### Reports of the Various Diplomatic Conferences

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Preliminaries to the Conference

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

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

(1) to consider the state of legislation on literary property in various countries;
(2) to consider the important points on which it is possible to achieve unification for the purposes of a Literary Property Union;
(3) to draft clear and concise articles, summarizing the principles acceptable to all nations, to constitute the text of a universal convention.

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

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

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

Article 1. The authors of literary and artistic works that have appeared or been presented or performed in one of the Contracting States, on the sole condition that they comply with the formalities laid down by the law of that country, shall enjoy, for the protection of their works in the other States of the Union, regardless moreover of their nationality, the same rights as nationals.
Article 2. The expression 'literary and artistic works' shall include: books, pamphlets or any other writings; dramatic or dramatico-musical works, musical compositions with or without words and arrangements of music; works of drawing, painting, sculpture and engraving, lithographs, maps, plans, scientific diagrams, and in general any literary, scientific and artistic work that may be published by any system of printing or reproduction.

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

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

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

That right shall include the rights of publication or performance.

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

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

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

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

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

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

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

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

'However, whatever may be the advantages offered by those conventions, it has to be acknowledged that they are far from affording uniform, efficacious and full protection of authors' rights. This shortcoming is unquestionably related to the diversity of national legislation, which the system introduced by the Convention has necessarily had to take into consideration.
The inequalities and indeed serious gaps in present international law were bound to have a serious effect on those concerned, authors, publishers or other entitled persons. This is why we see the utmost efforts being made on their part to bring about, on the one hand, the universal recognition of the rights of authors without distinction as to nationality, and on the other hand the desirable uniformity in the principles governing the subject.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**Programme Proposed by the Swiss Federal Council for the International Conference of September 8, 1884 in Berne**

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

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

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

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

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

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

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

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

9. Any infringing work may be seized on import into those countries of the Union where the original work enjoys legal protection. The seizure shall take place in accordance with the domestic legislation of each country, at the request either of the Public Prosecutor or of the interested party.

10. Adaptation shall be considered infringement and proceeded against in the same way.
11. This Convention shall apply to all works that have not yet fallen into the public domain in the country of origin at the time of its entry into force.  
12. It is understood that the High Contracting Parties reserve the right to make special arrangements between themselves for the protection of literary and artistic works, provided always that such arrangements in no way contravene the provisions of this Convention.  
13. An international bureau shall be established, under the name of 'Bureau of the International Union for the Protection of Literary and Artistic Works.' This Bureau, the expenses of which shall be borne by the administrations of all the Contracting States, shall be placed under the high authority of . . . . , and shall work under its supervision. The functions of the Bureau shall be determined by common consent between the countries of the Union.  
14. This Convention shall be subject to periodical revision for the purpose of introducing therein amendments intended to perfect the system of the Union.  
To that end, Conferences shall be held successively in one of the Contracting States between delegates of those States.  
The next meeting shall take place in . . . . (place), in . . . . . (year).  
15. States that have not become party to this Convention shall be allowed to accede to it on application.  
Such accession shall be notified in writing to the Government of . . . . , and by it to all the others.  
Such accession shall imply full acceptance of all the clauses and admission to all the advantages provided for in this Convention.  
16. The implementation of the mutual commitments written into this Convention shall be subject, as necessary, to compliance with the formalities and rules laid down by the constitutional laws of those of the High Contracting Parties that are bound to propose the application thereof, which they undertake to do within the shortest possible time.  
17. This Convention shall be put in force as from . . . . , and shall remain in force for an indefinite period until the expiry of one year from the day on which it is denounced.  

Such denunciation shall be made to the Government authorized to receive accessions. It shall only take effect for the State making it, the Convention remaining in full force and effect for the other Contracting Parties.  
18. This Convention shall be ratified, and the ratifications exchanged at . . . . within one year at the latest.  

Transitional Provision

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

Final Protocol

At the time of effecting the signature of the Convention concluded this day, the undersigned Plenipotentiaries have agreed as follows:  
1. It is understood that the final provision of Article 2 of the Convention is without any prejudice to the legislation of each of the Contracting States concerning the procedure to be followed before the courts and the competence of those courts.  
2. The definition of the words 'arrangements of music' (Article 4 of the Convention) shall not cover pieces reproduced by automatic instruments such as electric pianos, music boxes, fairground organs, etc.  
3. The exact meaning of the word 'adaptation' requires definition.  
4. The International Bureau has to be organized; its budget and the contributions of the States of the Union have to be decided upon.  
Functions. The International Bureau shall collect all kinds of information regarding the protection of the rights of authors in their literary and artistic works, and arrange them into a general statistical work to be distributed to all administrations. It shall receive from each administration a list of the works registered by
it, and communicate that list to all the other administrations. It shall undertake studies on questions of general interest concerning the Union and, with the aid of documents placed at its disposal by the various administrations, shall publish a periodical review in French on the questions which concern the purpose of the Union.

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

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

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

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

The official language of the International Bureau shall be French.

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

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**Minutes of the First Meeting of the Conference for the Protection of Authors’ Rights**

**September 8, 1884**

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

**Austria-Hungary**

*For Austria:*

Dr. Emil Steinbach, Ministerial Counsellor at the Ministry of Justice of Austria.

*For Hungary:*

Mr. Jules Zádor, Counsellor at the Ministry of Justice of Hungary.

**Belgium**

Count G. Errembault de Dudzecle, Counsellor at the Belgian Legation, Berne.

**France**

H. E. Mr. Emmanuel Arago, Senator, Ambassador of France to the Swiss Confederation, Berne.

Mr. Louis Ulbach, President of the International Literary Association.

**Germany**

Mr. Reichardt, Private Legation Counsellor, Reporting Counsellor to the Foreign Affairs Department of the German Empire.

Dr. Meyer, Private Regency Counsellor to the Department of Justice of the German Empire.

Dr. Dambach, Senior Private Counsellor for Posts, Professor of Law at the University of Berlin.

**Great Britain**

H.E. Mr. F.O. Adams, C.B., Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty in Switzerland.

**Haiti**

Dr. Louis-Joseph Janvier, Diplomate of the School of Political Science of Paris.

**Italy**

(A Delegation was announced, but the names of the Delegates, who were not yet at Berne, had not yet been notified.)
Appendix

Netherlands
Mr. B.L. Verwey, Consul General of His Majesty the King of the Netherlands to the Swiss Confederation.

Sweden and Norway
Mr. A. Lagerheim, Secretary General of the Ministry of Foreign Affairs.

For Norway:
Mr. F. Baetzmann, Honorary Vice-President of the International Literary Association.

Switzerland
Federal Councillor Louis Ruchonnet, Head of the Federal Department of Justice and Police.

Federal Councillor Numa Droz, Head of the Federal Department of Commerce and Agriculture.

Mr. A. d’Orelli, Professor of Law at the University of Zurich.

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

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

‘Gentlemen,

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

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

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

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

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

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

'A first question that will present itself to you for consideration is that of the system that is to serve as a basis for a general convention. Should one agree to each State having to apply national treatment for foreigners, or, as certain legal advisors have proposed, to the author being as it were followed in every State by the law of his country of origin? If, as the Federal Council proposes, the first system is adopted, how is the term of protection, which varies so much from State to State, to be calculated? Will it be according to the law of the country of origin or according to national law? Alternatively will both be taken as the basis, on the principle that the term will not, in any State, exceed that granted in the country of origin? Or again, will this point be left to be dealt with in special conventions? Each of the systems has its advantages and drawbacks. Your enlightened discussion will serve to highlight them all in turn, after which it will be easier to make an informed choice. Without wishing to encroach on the deliberations that are about to start, I take the liberty of saying that, if a uniform solution can be accepted, whatever it may be, it will be better than the diversity—or, dare I say it, the confusion—that reigns in the individual conventions at present.

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

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

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

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

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

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

‘Gentlemen,

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

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

Mr. Droz accepted and thanked the delegates.

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

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

The President noted that the names of all the delegates present had been notified to the Federal Council by the governments concerned, so that their official status was duly established. With regard to the nature of the powers invested in them, as for the time being it had only to be considered whether it was possible to lay the foundations of a general agreement which would then have to be submitted to governments for examination and eventually, if appropriate, incorporated in a diplomatic convention, the President proposed, subject to whatever discussion might occur at the time of the draft Rules of Procedure (Rules 5 and 7), that the Conference confine itself to noting the fact that all the delegates had indeed received official instructions to represent their governments at the Conference.

The assembly declared itself in agreement with the above view.

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

**Rule 1**
The French language is adopted for the discussions and for the Records of the Conference.

**Rule 2**
A general discussion shall take place on the principles that should form the basis for a convention. Then the Programme proposed by the Federal Council shall be referred for examination to a Committee on which each State shall be represented.

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

**Rule 3**
As a general rule, every proposal shall be handed to the President in writing.

**Rule 4**
Before proceeding to vote on an article or group of articles, the Conference may refer them back to the Committee for further examination.

**Rule 5**
Voting shall be by names of States, called out in their alphabetical order in French. Each delegation shall have one vote.

**Rule 6**
The minutes shall give a concise account of the deliberations. They shall report all the proposals made in the course of the discussion, with the results of votes; they shall also give a summary account of the arguments put forward.

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

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

**Rule 7**
The draft Convention that results from the deliberations shall be subjected to final editing. Thereafter, if appropriate, a Protocol shall be signed recording the results of the deliberations and accompanied where appropriate by the draft Convention, which moreover shall remain subject to examination by the Governments concerned.

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

In addition, the following reservations and declarations were made:

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

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

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

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

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

Mr. Lagerheim, the Delegate of Sweden, declared that he would take part in the discussions and in the voting of the Conference, but that he could not commit his Government in any respect whatever.
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Mr. Baetzmann, for his part, made the following statement as Delegate of Norway:

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

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

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

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

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

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

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

The meeting rose at 11.30 a.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

president

CHARLES SOLDAN       BERNARD FREY

Secretaries

MINUTES
OF THE
SECOND MEETING
OF THE
CONFERENCE FOR THE
PROTECTION OF AUTHORS’
RIGHTS

September 9, 1884

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 10.10 a.m.

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

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

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

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

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

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

Counsellor Reichardt addressed the delegates as follows:

‘Gentlemen,

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

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

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

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

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

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

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

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

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

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

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

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

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

'The Conference,
'Considering that, however desirable international codification of the principles governing the protection of the rights of authors may be, it is to be feared that such a project, in view of the difference of existing laws and conventions, may delay for a long time the conclusion of a general agreement;
'Considering further that the main objective to be achieved, for the time being, is the establishment of a Union whose subsequent development will bring the desired uniformity,
'Resolve that
'I. The foundations have to be laid of an international Convention to which the greatest possible number of States may accede immediately;
'II. Resolutions have to be made concerning the principles whose uniform introduction in laws and conventions is recommended to States.'

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

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

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

Question 1

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

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

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

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

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

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

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

Question 2

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

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

Question 3

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

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

Question 4

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

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

This view was endorsed by the Conference.

Question 5

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

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

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

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

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

Question 6

‘In line with what has been accepted for practically all literary conventions at present in
Appendix

force, would it not be appropriate to establish, for
the whole Union, the reciprocal right:

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

‘(b) To publish, under certain conditions,
chrestomathies consisting of fragments of
works by various authors, without the lat-
ter’s consent?

‘(c) To reproduce, in the original or in
translation, articles excerpted from newspa-
pers or periodical journals, with the excep-
tion of serialized novels and articles on
science or art?

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

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

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

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

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

Question 7

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

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

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

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

Federal Councillor Ruchonnet said that
Switzerland would endorse the assimilation.

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

At the request of the French Delegation, the
vote on Question 7 was adjourned.
The next meeting was to take place on the following day, Wednesday, at 10 a.m.

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

The meeting rose at 1 p.m.

IN THE NAME OF THE
CONFERENCE:

NUMA DROZ
President

CHARLES SOLDAN BERNARD FREY
Secretaries

MINUTES
OF THE
THIRD MEETING
OF THE
CONFERENCE FOR THE
PROTECTION OF AUTHORS’
RIGHTS

September 10, 1884

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 10.15 a.m.

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

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

Question 8

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

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

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

The proposal was adopted.

Question 9

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

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

Question 10

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

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

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

Dr. Dambach contested the above view, and mentioned that in recent months a German committee of experts had recognized the impossibility of defining the term concerned. Either adaptation was a disguised infringement—and in that case it was punished as such—or the changes made to the original work were so great that in fact a new work was involved, which itself was entitled to protection. The assessment of the question had in each specific case to be left to the courts, which so far had had no difficulty in settling them.

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

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

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

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

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

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

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

Question 11

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

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

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

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

In the sense indicated by the President, the Conference replied affirmatively to Question 11.

Question 12

‘Is it not in the light of the same considerations that the matter of the maintenance of conventions at present in force should be resolved?’ (Transitional Provision of the Programme)

Following an exchange of comments between Mr. Reichardt, Mr. Lavollée and the
President on the scope of the transitional provision proposed by the Federal Council, the question was referred to the Committee for examination.

Mr. Reichardt said that, in the opinion of the German Delegation, the decision to be taken on Questions 11 and 12 was contingent on the one that would be taken on Question 6.

Question 13
‘Should it not be specified, subject to the usual reservations and conditions in favour of acquired rights, that the projected Convention will be retroactive?’ (Article 11 of the Programme; Article 8 of the 1883 draft)

Mr. Reichardt explained that by acquired rights he meant those that related to copies of works, and also objects specially intended for reproduction that were completed or in the process of being completed on the entry into force of the Convention, but that, apart from that, the Convention should be retroactive.

Question 13 was referred to the Committee.

Question 14
‘As the formality of registration or deposit is not required by the legislation of all the Contracting States, would it not be appropriate to include a clause in the Convention exempting the persons concerned, in the event of judicial dispute, from providing formal proof of their copyright?’

Dr. Dambach said that German law had removed the formality of registration and replaced it with a set of legal presumptions, the effect of which was to give the author greater latitude for the assertion of his rights. A number of conventions had established the same principle, and it would certainly be a great step forward if it were written into the General Convention.

Mr. Lavollée said that the French Delegation agreed with the German on that point.

H.E. Mr. F.O. Adams made the following statement:
‘According to present English law, works have to be duly registered in the United Kingdom, and copies of the works so registered have to be deposited with the British Museum. For translations, formalities also have to be complied with that are not required by the legislation of other countries. It is for that reason that Great Britain was recently unable to conclude a convention with Switzerland, where such formalities do not exist. I am not questioning the subject; I merely wish to give an account of the present state of English law.’

The Conference decided to refer Question 14 to the Committee in line with the wish expressed by the German Delegation.

As the discussion of the questionnaire proposed by the German Delegation ended at that point, the President asked the German Delegates whether they were able to submit to the Conference the draft resolution announced at the first meeting, which concerned the international codification of the provisions governing copyright.

Mr. Reichardt announced that the draft would be presented at the time of the discussion of Article 14 of the Programme.

Proceeding to another matter, Mr. Reichardt asked the Conference whether it understood, as he gathered it was, that admission to the Union would be granted only to those States whose legislation protected copyright.

The Conference declared its agreement with the above view.

The general discussion provided for in Rule 2 of the Rules of Procedure was closed. The Conference would proceed with the discussion of the Programme proposed by the Federal Council as soon as it had been considered by the Committee, in accordance with the provisions of the Rule mentioned.

The Conference was to meet on the following day, Thursday, at 9.30 a.m., to approve the minutes of the previous two meetings; after that the Committee would begin its work.

The meeting rose at noon.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN  BERNARD FREY

Secretaries
Appendix

Minutes of the Fourth Meeting of the Conference for the Protection of Authors’ Rights
September 11, 1884
Presided over by Federal Councillor Numa Droz, President

The meeting opened at 9.30 a.m.

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

The minutes of the second and third meetings, which had been submitted to the delegates in draft form, were adopted with a number of amendments requested by Mr. Reichardt and Mr. Lagerheim.

The President arranged for the distribution to the participants in the Conference of a French translation of the Swedish law on literary and artistic property, which Mr. Lagerheim had handed to him for that purpose, and addressed the assembly’s thanks to the Delegate of Sweden.

The meeting rose at 9.45 a.m.

IN THE NAME OF THE CONFERENCE:
NUMA DROZ
President

CHARLES SOLDAN
BERNARD FREY
Secretaries

Conference for the Protection of Authors’ Rights
September 17, 1884
Presided over by Federal Councillor Numa Droz, President

The meeting opened at 4.10 p.m.

The following were present: the delegates who had attended the previous meeting, with in addition Dr. R. Thurmann, former Rector of the National Institute of Costa Rica and Delegate of the latter country. The President welcomed him on behalf of the Conference.

The minutes of the fourth meeting, which had been handed to the delegates in draft form, were adopted.

The President made the following communications to the Conference:
(1) Mr. Auguste Meulemans, Legation Secretary and Consul General of Paraguay in Paris, had informed the President of the Conference by telegraph that he had been delegated to that Conference by the Government he represented, and had asked to be entered on the list of delegates.

(2) It had transpired from a note from the Ministry of Foreign Affairs of the Kingdom of Italy that circumstances had prevented the Government of that country from sending a delegation, as it had announced it would. It nevertheless reserved the right to accede to the International Union after consideration of the results of the Conference, and requested that the latter be communicated to it.

(3) The Minister for Foreign Affairs of Brazil had telegraphed that his Government could not take part in the Conference, and that he would await communication of the resolutions taken by it before deciding on accession.

(4) The Government of the Argentine Republic had announced that lack of time had prevented it from sending a representative to the Conference. It nevertheless asked to be informed of the resolutions that would be taken during the proceedings, in order that it might accede if it considered such a step appropriate.
The Spanish Government had not been able to give instructions to a delegation.

(6) The Government of Portugal had not thought it necessary to be represented at the Conference; before taking a decision, it was awaiting the assessments made by governments more directly concerned with the question.

(7) Commendatore Felix Carotti of Florence and the International Association of Lawyers in Vienna had sent letters to the Conference expressing their support for the work that it was carrying out.

The President announced that, in accordance with Rule 2 of the Rules of Procedure, the Federal Council Programme had been considered by a Committee on which each State had been represented.

For examination of the subject in greater depth, two Sub-Committees had been appointed with the following membership, given in the alphabetical order of the French names of States:

(i) Drafting Committee:
   - Counsellor REICHARDT
   - Counsellor STEINBACH
   - Mr. LOUIS ULBACH
   - Mr. LAGERHEIM
   - Federal Councillor Numa Droz

(ii) Special Committee to consider the organization and functions of the projected International Bureau:
   - Dr. DAMBACH
   - Count G. ERREMBAULT DE DUDZEELE
   - Mr. René LAVOLLÉE
   - Mr. BAETZMANN
   - Professor D’ORELLI

The President announced that the Plenary Committee had held six meetings, and that the result of its discussions consisted of the following five documents, which he presented to the Conference:

(i) Draft Convention Concerning the Creation of a General Union for the Protection of Authors’ Rights;
(ii) Additional Article to the above Convention;
(iii) Final Protocol;
(iv) Recommended principles for subsequent unification;
(v) Final minutes of the Conference.

The President presented the report of the Committee on the basis of the notes provided by the Secretariat.

I. Draft Convention Concerning the Creation of a General Union for the Protection of Authors’ Rights

According to the proposals of the Committee, the title was adopted as transcribed above. The preamble was likewise accepted in the following form proposed by the Commission:

(Enumeration of the High Contracting Parties)

Being equally moved by the desire to protect effectively and as uniformly as possible the rights of authors in literary and artistic works,

Have resolved to conclude a Convention to that end, and have appointed the following as their Plenipotentiaries:

Who, after having exchanged their full powers, found to be in good form, have agreed on the following articles:

Article 1

(Article 1 of the Programme)

In its Programme, the Federal Council had proposed the following:

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

In a counter-proposal, the German Delegation had proposed the following text:

‘The Contracting Countries are constituted into a Union for the protection of the copyright in literary and artistic works.’

With regard to the title of the projected Convention, it had been observed within the Committee that it would not be accurate to speak of ‘the rights of authors,’ as it was in no way a question of regulating all the rights accruing to authors in relation to their literary and artistic works, for instance in their relations with the publisher, but merely of protecting a very special right, which in certain countries
was looked upon as a real right of ownership, whereas elsewhere it was regarded only as a personal right, albeit of a particular kind ("Urheberrecht"). Moreover, as the French expression 'droit d'auteur' was restricted by everyday language to the collection of the fee payable to the author, it seemed preferable to use a term that did not lend itself to misinterpretation. The use of the word 'authors' rights' had been intended to avert any misunderstanding regarding the purpose of the Union.

The expression 'Contracting Countries' had seemed preferable to 'Contracting States,' in view of the diversity of the national constitutions of the Contracting Parties, and the terminology adopted in that respect by comparable conventions. For the same reasons it had also been considered unnecessary to list the High Contracting Parties in Article 1.

Consequently, the Committee proposed that the provision be worded as follows:

**Article 1**

The Contracting Countries are constituted into a Union for the protection of authors' rights in literary and artistic works.

The above text was adopted without discussion.

**Article 2**

(Article 2 of the Programme)

The Federal Council Programme had proposed the following:

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

The following wording had been proposed by the German Delegation:

'Authors who are nationals of one of the Contracting Countries shall enjoy in all the other countries of the Union, in respect of their works, whether in manuscript or unpublished form or published in one of those countries, such advantages as the laws concerned do now or will hereafter grant to nationals.

'The enjoyment of the above rights shall be subject to compliance with the conditions of form and substance prescribed by the legislation of the country of origin of the work or, in the case of a manuscript or unpublished work, by the legislation of the country to which the author belongs.'

The Committee had agreed with the Delegates of Germany that the words 'subjects or citizens' did not correspond with perfect accuracy to the expressions used by the legislation of the various Contracting Countries. The term 'nationals,' on which it had decided, indicated clearly that the Convention was intended to protect all those authors who were natives of one of the countries of the Union.

The addition of the words 'whether in manuscript or unpublished form' was approved as a means of deleting the Article 5 proposed by the Federal Council.

By making the protection of a work subject to the condition that it be published in one of the countries forming part of the Union, the wording of the German Delegation made a restriction on the system proposed by the Federal Council. The Committee considered that such a restriction could be accepted, the word 'publish' having moreover to be understood in the sense attributed to it hitherto by legislation and case law.

A question that arises in connection with the above Article is whether national treatment has to be applied to foreign authors purely and simply, or whether on the contrary one should establish the principle written into, present literary conventions, according to which 'the protection reciprocally accorded to the authors of contracting countries shall be guaranteed to them only during the existence of their rights in their countries of origin, and the duration of the enjoyment of rights in the other country may not exceed that laid down by the law for national authors.'

From the point of view of drafting, the Committee had first considered that the second part of the above clause was in any case unnecessary, as it was implicit in the national treatment principle written into the
Convention that foreign authors could not be treated more favourably than nationals. As to substance, the Committee had acknowledged without hesitation that the setting of a uniform term of protection for the whole area of the Union would be a considerable step forward; it had therefore expressed the wish that the various States might concentrate their efforts in that direction, and they might at least agree to protect the work throughout the author's lifetime and for a certain time after his death. However, in view of the present diversity of all the various specific laws on that point, the Committee had had to disregard the solution concerned and pronounce on whether national treatment should be applied purely and simply to foreign authors or whether, on the contrary, it should benefit them only during the existence of their rights in their countries of origin. The latter alternative, proposed by the German Delegation, had originally been neither accepted nor rejected, the votes having been equally divided. Later it had been adopted by six votes to three. The Committee had moreover noted that, whatever the reply to the question might be, there was no escaping the drawbacks caused by a work having fallen into the public domain in one country while it was still protected in another.

With regard to the conditions required for the enjoyment of protection, the Committee had given preference to the wording proposed by the German Delegation; it had nevertheless substituted for the words 'conditions of form and substance' the expression 'formalities and conditions,' which had been proposed by the Federal Council, and which had seemed to it to encompass all the conditions and procedures specified in the country of origin for authors' rights to be secured.

In sum, the Committee proposed that Article 2 should have the following form:

**Article 2**

Authors who are nationals of one of the Contracting Countries shall enjoy in the other countries of the Union, for their works, whether in manuscript or unpublished form or published in one of those countries, the advantages which the laws concerned do now or may hereafter grant to nationals.

However, those advantages shall be reciprocally guaranteed to them only during the existence of their rights in their countries of origin.

The enjoyment of the above advantages shall be subject to the accomplishment of the formalities and conditions prescribed by the legislation of the country of origin of the work or, in the case of a manuscript or unpublished work, by the legislation of the country to which the author belongs.

On the subject of this Article Mr. Baetzmann made the following statement:

'Now that the result of the work of our distinguished Committee has become a draft that encompasses the subject area in its near entirety, and at the same time very explicitly defines the minimum of protection that has to be granted in each of the countries of the Union, I consider myself able to subscribe to the dual principle of national treatment and country of origin treatment. At the outset there was reason to fear that the clause on country of origin treatment might become too great a restriction on protection. As a result of the changes undergone by the draft that will be submitted to Governments for consideration, this risk seems to me to have disappeared, and I am therefore able today to vote for the second paragraph of Article 2.'

Mr. Ulbach said the following: 'Gentlemen, you have rejected the wording that to us seemed the simplest and which was at the same time, on the part of the French Delegation, the expression of a disinterested sentiment, as we were offering foreign authors more than we ourselves receive from their countries. I have no intention to make you reverse the successive votes of the Drafting Committee and the Plenary Committee. I do, however, wish to have this misprision of our generosity recorded in the minutes.

'It seemed to us quite simple for an author to accept the conditions of the country that extended its hospitality to him. It was a simple rule for the courts in the event of dispute; it was the best way of bringing about this equality, this uniformity in the duration of rights, which you consider fair, and which we consider indispensable. The States of the Union would have been in all the more of a hurry to align
themselves on France by setting at 50 years, like France, this protection after the author's lifetime.

'You have rejected this proposal with the mere expression of a wish that makes one hope for its realization. We thank you for that wish; we regret that, having found it necessary, you did not go further and make it unnecessary.'

Mr. Lagerheim recalled that he had set out within the Committee the reasons which according to him militated for the insertion in the Convention of the requirement contained in the second paragraph. Such a requirement would be capable of obviating a large number of contentious cases that would inevitably result from national treatment pure and simple. However, he had had to demand the insertion of this clause also on the ground that Sweden would not have been able to join the Union if by doing so it had been obliged to protect works which, in their country of origin, had fallen into the public domain. For him therefore the adoption of the paragraph was an absolute condition.

Dr. Meyer said the following: 'It is merely a question of noting that the wording proposed by the German Delegation, 'conditions of form and substance,' has been replaced by the words "formalities and conditions," and that the word "formalities," being taken as a synonym of the term "conditions of form," included, for instance, registration, deposit, etc.; whereas the expression "conditions," being in our view synonymous with "conditions of substance," includes, for instance, the completion of a translation within the prescribed period. Thus the words "formalities and conditions" cover all that has to be observed for the author's rights in relation to his work to come into being ("Voraussetzungen" in German), whereas the effects and consequences of protection ("Wirkungen" in German), notably with respect to the extent of protection, have to remain subject to the principle of treatment on the same footing as nationals.'

The President noted that the Conference agreed with Dr. Meyer on the scope of the words 'formalities and conditions.'

Mr. Lavollée drew attention to the deletion of the words with which, in the Federal Council draft, the second sentence of Article 2 started: 'Consequently, they shall have the same protection as those nationals and the same legal remedies against any violation of their rights.' That provision, which was to be found in practically all conventions at present in force, was indeed implicit in the general principle written into the first paragraph of the proposed Article; By formulating it expressly one might perhaps have prevented any uncertainty or hesitation in the mind of the authorities responsible for implementing the Convention. In any event, it had to be made clear that the change of form in no way altered the substance.

The President noted that the Conference agreed on the above point.

As no opposition had been expressed, Article 2 was adopted as proposed by the Committee.

Article 3

(Article 3 of the Programme)

According to the Federal Council Programme: 'The subjects or citizens of States not forming part of the Union who are domiciled, or have their works published, on the territory of one of the States of the Union shall be treated in the same way as the subjects or citizens of Contracting States.'

Originally, the German Delegation had proposed the outright deletion of this Article, on the ground that too-extensive facilities granted to foreigners would lessen the interest of accession to the Union for non-Contracting States. However, recognizing that the risk did not exist in relation to works whose publishers belonged to a country of the Union, the German Delegation had acknowledged in the course of the subsequent discussion that those publishers could be granted a direct right in respect of works whose author was not a national of a Contracting Country. That principle had been adopted by the Committee, which, taking account of a drafting amendment proposed by the French Delegation, had reinstated Article 3 in the following form:

Article 3

The provisions of Article 2 shall apply also to the publishers of literary or artistic works published in one of the countries of the
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Union, whose author comes from a country that does not belong to it.

On the subject of the above article, Mr. Lavollée made the following statement:

'The French Delegates were entrusted with supporting the original wording submitted by the Federal Council. In a treaty establishing an international union, it would have seemed preferable to retain a general formula recognizing the personal rights of authors rather than the restrictive provision that the specific demands of German legislation caused to prevail in the Franco-German Convention of April 19, 1883.

'In any event, the French Delegates would have wished to see the benefit of Article 3 extended to the works of authors resident on the territory of the Union, even where those works were published outside that territory. One example will suffice to justify our wish: a number of the works of Rossini, an Italian subject resident in France, have been performed for the first time in Italy. Had Italy not been a part of the Union, would those works of Rossini have had to be deprived of protection in France when, later, they were performed there? The fact of asking such a question seems to me to provide the answer.

'It should be pointed out moreover that the expression "domiciled" denotes not just residence, either temporary or secondary, but a principal and permanent establishment.'

Apart from his observation on the general scope of the Article, Mr. Lavollée expressed the view that, in the wording proposed by the Committee, the word ‘publisher’ should be understood in the broadest sense, so that it could, for instance, apply to the organizer of dramatic performances.

The Article was adopted in the form given above.

Article 4

(Article 4 of the Programme)

The Federal Council had proposed the following wording:

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

The German Delegation had proposed the following:

'The expression “literary and artistic work” shall include books, pamphlets or any other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of drawing, painting, sculpture and engraving; lithographs, illustrations, maps; plans, sketches and three-dimensional works relative to geography, topography, architecture or the natural sciences, and in general any production whatsoever in the literary, scientific or artistic domain.'

In accordance with what had been decided at the second meeting of the Conference, the Committee had deleted the mention of ‘arrangements of music,’ as that point was to be dealt with expressly or by implication in connection with the provisions concerning infringement or adaptation.

It had moreover agreed with the German Delegation regarding the special mention of ‘illustrations,’ and also regarding the precise indication of what was covered by ‘plans, sketches and three-dimensional works. On the other hand it had substituted the words ‘in general’ for the adjective ‘natural’ qualifying ‘sciences,’ which would have had the effect of restricting protection.

With regard to the phrase that ended the wording proposed by the German Delegation, it had been pointed out that it was not the purpose of the Convention to protect productions belonging to the scientific field that were not capable of being reproduced. In order to make that point clearer, it had been considered appropriate to complete the Article, using the drafting that ended it in the Federal Council proposal, with the word ‘mode’ substituted for ‘system.’

Finally, as the French Delegation had insisted on photographs being added to the enumeration of the works to be protected, the German Delegates had explained that their legislation in its present state did not allow them to accept the mention of photographs in the projected Convention. However, recognizing
that the protection of original photographs was appropriate, the Committee had decided to express the wish that it be introduced in the future.

As a result of the above decisions, the Committee had given Article 4 the following wording:

**Article 4**

The expression 'literary or artistic works' shall include books, pamphlets and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of drawing, painting, sculpture and engraving; lithographs, illustrations, maps; plans, sketches and plastic works relative to geography, topography, architecture or science in general; in fact, every production whatsoever in the literary, scientific or artistic domain which can be published by any mode of printing or reproduction.

Mr. Ulbach said the following: 'It is understood that the words “by any mode of printing or reproduction” do not exclude photography when it is used for the purposes of art or science, or when it is used to illustrate an instructive work on travel, ethnography, natural history or archaeology. It is understood that, while you may not wish to protect ordinary commercial photography at this stage, you will consider an artistic photograph that reproduces a masterpiece as being a reflection of that masterpiece, and worthy of respect, albeit not in the same capacity but at least by virtue of a sort of remote relationship.'

After an exchange of comments between Mr. Lavollée and the President it was understood that, while the enumeration in the above Article did not mention photographs, they nevertheless qualified for protection when they were the authorized reproduction of a work that was itself protected.

Article 4 was adopted.

**Article 5**

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

In view of the direct right of protection that Article 3 granted in certain cases to the publisher, the Committee had decided to complete the proposed wording with the additional mention of publishers.

Consequently, Article 5 had been drafted as follows:

The lawful agents or representatives of authors, or, in the case provided for in Article 3, those of publishers, shall in every respect enjoy the same rights as are granted by this Convention to the authors or publishers themselves.

Article 5 was adopted in this form.

**Article 6**

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

That right shall include the rights of publication or performance.

The following proposal had been presented by the German Delegation:

'Authors who are nationals of one of the countries of the Union shall, in all the other countries of the Union, enjoy the exclusive right of translation in relation to their works during ten years following the publication of the translation of their work authorized by them.'
The translation must be published in one of the countries of the Union. In order to qualify for the application of this provision, the said authorized translation must appear in its entirety within three years following the publication of the original work.

For works published in instalments, the three-year period specified in the foregoing paragraph shall be counted only as from the publication of the last instalment of the original work.

Where the translation of a work appears in instalments, the ten-year term provided for in the first paragraph shall also be counted only as from the appearance of the last such instalment.

It is understood that, for works composed of several volumes published at intervals, and also for bulletins or collections published by literary or scientific societies, or by private persons, each volume, bulletin or collection shall be considered a separate work with respect to the terms of ten years and three years.

For his part, Mr. Lagerheim had made the following proposal:

‘Authors who are nationals of one of the countries of the Union shall enjoy in each of the other countries of the Union the exclusive right of translation in relation to their works for ten years following the publication of the original work, provided however:

(i) that a complete authorized translation appears within three years following the publication of the original work;

(ii) that the said translation is published in one of the countries of the Union.

For works published in instalments, etc. (see the German draft).

Where the translation, etc. (ibidem).

It is understood that, etc. (ibidem).

‘It is understood that the exclusive right of translation shall extend only to the language or languages in which an authorized translation has appeared.’

Finally, the French Delegation had proposed that the Article be worded as follows:

‘Authors who are nationals of one of the Contracting Countries shall, in all other countries of the Union, enjoy the exclusive right to make or authorize the translation of their works throughout the duration of their rights in those works, the publication of an unauthorized translation being in all respects assimilated to the unlawful reprinting of the original work.

‘The translators of ancient works or modern works that have fallen into the public domain shall, with respect to their translations, enjoy the right of ownership and the guarantees deriving therefrom; they may not, however, object to the same works being translated by other writers.

‘The authors of dramatic or dramatico-musical works shall enjoy reciprocally the same rights concerning the translation or the performance of translations of their works.’

With respect to substance, the various wordings proposed diverged on the question whether or not the right of translation had to be assimilated to the exclusive right of reproduction with respect to its duration. Such assimilation had been emphatically demanded by the International Literary Association; it had been established by case law in France, and elsewhere by statute law, albeit with certain restrictions regarding the period within which the authorized translation had to have appeared. It had been argued in favour of outright assimilation that without it the protection of copyright would be illusory; moreover it was prejudiced to believe that the country that did not protect foreigners against translation was thereby doing a service to its nationals: it was indeed contrary to the nature of things for an author to refuse to authorize the translation of his work, but he did have an unquestionable interest in that translation being a good one, and that was what could not be secured otherwise than by protection. Those countries that had abandoned ancient prejudices to adopt the system of protection had recognized that, far from being harmful to national authors, on the contrary it favoured them strongly.

Acknowledging the validity of those arguments, the Committee had not hesitated to formulate the wish that the right of translation, with respect to its duration, be assimilated to the exclusive right of reproduction. It had noted however that, in view of the great diversity of specific legislation in that respect, it would hardly be possible to write the principle of
assimilation into a general convention at the present time; there were moreover all the fewer drawbacks to the introduction of lesser protection in the area concerned since, for the time being, it was merely a question of setting a minimum, and since the greater advantages provided for in specific conventions in that respect had to continue to accord reciprocal benefit to authors belonging to the Contracting Countries.

 Those considerations had led the Committee to give preference, with regard to the term of protection, to the proposal by the German Delegation, especially since Mr. Lagerheim had not pressed the proposal that he himself had made in opposition to it.

 As for the actual drafting of the Article, the Committee had considered, like Mr. Lagerheim, that the exclusive right of translation should not extend beyond the language or languages in which the authorized translation had appeared.

 It had also agreed, in accordance with a widely accepted practice, that the expression ‘exclusive right of translation’ included not only the author’s right to translate his work himself, but also his right to authorize its translation.

 For the various reasons set forth above, the Committee had adopted Article 6 in the following wording:

 *Article 6*

 Authors who are nationals of one of the countries of the Union shall enjoy, in all the other countries of the Union, the exclusive right of translation in relation to their works for ten years after the publication, in one of the countries of the Union, of the translation of their work authorized by them.

 In order to enjoy the benefits of the above provision, the complete authorized translation must appear within three years following the publication of the original work.

 For works published in instalments, the period of three years specified in the foregoing paragraph shall be calculated only as from the appearance of the last such instalment.

 In the case of works composed of several volumes published at intervals, and also for bulletins or collections published by literary or scientific societies, or by private persons, each volume, bulletin or collection shall, with regard to the periods of ten and three years, be considered a separate work.

 It is understood that the exclusive right of translation shall not extend beyond the language or languages in which an authorized translation has appeared.

 Mr. Lavollée felt bound, with regard to the matter of translation, to refer to the considerations that he had put forward at the second meeting of the Conference. The observations that had been exchanged within the Committee on that subject, which had brought about the adoption of the compromise formula at present being discussed, had not altered his opinion on that point. He remained convinced that the Conference could have voted for the wording proposed in Article 7 of the Federal Council Programme, which provided for full assimilation of the right of translation to that of reproduction.

 That principle, which France had been the first to establish in its case law, was no longer seriously contradicted anywhere in the world of letters, as demonstrated by the unanimous vote taken the previous year, also in Berne, by the International Literary Association. It had been given diplomatic consecration in a number of conventions: it was sufficient to mention those that France had signed in the last four years, namely with El Salvador (Convention of June 9, 1880, Article 5), with Spain (Convention of June 16, 1880, Article 3) and with Belgium (interpretative declaration of January 4, 1882). Switzerland had that day declared, in its proposal, its willingness to accept that same principle, and at the second meeting of the Conference the first Delegate of Germany had seen fit to express the opinion that the German Government might endorse full assimilation of the right of translation to copyright, provided that all the other countries also did so.

 The fact of that agreement between five of the States in which intellectual development had made the most progress, and the formulation
of the wish proposed by the Committee, were
certainly substantial results; it would, however,
have been desirable, and seemingly possible, to
make fuller and more definite progress had the
drafting presented by the Federal Council been
endorsed. Therefore, without absolutely reject-
ing the compromise Article that was proposed,
which in his opinion represented no more than
a minimum, and without demanding a vote,
the outcome of which could be prejudiced by
the discussions of the Committee, Mr. Lavollée
felt bound to abide by the point of view that the
French Government had expressly entrusted its
Delegates with presenting at the Conference.
In its opinion, the right of translation could not
and should not be considered a dismember-
ment of the right of reproduction, or a special
form of the right of reproduction itself. Indeed
in international relations translation was
almost always the normal manner of reproduc-
tion. Consequently the objection based on
contrary provisions in various domestic laws
had very little value in the case in point
because, when translation was involved, it was
almost solely relations with foreign countries
that had to be regulated, and because therefore
the real domestic law was in fact international
law. The fear had also been expressed that an
author's groundless resistance to the translation
of his work might be an obstacle to its dissemi-
nation, and thereby to the progress of civiliza-
tion. Concern for such an eventuality indicated
very little knowledge of human nature, and in
particular the nature of authors. Whether
inspired by lucrative considerations, by a desire
for fame or by devotion to a cause or to an idea,
the author would always be prone to accept,
perhaps even too readily, any proposals that
might be made to him regarding the translation
of his work. The main thing was that he should
not be cheated of the fruit of his work, and that
he should be able to ensure that his thoughts
were not misrepresented on the pretext of
translation. In the latter respect his interest was
in line with that of the public, which needed to
be assured of the accuracy of the interpretation
given to the original work.

On the various grounds set forth above, the
French Delegates remained resolutely true, on
behalf of their Government, to the system of
full assimilation of translation to ordinary
reproduction. They could not see any fair and
rational solution to the question of translation
outside that rule, which for them was a doctrin-
al principle whose universal recognition was
being delayed solely by reservations deriving
from the ancient institution of the right of
escheat. Those reservations were moreover los-
ing ground daily; it was already permissible to
predict their complete disappearance, and
indeed that result might well have been
achieved very soon if the Conference had
accepted the proposals of the Federal Council.

In view of the fact that no agreement had
been reached on that basis, the French
Delegates were not able to accept the proposed
wording otherwise than as a minimum, and
that with express reservations as to the eventual
decision of their Government.

Mr. Lagerheim wished to give a very suc-
cinct recapitulation of the arguments that he
had put forward within the Committee on this
important Article. The population of the
Scandinavian countries was small, but they had
an avid desire to learn, and a need to secure for
themselves the literary productions of great
countries. In the past they had been able to do so
without hindrance, and it was only recently
that Sweden had sanctioned in a new law the
principle of limited protection against unaUTHOR-IZED translations. Mr. Lagerheim acknow-
ledged that the law was not a good one, and that
in particular the term of protection of the
exclusive right of translation should be
extended somewhat. He had therefore pro-
posed within the Committee that the duration
be limited to ten years, grace period included.
As that proposal had not been supported, he
had accepted the present wording in a spirit of
compromise, but with a formal declaration
that that was the maximum concession that
Sweden could make on that point, and more-
over with reservations regarding the view of his
Government, which he was in no way able to
commit.

He asked in addition for it to be noted that
protection so limited became in practice very
real protection. If an authorized translation
existed, it would almost always take precedence
over other translations, and it was almost only
in the case where it was out of print and where
the publisher or the author did not concern
themselves with having a new edition published that another translation would be made at all. Due account had also to be taken, however, of the possibility of the authorized translation being a bad one. In that case the public was entitled not to be deprived forever of any means of acquainting itself with the original work in the form that best reflected the thoughts of the author, and the honour of the author himself could only benefit from freedom of translation granted after a certain period of time.

Dr. Steinbach said the following in his own name and on behalf of Counsellor Zádor, his counterpart from Hungary: 'We have to vote against Article 6 of the Convention, because new Hungarian legislation on authors' rights is in contradiction with that Article regarding the formalities to be complied with for the acquisition of the exclusive right of translation and as to the duration of that right.'

Mr. Reichardt spoke as follows: 'In the face of the proposals made by the French Delegation, I take the liberty of adding to the considerations expressed by the President some of the reasons that guided the majority of the Committee.

'The Committee was unanimous in its recognition that the current trend was towards assimilation of the duration of the exclusive right of translation to that of the rights in the original work. 'However, it was not to be overlooked that a number of countries still possessed provisions based on opposite principles, according to which the exclusive right concerned had a duration of five years only; and also that other countries of considerable literary importance had recently, and after very thorough research, extended the duration of that right from five to ten years; they had not done that without first having surmounted quite considerable difficulties.

'Now, it would be too great a leap, and indeed a potential salto mortale for the success of the projected Union, to attempt to establish the principle of assimilation at the outset.

'It was by placing itself at this vantage point that the Committee sought to progress towards the aim that we are all striving to attain, steering its proposal along the middle path, and leaving to the subsequent development of the Union the task of implementing more and more what I saw fit to mention as being a trend of our time.'

'The proposal by the French Delegation, reproduced above, was put to the vote. There were three votes in favour of the proposal, namely those of France, Haiti and Switzerland.

There were six votes against it, namely the votes of Germany, Austria, Hungary, Costa Rica, Sweden and Norway.

The Delegates of Belgium, the United Kingdom and the Netherlands abstained.

Thereafter the whole of Article 6 was put to the vote, and it was adopted as proposed by the Committee by six countries (Germany, Costa Rica, France, Sweden, Norway and Switzerland) to three (Austria, Hungary and Haiti).

The Delegates of Belgium, Great Britain and the Netherlands abstained, Count de Dudzeele declaring that his abstention was due to the fact that he had not received detailed instructions from his Government on the point concerned.

Article 7

(Article 8 of the Programme)

The Federal Council had proposed the following provision:

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

On the subject of the above Article it had been pointed out that the proposed wording contained a loophole, in that it did not protect the author against the reproduction that might be made in a country of the Union of an unauthorised translation of his work.

Moreover, the Federal Council Programme did not distinguish between whether it was the work itself or the translation that had fallen into the public domain. That was explained by the fact that the Programme provided for full assimilation of the right of translation to the right of reproduction. As the Committee had pronounced against such assimilation, the Article had had to be completed in that respect.
Consequently, the Committee had drafted it as follows:

**Article 7**

Translations are expressly assimilated to original works. They shall therefore enjoy the protection provided for in Articles 2 and 3 with respect to their unauthorized reproduction in countries of the Union.

In the case of a work for which the right of translation is in the public domain, the translator may not object to the same work being translated by other writers.

Article 7 was adopted in the above form.

Mr. Lagerheim asked for the order of Articles 6 and 7 to be reversed, as in his opinion Article 7 was a statement of a general principle, whereas Article 6, like Article 8 onwards, contained specific provisions concerning the application of the principles on which the Convention was based.

On an individual vote, the above drafting proposal was rejected by ten votes to four.

**Article 8**

(Article 8(a) as proposed by the German Delegation)

The German Delegation had made the following proposal, which referred to Question 6 of the questionnaire proposed by it:

'The publication in any of the countries of the Union of excerpts or whole passages of a work that has appeared for the first time in any other country of the Union shall be lawful, provided that the publication is specially designed and adapted for education, or has scientific character.

'The reciprocal publication of chrestomathies consisting of fragments of works by various authors shall also be lawful, as shall the insertion in a chrestomathy or in an original work published in one of the countries of the Union of the whole of a short writing published in another country of the Union.

'It is understood that the name of the author from whom, or of the source from which, the excerpts, passages, fragments or writings referred to in the above two paragraphs have been borrowed shall always be mentioned.

'The provisions of this Article shall not apply to musical compositions inserted in collections intended for schools of music; any insertion of such kind without the consent of the composer shall be considered an unlawful reproduction.'

The inclusion of the above provision had been proposed by the German Delegation because there seemed to be a universal interest in certain borrowings from authors to be allowed, within reasonable limits, for educational purposes. The Committee had acknowledged the existence of that interest. It had further considered it preferable to provide for the reproduction right concerned in the General Convention rather than leave it to special conventions and the domestic legislation of each country.

From the point of view of drafting, the words 'whole passages,' used in the first paragraph, had been criticized as having too great a scope and as being capable of such broad interpretation that they might encroach seriously on the author's legitimate rights. In reply to that observation, it had been stated that the expression concerned was to be found in a number of the conventions in force at present, and that it had been inserted with the avowed intention that it should be given a restricted meaning only. Once that explanation had removed the risk that the use of a general term might have caused, the Committee had raised no objection to allowing the expression 'complete passages.'

In another context, attention had been drawn to the need to permit also, under the same conditions, the reproduction of fragments of artistic works. The Committee had inserted a provision on those lines, and had worded the whole Article as follows, amending the last paragraph slightly.

**Article 8**

The publication in any of the countries of the Union of excerpts, fragments or whole passages of a literary or artistic work that has appeared for the first time in any other country of the Union shall be lawful, provided that the publication is specially designed and adapted for education, or has scientific character.

The reciprocal publication of chrestomathies consisting of fragments of works by various authors shall also be lawful, as shall the insertion in a chrestomathy or in an original work published in one of the countries of the Union of the whole of a short writing published in another country of the Union.

'It is understood that the name of the author from whom, or of the source from which, the excerpts, passages, fragments or writings referred to in the above two paragraphs have been borrowed shall always be mentioned.

'The provisions of this Article shall not apply to musical compositions inserted in collections intended for schools of music; any insertion of such kind without the consent of the composer shall be considered an unlawful reproduction.'
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authors shall also be lawful, as shall the inser-
tion in a chrestomathy or in an original work
published in one of the countries of the Union
of the whole of a short writing published in
another country of the Union.

It is understood that the name of the author
from whom, or of the source from which, the
excerpts, passages, fragments or writings
referred to in the above two paragraphs have
been borrowed shall always be mentioned.

The insertion of musical compositions in
collections intended for schools of music
shall be considered unlawful reproduction,
however.

Mr. Lagerheim expressed very special
reservations, based on the Swedish legislation
on literary property, on the subject of the
provisions written into the above Article.

Mr. Lavollée felt bound to make a special
reservation regarding his Government's decision
on Article 8, as the inclusion of such a provi-
sion, which was acceptable and indeed essential
in an agreement between two powers such as
France and Germany, could present certain
drawbacks in a treaty establishing an interna-
tional Union, the limits of which were still
uncertain.

Mr. Reichardt said the following: ‘Gentlemen, I cannot accept the views just
expressed by Mr. Lavollée in support of his pro-
posal that Article 8 of the draft Convention be
deleted.

‘This Article enshrines a principle recognized
not only in practically all earlier conventions,
but also, specifically, by the French Government
in the Franco-German Convention of 1883,
the purpose of which is to provide education
and scholarship with the means of drawing, to
a limited extent, on the literature of other
countries without having to resort to the
author’s authorization.

‘This way of thinking has its own justification
in relation to every country, unless there is a
desire to hamper the free development of
education.

‘This is therefore one of the most universal
principles, and one whose inclusion in the
General Convention Germany will never
renounce, because through the application of
the laws of the country of origin, provided for
in Article 2 of the draft Convention, the
deletion of Article 8, which introduces a
restriction on copyright, would make all
provisions comparable to Article 8 contained
in existing conventions void by virtue of the
Additional Article.

‘I therefore hope, that Mr. Lavollée's intention
is merely to state a way of thinking, and not to
bring about a vote on Article 8 of the draft, the
rejection of which would very probably place
the German Government in the position of
having to renounce the projected Union
completely.’

Mr. Ulbach spoke as follows: ‘Gentlemen,
allow me to revert one last time to an Article
that is very important to me, and to defend
once again the rights of the moral writer, who is
less well protected against borrowings and
plagiarism than the casual and immoral writer.
One cannot quote a whole passage from a given
novel, even if to give a taste or a distaste for
naturalism, and yet one can take with impunity,
using education as a pretext, not only the
substance but also the actual expression of that
substance by a writer who, producing little,
condensing the work of his intellect in short
sentences, can be robbed and can claim nothing
in return. If France had a La Bruyère today, and
if he were to set down his thoughts in parts,
whole parts would be taken from him as they
appeared, and when eventually the complete
book came out it would already have been
violated by the many borrowings that had been
previously made from it.

‘I am as sensitive as you, Gentlemen, to the
rights of youth, and to those of universal
education and progress; yet the best way of
holding to their duty those whose vocation it is
to effect intellectual emancipation is to shew
respect for their efforts and to guarantee them
reward for their work.

‘Article 8 should be an expression of will, at
the very most. One could long for a day to
come when authors who write on moral issues
are sufficiently well rewarded for them to waive
their rights in favour of youth; one could wish
that expropriation for reasons of moral value
might one day apply to books; however, when
we draw up a Convention guaranteeing the
inviolability of the rights of authors, I should
like us to confine ourselves to a statement of the
principles, and to reserve for the future such
departures from certain principles as may have been made necessary by experience and the public interest.

'I am not impressed by the argument that Article 8 is a reproduction of an article in the Franco-German Treaty of 1883. France and Germany sought agreement and found it; but it is precisely our purpose to improve and enlarge on the provisions of present treaties, and to inspire the countries of the Union with a desire to reform those treaties that offer advantages inferior to those that the principles laid down here lead one to expect.

'I am therefore maintaining my opposition and reiterating my regrets, and I do not believe that France is contradicting herself in wishing not to perpetuate, and one day to eradicate by common consent, a concession made to laws that are not her own.'

In reply to Mr. Reichardt, Mr. Lavollée said that he interpreted Article 16 of the draft Convention establishing the Union differently from the first Delegate of Germany. According to him, Article 8 should not be regarded as an exception to the rule of protection, but rather as a specific provision which, if it remained part of the specific conventions while being excluded from the General Convention, should be regarded not as contrary to the latter Convention, but as relating to matters other than those governed by it.

Following these declarations, Article 8 was adopted in the above form.

Article 9
(Article 8(b) of the Programme)

The German Delegation had made the following proposal (see Question 6 of its questionnaire):

Articles excerpted from newspapers or periodical journals published in one of the countries of the Union may be reproduced, in the original or in translation, in the other countries of the Union.

This right shall not however extend to the reproduction, in the original or in translation, of serialized novels or articles on science or art. The same shall apply to other articles of some length, excerpts from newspapers or from periodical journals where the authors or publishers have expressly declared, in the actual newspaper or journal in which they have caused them to appear, that they prohibit the reproduction thereof.

In no case shall the prohibition specified in the above paragraph apply to articles of political discussion.

The right of reproduction provided for in this Article had been motivated by considerations comparable to those that justified Article 8(a). It had even been argued, in the public interest, that the faculty should be extended to articles on science. The Committee had not considered that extension of the right of reproduction to be dictated by a compelling practical interest; it had therefore adopted Article 8(b) as worded above.

Dr. Janvier made the following speech:

‘Gentlemen,

‘On several occasions I have asked for the word ‘science’ in the second paragraph of Article 9 to be deleted, and I am asking for its deletion again. Do not look on my insistence as prejudice or as a quite uncalled-for obsession. It is the expression of a serious, scientific concern.

‘A number of the nations that are going to join the Union and of those that will be joining it later have as yet no real science and practically no art. A purely literary article, however beautiful, magnificent or masterly it may be, may not have an immediate interest in being known to the public at large; more often than not it is a piece designed for the delectation of cognoscenti, and more a pleasure than a useful or necessary article for mankind. The same is true of an artistic object. Art and literature are moreover the intellectual flowers that blossom only for peoples who have themselves reached the age of maturity.

‘Young, new nations set little store by articles of pure art and literature, because for them those articles are not of immediate, topical, absolute interest. The same is not true, for them, of an article on science. Among the sciences, one should include hygiene, veterinary and human medicine, modern chemistry and physics, the discoveries and processes of which, as they become daily more numerous and more ingenious, must be brought to the attention of all peoples of the globe for the greater benefit of each one of them, in as short a time as possible.'
‘Would it not be a real blow to French science if the research published by Professor Lefort, my esteemed master at the Paris medical faculty, on the improvements to be made on army camps and on the progress of military medicine, were not to be known everywhere?

‘Would it not be a real blow to French science if the work of Mr. Pasteur, which is better known through magazine articles that have summarized and condensed it than through the original works of the scientist himself, had not been translated into all languages or reproduced immediately in the press of the most diverse countries?

‘Would it not be a real blow to the dissemination of French science if, to mention only one’s contemporaries, it were not possible to translate or reproduce magazine articles by persons such as Marey, Pierre Lafitte, Broca, Topinard, Quatrefages, Gaston Boissier, Levasseur, Daubrée or Alfred Maury?

‘That peerless financier Léon Say, one of the colleagues of the Ambassador of France, recently made a trip to Italy. He made a close study of the people's banks and mutual credit societies of that country. It was for him a matter of the greatest haste to publish the results of his research in Débats, as he wanted all to be acquainted with his opinion on such delicate matters. He for one would certainly object to any international code that prevented his science from being known throughout Europe.

‘Similar studies have been made by him on the present economic situation in Germany and Great Britain. He has collected them together in one volume entitled Le Socialisme d’Etat. So does that really mean that under Article 8 I would have the right to quote from Le Socialisme d’Etat, and under Article 9 be prohibited from quoting opinions of the author of that book published in the Journal des Débats?

‘It is restricting science, indeed denigrating it, to think of material interests before moral interests, which are the fundamental, vital interests.

‘I could say the same of the latest book by Leroy-Beaulieu, Le Collectivisme.

‘How could it ever be that a German, an Italian or an Englishman could quote passages from this book to enlighten his country, whereas the same passages published in the Journal des Débats or in La Revue des Deux Mondes could not be quoted?

‘Come, Gentlemen, France is the mother of logic.

‘How could it be that the articles by Mr. Anatole Leroy-Beaulieu published in La Revue des Deux Mondes and in La Revue Bleue could not be reproduced while they could be if they were taken from the work by the same Leroy-Beaulieu entitled L’Empire des Tzaris?

‘I call the very close attention of His Excellency the Ambassador of France to all these facts, and I present them to him with all the respect due to his maturity, his qualifications and the great name that he wears so well, which name would not have become so famous if the scientific articles in French magazines and newspapers, read, translated and reproduced everywhere, had not carried it to the very confines of the civilized world.

‘I appeal to Consul General Lavollée, who is a Doctor ès lettres and who knows these things better than me; I appeal to Louis Ulbach, who has been given a very warm reception wherever he has been, even by sovereigns, who, by receiving him with friendship have honoured in him a man who was well acquainted with persons such as Littré, Renan, Berthelot and Wurtz.

‘The French language owes its very universality to the fact that French scientists, ever desirous of improving their own renown and that of their country, have generously and patriotically given of themselves in order to propagate French science everywhere.

‘If I dared, if I were qualified to do so, I would protest in their name, having been raised by the most eminent among them, when I hear that, if they were to write articles on science, they could forgo mentioning at the foot of those articles that they did not want them to be reproduced without permission.

‘When Pasteur had succeeded in his admirable research on fermentation and beer, Denmark and the United States of America immediately made the counter-experience of his research and bowed before the superiority of French science. Thus it is that the name of Pasteur is as popular in those two countries as in France.
'Likewise the same Pasteur, after having conducted decisive research in Hungary on the diseases of horses and sheep, gave the benefit of his experience to all breeding countries, whether on this continent or overseas.

'I repeat, where would the greatness and notoriety of French science be before 20 years had passed if the daily newspapers of France, which give no more than analytical accounts of a book, sometimes too concise, usually inadequate, often without its ‘innermost marrow,’ if the daily newspapers and condensed works that not everyone can buy or has the time to read, if newspapers and books were the only two vehicles of thought, if above all the magazine article were not there to be translated, commented on and reproduced everywhere, and to indicate the current state of minds, systems and science at a given time.

'However prolific he may be, an author cannot write a full volume every time; if he is a conscientious and profound author, he will not like to prostitute his thought and expose it inadequately in a short article in a daily newspaper, which will be little read, hardly discussed at all and practically never reproduced.

'I have the honour to submit all these objections also to the great wisdom and to the eminent practical sense of Counsellor Reichardt.

'I would point out to him, as respectfully as I did a moment ago to His Excellency the Ambassador of France, that he is perhaps mistaken in affording too much protection to the monetary interests of German scientists at the expense of their renown.

'When I was a medical student, I knew everything that was taking place in Germany in the medical field; I was familiar with the most recent work of Helmholtz, Dubois-Reymond, Virchow and Gorup-Bezanez, simply through reading in France the reproductions of the articles that they published in the major magazines of Germany on specific scientific subjects.

'To give an example, it was Dubois-Reymond who gave the exact date of the death of Diderot. He did so in a speech at the Berlin Academy in July; in France we knew of this immediately, because the Revue politique et littéraire of Paris immediately translated and published the article by Dubois-Reymond, and certainly without asking his permission. Dubois-Reymond is sufficiently rewarded if he knows that his name, under the blue cover of that review, is now being taken to Australia, to China, to Canada and elsewhere.

'German science predominates in the universities of Russia. German scientists and German magazines are consulted in the Slavonic, Anglo-Saxon or Indo-Germanic parts of Europe.

'If the very honourable Mr. Reichardt does not want the word “science” to be removed from Article 8, we will have delivered a severe blow to German science: either German authors will continue to be quoted everywhere without being consulted on the desirability of such quotation, or they will no longer be quoted at all.

'I do not believe that German scientists will be grateful to our eminent colleague for this lessening of their scientific popularity. Moreover, from the political standpoint, the most loved, the most imitated and the strongest country is the one whose science is, becomes or is likely to become the most universal.

'I take the liberty of presenting, in the most respectful way possible, the same observations to the honourable Delegates of Belgium, Austria, Hungary, Switzerland and Norway, indeed to you all, Gentlemen.

'If you want the names of your most esteemed compatriots to go to Brazil, to Chile or to the Plate, to Australia, to India, to Egypt and even to the countries of Europe, there to generate daily more knowledge of and respect and love for your individual countries; if you want there to be neither contradictions nor ambiguity in the terms and in the spirit of the Convention that we are going to sign; if you want those compatriots, through rapid knowledge of their work, to become monetarily rich as quickly as they have become rich in fame; if you want this small country or that to shine as the little country of Greece shone in ancient times, you will, Gentlemen, remove the word “science” from the second paragraph of Article 9.

'And, Gentlemen, if my proposal continues to be unanimously rejected, it will seem curious that it should have been a Haitian who made a proposal such as this one, who supported, defended and reiterated it with stubborn
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persistence, whereas that honour was entirely reserved for the countries which, more than all the others, have the right, and I would even say the duty, to be generous and politic; I am referring of course to France and Germany, currently the two leading lights of mankind.

‘Mr. President, I have the honour to ask that a vote be taken on my proposal.’

Mr. Reichardt spoke as follows: ‘Gentlemen, if I were to reply in detail to the address that Dr. Janvier has just read out, I should be repeating, in Plenary, what I have had the honour to explain quite thoroughly within the Committee. I do however wish to say a few words, lest readers of the minutes reproducing the address by Mr. Janvier should make an inaccurate interpretation of the intentions of the majority.

‘A remote country that felt the need, as mentioned by Mr. Janvier, to go further into the scientific findings of the scientists of Europe would, like us, be prepared to accept the conditions governing the propagation of science. All Article 9 does is set those conditions.

‘Moreover, the Article does not in any way preclude the possibility of taking advantage of scientific results achieved by others, as a borrowing of that kind may be lawfully made not under Article 9, but under Article 8 of the draft.

‘It is under Article 8 that everyone would have the right, in the example quoted by Dr. Janvier, to reproduce the discovery made by Mr. Dubois-Reymond regarding the setting of the date of Diderot’s death.

‘Dr. Janvier’s desire that a free rein be given to the exercise of the right of appropriation in relation to whole scientific works, however ideal the motive might be, is impracticable for legislation.’

Mr. Lagerheim repeated in connection with the present Article the reservations he had made regarding the previous Article.

A vote was taken on the deletion of the words ‘on science or’ contained in the second paragraph of the above Article.

The deletion was rejected by eight votes (Germany, Austria, Hungary, Costa Rica, France, Sweden, Norway and Switzerland) to the one vote of the Delegate of Haiti. The Delegates of Belgium, Great Britain and the Netherlands abstained.

Consequently, Article 9 was adopted in the form given above.

**Article 10**

(Article 11(a) as proposed by the German Delegation)

In order to complete the draft Convention, the German Delegation had proposed the following provision concerning arrangements of music, which is to be found in a certain number of existing conventions:

‘The right to protection for musical works shall entail the prohibition of pieces called arrangements of music, and also other pieces, or those composed without the author’s consent on the basis of phrases taken from those works, or reproducing the original work with modifications, deletions or additions.

‘Any disputes that should arise on the application of the above clause shall be within the jurisdiction of the courts concerned, in accordance with the legislation of each of the countries of the Union.’

The Committee had expressed the view that something might be gained by settling the point concerned. On the subject of the second paragraph, it had recognized that the legislation applicable in the event of dispute was that of the country in which protection was claimed.

The final drafting adopted by the Committee was the following:

**Article 10**

The right to protection for musical works shall entail the prohibition of pieces called arrangements of music, and also other pieces which, without the author’s consent, are composed on the basis of phrases taken from the said works or reproduce the original work with modifications, deletions or additions.

It is understood that such disputes as should arise on the application of the above clause shall be within the jurisdiction of the courts concerned, in accordance with the legislation of each of the countries of the Union.

The Article was adopted in this form.
Article 11
(Approved by the German Delegation)
The German Delegation had made the following proposal:
'The protection provided for in Article 2 shall apply to the public performance of dramatic or dramatico-musical works, whether published or not.
'The provisions of Article 2 shall also apply to the public performance of unpublished musical works in cases where the author has expressly declared, in the title or at the head of the work concerned, that he prohibits its public performance.
'The authors of dramatic or dramatico-musical works shall, throughout the duration of their exclusive right of translation, be mutually protected against unauthorized public performances of translations of their works.'
The French Delegation had proposed the following amendment:
'The provisions of Article 2 shall apply also to the public performance of musical works, and also to the public performance of dramatic or dramatico-musical works.'
The second paragraph was to be like the third paragraph of the Article as presented by the German Delegation.
The purpose of the above proposals was to regulate uniformly everything concerning the performance of dramatic, dramatico-musical and musical works. The Committee had considered a provision of that kind to be useful. It had considered furthermore that, for published musical works, only those authors should be protected who had expressly reserved for themselves the right of performance.
Consequently it had adopted the Article proposed by the German Delegation, having however reversed the various paragraphs and worded the provision as follows:

Article 11
The provisions of Article 2 shall apply to the public performance of dramatic or dramatico-musical works, whether published or not.
already incorporated in a number of existing conventions:

**Article 12**

In order to provide all works of literature or art with the protection specified in Article 2, and in order that the authors of such works may, until proved otherwise, be considered such and consequently be eligible before the courts of the various countries of the Union to initiate actions for infringement, it shall be sufficient for their name to be indicated on the title of the work, at the foot of the dedication or preface or at the end of the work.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be empowered to safeguard the rights belonging to the author. He shall, without any other proof, be deemed to be the assignee of the anonymous or pseudonymous author.

Article 12 was adopted in the above form.

**Article 13**

(Article 9 of the Programme)

The Federal Council proposal was as follows:

‘Any infringing work may be seized on import into those of the States of the Union in which the work is entitled to legal protection. Seizure shall take place at the request either of the public prosecutor or of the interested party, in accordance with the domestic legislation of each State.’

The Committee had considered it necessary to maintain the above provision, in view of the fact that, owing to the different terms of protection, it was possible that the publication of the work would be lawful in one country and unlawful in another.

On a proposal by Mr. Lagerheim, the word ‘countries’ was substituted for ‘States’ in the first paragraph; also the word ‘original’ was inserted before the words ‘work is entitled to legal protection.’

Consequently, the Article was adopted in the following wording:

**Article 13**

Any infringing work may be seized on import into those of the countries in the Union in which the original work is entitled to legal protection.

Seizure shall take place at the request either of the public prosecutor or of the interested party, in accordance with the domestic legislation of each country.

(Article 10 of the Programme—Adaptation)

The Federal Council had proposed the following Article:

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

In order to make clear what was to be understood by the word ‘adaptation,’ the French Delegation made the following proposal:

‘Unauthorized indirect appropriations, such as adaptations, imitations said to be in good faith, transcriptions or arrangements of dramatic, musical or dramatico-musical works and generally any borrowing from literary, dramatic or musical works carried out without the consent of the author shall be prohibited.

‘Adaptation means the alteration of the appearance of a work, either by deletions, or by changes of texts and intention, or again by developments that the original author had not intended, for the sole purpose of appropriating the work without seeming to translate or infringe it.’

For his part, Mr. Lagerheim had proposed the following wording:

‘Adaptation shall be prohibited when it is no more than the reproduction of an original work with alterations, additions or deletions that are not essential and would not constitute a new intellectual work capable of being regarded as being original.’

The various proposals mentioned above originated in the idea that it was necessary to penalize certain reproductions which, through being disguised, were all the more improper. The Committee had agreed to recognize that necessity, and also to admit that it would be useful to give certain indications to the courts in that respect. Moreover it had been emphasized that the word ‘adaptation,’ even though it was used in certain recent conventions, did not yet have a finally established meaning, and that, by attempting to define it, the Convention would be running the risk of going beyond the intentions of the Contracting Parties. Under those circumstances,
the Committee had preferred not to speak of adaptation in the Convention itself, but rather to include a declaration in the Final Protocol stating that the indirect appropriations that the term denoted were not to be considered lawful.

Mr. Lavollée recalled that, in accordance with their instructions, the French Delegates had proposed the insertion, after Article 7 of the draft Convention, of an additional Article concerning adaptation.

Unauthorized adaptation, like imitation said to be in good faith and various other comparable methods of disguised infringement, had been known and practised for a long time, and therefore the French Delegates did not think that the Conference should be allowed, in the draft Union treaty that it was drawing up, to pass them over in silence, and thereby in a sense legitimize them by pretermission. It would not be sufficient to refer to them in the Final Protocol; it would have been far preferable to name and prohibit them directly in a specific provision included in the Convention, like the one proposed by the Federal Council (Article 10 of the Programme) or the one in the Convention between France and Spain (Article 4, paragraph 2), which the French Delegates had done no more than reproduce.

As for the definition of ‘adaptation,’ the French Delegates did not have in mind to give such a definition in strict and final terms that dealt with every special case that might arise. That was for the judiciary, which would ultimately have to pronounce on it according to the circumstances of each dispute to be settled; however, if one were unable to formulate a definition, one could at least have added to the word ‘adaptation’ explanations and indications that would have brought out the general meaning enough and would thereby have assisted the courts in the accomplishment of their tasks. That was how criminal legislation had proceeded when it had specified the characteristics of fraud, for instance, subject to the court’s decision in each case whether the matter at issue possessed all the characteristics constituting the offense.

In accordance with the findings of the Committee, it was decided that the above question would be dealt with in connection with the Final Protocol.

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Article 14
(Article 11(c) as proposed by the German Delegation)
The following provision had been adopted by the Committee as establishing a right which, while it did unquestionably belong to Contracting Countries, was nevertheless sufficiently important to warrant a special mention:

‘The provisions of this Convention shall in no way be prejudicial to the right belonging to each of the High Contracting Parties to sanction, control or prohibit, by legislative or domestic policing measures, the circulation, performance or display of any work or production in respect of which the competent authority would be called upon to exercise that right.’

On proposals by Mr. Lagerheim and Mr. Reichardt, it was decided that the Article would start with the words: ‘It is understood that, etc.,’ and that the words ‘to each of the High Contracting Parties’ would be replaced by ‘to the Government of each of the countries of the Union.’

The Article was therefore adopted in the following form:

Article 14
It is understood that the provisions of this Convention shall in no way be prejudicial to the right belonging to the Government of each of the countries of the Union to sanction, control or prohibit, by legislative or domestic policing measures, the circulation, performance or display of any work or production in respect of which the competent authority would be called upon to exercise that right.

Article 15
(Article 11 of the Programme)
The Federal Council had proposed the following provision:

‘This Convention shall apply to all works not yet in the public domain in the country of origin of the work at the time of its entry into force.’

It was pointed out that the above Article had to do with the transitional provisions which the Final Protocol would rule upon. From the point of view of form, it was indicated that the

Retroactive application of the Convention to works not yet in the public domain

Right of authorization, prohibition, etc., reserved to governments
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proposed wording was incomplete in the sense that it did not mention 'manuscript or unpublished works.'

As to substance, the Committee had acknowledged that it was very difficult, if not impossible, to specify at the outset matters that concerned acquired rights at the time of the entry into force of the Convention (see the minutes of the third meeting of the Conference, on Question 13). Consequently, it proposed reserving the settlement of the matter for conventions that had been or would be concluded, and to draft the Article as follows:

**Article 15**
This Convention shall apply, subject to such reservations and conditions as may have been made by common consent, to all works which, at the time of its entry into force, have not yet fallen into the public domain in their country of origin or, in the case of a manuscript or unpublished work, in the country to which the author belongs.

Count de Dudzeele expressed reservations concerning the above Article, after which it was adopted.

**Article 16**
(Article 12 of the Programme)
The Federal Council had proposed the following:

'It is understood that the High Contracting Parties reserve the right to make special arrangements separately between themselves for the protection of literary and artistic works, in so far as those arrangements do not contravene the provisions of this Convention.'

The word 'contravene' used in the above wording was criticized in various quarters. As the purpose of the projected Union was to ensure a minimum of protection for authors, there was nothing against special arrangements conferring on them more extensive rights than those guaranteed by the Union, or providing for them differently, provided that there was no conflict with the General Convention. Recognizing the correctness of that observation, the Committee had given the above Article the following form:

'It is understood that the High Contracting Parties reserve individually the right to make special arrangements separately between themselves, in so far as those arrangements would confer on authors or their lawful representatives more extensive rights than those granted by the Union, or contain other provisions not contrary to this Convention.'

On a proposal by Federal Councillor Ruchonnet, the Conference decided to replace the expression 'High Contracting Parties' by 'Governments of the countries of the Union.' The Article would therefore be worded as follows:

**Article 16**
It is understood that the Governments of the countries of the Union reserve the individual right to make special arrangements separately between themselves in so far as those arrangements would confer on authors or their lawful representatives more extensive rights than those granted by the Union, or contain other provisions not contrary to this Convention.

**Article 17**
(Article 13 of the Programme)
The Federal Council had proposed the following:

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

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

In order to bring the title of the projected International Bureau into line with that of the Union of which it was the organ, the Committee had proposed drafting the Article as follows:

**Article 17**
An international bureau shall be established under the name of International Bureau of the Union for the Protection of the Rights of Authors.

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

Article 17 was adopted in the above form.

Article 18

(Article 14 of the Programme)
The Federal Council had proposed the following provision:

'This Convention shall be subject to periodical revision for the purpose of introducing therein such improvements as may perfect the system of the Union.

'To that end, conferences shall take place successively in one of the Contracting States between delegates of those States.

'The next such meeting shall be held in . . . . (place), in . . . . (year).'

The drafting of the first paragraph of the above Article appeared somewhat absolute, in the sense that it provided for mandatory and periodical revisions of the Convention. The Committee had considered that it was sufficient to provide for the possibility of such revisions and to specify the procedure to be observed for the convening of a new Conference. Moreover, the setting of the next meeting had seemed to it to be more in place in the Final Protocol than in the Convention itself. Consequently, the Committee had drafted the Article as follows:

Article 18

This Convention may be subjected to revisions for the purpose of making therein such improvements as may perfect the system of the Union.

Questions of that nature, and those that concern the development of the Union in other respects, shall be dealt with in conferences that shall be held successively in the countries of the Union between delegates of those countries.

Article 18 was adopted in the above form.

Article 19

(Article 15 of the Programme)
The Federal Council Programme provided as follows:

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

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

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

In accordance with what had been agreed at the end of the third meeting of the Conference, the Committee had amended the provision as follows, in order to make it quite clear that accession to the Convention should be granted only to those countries whose domestic legislation protected authors against infringement:

Article 19

The countries that are not party to this Convention, and provide in their domestic law for legal protection against the violation of the authors' rights that are the subject of this Convention, shall be allowed to accede to it at their request.

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

It shall, as of right, imply accession to all the clauses and admission to all the advantages provided for in this Convention.

Article 19 was adopted in the above form.

Article 20

(Article 16 of the Programme)
The Federal Council had proposed the following Article:

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

As the above provision appeared to be unnecessary, the Committee had pronounced in favour of deleting it.

The Committee's proposal was adopted.

Article 20

(Article 17 of the Programme)
The Federal Council draft read as follows:

'This Convention shall be put in force as from . . . . , and shall remain in force for an

* See Article 17.
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II. Additional Article

(Transitional Provision of the Programme)

The Federal Council Programme contained the following provision:

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

It was pointed out that the above provision did not, strictly speaking, have transitional character; the Committee had therefore preferred to make it into an Additional Article.

With regard to the purpose of the provision, the Committee had considered that the position to be taken by the Union with regard to specific conventions at present in force should be the same as that taken with respect to subsequent arrangements, dealt with in Article 12. Consequently, the Committee had drafted the Article as follows:

The Convention concluded this day shall in no way affect the maintenance of existing conventions between the Contracting Countries, provided always that such conventions confer on authors, or their lawful representatives, rights more extensive than those accorded by the Union, or contain other stipulations that are not contrary to this Convention.

Done at . . . . . , on . . . . .

The Additional Article was adopted in the above form.

III. Final Protocol

The Federal Council had proposed the following wording for the preamble:

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

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

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

3. The exact meaning of the word “adaptation” requires definition.

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

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

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

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

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

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

The official language of the International Bureau shall be French.

This Final Protocol, which shall be ratified at the same time as the Convention concluded this day, shall be regarded as forming an integral part thereof, and shall have the same force, validity and duration.'
4. As the legislation of a number of the countries of the Union does not allow photographic works to be included among the works to which the Convention concluded this day applies, the Governments of the countries of the Union reserve the right to agree at a later date on the special arrangements to be made by common consent for the purpose of mutually ensuring the protection of those photographic works in the countries of the Union.

5. The organization of the International Bureau provided for in Article 17 of the Convention shall be determined by regulations which the Government of . . . . * is responsible for drawing up.

   The official language of the International Bureau shall be French.

   The International Bureau shall collect all kinds of information regarding the protection of authors’ rights in literary and artistic works. It shall coordinate them and publish them. It shall undertake studies on questions of general interest concerning the Union and, with the aid of documents placed at its disposal by the various administrations, shall publish a periodical review in French on the questions which concern the purpose of the Union. The Governments of the countries of the Union reserve the right to authorize the Bureau, by common consent, to publish editions in one or more other languages where circumstances have demonstrated the need therefor.

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

   The administration of the country in which a Conference is to take place shall prepare the work of that Conference with the assistance of the International Bureau.

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

   The expenses of the International Bureau which, until such time as a new decision is made, may not exceed the sum of . . . . per annum, shall be borne collectively by the Contracting Countries, in amounts proportionate to each country’s population figures.

   The administration of . . . . * shall draw up the budget of the International Bureau and supervise its expenditure; it shall also provide the necessary advances and draw up the annual accounts, which shall be communicated to all the other administrations.

6. The next Conference shall take place at . . . . , in . . . .

7. It is agreed that, for the exchange of ratifications provided for in Article 21, each Contracting Party shall present a single instrument, which will be deposited, together with those of the other countries, in the archives of the Government of . . . . * Each party shall in return receive a copy of the record of the exchange of ratifications, signed by the Plenipotentiaries who take part in it.

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

   In witness whereof, etc.

   Done at . . . . , on . . . .

   The amendments made by the Conference to the draft submitted by the Committee were the following:

   (a) In item 4, the words ‘Contracting Governments’ were replaced by ‘Governments of the countries of the Union.’

   (b) In the third paragraph of item 5, the expression ‘Governments of the countries of the Union’ was likewise substituted for ‘Contracting Parties.’

   (c) At the end of the same paragraph, the Conference preferred to say ‘have demonstrated the need,’ rather than the future tense used in the Committee’s wording.

   (d) Finally, in the fifth paragraph of the same item 5, the words ‘the next Conference’ were replaced by ‘a Conference.’

   On the subject of the official language adopted for the publications of the

* See Article 17 of the draft Convention.
International Bureau, the President explained the following:

‘In the Special Committee of the Bureau, it was proposed that one add that, in case of need, such publications could be made in one or more languages other than French. Within the Special Committee this proposal, although opposed by Mr. Baetzmann, the Delegate of Norway, was nevertheless adopted by three votes to two. In the Plenary Committee, Mr. Baetzmann renewed his objections to any amendment made to the Federal Council draft in that respect. After the matter had been referred to the Drafting Committee, which accepted a wording that enabled Contracting States to authorize publication in several languages, Mr. Baetzmann stated that, whereas he maintained his position, he nevertheless considered it unnecessary to press the point.’

On the subject of the same question, Dr. Dambach spoke as follows:

‘The second paragraph of item 5 stipulates that the official language of the International Bureau will be French.

‘In the Committee, we agreed to say that the stipulation in question meant merely that written matter and official instruments originating with the International Bureau had to be in French. On the other hand, authorities and individuals who sent letters, etc., to the International Bureau could make use of their own languages.

‘The Committee decided to give that explanation in Plenary, and I request that it be included in the minutes, in order that all doubt may be removed as to the real meaning of the paragraph in question.’

On the subject of the contributions of Contracting States to the International Bureau, the President explained that the system adopted for other international bureaux had the shortcoming of being quite complex, and that it had seemed preferable to set the contributions in proportion to the population figures of each country, as had been done for the Metre Convention.

In the course of the discussion it was agreed that, in the fourth paragraph of item 5, the expression ‘members of the Union’ denoted ‘Governments of Contracting Countries,’ and not the nationals of those countries.

IV. Recommended Principles for Subsequent Unification

The President recalled that, at the first meeting, the German Delegation had submitted a prior question to the Conference regarding the possible desirability of standardizing the provisions on copyright immediately.

In that connection a draft resolution had been proposed by Federal Councillor Ruchonnet, but it had been decided that the vote would be postponed until the end of the discussion. Since then the Committee had concerned itself with the point, and proposed to the Conference that it adopt the following resolution, which appeared to reply to the question raised:

The International Conference for the Protection of Authors’ Rights,

Considering the diversity of the provisions in force in the various countries concerning several important points of legislation on the protection of authors’ rights,

Considering also that, however desirable the unification of the principles governing the subject matter might be, a Convention embodying uniform provisions on those points might not win acceptance from a certain number of countries at the present time,

Considering, however, that international codification is in the natural order of things and will establish itself sooner or later, and that the ground should be prepared for that event with an indication, at the outset, of the direction in which it is desirable that such codification take place,

Sees fit to submit the following wishes to the Governments of all countries:

I. The protection granted to the authors of literary or artistic works should last for their lifetime and, after their death, for a number of years that should not be less than 30;

II. The trend towards full assimilation of the right of translation to the right of reproduction in general should be promoted as much as possible.

On the subject of the first wish, Mr. Lavollée said that the French Delegation would have preferred the term of protection after the death of the author to be extended to 50 years. Mr. Lagerheim endorsed that statement.

On the subject of the second wish, Counsellor Steinbach declared in his own
name and on behalf of his colleague, the Delegate of Hungary, that he could not endorse that wish in view of the new Hungarian legislation.

Mr. Louis Ulbach made the following declaration on behalf of the French Delegation:

'It has been seen fit, in deference to the Governments that would refuse to assimilate the right of translation to the right of reproduction, to remove the words ending the expression of the wish, which presented it as the invocation of a principle of justice. I understand the scruple, but I do not share it. Every day a Government is asked to accede to a principle of justice and liberty, in the hope that it will find an opportunity to elevate its task, without that request or advice causing offence. One believes it worthy of greater progress. If it refuses to make that step forward, if it is held back by considerations of caution or political tact, it postpones the wish without actually having misconstrued it, and the principle of justice remains an argument for other, renewed wishes. I believe that we could have formulated this statement in a more diplomatic manner, without deleting it. I am mentioning it so that it will be reflected in the record of our deliberations.'

As no one asked for a vote to be taken, the proposals of the Committee were adopted with one amendment consisting in the last part of the recital being worded as follows:

Considering, however, that international codification is in the nature of things and will establish itself sooner or later, and that the ground should be prepared for that event with an indication, at the outset, with reference to certain essential points, of the direction in which it is desirable that such codification take place.

V. Final Minutes of the Conference

After consideration of the proposals of the Committee, the final minutes of the Conference were finally adopted, after some explanations, in the following wording:

The undersigned, Delegates to the International Conference for the Protection of Authors’ Rights, are convinced, after the examination in depth that they have undertaken, that it would be in the general interest to harmonize as much as possible the principles governing the subject in the various countries, and that a Union should be set up for the purpose that is similar to those existing for other subjects of eminently international character. Consequently, they have agreed to submit to their Governments, for consideration, a draft Convention specifying the minimum rights which, in the opinion of the Conference, the Contracting Countries could mutually guarantee to the authors of literary or artistic works.

The Conference also felt bound to record in an appended document the expression of its wishes regarding two essential points which it did not consider itself able to regulate uniformly at the present time.

The Delegates will exercise due diligence in handing to their Governments the result of their deliberations contained in the drafts appended hereto, and request the Swiss Federal Council to convey it also to those Governments that have not taken part in the Conference, and to continue to take such action as may be necessary for the conclusion of the agreement for which it has taken the initiative.

Done at BERNE, on September 18, 1884, in one copy which shall be deposited in the archives of the Swiss Confederation.

The Conference decided to proceed on the following day to a second reading of the other proposals made by the Committee, after which the final minutes would be signed.

The next meeting was to take place on the following day, September 18, at noon.

The meeting rose at 7.30 p.m.
Minutes of the Sixth Meeting of the Conference for the Protection of Authors’ Rights
September 18, 1884
Presided over by Federal Councillor Numa Droz, President

The meeting opened at 12.15 p.m.
All the members of the Conference were present.

Pursuant to the decision taken at the previous meeting, a second reading was made of the various drafts approved the previous day by the Conference, which were finally adopted, namely:

I(a) Draft Convention for the Establishment of a General Union for the Protection of Authors’ Rights;
I(b) Draft Additional Article to the above Convention;
I(c) Draft Final Protocol;
II. Recommended Principles for Subsequent Unification.

As the Conference had at that point completed its task, the President made the following address to its members:

‘Gentlemen,

‘Before proceeding to the signature of the final minutes, permit me to summarize and give my appreciation in a few words of the outcome of the work of the Conference.

‘Thanks to the friendly and conciliatory spirit that has prevailed at all times between us, and which each delegation has sought to demonstrate, it has been possible to overcome the main difficulties standing in the way of the work of unification for which we have established the groundwork.

‘The Programme of the Swiss Federal Council had confined itself within the limits of an approach which you considered excessively cautious; we have been pleased to note that the Conference has not hesitated to propose to the Governments concerned that the Programme be broadened and completed on a large number of essential points. The draft Convention that has emerged from our deliberations has thus become a virtually complete code of international legislation on the protection of authors’ rights. Once the Union has been established, it will not be difficult, in subsequent Conferences, to fill the gaps that the Convention still has with respect to the subject matter to be protected.

‘In other respects, of course, the draft Convention has not been able to accede to all wishes. Whereas, for one thing, certain delegations might have wished for more extensive and more uniform protection of authors’ rights, due account did also have to be taken of the fact that the ideal principles whose triumph we are working towards can only progress gradually in the so-varied countries that we wish to see joining the Union. Consideration also has to be given to the fact that limitations on absolute protection are dictated, rightly in my opinion, by the public interest. The ever-growing need for mass instruction could never be met if there were no reservation of certain reproduction facilities, which at the same time should not degenerate into abuses. These were the various viewpoints and interests that we have sought to reconcile in the draft Convention. Those of us whose wishes went further will have to remember that a number of delegations contested other points which to them seemed too advanced and too contrary to the legislation of their countries, and that they accepted the draft as a whole only in order to give evidence of their genuine desire for agreement. Our work is therefore the result of mutual concessions, and it is with that in mind that it is recommended to all Governments for approval.

‘If it were otherwise, in other words if no country were called upon to make sacrifices in the interest of the common work, I take the liberty of saying that that work would not be necessary. For as soon as all laws are absolutely in agreement with each other, an international treaty would have no effect other than that of recording the fact of their agreement. But it is..."
the very purpose of the Union that we want to form to bring about that agreement, by effecting the disappearance one after the other of the more or less arbitrary differences that exist in connection with the protection of literary and artistic works.

'Considering the results achieved as a whole, the International Literary Association is able and pleased to note that the majority of the wishes expressed by it in its 1883 draft have been satisfied. The only one that has not been satisfied to the extent advocated was that regarding the right of translation; we have, however, caused a significant step forward to be taken with the assimilation of that right to the right of reproduction in general, and with the introduction of a term of protection longer than that existing in a certain number of countries, and we should like to think that the wish expressed by our Conference on the subject, which figures among the recommended principles for subsequent unification, will not be a dead letter.

'And now, Gentlemen, we must not content ourselves with saying, like Propertius, In magnis voluisse sat est, as we have to convert our resolutions into realities. I like to think that we shall all do our utmost to bring about acceptance of our work on the part of the Governments that have sent us here. I like to think that the Governments of the countries not represented, all or almost all of which have hinted at their eventual accession, will also make a favourable appraisal of the result of our work. Finally, I hope that not too long a period will elapse before that day when the Plenipotentiaries of the Governments of all civilized countries, convened to a final Conference, will place their signatures at the foot of an instrument similar to the one that we have prepared for them.

'Having formulated this hope, I invite you, Gentlemen, to be so kind as to proceed, in the alphabetical order of the [French] names of States, with the signature of the final minutes of the Conference.'

The delegates then proceeded with the signature of the final minutes adopted on the previous day, their names being called in the alphabetical order of the [French] names of the countries that they represented.

On completion of that operation, it was agreed, at the request of Mr. Reichardt and after an exchange of observations between him and Mr. Lagerheim, Mr. Lavollée and the President, that, in deference to the Governments represented, the decisions of the Conference would not be publicized before November 1, 1884. For the purposes of the press, however, the Officers of the Conference could nevertheless issue a concise account of the main resolutions submitted to the distinguished Governments for consideration.

The delegates undertook to abide by what had just been agreed.

The President addressed the assembly in the following terms:

'Gentlemen,

'Now that we have completed our work and that we have only to adopt the minutes of our last meetings, I wish to express once again, as I am sure you all do, my great satisfaction with these days that we have spent together. Whether during the hard work of our meetings, or in the few hours of leisure that we have allowed ourselves, we have learned to know and value each other as representatives of different languages and races. In the great republic of letters and the arts, in whose service we have all been attending this Conference, those differences have to merge in harmony; the spirit of intellectual brotherhood that has reigned between us will develop within the Union and become one of the most powerful factors of civilization and peace.

'I thank you, Gentlemen, for the honour you have done me by calling on me to conduct the work of a meeting of such eminent men. I thank you for the kindness that you have shewn me, which has rendered my task as easy as it has been agreeable.

'In the name of my country, I thank you for having accepted its invitation to come and meet here, and for having entrusted the Federal Council with the honourable task of implementing your resolutions by communicating them to the Governments of the other countries. I am authorized to tell you that the Federal Council will be pleased to continue its action with a view to bringing about the final establishment of the Union.

'I speak on behalf of the Conference in addressing to our two so-devoted secretaries,
Mr. Soldan and Mr. Frey, all our gratitude for the excellent and expeditious manner in which they acquitted themselves of their difficult tasks.

‘My final wish is that you should take home from Switzerland the same pleasant memories of your stay as you have left. May it come to pass that we will again meet to salute the advent of the creation to which we have devoted our efforts.’

H.E. Mr. Emmanuel Arago replied in the following terms:

‘Gentlemen,

‘Each of us is going to report to his Government on the outcome of our work, completed today in the perfect agreement that all of us desired, without being absolutely sure of it beforehand. There is nothing more precious, more reassuring than this agreement on the future of a work whose first success will soon be bringing about the organization of a common homeland in which science, letters and the arts may prosper in brotherly companionship. So none will forget the sincere gratitude that we have so frequently expressed to the Swiss Government, our generous host, and which we also owe to our able and valued President, Federal Councillor Numa Droz. So our thanks, Mr. Droz, our double thanks, to your country and to you.’

Councillor Reichardt spoke as follows:

‘Gentlemen,

‘We are duty bound to address warm thanks to His Excellency the Ambassador of France, for having been so kind as to express, with all the depth and eloquence that we have come to expect of him, the sentiments of gratitude that we feel towards our very honoured President. We have another duty to perform, which is to thank His Excellency Mr. Emmanuel Arago in his capacity as Vice-President of the Conference.

‘Neither shall I accept His Excellency’s possible objection that, strictly speaking, he has practically had no opportunity to perform his vice-presidential duties. Delegates, I think I am accurately interpreting your sentiments when I place alongside the rigours of the vice-presidency the goodwill which, in the person of Mr. Arago, has, if I may put it in that way, “vice-presided” over our meeting.

‘It is his conciliatory spirit, his sympathetic assessments of the various opinions that have been expressed in the course of our debates, his skill in drafting, that in my view have set us an example of mutual understanding, while, by making agreement on our draft easier, he has efficiently seconded our President in the task of ensuring now, as far as possible, the future success of our work.

‘Therefore, Gentlemen, in addressing our sincere thanks to Mr. Arago, we are accomplishing not a “formality to be complied with” to qualify for membership of the Conference, but rather a “condition prescribed by the legislation of the country,” which we shall call courage and conviction.

‘Gentlemen, colleagues, friends, as a testimony to our gratitude towards our two Presidents, I would ask you to rise to your feet.’

The Conference was unanimous in its endorsement of this expression of thanks, and H.E. Mr. Emmanuel Arago spoke a few words of thanks.

Mr. Louis Ulbach took the floor in his turn:

‘Gentlemen,

‘I should not take the liberty of taking the floor after the Ambassador of France if I did not have a special—I hesitate to say personal—word of thanks to address to the Federal Government which has received us so well, to Councillor Droz who has so admirably presided over us, and to you all, Gentlemen, who have been so valuable and sympathetic in your collaboration.

‘However, I had the honour of being delegated by France only because I belong to the great Association whose initiative you have just commended, and also to that legion of writers to whom you have just opened up so many countries.

‘When I return tomorrow to more modest pursuits, I shall retain a warmth of memory, a spirit of mutual emulation and a glow of mental awareness from this exalted gathering that will give me support and satisfaction until the end of my human task.

‘We have worked hard, Gentlemen, and I shall never forget that inspired enthusiasm, fired by a unanimous resolution to achieve agreement on principles that are the most delicate and the most recently submitted to
European diplomacy for discussion. You will take with you the conviction of having accomplished indelible work. I myself shall take some invaluable lessons back to my friends.

'It is often those most directly concerned who are most ignorant of the very nature of their professional ambition. In more than one respect you have confirmed my faith, and in many others you have actually increased it.

'It is therefore in the name of the International Literary and Artistic Association that I thank you for the honour bestowed on its President, and it is on behalf of my fellow men of letters and the artists of all countries that I thank you for all the good that you have done them.'

After the above speeches, the President announced that the Conference would meet one last time, at 11 a.m. on the following day, to approve the minutes.

The meeting rose at 1.15 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ
President

CHARLES SOLDAN  BERNARD FREY
Secretaries

Minutes of the Seventh Meeting of the Conference for the Protection of Authors’ Rights

September 19, 1884

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 11.10 a.m.

All the members of the Conference were present with the exception of Dr. Dambach, Mr. Zádor, Mr. Louis Ulbach, Mr. Lavollée and Mr. A. d’ Orelli, who had presented their apologies.

The agenda called for the approval of the minutes of the fifth and sixth meetings of the Conference, which had been distributed to the delegates in draft form.

The minutes were adopted with certain amendments proposed by the President and by Mr. Reichardt, Mr. Ruchonnet, Mr. Lagerheim, Mr. de Dudzeele and Mr. Baetzzmann.

Mr. Reichardt subscribed, in the name of his colleagues, to the thanks that had been addressed to the Secretaries on the previous day.

The President addressed some words of farewell to the delegates, and announced the closure of the Conference.

The minutes of the present meeting were immediately read and adopted.

The meeting rose at 12.10 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ
President

CHARLES SOLDAN  BERNARD FREY
Secretaries

Final Minutes of the International Conference for the Protection of Authors’ Rights

The undersigned, Delegates to the International Conference for the Protection of Authors’ Rights, are convinced, after the examination in depth that they have undertaken, that it would be in the general interest to harmonize as much as possible the principles governing the subject in the various countries, and that a Union should be set up for the
purpose that is similar to those existing for other subjects of eminently international character. Consequently, they have agreed to submit to their Governments, for consideration, a draft Convention specifying the minimum rights which, in the opinion of the Conference, the Contracting Countries could mutually guarantee to the authors of literary or artistic works.

The Conference also felt bound to record in an appended document the expression of its wishes regarding two essential points which it did not consider itself able to regulate uniformly at the present time.

The Delegates will exercise due diligence in handing to their Governments the result of their deliberations contained in the drafts appended hereto, and request the Swiss Federal Council to convey it also to those Governments that have not taken part in the Conference, and to continue to take such action as may be necessary for the conclusion of the agreement for which it has taken the initiative.

Done at BERNE, on September 18, 1884, in one copy which will be deposited in the archives of the Swiss Confederation.

Reichardt
Meyer
Dambach
Emil Steinbach
Jules Zádor
Jules Zádor
G. Errembault deDudzeele
Emmanuel Arago
Louis Ulbach
René Lavollée

F.O. Adams
Louis-Joseph Janvier
B.L. Verwey
A. Lagerheim
F. Baetzmann
L. Ruchonnet
Droz
A. d’Orelli

Appendix

Records of the Second International Conference for the Protection of Literary and Artistic Works

Convened in Berne September 7 to 18, 1885

Minutes of the First Meeting of the Conference for the Protection of Literary and Artistic Works

September 7, 1885

The meeting was opened at 10.20 a.m., in the hall of the Council of States. The following were present:

Belgium: H.E. Mr. Maurice Delfosse, Envoy Extraordinary and Minister

France: H.E. Mr. Emmanuel Arago, Ambassador of France to the Swiss Confederation, Berne. Mr. Louis Ulbach, President of the International Literary Association. Mr. Rene Lavollée, Consul General of France, Doctor ès lettres. Mr. Louis Renault, Professor of Public International Law, Faculty of Paris.

Germany: Mr. Reichardt, Private Legation Counsellor, Reporting Counsellor to the Foreign Affairs Department of the German Empire.