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yet become Members of the new Intellectual Property Organization and the assemblies of the Unions. In this connection, at the joint meeting, tribute was once again paid to Switzerland, which, for nearly a century, has carried out with dignity functions permitting

the Unions to be administered wisely, and which, today, agrees to carry on—even though on a somewhat reduced scale—this function.

[This Report was unanimously adopted by Main Committee IV in its meeting on July 10, 1967.]

Records of the Diplomatic Conference for the Revision of the Berne Convention

(Paris, July 5 to 24, 1971)

GENERAL REPORT

Unanimously adopted on July 22, 1971
by the Plenary Conference
(July 23, 1971, Original French, document
B/DC/36)

1. Convening, purpose and composition of the Conference

1. In accordance with the decisions of the competent bodies of the Berne Union, the Director General of the World Intellectual Property Organization (WIPO) convened a Diplomatic Conference (hereinafter called 'the Conference') for the revision of the Berne Convention for the Protection of Literary and Artistic Works (hereinafter called 'the Convention'). This was held at Paris from July 5 to 24, 1971. The Universal Copyright Convention was also revised at the same place and dates.

2. The purpose of the Conference was on the one hand to revise the provisions relating to the developing countries contained in the Stockholm Act (1967) of the Convention, and on the other hand to introduce in the final clauses of the said Act the modifications consequent upon that revision.

3. Delegations of the following 48 countries, members of the Berne Union, participated in the work of the Conference: Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Canada, Ceylon, Chile, Congo*, Congo (Democratic Republic of the)**, Cyprus,

Czechoslovakia, Denmark, Finland, France, Gabon, Germany (Federal Republic of), Greece, Holy See, Hungary, India, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Liechtenstein, Luxembourg, Morocco, Mexico, Monaco, Netherlands, Niger, Norway, Pakistan, Portugal, Senegal, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, Uruguay, Yugoslavia.

4. The Delegations of Czechoslovakia and Hungary protested against the fact that the German Democratic Republic had not been invited to the part in the Conference. The Delegation of Chile made the same protest, and also declared that it did not consider the observers of the Republic of China as empowered to represent the people of China. The Delegation of India associated itself with this latter declaration.

5. Delegations of the following 27 States, members of the United Nations or of one or more organizations of the United Nations system but not members of the Berne Union, participated in the work of the Conference as observers: Algeria, Bolivia, Central African Republic, Chad, China (Republic of), Costa Rica, Dominican Republic, Ecuador, Guatemala, Iran, Iraq, Kenya, Khmer Republic, Laos, Liberia, Malawi, Malaysia, Mauritania, Nicaragua, Republic of Viet-Nam, Rwanda,

* This is the People's Republic of the Congo.

** This State has since changed its name; at the time of publication of these *Records* it is designated as 'Zaire'.

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Sudan, Syria, Tanzania, Togo, United Arab Republic, United States of America.

6. WIPO was represented by its Director General, Professor G. H. C. Bodenhausen, and subsequently by its First Deputy Director General, Dr. Arpad Bogsch.

7. Four intergovernmental organizations (the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (Unesco), the Council of Europe and the African and Malagasy Industrial property Office (OAMPI)), and nineteen international non-governmental organizations were represented by observers.

8. In total, nearly three hundred persons were present.

9. On the proposal of the Delegation of the United Kingdom, supported by the Delegations of Italy, Germany (Federal Republic), Spain and the Ivory Coast, His Excellency Ambassador Pierre Charpentier, Head of the Delegation of France, was elected President of the Conference by acclamation.

10. The Conference adopted the provisional Agenda submitted to it in document B/DC/1.

11. After introducing some modifications, the Conference adopted the draft Rules of Procedure prepared by the Permanent Committee of the Berne Union at its extraordinary session in September 1970 (document B/DC/2). The final text of the Rules of Procedure of the Conference is contained in document B/DC/8, modified by the substitution of the word 'nine' for the word 'eight' in Rule 10.

12. The following nine persons were elected Vice-Presidents of the Conference: Mr. J. P. Harkins (Australia), His Excellency Ambassador Everaldo Dayrell de Lima (Brazil), Mr. P.M.D. Fernando (Ceylon), Mr. Léopold Lutété (Congo, Democratic Republic of the), Mr. István Timár (Hungary), Mr. Abderrazak Zerrad (Morocco), Mr. Ulf Nordenson (Sweden), Professor Mario M. Pedruzzini (Switzerland), His Excellency Mr. Aleksandar Jelić (Yugoslavia).

13. The post of General Rapporteur was assigned to the Head of the Delegation of Senegal.

14. On the proposal of the Delegation of India, supported by the Delegations of the

Netherlands, Canada, Italy and France, professor Eugen Ulmer (Germany (Federal Republic)) was elected Chairman of the Main Commission. On the proposal of the Delegation of Spain, supported by the Delegation of the United Kingdom, His Excellency Ambassador Francisco Cuevas-Cancino (Mexico) and Mr. Abderrazak Zerrad (Morocco) were elected Vice-Chairmen of the Main Commission.

15. The Conference, on the proposal of the President, elected the representatives of the following countries as members of the Credentials Committee: Czechoslovakia, Germany (Federal Republic), Italy, Ivory Coast, Japan, Spain, Uruguay. During the Conference the Credentials Committee met on several occasions under the chairmanship of His Excellency Ambassador Yoshihiro Nakayama (Japan), its Chairman, or of Mr. Bernard Dadié (Ivory Coast), its Vice-Chairman. It examined the credentials of delegations and reported on its work to the Conference (documents B/DC/14 and 30).

16. The Conference, on the proposal of the President, elected the representatives of the following countries as members of the Drafting Committee: Argentina, Canada, France, India, Japan, Netherlands, Sweden, Tunisia, United Kingdom. The Drafting Committee elected Mr. William Wallace (United Kingdom) and Mr. Werner Ludwig Haardt (Netherlands) as its Chairman and Vice-Chairman respectively. The Drafting Committee held several meetings in order to put the revised text of the Convention into final form. Documents B/DC/24, 27 and 28 reflect the result of its work.

17. Mr. Claude Masouyé (WIPO) and Mr. Mihailo Stojanović (WIPO) acted as Secretary General of the Conference and Assistant Secretary General respectively.

II. Consideration of the draft text of the Convention

18. The Conference started its work in a plenary meeting in which general declarations were made. The same meeting decided that the instrument to be adopted should contain both the provisions which were and those which were not the subject of the Conference. Thus

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the new instrument is an 'Act' to be known as 'the Paris Act,' rather than an Act 'additional to the Stockholm Act.' (The International Bureau had, before the Conference, prepared drafts of both a self-contained and an additional Act.)

19. (a) The provisions which have not been the subject of the Conference and thus are incorporated in the Paris Act with exactly the same content and in exactly the same form as they appear in the 1967 Stockholm Act are the general substantive provisions (Articles 1 to 20) and the administrative provisions (Articles 22 to 26). This fact, in itself, proves that the Stockholm Conference had achieved success on most important points.

(b) Although the present Conference revised the special substantive provisions adopted at the Stockholm Conference concerning developing countries (and made consequential changes in the final clauses), it was generally recognized not only that the work of the Stockholm Conference was very important also as far as the questions concerning developing countries were concerned, but that, without that work, the present Conference could not have achieved the unanimous agreement which it had achieved in respect of those questions.

20. In order to underline the merits of the work accomplished at Stockholm, the Conference decided to express, in the preamble of the Paris Act, recognition of the importance of that work and to recall that the Articles referred to above were the result of the Stockholm, rather than the present, Conference.

21. Most of the rest of the discussions of the Conference took place in its Main Commission in which all the countries and all the organizations represented in the Conference had the right to participate and in which they all participated. The delegations representing developing countries held several meetings among themselves. These proved to be particularly useful in arriving at common positions among such countries on some of the more difficult issues.

22. The discussions were based (i) on the draft text prepared by the Permanent Committee of the Berne Union in 1970 (document B/DC/4) as slightly modified, on purely formal points, by the International Bureau of WIPO (document B/DC/5), (ii) on the observations made before

the Conference by governments and by interested organizations (documents B/DC/6 and 7), and (iii) on a number of amendments presented during the Conference by several delegations and working groups (documents B/DC/9 to 13, B/DC/15 to 23, B/DC/25 and 26 and B/DC/31 to 35). It is recalled that the text prepared by the Permanent Committee was, in turn, based on the work of several preparatory meetings, particularly those held in Washington in 1969 and in Geneva in May and September 1970 (see documents B/DC/3 and 4).

23. The discussions in the Plenary and in the Main Commission are reflected in the summary minutes. Consequently, this Report mainly mentions only those points which may be important for understanding the intentions of the Conference in adopting certain provisions and which the Conference agreed should be mentioned in this Report.

24. It is to be noted that several provisions in the Paris Act are similar to corresponding provisions in the Universal Copy right 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. These facts explain the relative brevity of the following passages of this Report. The points referred to in the previous paragraph are considered in the order in which they appear in the Paris Act.

Article 29^{bis}

25. The Conference noted a declaration of the Director General of WIPO to the effect that he would call the attention of the competent bodies of WIPO to this Article and would invite them, to note it for the purposes of the application of Article 14(2) of the Convention Establishing the World Intellectual Property Organization.

Article 36

26. It was understood that in countries according to the constitution of which treaties were self-executing to separate legislation was

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necessary to implement those provisions of the Convention which, by their nature, were susceptible of direct application.

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Article I(1)

27. It was understood that the expression 'country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations' did not allow for the drawing up of a list of such countries which would not be susceptible to changes in the future, not only because the stage of development of particular countries may change but also because the practice of the General Assembly may undergo changes in the sense that the criteria on which such practice is based may undergo changes. Whether any country is at any given time a developing country for the purposes of the Appendix would have to be decided on the basis of the practice of the General Assembly prevailing at the time relevant for deciding the question.

Article I(6)(a)

28. It was understood that this subparagraph did not modify the right of any country to apply the so-called 'comparison of terms' clause contained in Article 7(8).

Article II(2)

29. It was understood that the term 'national of such country' also covered legal entities, including the State itself, its national or local authorities, and enterprises owned by the State or such authorities.

30. (a) Furthermore, it was understood that the notion of 'a language in general use' in a country included languages in general use by less than the totality of the country's population. Thus, such a language could be a language in general use in a given geographic region of the country, the language of an ethnic group of the population, or a language generally used for particular purposes, such as government administration or education.

(b) It is to be noted that the expression in question also appears in other provisions of the Paris Act. It should be understood in the above sense in all such provisions also.

Article II(4)

31. Although the Delegation of India said that it interpreted the first sentence of this paragraph as meaning that the six or nine months period could start running before the expiration of the three or one year period (and thus the two kinds of periods could run concurrently), it was generally agreed that the six or nine months periods could not run concurrently with the three or one year periods since an application for a license for translation could validly be presented only after the expiration of the three or one year period and because the sense of the word 'further' was to bring out clearly that the six or nine months period is necessarily subsequent to the three or one year period.

Article II(6)

32. (a) This paragraph provides that the license to translate terminates if the owner of the right to translate himself publishes a translation satisfying certain conditions. One of them is that the said translation must have 'substantially the same content' as the translation which was published under the license. It was understood that this condition would be satisfied not only when the content of the translation of the owner was identical or almost so to the content of the translation made under a license but also when the former contained certain improvements, as would be the case, for example, when the content of a school book is updated.

(b) It was further understood that the licensee should be given reasonable notice by the owner of the right of translation, of the publication of a translation authorized by him, if the owner of the right is aware of the license.

Article II(9)(a) and (b)

33. It was understood that these subparagraphs do not affect or modify in any respect Article 11^{bis} of the Convention.

34. It was understood that the words 'made and acquired in accordance with the laws of the said country' in paragraph (9)(a)(i) mean that the copy must not be an infringing copy according to the laws of that country.

Article III(3)(ii)

35. It was noted that the English text uses the expression 'works of fiction, poetry, drama and music' and the French text '*œuvres qui*

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appartiennent au domaine de l'imagination, telles que romans, les œuvres poétiques, dramatiques et musicales,' but that the difference was merely one of form (unavoidable, because 'works of fiction' had, no exactly corresponding expression in French, and '*œuvres qui appartiennent au domaine de l'imagination*' had no exactly corresponding expression in English) whereas in substance they meant the same, and, in particular, the absence of the word '*roman*' in English did not mean that novels were not included, and that the use of the word '*roman*' in French did not mean that works of fiction shorter than novels were excluded.

Article III(7)(b)

36. This subparagraph applies when the reproduction is in audio-visual form—that is, a fixation containing both pictures and sound—and whether the audio-visual fixation constitutes itself a protected work or contains a protected work. It allows for the distribution of the reproductions of the fixation for the purposes and under the conditions provided for in the other provisions of Article III and the relevant provisions of Article IV.

Article IV(1)

37. It was understood that the request for authorization addressed to the owner of the right must indicate that, if such authorization is denied, the denial might serve as a basis for applying for a license under the Appendix.

38. Furthermore, it was understood that licenses under the Appendix may validly be applied for only when the applicable period under Article II(2)(a) or (3), or under Article III(3), has expired.

Article IV(2)

39. It was understood that where a license under Articles II or III is to be granted, the competent authority should take reasonable steps to ensure that the owner of the right has an opportunity to be aware of the application and to take such measures as may seem to him appropriate.

Article IV(4)(a)

40. It follows from the provisions of Article IV(4)(a), prohibiting the export of copies and prescribing that the license shall be valid only for publication in the territory of the country where

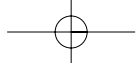
it has been applied for, that these provisions are considered as prohibiting a licensee from having copies reproduced outside the territory of the country granting the license. However, it was understood that this prohibition does not apply under the following conditions:

- (a) the country granting the license has within its territory, no printing or reproduction facilities, or such facilities exist 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 a 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).

41. (a) It was also understood that the foregoing conditions only apply to works published in printed or analogous forms of reproduction and to the incorporation in audio-visual fixations of translated texts.

(b) It was further understood that these provisions do not require any country in which the copies are reproduced to permit what would otherwise be an infringement of copyright under its law.

42. It was generally accepted that nothing in Articles II, III and IV prohibited a compulsory licensee from employing a translator in another country, or other compulsory licensees, licensed to publish a translation in the same language in other countries, from using the same translation, assuming, of course, that the translation has not already been published. The



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same interpretation applies with respect to persons entrusted with doing the preparatory editorial work.

Article IV(4)(c)(iii)

43. It was understood that the expression 'without commercial purpose' did not mean

that the public entity could not charge a price for each copy; what it meant was that the price, if any, could not include any profit or financial gain for the entity, but could merely enable it to recover its costs.

