (6), wherehy the countries of the Union hound by the Rome Act at the time of accession to or ratification of the Stockholm Act would be entitled to grant a term of protection shorter than those provided in Article 7.

193. The Committee adopted paragraph (6) as proposed in the *Programme*.

194. After discussion, the Committee decided to adopt, with some drafting amendments, a proposal prepared by the Secretariat (document S/225) on the basis of document S/50 and to insert the proposed new provision in the form of a new paragraph (7). The condition imposed on the option to grant a shorter term of protection would not merely be that the country shonld, at the time of ratification or accession, be bound by the Rome Act, but also that the national legislation in force at the time of signature of the Stockholm Act should contain provisions affording shorter terms of protection than those provided in Article 7. It is obvious that the rule of comparison of terms of protection (Article 7(7) of the *Programme* and now Article 7(8) of the new text) is applicable in the latter case.

Article 7(7) (paragraph (8))

195. Paragraph (2) of the Brussels text also contains a provision on the principle of comparison of terms. The term is governed by the law of the country where protection is claimed, but cannot exceed the term fixed in the country of origin of the work. The *Programme* transferred this provision to paragraph (7). At the same time it was stipulated that the comparison of terms does not apply if the legislation of the country where protection is claimed should so decide.

196. Switzerland proposed (document S/69) that the formula used in the last part of the paragraph should be reversed, so that national treatment would hecome the principal rule and the comparison of terms an exception.

197. The Committee adopted the text as proposed in the *Programme*.

Article 7bis (Works of joint authorship)

198. Article 7bis of the Brussels text relates to the term of protection in the case of works of joint authorship. The

term is calculated from the date of the death of the last surviving author. The *Programme* worded this Article differently in order to specify that the term of protection provided in Article 7 also applies to works of joint authorship, provided that the terms measured from the death of the author are calculated from the death of the last surviving author.

199. India proposed (document S/73) inserting after the words "last surviving author" the words "who was a national of a country of the Union." It was considered that this proposal had lost its point since India's proposal (document S/41) to make the nationality of the author the general criterion of eligihility and the general criterion of country of origin had not been accepted by the Committee. It should be added, however, that the term of protection of a work of joint authorship puhlished in a country of the Union is calculated from the death of the last surviving author whether he is a national of a country of the Union or not.

200. The Committee adopted the text proposed in the *Programme* without amendment.

201. The United Kingdom proposed (document S/42) inserting a new paragraph providing that the term of protection of the collective works mentioned in Article 2(4) should be fifty years from the death of the author of such works. Since it was pointed out that this rule seemed to be intended to apply without a special provision, the proposal was withdrawn.

Article 8 (Right of translation)

202. Under Article 8 of the Brussels text, authors enjoy the exclusive right of making or of authorizing the translation of their works throughout the term of protection of their rights in the original works. No explicit provision in this Article or in other Articles provides for any exception to this exclusive right.

203. The *Programme* did not propose any change in the text of this Article. It seems, however, to have started from the idea that it was fairly obvious that exceptions to the other exclusive rights, such as the right of reproduction, implied corresponding exceptions in respect of the right of translation and that the Convention had generally been applied in this way. It was expressly stated (document S/1, page 74) that the right to reproduce press articles also includes the right to reproduce them in the form of translations.

204. No amendment to the text of Article 8 was suhmitted to the Committee, hut proposals affecting the right of translation were made in connection with other Articles. For

instance, there was a proposal to insert a phrase adding to the limitation of the right of reproduction a corresponding limitation of the right of translation in Article 2bis(2) by India (document S/73), and in Article 10(1) and 10bis(1) (new) jointly hy Czechoslovakia, Hungary and Poland (document S/51). During the discussion of these proposals, the Committee considered thst a general rule regarding exceptions to the right of translation was necessary and should he inserted in Article 8. It was left to the Drafting Committee to try to find a satisfactory formula and to suggest whether such a formula should he included in the text of Article 8 or merely in the part of the Report concerning that Article. The Drafting Committee opted for the latter solution and the Committee decided that the following indications should be inserted in this Report.

205. As regards the right of translation in cases where a work may, under the provisions of the Convention, be lawfully used without the consent of the author, a lively discussion took place in the Committee and gave rise to certain statements on the general principles of interpretation. While it was generally agreed that Articles 2bis(2), 9(2), 10(1) and (2), and 10bis(1) and (2), virtnally imply the possibility of using the work not only in the original form hut also in trsnslation, suhject to the same conditions, in particular that the use is in conformity with fair practice and that here too, as in the case of all uses of the work, the rights granted to the author under Article 6bis (moral rights) are reserved, different opinions were expressed regarding the lawful nses provided for in Articles 11bis and 13. Some delegations considered that those Articles also applied to translated works, provided the above conditions were fulfilled. Other delegations, including those of Belgium, France and Italy, considered that the wording of those Articles in the Stockholm text did not permit of the interpretation that the possihility of using a work without the consent of the author also included, in those cases, the possibility of translating it. In this connection, the said delegations pointed out, on the level of general principles, that a commentary on the discussion could not result in an amendment or extension of the provisions of the Convention (see also paragraph 210 helow concerning the so-called "minor reservations" to Articles 11, 11bis, 11ter, 13 and 14).

Article 11 (Right of performance)

Article 11(1)

206. Under Article 11(1) of the Brussels text, the authors of dramatic, dramatico-musical and musical works enjoy the exclusive right of authorizing: (i) the public presentation and

public performance of their works; (ii) the public distribution by any means of the presentation and performance of their works. The application of the provisions of Articles 11bis and 13 is, however, reserved. The *Programme* did not propose any substantial change in the Brussels text, but merely a few minor amendments to the English version.

207. The Committee adopted the text proposed in the *Programme*, but excluded the reference to Article 13, which was no longer regarded as necessary in view of the amendments made to that Article.

208. When considering the deletion of paragraph (1) of Article 13, the Drafting Committee thought it advisable to recall that the general right of public performance provided in Article 11 also covered what Article 13(1)(ii) of the Brussels text called the public performance of works by means of instruments capable of reproducing them mechanically. It therefore proposed to insert in Article 11(1)(i), after the words "the public performance of their works," the words "including such public performance by any means or process." This proposal was adopted by the Committee.

209. In the General Report of the Brussels Conference, the Rapporteur was instructed to refer explicitly, in connection with Article 11, to the possibility of what it had been agreed to call "the minor reservations" of national legislation. Some delegates had referred to the exceptions permitted in respect of religious ceremonies, performances by military bands and the requirements of education and popularization. The exceptions also apply to Articles 11bis, 11ter, 13 and 14. The Rapporteur ended by saying that these allusions were given lightly without invalidating the principle of the right (cf. *Documents de la Conférence de Bruxelles*, page 100).

210. It seems that it was not the intention of the Committee to prevent States from maintaining in their national legislation provisions based on the declaration contained in the General Report of the Brussels Conference. It accordingly seems necessary to apply to these "minor reservations" the principle retained for exceptions to the right of translation, as indicated in connection with Article 8 (see paragraph 205).

Article 11(2)

211. Under Article 11(2) of the Brussels text, authors of dramatic or dramatico-musical works, during the full term of their rights over the original works, enjoy the same rights as those provided in paragraph (1) with respect to translations of their works.

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212. No change was proposed in the *Programme* and no amendment was submitted to the Committee. Paragraph (2) remains, therefore, as it is in the Brussels text.

Article 11(3)

213. Article 11(3) of the Brussels text states that authors are not bound, when publishing their works, to forbid the public presentation or performance thereof in order to enjoy the protection of this Article. The *Programme* considered this prohibition of formalities superfluous and proposed that the paragraph be deleted.

214. As no amendment was submitted to the Committee, it decided to delete the paragraph, as proposed in the *Programme*.

Article 11bis (Right of broadcasting)

215. Article 11bis(1) of the Brussels text deals with the exclusive right of the author to authorize the radiodiffusion and communication to the public of his work. Paragraph (2) refers to the compulsory license which national legislations may impose, subject to just remuneration, in respect of the rights referred to in paragraph (1). Paragraph (3) provides that permission for the radiodiffusion of a work does not imply permission to record the radiodiffused work, except where otherwise provided. National legislation may, however, determine the regulations for ephemeral recordings "made by a broadcasting body by means of its own facilities and used for its own emissions." Recordings may also, on certain conditions, be preserved in official archives.

216. The *Programme* considered that these rules provided an acceptable compromise between opposing interests and did not feel it necessary to propose any amendment other than some drafting amendments to the English version.

217. Brazil proposed (document S/217) a provision whereby each of the special rights included in the general broadcasting rights referred to in paragraph (1) could be exercised by the author and the right to make ephemeral recordings under paragraph (3) should not apply to profit-making organizations.

218. The United Kingdom proposed (document S/171): (i) deleting the condition in paragraph (3) that ephemeral recordings should be made by the broadcasting organization "by means of its own facilities"; (ii) restricting the right of recording to cases where "for technical or other reasons, the broadcast cannot be made at the time of the performance of the work."

219. Japan submitted a proposal (document S/112) similar to that made by the United Kingdom in respect of (i), suggesting that the words "by means of its own facilities and used for its own broadcasts" be replaced by the words "as a mere technical means for the use of the broadcasts made with permission." It further expressed the opinion that broadcasting organizations should be permitted to entrust the making of ephemeral recordings to one other broadcasting organization only, which would also be entitled to broadcast the work. It considered that this view was not contrary to the provisions of paragraph (3) of Article 11bis and it asked for this interpretation of the said paragraph to be mentioned in the Report.

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220. Monaco proposed (document S/77) that ephemeral recordings might be: (i) made by or for a broadcasting organization; (ii) used for its own broadcasts and for those of other organizations under the jurisdiction of the same country.

221. All these proposals were withdrawn at the session of the Committee which discussed Article 11bis.

222. The Working Group on the régime of cinematographic works proposed (document S/195) the insertion of a new paragraph (4) in Article 11bis limiting the compulsory license provided for in paragraph (2). The provisions of paragraph (2) would apply in respect of the cinematographic work and works adapted or reproduced in the cinematographic work itself only in so far as they relate to the rights provided in subparagraphs (ii) and (iii) of paragraph (1). But the Committee decided to make no amendment to the text of Article 11bis and the proposal of the Working Group was accordingly rejected.

223. Article 11ter of the Brussels text states that the author shall have the exclusive right of authorizing the public recitation of his works. No change was proposed in the *Programme*.

Article 11ter (Right of recitation)

224. The Federal Republic of Germany suggested (document S/92) including explicitly in this Article the right of authorizing: (i) the public recitation of works by means of instruments capable of reproducing them mechanically, and (ii) any communication to the public of such recitation. This proposal was accepted by the Committee.

225. The Drafting Committee suggested (document S/269) that under paragraph (1) of this Article authors should enjoy the right of authorizing: (i) the public recitation of their works, including such public recitation by any means or process; (ii) any communication to the public of the recitation of their works. This suggestion was made in order to bring the text of the paragraph into line with the new text of Article 11(1).

The Drafting Committee also suggested adding a paragraph (2) corresponding to paragraph (2) of Article 11, whereby authors shall enjoy, dnring the full term of their rights in the original works, the same rights with respect to translations thereof. The Committee adopted the text suggested by the Drafting Committee.

Article 12 (Right of adaptotion)

226. Article 12 of the Brussels text deals with the exclusive right of authors to authorize adaptations, arrangements and other alterations of their works. No change was proposed in the *Progromme* or by the countries in the Committee and the Brussels text remains unaltered.

Article 13 ("Mechonical rights")

227. Article 13 of the Brussels text deals with what are called the "mechanical rights" of composers. Under paragraph (1), authors of musical works have the exclusive right of authorizing: (i) the recording of such works by instruments capable of reproducing them mechanically; (ii) the public performance hy means of such instruments of works thns recorded. Paragraph (2) enahles countries to introduce a compulsory license in respect of these "mechanical rights," the author heing however entitled to obtain just remuneration. Paragraph (3) contains a transitional provision stipnlating that the provisions of paragraph (1) do not apply retroactively to recordings lawfully made hefore the coming into force of the Berlin Act of 1908 or, in the case of conntries acceding to the Convention at a later date, hefore the date of accession. Lastly, under paragraph (4), recordings are liable to seizure if they are made in accordance with paragraphs (2) and (3) and imported without permission from the parties concerned into a country which does not recognize the exceptions provided in paragraphs (1), (2) or (3).

228. The *Progromme* proposed tbe deletion of paragraph (1), the limitation of the compulsory license in paragraph (2) and the termination of the transitional system provided in paragraph (3). No amendment was made to paragraph (4), other than in references to the previous paragraphs. Owing to the deletion of paragraph (1), the otber paragraphs were renumhered.

Article 13(1) (of the Brussels text)

229. The *Programme* proposed the deletion of this paragraph. The right of recording was included in the right of reproduction provided in the new Article 9(1) and the right of puhlic performance in that provided in Article 11(1).

230. The Netherlands suggested (document S/230) that the first paragraph of the existing text he maintained.

231. The Committee adopted the proposal in the *Progromme* that it should be deleted.

Article 13(1)

232. According to the *Progromme*, the compulsory license under paragraph (1), which corresponds to paragraph (2) of the Brussels text, was maintained only in respect of recordings and aholished in respect of pnhlic performance by means of the recordings made.

233. Brazil proposed (document S/217) adding a sentence providing that the provisions of Article 9(2) should not he applicable to musical works.

234. The Federal Republic of Germany (document S/92) and the United Kingdom (document S/171) proposed inserting in the text a reference to the words of mnsical works. The Federal Republic of Germany preferred to add after the words "authors of musical works" the words "with or withont words." The United Kingdom chose a slightly longer wording: "works including any words intended by their author to he performed with them."

235. The Committee adopted the proposal of the *Programme*, adding however a special reference to the words of musical works, in accordance with the formula used in the United Kingdom proposal. The Drafting Committee proposed a text expressing this formula in more detail.

236. When considering the Drafting Committee's text, the Committee thought it preferahle to adopt a simpler formula. The starting-point should be the fact that compulsory licenses — for example, in the United Kingdom and Germany — are based on the conception that the author of the music and the author of the words have given their consent once to the recording. On the basis of such consent, the compulsory license could operate even in respect of the words. The Drafting Committee therefore prepared a new formula, which was finally adopted hy the Committee.

Article 13(2)

237. The *Programme* proposed putting an end to the transitional system under paragraph (2), which corresponds to paragraph (3) of tbe Brussels text. Only during a period not determined in the *Progromme*, hut which it was suggested should be very short, should it be permissible to reproduce, without the author's eonsent, recordings made in accordance with this paragraph.

238. The Federal Repuhlic of Germany proposed (document S/92) that a reference to the words of musical works should he inserted in this paragraph too.

239. The Committee adopted the proposal in the *Programme*. With regard to the date on which the transitional period should end, it accepted the proposal of the Drafting Committee that this period shonld expire two years after the date when the country where the recordings were made hecame honnd by the Stockholm Act.

Article 13(3)

240. This paragraph (3), which corresponds to paragraph (4) of the Brussels text, was not changed in the *Progromme*, except for the references to the preceding paragraphs.

241. Brazil suggested (document S/217) that the reference to paragraph (1) should he deleted, that is to say, recordings made under a compulsory license shonld not be seized. The Committee adopted the wording proposed hy the *Programme*.

Article 14bis (Article 14ter)

242. Article 14bis in the Brussels Act deals with the *droit de suite*. No proposal in that regard was made in the *Progromme* and none was snhmitted to the Committee.

243. The Committee decided to leave the Article as it was but to change the numhering hecause of the decision mentioned helow to insert a new Article 14bis dealing with cinematographic works.

Article 15

244. Article 15 of the Brussels text contains in paragraph (1) a definition of the person who should be regarded as the anthor of a work. Paragraph (2) stipulates that the publisher shall, in certain cases, be deemed to represent the author. No alteration was proposed in the *Progromme*.

245. In the course of the Committee's work, two new provisions were inserted in Article 15: one in paragraph (2) stipulating who should be presumed to be the maker of a cinematographic work, and the other in paragraph (4) containing rules applicahle to unpublished works when the identity of the author is nnknown. In the new draft, paragraph (2) of the Brussels text hecomes paragraph (3).

Article 15(1)

246. Paragraph (1) of the Brussels text estahlishes the rule that the person whose name appears on the work in the usual manner shall be regarded as the author of the work, in

the absence of proof to the contrary. As no proposal was submitted concerning this paragraph, it remains as it is.

Article 15(2) (new)

247. In a new paragraph (2) (see below under paragraph 325) the Committee adopted a rule stipulating who should be regarded as the maker of a cinematographic work.

Article 15(2) (paragraph (3))

248. Paragraph (2) of the Brussels text provides that in certain cases, as regards anonymous or pseudonymous works, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author. This provision ceases to apply if the author reveals his identity and establishes his claim to authorship of the work. No proposal was submitted with regard to this paragraph. The Committee changed the number of the paragraph, which becomes number (3); otherwise it remains unchanged.

Article 15(4) (new)

249. In a proposal (document S/73), the Delegation of India made several references to works of folklore. The Committee decided to consider the question of folklore, and a Working Group was set up for this purpose.

250. The Chairmanship of this Working Group was entrusted to Czechoslovakia, which then proposed (document S/212) that a provision on works of folklore should be inserted in the Convention. It would be a matter for legislation in the countries of the Union to appoint the authority competent to represent the authors of works of folklore and entitled to protect and enforce the author's rights, subject to the application of the second sentence of Article 15(2).

251. Taking as a basis the proposal of Czechoslovakia and some suggestions made by the Chairman of the Committee, the Working Group proposed (document S/240) the insertion in Article 15 of a new paragraph based on the following principles:

(i) the work is unpublished;
(ii) the author is unknown;
(iii) there is every ground to presume that the author is a national of a country of the Union;
(iv) if these three conditions are fulfilled, the legislation of that country may designate a competent authority to represent the author;
(v) the competent authority is entitled to protect and enforce the rights of the author in all the countries of the Union;

(vi) if such an authority is designated by a country, that country shall notify the Organization (WIPO) by means of a declaration in writing giving full information concerning the authority thus designated; WIPO shall communicate this declaration to all other countries of the Union.

252. The proposal of the Working Group did not mention the word "folklore," which was considered to be extremely difficult to define. Hence, the provision applies to all works fulfilling the conditions indicated above. It is clear, however, that the main field of application of this regulation will coincide with those productions which are generally described as folklore. The Working Group's proposal was adopted by the Committee.

253. The works of unknown authors seem to constitute a special category within the concept of anonymous works mentioned in the new text of the Convention in Article 7(3) and Article 15(3). The term of protection of anonymous works (as prescribed in Article 7) is thus also valid in respect of the works of an unknown author. If the author reveals his identity, he may establish his claim to authorship of the work in accordance with Article 15(3), last sentence. It appears that the work ceases to be subject to the special régime under paragraph (4) if it is published. If there is a publisher whose name appears on the work of an unknown author, such publisher may represent the author in accordance with Article 15(3), first sentence.

Article 16

254. Article 16 of the Brussels text deals in its three paragraphs with the seizure of infringing copies of a work. The *Programme* did not propose any amendment of this Article.

255. The United Kingdom proposed (document S/211) that the words "may" (be seized) in paragraph (1), and "may" (also apply) in paragraph (2), be replaced by "shall" (be seized) and "shall" (also apply).

256. That proposal was adopted by the Committee in principle, and the Drafting Committee proposed some purely formal amendments to the text, which were accepted by the Committee.

Article 17

257. Article 17 of the Brussels text leaves countries free "to permit, to control, or to prohibit by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority

may find it necessary to exercise that right." No proposal was made in the *Programme* concerning that Article.

258. Italy proposed (document S/226) the deletion of the words "or regulation." The United Kingdom proposed (document S/171): (i) the deletion of the words "to permit"; (ii) the insertion of a new paragraph leaving countries free to enact such legislation as is necessary "to prevent or deal with any abuse, by persons or organizations exercising one or more of the rights in a substantial number of different copyright works, of the monopoly position they enjoy."

259. Australia presented a proposal (document S/215) similar to that under (ii) above but of a more general character. Each country would have the right to take such legislative measures as it deemed necessary to prevent abuses which might result from the exercise of the rights conferred by the Convention. Such measures should not, however, be prejudicial to the moral rights of the author or his right to obtain equitable remuneration.

260. Israel proposed (document S/223) the insertion of a new paragraph guaranteeing that the scores of musical works should be accessible to the public. This proposal, which was expressed in a resolution, will be examined later.

261. The Committee decided that the wording of the Article should be modified along the line of the ideas underlying the above-mentioned Italian proposal.

262. The Committee also decided to adopt the proposal submitted in the document of the United Kingdom mentioned in paragraph 258 under item (i), that is to say, to delete the words "to permit." South Africa declared that, with respect to its national legislation based on Article 17 of the Brussels text, it was forced to vote against any amendment of Article 17 in the Plenary Assembly. As a result, Article 17 would have to remain as it was. The opinion of South Africa was that, according to Article 17, the countries, as sovereign States, were free to "permit" the dissemination of the work, even against the will of the author, if that were necessary as a matter of public policy in the country. The overwhelming majority of the Committee, however, interpreted Article 17 in another sense, even in its present form including the words "to permit." This Article referred mainly to censorship: the censor had the power to control a work which it was intended to make available to the public with the consent of the author and, on the basis of that control, either to "permit" or to "prohibit" dissemination of the work. According to the fundamental principles of the Berne Union, countries of the Union should not be permitted to introduce any kind of com-

pulsory license on the hasis of Article 17. In no case where the consent of the author was necessary for the dissemination of the work, according to the rules of the Convention, should it he possihle for countries to permit dissemination withont the consent of the author.

263. The Committee accepted, without opposition, the proposal of its Chairman that mention should he made in this Report of the fact that questions of puhlic policy should always he a matter for domestic legislation and that the countries of the Union would therefore he ahle to take all necessary measures to restrict possihle ahuse of monopolies. Whereupon, the proposals of Australia and the United Kingdom relating to ahuse of monopoly were withdrawn.

Article 18

264. Article 18(1) of the Brussels text stipulates that the Convention applies to all works that have not yet fallen into the public domain in the country of origin through the expiry of the term of protection. Article 18 also includes, in paragraphs (2) to (4), some other provisions concerning matters arising in that respect. As no proposals were made either in the *Programme* or in the Committee for alteration of this Article, it has heen retained in its original form.

Article 19

265. Article 19 of the Brussels text stipulates that the Convention shall not preclude the making of a claim to the henefit of any wider provisions which may he afforded hy domestic legislation. No proposal was suhmitted in this connection either in the *Progromme* or in the Committee, and Article 19 therefore remains in its original form.

Article 20

266. Article 20 of the Brussels text contains provisions concerning the right of the countries of the Union to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted hy the Convention, or contain other provisions not contrary to the Convention. No proposal was suhmitted in this connection either in the *Programme* or in the Committee, and Article 20 therefore remains in its original form.

IV. Régime of Cinematographic Works

267. Cinematographie works are expressly mentioned in the Brussels text in Article 2(1), Article 4(5), Article 7(3), Article 10[bis] and Article 14; of these the last named is the most important and it deals only with cinematographic works.

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Article 4(5), which defines the concept of puhlication, and Article 10[bis], which concerns the reporting of current events, may he left out of account in this section since they do not refer to the special prohlems relating to cinematographic works. Article 2(1) mentions "cinematographic works and works produced hy a process analogous to cinematography" as a category of protected works. Article 7(3) refers to the term of protection of cinematographic works according to the law of the country where protection is claimed. That term is not, however, to exceed the term fixed in the country of origin of the work.

268. Article 14(1) deals with the exclusive right of authors of pre-existing works to authorize: (i) the cinematographic adaptation and reproduction of these works, and the distrihution of the works thus adapted or reproduced; (ii) the puhlic presentation and performance of the works thus adapted or reproduced. Paragraph (2) stipulates that a cinematographic work is to he protected as an original work, without prejudice to the rights of the author of the pre-existing work. Paragraph (3) gives the author of a cinematographic work the right to authorize its adaptation. Paragraph (4) excludes cinematographic adaptations from the rules concerning the compulsory license in Article 13(2). Paragraph (5) stipulates that the provisions of Article 14 apply equally to works effected hy any other process analogous to cinematography.

269. The *Programme* proposed suhstantial changes in the present system as a result, amongst other things, of the development of television since the Brussels Conference. In Article 2(1) and (2), it offered a new definition of cinematographic works. New provisions in Article 4(4) and Article 6(2) made the headquarters or hahitual residence of the maker of a film the decisive factor, in certain cases, as regards the country of origin or the eligihility criterion of the work. In Article 4(6), the *Progromme* proposed a definition of the maker of a cinematographic work. The *Programme* also proposed new rules for the term of protection of cinematographic works in place of the provision in Article 7(3) of the Brussels text. In addition to the general rule in Article 7(1), it introduced as a variation for national legislations some rules which are included in a new Article 7(2).

270. In Article 14(1) to (3), the *Progromme* suhmitted provisions for pre-existing works which corresponded to the provisions of Article 14(1) to (5) of the Brussels text. In paragraphs (4) to (7), the *Progromme* introduced interpretative rules concerning contracts hetween authors and makers of cinematographic works.

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271. The Committee decided in principle to adopt amendments or new provisions in the same paragraphs as those of the *Programme*. Some rules on the same lines as those suggested hy the *Programme* in Article 14(4) to (7) were, however, placed in a new Article 14[bis], with the result that Article 14[bis] of the Brussels text was renumhered 14[ter].

272. No definition of the maker was introduced in Article 4(6). Further, a new provision, which will he mentioned helow (see paragraph 325), was inserted in Article 15(2), in order to determine who is to he regarded as the maker of the film.

Article 2(1) ond (2) (parograph (1))

273. The *Progromme* proposed that works assimilated to cinematographic works should he given a somewhat different definition from that contained in Article 2(1) of the Brussels text. The *Programme* replaced the phrase "works produced hy a process analogous to cinematography" hy the term "works expressed hy a process producing visual effects analogous to those of cinematography." This definition was limited, however, to works "fixed in some material form." The assimilated work was thus defined in a new paragraph (2).

274. Bulgaria (document S/89) and Yugoslavia (document S/107) proposed that a new category of protected works should he introduced: "televisual works." For this reason, the definition of a cinematographic work contained in paragraph (1) of the Brussels text was to he retained, hut the words "televisual works" were to he inserted after the definition and the new paragraph (2) was to he deleted.

275. Italy (document S/161) also favored the deletion of paragraph (2). It preferred to retain the assimilated works in paragraph (1), hut defining them in a way different from that of the Brussels text and the *Progromme:* "works expressed hy a process analogous to cinematography."

276. Portugal (document S/110) and the Federal Repuhlic of Germany (document S/92) suhmitted proposals concerning the requirement of fixation. Portugal wished to insert a new suhparagraph in paragraph (2) enahling countries to protect specifically as cinematographic works works which are not fixed. The Federal Repuhlic of Germany proposed that the words "fixed in some material form" should he deleted from paragraph (2) of the text of the *Progromme*. In their place, a new phrase was to he inserted stating that there would he no ohligation to protect as a cinematographic work a series of visual images not recorded in some material form.

277. The question was referred to the Working Group on the régime relating to cinematographic works, which presented

a proposal (document S/190) based on the Italian amendment (document S/161). The definition of a cinematographic work was to be transferred in its entirety to paragraph (1) and drafted as follows: "cinematographic works to which are assimilated those expressed by a process analogous to cinematography." Paragraph (2) of the *Programme* was to be deleted. The condition of fixation was no longer required as a general rule, but a provision giving countries the right to introduce fixation as a condition for protection of a work was inserted in a new paragraph (2) (see paragraph 130 above). The Committee adopted the proposal of the Working Group.

Article 4(4)(c)(i) (Article 5(4)(c)(i))

278. As regards the country of origin of cinematographic works, the *Programme* presented the following solution in Article 4(4). The first criterion for the country of origin would be publication *((a)* and *(b))* in the new and wider sense adopted in Article 4(5), making the country where the film is made (to a greater extent than at present) the country of origin of the film. If the cinematographic work is unpublished, the second criterion would be the country of the Union of which the maker is a national or in which he has his domicile or headquarters *((c)*(i)). If neither the first nor the second of these criteria applies, the country of the Union of which the author is a national would constitute the third criterion *((c)*(iii)).

279. Switzerland proposed (document S/63) that the words "habitual residence" be substituted for the word "domicile."

280. The Working Group suggested (document S/190) that item *(c)*(i) of the *Programme* should be adopted, except for two points: (i) the provision should not contain any reference to the nationality of the maker; (ii) the words "habitual residence" should be introduced instead of the word "domicile," in accordance with the above-mentioned Swiss proposal. The Committee adopted the proposal of the Working Group and inserted the provision in Article 5(4)*(c)*(i) of the new draft.

Article 4(6) (—)

281. The *Programme* proposed inserting in Article 4(6) a definition of the maker of a cinematographic work: "the person or body corporate who has taken the initiative in, and responsibility for, the making of the work.

282. Several proposals were submitted to amend that definition or to delete it. New definitions were proposed by the United Kingdom (document S/42) and India (document S/73), while France (document S/27) and Hungary jointly with

Poland (document S/43) proposed the deletion of the paragraph in question.

283. Italy proposed an amendment (document S/168) according to which paragraph (6) should not contain a definition of the maker but only a presumption. The maker of the cinematographic work would be presumed to be the person indicated as such in the credit titles of the film.

284. The Working Group proposed (document S/190), like France, Hungary and Poland, the deletion of paragraph (6) from the text of the *Programme*. At the same time, however, it proposed the insertion in a suitable place of a provision reproducing in a slightly amended form the presumption suggested by Italy.

285. The Committee adopted the Working Group's proposal and the Drafting Committee then suggested inserting the new rule in Article 15(2). Thus, the draft would no longer contain a new paragraph (6) in Article 4.

Article 6(2) (Article 4(a))

286. The *Programme* proposed for paragraph (2) of Article 6 a new criterion of eligibility in respect of cinematographic works which were unpublished or which were first published outside the Union. The criterion would be the country of the Union of which the maker is a national or in which he has his domicile or headquarters (see Article 4(4)*(c)*(i) regarding country of origin).

287. France proposed (document S/28) deleting this paragraph. The United Kingdom proposed (document S/42) adding at the end of the paragraph a sentence to the effect that the countries of the Union should be free to treat the maker of a cinematographic work as its author.

288. The Working Group proposed (document S/190) the adoption of paragraph (2) of the *Programme* with amendments corresponding to those made to Article 4(4)*(c)*(i), namely, the deletion of the criterion of the nationality of the maker and the substitution of the words "habitual residence" for "domicile." As regards the United Kingdom proposal, it was agreed that it was not necessary to insert the proposed sentence, as it was generally admitted that the Convention had always been interpreted in the manner suggested in that proposal, and as the situation would be clarified in the proposed new Article 14*bis*.

289. The Committee adopted the Working Group's proposal and included this provision in Article 4*(a)* of the new draft. The wish was expressed that the Report should state that a cinematographic work which is the result of joint

making is protected in the Union if one of the joint makers has his headquarters or his habitual residence in a country of the Union.

Article 7(2)

290. The *Programme* proposed new rules for the term of protection of cinematographic works. In general, cinematographic works should be subject to the general term of protection provided in Article 7(1), that is to say, the author's life and fifty years after his death. According to paragraph (2), national legislation may however provide for a special term of protection in respect of this category of works, namely, that protection shall expire fifty years after the first publication, public performance or broadcast. Failing such an event within fifty years from the making of such a work, the term would expire fifty years after such making.

291. Hungary proposed (document S/91) that this paragraph should be deleted and that the term of protection of cinematographic works should be regulated in Article 7(4) in the same way as that proposed in the *Programme* in respect of works of applied art and photographic works.

292. Portugal proposed (document S/152) that the term of protection should be fixed by national legislation in such a way as to allow a fair return on the investment made, and suggested certain rules regarding the date from which the term should begin to run.

293. The United Kingdom proposed (document S/42) that the words "after the first publication, public performance or broadcast" should be replaced by the words "after the work has been made available to the public with the consent of the author."

294. The Working Group proposed the adoption of the text of the *Programme* as amended in accordance with the suggestion made in the draft proposal by the United Kingdom. The Committee adopted the Working Group's proposal.

*Article 14 (Articles 14 and 14*bis*)*

295. Article 14 of the Brussels text consists of five paragraphs. Paragraph (1) deals with the exclusive right of authors of so-called pre-existing works. Paragraph (2) deals with the protection of cinematographic works in the strict sense. The authors of such works as can be said to constitute contributions to the cinematographic work as a whole may be called "authors of contributions." Paragraph (3) deals with the right to adapt cinematographic works. Paragraph (4) excludes cinematographic adaptations of works from the compulsory license referred to in Article 13(2). Paragraph (5) provides

that Article 14 shall also apply to works effected by any other process analogous to cinematography.

296. The *Programme* deleted paragraph (5), which was considered superflous in view of what had heen proposed in Article 2(2), and transferred paragraph (4) to a final sentence in paragraph (1). Some amendments were made to paragraphs (1) and (2), while paragraph (3) remained as it was. The *Programme* added to this Article paragraphs (4) to (7) concerning the "rules of interpretation for agreements," which refer to authors of hoth pre-existing works and contributions.

297. The Committee decided to deal only with the protection of authors of pre-existing works in Article 14 and to reserve for the authors of contributions Article 14bis containing the rules of interpretation or the "presumption of legitimation," to use the term generally employed in the Committee, as opposed to the term "presumption of assignment." At the same time, the scope of this presumption was reduced, to refer to authors of contrihutions only.

Article 14(1) (paragraphs (1) to (3))

298. Paragraph (1) of the Brussels text gives autbors of pre-existing works the exclusive right of anthorizing: (i) the cinematographic adaptation and reproduction of their works, and the distrihution of the works thns adapted or reprodnced; (ii) the public presentation and performance of the works thus adapted or reproduced.

299. The *Programme* proposed only two amendments. To the rights mentioned under (ii) it added the right of communication to the puhlic hy wire. In addition, it took over paragraph (4) of the Brussels text and incorporated it in a shorter form as the final sentence of paragraph (1), thus rendering the compulsory license inapplicahle to the rights referred to in that paragraph.

300. The Federal Republic of Germany proposed (document S/92) that: (i) the right to broadcast the work should be mentioned among the rights provided in paragraph (1); (ii) the application of Article 11bis(2) should be excluded while maintaining the application of Article 11bis(3).

301. The Working Gronp on the régime of cinematographic works proposed (document S/195) the adoption of the text of the *Programme* with two amendments: (i) the last sentence, referring to the non-application of the compulsory license under Article 13(1), was to be the subject of a special paragraph (3); (ii) a limitation of the compulsory license under Article 11bis(2), on the lines proposed hy the Federal Repuhlic of Germany in the above-mentioned proposal, should

he inserted in a new paragraph (4) of Article 11bis (see paragraph 222 ahove regarding Article 11bis).

302. The Committee adopted the text of the *Programme* amended in accordance with the first part of the Working Group's proposal and finally decided not to accept the second part of the proposal.

Article 14(2) (Article 14bis(1))

303. Paragraph (2) of the Brussels text provides in a single sentence that a cinematographic work, that is to say, the work of authors of contributions, shall he protected as an original work. The *Programme* retained the sentence hut added a second one stating that authors of contrihutions were to enjoy the same rights as the author of an original work, including the right referred to in the previous paragraph. No proposal on this point was submitted to the Committee.

304. The Committee adopted the Working Group's proposal (document S/195) to accept the text of the *Programme*, but to place it in paragraph (1) of the new Article 14bis dealing with authors of contrihutions. On a suggestion by the Drafting Committee, some minor amendments were made to the text.

Article 14 (3) (paragraph (2))

305. The Brussels text of paragraph (3) provides that adaptations of cinematographic productions derived from pre-existing works shall, without prejudice to the authorization of the authors of contributions, remain subject to the authorization of the authors of pre-existing works. No changes were proposed in the *Programme* or in the Committee. On the suggestion of the Working Group, the Committee merely changed the number of this paragraph, which hecomes paragraph (2) of Article 14.

Article 14(4) to (7) (Article 14 bis(2) and (3))

306. The *Programme* proposed the insertion, in paragraphs (4) to (7) of Article 14, of a rule concerning the interpretation of agreements hetween authors and makers on the exploitation of cinematographic works. This proposal was hased on the following ideas:

(i) this rule would apply to hoth kinds of authors, but, according to paragraph (7), a country could exclude authors of pre-existing works from its application. This should be notified to the Director General of the new Organization intended to replace BIRPI;

(ii) this rule presupposed the author's agreement to assign certain rights to the maker. Authors of pre-existing works should have autborized the cinematographic adaptation and reproduction of their works, whereas authors of contrihutions should have undertaken to hring literary or artistic contrihutions to the making of the cinematographic work;

(iii) the authorization of the authors should concern the fixation of their works in some material form;

(iv) the authorization should have heen given in the manner prescrihed hy the legislation of the country of origin;

(v) the countries of the Union could provide that the authorization should he given hy a written agreement or something having the same force;

(vi) if the ahove conditions were fulfilled, the author might not, in the absence of any contrary or special stipulation, object to the exploitation of the cinematographic work, that is to say, to the reproduction, distrihution, puhlic performance, communication to the puhlic by wire, hroadcasting, any other communication to the puhlic, subtitling and duhhing of the texts;

(vii) by "contrary or special stipulation" was meant any restrictive condition agreed hetween the maker and the authors;

(viii) unless national legislation provided otherwise, the interpretation rule should not, according to paragraph (6), apply to the rights in musical works, with or without words, used in the cinematographic work;

(ix) countries might, according to paragraph (5), provide, for the benefit of authors, a participation in the receipts resulting from the exploitation of the cinematographic work.

307. A number of proposals were submitted to the Committee.

308. (1) As to paragraphs (4) to (7) as a whole: Yugoslavia proposed (document S/107) deleting paragraphs (4) to (7) and therefore, in principle, maintaining the Brussels text. The United Kingdom proposed (document S/101) excluding from the application of the interpretation rule countries whose legislation grants copyright in a cinematographic work to its maker. Monaco proposed (document S/115), inter alia, reserving expressly the right of countries whose systems differ from that on which Article 14(4) was based, although their effects are similar to the interpretation rule, to maintain tbeir systems: for example, the "film copyright" system in force in the United Kingdom and several other countries, and the "*cessio legis*" system in force in Italy and Austria.

309. (2) As to point (i) ahove: Japan proposed (document S/111) that only authors of contrihutions should he mentioned

in Article 14(4) and that paragraph (7) should he deleted, which would mean that authors of pre-existing works were excluded from the interpretation rule. Belgium proposed (document S/144) the exclusion of all pre-existing works from the interpretation rule, except for dialogues and scenarios, which could, however, also he excluded under certain conditions.

310. (3) As to points (iv) and (v) above: the Federal Republic of Germany proposed (document S/92) that countries of the Union should have the right to provide, with respect to cinematographic works of which they are the country of origin, that the authorization or undertaking shall be given by a written agreement or something having the same force.

311. (4) With regard to item (v) above: France proposed (document S/130) that a written contract should be an obligatory condition for the application of the interpretation rule. On the other hand, Japan proposed (document S/111) that the phrase dealing with the right to demand that the authorization or undertaking should he in writing be deleted.

312. (5) With regard to item (vi) above: Monaco proposed (document S/115) that the text should refer only to exploitation, instead of listing all the actions to which authors might not object. Moreover, the interpretation rule should apply notwithstanding any previous assignment of the author's right.

313. (6) With regard to item (viii) above: Monaco proposed (document S/115) that paragraph (6) should be deleted, so that musical works should also be subject to the interpretation rule.

314. (7) With regard to item (ix) above: Hungary proposed (document S/139) that the optional provision in paragraph (5) should be made obligatory in regard to participation in receipts, while Monaco proposed (document S/115) that this provision should be deleted.

315. (8) With regard to the insertion of new provisions: Monaco proposed (document S/115) that a new paragraph should he inserted, stating that authors could not, subject to the application of Article 6bis and in the absence of any contrary or special stipulation, oppose alterations that might become indispensable for the exploitation of the cinematographic work.

316. The Working Group proposed (document S/195) a more modest regulation than that of the *Programme*. It suggested that Article 14 should be kept exclusively for pre-existing works, and that these should he completely excluded from the "presumption of legitimation." Article 14bis would group all the provisions concerning the cinematographic work

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itself and the authors of contributions. Paragraph (1) would take over paragraph (2) of the *Programme* without modification. Paragraph (2) would include, in a subparagraph *(a)*, a rule for determining the ownership of copyright, while a subparagraph *(b)* would deal with the presumption of legitimation, a subparagraph *(c)* would contain a provision dealing with written agreements, and a subparagraph *(d)* would contain a definition of the contrary or special stipulation. Paragraph (3) would contain provisions concerning authors constituting borderline cases between Articles 14 and 14bis.

317. The system proposed by the Working Group was based on the following ideas:

(i) the presumption should he limited to authors of contributions;

(ii) the presumption should not apply to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, unless the national legislation provides to the contrary (paragraph (3)). It may be noted that musical works which are not specially created for a cinematographic work will come entirely under the régime of pre-existing works in Article 14;

(iii) the question who is the owner of copyright in a cinematographic work should (according to paragraph (2)*(a)*) be a matter for legislation in the country where protection is claimed. This means, for instance, that if protection is claimed in the United Kingdom it is British law which decides who is the owner of the copyright in a cinematographic work, and if protection is claimed in France it is French law which decides the question. It should he added that the provision in paragraph (2)*(a)* applies not only in cases where copyright as a whole belongs to one particular person but also in cases where only some of the elements of copyright are assigned. Consequently, "*cessio legis*" (legal assignment) is in harmony with the rules in Article 14bis;

(iv) the presumption would apply only in countries which regard authors of contributions as the owners of copyright in the cinematographic work. Hence those countries which use the system of "film copyright" or that of "legal assignment" would fall outside the scope of this application. Nevertheless, the effects of these systems are the same in their application, taken as a whole, as the presumption of legitimation provided for in paragraph (2)*(b)*. It may he added that cinematographic works from the latter countries can he affected by the presumption. If, for example, the cinemato-

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graphic work of a British maker is exported to France, the maker will benefit in France from the presumption of legitimation, provided the necessary conditions are fulfilled;

(v) the authors should have undertaken to bring contributions to the making of the cinematographic work;

(vi) the legislation of the country where the maker has his headquarters or habitual residence should, according to paragraph (2)*(c)*, govern the form of the undertaking. That country may require a written agreement or a written act of the same effect.

(vii) if the conditions specified above are fulfilled, the authors of contributions may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of the texts, of the cinematographic work. The formula is the same as that used in the *Programme*;

(viii) by "contrary or special stipulation" should he understood, according to paragraph (2)*(d)*, any restrictive condition which may be relevant to the undertaking referred to in paragraph (2)*(b)*. This formula is the same, except for some amendments to the wording, as that used in the *Programme*.

318. The Committee began by adopting the proposal of the Working Group. After further discussions, however, it considered that the adopted text would not adequately meet the urgent demands of certain countries. The text of the Working Group was finally adopted but with amendments on two points.

319. The first amendment refers to point (ii) above. The principal director will he placed in the same situation as the authors of scenarios, dialogues and musical works, and will thus not be affected by the presumption, unless the national legislation provides otherwise. It is prescribed, however, that if the legislation of a country does not include the principal director among the authors to whom the presumption applies such country shall he obliged to notify the Director General of the Organization intended to take the place of BIRPI.

320. The second amendment refers to point (vi) above. The Committee started with the idea that the form of the undertaking should he governed by the legislation of the country where protection is claimed, instead of the legislation of the country where the maker has his headquarters or habitual residence. The final decision, reached at the last moment, consisted however in a compromise between the two principles

mentioned above: the form of the undertaking should be decided by the law of the country (i) where the maker of the cinematographic work has his headquarters or habitual residence, or (ii) where protection is claimed. The general rule is that the form of the undertaking is governed by the legislation of country (i). There is, however, an exception to that rule, which permits the legislation of country (ii) to make the application of the presumption conditional upon the existence of a written agreement or a written act of the same effect. Countries which avail themselves of such a possibility must notify the Director General of the Organization referred to above. The purpose of the notification is to enable all who are interested to know the countries in which the presumption is subject to a written agreement or a written act of the same effect. It should finally be pointed out that the question which arises concerns only the form of the agreement constituting the basis of the presumption and not the form as a condition of the validity of the agreement in general (authenticated by a notary or in any other form). In other words, the text adopted by the Committee concerns only the question whether or not the form of the undertaking should, for the application of the presumption of legitimation, be in a written agreement or a written act of the same effect.

321. It was further requested that the following clarifications be inserted in the Report. First, the presumption of legitimation prescribed in paragraph (2) is to be mandatory for the countries. It is not possible for those countries of the Union which regard authors of contributions as owners of copyright in the cinematographic work to maintain or introduce legislation that does not include a presumption of legitimation in accordance with Article 14bis(2).

322. Secondly, by "written act of the same effect" is meant a legal instrument in writing defining sufficiently adequately the conditions of the engagement of persons bringing contributions to the making of the cinematographic work. This notion applies, for example, to a collective employment contract or to a general settlement to which those persons have agreed.

323. Thirdly, the presumption of legitimation does not affect the right of the author to obtain remuneration for the exploitation of the cinematographic work. The countries of the Union are therefore free to introduce any system of remuneration they wish: for example, to provide for the benefit of the authors a participation in the receipts resulting from the exploitation of the cinematographic work.

324. And, fourthly, the right of the maker to make, even without the authorization of the authors, changes in the cine-

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matographic work is a matter for national legislation and subject to the interpretation of the agreement between the authors and the maker. The moral rights referred to in Article 6bis of the Convention must, however, be respected.

Article 15(2) (new)

325. As has already been stated above, the Committee decided to insert, on the basis of a proposal submitted by Italy (document S/168) and slightly amended by the Drafting Committee, a provision according to which the person or body corporate whose name appears on a cinematographic work in the customary manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

V. Joint Meetings with Other Committees

Article 25ter (Right of translation) (document S/9)

326. According to Article 8 of the Brussels text, the right of translation enjoyed by the author lasts throughout the term of protection of the original work. However, in accordance with Article 27(2), the countries of the Union could still retain the benefit of reservations formulated previously. One of these reservations maintained in favor of some countries was to apply Article 5 of the Paris text (1896) instead of Article 8 of the Brussels text; this made it possible in certain conditions to respect the right of translation only during a period of ten years from the publication of a work. Article 25(3) of the Brussels text permits countries outside the Union to benefit from this reservation on adhering to the Union.

327. The *Programme* (document S/9, Article 25ter) proposed the deletion of the reservation regarding the right of translation. Questions relating to reservations came within the province of Main Committee IV. A proposal was made by Japan (document S/98) to maintain this reservation. After asking the opinion of Main Committee I, the majority of whom voted, in conformity with the Japanese proposal, to maintain the reservation in favor not only of Union countries but also of countries acceding to the Stockholm Act, Main Committee IV took its decision on those lines.

328. A proposal having been submitted by Italy in respect of Article 25ter(2)*(b)* and *(c)* (documents S/245 and 259), Main Committees I and IV decided at a joint meeting to adopt, in accordance with that proposal, the principle that countries of the Union not availing themselves of the right of reservation in respect of the right of translation shall be entitled to apply the principle of equivalent protection in regard to works having as their country of origin a country which avails itself of that reservation. Nevertheless, this system applies only to

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cases where the reservation is made by a country outside the Union at the time it adheres to the Union; the principle of reciprocity cannot be applied with regard to countries of the Union already availing themselves of the reservations in question.

VI. Recommendations Expressed by the Committee - Miscellaneous Proposals - Additional Protocols

Extension of the term of protection

329. The Federal Republic of Germany proposed that the Committee adopt the recommendation, for expression by the Conference, that negotiations should be continued between the countries concerned for the conclusion of a special agreement on the extension of the term of protection in countries parties to that agreement (document S/205). This proposal was at first rejected by the Committee, but was then reconsidered and adopted with some amendments proposed by the Drafting Committee (document S/269).

Article 6bis (Deposit of a facsimile of certain works)

330. Austria proposed (document S/147) the insertion in Article 6bis of a new paragraph (4) containing a provision whereby it would be incumbent on the publisher of literary, musical or dramatico-musical works published in a country of the Union to "deposit in the national library or archives of that country a facsimile copy of the earliest and most authentic text or score of the work in the form and version finished and approved by the author." The conditions of the deposit would be a matter for national legislation.

331. After lengthy discussion, the Committee decided to recommend that the International Bureau of the Union should undertake a study of the question in order that consideration may be given to the possibility of including provisions relating thereto in a future revision of the Convention.

Article 17 (Provisions regarding the accessibility of musical works to the public)

332. Israel proposed (document S/223) the insertion of a new paragraph (3) in Article 17 under which it would be a matter for legislation in the countries of the Union to take measures whereby, "when a musical or dramatico-musical work has been made available with the consent of the author thereof, the graphic copies of the work shall be made accessible to the public without restrictions contrary to fair practice."

333. On this matter the Committee made the same recommendation as it had done in the case of the Austrian proposal mentioned above.

Copyright in works created on commission or in fulfilment of the author's task as an employee

334. Hungary proposed (document S/196) the insertion in the Convention of a new provision whereby works created on commission or in fulfilment of the author's task as an employee can be used only "for purposes relevant to the employer's own functions and in a manner not prejudicial to the moral rights of the author."

335. After discussion, the Hungarian Delegation withdrew its proposal, provided that it was recorded in this Report.

Additional Protocol concerning the Protection of the Works of Stateless Persons and Refugees

336. The *Programme* proposed an Additional Protocol providing that any country of the Union may declare that stateless persons or refugees or both are assimilated to the nationals of that country. This proposal also referred to the provisions regarding ratification or accession.

337. After the Committee had adopted the proposal to provide in Article 4(2) that persons having their habitual residence in a country of the Union should be assimilated to nationals of that country, the proposal to establish an Additional Protocol in respect of stateless persons and refugees became superfluous. The Committee accordingly decided not to adopt the said Protocol.

Additional Protocol concerning the Application of the Convention to the Works of Certain International Organizations

338. Taking its inspiration from the idea underlying Protocol No. 2 annexed to the Universal Copyright Convention, the *Programme* proposed an Additional Protocol which would make Articles 4, 5 and 6 of the Convention applicable to works first published by the United Nations and by its Specialized Agencies.

339. A proposal submitted by Belgium, Luxembourg and the Netherlands (document S/237) was designed to extend the protection to the works of international intergovernmental organizations that have their headquarters in a country of the Union or whose members are for the greater part countries of the Union.

340. During the discussions in the Committee, it was pointed out that the introduction of such an Additional Protocol was not necessary, since the works of the organizations in question were in any case protected if they were first published in a country of the Union or if their authors were

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nationals of a country of the Union. The Committee finally rejected the proposal to annex to the Convention an Additional Protocol concerning the works of certain international organizations.

341. The Rapporteur would here like to express his profound gratitude to the Committee's Secretary, Mr. Claude Masouyé (BIRPI), for the untiring assistance and collaboration afforded by him in the drafting of this Report. He would also like to draw attention to the notable spirit of international cooperation with which the deliberations of the Committee have been imbued and which has enabled it to accomplish work of importance for the future of the Convention.

[This Report was unanimously adopted by Main Committee I in its meeting on July 11, 1967.]

CONFERENCE IN STOCKHOLM, 1967 — REPORT ON THE WORK OF MAIN COMMITTEE II (VOJTĚCH STRNAD)

Report

on the Work of Main Committee II (Protocol Regarding Developing Countries)

by

Vojtěch STRNAD, Rapporteur
(Member of the Delegation of Czechoslovakia)

1. The protection of authors' rights in countries that have recently gained independence is one of the problems that have solicited the attention of the Swedish Government as the host country of the Revision Conference and that of BIRPI for several years. The history of the preparatory work and studies is to be found in document S/1 (pages 67 to 74).

2. After the publication of document S/1, there was an important event in this domain, whose influence has been apparent both on the discussion and on the results of the Conference. This was the East Asian Seminar on Copyright, which was held at New Delhi in January, 1967.

3. At the proposal of the Government of Sweden, a Main Committee was set up to produce a final text on the basis of document S/1. This Main Committee called Main Committee II in the Conference documents and hereinafter referred to as "the Committee" met ten times. It appointed two Working Groups for certain special problems, one to consider matters of substance (Chairman: Mr. Hesser (Sweden); members: Czechoslovakia, France, India, Ivory Coast, Tunisia, United Kingdom), and the other to consider the definition of the criterion of countries that would be entitled to avail themselves of this Protocol (Chairman: Mr. Lennon (Ireland); members: Brazil, Congo (Kinshasa), Czechoslovakia, France, India, Italy, Ivory Coast, Senegal, Sweden, Tunisia, United Kingdom).

4. Several amendments were submitted with respect to the *definition* of countries beneficiaries of the Protocol mentioned in the introduction to Article 1 of the Protocol with a view to the clarification of the general formula: the object of

a proposal by France (document S/176) was to make countries that adhered to the Berne Union only after the signing and entry into force of the Brussels Act beneficiaries of the provisions of the Protocol; a proposal by Italy (document S/213) introduced technical criteria (illiteracy, school attendance) into the idea of a developing country; two proposals, one by the United Kingdom (document S/149), and the other by Denmark, Finland, Norway and Sweden (document S/253), suggested as a solution an international authority competent to decide in each case (the Executive Committee of the Berne Union in the former and the General Assembly of the United Nations in the latter proposal). After discussion, the Working Group proposed to the Committee a text referring to Resolution No. 1897 (XVIII) adopted by the General Assembly of the United Nations at its eighteenth session on November 13, 1963, for application to any country subsequently designated as a developing country. A proposal by the Ivory Coast (document S/234) brought the list up to date by adding seven new African States to it.

5. The Committee dealt with the question and, while accepting the idea that the countries listed in the Annexes to document S/249 should be beneficiaries of the Protocol, it noted that simple reference to the decisions of the United Nations would entail a delay for countries that had recently gained their independence that would prevent them from acceding to the Convention and the Protocol immediately or at least before a decision by the United Nations. A more flexible wording was sought. A joint proposal by Denmark, Finland, Norway and Sweden submitted in document S/253 stipulated that a developing country would be considered to be any country designated as such under the established practice of the General Assembly of the United Nations, it being understood that the term "established practice" implies that the country concerned receives assistance from the United Nations Development Programme through the United Nations or its Specialized Agencies. The country which considers that it is in a position to have recourse to the Protocol shall notify the Director General of WIPO, who shall, if necessary, after consultation with the organs of the United Nations, communicate the notification to the other countries members of the Union together with his observations. The final text was produced by the Committee's Drafting Committee under the chairmanship of Mr. Essén (Sweden) (members: Mr. Abi-Saad (Brazil), Mr. Strnad (Czechoslovakia), Mr. Desbois (France), Mr. Krishnamurti (India), Mr. Ciampi (Italy), Mr. Amon d'Aby (Ivory Coast), Mr. Goundiam (Senegal), Mr. Fersi (Tunisia), Miss White (United Kingdom)). The text was adopted by the Committee at its last meeting.

6. The *substantive provisions* were also examined on the basis of document S/1 submitted by the Government of Sweden with the assistance of BIRPI. The order of the items included in the Protocol was altered by the Drafting Committee so that the provisions concerning the term of protection — following the system of the Convention itself — were mentioned first among the questions of substance, and the others were inserted thereafter. In the course of the proceedings of the Committee they underwent the following changes.

7. As an outcome of the insertion of Article 9, paragraph (2), of the Rome Act of 1928 and the Brussels Act of 1948 in a new draft of the text of the Convention itself, in which it appears as Article $10^{bis}(1)$, paragraph *(c)* of Article 1 in document S/1 became superfluous in the Protocol and was deleted.

8. A group of countries (Congo (Brazzaville), Congo (Kinshasa), Gabon, India, Ivory Coast, Madagascar, Morocco, Niger, Senegal and Tunisia) submitted a new drafting of the text of the Protocol (document S/160), stemming from document S/1 and adopting its scheme, but adding certain new features.

9. The *term of protection* has been decided without change in the manner proposed by the Government of Sweden with the assistance of BIRPI. The term of protection may therefore be fixed by domestic legislation at a period shorter than the compulsory term of fifty years referred to in Article 7 of the Convention.

10. The *translation license* combines the translation license referred to in Articles 25 and 27 of the Convention (Brussels text) and traditional in the Berne Union with certain elements of the license referred to in Article V of the Universal Copyright Convention; the definition of the languages into which the translation may be made has been clarified.

11. Several proposals were submitted for regulating the régime of published works on the basis of a statutory license (the proposals of Italy, document S/162; of Denmark, document S/146; of Greece, document S/181; and of Israel, document S/199). Japan made a proposal in document S/127 for simplification of the translation license by simply taking over the system as it exists in the Berne Convention.

12. The result of the proceedings of the Working Group and of the Committee, which is set out in document S/249, corresponds with certain slight alterations to the desire to replace the text of Article 5 of the Paris Act of 1896 quoted in paragraph *(b)* of Article 1 of the Protocol by an up-to-date wording without affecting the substance of the provisions concerned.

13. The principles of the Universal Copyright Convention (see Article V, paragraphs 2 and 5), which are incorporated in the system of the translation license provided for by the Protocol (Article 1, paragraph *(b)*(iv)) have also undergone modification: the compensation stipulated should be just and the explicit reference to international usage in this matter was deleted; the transmittal of such compensation, also referred to in the above Article of the Universal Copyright Convention, is made subject to national currency regulations by the text of the Protocol.

14. It should be noted that neither of the two International Conventions that might be regarded as having served as a model for paragraph *(b)* of Article 1 of the Protocol stipulates precisely where a translation must be published by the author himself if he does not wish a statutory license to come into force. Article 5 of the Paris Act of 1896 merely stipulates that the publication of such a translation must take place in a country of the Union. The Protocol adds an important clarification: the translation must be published in the country invoking the reservation concerning the translation license. Publication does not mean printing in the strict sense; this is an essential distinction for countries that do not possess even the technical means needed to publish translations or reproductions under the conditions laid down by the Protocol.

15. The proposals on the right of *reproduction* contained in Article 1*(e)* of document S/1, corresponding to Article 1*(c)* of the final text, have undergone profound modification. After discussion and examination of the various proposals (see the proposal of the United Kingdom, document S/149, paragraph 3, and the joint proposal of ten developing countries, document S/160), the Working Group proposed the text contained in document S/249, Article 1, paragraph *(d)*. The final solution adopted for the reproduction license is modeled on the translation license to the extent that the analogy is possible. It provides for the possibility of the introduction of a reproduction license for educational or cultural purposes — the wording should not be interpreted in a restrictive manner, given that the addition "for exclusively . . . purposes . . ." was intentionally deleted.

16. On the other hand, restriction of the right of reproduction to educational or cultural purposes excludes from the field of application of this reservation all works whose educational or cultural purpose is not evident; as an example, detective and adventure stories were mentioned in the discussion.

17. The procedure to he followed in order to ohtain such a license, the conditions concerning payment of the compensation, the place of pnhlication, respect for the right of the author to withdraw the work from circnlation, and the possibility of having recourse to snch a license even after the copies of the original edition of the work are out of print, have been estahlished on the same hasis as for translations.

18. Paragraph *(d)* of Article 1 of the Protocol, which concerns the *broadcasting* of literary and artistic works, permits the countries heneficiaries of the Protocol to snhstitute for paragraph (1) and paragraph (2) of Article 11bis of the Convention the text of the Rome Act of 1928 with two changes. The first, which represents a modernization of the text, is to replace the words "communication hy radiodiffusion" of the Rome Act of 1928 hy the word "hroadcasting". The second change settles a hasic matter: the public communication of hroadcast works for profit-making purposes shall not he permitted except on payment of equitahle remuncration fixed, in the ahsence of agreement, hy competent anthority. That addition takes over the wording of the proposal hy the United Kingdom (docnment S/149, paragraph 2).

19. A new possibility for restriction open to domestic legislation has heen adopted for uses destined *exclusively for teaching, study and research in all fields of education.* It should he noted that that reservation does not apply solely to the rights of translation and reproduction; it may also he invoked equally for the other uses of literary and artistic works. A new formula has heen inserted for the determination of compensation, hy which the latter shall "conform to standards of payment made to national anthors". The addition of the words "in all fields of education" and the exclusivity of the purposes for which the reservation can he ntilized indicate that industrial or commercial research or research of the same nature is outside the scope of this reservation.

20. In the case of copies of works translated and reproduced on the hasis of the reservations in a conntry availing itself of the Protocol, the general principle adopted is that their export and sale are not permitted in a conntry not availing itself of these reservations. The prohihition does not apply if the legislation of a conntry which cannot avail itself of the Protocol, or the agreements concluded hy that country, authorize snch importation. The reference to domestic law and to agreements concluded has heen replaced, in the case of the works mentioned in Article 1*(e)*, hy the condition of the agreement of the author. In the same paragraph it has heen made clear that only copies of a work published in a country for the said educational pnrposes may he imported

and sold in other countries availing themselves of the reservations; the effect, therefore, is that such copies will he in a language relevant to the edncational needs of that conntry. An example quoted in the discussions was that of a translation made in India which conld he imported into Ceylon hut not into Japan.

21. The ahove reservations may he maintained for ten years from the time of ratification hy the country concerned (see Article 1, introdnction *in fine);* countries that do not consider themselves in a position to withdraw the reservations made under this Protocol may continue to maintain them nntil they accede to the Act adopted hy the next revision conference; the "maintaining of reservations" therefore implies that it will he essential for a declaration to that effect to he addressed to the Director General hy the country concerned, and that in default thereof the reservations shall cease to he applicahle. The country concerned would then he honnd hy the Convention itself.

Various proposals made in the course of the Conference hy the Delegations present, and concerning one or other of the prohlems mentioned ahovc, have either heen incorporated in the final text or withdrawn (see, for example, pnhlication of serials, ahridgements or translations in newspapers or periodicals, document S/160, or the provisions for the institution of certain measnres of control over the application of the Protocol submitted hy Israel, document S/199), or have found their place in a resolution (for example, the creation of a fund intended for the authors of works affected hy the reservations stipulated in the Protocol, as proposed hy Israel, document S/228).

22. Article 6 was added to the text as the result of a proposal hy the United Kingdom which was adopted hy the Committee at its eighth meeting. Even a developing territory, judged hy the same principles as sovereign countries, which has not acceded to independence hy the day on which the Convention is signed may enjoy the henefits of the Protocol.

23. With regard to this Article, the Delegations of Tunisia, Czechoslovakia, India and Israel made statements evidencing their opposition in principle to clauses of this kind in conventions. Later on, in the Plenary of the Berne Union this Article was expanded to indicate that the declaration referred to in it could he made only hy a country hound hy the Protocol.

24. The reference to the practice estahlished hy the United Nations made it necessary to solve the prohlem of the legal consequences of a contrary situation, namely, to deal with the case of a country to which the status of developing country

ceases to he applicahle. The solution proposed hy the Drafting Committee is that such a country will no longer he ahle to avail itself of the Protocol at the expiry of a period of six years from the appropriate notification.

25. To provide a possihility for developing countries to henefit immediately from the Protocol, an Article 5 has heen added to the text, offering this possihility even hefore the text of the Convention itself has heen ratified within the meaning of Article 28(1)*(b)*(i).

26. Another question that was the snhject of consideration hy the developing conntries in the conrse of the preparatory work, that of the protection of folklore, was resolved hy Article 15, paragraph (3), of the Convention itself.

[This Report was unanimously adopted by Main Committee II in its meeting on July 8, 1967.]

Report

on the Work of Main Committee IV (Administrative Provisions and Final Clauses of the Paris and Berne Conventions and the Special Agreements)

by

Valerio De Sanctis, Rapporteur
(Member of the Delegation of Italy)

CONTENTS

1. The tasks assigned to Main Committee IV by the program and rules of procedure of the Conference were of a rather complex nature.

— It was not simply a matter of examining and discussing the proposals for revising the administrative and structural provisions of the Paris Convention for the Protection of Industrial Property (Document S/3), the Berne Convention for the Protection of Literary and Artistic Works (Document S/9), and the Special Agreements concerning industrial property: the Madrid Agreements (international registration of marks; repression of false or deceptive indications of source on goods), the Hague Agreement (international deposit of industrial designs), the Nice Agreement (international classification of goods and services for the purposes of the registration of marks), the Lisbon Agreement (protection of appellations of origin and their international registration), but also of examining the final clauses of the various Conventions and Agreements and the provisions relating to the adoption of possible transitional measures, as well as the decisions to be made with regard to the ceiling of contributions from the member countries of the Paris and Berne Unions.

— While the structural and administrative provisions concerning the Unions are tied in with the proposed new Intellectual Property Organization, the final clauses and transitional measures appear to be related to matters that are of interest also to other Main Committees of the Conference; therefore, constant coordination — particularly through the holding of joint meetings — was established with those Committees during the course of our work.

2. The Plenary Assembly of the Conference, which met at the time of the opening of the Conference, accepted the proposals of the Swedish Government to the effect that the chairmanship of Main Committee IV should be entrusted to France and the duties of Rapporteur to the writer of this Report.

3. The Committee began its work on June 13 under the chairmanship of Mr. François Savignon (Vice-Chairman: Mr. G. S. Lule, Uganda) and terminated it on July 10. During its meetings, the Committee set up a drafting committee composed of delegates from the following countries: Brazil, France, Germany (Federal Republic), Netherlands, South Africa, Soviet Union, Spain, Sweden, Tunisia, United Kingdom, United States of America. Mr. Roger Lahry (France) was named Chairman of this committee and Miss Silvia Nilsen (United States), Vice-Chairman.

— As the work of the Main Committee progressed, working groups were set up to make a preliminary study of certain matters.

4. During the general discussion of the structural and administrative reform, opened by the Chairman at the first

meeting of the Committee, all delegations indicated their willingness to adopt, in principle, the suggested proposals which were the result of a long preparatory work, particularly in governmental Committees of Experts.

— The creation, for each Union, of new permanent organs representing the common will of the member countries and the autonomy of each Union, especially as regards its own budget, constituted the foundation of the new administrative structure elaborated by the Committee and proposed to the Conference.

— The Head of the Swiss Delegation made a statement in which he reminded the delegates that the Federal Council considered it an honor to be entrusted with the mandate of supervisory authority but was ready to accept its transfer to the Member States if they so desired; he added that the Swiss Government would, of course, continue to exercise its mandate on behalf of the States as long as they were not yet Members of the new Intellectual Property Organization. This statement was greatly appreciated by all delegations.

5. Also during the general discussion, it was agreed that the references to the new Organization appearing in the texts to be adopted by the Committee could be regarded as approved, subject to the decisions made by Main Committee V. Inasmuch as the program (Document S/3, Article 16; Document S/9, Article 25) reserved to the States the right to choose between several possibilities when ratifying or acceding to the Stockholm Acts (this idea was later accepted by the Committee, notwithstanding certain proposals intended to restrict the possibilities of choice), some delegations recommended that the references in question be limited to what was absolutely necessary; this suggestion was taken into account in the drafting of the new texts.

6. The examination of the provisions in the program concerning the composition and functions of each Union's Assembly and Executive Committee gave rise to many suggestions by several delegations. Even in cases where they were accepted by the Committee, however, these suggestions did not alter the structure of the new organs as they were proposed in the program. It should simply be noted that, here too, an effort was made to strengthen the existing parallelism among the different Unions but to avoid unduly complicating the organization of certain industrial property Agreements.

7. The Assembly thus remains the sovereign organ of each Union, due to the fact that it is composed of all Union countries, and the Committee endeavored to strengthen its powers. As in the program, the Executive Committee consists of coun-

tries elected by the Assembly from among countries members of the Assembly.

— The constitution of the Assembly is the essential feature of the administrative reform of the Unions, and this was the principle on which the Committee based its work. The Assembly permits the member countries of each Union, even though grouped in a Union, to exercise their sovereign powers. Furthermore, from the standpoint of the development of international cooperation in the field of intellectual property, it offers the possibility of an uninterrupted exchange of views, whereas the present organization of the Unions — especially that of the Berne Union — provides for meetings only at intervals sometimes more than twenty years apart, at a time when culture and technology are advancing at a pace never before attained.

8. As regards the composition and functions of each Union's new organs, I should merely like to call attention to a matter concerning the representation of the member countries within the Assembly, a matter that was raised, in connection with a specific case, by a proposal made by the Delegations of Madagascar and Senegal. Because of the very strong fears of certain delegations that the proposal might weaken a basic general principle — namely that each delegation to the Assembly may represent, and vote in the name of, one country only — a compromise solution was adopted, following long debates within both the Committee and an *ad hoc* working group. The solution restricts the provision to the Paris Convention and limits it to the benefit of certain Paris Union countries, namely those which, under an agreement, are grouped in a common office possessing for each of them the character of a special national service of industrial property (referred to in another provision of the same Convention) and all of which, in discussions in the Assembly, may be represented by one of them. It is also understood that, in such a case, a delegation may vote by proxy only for one country and only for exceptional reasons.

— A proposal put forward during the debates by the Delegations of Argentina, Brazil and Uruguay (Document S/189), supported by the Delegation of Spain, provided that the possibility of voting in the name of a second country would not be limited to countries having a common office but would be made general. However, this proposal was rejected by the majority of the members of the Committee, who were of the opinion that what was involved was an exception and, consequently, should not be generalized so as not to upset, as regards voting, the structure of the Assembly and of any other collegial organ of the Unions.

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9. The question of the quorum of each Union's Assembly was examined by a working group, set up for that purpose by the Committee, which felt that the quorum of one-third provided in a paragraph of the draft was too low. The provisions adopted by the Committee in regard to this matter brought the quorum up to one-half, on the understanding, however, that the Assembly could make decisions even if the number of countries represented at a session was less than one-half, as long as it was equal to or more than one-half of the member countries. Decisions adopted in such cases would, however, not take effect until after having been communicated to the countries not represented in the Assembly, with a view to reaching the quorum by correspondence. The provision drawn up to this effect might appear to be somewhat complicated, but certain delegations pointed out that nothing prevented the application of the provision being clarified and simplified in the clauses of the Assembly's rules of procedure.

10. There is a certain interdependence between the matter of the quorum in the Assembly and that of the majority required in the Assembly to amend the administrative clauses of the two Conventions. In fact, only amendments to the administrative clauses are within the competence of the Assembly. Revision of the substantive provisions is, on the other hand, entrusted to conferences of the Union countries. Under the terms of the text adopted by the Committee, the majority required to amend the administrative clauses is three-fourths of the votes cast, except as regards the articles concerning the composition and functions of the Assembly, amendments of which require a four-fifths majority of the votes cast.

— The debates on these matters were rather lively, especially as concerns the conferences of revision of the substantive clauses. The requirement of unanimity was reaffirmed in respect of the Berne Convention, including the Protocol, which is an integral part of it. A proposal to substitute a qualified majority for unanimity was rejected by a vote of 24 to 11, with 9 abstentions. As to the substantive clauses of the Paris Convention, the existing situation has been maintained.

— A proposal to provide that the conferences of revision would always be held at the headquarters of the Organization was not adopted, but it was understood that the matter would be re-examined at the Conference of Revision of the Paris Union, scheduled to be held at Vienna in a few years' time.

11. The administrative tasks with respect to each Union will, on the basis of the new structural organization of the Unions, be performed by the International Bureau. The latter is a continuation of the Bureau of the Paris Union and the

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Bureau of the Berne Union, united in 1892 pursuant to a Swiss Federal Council decree. The Committee made no important substantive amendments to the proposals contained in the program. The replacement of the wording (French text) appearing in the program by the expression "*Les tâches administratives incombant à l'Union sont assumées par le Bureau international qui succède au Bureau de l'Union*" does not alter the basic idea. What is concerned is, in fact, a continuation in the same functions, and, as a transitional measure, the new wording confirms that the International Bureau of the Organization will also act as the Bureau of each Union so long as all countries of the Unions have not become Members of the Organization.

— The International Bureau will provide the secretariat of the various organs of each Union.

— This combination of functions within a single organ, this two-faced Janus, is not only a characteristic of the new structural organization of the Unions as set up at Stockholm in regard to the International Bureau; it is also to be found in the person of the Director General. He is, in fact, the chief executive of the new Organization and, at the same time, the chief executive of each Union; in addition, he represents all of these different international bodies, which, by the way, have their own autonomy.

12. In the matter of finances, the text adopted by the Committee provides that each Union shall have its own budget. This provision also reflects the concept that each Union is autonomous, as is brought out in the Unions' new structural organization.

— On the basis of a joint proposal by France, Germany (Federal Republic), Italy, and the United States of America, the original text (Documents S/3 and S/9) was amended as concerns the financing of the Unions. The Committee reached agreement on a text which provides that the budget of the Union shall include the expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization. Other draft provisions were altered accordingly. In connection with this provision, the Delegations of France, Germany (Federal Republic), Hungary, Italy, the Soviet Union, the United Kingdom, and the United States of America, put forth proposals to Main Committee V so as to have the words "...adopt the budget of expenses common to the Unions" (Documents S/62 and S/93) inserted in the list of powers belonging to the General Assembly of the Organization.

— Again on the subject of finances, the Delegation of Spain suggested (Document S/82) including among the sources

of income of the Paris Union a fee that would be collected on behalf of the International Bureau in respect of all applications relating to patents, marks, etc., for which claim — under the Paris Convention — is made to the right of priority. Another proposal (Document S/163) would merely have referred to the possibility of such a fee. Considering, however, that the proposal raised important practical and legal questions, the Committee preferred to adopt a draft resolution addressed to the Plenary of the Paris Union and requesting it to invite the International Bureau to make a study of the matter and submit the results of its work to the forthcoming Vienna Conference of Revision.

13. Still in connection with finances, the Committee adopted draft decisions concerning the maximun annual amount of ordinary contrihutions from the countries members of the Paris Union and of the Berne Union (ceiling of contrihutions) for the years 1968, 1969, and 1970. In regard to this matter, the Delegation of Argentina, supported hy the Delegation of Brazil, ohserved that the ceiling-of-contributions system was no longer appropriate. It should he noted that the new Stockholm texts have ahandoned this system.

14. At this point in my Report, I see that, if I were to attempt to deal in detail with each matter taken np hy the Committee, this paper would hecome unnecessarily long, not only because of the existence of minutes and other Committee documents, hut also and ahove all hecause of the fact that no really complex problems came up in connection with the administrative organization of the Unions. As a matter of fact, after carefully considering each matter, the Committee almost fully accepted the proposals, on these points, appearing in the draft texts contained in the program of the Conference. The work consisted primarily in resolving questions of a technical and editorial nature. In this respect, I should like to call attention to the really impressive accomplishments of the drafting committee which, in particular, undertook to draft the texts of the Special Agreements concerning industrial property that are in relationship with the Paris Convention, taking into account the parallelism that had to be achieved as far as possible in these different instruments.

I shall thus restrict myself to one or two matters concerning the final and transitional clauses.

15. In regard to the final provisions of the Paris Convention and Berne Convention, the Committee devoted special attention to the proposals of the program relating to the application of the earlier Acts of the Conventions of the Unions (Paris, Article 18; Berne, Article 27), which refer to the relations among countries of the Union that have acceded to

different earlier Acts, and ahove all to the relations hetween a country that has acceded solely to the Stockholm Act and the other Union countries that have not acceded to it.

— Since corrigenda (Documents S/3/Corr. 1 and S/9/Corr. 1) to the proposals regarding this matter contained in the original program had affected other provisions somewhat related to it (in particular, Article 25^{quater} (Berne), originally proposed concerning the anticipated application of the Protocol Regarding Developing Countries), these problems were also examined at joint meetings of Main Committees II and IV, where other problems too were examined, especially those raised by Article 20bis (Berne) concerning the Protocol Regarding Developing Countries. The joint meeting of the two Committees, under the chairmanship of Mr. Joseph Voyame (Switzerland), referred these matters to a working group, likewise chaired hy Mr. Voyame, for preliminary examination; after a thorough dehate, the working group presented its conclusions to the Committee. Moreover, once these conclusions had been approved, the suhject — particularly as concerns Article 27(3) (Berne) — was again taken up by the Committee, at the proposal of the Delegation of Switzerland, after it had been decided to re-open discussion on this point.

16. The solution to the prohlems concerning the application of earlier Acts within the framework of a Union Convention may look different depending on the view held, as regards international public law, on the effects of international treaties on the reciprocal obligations of States deriving from successive Acts of a Union Convention. The dehates on this reflected the various schools of legal thought that exist on the suhject, and there were naturally differences of opinion as to how the question might be settled. Furthermore, the matter is also tied in with the hasic principles of Article 2 of the Paris Convention and Article 4 of the Berne Convention, relating to the concept of equality of treatment (assimilation clause) and to the ohligations of the States regarding the rights specially provided for hy the Convention (minimum rights), as well as to the principle that the enjoyment and exercise of rights is independent of the existence of protection in the country of origin of the work. These prohlems of a general nature, which in the past had heen the subject of a number of scholarly discussions, were once again raised in the Committee, particularly in the statements made by the Delegations of Australia, France, and the United Kingdom. Out of rather divergent views — one considering that the ohligations among Union countries are governed by the most recent common Act, the other that the ohligations of a Union country are governed hy the provisions of the most recent Act to which it has acceded with regard to all other Union countries and,

therefore, even Union countries not parties to that Act — the view that emerged in the Committee, but only in respect to countries outside the Union which become parties to the Stockholm Act, is one which, in reciprocal relations, takes acconnt of certain interests of any country that has not acceded to the Stockholm Act.

17. The solution envisaged hy the Committee takes its inspiration from the following general principle: as this matter is not one of different treaties but of successive Acts of a Union of countries (see Article 1 of the Berne and Paris Conventions: "The countries ... constitute a Union ..."), all of the Union countries must always have some links with one another, even if they are not hound by a common Act. Moreover, the successive Acts of a Union Convention always contain more or less parallel provisions, so that, from a practical point of view, the question arises only with respect to provisions that differ from one another, especially when the more recent Act to which a Union country has not acceded contains provisions regarding minimum rights that are far removed from the level of protection guaranteed by the previous Act. Only in such a case did it seem reasonable and legally correct for the countries outside the Union but parties to the Stockholm Act, in conformity with the above-mentioned Swiss proposal, to apply that Act in their relations with all of the Union countries, even those that have not acceded to the Stockholm Act, while the latter countries, in their relations with the former, apply the provisions of the last Act to which they are party, with the possibility, however, of adapting its level of protection to the level guaranteed by the Stockholm Act. Texts based on these principles were adopted by the Committee.

— Consequently, as regards the relations between countries that accede only to the Stockholm Act and countries of the Union that do not accede to it, or that do so only later, both the Berne Convention and the Paris Convention provide that the former shall apply the Stockholm Act and that the latter shall apply the most recent Act to which they have acceded.

— Furthermore, I repeat, the Stockholm Act of the Berne Convention also provides that the countries of the second group mentioned above have the possihility of adjusting the level of protection they grant, on the basis of the most recent Act, to the level provided by the Stockholm Act. The Committee felt that this provision was justified because, in certain respects, the level of protection guaranteed by the Stockholm Act is not as high as that guaranteed by earlier Acts.

— Based on analogous principles, but having a different structure and content, is the provision, proposed during the joint meetings of Main Committees II and IV, according to which countries having, upon becoming parties to the Stock-

bolm Act, made reservations permitted under the Protocol Regarding Developing Countries may apply such reservations in their relations with other countries of the Union not parties to the Stockholm Act, provided that the latter countries have accepted such application. A precedent for the legal institution of such acceptance is found in the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

— The Committee did not feel it was necessary for the Paris Convention to include a provision similar to the one inserted in the Berne Convention, since the Stockholm Act of the Paris Convention in no way alters the level of protection afforded under the previous Act of that Convention. Consequently, there seemed to be no need to provide for the possibility of the kind of material reciprocity which is the basis of the new provision of the Berne Convention, and which, by the way, already existed in earlier Acts of that Convention — although in a less general form — in particular in regard to the term of protection and works of applied art.

18. Somewhat tied in with the views on the general question of the application of earlier Acts was the decision made by the Committee regarding the accession of a country outside the Union which accedes to the Stockholm Act and, by the same fact, to the earlier Acts. This decision extended to the Paris Convention the provision already found in Article 28(3) of the Berne Convention (Brussels Act). Consequently, after the entry into force of the Stockholm Act in its entirety, a country may not accede to earlier Acts of the Paris Convention. It was only after long debates that the Committee came to an agreement on this extension of the principle found in the text of the Berne Convention. As a matter of fact, as was pointed out in the Committee, a distinction must be made between *accession* to earlier Acts and *application* of such Acts. A country may not accede to earlier Acts of a Union Convention since they are replaced by the last Act; however, because of the relations existing between countries outside the Union that accede to the last Act and countries already belonging to the Union that do not accede to it, there do exist relations between these two categories of countries, which relations result also from the very contents of the earlier Acts. Besides, nothing prevents a country acceding for the first time to the Unions, in particular the Paris Union, from making an express declaration on the application of the earlier Acts.

— The new wording adopted by the Committee introduces a further element of parallelism between the texts of the two Conventions.

19. There was still another matter concerning the relations among Union countries within the framework of the unitary

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system of the Unions, and that was the provision of Article 25^{quater} (Document S/9) in the original text of the program which deals with the anticipated, voluntary application of the reservations made under the Protocol Regarding Developing Countries at any time after the date of signature of the Stockholm Act, by any Union country not yet bound by the substantive articles of that Act, including the Protocol which is an integral part of it. A provision debated at length in a working group and corresponding to Article 25^{quater} was included in an article of the Protocol proposed to Main Committee II by its drafting committee.

20. Ratification of or accession to the Stockholm Act (Paris and Berne Conventions) entails acceptance of all the clauses and admission to all the advantages of that Act; however, as mentioned above (paragraph 5), there is the possibility of excluding from the effects of ratification or accession one of the two groups of Convention provisions (substantive and administrative).

— The general question of reservations (other than the reservations provided for in the Protocol Regarding Developing Countries), regarding certain provisions of the Berne Convention, that may be confirmed or formulated at the time of ratification of or accession to the Stockholm Act had been included in the program of the Conference (Article 25ter of Document S/9), and it was therefore within the province of the Committee to examine this matter. However, Main Committee I had examined, as to substance, the question posed by the reservation concerning the right of translation, and had been in favor of maintaining, in the Stockholm Act, the provision contained in Article 25(3) of the Brussels Act, namely that notifications of accession to the new Stockholm Act by countries outside the Union could specify that such countries wished to substitute, provisionally at least, the provisions of Article 5 of the Union Convention revised at Paris in 1896 for those relating to the exclusive right of translation.

— In this connection, a proposal was subsequently put to Main Committee I by the Delegation of Italy in order to combine the possible maintenance of the right of reservation in favor of countries outside the Union which accede to the Stockholm Act with the right of countries making no reservations to apply, in this matter, the principle of material reciprocity in their relations with countries wishing to benefit from such a right of reservation. The matter was again taken up at a joint meeting of Main Committees I and IV held under the chairmanship of Professor Ulmer (Federal Republic of Germany), the compromise proposal was accepted, and a provision to the said effect was added to Article 25ter of the program. On the other hand, as concerns Union countries which have

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already made reservations (Article 27(2) of the Brussels Act of the Berne Convention and Article 25ter(2)*(a)* of the program) and which, when ratifying the Stockholm Act, wish to retain the benefit of such previously formulated reservations, the situation on reservations made in regard to the right of translation remains what it was before.

21. At the Brussels Conference of Revision of the Berne Convention, a clause on the settlement of disputes was inserted into the text of the Convention (Article 27bis) providing for the compulsory jurisdiction of the International Court of Justice in matters of disputes between two or more countries of the Union, concerning the interpretation or application of the Convention, not settled by negotiation. There was no similar clause, however, in the Paris Convention.

— It should be noted that, since the entry into force of the Brussels Act, no petition on such an issue has been made to the International Court by Union countries.

— The Committee examined this matter several times on the basis of the proposal of the program, reproducing the existing provision of the Berne Convention together with several variants. Certain delegations feared that this proposal — restricted, by the way, to the Berne Convention — might, in changing the existing provision, weaken the Convention as regards the compulsory jurisdictional protection obtained with such great effort at the Brussels Conference. Other delegations, on the other hand, expressed concern since, in their view, such a clause constituted an obstacle for several countries of the Union to the ratification even of the Brussels Act. Lastly, the Committee constantly endeavored to maintain a certain parallelism between the administrative clauses of the Berne and Paris Conventions, that is, between those clauses not touching upon the substantive provisions of the two Conventions. A compromise proposal, presented by the Delegations of the Netherlands and of Switzerland, whereby the same provision concerning the settlement of disputes could be inserted in both Conventions, was finally accepted by the Committee. This compromise provides for the insertion of the said jurisdictional clause in the texts of both Union Conventions, but each Union country would have the right, when signing or ratifying the Stockholm Act, to consider itself not bound by that clause, the principle of reciprocity applying for any Union country that has not availed itself of that right.

22. The provisions of the program relating to the denunciation of the Paris and Berne Conventions have not been altered.

— In regard to the interpretation of paragraph (4) relating to the minimum of five years from the date upon which

a country becomes a member of the Union that must elapse before such a country may exercise the right of denunciation, the drafting committee recommended that the Report of Main Committee IV should specify that denunciation may not he notified until after the expiration of the period concerned; it would thus go into effect six years, at the earliest, after the date mentioned in the said paragraph (4).

23. Draft resolutions on certain transitional measures regarding the proposed administrative reforms (Docnment S/11) — the first pertaining to the Paris Union, the second to the Berne Union, and the third to the General Assembly and the Coordination Committee of the proposed new Intellectual Property Organization as well as to related matters — were withdrawn by BIRPI. Mr. E. Braderman (United States of America), Chairman of Main Committee V, announced this at a joint meeting of that Committee and Main Committee IV that he had heen called upon to chair. As no delegation brought up these proposals again, our Committee did not have an opportunity to pursue the dehates on them. It is therefore understood that, until such time as the different Stockholm texts enter into force, the administrative situation of the Unions will —as it is at present — he governed hy the Acts now in force and hy the application of these Acts in practice. Once the new structural rules of the Union have entered into force, certain existing institutions of the Unions will cease to function — such as, for the Paris Convention, the Conferences of Representatives estahlished hy Article 14(5) of the Lishon Act, and, for the Berne Convention, the Permanent Committee of the Union, set up hy a resolution of the Brussels Conference of Revision.

24. As we have already indicated in this Report, the Swiss Government will continue to exercise its mandate of supervisory authority, not only until the entry into force of the various texts signed at Stockholm, but heyond that date in regard to Union countries that have not yet become Members of the new Intellectual Property Organization and the Assemblies of the Unions. In this connection, at the joint meeting, trihute was once again paid to Switzerland, which, for nearly a century, has carried out with dignity functions permitting the Unions to he administered wisely, and which, today, agrees to carry on — even though on a somewhat reduced scale — this function.

[This Report was unanimously adopted by Main Committee IV in its meeting on July 10, 1967.]

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

RECORDS OF THE DIPLOMATIC CONFERENCE FOR THE REVISION OF THE BERNE CONVENTION

(Paris, July 5 to 24, 1971)

General report

unanimously adopted on July 22, 1971
by the Plenary Conference
(July 23, 1971, Original French, document B/DC/36)

I. Convening, purpose and composition of the Conference

1. In accordance with the decisions of the competent bodies of the Berne Union, the Director General of the World Intellectual Property Organization (WIPO) convened a Diplomatic Conference (hereinafter called " the Conference ") for the revision of the Berne Convention for the Protection of Literary and Artistic Works (hereinafter called " the Convention "). This was held at Paris from July 5 to 24, 1971. The Universal Copyright Convention was also revised at the same place and dates.

2. The purpose of the Conference was on the one hand to revise the provisions relating to the developing countries contained in the Stockholm Act (1967) of the Convention, and on the other hand to introduce in the final clauses of the said Act the modifications consequent upon that revision.

3. Delegations of the following 48 countries, members of the Berne Union, participated in the work of the Conference: Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Canada, Ceylon, Chile, Congo *, Congo (Democratic Republic of the) **, Cyprus, Czechoslovakia, Denmark, Finland, France, Gabon, Germany (Federal Republic of), Greece, Holy See, Hungary, India, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Liechtenstein, Luxembourg, Morocco, Mexico, Monaco, Netherlands, Niger, Norway, Pakistan, Portugal, Senegal, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, Uruguay, Yugoslavia.

4. The Delegations of Czechoslovakia and Hungary protested against the fact that the German Democratic Republic had not been invited to take part in the Conference. The Delegation of Chile made the same protest, and also declared that it did not consider the observers of the Republic of China as empowered to represent the people of China. The Delegation of India associated itself with this latter declaration.

* This is the People's Republic of the Congo.

** This State has since changed its name; at the time of publication of these *Records* it is designated as " Zaire ".

5. Delegations of the following 27 States, members of the United Nations or of one or more organizations of the United Nations system but not members of the Berne Union, participated in the work of the Conference as observers: Algeria, Bolivia, Central African Republic, Chad, China (Republic of), Costa Rica, Dominican Republic, Ecuador, Guatemala, Iran, Iraq, Kenya, Khmer Republic, Laos, Liberia, Malawi, Malaysia, Mauritania, Nicaragua, Republic of Viet-Nam, Rwanda, Sudan, Syria, Tanzania, Togo, United Arab Republic, United States of America.

6. WIPO was represented by its Director General, Professor G. H. C. Bodenhausen, and subsequently by its First Deputy Director General, Dr. Arpad Bogsch.

7. Four intergovernmental organizations (the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (Unesco), the Council of Europe and the African and Malagasy Industrial Property Office (OAMPI)), and nineteen international non-governmental organizations were represented by observers.

8. In total, nearly three hundred persons were present.

9. On the proposal of the Delegation of the United Kingdom, supported by the Delegations of Italy, Germany (Federal Republic), Spain and the Ivory Coast, His Excellency Ambassador Pierre Charpentier, Head of the Delegation of France, was elected President of the Conference by acclamation.

10. The Conference adopted the provisional Agenda submitted to it in document B/DC/1.

11. After introducing some modifications, the Conference adopted the draft Rules of Procedure prepared by the Permanent Committee of the Berne Union at its extraordinary session in September 1970 (document B/DC/2). The final text of the Rules of Procedure of the Conference is contained in document B/DC/8, modified by the substitution of the word " nine " for the word " eight " in Rule 10.

12. The following nine persons were elected Vice-Presidents of the Conference: Mr. J. P. Harkins (Australia), His Excellency Ambassador Everaldo Dayrell de Lima (Brazil), Mr. P.M.D. Fernando (Ceylon), Mr. Léopold Lutété (Congo, Democratic Republic of the), Mr. István Timár (Hungary), Mr. Abderrazak Zerrad (Morocco), Mr. Ulf Nordenson (Sweden), Professor Mario M. Pedrazzini (Switzerland), His Excellency Mr. Aleksandar Jelić (Yugoslavia).

13. The post of General Rapporteur was assigned to the Head of the Delegation of Senegal.

14. On the proposal of the Delegation of India, supported hy the Delegations of the Netherlands, Canada, Italy and France, Professor Eugen Ulmer (Germany (Federal Repuhlic)) was elected Chairman of the Main Commission. On the proposal of the Delegation of Spain, snpported by the Delegation of the United Kingdom, His Excellency Amhassador Francisco Cuevas-Cancino (Mexico) and Mr. Abderrazak Zerrad (Morocco) were elected Vice-Chairmen of the Main Commission.

15. The Conference, on the proposal of the President, elected the representatives of the following countries as memhers of the Credentials Committee: Czechoslovakia, Germany (Federal Republic), Italy, Ivory Coast, Japan, Spain, Uruguay. During the Conference the Credentials Committee met on several occasions under the chairmanship of His Excellency Amhassador Yoshihiro Nakayama (Japan), its Chairman, or of Mr. Bernard Dadié (Ivory Coast), its Vice-Chairman. It examined the credentials of delegations and reported on its work to the Conference (documents B/DC/14 and 30).

16. The Conference, on the proposal of the President, elected the representatives of the following countries as memhers of the Drafting Committee: Argentina, Canada, France, India, Japan, Netherlands, Sweden, Tunisia, United Kingdom. The Drafting Committee elected Mr. William Wallace (United Kingdom) and Mr. Werner Ludwig Haardt (Netherlands) as its Chairman and Vice-Chairman respectively. The Drafting Committee held several meetings in order to put the revised text of the Convention into final form. Documents B/DC/24, 27 and 28 reflect the results of its work.

17. Mr. Claude Masouyé (WIPO) and Mr. Mihailo Stojanović (WIPO) acted as Secretary General of the Conference and Assistant Secretary General respectively.

II. Consideration of the draft text of the Convention

18. The Conference started its work in a plenary meeting in which general declarations were made. The same meeting decided that the instrument to he adopted should contain both the provisions which were and those which were not the suhject of the Conference. Thus the new instrument is an "Act" to be known as "the Paris Act," rather than an Act "additional to the Stockholm Act." (The International Bureau had, hefore the Conference, prepared drafts of both a self-contained and an additional Act.)

19. *(a)* The provisions which have not been the suhject of the Conference and thus are incorporated in the Paris Act with exactly the same content and in exactly the same form as they appear in the 1967 Stockholm Act are the general substantive provisions (Articles 1 to 20) and the administrative provisions (Articles 22 to 26). This fact, in itself, proves that the Stockholm Conference had achieved success on most important points.

(b) Although the present Conference revised the special substantive provisions adopted at the Stockholm Conference concerning developing countries (and made consequential changes in the final clauses), it was generally recognized not only that the work of the Stockholm Conference was very important also as far as the questions concerning developing countries were concerned, hut that, without that work, the present Conference could not have achieved the unanimous agreement which it had achieved in respect of those questions.

20. In order to underline the merits of the work accomplished at Stockholm, the Conference decided to express, in the preamhle of the Paris Act, recognition of the importance of that work and to recall that the Articles referred to ahove were the result of the Stockholm, rather than the present, Conference.

21. Most of the rest of the discussions of the Conference took place in its Main Commission in which all the countries and all the organizations represented in the Conference had the right to participate and in which they all participated. The delegations representing developing countries held several meetings among themselves. These proved to be particularly useful in arriving at common positions among such countries on some of the more difficult issues.

22. The discussions were hased (i) on the draft text prepared by the Permanent Committee of the Berne Union in 1970 (document B/DC/4) as slightly modified, on purely formal points, hy the International Bureau of WIPO (document B/DC/5), (ii) on the ohservations made hefore the Conference hy governments and hy iuterested organizations (documents B/DC/6 and 7), and (iii) on a number of amendments presented during the Conference hy several delegations and working groups (documents B/DC/9 to 13, B/DC/15 to 23, B/DC/25 and 26 and B/DC/31 to 35). It is recalled that the text prepared hy the Permanent Committee was, in turn, hased on the work of several preparatory meetings, particularly those held in Washington in 1969 and in Geneva in May and Septemher 1970 (see documents B/DC/3 and 4).

23. The discussions in the Plenary and in the Main Commission are reflected in the summary minutes. Consequently, this Report mainly mentions only those points which may he important for understanding the intentions of the Conferenee in adopting certain provisions and which the Conferenee agreed should he mentioned in this Report.

24. It is to he noted that several provisions in the Paris Act are similar to corresponding provisions in the Universal Copyright Convention as revised. Discussions on these provisions usually took place in the Revision Conference of that Convention only days hefore they were discussed in the present Conference, among participants who were to a great extent identical in the two Conferences. Arguments for and against and understandings on such provisions were, in many cases, not repeated in the present Conference. These facts explain the relative hrevity of the following passages of this Report. The points referred to in the previous paragraph are considered in the order in which they appear in the Paris Act.

Article 29bis

25. The Conference noted a declaration of the Director General of WIPO to the effect that he would call the attention of the competent bodies of WIPO to this Article and would invite them to note it for the purposes of the application of Article 14(2) of the Convention Estahlishing the World Intellectual Property Organization.

Article 36

26. It was understood that in countries according to the constitntion of which treaties were self-executing no separate legislation was necessary to implement those provisions of the Convention which, hy their nature, were susceptihle of direct application.

APPENDIX

Article 1(1)

27. It was understood that the expression "country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations" did not allow for the drawing up of a list of such countries which would not he susceptihle to changes in the future, not only

because the stage of development of particnlar countries may change hut also hecause the practice of the General Assemhly may undergo changes in the sense that the criteria on which such practice is hased may undergo changes. Whether any country is at any given time a developing country for the pnrposes of the Appendix would have to he decided on the hasis of the practice of the General Assemhly prevailing at the time relevant for deciding the question.

Article I(6)(a)

28. It was understood that this suhparagraph did not modify the right of any country to apply the so-called "comparison of terms" clause contained in Article 7(8).

Article II(2)

29. It was understood that the term "national of such country" also covered legal entities, including the State itself, its national or local authorities, and enterprises owned hy the State or such authorities.

30. *(a)* Furthermore, it was understood that the notion of "a language in general nse" in a country included languages in general nse hy less than the totality of the country's population. Thus, such a language could he a language in general nse in a given geographic region of the country, the language of an ethnic gronp of the population, or a language generally used for particular purposes, such as government administration or edncation.

(b) It is to he noted that the expression in question also appears in other provisions of the Paris Act. It should he understood in the ahove sense in all such provisions also.

Article II(4)

31. Although the Delegation of India said that it interpreted the first sentence of this paragraph as meaning that the six or nine months period could start running hefore the expiration of the three or one year period (and thus the two kinds of periods could run concurrently), it was generally agreed that the six or nine months periods could not run concnrrently with the three or one year periods since an application for a license for translation could validly he presented only after the expiration of the three or one year period and hecause

the sense of the word "fnrther" was to hring out clearly that the six or nine months period is necessarily suhsequent to the three or one year period.

Article II(6)

32. *(a)* This paragraph provides that the license to translate terminates if the owner of the right to translate himself puhlishes a translation satisfying certain conditions. One of them is that the said translation mnst have "substantially the same content" as the translation which was puhlished under the license. It was understood that this condition would he satisfied not only when the content of the translation of the owner was identical or almost so to the content of the translation made nnder a license hut also when the former contained certain improvements, as would he the case, for example, when the content of a school hook is npdated.

(b) It was further understood that the licensee shonld he given reasonahle notice hy the owner of the right of translation, of the puhlication of a translation authorized hy him, if the owner of the right is aware of the license.

Article II(9)(a) and (b)

33. It was understood that these subparagraphs do not affect or modify in any respect Article 11^{bis} of the Convention.

34. It was nnderstood that the words "made and acquired in accordance with the laws of the said country" in paragraph (9)*(a)*(i) mean that the copy must not he an infringing copy according to the laws of that country.

Article III(3)(ii)

35. It was noted that the English text uses the expression "works of fiction, poetry, drama and music" and the French text "*œuvres qui appartiennent au domaine de l'imagination, telles que romans, les œuvres poétiques, dramatiques et musicales,*" hut that the difference was merely one of form (unavoidahle, hecanse "works of fiction" had no exactly corresponding expression in French, and "*œuvres qui appartiennent au domaine de l'imagination*" had no exactly corresponding expression in English) whereas in suhstance they meant the same, and, in particular, the ahsence of the word "*roman*" in English did not mean that novels were not included, and that the use of the word "*roman*" in French did not mean that works of fiction shorter than novels were excluded.

Article III(7)(b)

36. This suhparagraph applies when the reproduction is in audio-visual form — that is, a fixation containing hoth pictures and sonnd — and whether the audio-visual fixation constitutes itself a protected work or contains a protected work. It allows for the distribution of the reproductions of the fixation for the purposes and under the conditions provided for in the other provisions of Article III and the relevant provisions of Article IV.

Article IV(1)

37. It was understood that the request for anthorization addressed to the owner of the right must indicate that, if such authorization is denied, the denial might serve as a hasis for applying for a license under the Appendix.

38. Fnrthermore, it was understood that licenses under the Appendix may validly he applied for only when the applicahle period under Article II(2)*(a)* or (3), or nnder Article III(3), has expired.

Article IV(2)

39. It was nnderstood that where a license under Articles II or III is to he granted, the competent authority should take reasonahle steps to ensure that the owner of the right has an opportunity to he aware of the application and to take such measures as may seem to him appropriate.

Article IV(4)(a)

40. It follows from the provisions of Article IV(4)*(a)*, prohihiting the export of copies and prescrihing that the license shall he valid only for puhlication in the territory of the country where it has heen applied for, that these provisions are considered as prohihiting a licensee from having copies reproduced outside the territory of the country granting the license. However, it was understood that this prohihition does not apply under the following conditions:

(a) the country granting the license has, within its territory, no printing or reproduction facilities, or such facilities exist hut are incapahle for economic or practical reasons of reproducing the copies;

(b) the country where the work of reproduction is done is a member of the Berne Union or a party to the Universal Copyright Convention;

(c) all copies reproduced are sent, in one or more hulk shipments, to the licensee for distribution exclusively in the licensee's country and the contract hetween the licensee and the estahlishment doing the work of reproduction so requires and provides further that the establishment guarantees that the work of reproduction is lawful in the country where it is done;

(d) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a license has heen granted under Article II or Article III; and

(e) all copies reproduced hear a notice in accordance with Article IV(5).

41. *(a)* It was also understood that the foregoing conditions only apply to works published in printed or analogous forms of reproduction and to the incorporation in audio-visual fixations of translated texts.

(b) It was fnrther understood that these provisions do not require any country in which the copies are reproduced to permit what would otherwise he an infringement of copyright under its law.

42. It was generally accepted that nothing in Articles II, III and IV prohihited a compulsory licensee from employing a translator in another country, or other compulsory licensees, licensed to puhlish a translation in the same language in other countries, from using the same translation, assnming, of course, that the translation has not already heen published. The same interpretation applies with respect to persons entrusted with doing the preparatory editorial work.

Article IV(4)(c)(iii)

43. It was nnderstood that the expression "without commercial purpose" did not mean that the pnhlic entity conld not charge a price for each copy; what it meant was that the price, if any, could not include any profit or financial gain for the entity, hut conld merely enahle it to recover its costs.

PORTRAITS OF PRESIDENTS OF THE INTERNATIONAL LITERARY AND ARTISTIC ASSOCIATION (ALAI)

Victor Hugo
Founder (1878) and Honorary President

Eugène Pouillet
1890-1905

Georges Maillard
1905-1942

Marcel Boutet
1946-1971

Henri Desbois
1972-1980

Georges Koumantos
1981-

The Various Texts of
THE BERNE CONVENTION
for the Protection of Literary and Artistic Works

Contents

BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

ORIGINAL TEXT OF SEPTEMBER 9, 1886

Article 1. The contracting countries constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2. [1] Authors who are nationals of one of the countries of the Union, or their successors in title, shall enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which their respective laws do now or may hereafter grant to their nationals. [2] The enjoyment of these rights shall be subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and must not exceed in the other countries the term of protection granted in the said country of origin. [3] The country of origin of the work shall be considered to be that in wbich the work is first published, or if such publication takes place simultaneously in several countries of the Union, the country whose legislation grants the shortest term of protection. [4] For unpublished works the country to which the author belongs shall be considered to be the country of origin of the work.

Article 3. The provisions of this Convention shall apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of whicb the authors belong to a country which is not a party to the Union.

Article 4. The expression "literary and artistic works" shall include books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of drawing, painting, sculpture and engraving; lithographs, illustrations, maps; plans, sketcbes, and three-dimensional works relative to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of printing or reproduction.

Article 5. [1] Authors who are nationals of one of the countries of the Union, or their successors in title, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union. [2] For works published in incomplete parts (*livraisons*), the period of ten years shall commence from the date of publication of the last part of the original work. [3] For works composed of several volumes published at intervals, as well as for bulletins or collections (*cahiers*) published by literary or scientific societies, or by private persons, each volume, bulletin, or collection shall be, with regard to the period of ten years, considered as a separate work. [4] In the cases provided for by this Article, and for the calculation of the terms of protection, December 31 of tbe year in which the work was published shall be regarded as the date of publication.

Article 6. [1] Lawful translations shall be protected as original works. They shall consequently enjoy the protection provided for in Articles 2 and 3 as regards their unauthorized reproduction in the countries of the Union. [2] It is understood that, in the case of a work for which the translating right bas fallen into the public domain, the translator cannot oppose the translation of tbe same work by other writers.

Article 7. [1] Articles from newspapers or periodicals published in any of the countries of the Union may be reproduced in original or in translation in the other countries of the Union, unless the authors or publishers have expressly forbidden it. For periodicals it shall be sufficient if the prohibition is indicated in general terms at the beginning of each number of the periodical. [2] This prohibition cannot in any case apply to articles of political discussion, or to the reproduction of news of the day or miscellaneous facts.

Article 8. As regards the right to include excerpts from literary or artistic works for use in publications for teaching or scientific purposes, or for chrestomathies, the effect of the legislation of the countries of the Union, and of special arrangements existing or to be concluded between them, is not affected by this Convention.

Article 9. [1] The provisions of Article 2 shall apply to the public representation of dramatic or dramatico-musical works, whether such works are published or not. [2] Authors of dramatic or dramatico-musical works, or their successors in title, shall be, during the existence of their exclusive right of translation, equally protected against the unauthorized public representation of translations of their works. [3] The provisions of Article 2 shall apply equally to the public performance of unpublished musical works, or of published works in which the author has expressly declared on the title page or commencement of the work that he forbids the public performance thereof.

Article 10. [1] The following shall be specially included amongst the unlawful reproductions to which this Convention applies: unauthorized indirect appropriations of a literary or artistic work, of various kinds, such as adaptations, musical arrangements, etc., wben they are only the reproduction of a particular work, in the same form, or in anotber form, witbout essential alterations, additions, or abridgments, so as not to present the character of a new original work. [2] It is agreed that, in the application of this Article, the tribunals of the various countries of the Union shall, if there is occasion, conform themselves to the provisions of their respective laws.

Article 11. [1] In order that the author of a work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the various countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. [2] For anonymous or pseudonymous works, tbe publisher whose name appears on the work shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the lawful representative of the anonymous or pseudonymous author. [3] It is, nevertheless, agreed that the courts may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, in accordance with Article 2.

Article 12. [1] Infringing copies of a work shall be liable to seizure on importation into any country of the Union where the work enjoys legal protection. [2] The seizure shall take place in accordance with the legislation of each country.

Article 13. It is understood that the provisions of this Convention cannot in any way affect the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

Article 14. Under the reserves and conditions to be determined by common agreement, this Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin.

Article 15. It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to enter into special arrangements among themselves, provided always that such arrangements confer upon authors or their successors in title more extensive rights than those granted by the Union, or contain other provisions not contrary to this Convention.

Article 16. [1] An international office shall be established, under the name "Bureau of the International Union for the Protection of Literary and Artistic Works." [2] This Bureau, the cost of which shall be supported by the Administrations of all the countries of the Union, shall be placed under the high authority of the High Administration of the Swiss Confederation, and shall work under its direction. Its functions shall be determined in common agreement between the countries of the Union.

Article 17. [1] The present Convention may be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union. [2] Questions of this kind, as well as those which in other respects are of interest to the Union, shall be considered in conferences to be held successively in the countries of the Union among the delegates of tbe said countries. [3] It is understood that no amendment to this Convention shall be binding on the Union except by the unanimous consent of the countries whicb are members of it.

Article 18. [1] Countries which are not parties to the present Convention, and which make provision in their laws for the protection of the rights forming the object of this Convention, shall be permitted to accede to it at their request. [2] Any such accession shall be notified in writing to the Government of the Swiss Confederation, and by it to all the other Governments. [3] Such accession shall automatically entail acceptance of all the provisions and admission to all the advantages of tbe present Convention.

Article 19. [1] Countries acceding to this Convention sball also have the right to accede thereto at any time on behalf of their colonies or foreign possessions. [2] They may for this purpose make either a general declaration of adhesion that includes all their colonies or possessions, or expressly indicate only those which are included, or which are excluded.

Article 20. [1] The present Convention shall come into force three months after the exchange of ratifications, and shall remain in force for an indefinite time, until the expiration of one year from the date of its denunciation. [2] Such denunciation sball be addressed to the Government in charge of receiving adhesions. It shall affect only the country which has made it, the Convention remaining in operation as regards the other countries of the Union.

Article 21. The present Convention shall be ratified, and the ratifications exchanged at Berne, within a period of one year at the latest.

ADDITIONAL ARTICLE OF SEPTEMBER 9, 1886

The Convention concluded this day shall in no way affect the maintenance of existing conventions between the contracting countries, provided always that such conventions confer on authors, or their successors in title, rights more extensive than those granted by the Union, or contain other provisions which are not contrary to this Convention.

FINAL PROTOCOL OF SEPTEMBER 9, 1886

I. [1] As regards Article 4, it is agreed that those countries of the Union where the character of artistic works is not refused to photographs engage to admit them to the benefits of the Convention concluded today, from the date of its coming into force. They shall, however, not be bound to protect the authors of such works further than is permitted by their own legislation except in the case of international arrangements already existing, or which may hereafter be entered into by them. [2] It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as provided for by the said Convention, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private agreements between owners of rights.

2. [1] As regards Article 9, it is agreed that those countries of the Union whose legislation implicitly includes choreographic works amongst dramatico-musical works expressly admit the former works to the benefits of the Convention concluded today. [2] It is, however, understood that questions which may arise on the application of this clause shall rest within the competence of the respective tribunals to decide.

3. It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical works in which copyright subsists shall not be considered as constituting an infringement of musical copyright.

4. [1] The common agreement provided for in Article 14 of the Convention is established as follows: [2] The application of the Convention to works which have not fallen into the public domain at the time when it comes into force shall take effect according to the relevant provisions contained in special conventions existing, or to be concluded, to that effect. [3] In the absence of such provisions between any countries of the Union, the respective countries shall regulate, each in so far as it is concerned, by its domestic legislation, the manner in which the principle contained in Article 14 is to be applied.

5. [1] The organization of the International Bureau established in accordance with Article 16 of the Convention shall be fixed by a regulation which shall be drawn up by tbe Government of the Swiss Confederation. [2] The official language of the International Bureau shall be French. [3] The International Bureau shall centralize information of every kind relating to the protection of the rights of authors over their literary and artistic works. It shall coordinate and publish such information. It shall undertake studies of general utility concerning the Union, and shall edit, with the help of documents supplied to it by the various Administrations, a periodical journal in Frencb dealing with questions relating to the objects of the Union. The Governments of the countries of the Union reserve the right to authorize, by common agreement, the publication by the Bureau of an edition in one or more other languages if experience should show this to be necessary. [4] The International Bureau shall at all times hold itself at the disposal of members of the Union, to supply them with any special information they may need on questions relating to the protection of literary and artistic works. [5] The administration of the country in which a conference is to be held shall make preparations for the work of the conference with the assistance of the International Burcau. The Director of the International Bureau shall be present at the meetings of the conferences, and take part in the discussions, but without the right of voting. He shall make an annual report on his administration, which shall be communicated to all the members of the Union. [6] The expenses of the Bureau of the International Union shall be shared by the contracting countries. Until a new decision is made, they cannot exceed the sum of 60,000 francs a year. This sum may be increased, if necessary, by the simple decision of one of the conferences provided for in Article 17. [7] To determine the contribution of each country to the total sum of expenditure, the contracting countries, and those which may afterwards join the Union, shall be divided into six classes, each contributing in the proportion of a certain number of units, namely: 1st class: 25 units; 2nd class: 20 units; 3rd class: 15 units; 4th class: 10 units; 5th class: 5 units; 6th class: 3 units. [8] These coefficients shall be multiplied by the number of countries in each class and the sum of the products thus obtained shall give the number of units by which the total expenditure is to be divided. The quotient shall give the amount of the unit of the expense. [9] Each country shall declare, at the time of its accession, in which of the said classes it wishes to belong. [10] The Swiss Administration shall prepare the budget of the Bureau, supervise its expenditure, make the necessary advances, and shall establish the annual accounts, which shall be communicated to all the other Administrations.

6. [1] The next Conference shall be beld at Paris between four and six years from the date of the entry into force of the Convention. [2] The French Government shall fix the date within these limits after having consulted the International Bureau.

7. [1] It is agreed that, as regards the exchange of ratifications provided for in Article 21, each contracting party shall deliver a single instrument, which shall be deposited, with those of the other countries, in the archives of the Government of the Swiss Confederation. Each party sball receive in return a copy of the records of the exchange of ratifications, signed by the Plenipotentiaries who took part. [2] The present Final Protocol, which shall be ratified at the same time as the Convention concluded this day, sball be considered as an integral part of the Convention, and shall have the same force, validity and duration.

ADDITIONAL ACT AND INTERPRETATIVE DECLARATION OF PARIS OF MAY 4, 1896

Article 1. The International Convention of September 9, 1886, is modified as follows:

I. ARTICLE 2. [1] The first paragraph of Article 2 shall read as follows: "Authors who are nationals of any of the countries of the Union, or their successors in title, shall enjoy in the other countries for their works, whether unpublished, or first published in one of those countries, the rights wbich the respective laws do now or may hereafter grant to nationals." [2] A fifth paragraph is added in these terms: "Posthumous works shall be included among those to be protected."

II. ARTICLE 3. Article 3 shall read as follows: "Authors who are not nationals of one of the countries of the Union, wbo first publish, or cause to be first published, their literary or artistic works in one of those countries, shall enjoy, in respect of such works, the protection granted by the Berne Convention, and by this Additional Act."

III. ARTICLE 5. The first paragraph of Article 5 shall read as follows: "Authors who are nationals of any of the countries of the Union, or their successors in title, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works throughout the term of their right in the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is to be claimed."

IV. ARTICLE 7. Article 7 shall read as follows: [1] "Serial novels, including short stories, published in the newspapers or periodicals of one of the countries of the Union, sball not be reproduced, in original or translation, in the other countries, without the authorization of the authors or of their successors in title. [2] This provision shall apply equally to other articles in newspapers or periodicals, when the authors or editors have expressly declared in the newspaper or periodical itself in which they have been published that reproduction is forbidden. In the case of periodicals it shall be sufficient if such prohibition is indicated in general terms at the beginning of each issue. [3] In the absence of prohibition, such articles may be reproduced on condition that the source is indicated. [4] The prohibition cannot in any case apply to articles of political discussion, to news of the day, or to miscellaneous information."

V. ARTICLE 12. Article 12 shall read as follows: [1] "Infringing copies of a work may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection. [2] The seizure shall take place in accordance with the legislation of each country."

VI. ARTICLE 20. The second paragraph of Article 20 shall read as follows: "Such denunciation shall be addressed to the Government of the Swiss Confederation. It shall affect only the country which has made it, the Convention remaining in operation as regards the other countries of the Union."

Article 2. The Final Protocol annexed to the Convention of the September 9, 1886, is modified as follows:

1. CLAUSE 1. This clause shall read as follows: "As regards Article 4, the following is agreed: A. In countries of the Union where protection is accorded not only to architectural plans, but also to the architectural works themselves, these works shall be admitted to the benefits of the Berne Convention and of this Additional Act. B. [1] Photographic works and works produced by an analogous process shall be admitted to the benefits of these provisions in so far as the laws of each State permit, and to the extent of the protection accorded by such laws to similar national works. [2] It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as provided for by the Berne Convention and by this Additional Act, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private agreements between owners of rights."

II. CLAUSE 4. This clause shall read as follows: "The common agreement provided for in Article 14 of the Convention is established as follows: [1] The application of the Berne Convention and of this Additional Act to works which have not fallen into the public domain within the country of origin at the time when these acts come into force shall take effect according to the relevant provisions contained in special conventions existing, or to be concluded, to this effect. [2] In the absence of such provisions between any of the countries of the Union, the respective countries shall regulate, each in so far as it is concerned, by its legislation, the manner in which the principle contained in Article 14 is to be applied. [3] The provisions of Article 14 of the Berne Convention and of this clause of the Final Protocol shall apply equally to the exclusive right of translation in so far as such right is established by this Additional Act. [4] The above-mentioned temporary provisions shall apply in case of new accessions to the Union."

Article 3. The countries of the Union which are not parties to this Additional Act shall at any time be permitted to accede to it at their request. This provision shall apply equally to countries which may hereafter accede to the Convention of September 9, 1886. It will suffice for this purpose that such accession should be notified in writing to the Swiss Federal Council, which shall in turn communicate it to the other Governments.

Article 4. [1] This Additional Act shall have the same force and duration as the Convention of September 9, 1886. [2] It shall be ratified, and the ratifications shall be exchanged at Paris, in the manner adopted in the case of that Convention, as soon as possible, and within a period of one year at the latest. [3] It shall come into force as regards those countries which shall have ratified it three months after such exchange of ratifications.

DECLARATION INTERPRETING CERTAIN PROVISIONS OF THE BERNE CONVENTION OF SEPTEMBER 9, 1886, AND THE ADDITIONAL ACT SIGNED IN PARIS ON MAY 4, 1896

1. In accordance with the provisions of Article 2, paragraph 2, of the Convention, the protection granted by the Instruments mentioned above shall depend solely on the accomplishment of the conditions and formalities in the country of origin of the work which may be required by the legislation of that country. This provision shall equally apply to the protection of photographic works mentioned in No. 1.B. of the Final Protocol, as amended.

2. The expression *published* works (*oeuvres publiées*) means works of which copies have been made available to the public (*oeuvres éditées*) in one of the countries of the Union. Consequently, the performance of a dramatic or dramatico-musical work, or of a musical work, or the exhibition of a work of art shall not constitute *publication* within the meaning of the above-mentioned Instruments.

3. Transformation of a novel into a theatrical play, or of a theatrical play into a novel shall be governed by the provisions of Article 10.

The countries of the Union which are not parties to this Declaration shall at any time be permitted to accede to it at their request. This provision shall equally apply to countries which may hereafter accede either to the Convention of September 9, 1886, or to that Convention and the Additional Act of May 4, 1896. It will suffice for this purpose that such accession should be notified in writing to the Swiss Federal Council, which shall in turn communicate it to the other Governments.

This Declaration shall have the same force and duration as the Instruments to which it refers.

It shall be ratified, and the ratifications shall be exchanged at Paris, in the manner adopted in the case of the Instruments to which it refers, as soon as possible, and within a period of one year at the latest.

ACT OF BERLIN OF NOVEMBER 13, 1908

Article 1. The contracting countries constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2. [1] The expression "literary and artistic works" shall include any production in the literary, scientific or artistic domain, whatever may be the mode or form of its reproduction, such as books, pamphlets, and other writings; dramatic or dramatico-musical works, choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; works of drawing, painting, architecture, sculpture, engraving and lithography; illustrations, maps; plans, sketches, and three-dimensional works relative to geography, topography, architecture or science. [2] Translations, adaptations, arrangements of musical and other reproductions in an altered form of a literary or artistic work as well as collections of different works, shall be protected as original works without prejudice to the copyright in the original work. [3] The contracting countries shall be bound to make provision for the protection of the above-mentioned works. [4] Works of art applied to industrial purposes shall be protected so far as the legislation of each country allows.

Article 3. This Convention shall apply to photographic works and to works produced by a process analogous to photography. The contracting countries shall be bound to make provision for their protection.

Article 4. [1] Authors who are nationals of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which the respective laws do now or may hereafter grant to their nationals as well as the rights specially granted by this Convention. [2] The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed. [3] The country of origin of the work shall be considered to be: in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; and in the case of works publisbed simultaneously in several countries of the Union, the country whose legislation grants the shortest term of protection. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin. [4] The expression "published works" means, for the purposes of this Convention, works copies of which have been made available to the public. The performance of a dramatic or dramatico-musical work, or of a musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute publication.

Article 5. Authors who are nationals of one of the countries of the Union, who first publish their works in another country of the Union, shall have in the latter country the same rights as authors who are nationals of that country.

Article 6. Authors who are not nationals of one of the countries of the Union, who first publish their works in one of those countries, shall enjoy in that country the same rights as authors who are nationals of that country, and in the other countries of the Union the rights granted by this Convention.

Article 7. [1] The term of protection granted by this Convention shall be the life of the author and fifty years after his death. [2] However, in case such term of protection should not be uniformly adopted by all the countries of the Union, the term shall be governed by the legislation of the country where protection is claimed, and must not exceed the term fixed in the country of origin of the work. Consequently the contracting countries shall only be bound to apply the provisions of the preceding paragraph in so far as such provisions are consistent with their national legislation. [3] For photographic works and works produced by a process analogous to photography, for posthumous works, for anonymous or pseudonymous works, the term of protection shall be governed by the legislation of the country where protection is claimed, provided that the said term shall not exceed the term fixed in the country of origin of the work.

Article 8. The authors of unpublished works, who are nationals of one of the countries of the Union, and the authors of works first published in one of those countries shall enjoy, in the other countries of the Union, throughout the term of the right in the original work, the exclusive right of making or authorizing a translation of their works.

Article 9. [1] Serial novels, short stories, and all other works, whether literary, scientific, or artistic, whatever their purpose, and which are published in the newspapers or periodicals of one of the countries of the Union shall not be reproduced in the other countries without the consent of the authors. [2] With the exception of serial novels and short stories, any newspaper article may be reproduced by another newspaper unless the reproduction thereof is expressly forbidden. Nevertheless, the source must be indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed. [3] The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 10. As regards the right to include excerpts from literary or artistic works for use in publications for teaching purposes, or having a scientific character, or for chrestomathies, the effect of the legislation of the countries of the Union and of special arrangements existing or to be concluded between them is not affected by this Convention.

Article 11. [1] The provisions of this Convention shall apply to the public performance of dramatic or dramatico-musical works, and of musical works, whether such works are published or not. [2] Authors of dramatic or dramatico-musical works shall be protected during the term of their right in the original works against the unauthorized public performance of translations of their works. [3] In order to enjoy the protection of this Article, authors shall not be bound in publishing their works to forbid the public performance thereof.

Article 12. The following shall be especially included among the unlawful reproductions to which this Convention applies: unauthorized indirect appropriations of a literary or artistic work, such as adaptations, musical arrangements, transformations of a novel, short story, or poem into a dramatic play and vice versa, etc., when they are only the reproduction of that work, in the same form or in another form without essential alterations, additions, or abridgments, and do not present the character of a new original work.

Article 13. [1] The authors of musical works shall have the exclusive right of autborizing: (1) the adaptation of those works to instruments which can reproduce them mechanically; (2) the public performance of the said works by means of these instruments. [2] Reservations and conditions relating to the application of this Article may be determined by the legislation of each country in so far as it is concerned; but all such reservations and conditions shall apply only in the countries which have imposed them. [3] The provisions of paragraph 1 shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of this Convention. [4] Adaptations made in accordance with paragraphs 2 and 3 of this Article, and imported without permission from the interested parties into a country where they are treated as infringing works, shall be liable to seizure.

Article 14. [1] Authors of literary, scientific or artistic works shall have the exclusive right of authorizing the reproduction and public performance of their works by cinematography. [2] Cinematographic productions shall be protected as literary or artistic works, if, by the arrangement of the acting form or the combinations of the incidents represented, the author has given the work a personal and original character. [3] Without prejudice to the copyright in the original work the reproduction by cinematography of a literary, scientific or artistic work shall be protected as an original work. [4] The preceding provisions apply to reproduction or production effected by any other process analogous to cinematography.

Article 15. [1] In order that the author of a work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the various countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. [2] For anonymous or pseudonymous works the publisher, whose name appears on the work, shall be entitled to protect the rights belonging to the author. He shall, in the absence of proof to the contrary, be deemed to be the lawful representative of the anonymous or pseudonymous author.

Article 16. [1] Infringing copies of a work shall be liable to seizure by the competent authorities of any country of the Union where the work enjoys legal protection. [2] In these countries the seizure shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected. [3] The seizure shall take place in accordance with the legislation of each country.

Article 17. The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

Article 18. [1] This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection. [2] If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew. [3] The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle. [4] The preceding provisions shall also apply in the case of new accessions to the Union, and to cases in which the term of protection is extended by the application of Article 7.

Article 19. The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union in favor of foreigners in general.

Article 20. The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Union, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

Article 21. [1] The international office established under the name of "Bureau of the International Union for the Protection of Literary and Artistic Works" shall be maiutained. [2] This Bureau is placed under the high authority of the Government of the Swiss Confederation, which shall regulate its organization and supervise its working. [3] The official language of the Bureau shall be French.

Article 22. [1] The International Bureau shall centralize information of every kind relating to the protection of the rights of authors over their literary and artistic works. It shall coordinate and publish such information. It shall undertake studies of general utility concerning the Union, and sball edit, with the help of documents supplied to it by the various Administrations, a periodical journal in French on questions relating to the objects of the Union. The Governments of the countries of the Union reserve the right to authorize, by common agreement, the publication by the Bureau of an edition in one or more other languages, if experience should show this to be necessary. [2] The International Bureau shall at all times hold itself at the disposal of members of the Union in order to supply them with any special information which they may need on questions relating to the protection of literary and artistic works. [3] The Director of the International Bureau shall make an annual report on his administration, which shall be communicated to all the members of the Union.

Article 23. [1] The expenses of the Bureau of the International Union shall be shared by the contracting countries. Until a fresh arrangement is made, they cannot exceed the sum of 60,000 francs a year. This amount may be increased, if necessary, by the simple decision of one of the conferences provided for in Article 24. [2] To determine the contribution of each country to the total sum of expenditure, the contracting countries, and those which may afterwards join the Union, shall be divided into six classes, each contributing in the proportion of a certain number of units, namely: 1st class: 25 units; 2nd class: 20 units; 3rd class: 15 units; 4th class: 10 units; 5th class: 5 units; 6th class: 3 units. [3] These coefficients shall be multiplied by the number of countries in each class, and the sum of the products thus obtained shall give the number of units by which the total expenditure is to be divided. The quotient shall give the amount of the unit of the expense. [4] Each country shall declare, at the time of its accession, in which of the said classes it wishes to belong. [5] The Swiss Administration shall prepare the budget of the Bureau, supervise its expenditure, make the necessary advances, and shall establish the annual account which shall be communicated to all the other Administrations.

Article 24. [1] The present Convention may be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union. [2] Questions of this kind, as well as those which in other respects concern the development of the Union, shall be considered in conferences to be held successively in the countries of the Union among the delegates of the said countries. The administration of the country in which a conference is to be held shall make preparations for the work of the conference, with the assistance of the International Bureau. The Director of the Bureau shall be present at the meetings of the conferences, and shall take part in the discussions, but without the right of voting. [3] No amendment to this Convention shall be binding on the Union except by the unanimous consent of the countries which are members of it.

Article 25. [1] States outside the Union which make provision for the legal protection of the rights forming the object of this Convention may accede thereto at their request. [2] Any such accession shall be notified in writing to the Government of the Swiss Confederation, and by it to all the other Governments. [3] Such accession shall automatically entail acceptance of all the provisions and admission to all the advantages of the present Convention. It may, however, contain an indication of the provisions of the Convention of September 9, 1886, or of the Additional Act of May 4, 1896, which they may judge necessary to substitute, temporarily at least, for the corresponding provisions of this Convention.

Article 26. [1] Contracting countries shall have the right to accede to this Convention at any time on behalf of their colonies or foreign possessions. [2] They may for this purpose make either a general declaration of adhesion that includes all their colonies or possessions, or expressly indicate only those which are included, or which are excluded. [3] Such declaration shall be notified in writing to the Government of the Swiss Confederation, and by it to all the other Governments.

Article 27. [1] The present Convention shall, as regards relations between the contracting States, replace the Berne Convention of September 9, 1886, including the Additional Article and the Final Protocol of the same date, as well as the Additional Act and the Interpretative Declaration of May 4, 1896. These Acts shall remain in force in relations with States which do not ratify this Convention. [2] The signatory States of the present Convention may declare at the exchange of ratifications that they desire to remain bound, as regards any specific point, by the provisions of the conventions which they have previously signed.

Article 28. [1] The present Convention shall be ratified, and the ratifications exchanged at Berlin, not later than July 1, 1910. [2] Each contracting party shall, as regards the exchange of ratifications, deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederaion. Each party shall receive in return a copy of the records of the exchange of ratifications, signed by the Plenipotentiaries who took part.

Article 29. [1] The present Convention shall come into force three months after the exchange of ratifications, and shall remain in force for an indefinite time until the expiration of one year from the date of its denunciation. [2] Such denunciation shall be addressed to the Government of the Swiss Confederation. It shall affect only the country which has made it, the Convention remaining in operation as regards the other countries of the Union.

Article 30. [1] The States which shall introduce in their legislation the duration of protection for fifty years provided for in Article 7, first paragraph, of this Convention, shall give notice thercof in writing to the Government of the Swiss Confederation, which shall immediately communicate it to all the other States of the Union. [2] The same procedure shall be followed in the case of the States withdrawing the reservations made by them in accordance with Articles 25, 26 and 27.

ADDITIONAL PROTOCOL OF BERNE OF MARCH 20, 1914

1. Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, nothing in the Convention of November 13, 1908, shall affect the right of such contracting country to restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the said non-Union country, and are not effectively domiciled in one of the countries of the Union.

2. The right granted by this Protocol to contracting States belongs equally to any of their overseas possessions.

3. No restrictions introduced in accordance with paragraph 1 above shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

4. The States which restrict the grant of copyright in accordance with this Protocol shall give notice thereof to the Government of the Swiss Confederation by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Government of the Swiss Confederation sball immediately communicate this declaration to all the other States of tbe Union.

5. This Protocol sball be ratified, and the ratifications deposited at Berne within a period not exceeding twelve months from the date thereof. It shall come into operation one month after the expiration of this period, and shall have the same force and duration as the Convention to which it relates.

ACT OF ROME OF JUNE 2, 1928

Article 1. The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2. (1) The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons, and other works of the same nature; dramatic or dramatico-musical works, choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; works of drawing, painting, architecture, sculpture, engraving and lithography; illustrations, maps, plans, sketches, and three-dimensional works relative to geography, topography, architecture or science. (2) Translations, adaptations, arrangements of music and other reproductions in an altered form of a literary or artistic work, as well as collections of different works, shall be protected as original works without prejudice to the copyright in the original work. (3) The countries of the Union shall be bound to make provision for the protection of the above-mentioned works. (4) Works of art applied to industrial purposes shall be protected so far as the legislation of each country allows.

Article 2bis. (1) It shall be a matter for legislation in the countries of the Union to exclude, wbolly or in part, from the protection provided by the preceding Article, political speeches and speeches delivered in the course of legal proceedings. (2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press. Nevertheless, the author alone shall have the right of making a collection of the said works.

Article 3. This Convention shall apply to photographic works and to works produced by a process analogous to photography. The countries of the Union shall be bound to make provision for their protection.

Article 4. (1) Authors who are nationals of any of the countries of the Union shall enjoy in countries otber than the country of origin of the work, for their works, whether unpublished or first puhlished in a country of the Union, the rights which the respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted hy this Convention. (2) The enjoyment and the exercise of these rights sball not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed. (3) The country of origin of the work shall be considered to be: in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; and in the case of works puhlished simultaneously in several countries of the Union, the country whose legislation grants the shortest term of protection. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin. (4) The expression "published works" means, for the purposes of this Convention, works copies of which have been made available to the public. The performance of a dramatic or dramatico-musical work, or of a musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute publication.

Article 5. Authors who are nationals of one of the countries of the Union and who first publish their works in another country of the Union shall have in the latter country the same rights as authors who are nationals of that country.

Article 6. (1) Authors who are not nationals of one of the countries of the Union, who first puhlish their works in one of those countries, shall enjoy in that country the same rights as authors who are nationals of that country, and in the other countries of the Union the rights granted by this Convention. (2) Nevertheless, where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not effectively domiciled in one of the countries of the Union. (3) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work puhlished in a country of the Union before such restrictions were put into force. (4) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to tbe Government of the Swiss Confederation hy a written declaration specifying the countries in regard to which protection is restricted and the restrictions to which rights of authors who are nationals of those countries are subjected. The Government of the Swiss Confederation shall immediately communicate this declaration to all the countries of the Union.

Article 6bis. (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work, as well as the right to object to any distortion, mutilation or other modification of the said work, which would be prejudicial to his honor or reputation. (2) It shall be a matter for the national legislation of the countries of the Union to determine the conditions under which these rights shall be exercised. The means of redress for safeguarding these rights shall be governed by the legislation of the country where protection is claimed.

Article 7. (1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death. (2) However, in case such term of protection should not be uniformly adopted by all the countries of the Union, the term shall be governed by the legislation of the country where protection is claimed, and shall not exceed the term fixed in the country of origin of the work. Consequently, the countries of the Union shall only be bound to apply the provisions of the preceding paragraph in so far as such provisions are consistent with their national legislation. (3) For photographic works and works produced by a process analogous to photography, for posthumous works, for anonymous or pseudonymous works, the term of protection shall be governed by the legislation of the country where protection is claimed, provided that the said term shall not exceed the term fixed in the country of origin of the work.

Article 7bis. (1) In the case of a work of joint authorship the term of protection shall be calculated according to the date of the death of the last surviving author. (2) Authors who are nationals of the countries which grant a term of protection shorter than that mentioned in paragraph (1) cannot claim a longer term of protection in the other countries of the Union. (3) In no case may the term of protection expire before the death of the last surviving author.

Article 8. The authors of unpublished works, who are nationals of one of the countries of the Union, and the authors of works first puhlished in one of those countries, shall enjoy, in the other countries of the Union, throughout the term of the right in the original work, the exclusive right of making or authorizing a translation of their works.

Article 9. (1) Serial novels, short stories and all other works, whether literary, scientific, or artistic, whatever their purpose, and which are published in the newspapers or periodicals of one of the countries of the Union shall not be reproduced in the other countries without the consent of the authors. (2) Articles on current economic, political or religious topics may be reproduced by the press unless the reproduction thereof is expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed. (3) Tbe protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 10. As regards the right to include excerpts from literary or artistic works for use in puhlications for teaching purposes, or having a scientific character, or for chrestomathies, the effect of the legislation of the countries of the Union and of special arrangements existing, or to be concluded, between them is not affected by this Convention.

Article 11. (1) The provisions of this Convention shall apply to the public performance of dramatic or dramatico-musical works and of musical works, whether such works be published or not. (2) Authors of dramatic or dramatico-musical works shall be protected during the term of their right in the original works against the unauthorized public performance of translations of their works. (3) In order to enjoy the protection of this Article, authors shall not be bound in publishing their works to forhid the puhlic performance thereof.

Article 11bis. (1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the communication of their works to the puhlic hy broadcasting. (2) The legislations of the countries of the Union shall determine the conditions under which the right mentioned in the preceding paragraph may be exercised, but the effect of those conditions shall apply only in the countries where they have been prescribed. This shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to ohtain an equitable remuneration which, in the absence of agreement, shall be fixed hy the competent authority.

Article 12. The following shall be specially included among the unlawful reproductions to which this Convention applies: unauthorized indirect appropriations of a literary or artistic work, such as adaptations, musical arrangements, transformations of a novel, tale, or poem, into a dramatic play and vice versa, etc., when they are only the reproduction of that work, in the same form or in another form, without essential alterations, additions, or abridgments and do not present the character of a new original work.

Article 13. (1) The authors of musical works shall have the exclusive right of authorizing: (i) the adaptation of those works to instruments which can reproduce them mechanically; (ii) the puhlic performance of the said works by means of these instruments. (2) Reservations and conditions relating to the application of this Article may be determined by the legislation of each country in so far as it is concerned; but all such reservations and conditions shall apply only in the countries which have imposed them. (3) The provisions of paragraph (1) shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of the Convention signed at Berlin on November 13, 1908, and in the case of a country which has acceded to the Union since that date, or accedes in the future, before the date of its accession. (4) Adaptations made in accordance with paragraphs (2) and (3) of this Article, and imported without permission from the interested parties into a country where they are treated as infringing works, shall be liahle to seizure.

Article 14. (1) Authors of literary, scientific or artistic works shall have the exclusive right of authorizing the reproduction, adaptation and puhlic performance of their works hy cinematography. (2) Cinematographic productions shall be protected as literary or artistic works if the author has given the work an original character. If this character is absent, the cinematographic production shall enjoy protection as a photographic work. (3) Without prejudice to the copyright in the work reproduced or adapted, a cinematographic work shall be protected as an original work. (4) The preceding provisions apply to reproduction or production effected by any other process analogous to cinematography.

Article 15. (1) In order that the author of a work protected by this Convention shall, in the ahsence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the various countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. (2) For anonymous or pseudonymous works the puhlisher whose name appears on the work shall be entitled to protect the rights belonging to the author. He shall, in the absence of proof to the contrary, be deemed to be the lawful representative of the anonymous or pseudonymous author.

Article 16. (1) Infringing copies of a work shall be liable to seizure by the competent authorities of any country of the Union where the work enjoys legal protection. (2) In these countries the seizure may also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected. (3) The seizure shall take place in accordance with the legislation of each country.

Article 17. The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit, hy legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

Article 18. (1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection. (2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the puhlic domain of the country where protection is claimed, that work shall not be protected anew. (3) The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle. (4) The preceding provisions shall also apply in the case of new accessions to the Union, and to cases in which the term of protection is extended hy the application of Article 7 or hy ahandonment of reservations.

Article 19. The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union in favor of foreigners in general.

Article 20. The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted hy the Union, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

Article 21. (1) The international office established under the name of the "Bureau of the International Union for the Protection of Literary and Artistic Works" shall be maintained. (2) That Bureau is placed under the high authority of the Government of the Swiss Confederation, which shall regulate its organization and supervise its working. (3) The official language of the Bureau shall be French.

Article 22. (1) The International Bureau shall collect information of every kind relating to the protection of the rights of authors over their literary and artistic works. It shall coordinate and puhlish such information. It shall conduct studies of general utility concerning the Union and, by the aid of documents placed at its disposal by the different Administrations, it shall edit a periodical journal in French on questions relating to the objects of the Union. The Governments of the countries of the Union reserve the right to authorize, by common agreement, the publication by the Bureau of an edition in one or more other languages, if experience should show this to be necessary. (2) The International Bureau shall always place itself at the disposal of members of the Union in order to provide them with any special information which they may require relating to the protection of literary and artistic works. (3) The Director of the International Bureau shall make an annual report on his administration, which shall be communicated to all the members of the Union.

Article 23. (1) The expenses of the Bureau of the International Union shall be shared by the countries of the Union. Until a fresh arrangement is made, they shall not exceed the sum of 120,000 Swiss francs a year. This amount may be increased, if necessary, by the unanimous decision of one of the conferences provided for in Article 24. (2) The share of the total expense to be paid by each country shall be determined by tbe division of the countries of the Union and those subsequently acceding to the Union into six classes, each of which shall contribute in the proportion of a certain number of units, viz.: Class I: 25 units; Class II: 20 units; Class III: 15 units; Class IV: 10 units; Class V: 5 units; Class VI: 3 units. (3) These coefficients shall be multiplied by the number of countries of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unit of expense. (4) Each country shall declare, at the time of its accession, in which of the said classes it wishes to be placed, but it may subsequently always declare that it wishes to be placed in another class. (5) The Swiss Administration shall prepare the budget of the Bureau, supervise its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

Article 24. (1) This Convention may be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union. (2) Questions of this kind, as well as those which in other respects concern the development of the Union, shall be considered in conferences to be held successively in the countries of the Union among the delegates of the said countries. The administration of the country where a conference is to meet shall prepare, with the assistance of the International Bureau, the program of the conference. The Director of the Bureau shall attend the sessions of the conferences, and shall participate in the discussions without the right to vote. (3) No amendment to this Convention shall be binding on the Union except by the unanimous consent of the countries which are members of it.

Article 25. (1) Countries outside the Union which make provision for the legal protection of the rights forming the object of this Convention may accede thereto on request to that effect. (2) Such accession shall be notified in writing to the Government of the Swiss Confederation, which shall communicate it to all the other countries of the Union. (3) Such accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention, and shall take effect one month after the date of the notification made hy the Government of the Swiss Confederation to the other countries of the Union unless a subsequent date has been indicated hy the acceding country. It may, however, contain an indication that the acceding country wishes to substitute, temporarily at least, for Article 8, concerning translations, the provisions of Article 5 of the Union Convention of 1886 as revised at Paris in 1896, on the clear understanding that the said provisions are applicahle only to translations into the language or languages of that country.

Article 26. (1) Any country of the Union may at any time in writing notify the Government of the Swiss Confederation that this Convention shall be applicable to all or part of its colonies, protectorates, territories under mandate or any other territories subject to its sovereignty or to its authority, or any territories under suzerainty, and the Convention shall thereupon apply to all the territories named in such notification. Failing such notification, the Convention shall not apply to any such territories. (2) Any country of the Union may at any time in writing notify the Government of the Swiss Confederation that this Convention shall cease to apply to all or part of the territories which have been made the subject of a notification under the preceding paragraph, and the Convention shall cease to apply in the territories named in such notification twelve months after its receipt by the Government of the Swiss Confederation. (3) All notifications given to the Government of the Swiss Confederation in accordance with the provisions of paragraphs (1) and (2) of this Article shall be communicated by that Government to all the countries of the Union.

Article 27. (1) This Convention shall, as regards relations between the countries of the Union, replace the Berne Convention of September 9, 1886, and the subsequent revisions thereof. The Acts previously in force shall continue to be applicable in relations with countries which do not ratify this Convention. (2) The countries on whose behalf this Convention

is signed may retain the benefit of the reservations which they have previously formulated, on condition that they make a declaration to that effect at the time of the deposit of their ratifications. (3) The countries which are at present members of the Union, hut on whose behalf this Convention is not signed, may accede to the Convention at any time. In that event they may enjoy the benefit of the provisions of the preceding paragraph.

Article 28. (1) This Convention shall be ratified, and the ratifications deposited at Rome, not later than July 1, 1931. (2) It shall enter into force, between the countries which have ratified it, one month after that date; however, if before that date it has been ratified hy at least six countries of the Union, it shall enter into force between those countries one month after the notification to them by the Government of tbe Swiss Confederation of the deposit of the sixth ratification and, in the case of countries which ratify thereafter, one month after the notification of each of such ratifications. (3) Until August 1, 1931, countries outside the Union may join it by acceding either to the Convention signed at Berlin on November 13, 1908, or to this Convention. On or after August 1, 1931, they may accede only to this Convention.

Article 29. (1) This Convention shall remain in force without limitation as to time until the expiration of a year from the day on whicb it bas been denounced. (2) Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in respcet of the country making it, the Convention remaining in full force and effect for the otber countries of the Union.

Article 30. (1) Countries which introduce into their legislation the term of protection of fifty years provided for by Article 7, paragrapb (1), of this Convention, shall give notice thereof in writing to the Government of the Swiss Confederation, which shall immediately communicate it to all the other countries of the Union. (2) The same procedure shall be followed in the case of the countries renouncing the reservations made or maintained hy them in accordance with Articles 25 and 27.

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Article 1. The countries to whicb this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2. (1) The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons, and other works of the same nature, dramatic or dramatico-musical works; choreographic works and entertainments in dumh show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; cinematographic works and works produced by a process analogous to cinematograpby; works of drawing, painting, architecture, sculpture, engraving and lithograpby; photographic works and works produced by a process analogous to pbotography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science. (2) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work. It shall, however, be a matter for legislation in the countries of the Union to determine the protection to be granted to translations of official texts of a legislative, administrative and legal nature. (3) Collections of literary or artistic works such as encyclopaedias and anthologies which, hy reason of the selection and arrangement of their contents, constitute intellcetual creations shall be protceted as such, without prejudice to the copyright in each of the works forming part of sucb collections. (4) Tbe works mentioned in this Article shall enjoy protection in all countries of the Union. This protcetion shall operate for the benefit of the author and his successors in title. (5) It shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in other countries of tbe Union only to such protcetion as is granted to designs and models in such countries.

Article 2bis. (1) It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protcetion afforded by the preceding Article political speeches and speeches delivered in the course of legal proceedings. (2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lcetures, addresses, sermons and other works of the same nature may be reproduced by the press. (3) Nevertheless, the author alone shall have tbe right of making a collcetion of his works mentioned in the preceding paragraphs.

Article 3. [*Omitted*]

Article 4. (1) Authors who are nationals of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, wbether unpublished or first published in a country of the Union, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rigbts specially granted by this Convention. (2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protcetion, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively hy the laws of the country where protection is claimed. (3) The country of origin shall be considered to be, in the case of published works, the country of first publication, even in the case of works published simultaneously in several countries of the Union which grant the same term of protection; in the case of works published simultaneously in several countries of the Union which grant different terms of protcetion, the country whose legislation grants the shortest term of protcetion. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin. A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication. (4) For tbe purposes of Articles 4, 5 and 6, the expression "published works" means works published, whatever may be the means of manufacture of the copies, and which have been made available in sufficient quantities to the public. The performance of a dramatic, dramatico-musical or cinematographic work, of a musical work, tbe public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architceture shall not constitute publication. (5) The country of origin shall be considered to be, in the case of unpublished works, the country to which the author belongs. However, in the case of works of architecture, or other artistic works incorporated in a building, the country of the Union where these works have been built or incorporated in a huilding shall be considered as the country of origin.

Article 5. Authors who are nationals of one of the countries of the Union, and who first puhlish their works in another country of the Union, shall have in the latter country the same rights as authors who are nationals of that country.

Article 6. (1) Authors who are not nationals of one of the countries of the Union, who first publisb their works in one of those countries, sball enjoy in tbat country the same rights as authors wbo are nationals of that country, and in the other countries of the Union the rights granted hy this Convention. (2) Nevertheless, where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not effectively domiciled in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication. (3) No restrictions introduced hy virtue of the preceding paragraph shall affcet the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force. (4) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Government of the Swiss Confederation by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of autbors who are nationals of those countries are subjected. The Government of the Swiss Confederation shall immediately communicate this declaration to all the countries of the Union.

Article 6bis. (I) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall bave the right, during his lifetime, to claim authorship of the work, and to objcet to any distortion, mutilation or other modification of, or any other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation. (2) In so far as tbe legislation of the countries of the Union permits, the rights granted to the author in accordance witb the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized hy the said legislation. It shall be a matter for the national legislation of the countries of the Union to determine the conditions under which the rights mentioned in this paragraph shall be exercised. (3) The means of redress for safeguarding the rights granted by this Article shall be governed hy the legislation of the country where protection is claimed.

Article 7. (I) The term of protection granted by this Convention shall be the life of the author and fifty years after his death. (2) However, where one or more countries of the Union grant a term of protcetion in excess of that provided hy paragraph (1), the term shall be governed hy the legislation of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work. (3) In the case of cinematographic and photographic works, as well as works produced by a process analogous to cinematograpby or photography, and in the case of works of applied art, the term of protection shall be governed hy the legislation of the country wbere protcetion is claimed, but shall not exceed the term fixed in the country of origin of the work. (4) In the case of anonymous and pseudonymous works, the term of protection shall be fixed at fifty years from the date of their publication. However, when the pseudonym adopted hy the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protcetion applicahle shall be tbat provided in paragraph (1). (5) In the case of posthumous works which do not fall within the categories of works included in paragraphs (3) and (4) ahove, the term of protection afforded to the heirs and other successors in title of the author shall end fifty years after the death of the author. (6) The term of protection subsequent to the death of the author and the terms provided by paragraphs (3), (4), and (5) shall run from the date of death or of puhlication, but such terms shall always be deemed to begin on the first of January of the year following the event which gives rise to them.

Article 7bis. In the case of a work of joint authorship the term of protection shall be calculated from the date of tbe death of the last surviving author.

Article 8. Authors of literary and artistic works protected by this Convention shall have the exclusive right of making and of authorizing the translation of their works tbroughout the term of protection of their rights in the original works.

Article 9. (1) Serial novels, short stories and all other works, whether literary, scientific, or artistic, whatever their purpose, and whicb are published in the newspapers or periodicals of one of the countries of the Union shall not be reproduced in the other countries without the consent of the authors. (2) Articles on current economic, political or religious topics may be reproduced by the press unless the reproduction thereof is expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined hy the legislation of the country where protection is claimed. (3) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 10. (1) It shall be permissihle in all the countries of the Union to make short quotations from newspaper articles and periodicals, as well as to include them in press summaries. (2) The right to include excerpts from literary or artistic works in educational or scientific publications, or in chrestomathies, to the extent justified by the purpose, shall be a matter for legislation in the countries of the Union, and for special arrangements existing or to be concluded between them. (3) Quotations and excerpts shall be accompanied by a mention of the source and of the name of the author, if it appears thereon.

Article 10bis. It shall be a matter for legislation in the countries of the Union to determine the conditions under which recording, reproduction, and public communication of short extracts from literary and artistic works may be made for the purpose of reporting current events by means of pbotography or cinematography or by broadcasting.

Article 11. (1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing: (i) the public performance of their works; (ii) any communication to the public of the performance of their works. The application of the provisions of Articles 11*bis* and 13 is, however, reserved. (2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof. (3) In order to enjoy the protection of this Article, authors shall not be bound, when publishing their works, to forbid the public performance thereof.

Article 11bis. (1) Authors of literary and artistic works shall have the exclusive right of authorizing: (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images; (ii) any communication to the public, by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one; (iii) the public communication hy loudspeaker or any other analogous instrument transmitting, hy signs, sounds or images, the broadcast of the work. (2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, hut these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration wbich, in the absence of agreement, shall be fixed by competent authority. (3) In the absence of any contrary stipulation, permission granted in accordance with paragrapb (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization hy means of its own facilities and used for its own hroadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Article 11ter. Authors of literary works shall enjoy the exclusive right of authorizing the public recitation of their works.

Article 12. Authors of literary, scientific or artistic works sball enjoy the exclusive right of autborizing adaptations, arrangements and other alterations of their works.

Article 13. (1) Authors of musical works shall enjoy the exclusive right of authorizing: (i) the recording of such works by instruments capable of reproducing them mcehanically; (ii) the public performance by means of such instruments of works thus recorded. (2) Reservations and conditions relating to the application of the rights mentioned in the preceding paragraph may be determined by legislation in eacb country of the Union, in so far as it may be concerned; but all sucb reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed hy competent authority. (3) The provisions of paragraph (1) of this Article shall not be retroactive, and consequently shall not be applicable in a country of the Union to works which, in that country, may have been lawfully adapted to mcebanical instruments before the coming into force of the Convention signed at Berlin on November 13, 1908, and in the case of a country whicb has acceded to the Union since that date, or accedes in the future, before the date of its accession. (4) Recordings made in accordance with paragraphs (2) and (3) of this Article, and imported witbout permission from the parties concerned into a country where they are treated as infringing recordings, shall be liable to seizure.

Article 14. (1) Authors of literary, scientific or artistic works shall have the exclusive right of authorizing: (i) the cinematographic adaptation and reproduction of these works, and the distrihution of the works thus adapted or reproduced; (ii) the public performance of the works thus adapted or reproduced. (2) Without prejudice to the copyright in the work reproduced or adapted, a cinematographic work shall be protected as an original work. (3) The adaptation into any other artistic form of cinematographic production derived from literary, scientific or artistic works shall, without prejudice to the authorization of the autbor of the cinematographic production, remain subjcet to the authorization of the author of the original work. (4) Cinematographic adaptations of literary, scientific or artistic works shall not be subjcet to the reservations and conditions contained in Article 13, paragraph (2). (5) The preceding provisions shall apply to reproduction or production effected by any other process analogous to cinematograpby.

Article 14bis. (1) The author, or after his death the persons or institutions authorized hy national legislation, sball, witb respect to original works of art and original manuscripts of writers and composers, enjoy the inalienahle right to an interest in any sale of the work subsequent to the first transfer by the author of the work. (2) The protection provided hy tbe preceding paragraph may be claimed in a country of the Union only if legislation in the country to which tbe author belongs so permits, and to the extent permitted by the country wbere this protection is claimed. (3) The procedure for collcetion and the amounts shall be matters for determination by national legislation.

Article 15. (1) In order that the author of a literary or artistic work protceted by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph sball be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity. (2) In the case of anonymous or pseudonymous works, other than those referred to in the preceding paragraph, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protcet and to enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and estahlishes his claim to authorship of the work.

Article 16. (1) Infringing copies of a work shall be liable to seizure by the competent authorities of any country of the Union where tbe work enjoys legal protection. (2) In tbese countries the seizure may also apply to reproductions coming from a country where the work is not protected, or bas ceased to be protceted. (3) The seizure sball take place in accordance witb the legislation of each country.

Article 17. The provisions of this Convention cannot in any way affcet the right of the Government of each country of the Union to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to whicb the competent authority may find it necessary to exercise that right.

Article 18. (1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protcetion. (2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protcetion is claimed, that work shall not be protceted anew. (3) The application of this principle shall be subject to any provisions contained in special conventions to that effcet existing or to be concluded between countries of tbe Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle. (4) The preceding provisions shall also apply in the case of new accessions to the Union, and to cases in which the term of protcetion is extended by the application of Article 7 or by abandonment of reservations.

Article 19. The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.

Article 20. The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as sucb agreements grant to authors more extensive rights than those granted by

the Convention, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

Article 21. (1) The international office established under the name of the "Bureau of the International Union for the Protection of Literary and Artistic Works" shall be maintained. (2) That Bureau shall be placed under the high authority of the Government of the Swiss Confederation, which shall regulate its organization and supervise its working. (3) The official language of the Bureau shall be the French language.

Article 22. (1) The International Bureau shall collect information of every kind relating to the protection of the rights of authors over their literary and artistic works. It shall coordinate and publish such information. It shall conduct studies of general utility concerning the Union and, by the aid of documents placed at its disposal by the different Administrations, it shall edit a periodical publication in the French language on questions relating to the objects of the Union. The Governments of the countries of the Union reserve the right to authorize, by common agreement, the publication by the Bureau of an edition in one or more other languages, if experience should show this to be necessary. (2) The International Bureau shall always place itself at the disposal of members of the Union in order to provide them with any special information which they may require relating to the protection of literary and artistic works. (3) The Director of the International Bureau shall make an annual report on his administration, which shall be communicated to all the members of the Union.

Article 23. (1) The expenses of the Bureau of the International Union shall be shared by the countries of the Union. Until a fresh arrangement is made, they shall not exceed the amount of 120,000 gold francs a year.* This amount may be increased, if necessary, by unanimous decision of the countries of the Union or of one of the conferences provided for in Article 24. (2) The share of the total expense to be paid by each country shall be determined by the division of the countries of the Union and those subsequently adhering to the Union into six classes, each of which shall contribute in the proportion of a certain number of units, viz.: Class I: 25 units; Class II: 20 units; Class III: 15 units; Class IV: 10 units; Class V: 5 units; Class VI: 3 units. (3) These coefficients shall be multiplied by the number of countries of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unit of expense. (4) Each country shall declare, at the time of its accession, in which of the said classes it wishes to belong, but it may subsequently declare that it wishes to be placed in another class. (5) The Swiss Administration shall prepare the budget of the Bureau, supervise its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

Article 24. (1) This Convention may be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union. (2) Questions of this kind, as well as those which in other respects concern the development of the Union, shall be considered in conferences to be held successively in the countries of the Union among the delegates of the said countries. The administration of the country where a conference is to meet shall prepare, with the assistance of the International Bureau, the program of the conference. The Director of the Bureau shall attend the sessions of the conferences, and shall participate in the discussions without the right to vote. (3) No amendment to this Convention shall be binding on the Union except by the unanimous consent of the countries which are members of it.

Article 25. (1) Countries outside the Union which make provision for the legal protection of the rights forming the object of this Convention may accede thereto upon request. (2) Such accession shall be notified in writing to the Government of the Swiss Confederation, which shall communicate it to all the other countries of the Union. (3) Such accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention, and shall take effect one month after the date of the notification made by the Government of the Swiss Confederation to the other countries of the Union, unless a subsequent date has been indicated by the acceding country. It may, however, contain an indication that the acceding country wishes to substitute, temporarily at least, for Article 8, concerning translations, the provisions of Article 5 of the Union Convention of 1886 as revised at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into the language or languages of that country.

Article 26. (1) Any country of the Union may at any time in writing notify the Government of the Swiss Confederation that this Convention shall be applicable to its overseas territories, colonies, protectorates, territories under its trusteeship, or to any other territory for the external relations of which it is responsible, and the Convention shall thereupon apply to all the territories named in such notification, as from a date determined in accordance with Article 25, paragraph (3). In the absence of such notification, the Convention shall not be applicable to such territories. (2) Any country of the Union may at any time in writing notify the Government of the Swiss Confederation that this Convention shall cease to apply to all or part of the territories which have been made the subject of a notification under the preceding paragraph, and the Convention shall cease to apply in the territories named in such notification twelve months after its receipt by the Government of the Swiss Confederation. (3) All notifications given to the Government of the Swiss Confederation in accordance with the provisions of paragraphs (1) and (2) of this Article shall be communicated by that Government to all the countries of the Union.

Article 27. (1) This Convention shall, as regards relations between the countries of the Union, replace the Berne Convention of September 9, 1886, and the subsequent revisions thereof. The Acts previously in force shall continue to be applicable in relations with countries which do not ratify this Convention. (2) The countries on whose behalf this Convention is signed may retain the benefit of the reservations which they have previously formulated, on condition that they make a declaration to that effect at the time of the deposit of their ratifications. (3) Countries which are at present members of the Union, but on whose behalf this Convention is not signed, may accede to it at any time, in the manner provided for in Article 25. In that event they shall enjoy the benefit of the provisions of the preceding paragraph.

Article 27bis. Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, shall be brought before the International Court of Justice for determination by it, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the Bureau shall bring the matter to the attention of the other countries of the Union.

* This monetary unit is the gold franc of 100 centimes, weighing 10/31 of a gramme and of a fineness of 0.900.

Article 28. (1) This Convention shall be ratified, and the ratifications deposited at Brussels, not later than July 1, 1951. The ratifications, with the date thereof and all declarations which may accompany them, shall be communicated by the Belgian Government to the Government of the Swiss Confederation, which shall notify the other countries of the Union thereof. (2) This Convention shall enter into force, between the countries which have ratified it, one month after July 1, 1951. However, if before that date it has been ratified by at least six countries of the Union, it shall enter into force between those countries one month after the notification to them by the Government of the Swiss Confederation of the deposit of the sixth ratification and, in the case of countries which ratify thereafter, one month after the notification of each of such ratifications. (3) Until July 1, 1951, countries outside the Union may join it by acceding either to the Convention signed at Rome on June 2, 1928, or to this Convention. On or after July 1, 1951, they may accede only to this Convention. The countries of the Union which shall not have ratified this Convention by July 1, 1951, may accede thereto in accordance with the procedure provided by Article 25. In this event they shall be entitled to the benefit of the provisions of Article 27, paragraph (2).

Article 29. (1) This Convention shall remain in force without limitation as to time. Nevertheless, each country of the Union shall be entitled to denounce it at any time, by means of a notification in writing addressed to the Government of the Swiss Confederation. (2) This denunciation, which shall be communicated by the Government of the Swiss Confederation to all the other countries of the Union, shall take effect only in respect of the country making it, and twelve months after the receipt of the notification of denunciation addressed to the Government of the Swiss Confederation, the Convention remaining in full force and effect for the other countries of the Union. (3) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date of its ratification or accession.

Article 30. (1) Countries which introduce into their legislation the term of protection of fifty years provided by Article 7, paragraph (1), of this Convention, shall give notice thereof in writing to the Government of the Swiss Confederation, which shall immediately communicate it to all the other countries of the Union. (2) The same procedure shall be followed in the case of the countries withdrawing the reservations made or maintained by them in accordance with Articles 25 and 27.

Article 31. The official Acts of the Conferences shall be established in French. An equivalent text shall be established in English. In case of differences of opinion on the interpretation of the Acts, the French text shall always prevail. Any country or group of countries of the Union shall be entitled to have established by the International Bureau an authoritative text of the said Acts in the language of its choice, and by agreement with the Bureau. These texts shall be published in the Acts of the Conferences, annexed to the French and English texts.

ACT OF STOCKHOLM OF JULY 14, 1967

Article 1. The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2. (1) The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science. (2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form. (3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work. (4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts. (5) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections. (6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title. (7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works. (8) The protection of this Convention shall not apply to news of the day nor to miscellaneous facts having the character of mere items of press information.

Article 2bis. (1) It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protection provided by the preceding Article political speeches and speeches delivered in the course of legal proceedings. (2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press, broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11*bis*(1) of this Convention, when such use is justified by the informatory purpose. (3) Nevertheless, the author shall enjoy the exclusive right of making a collection of his works mentioned in the preceding paragraphs.

Article 3. (1) The protection of this Convention shall apply to: (a) authors who are nationals of one of the countries of the Union, for their works, whether published or not; (b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union. (2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country. (3) The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication. (4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4. The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to: (a) authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of the Union; (b) authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5. (1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention. (2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed. (3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors. (4) The country of origin shall be considered to be: (a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection; (b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country; (c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that: (i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country, and, (ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

Article 6. (1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication. (2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force. (3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Director General of the World Intellectual Property Organization (hereinafter designated as "the Director General") by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Director General shall immediately communicate this declaration to all the countries of the Union.

Article 6bis. (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation. (2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained. (3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 7. (1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death. (2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making. (3) In the case of anonymous or pseudonymous works, the term of protection granted by this Convention shall expire fifty years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years. (4) It shall be a matter for legislation in the countries of the Union to determine the term of protection of photographic works and that of works of applied art in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work. (5) The term of protection subsequent to the death of the author and the terms provided by paragraphs (2), (3) and (4) shall run from the date of death or of the event referred to in those paragraphs, but such terms shall always be deemed to begin on the first of January of the year following the death or such event. (6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs. (7) Those countries of the Union bound by the Rome Act of this Convention which grant, in their national legislation in force at the time of signature of the present Act, shorter terms of protection than those provided for in the preceding paragraphs shall have the right to maintain such terms when ratifying or acceding to the present Act. (8) In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

Article 7bis. The provisions of the preceding Article sball also apply in the case of a work of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the last surviving author.

Article 8. Authors of literary and artistic works protected by this Convention shall enjoy tbe exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

Article 9. (1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form. (2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of sucb works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. (3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

Article 10. (1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries. (2) It shall be a matter for legislation in tbe countries of the Union, and for special agreements existing or to be concluded between them, to permit tbe utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice. (3) Where use is made of works in accordance witb the preceding paragraphs of this Article, mention sball be made of the source, and of the name of the author if it appears thereon.

Article 10bis. (1) It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same cbaracter, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed. (2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for tbe purpose of reporting current events by means of photograpby, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

Article 11. (1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing: (i) the public performance of tbeir works, including such public performance by any means or process; (ii) any communication to the public of the performance of their works. (2) Authors of dramatic or dramatico-musical works shall enjoy,during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 11bis. (1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing: (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images; (ii) any communication to tbe public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one; (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work. (2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in tbe countries where they bave been prescribed. They shall not in any circumstances be prejudicial to the moral rigbts of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority. (3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Article 11ter. (1) Authors of literary works shall enjoy the exclusive right of authorizing: (i) the public recitation of their works, including such public recitation by any means or process; (ii) any communication to the public of the recitation of their works. (2) Authors of literary works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 12. Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

Article 13. (1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together witb such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, sball be fixed by competent authority. (2) Recordings of musical works made in a country of the Union in accordance with Article 13(3) of the Conventions signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until a date two years after that country becomes bound by this Act. (3) Recordings made in accordance with paragraphs (1) and (2) of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

Article 14. (1) Authors of literary or artistic works shall have the exclusive right of authorizing: (i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced; (ii) the public performance and communication to the public by wire of the works thus adapted or reproduced. (2) The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, witbout prejudice to tbe authorization of the author of the cinematographic production, remain subject to tbe authorization of the authors of the original works. (3) The provisions of Article 13(1) shall not apply.

Article 14bis. (1) Without prejudice to the copyright in any work which may bave been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article. (2)(a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed. (b) However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work authors who bave brought contributions to the making of the work, sucb authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work. (c) The question wbether or not the form of the undertaking referred to above should, for the application of the preceding subparagraph (b), be in a written agreement or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. Tbe countries whose legislation so provides shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all tbe other countries of the Union. (d) By "contrary or special stipulation" is meant any restrictive condition which is relevant to the aforesaid undertaking. (3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, nor to the principal director tbereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragrapb (2)(b) to such director shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

Article 14ter. (1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of tbe work. (2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where tbis protection is claimed. (3) The procedure for collection and the amounts shall be matters for determination by national legislation.

Article 15. (1) In order that the author of a literary or artistic work protected by this Convention sball, in the absence of proof to the contrary, be regarded as sucb, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity. (2) The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work. (3) In the case of anonymous and pseudonymous works, other than those referred to in paragraph (1) above, the publisher whose name appears on tbe work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work. (4)(a) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority who shall represent tbe author and shall be entitled to protect and enforce bis rights in the countries of the Union. (b) Countries of the Union which make such designation under the terms of this provision shall notify the Director General by means of a written declaration giving full information concerning the autbority thus designated. The Director General shall at once communicate this declaration to all other countries of the Union.

Article 16. (1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection. (2) The provisions of the preceding paragraph shall also apply to reproductions coming from a country wbere the work is not protected, or has ceased to be protected. (3) The seizure shall take place in accordance with the legislation of each country.

Article 17. The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to whicb the competent authority may find it necessary to exercise that right.

Article 18. (1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection. (2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew. (3) The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle. (4) The preceding provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.

Article 19. The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection whicb may be granted by legislation in a country of the Union.

Article 20. The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention. The provisions of existing agreements wbich satisfy these conditions shall remain applicable.

Article 21. (1) Special provisions regarding developing countries are included in a protocol entitled "Protocol Regarding Developing Countries." (2) Subject to the provisions of Article 28(1)(b)(i) and (c), the Protocol Regarding Developing Countries forms an integral part of the present Act.

Article 22. (1)(a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 22 to 26. (b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts. (c) The expenses of each delegation shall be borne by the Government which has appointed it. (2)(a) The Assembly shall: (i) deal with all matters concerning the maintenance and development of tbe Union and the implementation of this Convention; (ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention Establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), due account being taken of any comments made by those countries of the Union whicb are not bound by Articles 22 to 26; (iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union; (iv) elect the members of the Executive Committee of the Assembly; (v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee; (vi) determine the program and adopt the triennial budget of the Union, and approve its final accounts; (vii) adopt the financial regulations of the Union; (viii) establish such committees of experts and working groups as may be necessary for the work of the Union; (ix) determine whicb countries not members of the Union and which intergovernmental and international non-governmental organizations sball be admitted to its meetings as observers; (x) adopt amendments to Articles 22 to 26; (xi) take any other appropriate action designed to furtber the objectives of the Union; (xii) exercise such other functions as are appropriate under this Convention; (xiii) subject to its acceptance, exercise such rights as are given to it in tbe Convention establishing the Organization. (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of tbe Coordination Committee of the Organization. (3)(a) Eacb country member of the Assembly shall bave one vote. (b) One-half of the countries members of the Assembly shall constitute a quorum. (c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, witb the exception of decisions concerning its own procedure, all sucb decisions shall take effect only if the following conditions are fulfilled. Tbe International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains. (d) Subject to tbe provisions of Article 26(2), tbe decisions of the Assembly shall require two-thirds of the votes cast. (e) Abstentions shall not be considered as votes. (f) A delegate may represent, and vote in the name of, one country only. (g) Countries of tbe Union not members of the Assembly shall be admitted to its meetings as observers. (4)(a) The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization. (b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly. (5) The Assembly shall adopt its own rules of procedure.

Article 23. (1) The Assembly shall have an Executive Committee. (2)(a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 25(7)(b), have an *ex officio* seat on the Committee. (b) The Government of eacb country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts. (c) The expenses of each delegation sball be borne by the Government which has appointed it. (3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded. (4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements which might be established in relation with the Union to be among the countries constituting the Executive Committee. (5)(a) Each member of the Executive Committee shall serve from the close of the session of the Assembly whicb elected it to the close of the next ordinary session of the Assembly. (b) Members of the Executive Committee may be re-elected, but not more than two-thirds of them. (c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee. (6)(a) The Executive Committee shall: (i) prepare the draft agenda of the Assembly; (ii) submit proposals to the Assembly respecting the draft program and triennial budget of the Union prepared by the Director General; (iii) approve, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General; (iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts; (v) in accordance with the decisions of the Assembly and baving regard to circumstances arising between two ordinary sessions of the Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General; (vi) perform such other functions as are allocated to it under this Convention. (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization. (7)(a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as tbe Coordination Committee of the Organization. (b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members. (8)(a) Each country member of the Executive Committee shall have one vote. (b) One-half of the members of the Executive Committee shall constitute a quorum. (c) Decisions shall be made by a simple majority of the votes cast. (d) Abstentions shall not be considered as votes. (e) A delegate may represent, and vote in the name of, one country only. (9) Countries of the Union not members of tbe Executive Committee shall be admitted to its meetings as observers. (10) The Executive Committee shall adopt its own rules of procedure.

Article 24. (1)(a) The administrative tasks with respect to the Union sball be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property. (b) In particular, the International Bureau shall provide tbe secretariat of the various organs of the Union. (c) The Director General of the Organization shall be the chief executive of the Union and sball represent the Union. (2) The International Bureau shall assemble and publish information concerning the protection of copyright. Eacb country of tbe Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright. (3) The International

Bureau shall publish a monthly periodical. (4) The International Bureau shall, on request, furnish information to any country of the Union on matters concerning the protection of copyright. (5) The International Bureau sball conduct studies, and sball provide services, designed to facilitate the protection of copyright. (6) Tbe Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee, and any otber committee of experts or working group. The Director General, or a staff member designated by him, shall be *ex officio* secretary of these bodies. (7)(a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 22 to 26. (b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision. (c) The Director General and persons designated by him shall take part, witbout the right to vote, in the discussions at tbese conferences. (8) The International Bureau shall carry out any other tasks assigned to it.

Article 25. (1)(a) The Union sball have a budget. (b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, wbere applicable, the sum made available to the budget of the Conference of the Organization. (c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to tbe Unions. The sbare of the Union in sucb common expenses sball be in proportion to the interest the Union has in them. (2) The budget of tbe Union shall be establisbed with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization. (3) The budget of the Union shall be financed from the following sources: (i) contributions of the countries of tbe Union; (ii) fees and cbarges due for services performed by the International Bureau in relation to the Union; (iii) sale of, or royalties on, the publications of the International Bureau concerning the Union; (iv) gifts, bequests, and subventions; (v) rents, interests, and other miscellaneous income. (4)(a) For the purpose of establishing its contribution towards the budget, eacb country of the Union shall belong to a class, and sball pay its annual contributions on the basis of a number of units fixed as follows: Class I: 25; Class II: 20; Class III: 15; Class IV: 10; Class V: 5; Class VI: 3; Class VII: 1. (b) Unless it bas already done so, eacb country sball indicate, concurrently with depositing its instrument of ratification or accession, the class to whicb it wishes to belong. Any country may change class. If it cbooses a lower class, the country must announce it to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session. (c) The annual contribution of eacb country shall be an amount in the same proportion to the total sum to be contributed to the annual budget of the Union by all countries as tbe number of its units is to the total of the units of all contributing countries. (d) Contributions shall become due on tbe first of January of each year. (e) A country which is in arrears in the payment of its contributions shall have no vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for tbe preceding two full years. However, any organ of the Union may allow sucb a country to continue to exercise its vote in that organ if, and as long as, it is satisfied that tbe delay in payment is due to exceptional and unavoidable circumstances. (f) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as tbe budget of the previous year, in accordance with the financial regulations. (5) The amount of the fees and cbarges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General. (6)(a) The Union shall have a working capital fund whicb sball be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, an increase shall be decided by tbe Assembly. (b) The amount of the initial payment of eacb country to the said fund or of its participation in the increase thereof sball be a proportion of the contribution of that country for the year in which the fund is established or the increase decided. (c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it bas heard the advice of the Coordination Committee of tbe Organization. (7)(a) In tbe beadquarters agreement concluded with the country on the territory of whicb tbe Organization bas its beadquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall bave an *ex officio* seat on the Executive Committee. (b) The country referred to in subparagraph (a) and the Organization sball eacb bave the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it bas been notified. (8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They sball be designated, with their agreement, by tbe Assembly.

Article 26. (1) Proposals for the admendment of Articles 22, 23, 24, 25, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Sucb proposals shall be communicated by the Director General to the member countries of the Assembly at least six montbs in advance of their consideration by the Assembly. (2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment of Article 22, and of the present paragrapb, shall require four-fifths of the votes cast. (3) Any amendment to the Articles referred to in paragrapb (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, bave been received by the Director General from three-fourths of the countries members of tbe Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the admendment enters into force, or whicb become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union sball bind only those countries wbich bave notified their acceptance of sucb amendment.

Article 27. (1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union. (2) For this purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries. (3) Subject to the provisions of Article 26 which apply to tbe amendment of Articles 22 to 26, any revision of this Convention, including the Protocol Regarding Developing Countries, shall require the unanimity of the votes cast.

Article 28. (1)(a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification and accession sball be deposited with the Director General. (b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply: (i) to Articles 1 to 21 and the Protocol Regarding Developing Countries, or (ii) to Articles 22 to 26. (c) If a country of the Union has already separately accepted tbe Protocol Regarding Developing Countries in accordance with Article 5 of such Protocol, its declaration under item (i) of the preceding subparagraph may relate only to Articles 1 to 20. (d) Any country of the Union which, in accordance with subparagraphs (b) and (c), bas excluded from the effects of its ratification or accession one of the two groups of provisions referred to in those subparagraphs may at any later time declare that it extends the effects of its ratification or accession to that group of provisions. Such declaration shall be deposited with the Director General. (2)(a) Subject to the provisions of Article 5 of the Protocol Regarding Developing Countries, Articles 1 to 21 and the said Protocol shall enter into force, with respect to the first five countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by paragraph (1)(b)(i), three months after the deposit of the fifth sucb instrument of ratification or accession. (b) Articles 22 to 26 shall enter into force, witb respect to the first seven countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by paragraph (1)(b)(ii), three months after the deposit of the seventh such instrument of ratification or accession. (c) Subject to the initial entry into force, pursuant to the provisions of subparagraphs (a) and (b), of eacb of tbe two groups of provisions referred to in paragraph (1)(b)(i) and (ii), and subject to the provisions of paragrapb (1)(b), Articles 1 to 26 and the Protocol Regarding Developing Countries shall, witb respect to any country of the Union, other than those referred to in subparagrapbs (a) and (b), which deposits an instrument of ratification or accession or any country of the Union which deposits a declaration pursuant to paragrapb (1)(d), enter into force three months after the date of notification by the Director General of sucb deposit, unless a subsequent date has been indicated in the instrument or declaration deposited. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated. (d) The Protocol Regarding Developing Countries may be applied, pursuant to Article 5 thereof, prior to the entry into force of this Act, from the date of its signature. (3) With respect to any country of the Union whicb deposits an instrument of ratification or accession, Articles 27 to 38 shall enter into force on the earlier of the dates on which any of the groups of provisions referred to in paragraph (1)(b) enters into force with respect to tbat country pursuant to paragrapb (2)(a), (b) or (c).

Article 29. (1) Any country outside the Union may accede to this Act and tbereby become a member of the Union. Instruments of accession sball be deposited witb the Director General. (2)(a) Witb respect to any country outside the Union whicb deposits its instrument of accession one month or more before the date of entry into force of any provisions of the present Act, this Act shall enter into force, unless a subsequent date has been indicated in the instrument of accession, on the date upon which provisions first enter into force pursuant to Article 28(2)(a) or (b); provided that: (i) if Articles 1 to 21 do not enter into force on that date, sucb country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 1 to 20 of the Brussels Act; (ii) if Articles 22 to 26 do not enter into force on tbat date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 21 to 24 of the Brussels Act.—If a country indicates a subsequent date in its instrument of accession, this Act sball enter into force with respect to that country on the date thus indicated. (b) With respect to any country outside the Union which deposits its instrument of accession on a date which is subsequent to, or precedes by less than one month, tbe entry into force of one group of provisions of the present Act, this Act shall, subject to the proviso of subparagraph (a), enter into force three months after the date on whicb its accession bas been notified by the Director General, unless a subsequent date bas been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date tbus indicated. (3) With respect to any country outside the Union which deposits its instrument of accession after the date of entry into force of the present Act in its entirety, or less than one month before such date, this Act shall enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act sball enter into force with respect to that country on the date thus indicated.

Article 30. (1) Subject to tbe possibilities of exceptions provided for in the following paragraph, in Articles 28(1)(b) and 33(2), and in the Protocol Regarding Developing Countries, ratification or accession sball automatically entail acceptance of all the clauses and admission to all the advantages of this Act. (2)(a) Any country of the Union ratifying or acceding to this Act may retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instfument of ratification or accession. (b) Any country outside the Union may, in acceding to this Act, declare that it intends to substitute, temporarily at least, for Article 8 concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as revised in Paris in 1896, on the clear understanding that the said provisions are applicable only to translation into the language or languages of the said country. Any country of the Union bas the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country. (c) Any country may withdraw such reservations at any time by notification addressed to the Director General.

Article 31. (1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of wbich it is responsible. (2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories. (3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under such paragraph shall take effect three montbs after its notification by the Director General. (b) Any notification given under paragraph (2) sball take effect twelve months after its receipt by the Director General.

Article 32. (1) The present Act shall, as regards the relations between the countries of the Union, and to the extent that it applies, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable, in their entirety or to the extent that the present Act does not replace them by virtue of the preceding sentence, in relations witb countries of the Union which do not ratify or accede to this Act. (2) Countries outside the Union which become party to this Act shall, subject to the provisions of paragrapb (3), apply it with respect to any country of the Union not party to this Act or which, although party to this Act, has made a declaration pursuant to Article 28(1)(b)(i). Such countries recognize that the said country of the Union, in its relations with them: (i) may apply the provisions of tbe most recent Act to which it is party, and (ii) bas the right to adapt the protection to the level provided for by this Act. (3) Any country which, in ratifying or acceding to the present Act, has made any or all of the reservations permitted under the Protocol Regarding Developing Countries may apply them in its relations witb other countries of the Union wbich are not party to this Act or which, although party to this Act, have made a declaration as permitted by Article 28(1)(b)(i), provided that the latter countries have accepted the application of the said reservations.

Article 33. (1) Any dispute between two or more countries of tbe Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union. (2) Eacb country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragrapb (1) sball not apply. (3) Any country baving made a declaration in accordance with the provisions of paragrapb (2) may, at any time, witbdraw its declaration by notification addressed to the Director General.

Article 34. After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.

Article 35. (1) This Convention sball remain in force without limitation as to time. (2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union. (3) Denunciation shall take effect one year after the day on whicb the Director General has received the notification. (4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

Article 36. (1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention. (2) It is understood that, at the time a country deposits its instrument of ratification or accession, it will be in a position under its domestic law to give effect to tbe provisions of this Convention.

Article 37. (1)(a) This Act shall be signed in a single copy in the French and Englisb languages and shall be deposited with the Government of Sweden. (b) Official texts shall be established by the Director General, after consultation witb the interested Governments, in the German, Italian, Portuguese and Spanish languages, and sucb other languages as the Assembly may designate. (c) In case of differences of opinion on the interpretation of the various texts, tbe French text shall prevail. (2) This Act shall remain open for signature at Stockholm until January 13, 1968. (3) The Director General sball transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country. (4) The Director General shall register this Act with tbe Secretariat of the United Nations. (5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Article 28(1)(d), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Article 31.

Article 38. (1) Until the first Director General assumes office, references in this Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the Bureau of the Union or its Director, respectively. (2) Countries of the Union not bound by Articles 22 to 26 may, until five years after tbe entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided under Articles 22 to 26 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such countries sball be deemed to be members of the Assembly until tbe expiration of the said period. (3) As long as all the countries of the Union have not become Members of tbe Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau. (4) Once all the countries of the Union bave become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

PROTOCOL REGARDING DEVELOPING COUNTRIES (STOCKHOLM, JULY 14, 1967)

Article 1. Any country regarded as a developing country in conformity with tbe established practice of the General Assembly of the United Nations wbich ratifies or accedes to the Act of this Convention of which this Protocol forms an integral part and whicb, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided in the Act may, by a notification deposited with the Director General, at the time of making a ratification or accession whicb includes Article 21 of the Act, declare that it will, for a period of the first ten years during whicb it is a party thereto, avail itself of any or all of the following reservations: (a) substitute for the term of fifty years referred to in paragraphs (1), (2) and (3) of Article 7 of this Convention a different term, provided that it shall not be less than twenty-five years; and substitute for the term of twenty-five years referred to in paragraph (4) of the said Article a different term, provided that it shall not be less than ten years; (b) substitute for Article 8 of this Convention the following provisions: (i) authors of literary and artistic works protected by this Convention shall enjoy in countries other than the country of origin of their works the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from tbe date of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for wbich protection is to be claimed; (ii) if, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the developing country concerned, a translation of such work has not been published in that country into the national or official or regional language or languages of that country by the owner of the right of translation or with his authorization, any national of such country may obtain a non-exclusive license from the competent authority to translate tbe work and publish the work so translated in any of the national or official or regional languages in which it has not been

published; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on tbe same conditions if all previous editions of a translation in such language in that country are out of print; (iii) if the owner of the right of translation cannot be found, then the applicant for a license sball send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the Government of that country. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application; (iv) due provision sball be made by domestic legislation to assure to the owner of the right of translation a just compensation, to assure payment and transmittal of such compensation, subject to national currency regulations, and to assure a correct translation of the work; (v) tbe original title and the name of the author of the work shall be printed on all copies of the published translation. The license shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union if one of the national or official or regional languages of such other country is the same language as that into which the work has been so translated, and if the domestic law in such other country makes provision for such licenses and does not prohibit such importation and sale. Wbere the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements. The license sball not be transferable by the licensee; (vi) the license shall not be granted when the author has withdrawn from circulation all copies of the work; (vii) should, bowever, the author avail himself of the right under subparagraph (i) above during the term of ten years from the date of first publication, the license shall terminate from the date on which the author publishes or causes to be published his translation in the country where the license has been granted, provided, however, that any copies of the translation already made before the license is terminated may continue to be sold; (viii) should, however, the author not avail himself of the right under subparagraph (i) above during the said term of ten years, compensation under the non-exclusive license referred to above shall cease to be due for any uses made after the expiry of such term; (ix) should the autbor be entitled to exclusive translation rights in a country by baving published or caused to be published a translation of the work in that country within ten years from the date of first publication, but should thereafter during the term of the author's copyright in the work all editions of the authorized translation in that country be out of print, then a non-exclusive license to translate the work may be obtained from the competent authority in the same manner and subject to the same conditions as are provided with respect to the non-exclusive license referred to in subparagrapbs (ü) to (vi) above, but subject to the provisions of subparagraph (vii) above; (c) apply the provisions of Article 9(1) of this Convention subject to the following provisions: (i) if, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the developing country concerned, such work has not been published in that country in the original form in which it was created, by the owner of the right of reproduction or with his authorization, any national of such country may obtain a non-exclusive license from the competent authority to reproduce and publish such work for educational or cultural purposes; provided that such national, in accordance with the procedure of the country concerned, establishes either that he bas requested, and been denied, authorization by the proprietor of the right to reproduce and publish such work for educational or cultural purposes, or that, after due diligence on his part, be was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of such work in its said original form in that country are out of print; (ii) if the owner of the right of reproduction cannot be found, then tbe applicant for a license sball send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of reproduction is known, to tbe diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the Government of that country. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of tbe application; (üi) due provision sball be made by domestic legislation to assure to the owner of the right of reproduction a just compensation, to assure payment and transmittal of sucb compensation, subject to national currency regulations, and to assure an accurate reproduction of the work; (iv) the original title and the name of the autbor of the work shall be printed on all copies of the published reproduction. The license shall be valid only for publication in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union for educational or cultural purposes if the domestic law in sucb other country makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of tbe Union shall be governed by its domestic law and its agreements. The license shall not be transferable by the licensee; (v) the license shall not be granted when the author has withdrawn from circulation all copies of the work; (vi) should, however, the author avail himself of the right to reproduce the work, the license shall terminate from the date on which tbe author publisbes or causes to be published his work in its said original form in the country where tbe license bas been granted, provided, however, that any copies of the work already made before the license is terminated may continue to be sold; (vii) should the author publish or cause to be published his work in its said original form in a country, but should thereafter during the term of the author's copyright in the work all authorized editions in sucb original form in that country be out of print, then a non-exclusive license to reproduce and publish tbe work may be obtained from the competent authority in the same manner and subject to the same conditions as are provided with respect to the non-exclusive license referred to in subparagraphs (i) to (v) above, but subject to the provisions of subparagraph (vi) above; (d) substitute for paragraphs (1) and (2) of Article 11*bis* of this Convention the following provisions: (i) authors of literary and artistic works shall enjoy the exclusive right of authorizing the broadcasting of their works and the communication to the public of the broadcast of the works if such communication is made for profit-making purposes; (ii) the national legislation of the countries of the Union may regulate the conditions under whicb the right mentioned in the preceding subparagraph shall be exercised, but the effect of those conditions will be strictly limited to the countries wbich have put them in force. Such conditions shall not in any case prejudice the moral rights of the author, nor the right which belongs to the author to obtain an equitable remuneration which shall be fixed, failing agreement, by tbe competent authority; (e) reserve the right, exclusively for teaching, study and researcb in all fields of education, to restrict the protection of literary and artistic works, provided due provision shall be made by domestic legislation to assure to the author a compensation which conforms to standards of payment made to national authors; the payment and transmittal of such compensation shall be subject to national currency regulations. Copies of a work publisbed pursuant to reservations under this paragraph may be imported and sold in another country of the Union for purposes as aforesaid if that country has invoked the said reservations and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union which cannot take advantage of this Protocol are prohibited in the absence of agreement of the author or his successors in title.

Article 2. Any country which no longer needs to maintain any or all of the reservations made in accordance with Article 1 of this Protocol shall withdraw such reservation or reservations by notification deposited with the Director General.

Article 3. Any country which has made reservations in accordance with Article 1 of this Protocol, and which at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to withdraw the reservations under the said Article 1, may continue to maintain any or all of the reservations until it ratifies or accedes to the Act adopted by the next revision conference of this Convention.

Article 4. If, in conformity with the established practice of the General Assembly of the United Nations, a country should cease to be regarded as a developing country, the Director General shall give notification of sucb cessation to the country concerned and to all of the other countries of the Union. At the expiry of a period of six years from the date of sucb notification the said country shall no longer have the right to maintain any of the reservations under this Protocol.

Article 5. (1) Any country of the Union may declare, as from the signature of this Convention, and at any time before becoming bound by Articles 1 to 21 of this Convention and by this Protocol, (a) in the case of a country referred to in Article 1 of this Protocol, that it intends to apply the provisions of this Protocol to works whose country of origin is a country of the Union which admits the application of the reservations under the Protocol, or (b) that it admits the application of the provisions of the Protocol to works of which it is tbe country of origin by countries which, on becoming bound by Articles 1 to 21 of this Convention and by this Protocol, or on making a declaration of application of this Protocol by virtue of the provision of subparagraph (a), bave made reservations permitted under this Protocol. (2) Tbe declaration shall be made in writing and shall be deposited with the Director General. The declaration sball become effective from the date it is deposited.

Article 6. Any country whicb is bound by the provisions of this Protocol and which has made a declaration or notification under Article 31(1) of this Convention in respect of territories whicb, on the date of the signature of this Convention, are not responsible for their external relations, and the situation of which can be regarded as analogous to that of the countries referred to in Article 1 of this Protocol, may notify the Director General tbat the provisions of this Protocol shall apply to all or part of those territories and may in such notification declare that any such territory will avail itself of any or all of the reservations permitted by this Protocol.

ACT OF PARIS OF JULY 24, 1971

[1] The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of autbors in their literary and artistic works, [2] Recognizing tbe importance of the work of the Revision Conference held at Stockholm in 1967, [3] Have resolved to revise the Act adopted by the Stockholm Conference, while maintaining without change Articles 1 to 20 and 22 to 26 of that Act. [4] Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:

Articles 1, 2, 2bis, 3, 4, 5, 6, 6bis, 7, 7bis, 8, 9, 10, 10bis, 11, 11bis, 11ter, 12, 13, 14, 14bis, 14ter, 15, 16, 17, 18, 19 and 20 [*same text as the Act of Stockholm (see above)*].

Article 21. (1) Special provisions regarding developing countries are included in the Appendix. (2) Subject to tbe provisions of Article 28(1)(b), the Appendix forms an integral part of this Act.

Article 22 [*same text as the Act of Stockholm, above, up to paragraph (2)(a)(v) inclusive*].

[The Assembly shall:] (vi) determine the program and adopt the [triennial]* [biennial]** budget of the Union, and approve its final accounts; [*Article 22 continues exactly as in the Act of Stockholm, above, up to paragraph 3(a)(g) inclusive*]. (4)(a) The Assembly shall meet once in every [third]* [second]** calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization. [*The rest of Article 22 continues as in the Act of Stockholm, above.*]

Article 23 [*same text as the Act of Stockholm, above, up to paragraph (6)(a)(i) inclusive*].

[The Executive Committee shall:] (ii) submit proposals to the Assembly respecting the draft program and [triennial]* [biennial]** budget of the Union prepared by the Director General; [(iii) approve, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General;]*** [*the rest of Article 23 continues as in the Act of Stockholm, above*].

Articles 24, 25 and 26 [*same text as the Act of Stockholm (see above)*].

Article 27. (1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of tbe Union. (2) For this purpose, conferences shall be held successively in one of the countries of tbe Union among the delegates of the said countries. (3) Subject to the provisions of Article 26 which apply to the amendment of Articles 22 to 26, any revision of this Act, including the Appendix, sball require the unanimity of the votes cast.

Article 28. (1)(a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification or accession shall be deposited with the Director General. (b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply to Articles 1 to 21 and the Appendix, provided that, if such country bas previously made a declaration under Article VI(1) of the Appendix, then it may declare in the said instrument only that its ratification or accession shall not apply to Articles 1 to 20. (c) Any country of the Union which, in accordance witb subparagraph (b), bas excluded provisions therein referred to from the effects of its ratification or accession may at any later time declare that it extends the effects of its ratification or accession to those provisions. Sucb declaration sball be deposited witb the Director General. (2)(a) Articles 1 to 21 and the Appendix shall enter into force three months after both of the following two conditions are fulfilled: (i) at least five countries of tbe Union have ratified or aceded to this Act without making a declaration under paragraph (1)(b), (ü) France, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, bave become bound by the Universal Copyright Convention as revised at Paris on July 24, 1971. (b) The entry into force referred to in subparagraph (a) shall apply to those countries of the Union whicb, at least three months before the said entry into force, have deposited instruments of ratification or accession not containing a declaration under paragraph (1)(b). (c) With respect to any country of the Union not covered by subparagrapb (b) and which ratifies or accedes to this Act without making a declaration under paragrapb (1)(b), Articles 1 to 21 and the Appendix shall enter into force three months after the date on whicb the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 1 to 21 and the Appendix sball enter into force with respect to that country on the date thus indicated. (d) The provisions of subparagraphs (a) to (c) do not affect the application of Article VI of the Appendix. (3) With respect to any country of the Union whicb ratifies or accedes to this Act with or without a declaration made under paragrapb (1)(b), Articles 22 to 38 shall enter into force three months after the date on which tbe Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 22 to 38 shall enter into force with respect to that country on the date thus indicated.

Article 29. (1) Any country outside the Union may accede to this Act and thereby become party to this Convention and a member of the Union. Instruments of accession shall be deposited with the Director General. (2)(a) Subject to subparagraph (b), this Convention shall enter into force witb respect to any country outside the Union three months after the date on whicb the Director General has notified the deposit of its instrument of accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, this Convention sball enter into force witb respect to that country on the date thus indicated. (b) If the entry into force according to subparagraph (a) precedes tbe entry into force of Articles 1 to 21 and the Appendix according to Article 28(2)(a), the said country shall, in tbe meantime, be bound, instead of by Articles 1 to 21 and the Appendix, by Articles 1 to 20 of the Brussels Act of this Convention.

Article 29bis. Ratification of or accession to this Act by any country not bound by Articles 22 to 38 of the Stockholm Act of this Convention shall, for the sole purposes of Article 14(2) of the Convention establishing the Organization, amount to ratification of or accession to the said Stockbolm Act with the limitation set forth in Article 28(1)(b)(i) thereof.

Article 30. (1) Subject to the exceptions permitted by paragraph (2) of this Article, by Article 28(1)(b), by Article 33(2), and by the Appendix, ratification or accession shall automatically entail acceptance of all provisions and admission to all the advantages of this Convention. (2)(a) Any country of the Union ratifying or acceding to this Act may, subject to Article V(2) of the Appendix, retain the benefit of the reservations it bas previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession. (b) Any country outside the Union may declare, in acceding to this Convention and subject to Article V(2) of the Appendix, that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that tbe said provisions are applicable only to translations into a language in general use in the said country. Subject to Article 1(6)(b) of the Appendix, any country has the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation, a protection whicb is equivalent to the protection granted by the latter country. (c) Any country may withdraw sucb reservations at any time by notification addressed to the Director General.

Article 31. (1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification at any time thereafter, tbat this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible. (2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of sucb territories. (3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in whicb it was included, and any notification given under that paragraph sball take effect three months after its notification by tbe Director General. (b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director-General. (4) This Article shall in no way be understood as implying the recognition or tacit acceptance by a country of the Union of tbe factual situation concerning a territory to which this Convention is made applicable by anotber country of the Union by virtue of a declaration under paragrapb (1).

Article 32. (1) This Act shall, as regards relations between the countries of the Union, and to the extent that it applies, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. Tbe Acts previously in force shall continue to be applicable, in their entirety or to the extent that this Act does not replace them by virtue of the preceding sentence, in relations with countries of the Union which do not ratify or accede to this Act. (2) Countries outside the Union which become party to this Act shall, subject to paragraph (3), apply it with respect to any country of tbe Union not bound by this Act or which, although bound by this Act, has made a declaration pursuant to Article 28(1)(b). Such countries recognize that the said country of the Union, in its relations with them: (i) may apply the provisions of the most recent Act by which it is bound, and (ü) subject to Article 1(6) of the Appendix, has the right to adapt the protection to the level provided for by this Act. (3) Any country whicb bas availed itself of any of the faculties provided for in the Appendix may apply the provisions of the Appendix relating to the faculty or faculties of which it bas availed itself in its relations with any other country of the Union which is not bound by this Act, provided that the latter country has accepted the application of the said provisions.

Article 33 [*same text as the Act of Stockholm (see above)*].

Article 34. (1) Subject to Article 29*bis*, no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix bave entered into force. (2) Once Articles 1 to 21 and the Appendix have entered into force, no country may make a declaration under Article 5 of the Protocol Regarding Developing Countries attached to the Stockholm Act.

Article 35 [*same text as the Act of Stockholm (see above)*].

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* Word appearing in the Act of Paris.

** Word adopted by the Assembly of the Berne Union on October 2, 1979; entry into force November 19, 1984.

*** Words appearing in the Act of Paris but deleted by the Assembly of the Berne Union on October 2, 1979; entry into force of the deletion November 19, 1984.

Article 36. (1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention. (2) It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 37. (1)(a) This Act shall be signed in a single copy in the French and English languages and, subject to paragraph (2), shall be deposited with the Director General. (b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian, Portuguese and Spanish languages, and such other languages as the Assembly may designate. (c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail. (2) This Act shall remain open for signature until January 31, 1972. Until that date, the copy referred to in paragraph (1)(a) shall be deposited with the Government of the French Republic. (3) The Director General shall certify and transmit two copies of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country. (4) The Director General shall register this Act with the Secretariat of the United Nations. (5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Articles 28(1)(c), 30(2)(a) and (b), and 33(2), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 30(2)(c), 31(1) and (2), 33(3), and 38(1), as well as the Appendix.

Article 38. (1) Countries of the Union which have not ratified or acceded to this Act and which are not bound by Articles 22 to 26 of the Stockholm Act of this Convention may, until April 26, 1975, exercise, if they so desire, the rights provided under the said Articles as if they were bound by them. Any country desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such countries shall be deemed to be members of the Asssembly until the said date. (2) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau. (3) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

APPENDIX
TO THE PARIS ACT OF 1971

Article I. (1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(1)(c), at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V(1)(a). (2)(a) Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a notification deposited with the Director General not more than fifteen months and not less than three months before the expiration of the ten-year period then running. (b) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the ten-year period then running. Any such declaration may be renewed as provided for in the second sentence of subparagraph (a). (3) Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in paragraph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later. (4) Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed until their stock is exhausted. (5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made. (6)(a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than it is obliged to grant under Articles 1 to 20. (b) The right to apply reciprocal treatment provided for in Article 30(2)(b), second sentence, shall not, until the date on which the period applicable under Article I(3) expires, be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article V(1)(a).

Article II. (1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled, so far as works published in printed or analogous forms of reproduction are concerned, to substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV. (2)(a) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction. (b) A license under the conditions provided for in this Article may also be granted if all the editions of the translation published in the language concerned are out of print. (3)(a) In the case of translations into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2)(a). (b) Any country referred to in paragraph (1) may, with the unanimous agreement of the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2)(a) a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it. (4)(a) No license obtainable after three years shall be granted under this Article until a further period of six months has elapsed, and no license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed (i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or (ii) where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license. (b) If, during the said period of six or nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted. (5) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research. (6) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted. (7) For works which are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of Article III are also fulfilled. (8) No license shall be granted under this Article when the author has withdrawn from circulation all copies of his work. (9)(a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in a country referred to in paragraph (1), upon an application made to the competent authority of that country by the said organization, provided that all of the following conditions are met: (i) the translation is made from a copy made and acquired in accordance with the laws of the said country; (ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession; (iii) the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts; (iv) all uses made of the translation are without any commercial purpose. (b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph (a) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the country whose competent authority granted the license in question. (c) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities. (d) Subject to subparagraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

Article III. (1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled to substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV. (2)(a) If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of (i) the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or (ii) any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date,—copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a license to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities. (b) A license to reproduce and publish an edition which has been distributed as described in subparagraph (a) may also be granted under the conditions provided for in this Article if, after the expiration of the applicable period, no authorized copies of that edition have been on sale for a period of six months in the country concerned to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works. (3) The period referred to in paragraph (2)(a)(i) shall be five years, except that (i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years; (ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years. (4)(a) No license obtainable after three years shall be granted under this Article until a period of six months has elapsed (i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or (ii) where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license. (b) Where licenses are obtainable after other periods and Article IV(2) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application. (c) If, during the period of six or three months referred to in subparagraphs (a) and (b), a distribution as described in paragraph (2)(a) has taken place, no license shall be granted under this Article. (d) No license shall be granted if the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for. (5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases: (i) where the translation was not published by the owner of the right of translation or with his authorization, or (ii) where the translation is not in a language in general use in the country in which the license is applied for. (6) If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and with substantially the same content as the edition which was published under the said license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted. (7)(a) Subject to subparagraph (b), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction. (b) This Article shall also apply to the reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Article IV. (1) A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any national or international information center referred to in paragraph (2). (2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any national or international information center which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business. (3) The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies. (4)(a) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country in which it has been applied for. (b) For the purposes of subparagraph (a), the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I(5). (c) Where a governmental or other public entity of a country which has granted a license to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of subparagraph (a), be considered to constitute export if all of the following conditions are met: (i) the recipients are individuals who are nationals of the country whose competent authority has granted the license, or organizations grouping such individuals; (ii) the copies are to be used only for the purpose of teaching, scholarship or research; (iii) the sending of the copies and their subsequent distribution to recipients is without any commercial purpose; and (iv) the country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been notified of the agreement by the Government of the country in which the license has been granted. (5) All copies published under a license granted by virtue of Article II or Article III shall bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies. (6)(a) Due provision shall be made at the national level to ensure (i) that the license provides, in favour of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned, and (ii) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent. (b) Due provision shall be made by national legislation to ensure a correct translation of the work, or an accurate reproduction of the particular edition, as the case may be.

Article V. (1)(a) Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II may, instead, at the time of ratifying or acceding to this Act: (i) if it is a country to which Article 30(2)(a) applies, make a declaration under that provision as far as the right of translation is concerned; (ii) if it is a country to which Article 30(2)(a) does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30(2)(b), first sentence. (b) In the case of a country which ceases to be regarded as a developing country as referred to in Article I(1), a declaration made according to this paragraph shall be effective until the date on which the period applicable under Article I(3) expires. (c) Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration. (2) Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to paragraph (1). (3) Any country which has ceased to be regarded as a developing country as referred to in Article I(1) may, not later than two years prior to the expiration of the period applicable under Article I(3), make a declaration to the effect provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union. Such declaration shall take effect at the date on which the period applicable under Article I(3) expires.

Article VI. (1) Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix: (i) if it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article I(1), that it will apply the provisions of Article II or of Article III or of both to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix; such declaration may, instead of referring to Article II, refer to Article V; (ii) that it admits the application of this Appendix to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I. (2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.

List of

Portraits and Other Pictures

List of Portraits and Other Pictures

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