Copyright

Review of the
WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

and the United International Bureaux for the Protection of Intellectual Property (BIRPI)

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Contents

WORLD INTELLECTUAL PROPERTY ORGANIZATION

African Seminar on Intellectual Property

(Nairobi, October 16 to 20, 1972)

Note *

This Seminar was organized by the World Intellectual Property Organization (WIPO) in agreement with the Government of Kenya. All States of Black Africa were invited to appoint participants. The following 17 accepted and sent representatives: Burundi, Chad, Congo, Ghana, Ivory Coast, Kenya, Lesotho, Liberia, Madagascar, Malawi, Niger, Nigeria, Senegal, Togo, Uganda, United Republic of Tanzania, Zambia.

Several intergovernmental and non-governmental organizations were also invited.

The list of participants appears at the end of this Note.

The Seminar dealt with both industrial property and copyright matters.

Industrial Property Matters. At the outset of the discussions, the participants from each country were invited to inform the Seminar of the status of their respective legislations in the field of industrial property and of the arrangements existing in each country in respect of the administration of those legislations.

The Seminar then discussed, on the basis of the working documents prepared by the International Bureau of WIPO, the following questions in the field of industrial property:

(i) the impact of industrial property on developing countries,

(ii) general questions relating to patents, trademarks, industrial designs, and other branches of industrial property,

(iii) international industrial property relations, in particular the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty.

The Seminar also discussed the organization and experience of the African and Malagasy Industrial Property Office (OAMPI) (which is a common industrial property office for thirteen African States) on the basis of a report prepared by Mr. D. Ekani, Director General of OAMPI.

The exchange of views on these subjects revealed the desirability of modernizing and harmonizing the industrial property legislations of several African countries, particularly those which have not revised their patent, trademark or industrial design laws since their accession to independence. The discussions highlighted the advantages of existing regional cooperation as illustrated by OAMPI, and the possibilities of further regional cooperation, particularly in the field of registration of patents. They brought out the possibilities that participation in WIPO and in the treaties administered by WIPO — particularly the Paris Convention and the Patent Cooperation Treaty — offers to developing countries, especially in the field of transfer of technology. Finally, they drew attention to the desirability of WIPO becoming a UN specialized agency.

Copyright Matters. In the field of copyright, the discussions of the Seminar centered on the 1971 revisions of the Berne and Universal Copyright Conventions.

The participants expressed the opinion that a single model law on copyright for African countries should be aimed at, single in the sense that it should be acceptable to the African countries which were party, or which were contemplating the possibility of becoming party, to both the Berne Convention and the Universal Copyright Convention, and acceptable irrespective of whether the language of these countries was English, French, or any other language. Furthermore, the participants expressed the wish that WIPO and Unesco should jointly sponsor a meeting in 1973 for African countries, preferably in Africa, on the question of a model law on copyright for such countries; that the International Bureau of WIPO and the Secretariat of Unesco should jointly prepare for such a meeting the draft of a single model law as described above and that, in preparing such a draft, the said Bureau and the said Secretariat should also take into account a draft which OAMPI has prepared.

List of Participants *

I. Participants appointed by their respective Governments

Burundi: J.-B. Kabunda. Chad: E. N'Doubayidi. Congo: P. Kibongui-Saminou. Ghana: B. W. Prah. Ivory Coast: Y. Delon; K.-L. Liguer-Laubbouet (Mrs.). Kenya: C. Njonjo; D. J. Coward; A. G. Barve; J. Habib; J. Kingarui. Lesotbo: T. R. Makeka. Liberia: H. B. Paasewe. Madagascar: A. Ramanankoto. Malawi: M. A. Mboni. Niger: S. Alou. Nigeria: A. G. Adob. Senegal: S. Kandji; B. Niang. Togo: C. Matbey. Uganda: J. H. Ntabgoda. United Republic of Tanzania: K. Kobelo. Zambia: G. E. Harre.

II. Intergovernmental Organizations

United Nations: B. Stedman. United Nations Educational, Scientific and Cultural Organization (Unesco): B. Ringer (Miss). United Nations Devel-

* This Note bas been prepared by tbe International Bureau of WIPO.

* A list containing tbe titles and functions of tbe participants may be obtained from tbe International Bureau upon request.

opment Programme (UNDP): B. Stedman; C. G. de Merode. African and Malagasy Industrial Property Office (OAMPI): D. Ekani.

III. Non-governmental Organizations

International Confederation of Societies of Authors and Composers: R. N. Simpson. International Publishers Association (IPA): R. G. Houghton. Union of National Radio and Television Organizations of Africa: S. Adagala; F. A. Njenga.

IV. WIPO

G. H. C. Bodenhausen *(Director General)*; A. Bogsch *(First Deputy Director General)*; I. Thiam *(Chief, WIPO Conference Affairs Section)*.

V. Officers of the Seminar

Chairman: C. Njonjo (Kenya); *First Vice-Chairman:* B. W. Prah (Ghana); *Second Vice-Chairman:* S. Kandji (Senegal); *Secretary:* I. Thiam (WIPO).

BERNE UNION

MAURITANIA

Accession to the Stockholm Act of the Berne Convention

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of member countries of the Berne Union that the Government of the Islamic Republic of Mauritania deposited on October 16, 1972, its instrument of accession dated October 10, 1972, to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Stockholm on July 14, 1967, availing itself, for a period of ten years in the first instance, of the reservations provided in Article 1 of the Protocol Regarding Developing Countries.

The Islamic Republic of Mauritania indicated that, for the purposes of Article 25(4)*(b)* of the Convention, it wished to belong to Class VII.

In accordance with the provisions of Article 29 of the Stockholm Act, the Islamic Republic of Mauritania will, three months after the date of this notification, that is, on February 6, 1973, be bound by:

(a) Articles 1 to 20 of the Brussels Act of the Berne Convention pending the entry into force of Articles 1 to 21 of the Stockholm Act of the same Convention;

(b) Articles 22 to 38 of the Stockholm Act of the Berne Convention.

A separate notification will be made on the entry into force of Articles 1 to 21 of the Stockholm Act when the required number of ratifications or accessions is reached.

Berne Notification No. 39, of November 6, 1972.

GENERAL STUDIES

The Paris Revisions (July 1971) of the Universal Copyright Convention and the Berne Convention

By Valerio De SANCTIS *

Summary: 1-2. How, almost immediately after the signature of the Stockholm Act (July 1967) revising the Berne Convention, there arose the prohlem of the Protocol Regarding Developing Countries, which forms an integral part of the Act, and how the question of a revision of the 1952 Universal Copyright Convention arose at the same time. — 3-4. The preparatory work for the Paris Diplomatic Conferences for the simultaneous revision of the two copyright Conventions resulting in the preparation and signature of the two new international instruments (July 5 to 24, 1971). — 5.-10. The suhstantive provisions of the two international Conventions as revised at Paris. — 11-14. The structure of each of the two Conventions, as revised, including their administrative provisions. Links hetween the two Conventions. — 15. The problem of identifying "developing countries". The "language question" in relation to the cultural advancement of developing countries. — 16. Conclusions.

1. In my commentary on the work of the Stockholm Intellectual Property Conference (July 1967) which gave rise to Acts revising the Brussels text of the Berne Convention for the Protection of Literary and Artistic Works and the Lisbon text of the Paris Convention for the Protection of Industrial Property, and also established the World Intellectual Property Organization (WIPO), I dwelt at length on the Protocol Regarding Developing Countries, which forms an integral part of the Stockholm Act of the Berne Convention.[1]

I pointed out in my commentary that, while it could hardly be said that the revision of the 1948 Brussels text which took place at Stockholm revolutionized the Union's general system for the international protection of copyright as far as substantive provisions were concerned, it was above all the introduction of far-reaching reservation faculties relating to a number of points in the Convention — such as those authorized by the special provisions appearing in the Protocol (even though, from a formal standpoint, they were only transitional measures) — that was responsible for the reorientation of the objectives of the Berne Convention, although in fact the original Convention text of the Preamble and Article 27 remained essentially unchanged at Stockholm. I further observed in this connection that, as from the Stockholm revision, on account of the Protocol in particular, the Berne Convention sought more the advantages of the universality of international copyright protection than those of a high level of uniform protection concerning a certain number of fundamental points, which the countries of the Union had managed to achieve with the Rome and Brussels Acts of 1928 and 1948 respectively.

Indeed, even if one were to disregard the amendments made at Stockholm to certain general substantive provisions by way of alternatives in order to promote, or rather not to prevent permanently, the future accession of large industralized countries such as the United States and the Soviet Union, the exceptions introduced by the Protocol relate to the very principle of the Berne Convention, namely that of a high level of protection afforded to the intellectual work; it allowed countries which had long been members of the Union and had a large population (suffice it to mention Brazil and India) to be released — in their capacity as developing countries, and without leaving the Union — from various obligations concerning minimum standards of protection which those countries had originally assumed by reason of their accession to previous Acts of the Berne Convention — particularly the Brussels Act which, it will be noted, came after the Second World War — with the complications which such a complex system of partial release is bound to create in the application of private international law relations.

Even before Stockholm, doubts were expressed in various quarters as to the wisdom of giving the Berne Convention this new orientation, and other, perhaps more effective, solutions were suggested for enabling countries — such as insufficiently industrialized countries, and generally extensive importers of intellectual works — which for a wide variety of legal, cultural and, above all, economic reasons had not seen fit to accede to the Berne Union, or even to remain in it (having acquired new clear insight into their present special internal situations), to opt freely for the 1952 Universal Copyright Convention of Unesco, likewise multilateral and open to all countries of the world, thereby taking on less — much less — stringent obligations than those of the Berne Union.[2]

In order to assess properly the situation which gradually became established in international copyright relations, especially in the course of the last decade, the existence of the rule laid down in paragraph *(a)* of the Appendix Declaration relating to Article XVII of the Universal Convention, known as the "Berne Union safeguard clause", which was fully justified at

* Attorney-at-Law; Memher of the Permanent Consultative Copyright Committee, Presidency of the Council of Ministers of Italy.

[1] Cf. De Sanctis, "La Conferenza diplomatica di Stoccolma della proprietà intellettuale", in *Il Diritto di Autore*, 1967, No. 3, pp. 303 to 414, in particnlar pp. 327 to 344, which deal more especially with the Stockholm Protocol Regarding Developing Countries.

For the Stockholm Acts and the final recommendations relating thereto, including the text of the reports of the Main Committees, see *Copyright*, 1967, from p. 146 onwards.

[2] For what I wrote on this subject prior to the Stockholm Conference, see in particular "La Convention universelle du droit d'auteur et l'évolution future des conventions déjà existantes en matière de droit d'auteur", in *Mélanges François Hepp*, Paris, 1957, p. 81; "The Clauses providing 'Safeguards for the Berne Convention', contained in the Universal Copyright Convention", in *UNESCO Copyright Bulletin*, 1955, p. 50.

the time of its being devised and introduced into the 1952 Universal Convention (by virtue of prior agreements with the international bodies of the Berne Union),[3] had become, in view of the radical changes which had occurred in the political, technological and cultural situation, an obstacle to international convention law which had at all costs to be overcome. It should also be observed that countries regarded as developing countries in accordance with the established practice of the United Nations had, and have still further, increased in number since 1963 whereas, as we shall see below (under 15*(a)*), the eligibility criterion is oddly variable and uncertain.

Immediately after the signature in Stockholm of the revised Berne Convention, the form and content of the Protocol Regarding Developing Countries was exposed to a great deal of criticism in various industrialized countries members of the Union and exporters of intellectual works, particularly in the Anglo-Saxon world. This criticism had a sound basis in the fact that at Stockholm the United Kingdom plenipotentiaries — although in fact the British Delegation had taken an active part in the work as well as in the preparations for the Conference — did not feel able, following last-minute instructions received from their Government, to affix their signature on the revised Convention, for the very reason that the Protocol, containing the provisions that it did, particularly with respect to the right of reproduction, was inseparable from the Convention itself at the time of ratification or accession.[4]

In the meantime, societies of authors in a number of countries, and publishers in particular, continued to build up their opposition to the Protocol, and made representations to their governments in order to induce them to revise their position, even if they had signed the Convention. In view of the form of the Stockholm Act, this criticism eventually extended to the substantive provisions as a whole (Articles 1 to 21). Even in industrialized countries not members of the Union, especially the United States of America, there was a similar movement of opposition, perhaps even more pronounced, directed against the Stockholm Protocol owing (even though the complexity of business relations between industrialists from various countries was meant to be disregarded here) to interests, in the publishing field in particular, which might be encroached upon also in connection with the exercise of the well-known principle of " simultaneous publication " referred to in Articles 3 and 5 of the Berne Convention.

In view of this general trend of ideas in a large number of countries, it was not hard to see that ratifications, accessions and acceptance on the part of member States of the Union would be blocked for all the substantive clauses, although these had achieved results which, apart from the Protocol, were considered at the International Conference to be sufficiently constructive.

It should be made clear in this connection that, even though ratification (or accession or acceptance) by developing countries members of the Berne Union would have brought about the rapid entry into force of the Stockholm Act in its entirety, such a success on paper would have been of little value in concrete terms, since the Protocol has a particular significance for countries regarded as developing countries not in their relations between themselves but rather in their relations with industrialized countries. It goes without saying, however, that there neither was nor is in the case in point any question of " conflict ", but only of justified differences of opinion as to the methods to be used towards collaboration between all countries of the world — whether developed or not — in a spirit of international solidarity, with a view to protecting the products of the mind which are the fruit of man's creative activity and a vital element in the expansion and dissemination of culture throughout the world. This general principle should always be widely observed, pursuant to Article 27 of the United Nations Universal Declaration of Human Rights.

Meanwhile, the instruments of ratification, accession or acceptance relating to the administrative clauses of the Stockholm Act (Articles 22 to 26), which had made it possible, by dint of careful drafting, to bring about a thorough and beneficial redesigning of the Berne Convention with a view to modernization, had rapidly and steadily increased in number, with the result that the WIPO Convention was able to enter into force.[5] It was now all the more necessary and urgent, therefore, to find a solution to the paradoxical situation which had arisen from the fact that some of the substantive clauses of the Convention appeared in the Protocol.

2. Even before the opening of the Stockholm Intellectual Property Diplomatic Conference on June 11, 1967, Resolution No. 5122, the result of a proposal by Tunisia, unanimously adopted by the General Conference of Unesco at its 14th session (Paris, October 25 to November 30, 1966), had placed on an intergovernmental level the problem (which in the personal view of the author was logically and urgently in need of solution) of the removal or at least the suspension of paragraph *(a)*, mentioned earlier, of the Appendix Declaration relating to Article XVII of the Universal Convention; this problem was the starting point of a rapid revision of the Universal Convention, albeit only on a small scale at that stage.

After the adoption of the Resolution by the General Conference of Unesco, the problem became one which could not be ignored within the Berne Convention either (it should be

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[3] Cf. my work on *La Convenzione Universale del Diritto di Autore*, Rome, 1953, in particular pp. 58 *et seq.*

[4] As I have already had occasion to point ont since the preparatory work for the Stockholm Conference (cf. my study on the Stockholm Diplomatic Conference, etc., quoted above, particularly the remarks nnder No. 13), a Protocol independent of the Berne Convention would have seemed incompatihle with a principle which has been one of the mainstays of the Union since its inception, heing maintained unchanged in Article 20 of the Brussels Act and later incorporated in the Stockholm Act, according to which the States of the Union may enter into special agreements among themselves *only* 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.

[5] The notification of the Director General of WIPO on the entry into force of Articles 22 to 26 of the Stockholm Act (administrative provisions) pursnant to Article 28(2)*(b)* of that Act (three months after the deposit of the seventh instrument of ratification or accession) is dated November 28, 1969 (see *Copyright*, 1969, p. 236).

As regards the World Intellectual Property Organization (WIPO) and its establishment hy the Act signed at Stockholm on Jnly 14, 1967, see my stndy on " La Conferenza diplomatica di Stoccolma della proprietà intellettnale ", referred to earlier, pp. 55 *et seq.* The Convention establishing WIPO entered into force on April 26, 1970, pursuant to Article 15(1), since the prescribed nnmher of ratifications had been reached.

borne in mind that some twenty countries party to this Convention are regarded as developing countries) and, in a resolution adopted by the Permanent Committee of the Berne Union at its extraordinary session in March 1967, it was decided to reexamine the question as far as the Berne Convention was directly or indirectly concerned. Only " after the Stockholm Conference " however, as the Resolution of the Permanent Committee put it. Some States members of the Committee (or at least their delegations) may have nurtured the illusion that the Protocol for the benefit of developing countries — which was to be drafted for subsequent approval at the Stockholm Revision Conference — would be capable of removing the more pressing reasons for the proposed deletion, or perhaps suspension or amendment, of paragraph *(a)* of the Appendix Declaration. But this was not to be so.

Indeed the opposition to the Protocol incorporated in the Berne Convention at Stockholm, which was shown in the interested sections of public opinion of a great many member countries of the Union, plus the fact, which was from now on obvious, that the United States — party to the Universal but not to the Berne Convention — would have had an interest in intervening directly or indirectly in the course of the crisis which had thus occurred, not only did not lessen the general problem of the relations between the Berne Convention and the Universal Convention, but actually aggravated it: it did not remain confined to what is known as the " Berne Union safeguard clause " as formulated in the original 1952 Universal Convention, while on the other hand the simplest solution, that of revising " only " the Protocol of the Stockholm Act, was eventually discarded completely. Thus it was that, in view of the failure of the Stockholm Conference, due to the Protocol and only the Protocol, we witnessed a series of contacts and even collaboration between the international bodies of both Conventions, in spite of persistent opposition on the part of certain States which remained firmly attached to the principle of the autonomy of the two Conventions and their total independence of one another; this was paralleled by a growth of simultaneous activity on the part of national bodies in various interested countries, directed towards an overall solution of the international copyright crisis which had broken out. These contacts, and the work to which they gave rise, were carried on intensively and continuously during a period which began in 1969 and lasted until the eve of the two Diplomatic Revision Conferences in Paris in July 1971, to which the personal remarks in this Article relate.[6]

3. Of the innumerable preparatory meetings for the two Paris Diplomatic Conferences which took place in unrelentingly quick succession, there is one which is significant for its timing and importance: this was the Joint Study Group (Berne and Universal Conventions) which was set up in February 1969 as a result of discussions within the two Committees, namely the Permanent Committee of the Berne Union and the Intergovernmental Copyright Committee (Universal Copyright Convention).

The Delegation of the United States of America to the Intergovernmental Copyright Committee, which had proposed the creation of the Joint Study Group and had urged the other delegations to approve the proposal as a means of settling the crisis more quickly, invited the Group to hold its first session in Washington. The session took place from September 29 to October 3, 1969.

The Resolution of the Joint Study Group expressed at the Washington meeting recorded the need, with regard to the problems raised by the existence of two copyright Conventions, to establish links between the two international instruments in order particularly to arrive at a solution of the problems concerning the relative interests of developing and industrialized countries in the field of copyright. In this connection, a proposal presented by the delegations of a number of countries taking part in the Joint Study Group was eventually approved with near-unanimity (objections and serious reservations having been made by the French Delegation). The Resolution was — and still is today — designated as the " Washington Recommendation ".[7]

The Washington Recommendation provided for the " simultaneous " revision of the Universal and Berne Conventions in diplomatic conferences to be held at the same time and place so as to achieve the following. In the Universal Copyright Convention: (1) suspension of Article XVII and the Appendix Declaration for the benefit of developing countries; (2) inclusion of specific protection for the basic rights of the author: reproduction, broadcasting and public performance; (3) inclusion of rules permitting relaxation of those rights, as well as the right of translation (Article V), for the benefit of developing countries, without material reciprocity. In the Berne Convention: (1) revision of Article 21 of the Stockholm Act to separate the Protocol Regarding Developing Countries from that Act; (2) provision under which the revision of Article 21 can become effective only upon ratification of the revised Universal Copyright Convention by France, Spain, the United Kingdom and the United States of America; (3) provision to allow developing countries members of the Berne Union to apply temporarily, in their relations with other countries members of that Union, the revised text of the Universal Copyright Convention; (4) suspension of the obligation of paying contributions to the Berne Union by developing countries having chosen Class VI or VII for the purposes of contributions.

While mentioning some of the more important steps which led to Stockholm in 1967 and Paris in 1971 and which may

[6] See the reports on the Conferences for Revision of the Universal Copyright Convention (INLA/UCC/44) and of the Berne Convention *Copyright*, 1971, pp. 150 *et seq.*).

[7] For the text of the " Washington Recommendation " and of the Resolution also approved at the Washington meeting, on the International Copyright Information Centre, see *Copyright*, 1969, p. 227.

As regards literature, cf. E. Ulmer, " The Washington International Copyright Proposals " in *EBU Review*, No. 120 B, March 1970. Cf. also Ulmer, " Die Revision der Urheberrechtskonventionen, im Zeichen der Washingtoner Empfehlung ", in *Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil*, June 1970, pp. 167 to 171.

As regards the Washington Recommendation, see above all: International Copyright Joint Study Group, First Session, Washington, September 29 to October 3, 1969, Proposals of Certain Delegations for the Revision of the International System of Copyright (document UNESCO/BIRPI/SGC-I/14). Of the documents which came out afterwards, cf. in particular Resolution No. 60(X), entitled " Revision of the Universal Copyright Convention ", adopted by the Intergovernmental Copyright Committee (Unesco) at its 10th Session in Paris, from December 15 to 19, 1969 (*Copyright*, 1970, p. 35).

help to understand the structure and provisions of the two revised Conventions, I would point out that, prior to the meeting of the Joint Study Group in Washington, at the meeting in Paris of a subcommittee of the Intergovernmental Copyright Committee (Universal Copyright Convention), in June 1969, the Italian Government Delegation (of which the author had the honor, on this occasion also, of being a member) had submitted a draft Protocol for the amendment of the Universal Convention which would have bound also the countries of the Union party to that Convention, and to which the few countries bound " only " by the Berne Convention would have had the possibility of acceding.[8] It was the view of the Italian Delegation that a Joint Protocol, embodying of course the necessary amendments concerning the maximum term of copyright protection in particular, would have settled more quickly the crisis brought about by the existence of the Appendix Declaration relating to Article XVII of the Universal Convention and by the Stockholm Protocol. The idea was adopted in part but was restructured and presented on a broader scale in a very interesting BIRPI memorandum submitted by the First Deputy Director of BIRPI in the course of the Washington meeting.[9]

As for the idea of the Protocol deposited earlier by the Italian Delegation and the text of which, as we said, had been distributed to participants in the Washington meeting of the Joint Study Group, it found application in an important structural element (under (3)) of the Washington Recommendation described above.

A report on the Washington proposals was submitted by the Secretariats of the Permanent Committee of the Berne Union and of the Intergovernmental Copyright Committee at meetings held two months later in Paris, in December 1969. The two Committees then proposed, in separate but corresponding Resolutions, that the revision of the two Conventions should be prepared in accordance with the Washington Recommendation and that the two revision conferences should be held at the same place and date, not later than May or June 1971.

4. At the above-mentioned meetings in December 1969, two Ad Hoc Preparatory Committees (for the Universal Convention and the Berne Convention) were set up and given the task of preparing preliminary drafts to serve as the basis of the work of the Diplomatic Revision Conferences. It had been decided that the Ad Hoc Preparatory Committee for the Universal Convention would meet in Paris from May 11 to 16, 1970, and the one for the Berne Convention in Geneva immediately afterwards, from May 19 to 21, 1970.

The two Ad Hoc Preparatory Committees met at the fixed places and times and prepared separate documents which were then submitted (in September-October 1970), together with observations by the Governments of the various countries, to extraordinary sessions of the Permanent Committee of the Berne Union and of the Intergovernmental Copyright Committee, on behalf of which the Ad Hoc Committees had been acting.[10]

I should like to point out at once that it was at this stage of the work, that is, in the course of the meetings of the Ad Hoc Preparatory Committees and therefore during the preparation of the preliminary drafts for submission to the Intergovernmental Committees, that there was a decisive change of direction in the path which was later to lead to the Paris Acts in July 1971, a change which was to affect both their form and their content. It was then that, despite the idea put forward by the two Committees at the December 1969 meetings that the revision of the two Conventions should be prepared in accordance with the Washington Recommendation, the latter was abandoned as far as its most original feature was concerned, namely its intention that an " organic and formal " link be created between the two Conventions for the solution by them of the problems affecting developing countries.

The observations of the French Government, which appeared in a BIRPI document dated April 24, 1970 (Draft Texts and Comments of States — DA/31/3), prepared for the attention of the Ad Hoc Preparatory Committee for the Revision of the Berne Convention, and the parallel observations presented by the same Government for the attention of the Ad Hoc Preparatory Committee for the Revision of the Universal Convention, were determining factors in this change of direction.

In its observations, the French Government showed itself to be resolutely opposed to the idea put forward in the Washington Recommendation according to which, as we have already pointed out, developing countries members of the Berne Union would have been allowed to apply temporarily in their relations with other countries members of that Union the revised text of the Universal Convention. The reasons it gave were that such a project would have been detrimental to the principle " of the coexistence and the complementary nature of the two Conventions ", to which the French Government — these are its own words — had " always been attached ".

As for the part of the Washington Recommendation concerning the revision of Article 21 of the Stockholm Act to separate the Protocol Regarding Developing Countries from that

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[8] For the draft Joint Protocol submitted by the Italian Government Delegation at the meeting mentioned above, see *Copyright*, 1969, pp. 199 and 200.

[9] See, in this connection, *Copyright*, 1969, p. 216, on the BIRPI memorandum submitted by the First Deputy Director, Arpad Bogsch, pursuant to paragraph 12*(b)* of the resolutions taken on February 7, 1969, by the Permanent Committee of the Berne Union and the Intergovernmental Copyright Committee, as a preparatory document for the meeting of the Joint Study Group. The BIRPI draft, which was submitted as a Joint Protocol between the two Conventions, seemed definitely premature at the time, which is why the Italian Delegation could not support it, but in my opinion there can be no doubt that it reflects a trend of thought which shonld be taken into consideration in future.

[10] The Ad Hoc Preparatory Committee entrusted with drafting a preliminary version of the proposals for the revision of the Universal Convention met in Paris from May 11 to 16, 1970.

The corresponding Ad Hoc Preparatory Committee for the Berne Convention which met afterwards in Geneva, from May 19 to 21, 1970, found its task made easier by the findings of the Universal Convention Committee. The reader should consult document DA/31/9 of May 20, 1970 (see *Copyright*, 1970, pp. 149 *et seq.)*, which contains the modifications to the text of the Stockholm Act submitted by the Drafting Committee, and the Report of the Director of BIRPI to the Permanent Committee of the Berne Union, which met in extraordinary session in Geneva from September 14 to 18, 1970, containing the proposals for the revision of the Berne Convention as prepared by the Ad Hoc Preparatory Committee.

Act, the French Government pointed out that such a suggestion seemed superfluous when, with the suspension of the safeguard clause, developing countries would have the possibility of leaving the Berne Union and availing themselves of the provisions which, owing to the temporary needs, they expected to be adopted for their benefit within the Universal Convention at the forthcoming Revision Conference. On the other hand, the French Government noted, without raising any objections, the part in the Recommendation according to which the revision of Article 21 of the Berne Convention could have become effective only on ratification of the revised Universal Convention by France, Spain, the United Kingdom and the United States of America. However, in terms of the document, it did not reject out of hand the idea of keeping in the Berne Union developing countries which were members at the time, by proposing to this end that provisions be taken in their favor which would be incorporated in the actual text of the Berne Convention, or else simply in a separate protocol.

It should be made clear here that, as shown in document DA/31/3 quoted above, which, we recall, contains the observations of the various States, the Government of the Federal Republic of Germany, unlike that of France, stood by the Washington Recommendation in the sense that it considered the Recommendation to be a suitable basis for the revision of the two Conventions; the same was true of the Governments of Austria, Finland, the Netherlands, Norway and Spain. Sweden and Switzerland made some reservations as to the way of applying certain clauses of the Universal Convention to developing countries members of the Berne Union, but nevertheless also accepted all the principles set out in the Washington Recommendation.[11]

As for the Italian Government's observations on this subject, they endorsed the main principles of the Washington Recommendation but took up again, in a new form, the idea of a Joint Protocol in which some of the points of the Recommendation, suitably arranged, could have been incorporated, without their necessarily having to be inserted in special clauses of the Universal Convention and the Berne Convention respectively. They further maintained the insistence on the introduction of express provisions in the Universal Convention on the protection of certain special categories of authors' rights.

By means of the Joint Protocol, the Italian Government sought at the same time to achieve the following aims: *(a)* to establish a formal link between the two multilateral copyright conventions; *(b)* to keep developing countries members of the Berne Union in that Union; *(c)* to prevent future " competition " between the two Conventions, which was detrimental to copyright.[12]

It was at that point that the bargaining was to begin, within the two Ad Hoc Committees, between the delegations of various developed and developing countries, with a view to arriving in advance at overall, genuine and authentic agreements, so designed as to make it difficult to amend them afterwards in the course of the discussions at the Diplomatic Conference; qualified majorities had in fact been reached on the various points at issue, taken both individually and in their complex balance. During this bargaining, the delegations of the developing countries very often held their meetings apart from the others in order to decide on a common preventive attitude for the purposes of future work, often discussing certain points in the wings of the preparatory international meetings with members of the delegations of industrialized countries, especially English and French-speaking countries.

It should be observed here that, even in the report of the General Rapporteur of the Conference for Revision of the Universal Convention, reference is made to a " package deal ",[13] meaning an agreement which apparently occurred in September 1970 (in other words once the conclusions of the two Ad Hoc Preparatory Committees were known) within the Committees of the two Conventions on the very subject of the " relaxations " jointly decided upon in favor of developing countries; the " package deal " had a profound effect on the

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11 In its observations to the Ad Hoc Preparatory Committees for Revision of the Universal Convention and the Berne Convention (DA/31/3 Add. 1), the Portuguese Government stressed the manner in which the preparatory work on the revisions had overlooked the interests of countries, including also Canada and other countries, which, from a copyright standpoint, occupy a place described by the Portuguese Government as " intermediate ", in the sense that they are neither industrialized countries which export intellectual works nor " developing countries ". These remarks on the part of the Portuguese Government were among other things aimed at making the participants in the preparatory work think it necessary that the Berne Union safeguard clause appearing in the Universal Convention be removed outright, in such a way that not only developing countries but also any other member State of the Berne Union might have complete freedom of action.

12 One thing which was held against the idea of a Joint Protocol which, as mentioned in the text, was also incorporated in the proposals formulated by the Italian Administration for the work of the Ad Hoc Preparatory Committees, was the question of the diversity of the systems for acceptance of revisions in the two Conventions, since the Berne Convention required unanimity and the Universal Convention only a qualified majority; yet it is self-evident that any final acceptance of the Joint Protocol or another similar document would require separate approval by both Assemblies in accordance with the principles established under the respective Conventions.

In a very interesting study on the two Paris Acts — " Paris 1971 ou les aventures d'un *package deal* " (" Paris 1971 or the adventures of a package deal "), in *Revue internationale du droit d'auteur*, October 1971, pp. 2 *et seq.* — Roger Fernay notes how, in view of the complementary and not competitive nature of the two Conventions, it had been considered suitable by Italy to establish a link between them by means of a sort of Joint Protocol and perhaps also by other instruments of association, but how such an idea, logical though it was, was not adopted in the course of the preparatory meetings. In describing carefully and accurately the " preliminary haggling ", Roger Fernay reveals another feature of the Paris Conferences: the authors' silence resulted in a situation in which creators are made to carry the burden of assistance which should be borne by governments, and, after a discussion of the new provisions which were also not in the " package deal " concerning audiovisual works, he concludes: we can already see the problem of " non-aligned countries " developing, as well as the careful, progressive encircling action being carried on daily by broadcasting organizations, in which satellites — being both an expedient and an excuse — could from one day to the next become the strike force to transform it into a final assault.

13 Reference is made to the " package deal " in the report presented by the General Rapporteur, A. L. Kaminstein, on the Conference for Revision of the Universal Copyright Convention (document INLA/UCC/44, dated December 1, 1971, p. 13). In the report on the Conference for the Revision of the Berne Convention, presented by Ousmane Goundiam, Rapporteur General (see *Copyright*, 1971, p. 150 *et seq.*), we read (paragraph 24): " It is to be 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 before 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."

drafts which were submitted to the Diplomatic Conferences and used as a basis for the debate in question.

In fact, throughout the preparatory work for the two Conferences, the " package deal " was seen in various stages of development, even though it had changed on each occasion. Such a method, particularly when applied to open international conventions containing essentially rules of private international law, is highly questionable in my personal opinion. I would add that it was in connection with this " package deal ", which in fact is a transaction frequently concluded between the delegations of a number of industrialized countries and those of developing countries, that the " language question " arose and developed, a question which is economic and political in character and is therefore not strictly speaking a general copyright question.

With regard to the overall agreement on which the so-called " package deal " was based, what should above all not be misunderstood is the fact that the international treaty concept includes here the nature and layout of the contract in terms of civil law as applied to relationships outside the purview of civil law. Reference has been made in the context of international law to contract treaties and normative treaties, but, even if today one wanted to make a distinction and find in international copyright conventions the characteristics of the normative treaty rather than those of the contract treaty specific to commercial-law contracts, there is no escaping the fact that each is bound to comprise a system of rules between States which make a reciprocal undertaking to observe a particular kind of behavior. However, what to me could be considered a questionable practice is the fact that, in the course of the *preparatory* work on an open international convention, global, complex, unitary and therefore interdependent pacts should be made between certain States, with the result that it is almost impossible for other States taking part in the conference to intervene effectively and thus bring about concrete results. It is well known that the sanction, so to speak, of failing to sign or to ratify the convention often cannot be applied, essentially for political reasons.

5. These references to the preparatory work for the two Diplomatic Conferences in Paris ease my next task, which is that of indicating all the amendments which were made to the 1952 Universal Convention and to the 1967 Stockholm Act. In the next five paragraphs, I shall confine myself to illustrating the changes made in the substantive clauses of each of the two Conventions, reserving the following paragraphs for a description of the structure of the Conventions as a result of the Paris revisions, with particular reference to the administrative and final clauses and the present relationship between the two Conventions. I shall then end my exposé with a few short remarks by way of conclusion.

6. The substantive provisions of the Universal Convention as resulting from the Paris revision may be divided into two categories concerning first the provisions of a general nature and second the special provisions introduced in the interests of developing countries.

As for the provisions of a general nature, I would point out first and foremost that the original Universal Convention of 1952 contained only a general undertaking (Article I) on the part of all Contracting States to " provide for the adequate and effective protection of the rights of authors ". At Paris, a new Article IV^{bis} (which follows unchanged provisions on the duration of protection) established that the economic rights in the work (whether the latter is used in its original or a derived form) include the basic rights of the author — exclusive rights of reproduction by any means, public performance and broadcasting.[14] However, under paragraph 2 of the same Article IV^{bis}, Contracting States are allowed to make exceptions to the rights mentioned in paragraph 1, provided that they do not conflict with the spirit and provisions of the Convention, and with the further proviso that any State whose legislation provides for such a faculty must nevertheless accord " a reasonable degree of effective protection " to the rights in question; the phraseology is admittedly vague and admits of flexible interpretation on the part of the various national legislations, but the new Article IV^{bis} is at any rate a considerable step forward towards a more effective and, above all, more uniform protection of copyright at the international level. One thing which must be remembered in this connection is that any exceptions which national legislations may make (this is made clear in the report and may moreover be deduced by applying general principles of interpretation) should never be allowed, under the Convention, to reach the " ceiling " of restriction of rights which is the privilege of developing countries by virtue of the special provisions incorporated in the revised Convention. This problem of interpretation can take on its real meaning with respect also to the relations between developed countries party to the Convention in so far as some of them have introduced in their national legislation forms of legal licensing or simply the free use of works, especially for the use of protected works in the field of education.[15] We would recall however that, under the present paragraph *(c)* (formerly *(b)*) of the Appendix Declaration relating to Article XVII, the Universal Convention is not applicable to the relationships among countries bound also by the Berne Convention. The question then arises whether it is possible to apply lesser protection to purely national situations.

A proposal by Argentina that a provision be introduced in the Universal Convention corresponding to Article 6bis of the Berne Convention, on the protection of moral rights independently of economic rights, was not adopted, since the proposal itself raised problems as to the legal nature of copyright which might present themselves differently according to the

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[14] With regard to the " derived work ", the Convention specifies that it must be in a " form recognizably derived from the original ", intending thus to facilitate interpretation of the text. Consequently, material taken from a protected work could not result simply in a " derived " work: it would on the contrary be an " original " work, and even more so in the case of the international undertaking based on the revised Universal Convention. It is well known that this question is on the whole one of the most difficult in copyright, whereas in the field of patent protection the introduction, among other things, of compulsory licenses for so-called dependent inventions shows the different course which has been taken. For the Italian domestic system, cf. my book *Contratto di edizione*, published by Giuffrè, Milan, 1965, p. 31.

[15] For instance, the Italian Copyright Law of 1941, currently in force, provides (Article 70 of the Law and Article 22 of the Regulations for its application) for a strictly regulated system of legal licenses for a consideration (equitable remuneration) for the reproduction in anthologies, for use in schools, of literary, musical and scientific works.

different legislative systems, especially on account of the fact that the extension of protection of the work to that of the personality of the author may be deduced, albeit indirectly, from subparagraphs *(e)* and *(f)* of Article V and subparagraphs *(f)* and *(g)* of paragraph 1 of Article V[quater] of the revised Convention with regard to the right to the name and to the integrity of the work, and even the grant of the right to withdraw the work from circulation.

In the original Geneva text of the Convention, only Article V (right of translation) contains a special substantive provision. While paragraph 1 of this Article states that copyright includes the exclusive right " to make, publish, and authorize the making and publication " of translations of protected works, Contracting States are then allowed (paragraph 2) to make a fundamental restriction to this right by their domestic legislation, although this is subject to a multitude of conditions, by introducing a system of compulsory licenses within the framework of the Convention, limited to the translation of " writings ".[16]

Article V remained unchanged at the Paris revision. Only the expression " published in the national language " was replaced by " puhlished in a language in general use in the Contracting State ". For the time being, I shall confine myself to pointing out that the expression " national language " is associated with a legal principle, in other words, a language or languages considered national under the legislative (or sometimes the constitutional) system of the country in which the provision is to be applied, the principle itself being based on an essential structural element in a given State; the " language in general use ", on the other hand, would seem rather to take into consideration a *de facto* situation relating to the use of a given language. In any event, it is made clear in the Report that the change was considered desirable in order to align the terminology of the two Conventions " when identifying a language with a country for various purposes ", and that there was no intention to change the interpretation of the phrase as it existed in Article V of the 1952 text.

Such an intention may be discerned in Article V. It should be pointed out, however, that the amendment to Article V is due only to the desire to use the new expression in the subsequent Articles on developing countries. Consequently, a similar amendment was made in the Appendix to the Paris Act of the Berne Convention to the different phrase appearing in the Protocol annexed to the Stockholm Act: " national or official or regional language or languages of that country ", which in my opinion was legally more precise.[17]

The " relaxations " of the substantive provisions which may be claimed by developing countries party to the revised Universal Convention (and which on the whole correspond to those appearing in the Appendix to the Paris Act of the Berne Convention), take on a concrete form in the introduction in the Convention of special provisions concerning, on the one hand, the compulsory license for the right of translation, these being additional to the general rules already appearing in Article V, and, on the other hand, still within the legal system of the compulsory license, the right of reproduction of the original work. There is no precedent for the latter provisions in the 1952 Convention. In the Paris Act of the Berne Convention, however, the " relaxations " for the benefit of developing countries relating hoth to the right of translation and to the right of reproduction have a precedent in the Protocol to the Stockholm Act, of which the Paris Appendix could be described as a modified version.

In both Conventions, the special system of compulsory licenses for the benefit of developing countries, which is applied on the hasis of complex formalities and on expiration of a period during which the copyright owner enjoys exclusive rights, consists of non-exclusive licenses which are personal and therefore non-transferable and are granted, against payment, for the sole purpose of teaching, scholarship or research involving the copies made under license. With respect to this limitation on use, we should at once make it clear that use for the purpose of teaching and scholarship should be understood in the broad sense, whereas " research " excludes research work in the fields of industry or commerce.

The license being a compulsory one, the specific feature of this legal institution are found in the Convention provisions governing it and in its own essential characteristics. This is

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[16] With regard to compulsory licenses for translation as provided for under the Universal Convention, see A. Bogsch, *The Law of Copyright under the Universal Convention*, Leyden-New York, 1964, pp. 59 *et seq.*; Desbois, " La Convention universelle de Genève et la Convention de Berne ", in *Le Droit d'Auteur*, 1955, pp. 130 *et seq.*; my work referred to earlier: *La Convenzione Universale del Diritto di Autore*, pp. 125 *et seq.*

I would point out that, as far as copyright is concerned, the translated work comes into being under the legislation of the country granting the license (that of a developing country in the case before us) by assimilation to any other original or derived work having that country as its country of origin, with all the corresponding legal implications in terms of the national legislation of that country, whereas the international rules governing the right of translation and the corresponding undertakings involve for the most part the subjective aspect, in other words the right of translation accruing to the author of the original work and originating generally in a foreign country. Translation, that is, the rendering of a work in another language, includes also, in the case we are concerned with, the " retranslation " of a translation; therefore, if for instance the original work and its translation are protected, the request to " retranslate " the translation should be addressed either to the original copyright owner or to the owner of the copyright in the derived work. As for the reproduction of a translation under the system of compulsory licenses for reproduction, the respective license cannot be obtained in the country unless the right of translation accruing to the original owner of the right itself is not subject to similar rules.

[17] National or regional languages are those which, as modes of expression established on a natural basis, in current use and in a state of dynamic and developmental balance, are used by a given community *as a normal means of communication* between individual members of that community. These languages are generally recognized as such hy national legislations, either directly or indirectly and sometimes also in the constitution, in all countries of the world organized in the form of States (in fact the Italian Constitution is one of the few which do not contain such clarification, although it may nevertheless be deduced from various special laws). National or regional languages are occasionally designated as " official languages " distinct from the special " official languages " used in another linguistic context, to denote that a given international agreement is authentic. There are also " international " languages, this expression denoting languages currently existing and spoken, or having existed and been spoken in the past, in a given linguistic community, used in the course of time as *means of communication between individuals of different nationality or language* (successively Greek, Latin, Medieval Latin, Spanish, French, English, and so on). International languages are also known as " world languages ". In the international copyright field, the language question acquires legal importance, particularly with respect to the exercise of the rights of translation and reproduction.

In the General Report of the Paris Conference for the Revision of the Berne Convention, it is made clear that the " language in general use " may also be used to designate the language of an ethnic gronp or " a language generally used for particular purposes, such as government administration or education ". In this connection, see also the Report on the Conference for Revision of the Universal Copyright Convention, paragraph 63.

why, for instance, the license is not granted if the owner of the right has already exercised the same right in the same country for the same purpose; limited use may be made of the license within a given country or territory, the export of copies manufactured under license remaining prohibited; the license may be exercised during a specified period of time, which is renewable, on the understanding that the copies may continue to be distributed until their stock is exhausted; remuneration for the exercise of the license is proportional to that which is normally paid in the case of licenses freely negotiated between persons in the two countries concerned; the amount of remuneration has to be *actually* transmitted to the owner of the right by the use of international machinery.

Article V^bis of the revised Universal Convention (and in like manner Article I of the Appendix to the Paris Act of the Berne Convention) lays down the general conditions to which application for and securing of the license are subject (developing country status and permanent or temporary nature of such status) and the complex procedure (system of filing of notifications with the Directors General of Unesco or WIPO, as the case may be) which are required in order to benefit from the special restrictions granted for the exercise of the exclusive rights of translation and of reproduction. I shall return to the question of developing country status, but I should like to draw attention now to the so-called "colonial clause" (paragraph 5 of the same Article V^bis and Article I (5) of the Appendix to the Paris Act of the Berne Convention); the clause was already included in the Stockholm Protocol in spite of the strong opposition to which the proposal (submitted by the United Kingdom) had given rise at the time. It provides for the equal treatment, with regard to compulsory licenses under the respective Conventions, of independent developing States and of territories (or parts of territories) which are similar in character but "for the international relations of which" a developed country "is responsible". The existence of such a clause in both Conventions may throw light on certain aspects of the license system, and especially the language problem.

7. Article V^ter of the revised Universal Convention rules on the compulsory licence for the right of translation to the advantage of developing countries (and in this, as we said, it falls into line with Article V, which is of general scope), whereas Article V^quater lays down all the conditions for the license relating to the right of reproduction (which, we recall, is new in relation to the 1952 Convention), including, for instance, the audio-visual reproduction of lawful audio-visual recordings, accompanied by the translation of the corresponding text, if any (see under 8 below). As regards the license for the latter purpose, the relevant proposal was submitted at a second stage, in the course of the preparatory work, on account of the fact that it is an exception to the general rule, which also appeared in the original Convention, under which the license should have affected only works published in printed or analogous forms of reproduction (paragraph 3*(a)* of Article V^quater). We would observe in this and any other relevant context that no amendment was made to Article VI of the 1952 Convention, according to which "publication" means the reproduction in a tangible form and the general distribution to the public of copies of the work from which it can be read or otherwise visually perceived. As we know, the concept of publication and first publication in the Universal Convention is inspired by the one which is to be found in the American copyright system.[18]

Before proceeding to the examination of the essential characteristics of the new Article V^ter, I should like to call attention to some of the provisions (paragraph 1*(c)*) which are also to be found in connection with the right of reproduction (paragraph 1*(d)* of Article V^quater) and which are intended to facilitate for individuals concerned the fulfilment of the complex procedure imposed by the Universal Convention with respect to the application for and the acquisition and implementation of the license agreement involved. It consists in placing the International Copyright Information Centre, set up very opportunely by Unesco, at the disposal of interested private persons and the various Governments, in conjunction with any other similar information center, whether national or regional, indicated as such in a notification filed for the purpose with the Director-General of Unesco by the Government of the State in which the publisher is presumed to exercise the greater part of his activity. This happy initiative on the part of the great cultural and social body of the United Nations is the result of a Resolution adopted at Washington in the course of the first session of the Joint Study Group mentioned earlier.[19]

The basic provision of the new Article V^ter allows (paragraph 1*(a)*) Contracting States regarded as developing countries to substitute for the term of the exclusive right of translation, namely seven years from the time of first publication of the work, on expiration of which a license may be applied for and granted under paragraph 2 of Article V, a three-year period or any longer period which may be prescribed by national legislation. However, in the case of translation into a language which is not "in general use" in one or more developed countries that are party either to the revised Convention of 1971 or only to the 1952 Convention, a period of one year is substituted for the period of three years. In

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[18] In the Report on the Conference for Revision of the Universal Copyright Convention (paragraph 87) it is pointed out that the work translated under a license mnst he a "writing". This term has a limited meaning under Article I of the Universal Copyright Convention, although its scope is a matter of some dispute. The interpretation most commonly held is that "writings" do not include musical, dramatic and cinematographic works, and paintings, engravings and sculptures, except for the cases of text incorporated in art hooks and audio-visual fixations, specially dealt with in paragraphs 7 and 8*(b)* of Article V^ter. The "writing" concept is similarly presented in the Appendix to the Paris Act of the Berne Convention.

[19] The International Copyright Information Centre was set np recently by Unesco as a resnlt of a proposal pnt forward during the first session of the Joint Stndy Group, which was held from September 29 to October 3, 1969 (which was also the time, as already mentioned in the text, at which the Washington Recommendation on the revision of the two Conventions was made); the proposal had expressed the desire for international machinery "permitting developing countries a greater degree of access to protected works while respecting the rights of anthors". The International Centre is in liaison with the national centers which bave been set np in various States, generally within the national Unesco Commissions or on their initiative.

Several national centers have already heen set up (for instance those of France, Germany (Federal Repnblic), the Netherlands, Sweden, the United Kingdom and the United States of America) and they are ready to collahorate with the International Centre of Unesco.

practice, this provision concerns mainly translation into the languages or dialects peculiar to the developing country involved.

In addition, under subparagraph *(b)* of the same paragraph 1, a Contracting State which is a developing country may, with the unanimous agreement of the developed countries party either to the revised Convention or only to the 1952 Convention and in which the same language is in general use, substitute, in the case of translation into that language, for the three-year period provided for in subparagraph *(a)* another period as determined by such agreement, provided that this other period is not shorter than one year. This provision does not apply where the language in question is English, French or Spanish. Notification of such an agreement should be filed with the Director-General of Unesco. This rule might seem a real puzzle if one did not consider the special situation of developing countries of which the language "in general use" is that of a developed country but not one of the three "world languages"; this applies for instance to Portuguese in Brazil and its relations with Portugal. The problem, which was a cause of special difficulties for the delegations at the Paris Conference and its Drafting Committee (there is a similar solution, as indicated above, may be found in Article II(3)*(b)* of the Appendix to the Paris Act of the Berne Convention), had been brought up by the Delegation of Brazil during the preparatory work already, owing to the difficulties of an economic and cultural nature encountered by Portuguese-speaking developing countries in the face of "exclusive" contracts for the translation into Portuguese of works originally written in the language of a developed country, such contracts being entered into by the owners of the right to translate the respective works into Portuguese with publishers in developed countries. The solution thus reached gives an idea of the considerable difficulties which a compulsory license system presents, especially, we would add, if the licenses are limited to certain uses of the translated work, and when in addition provisions have to be adopted on specific questions within multilateral international conventions. The reasons for the "manufacturing clause", a well-known feature of the American copyright system, frequently came to the author's mind during the Conference's work.

As for the three-year or one-year period for the exclusive right of translation mentioned above, during which licenses cannot be granted, it should be pointed out that paragraph 2 of Article V[ter] provides for consecutive further periods (of six or nine months) to permit publication in the country, prior to expiration of these periods, of a translation authorized by the owner of the exclusive right: these are grace periods which subsist, here too, so long as the edition is not out of print. The question of "further periods", to which authors and publishers from developed countries were obviously very much attached, were the subject of debates in the Main Commission which frequently were more than somewhat animated.

A series of provisions also appearing in Article V[ter] (paragraph 8), which originated in a proposal put forward for the first time in the Main Commission (Universal Convention) by the Delegation of Kenya (document UCC/13), was eventually adopted on the basis of a text prepared by the Delegations of Kenya and the United States of America, after protracted discussions which also took place within a special working group. This series of complex provisions (which were by no means as well drafted as they might have been) relates to a license for the translation of a protected work published in printed or analogous forms of reproduction, which may be granted to a broadcasting organization (exchange between similar organizations in developing countries is also permissible) with its headquarters in a developing country party to the Convention, following an application made in that country by the broadcasting organization concerned. Among the many and complex conditions which must be met to obtain the license, there is a provision that the translation must be used only 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. Similar licenses may also be granted for the translation of texts incorporated in audio-visual recordings prepared and published for the sole purpose of being used in connection with systematic instructional activities.

This type of license for the right of translation (similar provisions appear in Article II(9) of the Appendix to the Paris Act of the Berne Convention) corresponds to the licenses granted, also to broadcasting organizations, for the right of reproduction, which I mentioned at the beginning of this paragraph and shall revert to in the next. In my opinion, the licenses for the benefit of broadcasting organizations, if one considers their real structure and the legal expression of the informatory character of the majority of them, particularly in developing countries, seem to resemble more the system of the legal paying license than that of the compulsory license.[20]

8. As we said, Article V[quater] of the revised Universal Convention concerns licenses in connection with the right of reproduction of the original work, whereby developing countries party to the Convention are given the possibility of adopting certain restrictions to the exclusive right in question. Similar provisions are to be found in the Appendix to the Paris Act of the Berne Convention (Article III).

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20 The personal non-transferable license, under the Italian system at least, is no more than a compulsory link between the party who remains the owner of one or several independent pecuniary rights and the party who has been granted a license to exploit the work according to a specified procedure. In my opinion (see De Sanctis, under *Autore, Diritto di*, in *Enciclopedia del Diritto*, published by Giuffrè, Milan, 1959, vol. 3, p. 414), it may be said that the legal relationship is similar to the one which exists in a rental situation in so far as it concerns a right of personal use. The license may also be compulsory by law, even if it is formally conceded by the owner of the right, or legal, in the sense that the right accruing to the licensee derives directly and exclusively from the law. The license terminates on expiration of the period, or termination of the license agreement in the case of voluntary licenses, or again, in the case of compulsory or legal licenses, by direct action of the law. Personal licenses, irrespective of their form, are characterized by renunciation of rights, by contract or by legal obligation, on the part of the copyright owner to assert his exclusive right to the licensee, whereas they confer on the latter the positive faculty of exclusive personal use, subject to various procedures. Real licenses, on the other hand, can be said to be those under which the licensee is given the possibility of taking direct action against third parties (see De Sanctis, *Contratto di edizione*, referred to earlier, p. 39).

The basic provision of Article V^quater is that if, after the expiration of a specified period of exclusive rights, copies of the work have not been distributed in a given State to the general public or in connection with systematic instructional activities (and, incidentally, at a price reasonably related to that normally charged in the State for comparable works), by the owner of the right of reproduction or with his authorization, any national of that State may obtain a non-exclusive license from the competent authority of such State to publish the edition at that or a lower price for use in connection with systematic instructional activities.

In this case also the license may only be granted if the applicant, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to publish the work or that, after due diligence on his part, he has been unable to find the owner of the right. This rule is followed by a multitude of others which set out the special conditions and procedures for the grant of the license.

In terms of paragraph *3(b)* of the same Article V^quater, the system applies also to the reproduction in audio-visual form of lawfully made audio-visual recordings including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the developing country with power to grant the license. The audio-visual recordings in question must have heen prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Normally, the minimum period for the exclusive right of reproduction of the work before the license system can come into operation (paragraph *1(c)*) is five years. However, this period is reduced to three years for works of the natural and physical sciences, including mathematics, and of technology, and increased to seven years for works of fiction, poetry, drama and music, and for art books. Similar provisions are to be found in the Appendix to the Paris Act of the Berne Convention (Article III(3)).

The Report on the Conference for Revision of the Universal Copyright Convention mentions (paragraph 89) that " after crossing the stormy seas of Article V^ter, the Conference seemed to be entering a calm harbor when it got to Article V^quater ". I should like to make it clear, however, that the calmer waters of the Conference came after the extremely rough ones of the preparatory work which led to the final draft submitted to the Conference and adopted by it with amendments of form only. Indeed one cannot help observing that the " exclusive " right of reproduction, an essential feature in the system for the legal protection of the work, thus came down from a general term of 50 years *p. m. a.* under the Berne Convention and 25 years *p. m. a.* under the Universal Convention to seven years from the first publication of a given edition of the work, and this even for categories of works, such as novels and other types of fiction, which have absolutely nothing to do with systematic instructional activities; it has thus become no more than a " right to remuneration ".

9. I have attempted in the foregoing paragraph to direct the reader through the forest of provisions in the revised Universal Convention which make up the rules on compulsory licenses for the benefit of developing countries. The provisions of the Appendix to the Paris Act of the Berne Convention, which I have mentioned on several occasions, are similarly formulated, as we have seen, and the only possible comment is that they are drafted in a manner more in keeping with their normative structure than are those of the Universal Convention.

In the following paragraph, I shall deal briefly with the most marked differences between the Stockholm Protocol and the Paris Appendix; however, I should like first to give a hroad outline, as I said earlier, of the guarantees of limited use of copies under license in general circulation and those connected with the prohibition on the export of such copies to another country, as provided for in each of the revised Conventions.

It was not considered necessary to follow up an intervention by tbe Italian Delegation in the Main Commission on the Universal Convention, proposing a stipulation that copies made under license should embody a notice to inform the public that they were confined to use in connection with systematic instructional activities, owing to the difficulty of control and of the sanctions to be applied. Moreover, all copies published under Convention licenses must contain a notice in the appropriate language stating that the copy is available for distribution only in the country or territory to which the license applies. One thing in particular which is specified in the revised Universal Convention is the obligation (a timely clarification on the part of the United States Delegation) deriving from paragraph 1 of Article III of the Convention (which remained unchanged in relation to the 1952 Convention), under which copies of the work must bear the symbol © accompanied hy the name of the copyright proprietor and an indication of the year of first publication. Although the Universal Convention does not, as we have said many a time, have any effect on relations between countries which are members also of the Berne Union and therefore subject only to tbe rules of the Berne Convention, the notice prescribed by the Universal Convention is finding its way into general use, even for works having a Berne Union country as their country of origin, since international publishers take account more and more of relations with countries bound only by the Universal Convention. Thus it is that any interested person may, by means of all the indications appearing on the copy of the work, ascertain rapidly its international copyright situation, since these indications also have an indirect usefulness as a source of information concerning the restrictions imposed on the use of the copy.

The question of the prohibition of the export of copies puhlished under license acquires greater importance not so much in relation to the license itself as in relation with the distribution of the copies inside the territory of the Contracting State in which the license has been applied for and from the authority of which it has been obtained (Article V^ter, paragraph *4(a)*, and Article V^quater, paragraph *1(f)*; also Article IV(4)*(a)* of the Appendix to the Paris Act of the Berne Convention).

It is interesting to note, in connection with the general translation license as provided for in Article V of the Universal Convention, that this Article permits the importation and sale of copies in another Contracting State if such other State has the same national (language "in general use" in the revised Convention) language as that into which the work has been translated, and if the domestic law makes provision for such licenses and does not prohibit importation and sale of such copies; in all other cases the possibility of importing and selling them on the territory of any other Contracting State is subject to the legislation of that State and to such agreements as may have been entered into between States.

It would seem, however, in terms of the rule of general interpretation appearing in paragraph 9 of Article V[ter], mentioned earlier, that the rule of Article V is not the only one applicable to the special licenses granted for the benefit of developing countries, as such licenses are governed by *both* Article V *and* Article V[ter]. Thus the question of the prohibition on the export of copies published under license (and conversely that on their import into another country), which is of considerable importance in the compulsory license system, is also governed, under the revised Convention, by the special provisions appearing in it which concern the relations between developed and developing countries, particularly if they have the same language in general use. And in this connection also there was no desire to make an exception in the case of the relations of a colonial territory with a colonizing State under the so-called "colonial clause". Only after long and complicated discussions in the Main Commission was a proposal by the Delegation of Brazil accepted (Article V[ter], paragraph 4*(c)* and Article IV(4)*(c)* of the Appendix to the Paris Act of the Berne Convention) according to which a State which has granted a license for translation into a language other than English, French or Spanish is allowed to send copies of a translation made under such license to its nationals residing in another country, subject to observance of various conditions, including the condition that the sending and distribution of the copies must not be for profit-making purposes.

Another problem which presented difficulties to the delegations meeting in Paris was the criteria for differentiation between the "publication" and "printing" of copies of the work, in order that the "printing" of copies of the work on the territory of a country other than that granting the license might not be regarded as prohibited. The problem is of prime importance in the publishing field, particularly to developing countries of which the national language is the language in general use in one or several developing countries party to the Convention.

The General Report on the Conference for the Revision of the Berne Convention enumerates, in relation to Article IV(4)*(a)* of the Appendix, the conditions (which cannot but be equally important under the revised Universal Convention) which — if all of them are met — would render inapplicable the principle of the prohibition of the export from one country to another of copies of the work published under license, inasmuch as such a prohibition would also include that on the "reproduction" of copies outside the (developing) country granting the license.[21] Even though this is an "authentic interpretation" given by the Conference itself, it could be doubted that the enumerated conditions are all fully compatible with the provision in the Convention, which in our opinion seems more strict. Moreover, such an elastic general principle does not seem likely to enable national publishing enterprises and typographical industries to come into being and established themselves, and this in turn might appear at variance with the aim, frequently stated by developed countries, of promoting the cultural, economic and industrial advancement of such countries which have recently acquired independence.

10. We propose now to strike a synthesized balance by comparing the Stockholm Protocol and the Paris Appendix in relation to international copyright protection.

Article 30(2)*(a)* of the Paris Act provides that: "Any country of the Union ratifiying or acceding to this Act may, subject to Article V(2) of the Appendix, 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 instrument of ratification or accession".

As for Article V(2) of the Appendix, it provides that any country which has availed itself of the faculty of the compulsory license for the right of translation provided for in the Appendix may not, in the same way, make a declaration under Article 30(2) of the Convention unless it has ceased to be regarded as a developing country and therefore no longer enjoys the said faculty (Article V(3)). This of course is the translation reservation used also by Italy until 1931: it is based on the principle which was maintained in the Stockholm Act and according to which any country acceding to the new Act may express the wish to substitute for Article 8 (exclusive right of translation) the provisions of Article 5 of the Berne Convention of 1886, as revised at Paris in 1896, according to which translation in that country is free if ten years have elapsed since the first publication of the work, without any authorized translation having appeared in the country.[22] In conclusion, a developing country may, if it sees fit, instead of making a request for a compulsory license under the Appendix, make the reservation declaration under

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[21] For the differentiation of "publication" and "printing", under the Italian system at least, cf. De Sanctis, *Contratto di edizione*, referred to earlier.

With regard to the matter of the prohibition imposed on the licensee of having copies of the work reproduced outside the territory of the country to which the license relates, the list of conditions which together make the prohibition inoperative seems particularly interesting; I have reproduced the list here, and it may also be found in the general report on the Conference which produced the Paris Act: *(a)* the country granting the license has, within its territory, no printing or reproduction facilities, or such facilities exist but are incapable 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 party to the Universal Copyright Convention; *(c)* all copies reproduced are sent, in one or more bulk shipments, to the licensee for distribution exclusively in the licensee's country and the contract between the licensee and the establishment 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 been granted under Article II or Article III; and *(e)* all copies reproduced bear a notice in accordance with Article IV(5).

[22] V. De Sanctis, *La Convenzione internazionale di Berna per la protezione delle opere letterarie e artistiche*, Rome, 1949, pp. 5 *et seq.*

Article 30(2)*(a)* or, as the case may be, under Article 30(2)*(b)*; on no account, however, may it combine the privileges deriving from the reservation relating to Article 8 of the Berne Convention with those deriving from the Appendix. This rule is a satisfactory and logical change from the system of possible cumulation sanctioned by the Stockholm Protocol Article 1*(b)*).

Quite apart from the equitable solution of the specific problem mentioned above (which arises only within the Berne Convention and not within the Universal Convention), the Appendix is a substantial improvement on the Protocol in that it provides more extensive protection of copyright, particularly by removing the clause in the Protocol (Article 1*(a)*) substituting for the term of protection of the work normally provided for members of the Union (50 years *p. m. a.* — Article 7(1)) the general term provided for under the Universal Convention (25 years *p.m.a.*), and for the special period of 25 years, provided for in paragraph (4) of the same Article 7 of the Berne Convention for photographic works and works of applied art, a shorter, ten-year period.

Other amendments with a view to improvement (again in the sense of a higher level of protection) relate among other things to the license for the right of translation in favor of developing countries: the latter, in the Protocol, embodied no limitation on the use of copies of the translated work and, with respect to the prohibition on the export of copies and, conversely, on their import into another Contracting State (Article 1*(b)*(v) of the Protocol). Furthermore, with respect to the facilities adopted for the benefit of developing countries in the field of the right of reproduction, the Protocol is less restrictive in approach than the Appendix in that it allows licenses for the reproduction and publication of the edition " for educational or cultural purposes " in all fields of education (Article 1*(c)*(i)), an ill-defined expression which could apply to any intellectual work.

With regard to the right of broadcasting, it should be noted that, in the Berne Convention system, under Article 11bis(2), national legislations are allowed to " determine the conditions under which the right ... may be exercised ", provided that they are not prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration. The differences between the Protocol and the Appendix, once the right to equitable remuneration is guaranteed by both international instruments, do not seem very great in practice, although the authors should be pleased that the Appendix no longer features the general limitation on the right of broadcasting whereby it can only be exercised if the communication " is made for profitmaking purposes ", this being specified in the Protocol (the whole of Article 1*(d)* of the Protocol, dealing with broadcasting, was left out of the Appendix).

Finally, the general right conferred by the Protocol on developing countries to " restrict " the protection of the work " exclusively for teaching, study and research in all fields of education " (Article 1*(e)*), which at first sight would seem to be consistent with the provisions in the Appendix, is in fact a much greater restriction of scope, since the limits of the restriction of protection are not defined at all.

I could here take stock of the comparative analysis of the Stockholm Protocol and the Paris Appendix, an analysis which, as far as the justified interests of authors and publishers of intellectual works are concerned, comes out certainly to the advantage of the Appendix. I should like to point out, however, that the language question, with reference to the " world languages " (English, French and Spanish), arose for the first time only after Stockholm, in other words at Paris, in the course of the revision work on the two Conventions, as a result of interventions on the part of representatives of the publishing industry in industrialized countries, and especially Anglo-Saxon countries.

There is no disputing the fact that the language question in general has a special economic and even legal importance in connection with compulsory and other licenses for the right of translation, and more especially for the right of reproduction, being a question which concerns primarily the relations between market-economy countries with the same national language. Yet, in the past, in international copyright relations (also under the 1952 Universal Convention and the Stockholm Protocol), solely the general concepts " country of origin of the work ", " national language or languages " and " equitable remuneration " have been used to advantage (even when dealing with the actual payment of such remuneration and the transfer of the corresponding monies), there being Convention provisions to prohibit the export of copies made under license. This had seemed sufficient, although other matters referred to other bilateral or multilateral instruments of a contractual nature, particularly in the professional field.

On the other hand, at the time of the Paris revisions of the two multilateral copyright Conventions, as we have seen, the desire was to deal with the special questions which arose in connection with the use of " world " languages. I do not wish the fate of the sorcerer's apprentice to befall those who raised this very special and complex question (and perhaps did so somewhat out of context, in my personal opinion), namely that they see it get beyond their control.

11. As for the structure of the two Conventions in relation to the new rules introduced at Paris, the question should first be raised whether in each case there was a complete revision of the previous Act or whether, apart from certain links specifically incorporated in the new instrument, a distinct Convention merely emerged from the earlier one. For the Universal Convention the comparison should be with the original 1952 Geneva Convention, and for the Berne Convention with the 1967 Stockholm Act (including the Protocol Regarding Developing Countries) by which the 1948 Brussels Act was revised.

I can say at once that there is no possible doubt in this respect as far as the Berne Convention is concerned: although in the course of the preparatory work for the Paris Diplomatic Conference some thought had been given to the possibility of bringing about revision in the form of an " Additional Act " [23] to the Convention as revised at Stockholm, the

[23] " Additional Acts " have occured several times in the history of the Berne Union, and yet the reasons for their adoption in preference to actual revision of the previous Act have not always been clear. It has been observed that such a procedure was adopted more on the basis of

"Paris Act" is now an instrument genuinely revising the Stockholm text in accordance with the latter's Article 27, which is in line with Union tradition and has brought about the results already familiar to us. Moreover, the Paris Act was really made "with a view to the introduction of amendments designed to improve the system of the Union" (Article 27(1) of the Stockholm Act, which reproduces the text of earlier Acts), and therefore the matters on which we dwelt at length concerning the relationship between the Stockholm Act and the preceding Brussels Act [24] would seem to have very little bearing here. Nothing is proved, in support of a possible argument against its being a genuine revision, by the fact that the Articles of the Stockholm Act relating to substantive law (substantive provisions: Articles 1 to 20) and those of an administrative nature (22 to 26) have been incorporated in the Paris Act. From a legal and formal standpoint, however, it is still a new Act, subsequent to and revising that of Stockholm, the Appendix being an integral part of the substantive clauses, as was the Protocol to the Stockholm Act. It is only from a historical standpoint with a touch of the "moral", but with no legal value, that the Preamble of the Paris Act recognizes the importance of the work done at Stockholm and the merits of the Conference, and further states that the countries of the Union "have resolved to revise the Act adopted hy the Stockholm Conference, while maintaining without change Articles 1 to 20 and 22 to 26 of that Act".

Tbe fact that the Stockholm Act had not yet entered into force with respect to its substantive clauses on the date of signature of the Paris Act raises a problem of a different kind.

The same question arose in a different way, also at the Paris Conference, in relation to the Universal Convention: a discussion took place during the session which left its mark on the text as finally approved. The question had been raised, namely, whether the Paris Convention was to be regarded as a separate Convention, independent of the original Geneva Convention. The report gives a detailed account of this aspect of the matter.

Here too, however, there is little doubt in my mind that the Act is one which revises the 1952 Convention, quite apart from the fact that the situation may be deduced from the title, the Preamble and the Resolution concerning Article XI, considering the implication in the complex rules written into Article IX that the new Convention is not separated from the previous one as far as interested States are concerned, although the two continue to be distinct and successive Conventions; moreover, "periodic revisions" are provided for in paragraph 1*(b)* of Article XI of the 1952 text. [25] The general prohlems which we have dealt with in passing, on the application of successive treaties on the same subject, can also arise here, always bearing in mind that the Universal Convention is not a convention organized in the form of a Union, and still less has its own Assembly.[26]

The Paris Universal Convention contains express provisions determining the effects of the revision on States having acceded only to the 1952 Convention, or only to the Paris one, or again to both. I should point out first of all here that, under paragraph 3 of Article IX, a State not party to the 1952 Convention which accedes to the 1971 text automatically becomes party to the former. The provision in the same paragraph under which, after the entry into force of the 1971 Convention, it is no longer possible to accede only to the 1952 Convention, may also be found in the structure of other international conventions which are suhject to revision, and it may even constitute an important element of interpretation in that it is indeed a "revised Convention" (see Article 34 of the Stockholm Act of the Berne Convention, from which similar effects may be deduced after the entry into force of the Act "in its entirety", in relation to the earlier Brussels Act). Another link between the Universal Conventions of 1971 and 1952 is established by paragraph 4 of the same Article IX, under which a State party to the 1952 Convention and not to that of 1971 may, by means of a special notification, allow States party to the 1971 Convention to apply the new text, in relations with it, to the system for the protection of its works, that is, to the works of its nationals or those first published in its territory. This rule is similar in certain respects to the one in Article 32 of the Stockholm Act *(acceptance principle)*, which in the course of the Diplomatic Conference, being a specific application of general principles concerning subsequent treaties, gave rise to interesting discussions on the subject of international law. On the other hand, a proposal

a "quantitative" criterion and for reasons of convenience concerning the subject of revision rather than on the basis of dogmatic considerations. Be this as it may, I should like to point out that the Berlin Revision Conference of November 13, 1908, had to codify in a single Act the 1886 Convention with its Additional Article and Final Protocol, as well as tbe 1896 Additional Act and Interpretative Declaration, while later the Additional Protocol of March 20, 1914, was incorporated in the 1928 Rome Act, of which it constitutes paragraphs (2) to (4) of Article 6. Thus, even with tbe Additional Act procedure the ultimate outcome has always been the unification of the texts. In my opinion it was right, in the 1971 Paris Act, to change the proposed Additional Act into a full revision of the Stockholm Act, as the substantial amendments to the Protocol are in fact revisions of the text, the Protocol being an "integral part" of the Stockholm Act in the same way, moreover, as the Paris Appendix is an integral part of the Paris Act. For the history of the Berne Convention, cf. my work *La Convenzione internazionale di Berna per la protezione delle opere letterarie* e *artistiche*, referred to earlier.

[24] Cf. De Sanctis, "La Conferenza diplomatica di Stoccolma della proprietà intellettuale, in *Il Diritto di Autore*, No. 3 of 1967, pp. 309 *et seq.*

[25] As I have written elsewhere (cf. my work on *La Convenzione Universale del Diritto di Autore*, referred to earlier, p. 80), the provision for the convening of periodical revision conferences, on the initiative of the Intergovernmental Committee or at the request of a certain number of Contracting States, shows that the international system implemented at Geneva, which in this respect has points of similarity with the Berne system, far from being static, is designed with a view to progress. And yet it is not a "Union" of States so long as the associate nature of the bonds it creates, although represented by the existence of a permanent Intergovernmental Committee, appears considerably more tenuous than in the Berne Union, even if one considers tbe period prior to the establishment of WIPO.

In the Preamble to the new Paris text of the Convention, which underwent no change in relation to the original 1952 Convention, tbe end reads: "have resolved to *revise* the Universal Copyright Convention as signed at Geneva on 6 September 1952 (hereinafter called "the 1952 Convention"), and consequently, . . .".

[26] On the discussions at Paris, particularly those in the Main Commission on the question raised by Article IX, eventually approved in its final form (the discussions, which were particularly animated, were on the subject of the first revision of the Universal Convention), cf. the report of the General Rapporteur, paragraphs 118 to 127. On the general principles governing the application of subsequent treaties within the framework of the Berne Convention, cf. the report (De Sanctis) on the work of Main Committee IV of the Stockholm Diplomatic Conference, in the *Records of the Intellectual Property Conference of Stockholm* (1967), volume II, pages 1207 to 1219. WIPO, Geneva, 1971.

according to which the State party to the 1952 and not to the 1971 Convention might under the acceptance principle have indicated those of the States party to the 1971 Convention which would undergo its consequences *(selection principle)* was not accepted.

After a long discussion, the Paris Conference also rejected the principle (proposed by the Delegation of Kenya, and in spite of its having being adopted in the Stockholm Protocol (Article 5) and in the Paris Appendix (Article VI)) according to which, prior to the entry into force of the new revised Convention and before becoming bound by it, a State party to the previous Convention (the 1952 Convention in the case in point) would have had the possibility of applying the provisions of the new Convention following the deposit of a declaration to that effect *(advance application principle)*.[27]

As for the composition, in each of the two Conventions, of the special rules on developing countries within the framework of the general rules, we would point out that, in the Berne Convention, which contains a complete enumeration and classification of the various categories of exclusive rights and also provides various alternatives for their protection and regulation, the new facilities extended to developing countries have been called "faculties". In the Universal Convention, however, the facilities extended to developing countries have been introduced as "restrictions" to the exclusive rights, this being also in line with the practice of the original Convention as far as exclusive rights of translation are concerned (Article V, paragraph 2).[28]

The list of the special provisions adopted for the benefit of developing countries appears in the Paris Act of the Berne Convention and, as we have seen, in an "Appendix" which forms an integral part of the substantive provisions of the Convention itself, again in conformity with the precedent of the Stockholm Act regarding the Protocol and also in consideration of Article 21, likewise to be found again in the Paris Act. Only the name has changed, therefore, in order to remove all possible ambiguity and to emphasize the structural inseparability of all these substantive provisions. The complementary numbering used for the facilities adopted in favor of developing countries in the Paris Revision of the Universal Convention strengthens the same structuring tendency, if indeed this was necessary, in such a way that similar conceptions may be said to have been followed for both instruments. The Italian idea of a Joint Protocol, which has been mentioned several times already (and which, as we saw, was discarded while the Paris Diplomatic Conferences were still in the preparatory stage), could not be put forward again in the course of the discussions on the revision of the Stockholm Act, also owing to the fact that the Conference for the Revision of the Berne Convention took place after the Diplomatic Conference for Revision of the Universal Convention had finished.

With regard to other general structural principles common to the two Conventions after the Paris Revisions, I shall mention that the general principle of assimilation or equal treatment (combining the Convention rules system and the assimilation system) has held good without the introduction of elements which might have led back to the principle of what is known as material reciprocity (similar, therefore, as far as the Universal Convention is concerned, to the original 1952 principle) [29] and to the traditional principle of application of Convention rules only to international situations, regardless of the fact that some of them which are not susceptible of direct application require the enactment of an international legislative provision within three months following ratification. However, as far as the Universal Convention is concerned (disregarding any general remarks made earlier on the nature and scope of the right of translation in copyright), it is a fact that, owing to the effect of the domestic law of the United States of America on international undertakings in this field, there has always been a certain amount of confusion (as in the course of the discussions at the 1952 Geneva Conference) on the question of whether Convention provisions should also be observed in purely national situations.[30]

12. We have already referred to some of the final provisions of the two Conventions while dealing with the relationship between them. We now come to the point where we bring ont some other elements of the Paris Act of the Berne Convention which distinguish it from the Stockholm Act with respect to the final clauses.

As we have seen, the Washington Recommendation made the entry into force of the revised version of Article 21 of the Stockholm Act contingent on the ratification of the Universal Convention, also revised, by certain States including the United States of America. This indirect link between the two Conventions had appeared absolutely essential to the Joint Study Group which met in Washington. Indeed the eventuality of such a large, highly industrialized and English-speaking

[27] With regard to the Paris Act of the Berne Convention, the United Kingdom recently filed with WIPO a declaration of advance application of the provisions contained in the Appendix.

[28] Cf. Živan Radojković, "Revision des Conventions internationales sur le droit d'auteur" *Il Diritto di Autore*, 1971, pp. 345 *et seq.* The differences of structure and content of the two multilateral Conventions are also mentioned in this study. Still on the subject of the Paris revisions of the two Conventions, it is also stressed here, from a structural viewpoint, that the advantages for developing countries take the form of legal licenses nnder the Universal Convention, while under the Berne Convention they take the form of *reservations* regarding the exclusive rights enumerated in the Convention. Mr. Radojković points out that the license system is interesting for authors, whereas the reservation system appears to be more favorable to users.

[29] Article II of the revised Universal Convention, on the equality of treatment, remained unchanged with the sole exception of the phrase "as well as the protection specially granted hy this Convention", which was added to bring the provision into line with the corresponding text in Article 4 of the Berne Convention; from now on the Universal Convention provides for the protection of specific rights (minimum rights) mentioned in the new Article IV^{bis}.

The principle of assimilation in relations hetween States party to the revised Convention is in certain cases not accompanied, as stated in the text, hy what is known as the material reciprocity principle (for the two principles of assimilation and material reciprocity, see the report, paragraphs 58 and 59), with the result that, for instance, a developed country which cannot avail itself of the exceptions provided for the benefit of developing countries mnst nevertheless continne to apply its own domestic legislation (with the exception of the provisions on duration) to works originating in a developing country.

[30] The traditional principle of application of Convention rules only to international situations in my opinion has the result, from the point of view of international undertakings alone, that the equitable remuneration (Article V^{ter}, paragraph 5; Article V^{quater}, paragraph 2*(b)* (i)), which in terms of those undertakings must he consistent with the remuneration normally paid in the case of licenses freely negotiated hetween interested parties from the two countries involved, could also differ from the lower level which might he provided for in the law in respect of national situations only.

country not being party to the revised Universal Convention could have deprived the "overall solution", drawn up by common consent for the rules in favor of developing countries, of all its effectiveness, and at the same time disrupted — or at least disturbed — in relations between countries bound by the two Conventions and the United States, the market for their respective publishing industries in developing countries.

In Article 28(2)*(a)* of the draft text for the revision of the Stockholm Act, as submitted to the Diplomatic Conference, it was however established that "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 the Union have ratified or acceded to this Act without making a declaration under paragraph (1)*(b)*; (ii) France, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America have become bound by the Universal Copyright Convention as revised at Paris".

In the Main Committee session of July 16, 1971, at the time of final adoption of the text of the draft (in a form which incidentally was the result of long drawn-out discussions) to be submitted to the Plenary of the Conference, it was suggested that the mention of the United States of America be taken out of Article 28(2)*(a)* (ii), as it seemed anomalous that the entry into force of Articles 1 to 21 of the Act as well as that of the Appendix should be conditional on the consent of a country, the United States, which was not a member of the Berne Union. The Italian Delegation opposed the suggestion, however, for the reasons given above, and was supported by some other delegations especially those of Brazil, India and Mexico. This, too, was a matter of correctness in international relations, since the problem was not hinted at even in the form of an announcement of the possibility of such a proposal being made at the Conference for the Revision of the Universal Convention, then already finished with the exception of the signature of the instrument. After the interventions referred to, paragraph (2)*(a)* of the Paris Act of the Berne Convention was approved without amendment.

Although, from an international standpoint, the fact of making the entry into force of an open multilateral Convention conditional on ratification by a country party not to it but to a different Convention, also open and multilateral, might seem completely irregular, the abnormality of the situation was due solely to the system of the prior "overall agreement" and of the special link existing between the two Conventions thus concluded, as indeed is apparent from the fact that some other States (France, Spain, United Kingdom), members of the Union, were for their part asked to accede to a separate Convention. [31]

If the intention was to abide by the overall agreement, other amendments proposed at the time having been rejected for that reason, one could not just omit such an important element of it, and certainly not at the last moment. Moreover, from the point of view of form, there is nothing to prevent the States mentioned in Article 28(2) of the Paris Act from not ratifying the Universal Convention, yet in view of the fact that they are States which, through their delegations, have played a leading role in the "package deal" and its preparation, and whose plenipotentiaries have signed both instruments in their name (or perhaps just the revised Universal Convention, but only because they were not members of the Union), they would be bound, when the time came, to shoulder the entire blame for bringing to nothing all the results of the Paris Revision Conferences.

While on this chapter, and with reference to the provisions contained in Article 34 of the Stockholm Act, attention should be drawn to the importance of Article 34 of the Paris Act, under which: "Subject to Article 29bis, no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix have entered into force", and; "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 29bis, referred to in the above quotation, provides that ratification of, or accession to, the Act by any country not bound by Articles 22 to 38 of the Stockholm Act shall, for the sole purposes of Article 14(2) of the Convention establishing WIPO, amount to ratification of, or accession to, that Act with the limitation set forth in its Article 28(1)*(b)*(i). Paragraphs (2) and (3) of Article 32 of the Paris Act remained substantially the same as those of the Stockholm Act.

One cannot but realize the importance of such provisions in that, on the one hand, they have the beneficial effect of mitigating the delayed application of the Paris Act, particularly as far as the Stockholm Act and the Protocol are concerned, and, on the other hand, they facilitate by means of implicit ratification the accession to WIPO of countries which do not yet have a part in its activities; finally they reaffirm the principle of *optional adaptation*, which was an important structural innovation in relation to previous Acts of the Convention. The author is thoroughly satisfied with this situation.

As far as the final clauses are concerned, there are no really noteworthy innovations in the text of the 1971 Universal Convention, as compared with the original 1952 Convention. For instance, the minimum number of instruments of ratification, acceptance or accession for the entry into force of the instrument (12) remained the same in 1971 (Article IX, paragraphs 1 and 2).

13. On the administration of the two Conventions I shall only mention, with reference to the Universal Convention, Article XI and the appended Resolution corresponding to it, but only very briefly, as the question of the composition of the Intergovernmental Committee is very closely related to one I have already discussed, namely that of a Convention completely independent of its predecessor or a revision of the latter. As for the Italian proposal of the creation of a link between the Secretariat of the Intergovernmental Committee of the Universal Convention and WIPO, also within the framework of the Resolution concerning Article XI, it will be covered in the next chapter, since it is a structural question which concerns particularly the relations between the two Conventions.

[31] See in this connection the general report by Ousman Goundiam, adopted on July 22, 1971, by the Plenary of the Conference, in particular paragraph 24.

The membership of the Intergovernmental Committee provided for in Article XI has been increased from 12 to 18, since the Conference had expressed the wish that the composition of the Committee might reflect better than in the past a geographical balance between the countries party to the Convention. A curious proposal that representatives of countries party only to the 1952 Convention should be excluded from the Committee was rejected, as was another, equally uncalled for, intended to exclude from the Committee representatives of countries which have not ratified the 1971 Convention by the second ordinary session of the Committee, and to replace them, should the situation arise, by representatives of countries party to the 1971 Convention. It was right, on the other hand, to introduce a rule under paragraph 2 of the Resolution concerning Article XI whereby States not party to the 1952 Convention which also have not acceded to the 1971 Convention by the first ordinary session of the Committee would simply be replaced by other States in accordance with paragraphs 2 and 3 of Article XI. Pursuant to a decision adopted under the Resolution, the six States whose representatives would be added to those of the twelve States of the 1952 Convention were actually designated in the course of the Conference. They are Algeria, Australia, Japan, Mexico, Senegal and Yugoslavia.

With regard to the Paris Act of the Berne Convention, there is no change in the administrative provisions or — obviously — in the rules governing WIPO on the basis of the Convention which established it. I therefore refer the reader to my account of and considerations on the Stockholm Diplomatic Conference, and draw attention once again to the rule opportunely introduced by Article 29bis, mentioned earlier.

14. Let us now return to the links existing between the Universal Convention and the Paris Act of the Berne Convention as evidenced by some of the final clauses of the two Conventions, especially the (amended) Appendix Declaration relating to Article XVII and the Resolution concerning Article XI with regard to the Secretariat of the Intergovernmental Committee. As for Article 28(2)*(a)*(ii) of the Paris Act of the Berne Convention, which specifies one of the conditions for the entry into force of Articles 1 to 21 and the Appendix, we dealt with them in the previous chapter.

The history of the Appendix Declaration relating to Article XVII of the Universal Convention is well known. I shall confine myself to recalling that it was at Washington in October 1950 that the third Committee of Experts for the preparation of the drafts to establish a Universal Convention, in which representatives of the Berne Bureau and the Panamerican Union took part, finished the complex studies carried on up to then; these studies resulted in the recommendation of the clauses which later, after having undergone drafting amendments, formed the contents of the Appendix Declaration.[32]

While at Paris, Article XVII of the Universal Convention did not undergo any amendment, the Appendix Declaration was modified (thus partially complying with the Resolution we mentioned earlier, formulated by the General Conference of Unesco at its 14th session) to enable States regarded as developing countries and acceding to the Universal Convention which might leave the Berne Union to avail themselves of the exceptions provided for in the Universal Convention for the benefit of such States. To this end, the original paragraph *(a)* of the Appendix Declaration was made subject to appropriately-formulated provisions in paragraph *(b)*. The original paragraph *(b)* of the 1952 Convention remained unchanged, being merely reproduced with different numbering under a new paragraph *(c)*.

As indicated in the new Preamble to the Appendix Declaration ("Recognizing the temporary need of some States to adjust their level of copyright protection in accordance with their stage of cultural, social and economic development"), a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, and having deposited with the Director-General of Unesco, "at the time of its withdrawal from the Berne Union", a notification to that effect, is not subject to the provisions of paragraph *(a)* of the Appendix Declaration, "as long as such State may avail itself of the exceptions provided for by this Convention in accordance with Article Vbis".

The radical change in the administrative structure of the two great international Unions, namely the Paris Union for industrial property and the Berne Union for copyright, which was brought about at Stockholm was intended, by means of the creation of WIPO, not only to transfer the functions of Supervisory Authority (entrusted until then according to a time-honored custom to Switzerland, the host country to the respective international administrative bodies headquartered there) to a joint Assembly of the member States of the two Unions, but also to create a "forum" which would make it possible for an uninterrupted dialogue to be carried on among the various countries of the world on all the problems relating to the legal rules adopted in the field of intellectual property at the international level.

It is said that law is always trailing behind technology and all the other elements of the human universe related to it, and this is all the more true nowadays, when technology has reached a stage of rapid and relentless development. Hence the importance, with respect to the strictly legal problems of intellectual property, of following this development closely and concentrating all effort within a special international center which groups all the States party to various Conventions, such as WIPO, which would thus be in a position to centralize all the necessary information in this field by inviting any other interested international body to provide useful collaboration on the basis of programmed, coordinated and standardized plans. This does not mean that outside the specifically legal organization of this subject the study and international regulation of other, essentially political, cultural, economic and social aspects of intellectual property protection may not be mainly centered on other governmental bodies of universal character within the United Nations and its specialized Agencies, Unesco in particular. The converse would then apply, and WIPO would be called upon to provide collabora-

[32] For the history of the Appendix Declaration relating to Article XVII, see De Sanctis, *La Convenzione Universale del Diritto di Autore*, pp. 58 to 64 and 94 to 96.

tion. I should like here once again to make a special mention of the commendable initiative taken by Unesco in creating the International Copyright Information Centre.

While WIPO has accepted to assume or, pursuant to Article 4(iii) of the Convention establishing it, to participate in the administration of certain private international law conventions dealing with intellectual property, apart from the two main Unions and the corresponding Acts relating to them (an example of this being the Rome Convention on so-called neighboring rights, which is administered by WIPO, Unesco and the ILO), it has on the other hand been obliged to stay remote from others, from an organizational point of view, solely on account of the fact that these other Conventions were concluded earlier on the direct initiative of another international organization. An instance of this (and indeed perhaps the only one) is the Universal Copyright Convention administered by Unesco, although from the outset of the preparatory work on the Geneva Conference, BIRPI collaborated in its preparation, if only in relation to the Appendix Declaration relating to Article XVII, and thereafter the means were found to achieve successful *de facto* collaboration between the two great international bodies on the basis of a general "cooperation agreement" which lasted up to the Paris Conferences, which of course are the subject of the personal views expressed here.

In the course of this exposé, I have frequently mentioned Italy's concern about creating, at the time of the simultaneous Revisions at Paris, a certain formal link between the Berne and Universal Conventions. The purpose of this would have been to organize and stabilize, considering the uncertain future of copyright, the collaboration which, as we said, has already been achieved thanks to the happy and concurrent initiatives of the two great international bodies administering the two Conventions.

But when the BIRPI memorandum had been rejected at Washington and the Italian proposal of a Joint Protocol, which might have induced WIPO also to take an interest in the Universal Convention, abandoned, even a very modest proposal formulated by the Italian Delegation towards the end of the revision work on the Universal Convention, in which it expressed the wish that the Secretariat of the Intergovernmental Committee, to be provided by Unesco, might "if possible" be provided in collaboration with WIPO, was unsuccessful.[33]

Obviously the Italian proposal was intended to be a step towards the establishment of a formal link between Unesco and WIPO with respect to the Universal Copyright Convention, and not of course a move to dispossess Unesco of its responsibilities in the implementation of intellectual rights as defined in Article 27 of the United Nations Universal Declaration of Human Rights. The purpose of this modest Italian proposal, we will recall, was simply to avoid in future divergent action in the international field, in the interests of smooth development of the protection of intellectual creations and the dissemination of culture. It seems really dangerous for the future of copyright that there should be a possibility of different and even actually divergent action in this field, where Unesco might give greater importance to paragraph 1 of Article 27 of the Universal Declaration of Human Rights, mentioned earlier, and WIPO might give more importance to paragraph 2 of the same Article. Even if the Berne and Universal Conventions are supposed to be regarded as "coexistent and complementary", I feel that everything should be done to avoid their becoming rivals, especially since the majority of the countries party to the Universal Convention are at the same time party to the Berne Convention.

Finally, it would not be out of place to mention here, once again, that the elaboration of the Universal Convention which led to the signature of the 1952 Geneva text is indeed due to Unesco but above all to the fact that Unesco, immediately after the Second World War, inherited the initiatives (and the archives) of the International Institute for Intellectual Cooperation in Paris, which since 1935, in collaboration with BIRPI and the International Institute for the Unification of Private Law in Rome, had been carrying on studies and had even prepared drafts for an International Copyright Convention designed to be a "linking" Convention between the Berne Convention and the American Conventions.[34]

15. In these final considerations on the international copyright system which resulted from the Paris Revision Conferences, I think it would be particularly profitable to come back and deal with certain specific aspects of two points which I have already mentioned in this exposé. The two points I have in mind are *(a)* the problem of the identification of countries "regarded as developing countries" where it arises in the application of the system, and *(b)* the "language question" in the context of the individual cultural development of the various developing countries.

(a) The problem of the objective and rapid identification of the country "regarded as a developing country" had not been dealt with in the proposal of the Swedish/BIRPI Study Group for the revision of the Brussels Act, owing to the fact that a number of different formulations were expected during the Stockholm Diplomatic Conference.[35] This problem, it

[33] In his important speech, Mr. Clande Lussier, representing the Director-General of Unesco at the Paris Conference for Revision of the Universal Convention, claimed for Unesco, actually at the time the Italian proposal was made, the most extensive competence and responsibilities in the protection of intellectual creations, and also recalled the decisions taken hy the General Conference of Unesco at its 14th, 15th, and 16th sessions, with a view to the revision of the 1952 Universal Convention. With regard to WIPO, the representative of the Director-General of Unesco recalled in his speech that in 1967, at the Stockholm Conference, during examination of the draft Convention which led to the creation of WIPO, the Unesco representative, while conveying his hest wishes for the success of the proposed new international organization, drew attention to the special aspects of Unesco competence in connection with the exercise of cultural rights as defined in the United Nations Universal Declaration of Human Rights.

[34] And in this context I should like to call attention to the words used by the then Director-General of Unesco, Jaime Torres Bodet, in his address inaugurating the Intergovernmental Conference, on August 18, 1952, in the Palais Electoral in Geneva, to define the objectives of the new international Convention: "a complementary international instrument to establish a permanent link hetween the two great systems of the Berne Union and the American Continent". No one will dispute that everything changes, even in the human universe, yet the complementary element of the Universal Convention should, again in my own personal opinion, he supported by the existence of *formal* and *permanent* links with the Berne Convention.

[35] Cf. the report (Strnad) on the work of Main Committee II (Protocol Regarding Developing Countries) in *Records of the Intellectual Property Conference of Stockholm* (1967), Volume II, pp. 1193 to 1199. WIPO, Geneva, 1971.

should be recalled, had been raised in the course of the preparatory work for Stockholm as being a problem concerning countries "having recently acquired independence", and later, with the acceptance of the "colonial clause" (see paragraph 1 above), described generally as the "developing country problem". The one chosen at the Conference (Article 1 of the Protocol) refers to the developing country "in conformity with the established practice of the General Assembly of the United Nations ... 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 in the Act". Such a country may give notice of its intention to avail itself of the special "reservations" provisionally allowed under the Protocol (Article 1). The Stockholm Protocol system of reference to United Nations practice was accepted, as we have seen, by the revised Universal Convention.

If the "established practice of the United Nations" as stated by the General Assembly at its session on November 13, 1963 (Declaration No. 1897 (XVIII)), were observed, the result would be that countries qualifying as "developing" or underdeveloped would be at least 75 in number, to which seven new African States should be added. I do not know how many have been added since, or how many may yet be added, or of course what changes may occur in the future. The situation is indeed one which is not stationary but constantly developing in that United Nations practice may alter in the course of time, and the question cannot therefore be resolved until it is concretely presented.[36]

Since we are concerned here with open international conventions determining rights in private relations, there is good reason to expect that a multitude of difficulties will arise in the practical application of the system, particularly in the event of judicial controversy in the various countries, as well as complications in connection with civil law (one need only think of the matter of "acquired" rights which might come up in contractual relations which have to be carried on in the course of time in more or less large areas). These dangers, which were already foreseeable at the time of the Stockholm Diplomatic Conference — and to which the author has for a long time been seeking to draw attention, having in the past proposed various systems as suitable means of meeting the actual temporary needs of developing countries — were not removed by the Paris Conferences. We must confess that there was nothing any of us could do during the session to clarify the situation; on the contrary, the uncertainty as to interpretation actually increased: whereas in the revised Universal Convention — as far as may be gathered from the discussions in the course of the preparatory work and during the Conference itself — the reference to United Nations practice is set out in strict terms, in Article I of the Appendix to the revised Berne Convention the same expressions may be found as were formulated at the time of the Stockholm Protocol ("having regard to its economic situation and to its social or cultural needs").

A. L. Kaminstein, the General Rapporteur of the Conference for Revision of the Universal Convention, followed his report dated July 1971 with another official document (INLA/UCC/45), dated November 30, 1971, after the Conference therefore, which contains some interesting comments, even though they are made in a personal capacity, on the criteria governing developing countries.

These considerations could go so far as to make the whole set of rules adopted at the time of the revision of the two Conventions appear practically inapplicable, for the very reason of the difficulty of making an accurate identification of the developing country. In Kaminstein's view, the calculation of contributions to the United Nations budget, on the basis of *per capita* income (a purely economic criterion therefore), would appear to be the best criterion, but it cannot be applied automatically; in the above document he further recalls the words of the Head of the Spanish Delegation to the Paris Conference, although in fact they were spoken on a different occasion: "instead of having too many questions and no solution, we have a solution and too many questions".

It should nevertheless be pointed out that the system of notifications referred to was based essentially on a subjective criterion, namely the very "reservation" system which had been applied under the Berne Convention since its inception. Yet the subjective criteria, which themselves are easy to apply, are in this instance — and indeed cannot avoid being — accompanied by an objective criterion, and it is this association which creates difficulties in application. Moreover the notification, as a unilateral declaration, could be an acceptable system for the general principle of assimilation (equal treatment), combined in certain cases with that of reciprocity, but this is not what was wanted. Consequently, the notification does not solve every problem: a member State may still, in my opinion, dispute the effects of such a notification, at the seat of the respective body, if, in the absence of a "sure" objective criterion, the notification in question constituted a violation of the specific and just interests of that State. For countries party to both Conventions, there can also arise the problem of dissimilarity between notifications filed with the competent bodies of each of the two Conventions, which in turn creates new interpretation difficulties.

(b) We dealt earlier with the provisions contained respectively in the revised Universal Convention and in the Berne Convention as revised at Paris on the compulsory licenses for translation and reproduction of which developing countries may avail themselves, provided that the licenses are associated

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This report indicates how the problem of copyright "in countries that have recently gained independence" was one of those to which the Swedish Government was particularly attentive in its capacity as host country to the Conference, and one which therefore arose at the time of the Stockholm revision of the Brussels Act of the Berne Convention. The report further indicates how, in the course of the Conference, the documents relating to the preparatory work (particularly document S/1) were supplemented by the results of the East Asian Seminar on Copyright, held in New Delhi in January 1967, which had a marked influence on the debates at the Conference.

In my work entitled "Needs of Developing Countries in the Field of International Copyright", written for the Seminar at the request of the Government of India, I mentioned the qualification for developing country status within the United Nations: average *per capita* income of less than 300 dollars a year, at least 60 percent of the population engaged in agriculture, and therefore living in rural areas, high percentages of illiteracy and population growth. Unfortunately, developing countries would thus represent about 70 percent of the world's population.

[36] In this connection, cf. the Goundiam report on the Paris Conference.

with the expression "language in general use" and with so-called "world" languages. The complex system, which is similar in both Conventions, suggests some comments on the "language question", with reference to its cultural aspects and those relating to economic policy in the various countries (disregarding legal questions, therefore, and questions of interpretation of Convention clauses), particularly in the field in which such a question is important above all, namely that of education and scientific research.

It should be noted in this connection that "world languages" are considered in relation to developing countries on account of the fact that those languages, which are specific to certain European countries and were imported in the course of the last century, or even the present one, with the colonization of certain regions, are still used in those regions (one or other of them) by the higher social classes, in the world of business, in bureaucratic circles and sometimes in teaching, and that for that reason they may be counted among the languages "in general use". This is very often true of countries which have newly acquired independence, unlike what happened in the more distant past, in Latin America for instance (not to mention the United States, with reference to the English language), where the question of the Spanish language appears in a completely different light. Language is linked to a particular culture. With a given "world language", taken as a language "in general use" in a developing country which, as we said, has not long been independent, a culture fundamentally alien to the national genius may make a massive penetration, even in the future, and thus directly and effectively hamper the free development of original creative spirit in peoples likely to make a substantial contribution to the development of the intellectual world. Rich traditional cultures which existed before colonization often came near to dying out during the colonial period. National authors of such countries and territories should not therefore be encouraged only to undertake the translation, into the various and often numerous local languages, of original works which are foreign to their national spirit, but also, and above all, to exercise a primary, original creative activity. As long as a colonial linguistic situation persists in this field, this impoverished state of conscious dialogue between peoples in the world of culture, the only thing which contributes to the progress of the human race, can also persist.

Furthermore, what is known as the neo-colonialism of certain industrialized States, particularly in the field of publishing and mechanical sound recording,[37] has the unfortunate property of inducing other countries with an equally rich and ancient culture, also industrialized, but whose languages now have little world use, essentially for historical reasons, to engage in various operations which can only be detrimental to the cause of international copyright protection as a whole.

Quite apart from the above comments, the language question for developing countries considered to have the language of a given industrialized country as their language "in general use" will one day (as it has done in the United States vis-à-vis the United Kingdom) raise the well-known question of the "manufacturing clause" for the safeguarding of national industry; there was evidence of this at Paris in the introduction of paragraph 1*(b)* in Article V[quater] of the Universal Convention, referred to earlier. The problem could be avoided, of course, if international copyright protection were structured differently in future.

16. In spite of the critical remarks which I have seen fit to make, from a strictly personal viewpoint, in the course of this exposé, on the way the Paris Revision Conferences were run and their results, it is of course by no means my desire that the two world copyright Conventions should fail to enter into force for want of the required number of ratifications or because acceptance of the instruments might be insufficient.

In such an undesirable eventuality as this, the present international copyright crisis would become even more serious, and above all it would seem even more difficult to find a way out. What must now be done is, on the one hand, to turn over the page on the 1967 Stockholm Conference as soon as possible and, on the other hand, to endorse, in the context of international copyright development, the present affirmations, however timid, of the existence of a link between the two great multilateral Conventions.

I am of the opinion that in the future the whole problem will have to be "rethought", and not least the matter of so-called neighboring rights, with a view to achieving greater structural and textual simplicity and some coordination between the various international instruments concerned.[38] However, for such a systematic revision to be possible, various problems raised by the present Conventions must be "decanted" by the effect of time, and solutions must first be found to other problems which tend to cause a proliferation of international conventions in this field, the latter being nevertheless fully justified by the urgent need to mend the cracks which, on account of the political, social and above all technological development of the modern world, are becoming ever more numerous in the walls of the intellectual property building. Only in the fairly distant future can this overall "rethinking" be done and thereby a new and modern building be set up, both larger and more functional, with stronger foundations and multiple stories.

To return more especially to the results of the Paris Revisions of the Universal and Berne Conventions in July 1971, one must inevitably draw attention once again, as a final remark, to the difficulties of interpretation and either direct or indirect application of the many and complex provisions which govern the system of licenses granted by each of the international instruments to developing countries.

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[37] Edmundo Guibourg and Delia Lipszyc, in two separate reports (Society of Authors of Argentina ARGENTORES) drawn up for the Legal and Legislative Commission of the International Confederation of Societies of Authors and Composers (CISAC) (Rome meeting, February 1972) observe how chaos ensued after the abandonment, in the drafting of the Paris texts, of the Washington Recommendation, adding that hopefully this will only be for a transitional period. A mention is also made of the "neo-colonialism in the field of culture" which the Paris texts represent in relation to developing countries.

For all that, CISAC saw fit, in view of the present situation, to recommend the ratification of the Paris texts.

[38] In this connection, see De Sanctis, "L'évolution du droit d'auteur sur le plan international", report to the XXVII[th] CISAC World Congress of Authors and Composers, in *Interauteurs*, 1970, pp. 214 to 224.

During the afternoon meeting of July 16, 1971, of the Conference for the Revision of the Berne Convention, the observer from the International Publishers Association at the Paris Conferences expressed the wish that there might in fact be very few compulsory licenses in future, since equitable contracts could be entered into by publishers and authors in developed countries with their counterparts in developing countries, thereby obviating recourse to the compulsory license system and the international rules governing it. Moreover, the work of the national copyright information centers which, we will remember, are in the process of being set up in various States, in liaison with the Unesco International Centre, and which sometimes also have a conciliatory function, could also contribute to the development of such freedom of action at the contractual level.

To conclude this exposé, I feel I can only express the same wish, pointing out at the same time that, in the twenty years which have now elapsed since the signature of the Geneva Universal Convention, and therefore since the existence of its Article V, it seems that not a single compulsory license for translation has been issued, and that in any case there is no case law on the subject.

We are thus tempted to ask ourselves whether the Diplomatic Conferences should not in fact be placed in the "white elephant" category. No, they definitely should not, for their results are the expression of an intensive dialogue and the common will of industrialized States and those currently regarded as developing countries, and as such they are bound to bear fruit in the drafting of national laws, and above all in the field of contracts, where the work of the information "switchboards" and authors' societies in the various countries, developed and not developed, will have an equally beneficial effect. This complex intervention in the contractual and professional field in the light of international considerations will serve not only to provide concrete rules on copyright licenses but also to promote a wider dissemination of culture, and above all — this is our wish and hope — the appearance of new sources of literary and artistic creation in the masses of the Third World.

CONVENTIONS NOT ADMINISTERED BY WIPO

Ratifications of the Universal Copyright Convention as revised at Paris on July 24, 1971

France

In a letter dated Novemher 14, 1972, the Director-General of Unesco informed the Director General of WIPO that the instrument of ratification hy France of the Universal Copyright Convention as revised at Paris on July 24, 1971, and of Protocols 1 and 2 annexed thereto had been deposited with that Organization on September 11, 1972.

Hungary

In a letter dated November 18, 1972, the Director-General of Unesco informed the Director General of WIPO that the instrument of ratification hy the Hungarian People's Repuhlic of the Universal Copyright Convention as revised at Paris on July 24, 1971, and of Protocol 2 annexed thereto had been deposited with that Organization on Septemher 15, 1972.

The Hungarian People's Republic effected the deposit of its instrument of ratification under cover of a Verhal Note dated September 12, 1972, containing the following declaration:

"The Hungarian People's Republic declares that the provisions of Article XIII, paragraph 1, of the Universal Copyright Convention signed at Geneva on September 6, 1952, and revised at Paris on July 24, 1971, run counter to the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in resolution 1514 (XV) which was adopted on December 14, 1960, by the General Assembly of the United Nations".

United States of America

In a letter dated November 14, 1972, the Director-General of Unesco informed the Director General of WIPO that the instrument of ratification hy the United States of America of the Universal Copyright Convention as revised at Paris on July 24, 1971, and of Protocols 1 and 2 annexed thereto had been deposited with that Organization on Septemher 18, 1972.

At the same time, the Government of the United States, in accordance with Article XIII of the Convention, declared in a notification addressed to the Director-General of Unesco that the Convention shall apply also to Guam, the Panama Canal Zone, Puerto Rico and the Virgin Islands.

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The following States have so far deposited instruments of ratification with Unesco in respect of the aforesaid Convention and Protocols:

United Kingdom	May 19, 1972	Convention and Protocols 1 and 2
France	Septemher 11, 1972	Convention and Protocols 1 and 2
Hungarian People's Repuhlic	Septemher 15, 1972	Convention and Protocol 2
United States of America	September 18, 1972	Convention and Protocols 1 and 2

In accordance with the provisions of its Article IX(1), the Convention will enter into force three months after the deposit of twelve instruments of ratification, acceptance or accession.

With regard to the Protocols 1 and 2, they shall, in conformity with their paragraph 2*(b)*, enter into force in respect of each State on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the 1971 Convention with respect to such State, whichever is the later.

BOOK REVIEWS

Le droit d'auteur an Canada [Copyright in Canada], hy *Jacques Boncompain.* One volume, 406 pages, 14 × 20.5 cm. Le Cercle du Livre de France Ltée, Montreal (Que.), 1971.

Detailed studies of a country's legislation and case law are always of particular interest to our readers. In this case, the country is one in which — as the author puts it — there has heen a two-fold influence: on the one hand, historical and European, on the other hand, physical and American. Hence the prohlem of reconciling and harmonizing the European and American concepts of copyright which are different, if not conflicting. Moreover, the Canadian Government has recently been showing a keen interest, particularly at international level, in the problems arising in tbe field of copyright as a result of the increasing nse of new techniques for the dissemination of intellectual works.

The hook which is the subject of this short review is divided into two parts: the first concerns copyright in domestic relations, and the second copyright in international relations.

In the first part, the author first examines " protected contrihutions " *[prestations protégées]* (i. e. various categories of works) as well as what he terms " accessory contrihutions ", comprising not only the contribution of performers hut also pnhlications, recordings and hroadcasts. In this connection, one may mention the qnestion of the fixation of a work as a condition for its protection; the reply given differs according to the category within which the work falls. The anthor also refers at some length to the prohlem of works of applied art for which, in his view, the existence of two pieces of legislation constitntes a " source of confusion ".

Next come the conditions for enjoyment and exercise of copyright (ownership of copyright, the implications of pnhlication, the formalities to he complied with) as well as the legal character and content of anthor's rights. In connection with formalities, the author emphasizes that, while registration is optional, if the owner of copyright assigns tbe same right to two different persons, " the person who effects registration first has preference over the other person ". The moral rights are recognized as such, althougb the actual term is not mentioned in the legislation; nevertheless, there is no specific provision affording protection to the author's moral interests after his death.

The second part of the hook, which is devoted to problems of copyright at international level, is of particular interest. After giving a description of bilateral relations with the United States of America, the anthor turns to tbe multilateral conventions, in particular the Berne Convention and the Universal Copyright Convention. In his legal analysis of relationships hetween tbe Canadian legislation and the Berne Convention, he points ont that Article 36(1) and (2) of the Stockholm Act (taken over without change in the Paris Act of 1971) contains a provision that " would have eliminated any problem " whicb might have existed in Canada in regard to the need to solve any conflict tbat could arise as hetween domestic legislation and the provisions of the Convention. Referring to the suhstantive clauses of the same Act, he mentions *inter alia* the provision of Article 7(7), whicb, in his view, " seems to be tailored for Canada " and which, it will he recalled, allows conntries of the Union hound by the Rome Act to maintain, subject to certain conditions, the term of protection which they grant for works.

The conclusion which the author draws from his study can he snmmed up in his finding that, as between the two schools in the copyright field — the European one and the American one — the trend has been towards a closer relationship with the American school. M. S.

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Bescherming van vormgeving tegen plagiaat [Protection of applied arts against plagiarism], hy *Th. Limperg.* A volume of 244 pages, 14 × 22 cm. Agon Elsevier, Amsterdam and Brussels, 1971.

The snhject of Theodore Limperg's most recent publication is tbe protection of industrial designs and models against plagiarism.

In his introduction, Limperg describes how already in tbe 1920s and 1930s, under the influence of leading foreign and Dntch designers such as the Bauhans group in Germany and Rietveld and Stam in Holland, and again, after 1945, under the influence of Scandinavian design concepts, there developed also in the Netherlands an increasing interest in making useful articles not only functional but also beautifnl.

Since, from the technical point of view, it is often easy to copy designs and models, protection of the original is bighly desirable, especially in view of the fact that design aspects are important sales arguments. Though one might argue that imitation is the sincerest form of flattery, the majority of manufacturers and designers prefer not to be flattered in this way. In certain branches of industry, however, plagiarism seems to he inevitable and even necessary; Limperg mentions the protests hy the Dntch textile indnstry against the proposed adoption of a Dutch law on the protection of designs on the grounds that in tbat branch of indnstry " one cannot do without plagiarism and so one acts accordingly ".

Even if the Netherlands has no specific law on the protection of designs and models, for those who wish to protect tbeir designs there is certainly no lack of ways and means of doing so.

The author explains how action can be based upon copyright law, upon certain provisions of civil and occasionally npon some provisions of patent and trademark law, especially since the Uniform Benelux Trademark Law, which recently entered into force, allows for the registration of three-dimensional objects as trademarks (Article 1).

In the Netherlands, the Copyright Act of 1912 is, in principle, the hasis for design protection, and Limperg amply discusses tbe requirements with which a design must comply in order to obtain protection under that Act, namely, a certain degree of originality, novelty and artistic quality.

It is evident that, in many instances, it is extremely difficult to jndge whether or not a given design combines sufficiently all these aspects, and the author cites many interesting cases in whicb the varions aspects are discussed in relation to sncb articles as nnrses' nniforms, furnitnre, stoves, carrycots, lamps and pipes.

The criteria to he applied with respect to the degree of artistic quality are particularly difficult to define. The author supports those formulated in this respect hy the High Court of Amsterdam and according to which the artistic qnality required depends on the functional requirements of the object. In order to benefit from copyright protection, an ohject intended for daily nse need not bave the artistic qnality of a rare work of art.

In practice, once attacked for plagiarism, parties tend to defend their designs by arguing on the hasis of long lists of minor differences. The anthor ohjects to such practice and cites jndicial decisions clearly stating the principle that tbe only decisive differences are differences in the overall impression of the designs to he compared.

Protection of designs can also he claimed in the Netherlands on the basis of the most notorious provision of civil law, namely, Article 1401 of the Dntch Civil Code. Here the essential principle is that imitation sbould be allowed, unless the imitated design is itself protected and unless the desired effect could have been obtained in some otber way. The author cites numerons conrt decisions showing that, up to certain limits, this socio-ethical principle and this anti-monopolistic pbilosophy are generally accepted, even by tbe Dntch Supreme Conrt.

In his book, Limperg depicts the present situation against the background of the development of international cooperation in the field of design protection and discusses the Hague Agreement of 1925 and its subsequent revisions at London (1934), The Hague (1960), Monaco (1961) and Stockholm (1967), the Berne Convention and the Universal Copyright Convention, the last-mentioned of which the Netherlands acceded to only in June 1967.

In a separate chapter, the author discusses the Benelux Convention and Uniform Law on Designs and Models, of October 25, 1966, ratified by Belgium, but not yet by Luxembourg or the Netherlands, though in the latter country discussions in Parliament can be expected to take place shortly.

Altogether, Limperg's book, which also served as the basis for his doctoral thesis, can be considered an important contribution to the understanding of the complicated subject of design protection. His comprehensive study gives, so to speak, a close-up of the situation in the Netherlands as at present and as a basis for the future development of design law under a more specific and, at the same time, supranational Benelux law system. C. W.

CALENDAR

WIPO Meetings

February 12 to 16, 1973 (London) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

March 20 to 30, 1973 (Stockholm) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

April 2 to 6, 1973 (Stockholm) — International Patent Classification (IPC) — Joint ad hoc Committee

April 9 to 13, 1973 (Geneva) — Committee of Experts on a Model Law for Developing Countries on Appellations of Origin
Object: **To study a Draft Model Law — *Invitations:* Developing countries members of the United Nations — *Observers:* Intergovernmental and international non-governmental organizations concerned**

April 9 to 13, 1973 (Geneva) — ICIREPAT — Technical Committee for Computerization

April 25 to 30, 1973 (Geneva) — Patent Cooperation Treaty (PCT) — Standing Subcommittee of the Interim Committee for Technical Cooperation

April 30 to May 4, 1973 (Geneva) — ICIREPAT — Technical Committee for Standardization

May 7 to 11, 1973 (Geneva) — ICIREPAT — Technical Committee for Shared Systems

May 17 to June 12, 1973 (Vienna) — Diplomatic Conference on: (a) the International Registration of Marks, (b) the International Classification of the Figurative Elements of Marks, (c) the Protection of Type Faces

June 4 to 8, 1973 (*) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

June 18 to 22, 1973 (*) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

June 27 to 29, 1973 (Geneva) — ICIREPAT — Technical Coordination Committee

July 2 to 6, 1973 (*) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee

July 2 to 11, 1973 (Nairobi) — Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission Via Space Satellites
Note: Meeting convened jointly with Unesco.

July 9 to 13, 1973 (*) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

September 10 to 14, 1973 (*) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

October 22 to 26, 1973 (Tokyo) — Patent Cooperation Treaty (PCT) — Interim Committees

October 29 to November 2, 1973 (*) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

November 5 to 9, 1973 (*) — International Patent Classification (IPC) — Joint ad hoc Committee

November 14 to 16, 1973 (Geneva) — ICIREPAT — Plenary Committee

November 19 to 27, 1973 (Geneva) — Administrative Bodies of WIPO (General Assembly, Conference, Coordination Committee) and of the Paris, Berne, Madrid, Nice, Lisbon and Locarno Unions (Assemblies, Conferences of Representatives, Executive Committees)

November 28 to 30, 1973 (Geneva) — Working Group on Scientific Discoveries

December 3 to 11, 1973 (Paris) — Sessions of the Executive Committee of the Berne Union and of the Intergovernmental Committees established by the Rome Convention (Neighboring Rights) and the Universal Copyright Convention

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* Place to be notified later.

UPOV Meetings

March 13 and 14, 1973 (Geneva) — Technical Steering Committee

Jnly 2 to 6, 1973 (London/Cambridge) — Symposinm on Plant Breeders' Rights

Meetings of Other International Organizations concerned with Intellectual Property

February 13 to 23, 1973 (Brussels) — European Economic Community — " Community Patent " Working Party

May 20 to 26, 1973 (Rio de Janeiro) — International Chamber of Commerce — Congress

September 10 to October 6, 1973 (Munich) — Diplomatic Conference on a European Patent Convention

September 24 to 28, 1973 (Budapest) — International Association for the Protection of Industrial Property — Symposium

October 28 to November 3, 1973 (Jernsalem) — International Writers Guild — Congress

VACANCY IN WIPO

Competition No. 198

Counsellor

(or " Legal Assistant " *)

Legislation and Regional Agreements Section

(Industrial Property Division)

Category and grade: P.4/P.3, according to qnalifications and experience of the selected candidate.

Principal duties:

The incnmbent will assist the Head of the Legislation and Regional Agreements Section in carrying ont the duties which fall under the competence of the above-mentioned Section. In particnlar, he will have the following dnties:

(a) preparing drafts of industrial property model laws and regulations for developing conntries and commentaries thereon (including all preparatory documents for meetings of expert committees); acting as assistant secretary in WIPO meetings dealing with these matters;

(b) undertaking studies on questions relating to regional indnstrial property agreements;

(c) undertaking studies on particular aspects of indnstrial property protection, such as license agreements, know-how and trade secrets, as well as studies concerning the role of indnstrial property in developing countries;

(d) representing WIPO in meetings of other international organizations dealing with the questions referred to under *(a)* through *(c)*.

Qualifications required **:*

(a) University degree in law or qualifications equivalent to such a degree;

(b) wide experience in industrial property law (including its international aspects); thorough knowledge of at least one national law in this field;

(c) ability to nndertake legal studies involving critical analysis and to draft legislative texts (i. e. model laws);

(d) ability to act as a representative of WIPO in specialized meetings related to the above-mentioned duties;

(e) excellent knowledge of English; at least a good knowledge of French; knowledge of other major languages wonld be an advantage.

Nationality:

Candidates must be nationals of one of the Member States of WIPO or of the Paris or Berne Unions. Qualifications being equal, preference will be given to candidates who are nationals of States of which no national is on the staff of WIPO.

Type of appointment:

Probationary period of two years, after satisfactory completion of which a permanent appointment will be offered.

Age limit:

Candidates must be under fifty at date of appointment.

Date of entry on duty:

To be agreed.

Applications:

Application forms and full information regarding the *conditions of employment* may be obtained from the Head of the Administrative Division, WIPO, 32, chemin des Colombettes, 1211 Geneva, Switzerland. Please refer to the number of the competition.

Closing date: January 31, 1973.

* Title applicable if appointment at P.3 level.

** The full range of these qualifications corresponds to an appointment at the P. 4 level.