Appendix

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. Baetzzmann
L. Ruchonnet
Droz
A. d’Orelli

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

Convened in Berne September 7 to 18, 1885

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

September 7, 1885

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

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

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.
Appendix

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

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

Great Britain: H.E. Mr. E.O. Adams, C.B., Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty, Berne.

Mr. J.H.G. Bergne, Superintendent of the Treaty Department of the Foreign Office.

Haiti: Dr. Louis-Joseph Janvier, Doctor of Medicine of the Paris Faculty, diplomat of the Paris Medical Faculty, diplomat of the School of Political Science of Paris (administrative section and diplomatic section).

Honduras: Mr. Weder, Doctor of Law.

Italy: H.E. Count Fè d'Ostiani, Envoy Extraordinary and Minister Plenipotentiary of Italy, Berne.

Mr. Enrico Rosmini, Barrister, Vice-President of the Italian Society of Authors.

Spain: H.E. Senator Don Melchior Sangro y Rueda, Count of la Almina, Envoy Extraordinary and Minister Plenipotentiary of Spain, Berne.

Mr. Manuel Tamayo y Baus, Senior Head of the Corps of Archives, Libraries and Antiquities Faculties.

Director of the National Library, member and life secretary of the Spanish Academy.

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

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

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

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

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

Tunisia: Mr. Louis Renault, Professor of Public International Law at the Law Faculty of Paris.

United States: Mr. Boyd Winchester, Resident Minister and Consul General of the United States of America, Berne.

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

‘Gentlemen,

‘This is the third time that I have had the honour of greeting, in this hall, the representatives of various countries gathered together to address the great cause of literary and artistic property. My colleague Mr. Ruchonnet and I are particularly pleased to convey to you today, on behalf of the Swiss Federal Council, a cordial welcome to our country, as we have great expectations that there will emerge from this meeting a final work that accedes both to the wishes of the eminent governments that you represent and also to the legitimate aspirations of literary and artistic people throughout the world.'
The majority of the members of this Conference took part in our work last year. It is a real pleasure to see the faces of our friends again, and we look forward to renewing the agreeable relations that developed between us during the hard-worked meetings of the previous Conference. Those who are absent are few, yet we do not reproach them for that: on the contrary, we address to them our friendly greetings together with our hope that the countries they represented here a year ago will not remain in isolation outside the Union whose first foundations they helped us to lay.

What strengthens our hopes is the fact that the numbers both of States and of delegates representing States have noticeably increased this year. The States represented at this Conference, with their colonies, comprise a total of 573 million inhabitants, which you will agree is a generous section of the human race, reflecting the excellence of the idea that we are seeking to realize. Crescit eundo: it grows by walking; there is therefore no doubt but that it will eventually conquer the whole universe, in the name of justice and for the satisfaction of aspirations and interests that are growing in proportion to civilization itself. It is therefore with double pleasure that we welcome the newcomers to this Conference; their support is invaluable to us, and our work will be enhanced by the new light that they shed on it.

I have to report to you briefly, Gentlemen, on the mission that you entrusted to the Federal Council last year. The draft Convention that emerged from your wise deliberations was transmitted, together with the minutes of your meetings, to the governments of all civilized countries. We have received a favourable response from all sides. The constitution of a General Union for the Protection of Authors’ Rights, based on the assimilation of foreigners to nationals and on the removal of the multitude of formalities now imposed, does not seem to have any detractors. Where there are differences of opinion, they relate to other, more or less important elements of the draft, especially those whose effect is to amend certain provisions of domestic legislation. Obviously, Gentlemen, the purpose of our Convention has to be to assure the citizens of the various countries of the Union of real mutual rights; consequently it is necessary, in order to fill whatever gaps there may be in national legislation, to unify to a certain extent the principles of literary and artistic property that have a genuinely international character. Each country is convinced of this, but there are differences as to the extent to which the unification is to take place. On the one hand, there are those that apply very advanced principles, which for other countries too are great providers of intellectual products, and which would like to see the work of unification achieve, at once, the fullness of their ideals on all the points on which they have set their hearts. And there are others, guided by the necessities of a situation for which allowance has to be made, that are quite willing to take a step forward, but cannot take such a great one at the very outset.

These are indeed serious difficulties, but in my opinion and I should like to think in yours, they are not insurmountable. You will already have received, through us, some of these divergent proposals, and you will no doubt be hearing others in the course of your discussions. You will consider them with the care and mature judgement that such serious matters demand, and I have no doubt that you will succeed, such is your desire for understanding and your wisdom, in finding solutions capable of satisfying the interests at stake and safeguarding principles at the same time.

It is not only in the ministries of the various States that our draft Convention has been examined: literary people, artists and lawyers have applied themselves to it, sometimes in a very energetic fashion, at their meetings and in the press. The expressions of opinion that have reached us from various quarters have also not been characterized by uniform, unreserved endorsement of our work. Here too it is understandable that we should come across aspirations that in some cases go much farther than the draft Convention. Writers and artists naturally demand as much protection as possible; lawyers and forensic experts, for their part, discuss the theoretical and practical aspects of the validity of the rights, some of them new, whose recognition is demanded of them. Nevertheless, what predominates, in this conflict of opinions and interests, both in these areas and in official spheres, is the feeling that a universal Union for the protection
of authors’ rights is an imperative necessity of our time.

‘This very necessity accounts for my lack of anxiety regarding the outcome of our work. When all the States, all the thinkers of the world agree that the international protection of authors’ rights is a matter of morality and justice, it is impossible not to find the means of giving legitimate satisfaction to interests of such a high order. The differences of domestic legislation are not so wide and deep that they cannot be bridged to bring about the desired rapprochement. Let us therefore apply ourselves, Gentlemen, as that is our task, to finding the points at which contact may be made as of today. The main thing, for the time being, is to establish the Union.

‘The example of other international Unions is for us a sure guarantee that later, by the very force of principles, the differences that still divide us will tend to disappear and the near future will no doubt see the realization of that ideal of uniformity to which so many aspire. In the meantime, the work of our Conference, even if it should not result in agreement on all points, will serve as a valuable blueprint for future unification.

‘It is this spirit of progress that inspires us all. We do not want any country to shy away from the national or international dimensions of literary and artistic property; on the contrary, we wish to lead the largest possible number forward with us.

‘In expressing the wish that this may indeed come to pass, I declare open the second official International Conference for the Protection of Authors’ Rights, or, which to me comes to the same thing, for Literary and Artistic Property.’

H.E. Mr. Emmanuel Arago accepted this function and addressed his thanks to the Assembly.

The President presented, as Secretaries, Mr. Charles Soldan, judge at the Cantonal Tribunal of Vaud in Lausanne, and Mr. Bernard Frey, Secretary of the International Bureau of Industrial Property in Berne.

The President noted that the names of all the delegates present had been notified to the Federal Council by the Governments concerned, so that their official status was duly established. With regard to the nature of the powers invested in them, he proposed that it be dealt with later if necessary.

The assembly declared itself in agreement with the above view.

Mr. Rosmini made the following address:

‘Mr. President, distinguished colleagues,

‘In the capital of Belgium, which in times past did not seem to be the kindest protector of authors’ rights, there nevertheless arose, not quite 30 years ago, the rallying-cry of the most noted figures of the time in the fields of science, literature and fine arts, to bring about the removal of a defect that afflicted most of the national laws of Europe on the subject of authors’ rights. All honour to the Belgians!

‘The echo of the Brussels Congress and its wise resolutions was heard everywhere: local legislation was improved, and the triumph of great principles was universally recognized; political barriers were overcome, a number of international treaties were concluded, and the day is no longer far off, we hope, when universal solidarity will be realized in this branch of law, for it is in this city, which several centuries ago enfolded in its protecting wings the victims
of local oppression or threats from abroad, whose dignity, wisdom and prudence has elevated it to the position of metropolis of one of the most charming countries of Europe, that practically all the great civilized States of the world are meeting to draw up the international covenant that is to guarantee the most sacred of properties and noblest of rights, namely the property of genius and the rights of the intellect.

'Please allow us therefore, Mr. President and distinguished colleagues, to convey to you, in the name of Italy and its Government which we have the honour to represent here, and which is following the development and progress of these great institutions with great interest, the most heartfelt congratulations and the most earnest thanks for the unselfish and noble initiative that you have been so good as to take in order to tighten the bonds of brotherhood and mutual protection that all nations feel they owe each other for the defence of the realm of thought and of the work of the mind.'

The President submitted to the Assembly the draft Rules of Procedure drawn up by the Federal Council. The draft was discussed rule by rule and adopted in the following form, after an exchange of views between Mr. Reichardt, Mr. Ulbach, Mr. Renault and the President:

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

**Rule 2**
The draft Convention Concerning the Creation of a General Union for the Protection of Authors’ Rights, drawn up by the International Conference held in Berne in September 1884, and the texts annexed thereto (draft Additional Article, draft Final Protocol and Recommended Principles for Subsequent Unification), shall, after a general discussion, be referred for consideration, if necessary, to a Committee on which each delegation may be represented by one or more of its members, the delegations having only one vote each.

If the nature of the work requires, the Committee may divide itself into several sub-committees.

The amendments proposed by the Committee shall be printed before being debated.

The same shall apply, as a general rule, to any individual proposals presented in the course of the discussions and taken into consideration by the Conference.

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

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

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

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

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

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

**Rule 7**
The draft Convention that results from the deliberations shall be subjected to final editing, after which the Conference shall decide what action to take on the work thus produced.

With reference to Rule 5, Mr. Lagerheim noted that, the previous year, Sweden and Norway had each had a separate right to vote, and presumed that the same would be true of the present Conference.
The assembly declared itself in agreement with this practice.

The President invited those of the delegates who might have any statements to make to present them to the assembly.

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

'I feel bound to present to the Conference, in a few words, the position of the British Delegation.

'You will recall, Gentlemen, that last year I was instructed by my Government to attend the preliminary Conference in a purely advisory capacity, and that I was unable to take part either in the discussions or in the votes.

'I nevertheless drew up detailed reports on the deliberations and conclusions of that preliminary Conference, and recently I was pleased to be able to announce to the Federal Council that my Government, recognizing the importance of this now-international question, has decided to be represented at the 1885 Conference by two delegates with more extensive powers. It appointed me for that purpose, together with Mr. Bergne, the head of a large Foreign Office department in London. We are authorized to take part in the deliberations and votes of the Conference, but on the strict condition that we may not in any respect commit our Government, which will remain entirely free either to subscribe to the conclusions of the Conference or not.

'The delegates will not be unaware that the present English law on literary and artistic property presents difficulties that would not allow Great Britain to accede to an International Convention without its Parliament having first sanctioned new legislation. The main task of the British Delegation will be to present, at the appropriate time, such observations as will lead the Conference to establish foundations for a Union that will facilitate not only the eventual accession of Great Britain, but also that of other States.

'With this in mind, we take the liberty of hoping that the foundations of the Union will take on as broad and liberal a character as possible, and that the Convention will contain principles rather than details. For it is essential not to overlook the fact that one single detail inserted in the Convention that does not conform to the domestic law of any State could well become an insurmountable obstacle to that State's accession.

'We should therefore like to think that the Conference will confine itself to laying down principles that will precisely shape the foundations of the Union, and that it will leave aside such details as might make it more difficult for States to align their legislation on the provisions of the Convention.

'Finally, if the result of the Conference should be a draft Convention of the kind that I have had the honour to outline, it would be for us the most agreeable of duties to submit to our Government the legislative amendments that would enable Great Britain to enter into the International Union, and we should be well pleased with having to some extent assisted in the grant of broader and more effective protection to the intellectual products of all the States forming part of this Union.'

For his part Mr. Tamayo, the Delegate of Spain, spoke as follows:

'By outlawing adaptation and by setting the exclusive right of translation at the entire duration of the right of ownership of the original work, my country has given a striking testimony, in the Franco-Spanish Treaty, of its respect for author's rights and for modern conceptions of literary property. The Spanish Government therefore hopes to have no difficulty in acceding to the International Union; it does, however, feel bound to reserve fully the right to consider and accept or reject the conclusions of the Conference. As the Literary Delegate of Spain, I am not authorized to make final commitments on its behalf; and if I should express certain opinions in the course of the discussions, they will not be binding on my Government in any way.

'The Secretary of the Conference will no doubt be so kind as to record this statement in the minutes.'

Pursuant to Rule 2 of the Rules of Procedure, the President observed that the time had come to proceed to the general discussion of the draft Convention, and asked the delegates whether they intended to embark on it immediately or postpone it until later.

The assembly decided to set the general discussion for an afternoon session, which would take place at 3 p.m. on the same day.
The President communicated to the Conference a letter from the Society of Men of Letters of London, accompanying a draft law on literary and artistic property, a certain number of copies of which had been distributed to the delegates.

The meeting rose at 11.10 a.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ
President

CHARLES SOLDAN         BERNARD FREY
Secretaries

MINUTES
OF THE
SECOND MEETING
OF THE
CONFERENCE FOR THE
PROTECTION
OF LITERARY AND ARTISTIC
WORKS

September 7, 1885
Presided over by the Federal Councillor
Numa Droz, President

The meeting opened at 3.20 p.m.

The delegates who had attended the previous meeting were present.

Pursuant to Rule 2 of the Rules of Procedure, the President opened a general discussion on the draft as a whole.

Mr. Lagerheim asked whether States other than those mentioned in the circular from the Federal Council of April 24, 1885, had made comments on or proposed amendments to the draft Convention.

The President replied that, with few exceptions, the Governments had confined themselves to replies of general character, and that those replies were as a whole sympathetic to the aim pursued by the Conference. The Italian Government had made some special observations, however.

Mr. Rosmini explained that those observations were not, in principle, contrary to the draft, but merely sought to win support for a clearer drafting or an amendment of form, the exception being the discussion of the amendment concerning the right of translation.

Mr. Lagerheim said that his Government, for reasons attributable to Swedish legislation, would prefer authors not belonging to a country of the Union not to be protected. However, if the Conference were not to accept that way of thinking, it would, for the present, support the amendments proposed by the French Delegation for Article 3.

As for the right of translation, the Swedish Government had not changed its opinion; acceptance of the proposal of the French Delegation would result in the exclusion of Sweden and Norway from the projected Union. While understanding that France, being so generous towards authors of all nationalities, wished to enjoy reciprocal treatment in other countries, Mr. Lagerheim failed to see why it should refuse to allow in the Convention a principle that it had established in a large number of its specific treaties. It was not a question of achieving unity—it had been agreed the previous year that that was impossible—but rather a question of establishing the foundations of a Union. He therefore hoped that France would be so kind as to make it easier for the Scandinavian countries to reform their legislation, by not expecting of them a sacrifice that they would very probably be incapable of making. In conclusion, he made an appeal to France's spirit of generosity and fairness.

As no one wished to take the floor on the subject of the draft as a whole, the President opened the discussion on its various articles. It was understood that there would be no voting and which would in no way prejudice questions of drafting.

The preamble of the draft Convention did not give rise to any observations.

On the subject of Article 1, Mr. Reichardt asked whether it would not be possible to
delete the expression ‘Union’ for the protection of authors’ rights, in view of the difficulty that the translation of that term into German would present. It would be sufficient to speak of a ‘Universal Convention.’ Moreover, it would be difficult to understand a ‘Union’ composed of countries living under a highly divergent legislative regimes. Apart from that, the idea of the Union could be reintroduced when universal codification was achieved.

Mr. Renault and Mr. Lavollée opposed the deletion of the word ‘Union,’ which in their view would weaken the bond that had to exist between contracting countries. By sacrificing the expression, one would appear to be abandoning the actual idea. The divergency of legislation had not prevented States from setting up ‘Unions’ in connection with posts and telegraphs. As for the proposed term, ‘Universal Convention,’ it would correspond even less to physical reality than ‘Union.’ Finally, there was no knowing how the International Bureau would be designated if the proposal by the German Delegation were adopted.

Mr. Rosmini said the following: ‘with regard to the proposal by the French Government that the words ‘literary and artistic property (Urheberrecht)’ should be substituted for ‘authors’ rights,’ the Delegates of Italy have instructions not to oppose it, even though lawyers have to recognize that the term used in the draft is more accurate and more appropriate than that of the proposed amendment.’

Mr. Lavollée and Mr. Renault pressed the French proposal, in view of the fact that the expression ‘droits d’auteur’ in French did not have the same connotation as the German word ‘Urheberrecht’ but rather indicated the sum that a dramatic author received for the performance of his play. As the Convention was drafted in French, it seemed necessary, in order to prevent misinterpretation, to adopt the expression customary in France.

Mr. Reichardt stated that Germany could not accept the French proposal, in view of the consequences that case law would draw from the word ‘property.’ This expression had indeed caused much controversy and discussion; it should therefore not be used, and the term ‘authors’ rights,’ or, which would perhaps be even better, the expression ‘copyright,’ neither of which gave rise to any ambiguity, should be used instead.

The President thought that the Convention would be authentic in the official wording that would be published in the statute books of the various countries. Each of them would therefore be free to choose whatever translation best corresponded, in its language, to the legal conception enshrined in the expression used in the Convention.

In the first paragraph of Article 2, the French Delegation proposed the replacement of the words ‘whether in manuscript or unpublished form’ by the words ‘whether published or not.’

Mr. Lagerheim pointed out that if, as he supposed, the purpose of the amendment was not to change the principle embodied in the draft, one should preferably say ‘either published in one of those countries, or unpublished.’

The French Delegation declared that its amendment indeed did not have the purpose of changing the principle of the draft, and that it therefore endorsed the proposal by Mr. Lagerheim.

On the subject of the second paragraph of Article 2, Mr. Reichardt and Mr. Renault observed that the drafting of the paragraph was ambiguous and should be amended.

Mr. Reichardt expressed strong reservations as to the grounds given by the French Delegation in support of the amendment it proposed to the third paragraph of the same Article: it would appear to have the effect of allowing the publication of a literary work to occur by word of mouth; yet that would be a principle entirely contrary to what was recognized by German science and case law.

Mr. Rosmini desired it to be expressly stated that the term of protection granted to foreign authors could not exceed that of the protection enjoyed by nationals, and pointed out that it was a provision already written into Article 1 of both the Italo-French and the Italo-German Conventions.

Mr. Reichardt replied that that was sufficiently evident from the end of the first paragraph, which specified the application of national law to foreigners, and that it was for that reason that the 1884 Conference had deleted the sentence proposed by Mr. Rosmini as being unnecessary, although it did indeed appear in existing conventions.

Mr. Bergne announced that the British Delegation would be submitting a new
drafting for Article 2 to the Conference on the following day.

With regard to Article 3, Mr. Renault pointed to what appeared to him to be a gap in the Convention: the protection granted by Article 3 to publishers seemed to refer only to the provisions of Article 2. In order to assimilate publishers fully to authors, the provision in Article 3 should be made general so as to cover all the rights afforded by the Convention, particularly those derived from Articles 6, 7 and 11. Mr. Renault felt moreover that the Conference agreed that assimilation had to operate for all the rights protected.

Dr. Dambach, while agreeing with the substance of Mr. Renault's way of thinking, did not think it was necessary to amend the draft: the desired interpretation followed necessarily from the combination of Article 3 with Article 1.

Mr. Lagerheim pointed out that Article 7 of the draft referred expressly to Article 3, and that Article 11 did so by implication. It was therefore only Article 6 that was not applicable to publishers. There was clearly a gap to be filled.

In Article 4, the French Delegation proposed the inclusion of photographs among protected works.

While endorsing the above addition, Mr. Rosmini asked for protection to extend also to choreography. He justified the proposal by pointing to the importance that the art form concerned had acquired in recent years. In that genre Italy, like France, Germany and other countries, possessed remarkable works in regard to which it was not a question of protecting just the libretto, which was only an outline, or the music, which was only an adjunct, but also the choregraphic action, which was a creation by the author. Any choreographer worthy of the name was a poet and an artist: he created the subject; he organized the scenes, the decors, the costumes, the tableaux and the colours; likewise the sequence, the plot, the development of mimed passages and dances, which expressed the imaginary, mythological or historical drama concerned. All that was a genuine work of art, and the whole work was a dramatico-musical work. Thus there was a twofold reason for protecting choregraphic action.

Mr. Reichardt said that Germany could not protect photographs as works of art. As for choreographic works, he pointed out that the wish expressed by Mr. Rosmini deserved the full attention of the Conference. In Germany, the matter had been seriously taken into consideration during negotiations prior to the conclusion of the 1884 Italo-German Literary Convention, and indeed with all the more interest since, as Mr. Rosmini had been kind enough to acknowledge, Germany had produced important works in the choreographic field. However, examination of the question in depth had shown that, instead of providing expressly and in general terms in the Convention itself for the protection of those works, it would be preferable, in the interest of development in that area, to leave the matter to the discretion of the courts. The Convention already protected ballet libretti and music under another heading. So what remained to be protected? That would be the dances, the poses, the tableaux by supernumerary actors, etc. By proclaiming the protection of choreographic works without any reservation or distinction, one was arguably running the risk of implicitly including in that production certain types of pseudo-choreography that did not deserve at all to be included among works of art. It would be opening the way to the protection of any mimed show or any choreographic scene, whether performed at a circus, at a fair, in side-shows or even in the street. It should rather be the dramatic or dramatico-musical nature of a choreographic work that should be its entitlement to protection. No clear definition of choreographic works yet existed in science or legislation or even, to the speaker's knowledge, in case law. In view of the pressing need to make the protection sought by the Italian Delegation contingent on certain distinctions, it should be left to the courts, at least until the problem of a definition was solved, to judge where appropriate whether, and if so under what conditions, the protection granted to dramatic or dramatico-musical works against unlawful reproduction should apply to choreographic works.

In general it was preferable not to enlarge the enumeration contained in Article 4, and to leave it to case law to develop the principles to be imposed. It was to praetorian jurisdiction rather than to legislation that the ancient Romans owed the classical development of their civil law; it should also be left to the courts of the countries of the Union to perfect, clarify and complete the legal subject matter at
present before the Conference, which only very recently had been subjected to serious study.

The speaker reserved the right to present the Conference with an amendment that took account of the above way of thinking on the one hand, and of the desire expressed by the Italian delegate on the other.

Mr. Renault failed to see what disadvantage there could be to the express mention of photography and choreography, as those types of work would only enjoy protection to the extent that it was granted them by the national legislation of each country.

Mr. Lavollée also considered that Article 4 was restricted by Article 2, which confined itself to specifying the assimilation of foreigners to nationals.

Mr. Reichardt was unable to accept that way of reasoning. On the contrary, he considered that the unreserved inclusion of choreographic works in Article 4 would be binding, and that the works mentioned there would necessarily be protected in all the countries of the Union, at least in so far as the legislation of one country or another did not expressly or implicitly refuse such protection.

Mr. d’Orelli endorsed the opinion expressed by Mr. Reichardt. Admittedly the draft originally allowed specific legislation to prevail on all points; however, in the course of the work of the 1884 Conference, certain principles had been introduced that would be compulsory for all countries of the Union.

Dr. Dambach pointed that it would not be sufficient to insert the words ‘photographs’ in Article 4 but that, in order to protect that kind of work, still other special provisions would be required: a distinction would have to be made from the legal point of view between a number of types of photograph, namely photographs of artistic works already enjoying protection, and photographs of works that were not protected. Due account would also have to be taken on the fact that various countries, including Germany, had made the protection of photographs subject to certain formalities, which would cause an amendment of the third paragraph of Article 2. Under those circumstances, it would be preferable to reserve the protection of photographs for a special convention.

Mr. Lavollée replied to Dr. Dambach that the position regarding photographs was the same as that regarding many other works mentioned in Article 4, lithographs and drawings for instance. It was clear that the unauthorized reproduction, by photography, of a work enjoying protection was an infringement and had to be punished as such.

Mr. Lagerheim noted that there had been a misunderstanding up to that point, and that the various Governments had not interpreted Article 4 in the same manner; it would therefore be necessary to specify its scope very clearly.

Mr. Bergne asked whether a text should not be adopted that replaced the enumeration in Article 4 with an entirely general drafting.

Article 5 and the amendment to it formulated by the French Delegation did not give rise to any comment.

The continuation of the discussion was adjourned to the following day, at 9 a.m.

The meeting rose at 5.45 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ
President

CHARLES SOLDAN BERNARD FREY
Secretaries

MINUTES OF THE THIRD MEETING OF THE CONFERENCE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

September 8, 1885

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 9.15 a.m.

The following were present: the delegates who had attended the previous meeting,
in addition Mr. B. L. Verwey, Consul General of His Majesty the King of the Netherlands to the Swiss Confederation, Delegate of the Netherlands, to whom the President addressed a few words of welcome.

The discussion of the draft Convention Article by Article resumed.

Mr. Bergne, on behalf of the British Delegation, spoke as follows:

'I have the honour of reading out to you the proposed text for Article 2 that I announced to you yesterday:

'Article 2

'Authors who are subjects or citizens of one of the Contracting Countries or their lawful representatives or agents shall enjoy in all the other countries for their works, whether published or not, the advantages that the laws concerned do now or may hereafter grant to nationals.

'However, those advantages shall be reciprocally guaranteed to them only during the existence of their rights in the country in which the work was published for the first time.

'The enjoyment of these advantages shall be subject to the accomplishment of the formalities and conditions prescribed by the legislation of that country.'

'As the British Minister said to you yesterday, the British Delegation's desire was to remove from the Convention, as far as possible, those details that could be in conflict with the domestic law of any State.

'We think that, if our wording were accepted, one might perhaps delete Articles 3 and 5 as being as unnecessary. The delegates are no doubt aware that present English law imposes the conditions of deposit and registration with respect to foreign works in England, but we do realize that the only means of arriving at an understanding in the interest of an International Union is to relieve authors of those formalities. We propose to draw our Government's attention to the necessity of new legislation on this point; but we cannot of course give assurances that the principle will receive Parliamentary sanction.'

The discussion was opened on Article 6.

Mr. Baetzmann spoke as follows: 'As the protection referred to in this Article is unknown, in general terms, in Norwegian legislation, it is important to us that the restrictions that our membership of the projected Union will impose on our translation literature should not be imposed abruptly.

'It will therefore be impossible for the Government of Norway to endorse the proposal to the effect that authors should be granted protection against unauthorized translation that has the same duration as protection against infringement.

'If, therefore, it is preferable that, on this point, the Convention should be given the same content as that of last year's draft, namely a content whose legislative implementation would in all probability not encounter any too-great obstacles.

'I would add that the instructions that my Government gave me on this point refer only to the draft emerging from last year's Conference and to the French proposal.'

Mr. Reichardt noted that the statement made the previous year by Germany on the subject of assimilation of the right of translation to the right of reproduction had been criticized as inconsistent, because, while recognizing in principle the soundness of the French proposal, it had opposed it. This criticism was not justified; the German Delegates were authorized to allow the French amendment, which they regarded as conforming to a tendency of the times, but on condition that all the other countries also adopted it. That condition had not been fulfilled: a large number of countries would refuse to accede to the Convention if the right of translation were assimilated to the right of reproduction. Under those circumstances, Germany proposed to abide by the draft. It also had to be pointed out that the French amendment had little more than theoretical value for the time being: it was indeed very probable that, before the ten years granted by the Convention had expired, the term of protection granted for the right of translation would have been lengthened by a subsequent Conference. By adopting Germany's attitude, there was a chance that accession to the Convention might be secured from countries that would have shied away from the principle of assimilation.

Mr. Lavollée was pleased to be able to note the statement by the German delegates. The
agreement existing between France and Germany on the principle of assimilation seemed to be a guarantee of success for the overall work. The objection put forward by Mr. Reichardt was only a factual objection; there was as yet no proof of his contention that, by assimilating the right of translation to the right of reproduction, one would be estranging a certain number of important States from the Convention. It seemed on the contrary that, when a step forward was to be made, advanced countries should set an example without awaiting the unanimous support of the others. That was what France had done up to the present, and in doing so it had acted in conformity with justice, and perhaps also, unintentionally, with its interests. It could not at the present stage abandon that line of conduct to adopt a restrictive principle. France would, however, have cause for reflection if its Delegation were convinced that the establishment of the principle advocated by it would estrange major countries from the Union; there was no proof of that so far. On the contrary, there was reason to hope that Great Britain would amend its legislation to accommodate assimilation: indeed there seemed to be little doubt, according to the statement by the British Delegates, that a bill for the amendment of English law would shortly be presented to Parliament, and it was noteworthy that, in the draft that had recently been jointly produced by the Society of British Authors and the Society of British Publishers, the text of which had been communicated to the Conference, the right of translation was assured on an equal footing with the right of reproduction. That proposal would acquire still more value, and a virtually sure prospect of success, if it were reinforced by a favourable vote from the Conference. There were therefore no serious obstacles to be seen to France and Germany, which agreed on the principle and moreover were assured of support from Belgium, Spain and Switzerland, establishing, on the basis of assimilation, a Union whose attractive force would be absolutely irresistible; if they were able to take advantage of that opportunity, they could, better than by the mere expression of a wish, ensure the acceptance at very short notice, not only by Great Britain, but also by all the great civilized peoples, of the system that they considered the most equitable, the most logical and the most in accord with the interest of authors and that of the public. However, in order to do that, they had to take over the leadership of the movement instead of contenting themselves with following it.

In reply to Mr. Lavollée, Mr. Reichardt mentioned Germany, Austria-Hungary, Sweden and Norway, Denmark and the Netherlands as having probably to abandon membership of the Union in the event of the principle of assimilation being introduced. And it was precisely with the latter States that a number of countries had for a long time desired to conclude conventions on authors’ rights, and there were all the fewer grounds for keeping them at a distance since the French proposal had no practical importance from the point of view of urgency. Furthermore, Article 6 was complemented by the resolution formulated the previous year concerning the full assimilation of the right of translation to the right of reproduction in general. Finally, if experience were to show that the retention of the provision in Article 6 beyond ten years after the entry into force of the Convention was prejudicial to certain States, Article 20 would give them the option of denouncing the Convention.

The British Delegation, in the person of Mr. Bergne, saw fit to submit the following wording for Article 6 to the Conference for consideration:

‘Authors who are nationals of one of the countries of the Union, or their lawful agents or representatives, shall enjoy, in all the countries of the Union, the exclusive right of translation in relation to their works, in so far as it is granted them by the law of the country in which protection is sought.’

In support of his proposal, Mr. Bergne added the following:

‘It seems to us that the differences of opinion that have arisen on this point lead one to hope that many difficulties will now be removed.

‘Article 2 lays down the principle according to which the protection for original works is that granted by each country to its nationals.

‘However, in international relations, translation is almost the only means of reproduction. So why, in that case, specify more than is in Article 2?’
Without this limitation, every country would profit by whatever was available in another country and, in terms of the second paragraph of Article 2, no country would receive abroad more than it would give at home. That in our opinion constitutes perfect reciprocity, which would not inconvenience any country in its task of bringing its legislation into line with the provisions of the International Convention.

If one were to allow the exclusive right of translation for the full extent of the term set for the original work, several States would probably be prevented from acceding. Setting a term of ten years would be tantamount to consenting to the wish that protection should not go beyond that limit.

If the proposed wording were to be accepted, one would be able to delete all the details following the first paragraph of the Article in question, which were liable to cause quite considerable difficulties to arise in Great Britain and in other States.

Federal Councillor Ruchonnet said that the Swiss Delegation would be only too pleased to subscribe to the French proposal, as Swiss law provided that literary property presupposed the right of translation. However, in order to create a Union, it was necessary to gather together the greatest possible number of States; so, in the face of the statements by Germany, Great Britain and Norway, the instructions given to the Italian Delegates and the absence of the Delegates of Austria-Hungary, the central core indicated by Mr. Lavollée would be reduced to not very much at all. Another area therefore had to be found, and in that respect it was important to note that the draft embodied two quite different things. On the one hand, Article 2 assured every member of the Union of national treatment in full measure, including also the right of translation, on the sole condition that the term of protection should not exceed that granted by the legislation of the country of origin. On the other hand, there were a certain number of provisions in the draft that amounted to the beginnings of universal codification. One of them was Article 6, whose purpose was to oblige contracting countries to protect the right of translation for a minimum of ten years, without precluding more extensive protection, if such were provided for in national legislation. The Conference of the previous year had sought in that respect to take a step in the direction of codification. From that it followed not only that the British proposal would have to be rejected, but also that the wording of Article 6 would have to be revised to state expressly that it was without prejudice to the provisions of Article 2.

Mr. Ruchonnet also criticized the provision to the effect that the exercise of the right of translation was subject to the condition that it be made use of within three years. That period was insufficient: before the need for a translation could be felt, before the fame of the work could spread to a country where another language was spoken, quite a considerable time had to pass, and still more time would be needed to trace a qualified translator, to translate the work and to publish it. It would need only a modicum of ill will on the part of the publisher or printer for the period to expire and for the author to forfeit his right. So in fact the exclusive right of translation written into the draft Convention amounted to very little. Consequently, Mr. Ruchonnet asked the delegates of the countries that were opposing assimilation whether one might not lengthen the periods, for instance, to five and twelve years instead of three and ten.

Mr. Lavollée supported Mr. Ruchonnet’s observation regarding the insufficiency of the period for publication; the three-year period was an outright invitation to act in bad faith. Even if it were extended to five years, it would still be too short, and it would be preferable to increase it to ten years. Moreover, addressing the delegates of the countries whose literature was relatively undeveloped, or those that needed to borrow from producer nations, Mr. Lavollée expressed the fear that freedom of translation might deal a fatal blow to the development of national literature. In support of his observation he quoted a passage from a report from Mr. de Borchgrave, rapporteur of the Chamber of Representatives of Belgium, on the draft law at present under preparation on literary and artistic property.

Mr. Rosmini, in order to satisfy the wishes expressed by Mr. Ruchonnet and Mr. Lavollée, proposed the deletion of everything in Article 6 that had to do with the three-year period. On the other hand, the Italian Delegation could not accept full assimilation of the right of
translation to the right of reproduction in general. The French proposal was too broad: something remained to be done for the benefit of society; it could not be forever deprived of the enjoyment of a work published in one country which the author or his heirs might not wished to have translated.

Mr. Renault insisted on the difficulties arising from the three-year period. They were particularly great for serious works, regarding which it was often unknown, at the beginning of the work, whether a translation was even feasible. Where the work was composed of a number of volumes published at intervals, the drawback mentioned was even more striking, because, according to the fifth paragraph, each volume would be considered a separate work with respect to the periods for translation, so that the author's exclusive right could be lost for the first volumes when, as a result of its completion, the work showed attributes that warranted its translation. Mr. Renault added that the provision under discussion was a provision of paramount importance and indeed essential to the draft; it was the one that would give it its real character. As translation was the normal manner of reproduction in relations between countries that did not speak the same language, it was a question of deciding whether one should strictly prohibit what no one would be tempted to do, while at the same time allowing quite considerable latitude for the very thing that was the most dangerous and indeed often the only thing possible.

Mr. Lagerheim said that the Swedish Government was quite conscious of the fact that absolute freedom of translation was to a certain degree prejudicial to national literature. It was moreover partly for that reason that it had decided to direct its attentions towards reform. It was bound to take the President's position into consideration, however, and it could not bring itself, at the outset, to accept the amendment proposed by the French Delegation. It also had to be noted that the position of the Scandinavian countries was in fact not the same as that of the countries that were demanding the assimilation of the right of translation to the right of reproduction: as the knowledge of foreign languages was quite widespread in Scandinavian countries, there would be more publication of translations of foreign works than there would be of Scandinavian works in other countries. If Sweden were to accept the French proposal, it would not in fact be receiving protection equivalent to that granted to foreign authors, and from that point of view, even by adopting the provisions of the draft, it was already making a sacrifice beyond which it could hardly go.

Article 7 did not give rise to any comment.

On the subject of Article 8, Mr. Baetzmann announced that he would propose wording the beginning of the Article as follows: 'The publication in any of the countries of the Union of excerpts, fragments or whole passages of a literary or artistic work that has appeared for the first time in at least a year in any other country of the Union shall be lawful, etc.'

The purpose of the amendment was to prevent the right of compilation from being abused. Mr. Baetzmann added that opinions might differ on the subject of the one-year period, but he hoped that the principle of the legitimacy of protection such as that just indicated by him would be acknowledged.

Mr. Baetzmann also said that he would be voting against the last paragraph of Article 8.

In the name of the British Delegation, Mr. Bergne subscribed to the wish expressed by the French Delegation that Article 8 should be deleted.

The President drew the Conference's attention to the question whether a foreign author would be exposed to borrowings whereas, according to national legislation, the national author would not be so exposed. If Article 8 were retained, it should be stated expressly that borrowings from a foreign author were lawful only in so far as the national author was exposed to the same thing.

Mr. Reichardt observed that Article 8 was a step towards unification of authors' rights, being a restriction of copyright that was binding on all the Contracting States. If Article 8 were deleted, specific legislation authorizing borrowings would subsist, and that would hardly be in conformity with the idea of a Union for the protection of authors' rights. The reason for the German Delegates' demand that Article 8 be retained was on the one hand precisely that it laid the groundwork for codification, and on the
other hand that it also enshrined a fair principle, as borrowings were necessary for education and for the progress of science, and were in no way prejudicial to the development of authors’ rights. In any case, if the Article were deleted, it would be necessary, in view of the provisions of Article 16 and the Additional Article, to introduce a special provision in order to preserve provisions comparable to Article 8 that were at present contained in special literary conventions, and to reserve the right of countries of the Union to conclude special conventions within the meaning of Article 8 in the future.

Dr. Janvier criticized the last paragraph of Article 8, and asked for it to be deleted, as it contradicted the rest of the Article. He spoke in favour of retaining the Article, and even preferred retaining it in its entirety to its complete deletion.

Mr. Rosmini said that Article 8 was a restriction on copyright, and that the exception was hardly justified with respect to chrestomathies; such books, being compulsory for schoolchildren, became very profitable for publishers; their main contents were drawn from the classics, which were already in the public domain; as for modern authors, it was only fair to ask for their consent. The Article could therefore be deleted without any risk for public education. The Italian Delegation did not, however, have any objection to its principle being maintained; but it did point to the contradiction existing between the last paragraph and the rest of the Article. It was not understood why music teaching should be treated differently from other branches of education.

Mr. Lavollée believed that the provision in the last paragraph, which was first included in the Franco-German Convention of 1883, was attributable to the fact that, for certain composers, the use of their compositions in music schools was one of their main sources of income, of which it would not be fair to deprive them.

Mr. Reichardt, while subscribing to the comment made by Mr. Lavollée, said that the provision criticized by Mr. Rosmini related only to music schools proper, such as ‘Conservatoires’ and other such institutions. It did not by any means prevent the inclusion of pieces of music in song books used for ordinary schools. Germany might perhaps, in view of the provisions of its legislation, consent to the deletion of the entire Article, but, if it were retained, it could not allow the deletion of the last paragraph, which reinstated the general rule.

Mr. Rosmini noted that, if the scope of the last paragraph of Article 8 were that attributed to it by Mr. Reichardt, its wording was wrong. It should be revised to make it quite clear what borrowings were prohibited, namely compositions that the composer had intended for music schools; in any case, however, the deletion of the paragraph was preferable.

Mr. Ruchonnet pointed out that the deletion of Article 8 had been asked for on two sides and for two different reasons: by France, in order to prevent pirating, and by Great Britain in order to allow more freedom for national law. It would be helpful if an understanding could be reached. The Conference of the previous year had sought to provide for a maximum of codification; perhaps it might be wiser at the present stage to adopt the British proposal and to reserve unification on that subject for a subsequent Conference.

H.E. Mr. F.O. Adams subscribed to the view expressed by Mr. Ruchonnet.

Mr. Reichardt wished to know whether the right to make quotations of some length was sanctioned by French legislation.

Mr. Renault replied that French works, particularly works of science or criticism, made very extensive use of the right of quotation, and that to his knowledge the right in question, which was asserted by the legal writers who had addressed the subject, had never given rise to any litigation before the courts.

Dr. Dambach pointed out that the case law and legislation of the various countries could vary, and that consequently it seemed preferable to retain Article 8 and to specify in the Convention itself the right to make quotations, etc.

The President drew the assembly’s attention to the consequences that there would be if Article 8 were retained. In particular, it had to be decided whether the specific provisions that encroached more than that Article did on the rights of authors could subsist in spite of its retention. If necessary it could be mentioned in the Additional Article that any more restrictive provisions on that point contained in national legislation or in specific Conventions would remain reserved.
On the subject of Article 9, Mr. Baetzmann said that he would later be submitting to the President an amendment that would simplify the wording of the Article, which seemed to him, in its present form, to be rather too complex. The amendment would aim to make the protection of all sorts of newspaper or magazine articles subject to an express declaration of reserved rights by the author. He then proposed the addition to Article 9 of the following paragraph: ‘In any case, the source shall be specified.’

Dr. Janvier made the following speech:

‘Gentlemen,

‘I have some comments to make on Article 9. According to the draft Convention that I have before me, Article 9 allows the reproduction of articles of political discussion and prohibits the reproduction of articles on science.

‘That seems to me hardly fair and indeed open to criticism. An article of political discussion, however important it might be or appear, is bound to have an interest that is either just national, or restricted from an international standpoint, or temporary. An article on science generally has a largely international, permanent, and sometimes universal character.

‘In September of last year, I already had the honour to point this out to you. New circumstances have arisen since which bear out the arguments that I put forward at that time. I now repeat them, presenting them from another angle and completing them.

‘You will have seen that Dr. Ferran claims to have discovered the means of making cholera benign by vaccination. Let us suppose that, instead of keeping his process to himself, and his secret for his country, he revealed them to the world in a note published in a Spanish newspaper, or in a letter published in a Spanish magazine; according to Article 9, the note or the letter could not be reproduced either in the original or in translation in any of the countries of the Union. On the contrary, owing to a singular irony which at best comes as something of a shock, they could be reproduced in a country that had refused to join the Union.

‘I would ask you to bear in mind that cholera, an epidemic disease, can break out in the most diverse climates and under skies that are very different from each other. An article of political discussion may of course seem extremely interesting to one country; it may indeed be of interest to two or three areas of civilization with more or less similar political systems; yet an article on science can serve immediately after its publication in all the social conglomerations of the globe, because men are virtually the same everywhere, particularly with respect to their susceptibility to a zymotic disease such as cholera.

‘What I have just said of medical science and the human race can apply to sciences either more exact or less exact than medical science, to breeds of domestic animals, and even to plant species, which, as you all know, are a matter of constant concern to a number of major countries of Europe and America.

‘Scientific discoveries have to serve all mankind, all creation.

‘If the authors or publishers of scientific articles do not formally prohibit reproduction, your Convention should not try to be more of a royalist than the king or more paternal than a father; it should not prohibit such reproductions.

‘Your Convention proposes to unite all the countries of the planet in common agreement. It will achieve that aim all the more quickly for being liberal and humanitarian, and all the more readily for showing itself to be full of generosity and greatness.

‘I know quite well that the words of Article 9 whose deletion is desirable are to be found in conventions already concluded and signed between major European States whose intellectual powers and moral enlightenment are mutually balanced or compensated, being written into the Treaty of July 25, 1883, between France and Germany among others, but, Gentlemen, the clauses of a general international Convention must have, or at least must be able to assume, a less restrictive character than the clauses of an international bilateral treaty.

‘An international Convention whose clauses are too restrictive from the scientific point of view or from the point of view of applied natural sciences, and above all from the point of view of the science of nature exploitation, will not be signed either by Latin America or by English-speaking America.

‘Account has to be taken of the opinion of nations whose total population figure is in excess of a hundred million souls.'
Appendix

'Perhaps, as a matter of urgency, you should remove every ambiguous phrase from the instrument constituting your Convention; it is important to prevent all misunderstanding, and commendable to dispel in advance, through it, any confusion that might arise in the minds of governors who, later, might wish to apply the Convention to the countries under their administration.

'Article 8 says that the reproduction of excerpts, fragments or whole passages of a literary or artistic work is lawful, provided that the publication is specially designed and adapted for education or has scientific character.

'Either it is in flagrant or latent contradiction with Article 9, or it is not. If it is in contradiction, one should delete from Article 9 whatever contradicts the terms of Article 8; if the Articles do not actually contradict each other, it is better to delete everything that appears to be a contradiction, and all words that could be contradictory in the eyes of some people.

'Therefore, I have in any event the honour to propose to you that the wording of the first sentence of the second paragraph of Article 9 be as follows:

'This right shall not, however, extend to the reproduction, in the original or in translation, of serialized novels or articles on art.'

'Last year, one of the leading lights of the Conference maintained that scientists could not protect themselves: Dr. Ferran has just triumphantly proved the opposite. It was also said that scientists had to be protected despite themselves.

'For the time being, an excess of protection, and for that I apologize to my eminent colleague, would be fatal to the Union that we wish to establish. On the other hand, any lack of precision in the final text of the Convention would be prejudicial, not only in terms of ideals but also in material terms, to the general cause of science and that of humanity.

'Science can never be localized, any more than it can be taken to pieces. Its ultimate purpose is not enrichment, but rather enlightenment by all available means.

'If my proposal is approved, you will have resolved the question in its broadest sense, in its most philosophical sense and, Gentlemen, I take the liberty of adding, in its most distinguished sense for you, for the countries represented here and for scientists.'

Mr. Bergne, in the name of the British Delegation, asked for the deletion of Article 9, for the same reasons as had induced him to propose the deletion of Article 8. It seemed preferable to leave all such details to be evaluated by the courts of each country. The impossibility of aiming at the present stage for full codification of international law had been recognized; so, without such codification, it seemed practically impossible to harmonize the minute stipulations of the draft with the laws of all the countries that one wished to see joining the Union.

The continuation of the discussion was adjourned to an afternoon meeting, which was to take place at 3 p.m. on the same day.

The meeting rose at 11.45 a.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ
President

CHARLES SOLDAN            BERNARD FREY
Secretaries

MINUTES
OF THE
FOURTH MEETING
OF THE
CONFERENCE FOR THE
PROTECTION
OF LITERARY AND ARTISTIC
WORKS

September 8, 1885

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 3.20 p.m.

The following were present: the delegates who had attended the previous meeting.
The President read out a letter from J.M. Torres Caicedo, Minister of El Salvador in France in which the sender announced that, owing to a change of Government, he had not received the necessary powers to take part in the Conference.

The President also announced that Mr. Hector Álvarez, Resident Minister of the Argentine Republic to the Swiss Confederation, and H.E. Mr. José S. Decoud, Minister for Foreign Affairs and Special Commissioner of the Government of Paraguay, had announced to him that they would attend the Conference.

H.E. Mr. Maurice Delfosse, Minister of Belgium, made the following statement:

'I have the honour to submit to the officers of the Conference, by way of information, the report of the central section of the Chamber of Representatives on the draft law for the protection of literary and artistic property presented by the Government of the King. This draft is based on broad and generous principles in international terms; on most points it approximates, as does the counter-draft of the central section, to the draft Convention on which the Conference is deliberating at the present time.

'The discussion of this draft law has not yet started, but it has been put at the top of the agenda of the next legislative session. Under such circumstances the Belgian Government cannot take part in the Conference otherwise than subject to the same reservations as it made at the first Conference, in 1884.'

Mr. Verwey, Delegate of the Netherlands, declared that the Government of his country was following the work of the Conference with interest and was sympathetic towards it, but that its representative could only take part in the deliberations in an advisory capacity.

The discussion of the draft Convention article by article resumed.

In Article 10, Mr. Rosmini proposed deleting the words ‘are composed on the basis of phrases taken from the said works. . . .’ which had the effect of prohibiting genuine original works that were products of intelligence, including the masterpieces of which every nation boasted, which it would be unfair and contrary to the freedom of intellectual production to prohibit or to restrict in any way. It was by virtue of those principles that Italian law protected the authors of such compositions (fantasies, caprices, concerti grossi, etc.).

On the subject of Article 11, Mr. Baetzzmann pointed out that the Norwegian law contained an article worded its follows: ‘it is, however, permissible to declaim or play such works, provided that this takes place without scenic decoration.’ The Delegate of Norway was not absolutely committed to the wording of that legislative provision. However, when one was endeavouring to achieve real codification on the point in question, it seemed appropriate, and perhaps indeed necessary, to prepare oneself for exaggerations of the principle of protection. It would really be something of an exaggeration, for instance, if any declamation or reading of any dramatic work at a public meeting were considered an offence.

Mr. Lavollée indicated that the attention of the French Government had been drawn to the disadvantages that might result from the present wording of the first two paragraphs of Article 11, particularly with regard to the performance of translations. Consequently, the French Delegation submitted the following wording to the Conference, the effect of which was not to alter the substance of the Article, but merely to make its form clearer and more complete.

‘The right of dramatic authors and composers to prohibit or authorize the public performance of their works, whether in the original language or in translation, shall be reciprocally guaranteed to them, in accordance with the provisions of Articles 2 and 6 of this Convention, in each of the countries of the Union.

‘This right shall apply both to manuscript or autographic works and to those that are printed, and they shall be assured of protection by law in each of the countries of the Union in the same way as national works.

‘The right of publication of dramatic works and the right of their performance are absolutely distinct from each other, and the publication of a work shall not authorize anyone to present or perform it without the consent of its author, any more than performance shall authorize its publication.’

Mr. Reichardt considered that the present wording was sufficient, and that it had the advantage of being concise; he failed to see why...
it should be replaced by that proposed by the French Delegation, which had the drawback of being long. The fact of the publication of a dramatic work not prejudicing the right of performance was not in doubt.

Mr. Lavollée replied that the question was indeed regulated with sufficient clarity by the Article under discussion as far as performance of the original work was concerned; but, with regard to performance of the translation, doubts could arise and actually had arisen in practice, and it was important to dispel them with as precise a wording as possible.

On the subject of Article 12, Mr. Rosmini pointed out that it was not in harmony with Article 2, which prescribed formalities to which the enjoyment of authors' rights was subject; consequently he proposed that there be a bracketed reference to Article 2 in Article 12.

The President subscribed to the comment by Mr. Rosmini.

Mr. Reichardt considered that there was no relation between the two Articles, which referred to two entirely different things. Article 2 specified the material conditions to be met for authors' rights to become effective, whereas Article 12 related only to a procedural question, namely the presumption that the person whose name was specified on the work was considered to be the author until proved otherwise.

While agreeing with Mr. Reichardt on the manner in which Articles 2 and 12 related to each other, Mr. Renault nevertheless thought that it would be useful if an express explanation were given.

Mr. Lagerheim did not see any possible ambiguity regarding the scope of Article 12 in relation to Article 2. It was, however, necessary to establish whether publishers, who were assimilated to authors in the cases specified in Article 3, should not be mentioned.

In the name of the British Delegation, Mr. Bergne proposed deleting Article 12, the effect of which would be to leave the whole subject to be legislated on by each country. He pointed out, moreover, that the present wording could not apply to works of art.

Dr. Janvier said the following:

'It is important to reconcile the spirit of Article 12 with that of Article 14.

'I propose the following amendment to the second paragraph of Article 12:

For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be empowered to safeguard the rights belonging to the author.

Elsewhere than in the country of origin of the author, the publisher shall, in the absence of any other proof, be deemed to be the successor in title of the anonymous or pseudonymous author.'

'The Government of a Union national has to have a better right to his works; it has to be able to prohibit effectively a work that the national in question has directed against it. In that case, when it asserts its territorial sovereignty in relation to one of its natives, no foreign publisher representing the author, whether or not he is really substituted for him with respect to his rights, should have the possibility of intervening and changing a matter of domestic policy into a diplomatic question.

'This observation is of some importance, as there is a need to prevent diplomatic difficulties from arising between the various countries of the Union as a result of the publication of political works written by one of their nationals.'

On the subject of Article 13, Mr. Lagerheim said that Sweden regarded the provision contained in that Article as being essentially optional. He wished to make it clear that, in the event of Sweden signing the Convention, it would not by any means undertake to introduce seizure on its territory.

In the name of the British Delegation, H.E. Mr. E.O. Adams proposed that the second paragraph be drafted as follows:

'Seizure shall take place in accordance with the domestic legislation of each country.'

The other words would then be deleted. In Great Britain seizure was within the jurisdiction of the Customs, and his country could not accept the wording of the draft Convention without first changing the Act of Parliament entitled 'Customs Consolidation Act.'

Article 14 did not give rise to any comment.

In [the French text of] Article 15, Mr. Renault proposed replacing the words 'manuscrit on inédite' by 'non publiée.'

On the subject of Article 16, Mr. Reichardt noted that the effect of that provision was that
it would not be lawful for the countries of the Union to restrict the rights granted to authors by those of the provisions of the Convention that had regulatory or unifying character, and that consequently the restriction resulting from the Convention itself would be binding on all those countries.

Articles 17 to 21 did not give rise to any comment.

In the name of the British Delegation, and in view of Great Britain’s position in relation to its colonies, Mr. Bergne proposed completing the Convention with an additional article worded as follows:

‘Accessions to this Convention shall constitute accession on the part of all the foreign colonies or possessions of the acceding country, except where a reservation to the contrary has been expressly made at the time of accession.

‘The acceding country shall, however, have the right to exclude one or more of its foreign colonies or possessions from the effects of this Convention by declaring the fact at the time of its accession.’

The Additional Article following the draft Convention did not give rise to any comment.

The Conference went on to discuss the Final Protocol.

On the subject of item 1, Mr. Lagerheim mentioned that the Federal Council circular of April 24, 1885, mentioned a reservation made by Belgium, and wished to know whether the Belgian Delegate intended to make a statement in that connection.

H.E. Mr. Maurice Delfosse replied that his instructions did not allow him to rely on the Belgian Government consenting to the signature of a Convention that enshrined the principle of retroactivity and would therefore make it lose the benefit of existing conventions.

Mr. Reichardt explained that the draft Convention did not actually enshrine retroactivity, and did not harm the interests of anyone: reproductions lawfully made or begun before the entry into force of the Convention would not be covered by its prohibitive provisions.

The President joined Mr. Reichardt in declaring that the transitional provisions of the Convention did not contain anything at all that might prevent any Government from acceding to it.

Item 2 did not give rise to any comment.

On the subject of item 3, Mr. Lagerheim said that he would not be able to vote on the French amendments, in view of the precise instructions that he had received on the subject. Moreover, the amendment in any case went too far, as it referred generally to any borrowing made without the author’s consent, which would clearly have the effect of preventing all quotation, thereby making it impossible to publish certain scientific and other works of great importance that had been composed in all good faith.

Dr. Dambach subscribed to that way of thinking. He also pointed out that there was no way of defining the term ‘adaptation’ satisfactorily. That was what the Conference had been obliged to acknowledge the previous year. The draft should therefore be adhered to, and the courts left to prosecute infringement in all its forms.

Mr. Bergne asked whether the French proposal applied to the dramatization of a novel.

Mr. Lavollée replied in the affirmative.

Dr. Meyer drew the Conference’s attention to the consequences that adoption of the French proposal would have for musical works. There were certain musical works, notably variations, that borrowed a theme from another composer, but were nevertheless works of entirely original value.

Mr. Lavollée agreed that that kind of work was already sufficiently protected by Article 10.

On a comment by Mr. Reichardt, and following a request from the President, the French Delegation announced that it would indicate later the place in which the article proposed by it should be inserted.

Speaking in his own name, Mr. Tamayo considered that literary property could not be assimilated to any other kind of property. While the author always had the right to sell, he sometimes had the duty to give. Imitation in good faith should not be prohibited; it had frequently been an instrument essential to progress in art and letters. The Article under discussion could deprive a country’s literature of a work like Corneille’s ‘Le Cid,’ which France had borrowed from Spain. In the name of society, in the name of freedom of the intellect,
Mr. Tamayo opposed any article whose implementation was bound to tyrannize the world of letters. There were imitations that were preferable to the original; care should therefore be taken not to make the Conference’s work into a treatise on aesthetics or literary criticism, or to hamper men of good faith and talent.

Mr. Lavollée replied to Mr. Tamayo that he agreed with him in substance, but that a distinction had to be made between imitations that created a new work and imitation that was no more than disguised infringement. It was the latter that the French proposal wished to prevent, and it was for that reason that it spoke expressly of imitations ‘said’ to be in good faith. The proposed provision was moreover no more than a reproduction of the second paragraph of Article 4 of the 1880 Franco-Spanish Convention, the conclusion of which had been hailed by the literary and artistic world as representing immense progress, and which the most enlightened minds of both countries regarded as the realization of an ideal.

Mr. Tamayo replied in the following terms: ‘What I have just said, I said on my own behalf. Having declared at our first meeting that my country condemned adaptation, I was well aware that the Franco-Spanish Convention contained an article in that connection, the effect of which was bound to be a condemnation of imitation in bad faith, plagiarism and infringement, as I myself have just condemned them. Mr. Lavollée agrees with me in substance, and I believe that, in a universal Convention, a provision should be drafted on the subject and so worded as to rule out all misunderstanding.’

Item 4 did not give rise to any comment.

In item 5, Mr. Rosmini proposed the addition of the words ‘or certificates’ after ‘information’ in the fourth paragraph. By granting the certificates that would replace those of the country of origin, the International Bureau would make it easier for authors to exercise their rights.

Mr. Reichardt replied that the Conference had already discussed that matter the previous year, and had come to the conclusion that the proposed arrangement would be too great a burden for the International Bureau. It was moreover understood that, when an author applied to the International Bureau for a certificate, the latter would take the necessary steps to procure one for him.

Mr. Rosmini said that he was satisfied with the above reply.

Neither items 6 and 7 of the Final Protocol nor the Recommended Principles for Subsequent Unification gave rise to any comment.

As the general discussion came to an end at that point, the Conference decided, pursuant to Rule 2 of its Rules of Procedure, to refer the further consideration of the draft Convention, and the various proposals formulated, to a Committee on which all the members of the Conference would be represented.

The meeting rose at 5 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ
President

CHARLES SOLDAN  BERNARD FREY
Secretaries

REPORT OF THE COMMITTEE

General Observations

The preliminary draft international Convention that the Federal Council had submitted to the 1884 Conference was primarily if not exclusively designed to assure foreign authors of the treatment granted to national authors by the domestic legislation of each country. The Conference, however, had considered that it could broaden the base of the projected Union by incorporating in the draft Convention certain provisions that constituted the beginnings of an actual codification of the substantive law applicable to authors; for instance, it had guaranteed the right of translation for a period of ten years, and also specified the conditions under which certain borrowings could be lawfully made from protected works.
Moved as it is by the desire to see the greatest possible number of countries joining the Union, the Committee considers today that, without actually confining itself to guaranteeing national treatment, the Convention to be concluded should nevertheless codify substantive law only to the extent that such codification is susceptible of acceptance by those of the countries concerned whose accession would be a guarantee of success for the Union.

For it is clear that, if a choice has to be made between a restricted Union that comprises only the countries that are the most advanced in the protection of literary and artistic works and a Union encompassing almost all countries of some importance in terms of literature and the arts, it is the latter alternative that presents the most advantages and to it that preference should be given.

Consequently, while maintaining the wishes that were formulated last year with a view to more extensive unification, and especially the one advocating full assimilation of the right of translation and the right of reproduction in general, the Committee, desiring above all to facilitate the accession of several countries, has considered it wise to renounce unification for the moment on certain points which, last year, seemed susceptible of it. It will be for the future, and for the future conferences that the draft Convention itself provides for, to elaborate still more on the work of codification which, at the present time, can only be sketched out.

It is also with a view to facilitating as far as possible the accession of all the countries represented at the Conference that it has seemed preferable not to sign at this stage, on behalf of the Governments concerned, a final Convention between those of the countries whose delegates might be empowered to do so. The final minutes proposed by the Committee confine themselves to noting that the delegates completed their work and submit the result of their deliberations to their individual Governments; they moreover invite the Swiss Federal Council to take the necessary action for the draft to be submitted to a diplomatic Conference whose purpose would be to transform it, within the period of a year, into a final Convention. At the present stage reached by the work of the Conference, it is permissible to believe that the draft has taken into consideration all the viewpoints expressed by the representatives of the various countries to an extent sufficient to allow the Governments concerned to pronounce, in full knowledge of the facts, either for acceptance pure and simple of the draft or for its rejection, without any further Conference of delegates being called upon to review it. It would therefore be understood that the new Conference, which would meet within a period of a year, would have no purpose other than to effect the signature of the diplomatic instrument. The terms in which the final minutes are couched are moreover so conceived that they enable all the delegates to affix their signatures to the instrument without committing the Governments that they represent.

Proceeding now to the special part of its report, the Committee will respect the order of articles proposed by it.

**Title of the Convention**

Before going on to discuss its various articles, the Committee had to concern itself with the title to be given to the draft Convention. The Conference of the previous year had settled on the following wording: ‘Draft Convention Concerning the Creation of a General Union for the Protection of Authors’ Rights.’ However, the French Delegates pointed out that the term ‘authors’ rights’ [droits d’auteur] had given rise to violent criticism in France, as everyday language in that country understood the expression concerned as meaning not the rights that it was the Convention’s purpose to protect, but rather the remuneration payable to a dramatic author for the performance of his play. The French Government consequently proposed replacing the words concerned with ‘of literary and artistic property,’ but with a bracketed mention that the expression, which was used in everyday language in France, was equivalent to the German word ‘Urheberrecht.’ The first vote taken produced a majority in favour of the proposal of seven
votes to five. However, when the German Delegation indicated that the enforcement of that decision would very probably prevent Germany from acceding to the Convention, in view of the fact that it could not accept a name that was incorrect from the German legal viewpoint, the Committee realized that another expression had to be looked for. On a proposal by the Swiss Delegation, it settled on the term of ‘protection of literary and artistic works.’ Even though this expression is not strictly accurate, as the Convention is designed to protect authors and not works, it is nevertheless used in a number of recent specific conventions, and it seems that it could also figure in the title of the general Convention without any difficulty. It was also agreed that an express mention in this report, and also where appropriate in whatever agreed statements might be set down in the minutes of the Conference, would define the exact scope of the expression ‘protection of literary and artistic works,’ with an indication of the equivalent expressions in the main languages. In that way it was established that, by removing from the title of the Convention the expressions ‘protection of literary and artistic property’ and ‘protection of authors’ rights,’ the Committee had in no way sought to pronounce in favour of either of the current theories concerning the legal nature of the rights that belonged to authors in relation to their literary and artistic works. From that it follows that, in the opinion of the Committee, the title of the Convention is equivalent to the words ‘literary and artistic property,’ and should be translated in each country by the usual expression employed there to designate those rights, for instance ‘Urheberrecht,’ ‘copyright,’ etc. It was among other things agreed that the term ‘protection of literary and artistic works’ was equivalent to ‘droit d’auteur,’ which is to be found in the Belgian draft law, and also in the works of a number of French writers on the subject.

Finally, the Committee preferred the term ‘International Union’ to ‘General Union.’

In conclusion, the wording for the title proposed by the Committee is as follows:

I. Convention Concerning the Creation of an International Union for the Protection of Literary and Artistic Works

Preamble

The draft adopted the previous year was worded as follows:

(Enumeration of the High Contracting Parties)

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

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

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

The Committee declared itself in agreement with the above wording, but, in order to make it more precise, preferred to say ‘the rights of authors in their literary and artistic works.’

Article 1

The wording of the 1884 draft was as follows:

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

In conformity with what was said above concerning the heading of the Convention, this wording was amended to read, like the preamble: ‘the protection of authors’ rights in their literary and artistic works.’

Article 2

The draft adopted the previous year contained the following provision:

‘Authors who are nationals of one of the Contracting Countries shall enjoy in the other countries of the Union, for their works, whether in manuscript or unpublished form or published
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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.

With regard to the wording of the above Article, the Committee first adopted the amendment proposed by the French Government, which involved replacing the words 'whether in manuscript or unpublished form or published in one of those countries' in the first paragraph by 'whether published in one of those countries or unpublished.'

With regard to substance, the Italian Delegation proposed stating expressly in the second paragraph that the term of the enjoyment of rights granted to an author, in a country of which he was not a national, might not exceed that set by the law for national authors; it pointed out that the same clause was to be found notably in the Italo-German and Italo-French Conventions.

The Committee did not see fit to accept that change, however, because it was already sufficiently clear from the first paragraph that the protection accorded to foreign authors was that enjoyed by nationals; it therefore went without saying that it could not be more extensive.

Moreover, the Committee considered the words 'during the existence of their rights in their countries of origin' to be too absolute, as it could be concluded from them that, even outside the context of the term of protection, the courts would always be obliged to apply the law of the country of origin to an author, even when that law was less favourable to him than that of the country in which protection was sought. Yet such a system would have the serious drawback of requiring either the courts or publishers to have a thorough knowledge of all specific legislation, which would be contrary to the very concept of the Union to be created. The Committee therefore made the wording of the Article more specific by saying that the term of protection could not be longer, in the other countries of the Union, than that granted in the country of origin.

With regard to the term 'country of origin' used in the second paragraph, it seemed essential to make it clear whether the expression referred to the country of which the author was a national or to the country in which the work was published. The Committee pronounced in favour of the latter alternative, which the British Delegation had recommended, in view of the practical difficulties that would result from the adoption of the opposite system: if it was acknowledged that the protection granted to the author, in the event of his work being published, was determined by the legislation of the country of which he was a national, the persons concerned, who might well be unaware of the author's nationality, would have a great deal of difficulty in establishing whether or not the work was still protected; moreover, cases of dual nationality would be a source of serious difficulties. By giving preference to the system that made the term of protection dependent on the law of the country in which publication had first occurred, the Committee also had to provide for the case in which such publication occurred in a number of countries of the Union at the same time, and it settled it by providing that the term of protection could not exceed that of the country in which the work fell into the public domain soonest. As for unpublished works, the Committee considered the country to which the author belonged to be their country of origin. It further agreed, as it had the previous year, to allow the protection deriving from Article 2 to extend to all authors who were natives of one of the Contracting Countries; it was therefore indigency that had to be taken into account every time the Convention spoke of authors who were nationals of or who belonged to one of the countries of the Union. It went without saying moreover that indigency was required only of authors, nationality being irrelevant for their legal representatives.

Finally, the protection specified by Article 2 in favour of authors was extended to their representatives, and that made it possible to delete Article 5 of the draft, which was worded as follows:

'The lawful agents or representatives of authors, or, in the case provided for in Article 3, those of publishers, shall in every respect enjoy the same rights as are granted by this Convention to the authors or publishers themselves.'
With reference to the above text, the Committee considered that, strictly speaking, there could be no question of granting protection to the legal agents of authors, as such agents in themselves had no rights, merely being able to assert the rights of the authors that they represented. It was for that reason that the Committee proposed that there should be no mention of legal agents.

As for the term ‘representatives,’ it was understood that it applied to successors both in the universal sense and by specific provision.

As a result of all the above considerations, the Committee proposes that Article 2 should be given the following wording:

**Article 2**
Authors who are nationals of one of the countries of the Union, or their representatives, shall enjoy in the other countries of the Union, for their works, whether published in one of those countries or unpublished, the advantages which the laws concerned do now or may hereafter grant to nationals.

The enjoyment of the above advantages shall be subject to the accomplishment of the conditions and formalities prescribed by the legislation of the country of origin of the work; it may not, in the other countries, exceed the term of protection granted in the said country of origin.

The country of origin of the work shall be that of first publication or, if such publication has occurred in several countries of the Union, the one among them whose legislation grants the shortest term of protection.

For unpublished works, the country to which the author belongs shall be considered the country of origin of the work.

**Article 3**
The provisions of this Convention shall apply also to the publishers of literary or artistic works published in one of the countries of the Union whose author comes from a country that does not belong to it.

**Article 4**
The expression ‘literary or artistic works’ shall include books, pamphlets and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of drawing, painting, sculpture and engraving; lithographs, illustrations, maps; plans, sketches and plastic works relative to geography, topography, architecture or science in general; in fact, every production whatsoever in the literary, scientific or artistic domain which can be published by any mode of printing or reproduction.

An amendment proposed by the French Government called for the addition of the words ‘photographs’ after ‘lithographs.’ While subscribing to that proposal, the Italian Delegates insisted for their part that ‘choreographic works’ should be specified among those protected by the Convention.
With regard to photographs, it was objected that the legislation of Germany, and that of a number of other countries, did not consider them artistic works, and that, consequently, those countries could not include them among the works protected by the Convention. Under those conditions it seemed preferable to the Committee to leave photographs out of the actual text of Article 4, but to state, by means of an express mention in the Final Protocol, that they would be given the benefit of the provisions of the Convention in those of the countries of the Union that did not refuse them the character of artistic works.

The Committee also agreed to allow the authorized photograph of a protected work of art to enjoy legal protection for as long as the right of reproduction of the work itself lasted, within the limits of such private arrangements as might have been made between the persons entitled to do so. That point would also be expressly mentioned in the Final Protocol.

Finally, as for choreographic works, one objection to the proposal of the Italian Delegation was that the definition of such works, whose protection had not been recognized until quite recently in some countries, still presented serious difficulties. The majority of the Committee consequently considered it preferable not to include that type of work among those mentioned in Article 9, but rather to specify in the Final Protocol that the countries whose legislation implicitly included choreographic works among dramatico-musical works expressly gave the former the benefit of the provisions of the Convention.

Subject to the indications to be inserted in the Final Protocol, the Committee proposes that the present wording of Article 4 should be retained.

(Article 5 of the draft)
See under Article 2 above.

Article 5

(Article 6 of the draft)

The Conference of the previous year had adopted this Article in the following wording: "Authors who are nationals of one of the countries of the Union shall enjoy, in all the other countries of the Union, the exclusive right of translation in relation to their works for ten years after the publication, in one of the countries of the Union, of the translation of their work authorized by them.

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

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

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

The French Government for its part presented an amendment whose effect was to assimilate the right of translation fully to the right of reproduction in general, as had been provided in the preliminary draft drawn up by the Federal Council.

The British Delegation on the other hand proposed that the term of the exclusive right of translation should not be set in the Convention, but rather that the whole matter should be made subject to the legislation of the country in which protection was sought.

Finally, the Italian and Swiss Delegations requested the deletion of the time limit of three years set on the publication of the translation; at the same time they proposed that the terms of ten and three years should be increased in order that the author might be given more extensive protection.

As for the amendment proposed by the British Delegation, the majority of the Commission considered that its adoption would leave too much latitude for specific legislation and would restrict the Union’s role to excessively narrow limits. It therefore rejected the amendment by eight votes to four. But on the other hand it also pronounced by six votes to five against the
principle of full assimilation of the right of translation to the right of reproduction, not because it was in principle opposed to such assimilation, but rather because its introduction could be expected to prevent a considerable number of countries that were important in terms of literature and the arts from acceding to the Union. It was also pointed out that the amendment presented by the French Government did not in fact have as much importance as might have been attributed to it at first, as it could be considered probable that, before the expiry of the ten-year period during which the Convention was to guarantee the exercise of the right of translation, the Convention itself would be revised so that fuller protection of that right could be afforded.

The two systems of full assimilation and of national treatment pure and simple having thus both been discarded, the Committee, after having rejected by six votes to five\(^3\) the draft of the previous year, considered the amendment whereby the terms of three and ten years were to be increased to five and 12 years. The delegates of a number of countries declared that the adoption of the amendment would make it impossible for their Governments to accede to the Union, and so the amendment was withdrawn, and the Committee decided unanimously to remove the period of three years provided for in the draft for the publication of the translation. It appeared that the period was insufficient and liable to favour the use of unscrupulous methods on the part of ill-intentioned publishers. The uniform period of ten years guaranteed by a decision of the Committee had on the contrary the advantage not only of granting authors absolute protection, which therefore was more extensive, but also of simplifying the procedure, as the persons concerned would know in advance that, during the ten years following the publication of the work, it was the author or his representatives who owned the exclusive right to translate it or have it translated. In order to take a step further in the direction of simplification, the Committee also agreed that the ten years of the exclusive right of translation should not begin to run until the end of the year in which the work was published.

With regard to the calculation of the ten-year period, the Article had to make special provision for the case in which the work appeared in instalments. This expression, which the draft contrasted with collections or bulletins, was liable to give rise to difficulties of interpretation, so the Committee agreed to recognize that the term 'instalment' denoted a part of a work appearing in the form of successive brochures, which did not itself constitute a separate publication but was so inseparably tied up with the rest of the work, either in its page numbering or in its typographical layout, that the absence of just one instalment would make the whole work incomplete and defective. It was moreover agreed that any difficulties with instalments that might result from the application of laws whose terminology might have failed to follow all the progress of the book trade would be evaluated by the courts of each country, which would have to take due account of all the circumstances of the case.

In setting at ten years the period during which the author enjoys the exclusive right of translation, the Committee had occasion to wonder whether Article 5 was a strict, binding rule of law; or whether it allowed to subsist any more extensive rights than the domestic legislation of the countries of the Union or specific conventions concluded between them might grant authors against the unauthorized translation of their works. The Committee pronounced in favour of the latter alternative, as the purpose of the Union was to assure authors of a minimum of protection.

As the system of a single period often years had been accepted by the Committee, the last paragraph of the Article had to be deleted as having no further purpose.

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1 The following voted for the British amendment: Belgium, Great Britain, Sweden and Norway. The following voted against it: France, Germany, Haiti, Honduras, Italy, Spain, Switzerland and Tunis.  
2 The following voted for full assimilation: Belgium, France, Haiti, Spain and Tunisia. The following voted against it: Germany, Honduras, Italy, Sweden, Norway and Switzerland.  
3 The following voted for the retention of the old Article 8: Germany, Honduras, Spain, Sweden and Norway. The following voted against it: Belgium, France, Haiti, Italy, Switzerland and Tunisia.
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Finally, taking due account of the deletion of Article 5 of the draft, the Committee inserted in the first paragraph the words ‘or their representatives’ after ‘authors who are nationals of one of the countries of the Union.’ It goes without saying, moreover, that the nationality of the authors’ representatives is irrelevant.

In view of the foregoing, the Committee proposes that Article 5 should be given the following wording:

**Article 5**

Authors who are nationals of one of the countries of the Union, or their representatives, shall enjoy, in the other countries, the exclusive right to translate their works or have them translated until the expiry of ten years after the publication of the original work in one of the countries of the Union.

For works published in instalments, the period of ten years shall be calculated only as from the publication of the last instalment of the original work.

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

In the cases provided for in this Article, December 31 of the year in which the work is published is recognized as the date of publication for the calculation of the periods of protection.

**Article 6**

(Lawful translations shall be protected as original works. Consequently they shall enjoy the protection provided for in Articles 2 and 3 with respect to their unauthorized reproduction in countries of the Union.

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

**Article 7**

(The text adopted in the draft Convention was as follows:

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

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

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

The British Delegation requested the deletion of the above Article, in view of the fact that it was in conflict with the domestic legislation of Great Britain, which required excerpts from newspapers to be accompanied by a mention of the source from which they have been taken. Also, the Delegate of Haiti found that the terms of Article 8 would give rise to ambiguity and dispute.

In order to avoid those drawbacks, the Delegate of Norway proposed the following amendment:

‘Articles excerpted from newspapers or periodical journals published in one of the countries of the Union may be reproduced, in the original or in translation, except where the authors or publishers thereof have expressly prohibited it.'
Such prohibition may never, however, apply to articles of political discussion. In all cases the source must be mentioned.'

Apart from the advantage of simplicity, the above text had that of maintaining as a rule the principle underlying the Convention, namely the privilege of the writer to dispose of his work as he sees fit. The wording was criticized, however, for restricting too much the right to make borrowings from newspapers, and for making periodical journals subject to the same rules as the ordinary press, by presupposing an express prohibition of reproduction for every article contained in any such journal.

Taking due account of the criticism expressed, the Committee, after having rejected the British proposal by ten votes to two,1 pronounced in favour of the following wording:

Article 7

Articles from newspapers or periodical journals published in one of the countries of the Union may be reproduced, in the original or in translation, except where the authors of publishers thereof have expressly prohibited it. For journals, it may be sufficient for the prohibition to be stated in a general way at the head of each issue of the journal.

This prohibition may not in any case apply to articles of political discussion, or to the reproduction of news of the day or miscellaneous information.

At the request of the British Delegation, it was noted that the countries of the Union could always require of newspapers appearing on their territory that they mentioned the sources from which they took their news, it being understood, however, that the countries that did not so require would not be subject to any reciprocity in that respect.

In accordance with the views expressed by the German Delegation, it was understood that the term ‘articles of political discussion’ applied only to writings on everyday politics, and not to essays or studies on political or socio-economic subjects.

It was also agreed that it would not be lawful to reproduce, for instance in the form of an anthology, a series of articles that had appeared in the same newspaper. Given the Committee’s agreement on that point, the Delegate of Norway withdrew the amendment that he had presented, the purpose of which was to have the word ‘singly’ inserted after ‘may be reproduced.’

Article 8

(Article 8 of the draft)

The 1884 draft worded the above provision as follows:

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

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

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

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

This Article was discussed at length. The French and British Delegations asked for it to be deleted. The Italian Delegation considered that it could be deleted without any risk for public education, but that, if it were maintained with its essential provisions, it would be necessary to delete the last paragraph, which created an unwarranted disparity to the disadvantage of music teaching; the Italian Delegation insisted on the text being at least amended as follows:

‘The insertion in collections intended for schools of music of musical compositions created by the author for the purposes of and for use by those schools shall be considered unlawful reproduction, however.’

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1 The following voted for the deletion of the Article: Belgium and Great Britain. The following voted against it: France, Germany, Haiti, Honduras, Italy, Spain, Sweden, Norway, Switzerland and Tunisia.
The German Delegation favoured the retention of Article 8 in its entirety, but preferred its deletion to the adoption of the Italian amendment.

In the vote, the Committee pronounced by nine votes to three in favour of the deletion of the last paragraph of Article 8; and, when afterwards the whole Article had to be voted upon, it was rejected by seven votes to five. It was therefore decided that the question of lawful borrowings had to be left to domestic legislation and specific arrangements between countries of the Union. Consequently, the Committee adopted the following wording, which was necessary for Contracting Countries to make special arrangements between themselves on that particular point, notwithstanding the provisions of Article 15:

**Article 8**

With regard to the right to make lawful borrowings from literary or artistic works for publications intended for education or of scientific character, or for chrestomathies, the effect of the legislation of the countries of the Union and of special arrangements existing or to be concluded between them is reserved.

In the discussion that took place on the subject of this Article, it was asked whether it covered the right of quotation, and the Spanish Delegation in particular wished to know whether such quotations as were necessary in commentaries, critical studies or other scientific or literary works were authorized under the Article concerned. The French Delegation said that, in spite of the lack of legal provisions concerning the right of quotation in the legislation of its country, that right had always been recognized by case law. The delegations of the other countries, several of which did have legal provisions on the subject, endorsed the above statement with reference to their countries.

The Spanish Delegation also proposed the addition of the words 'or study' to 'especially intended for education.' The amendment did not seem necessary, as the Committee had already agreed that the term 'education' applied both to elementary education and to higher education, and that works intended for self-teaching were covered by the words 'of scientific character.'

In view of the present content of Articles 8 and 9 of the draft, the first of which establishes a rule of positive law, whereas the second introduces a provision departing from that rule, the Committee proposes reversing the order of the two Articles in the Convention, as indeed it already has done in its report.

**Article 9**

(Article 11 of the draft)

The provisions of Article 2 shall apply to the public performance of dramatic or dramatico-musical works, whether published or not.

The authors of dramatic or dramatico-musical works, or their legal representatives, shall, throughout the duration of their exclusive right of translation, be mutually protected against unauthorized public performance of translations of their works.

The provisions of Article 2 shall apply also to the public performance of unpublished musical works or those that are published but whose author has expressly declared on the title or in the heading of the work that he forbids their public performance.

In order to complete the above text, the French Delegation had originally proposed substituting for the first two paragraphs the following wording, which was primarily intended to establish a clear distinction between the right of publication and the right of performance of dramatic works in translation:

*The right of dramatic authors and composers to prohibit or authorize the public performance of their works, either in the original or in translation, is mutually guaranteed to them, in accordance with the provisions of Articles 2 and 6...*
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of this Convention, in each of the countries of the Union.

'This right applies not only to manuscript or autographic works but also to those that are printed, and they are assured of protection by law, in each of the countries of the Union, as are national works.

'The right of publication of dramatic works and the right of their performance shall be absolutely distinct from each other, and the publication of the work shall not authorize anyone to present or perform it without the consent of its author, any more than performance authorizes its publication.'

As a result of the removal of the double time limit of three years and ten years, and the setting of a single ten-year period for the exercise of the right of translation reserved to the author, the above amendment, the principle of which had moreover been unanimously accepted, became superfluous and the French Delegation therefore withdrew it.

As no other amendment was presented the original wording was maintained.

In the course of the discussion on the above Article, it was agreed that its provisions would apply also to the representatives of the authors of dramatic or dramatico-musical works, so that was added to the original text.

Article 10

(Article 10, and item 3 of the Final Protocol, according to the 1884 draft)

The draft adopted the previous year contained the following provision:

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

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

The Italian Delegation asked for the deletion of the words 'are composed on the basis of phrases taken from the said works or.' In support of the amendment it pointed out that the wording of the draft was too absolute, in the sense that it amounted to a prohibition on genuine original works. The comment seemed sound to the Committee.

Also, the French Government had asked for the insertion in the Convention of a new article worded as follows:

'The following shall be prohibited: arrangements, adaptations, imitations said to be in good faith, or transcriptions of dramatic, musical or dramatico-musical works, and in general any borrowing from literary, dramatic, artistic or musical works, without the consent of the author.'

The Conference of the previous year had already discussed the question of imitations said to be in good faith, adaptations, etc., and, in order to do justice to a certain extent to the way of thinking expressed by the French Delegation, it had introduced the following in the Final Protocol, as item 3:

'The attention of the Plenipotentiaries was drawn by several of their number to the question whether certain categories of unauthorized indirect appropriation should not be expressly prohibited, notably that which a number of conventions in force designated by the name of adaptation.

'The Plenipotentiaries agreed that infringements included all kinds of unlawful violation inflicted on authors' rights, but they were of the opinion that, instead of listing and defining them, it was preferable to entrust to the courts the responsibility of evaluating, in each particular case, the prejudice caused by any particular form of infringement.'

The Conference of the previous year had considered that it did not need to go any further in the direction indicated by the French Delegation, in view of the impossibility of defining precisely the meaning of the word 'adaptation,' which moreover did not have an exact equivalent in a number of languages. The same objection was made this year to the amendment proposed by the French Government, reproduced above. It was further pointed out that, by prohibiting 'any borrowing from literary, dramatic, artistic or musical works, without the consent of the author,' the amendment overstepped its own target and effected total elimination of the right of quotation.
The above reasoning induced the Committee to pronounce, by eight votes to four, against the amendment proposed by the French Government. It did, however, recognize that it should not be permissible to reproduce a work, either in the same or in another form, with unessential changes, additions or deletions, when in other respects the reproduction did not have the character of a new, original work. It was on that same principle that the provision in Article 10 of the draft of the previous year, which expressly prohibited arrangements of music, was based.

The Delegate of Sweden, looking for a means of reconciling the views of the Committee with those of the French Delegation, proposed replacing item 3 of the former Final Protocol with the following wording:

'The adaptation, like any other unauthorized indirect appropriation of a literary or artistic work, shall be prohibited when it is no more than the reproduction, in the same or another form, with unessential changes, additions or deletions that do not constitute a new, original work.

'It is understood that any disputes that should arise on the application of the above clause remain subject to the appreciation of the courts concerned, in accordance with the legislation of each of the countries of the Union.'

The above wording had the advantage of not defining 'adaptation,' but of confining itself to mentioning it as one of the forms of unauthorized indirect appropriation. Yet the Committee was nevertheless reluctant, on the grounds already indicated, to use the word as the main subject of a prohibitive provision. It considered furthermore that a more comprehensive wording should be chosen which referred to all the unauthorized indirect appropriations and therefore could be applied also to arrangements of music.

Consequently, the Committee proposed the following Article, which would correspond both to Article 10 of the draft Convention and to item 3 of the draft Final Protocol:

Article 10

The following shall be especially included among the unlawful reproductions to which this Convention applies: unauthorized indirect appropriations of a literary or artistic work, designated by various names, such as adaptations, arrangements of music, etc., when they are no more than the reproduction of such a work, in the same or another form, with unessential changes, additions or deletions which moreover do not give it the character of a new, original work.

It is understood that, in the application of this Article, the courts of the various countries of the Union will, where appropriate, take due account of the reservations written into their respective laws.

Following a question raised by the British Delegation in the course of the discussion, it was agreed that the kind of indirect appropriation known as 'dramatization' could, under certain circumstances, be regarded as constituting unlawful indirect reproduction.

The Committee also proposes reversing the order of Articles 10 and 11 of the draft, so that they become Articles 10 and 9 of the Convention respectively.

Article 11

(Article 12 of the draft)

In the 1884 draft this provision was drafted as follows:

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

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

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1 The following voted for the French amendment: France, Haiti, Honduras and Tunisia. The following voted against it: Belgium, Germany, Great Britain, Italy, Spain, Sweden, Norway and Switzerland.
It was pointed out in various quarters that the provisions of Article 2, which made the enjoyment of the rights granted to authors by the Convention subject to the accomplishment of the conditions and formalities prescribed by the legislation of the country of origin of the work, should be reserved in this Article.

Even though the wording of the draft already indicated that Article 11 referred only to a question of procedure, as distinct from the material conditions and formalities whose accomplishment was required by Article 2, the Committee thought that there would be some use in stating expressly that the court could, where appropriate, demand the production of a certificate issued by the competent authority attesting that the formalities prescribed in terms of Article 2 by the legislation of the country of origin had been observed. The presumption in favour of the author would also be applicable to the publisher in the case of Article 3.

Also, it seemed that there was no need at all to specify in detail and in a somewhat limitative fashion how the author’s name should be given on the work, but that one could be content with speaking in that regard of the customary manner.

It was asked whether one might not delete as being unnecessary the last sentence of the second paragraph, according to which: ‘he [the publisher] shall, without any other proof, be deemed to be the assignee of the anonymous or pseudonymous author.’ It was replied that it was important for the author’s rights to be susceptible of protection by the courts as well as those of the publisher, and without the former being obliged to state his real name. Yet it was possible for the authors’ rights to have been violated, in which case the first sentence of the second paragraph provides that the publisher named on the work is empowered to safeguard the rights belonging to the author. On the other hand, it was possible for the publisher to have to assert his own rights. For that second eventuality, the last sentence of the second paragraph provides that, without any other proof, he is deemed to be the representative of the anonymous or pseudonymous author. If the Article were deleted, the publisher would be obliged, in the event of litigation, to provide proof that his right came to him from the author in the proper way. He could do so by producing his contract with the latter or otherwise, but in any event the name of the author would then be disclosed, which was unfortunate. It was argued also that the provisions of the second paragraph were contained in the German law and in a number of recent Conventions.

In view of the above circumstances, the second paragraph was adopted in its entirety.

The Committee proposes wording the Article as follows:

**Article 11**

In order that the authors of the works protected by the Convention may, until proved otherwise, be considered such and consequently be eligible to institute proceedings before the courts of the various countries of the Union against infringement, it shall be sufficient that their name be indicated on the work in the accustomed manner.

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

It is nevertheless understood that the courts may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article 2.

**Article 12**

(Article 13 of the draft)

The 1884 draft Convention contained the following provision:

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

The British Delegation pointed out that the second paragraph of the above Article was not in conformity with the legislation of Great
Britain, in view of the fact that, in that country, seizure could be effected ex officio without any request, by the Customs authorities.

On a proposal by the same Delegation, the Article was worded as follows:

\emph{Article 12}

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

Seizure shall be effected in accordance with the domestic legislation of each country.

\emph{Article 13}

\textit{(Article 14 of the draft)}

This Article was retained in its original wording, which reads as follows:

\emph{Article 13}

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

The Committee wondered whether the words ‘any works or production’ should not be completed in the same way as at the end of Article 4, but it has decided that it is better to refrain from an addition of that kind, which moreover would not add anything to the right conferred by the Article on the Governments of the countries of the Union.

\emph{Article 14}

\textit{(Article 15 of the draft)}

This Article was worded as follows in the 1884 draft:

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

As noted below, in connection with the Final Protocol, the implementation of the above Article will be left to each country of the Union, which will decide on the conditions of retroactivity according to its own laws or specific conventions. However, that reservation having been made, the fact remained that the question had to be regulated in each country in terms of Article 15.

The scope of the term ‘country of origin’ having been specified in Article 2, both for published and for unpublished works, the Committee was able without difficulty to remove the last sentence on manuscript or unpublished works. Article 14 was therefore adopted in the following wording:

\emph{Article 14}

Subject to reservations and conditions to be decided upon by common consent, this Convention shall apply to all works which, at the time of its entry into force, have not yet fallen into the public domain in their country of origin.

\emph{Article 15}

\textit{(Article 16 of the draft)}

This Article was adopted without change in the following form:

\emph{Article 15}

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

The German Delegation asked whether an exception should not be written into the above Article concerning Article 7, in view of the fact that otherwise certain countries of the Union might make special arrangements between themselves to restrict the borrowings that it was permissible to make from newspapers. This idea was abandoned, however, as the Committee had decided that such arrangements could only bind the countries that had made them without committing the other countries of the Union in any way.
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Article 16
(Article 17 of the draft)
The Committee adopted this Article in the wording of the 1884 draft, merely aligning the name of the International Bureau on the new title given to the Convention.
Article 16 has therefore been worded as follows:

Article 16
An international bureau shall be established under the name of International Bureau for the Protection of the Rights of Authors.
This Bureau, the expenses of which shall be borne by the administrations of all the countries of the Union, shall be placed under the high authority of . . . . . , and shall work under its supervision. The functions of the Bureau shall be determined by common consent by the countries of the Union.

Article 17
(Article 18 of the draft)
The text of the draft Convention was as follows:
This Convention may be subjected to revisions for the purpose of making therein such improvements as may perfect the system of the Union.
Questions of that nature, and those that concern the development of the Union in other respects, shall be dealt with in Conferences that shall be held successively in the countries of the Union between delegates of those countries.
On an observation by the British Delegation, supported by other Delegations, to the effect that the legislative authorities of various countries would perhaps be reluctant to amend domestic legislation to adapt it to the International Convention if there were a risk of it being revised at short notice, it was understood that the present Convention would constitute the charter of the Union, so to speak, and that it could only be amended with the agreement of all the Contracting Countries. Countries that agreed on improvements to be made on the Convention, but failed to secure the endorsement of the other countries of the Union, would be free, within the limits of the general Convention, to make special arrangements in terms of Article 15.
In order to make the above point clearer, the Committee has added the following paragraph to Article 7:
It is understood that no change to this Convention shall be valid for the Union without the unanimous consent of the countries composing it.

Article 18
(Article 19 of the draft)
This Article was retained in the wording of the draft, with a small amendment of form to substitute the word ‘rights’ for ‘authors’ rights,’ the latter having been removed from the Convention. The Article adopted by the Committee is thus worded as follows:

Article 18
The countries that are not party to this Convention, and provide in their domestic law for legal protection against the violation of the rights that are the subject of this Convention, shall be allowed to accede to it at their request.
Such accession shall be notified in writing to the Government of . . . . . , and by it to all the others.
It shall, as of right, imply accession to all the clauses and admission to all the advantages provided for in this Convention.

Article 19
(New Article)
The British Delegation proposed the following new Article:
‘Accessions to this Convention shall constitute accession on the part of all the foreign colonies or possessions of the acceding country, unless an express reservation to the contrary has been made at the time of its accession.
‘The acceding country shall, however, have the right to exclude one or more of its foreign colonies or possessions from the effects of this Convention, by making the appropriate declaration at the time of its accession.’
Realizing the importance of regularizing the position of colonies within the Union, the Committee adopted the above Article in...
principle. It gave it the following wording, however:

**Article 19**

Countries acceding to this Convention shall also have the right to accede to it at any time on behalf of their colonies or foreign possessions.

They may do this either by a general declaration whereby all their colonies or possessions are included in the accession, or by expressly naming those that are included, or by confining themselves to specifying those that are excluded.

The Committee does not propose any amendment to the last two Articles of the Convention, the text of which follows:

**Article 20**

This Convention shall be put into force three months after the exchange of ratifications, and shall remain in force for an indefinite period, until the expiry of one year following the day on which it has been denounced.

Such denunciation shall be made to the Government authorized to receive accessions. It shall only take effect for the country making it, the Convention remaining in full force and effect for the other countries of the Union.

**Article 21**

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

In witness whereof, etc.

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

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**III. Final Protocol**

The preamble was retained by the Committee in the following wording, which is that of the draft:

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

For ease of reference, the Committee proposes that the various items of the Final Protocol should be arranged according to the numbers of the Articles of the Convention to which they relate.

1. (Item 4 of the draft)

Item 4 of the earlier draft was worded as follows:

‘As the legislation of a number of the countries of the Union does not allow photographic works to be included among the works to which the Convention concluded this day applies, the Governments of the countries of the Union reserve the right to agree at a later date on the special arrangements to be made by common consent for the purpose of mutually ensuring the protection of those photographic works in the countries of the Union.’

On the subject of the above item, reference is made to the part of this report relating to Article 4 of the Convention.

The text proposed by the Committee establishes clearly that photographic works are eligible for the benefits of the provisions of the Convention, throughout the whole Union, when they are the lawful reproduction of a...
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protected work. The text follows:

1. On the subject of Article 4, it is agreed that those of the countries of the Union in which the character of artistic work is not denied to photographic works undertake to make them eligible, as from the entry into force of the Convention concluded this day, for the benefits of its provisions. They shall moreover not be bound to protect the authors of such works further than is permitted by their legislation, subject to existing or future international arrangements.

It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention, for the same period as the principal right in the work itself subsists, and within the limits of private agreements between the holders of legal rights.

2 (New item)

2. On the subject of Article 9, it is agreed that those of the countries of the Union whose legislation implicitly includes choreographic works among dramatico-musical works expressly admit the said works to the benefit of the provisions of the Convention concluded this day.

It is moreover understood that any disputes that should arise concerning the application of the above clause shall be within the jurisdiction of the relevant courts.

On the subject of choreography, reference is made also to what was said earlier on the subject of Article 4 of the Convention.

3 (Item 2 of the draft)

3. It is understood that the manufacture and sale of instruments serving for the mechanical reproduction of melodies that are in the private domain shall not be regarded as constituting musical infringement.

In view of the difficulty of settling the question of sound reproduction, the Committee proposes that the Conference should not pronounce on whether or not the public performance of any musical work by means of one of the instruments mentioned in item 3 is lawful.

4 (Item 1 of the draft)

4. The common consent provided for in Article 15 of the Convention is specified as follows:

The application of the Convention to works that have not fallen into the public domain at the time of its entry into force shall take place according to the provisions relating thereto contained in such special conventions as may have been or may hereafter be concluded for that purpose.

In the absence of similar provisions between countries of the Union, the countries concerned shall regulate by domestic legislation, each as far as it is concerned, the relevant procedures for the application of the principle written into Article 14.

The Committee proposes that this item could be adopted without amendment.

5 (Item 5 of the draft)

With regard to item 5 of the former Final Protocol, the Committee proposes that the system of apportionment of the expenses of the International Bureau in proportion to the population figures of the various countries of the Union should be replaced by another system that divides the countries into six classes, as has been done for the Union for the Protection of Industrial Property. In that case, each of the countries of the Union, on signing the Convention, would have to specify the class in which it asked to be placed. In addition the Committee proposes that the maximum annual expenditure of the Bureau should be set at sixty thousand francs, it being possible, however, to increase that figure by a mere decision of one of the periodical Conferences provided for in the draft Convention, without it being necessary to seek ratification by the various parliaments.

Consequently, the Committee proposes that item 5 of the Final Protocol should be worded as follows:

5. The organization of the International Bureau provided for in Article 16 of the Convention shall be determined by regulations which the Government of . . . . is responsible for drawing up.
The official language of the International Bureau shall be French.

The International Bureau shall collect all kinds of information regarding the protection of 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 languages where circumstances have demonstrated the need therefor.

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

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

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

The expenses of the Bureau of the International Union shall be borne collectively by the Contracting Countries. Until such time as a new decision is made, they may not exceed the sum of sixty thousand francs per annum. This sum may be increased merely by means of a decision of one of the conferences provided for in Article 17.

In order to determine the contribution of each of the countries to this total amount of expenditure, the Contracting Countries and those that should later accede to the Union shall be divided into six classes, each contributing in proportion to a certain number of units, namely:

- Class 1 . . . . . . . . . . 25 units
- Class 2 . . . . . . . . . . 20 units
- Class 3 . . . . . . . . . . 15 units
- Class 4 . . . . . . . . . . 10 units
- Class 5 . . . . . . . . . . 5 units
- Class 6 . . . . . . . . . . 3 units

The above coefficients shall be multiplied by the number of countries in each class, and the sum of the products thus obtained shall give the number of units by which the total expenditure is to be divided. The quotient shall give the amount of the unit of expenditure.

Each country shall specify, at the time of its accession, in which of the above classes it desires to be placed.

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

Finally, with regard to item 6 and 7 of the Final Protocol, the Committee proposes that they should be retained in the following form:

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 shall be deposited, together with those of the other countries, in the archives of the Government of . . . . Each party shall in return receive a copy of the record of the exchange of ratifications, signed by the Plenipotentiaries who take part in it.

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

In witness whereof, etc.

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

Item 3 of the Final Protocol, concerning adaptation, has been deleted as a result of the mention of adaptation in Article 10 of the Convention.

Recommended Principles for Subsequent Unification

In the previous year's draft, the text of the Convention and Final Protocol was followed by the following declaration, concerning

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the principles recommended for subsequent unification:

['The Conference for the Protection of Literary and Artistic Works,]

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

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

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

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

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

While noting that the present Conference agrees with the previous one on the above principles, the Committee believes that it is unnecessary to reproduce the text after the final Convention.

The Italian Delegation would have wished that, in order to assure the authors of dramatic or dramatico-musical works of effective protection, the Conference formulate the desire to have the system of prior authorization introduced throughout the Union. Under that system, the person who wishes to have one of the works mentioned above performed has to apply to the competent local authority for authorization, enclosing with his application and authentic document attesting that the author has delegated to him his right of performance in relation to the work, failing which the authorization cannot be granted.

While abiding by its decision not to add the text of the Recommended Principles for Subsequent Unification to the final Convention, the Committee considers that the system concerned does deserve to be given careful attention by all Governments, as it is one of the systems which, by affording preventive protection, are most sure of preventing the unlawful performance of dramatic or dramatico-musical works.

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**Appendix**

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

September 17, 1885

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 6.30 p.m.

The following were present: all the members of the Conference with the exception of Mr. Ulbach, who sent his apologies.

The minutes of the first four meetings, which had been submitted to the delegates in draft form, were adopted.

The President informed the Assembly that the Committee, to which the Conference had decided to refer the draft Convention, had held numerous meetings since September 9, and that it had completed its work. He tabled the report of the Committee, which had already been communicated to the members of the Conference, and announced that it would be included in the Records of the Conference.

Pursuant to Rule 2 of the Rules of Procedure, a Drafting Committee had been appointed, which was composed as follows, in the [French] alphabetical order of States:

- Counsellor Reichardt,
- Mr. Tamayo,
- Mr. Renault,
- Mr. Bergne,
- Mr. Rosmini,
- Mr. Lagerheim,
- Federal Councillor Numa Droz.

The President then opened discussions on the final minutes proposed by the Committee, including the following drafts:

1. Convention for the Creation of an International Union for the Protection of Literary and Artistic Works;
II. Additional Article

III. Final Protocol

At the time of the enumeration of the representatives that had taken part in the work of the Conference, the President informed the Assembly that the Delegates of the Argentine Republic and Paraguay had informed him that they were not empowered to sign the final minutes.

H.E. Mr. Maurice Delfosse made the following statement:

'The Belgian Government has already made it known that it is not prepared to accede to provisions that would make it lose the benefit of the specific conventions that it has recently concluded. Being moreover engaged in the comprehensive and imminent revision of its domestic legislation on literary and artistic property, and not wishing to seem to anticipate, as it were, the eventual resolutions of the legislative chambers, it has instructed me to abstain from signing the Final Act of the Conference, reserving the right to accede to the Union in due course, if appropriate, by virtue of Article 18.'

Mr. Tamayo spoke as follows:

'The Spanish Delegation will sign, but without committing its Government in any way.'

Mr. Winchester, for his part, made the following statement:

'Mr. President,

'On August 31 I sent a note to His Excellency the President of the Swiss Confederation in which I informed him that, in response to an invitation addressed by the Minister of Switzerland in Washington to the Government of the United States to send a representative to a second, final Conference for the Protection of Literary and Artistic Works, that was to meet in Berne on September 7, 1885, the Secretary of State had done me the honour of appointing me Delegate of the United States, with precise instructions as to the scope and extent of my powers. I communicated the content of those instructions to His Excellency the President in the note just mentioned.

'However, I considered that it would be proper to explain to the Conference the circumstances that induced my Government to give me a limited mandate, and also to indicate what the powers of its representative were in this important meeting.

'When, last spring, the invitation to take part in this Conference reached the Government of the United States, the Minister of Switzerland had been informed by the Secretary of State that, as the question of international literary and artistic property had for some time been under consideration in the Congress of my country, the Government did not feel authorized to take any steps that might prevent or hamper the free discussion or action of the Congress in connection with a question that was entirely within its jurisdiction. The Government was therefore not prepared to take part in an international agreement that had the character of a general, formal Convention before the Congress had declared its wishes on the subject. However, since the Congress and the people have for years shown a great and growing interest in the question of international literary and artistic property, the Government of the United States would be pleased to take part in the consultative deliberations of the proposed Conference, and to benefit from the exchange of opinions that would take place at it. If therefore this Government could be represented at the Conference by a delegate, at the same time reserving the right to subscribe later to the results that might be achieved in so far as they were in line with its interests and policy, that delegate would be named.

'In reply to the foregoing, the Government of the United States has been assured that the Conference would receive with pleasure a delegate endowed with cooperative and consultative powers. It is as a result of that understanding and within those limits that I am authorized to take my place here.

'The Honourable Secretary of State has not instructed me regarding the specific views of my Government on the subject of international literary and artistic property, or on the details, which are as varied as they are important, that enter into that sphere. Neither did he indicate the manner of proceeding which, in all probability, would be the most appropriate for the formation of the basis for a general agreement whose purpose would be to include all countries in one system of protection for literary and artistic works.'
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However, even though my Government has not seen fit to make proposals to the Conference and has conferred only limited powers on its representative, the very fact that it is represented here by an authorized delegate is to be accepted as having real significance, and as the expression of the great importance and the keen interest that it attaches to the serious question that has brought us together today. I am not authorized to vote on any question, and would not take the liberty of exercising that privilege. I feel that I shall have fully accomplished my duty and mandate by giving my close attention to the work of this Conference, and, after its completion, by submitting the results to my Government for consideration. At the same time, it will be a pleasurable duty for me to give a testimony of the great intelligence that has presided over the hard and wide-ranging work of the Conference, which in turn should give its resolutions great weight and a decisive influence.

‘However, I do not believe I am overstepping the limits of my powers when I say that “the Government of the United States is favourably disposed towards the principle that the author of a literary or artistic work, whatever his nationality, and whatever the place of reproduction, should be protected everywhere on the same footing as the citizens or subjects of every nation.”

‘It is true that such an arrangement could come up against serious difficulties; but, in a spirit of mutual concession, those difficulties should give way to an international agreement that would be at once equitable, fair and enlightened.’

H.E. Mr. F.O. Adams made the following statement in his turn:

‘Mr. President,

‘At the first meeting of the Conference, I explained that the main task of the British Delegation would be to present observations with a view to the establishment of a basis for a Union that would facilitate not only the eventual accession of Great Britain, but also that of other States, and that we took the liberty of hoping that the Convention would contain principles rather than details.

‘Within the Committee, I saw fit to repeat those observations, and I stated that we were consequently bound to propose quite considerable amendments to a number of articles. I have little need to point out that, in proceeding in this way, we had not the slightest intention of damaging the draft that was so carefully drawn up last year, but the British Delegation did naturally have to take into consideration the present state of legislation and public opinion in Britain, not to mention the need to obtain Parliamentary approval of the amendments that would have to be made to our legislation before Great Britain could accede to the projected Union. We therefore expressed the fear that, if the amendments proposed by us were not favourably received, the Convention would contain provisions that would prevent us from recommending to our Government the necessary amendments to our own laws, or that, if we were in a position to recommend them, the Government would perhaps find itself obliged to reject them; and that, if that were to happen, the whole question could be indefinitely postponed in our country and all hope of seeing Great Britain acceding to the Union in the near future would be lost.

‘The British Delegation is pleased to acknowledge, Gentlemen, that you have been kind enough to take my observations into consideration and that, in a true spirit of conciliation, you have given your consent to concessions which, we sincerely hope, will facilitate our dealings with Her Majesty’s Government. In this respect, we ask you to accept our sincere thanks. Be assured, moreover, that we shall be extremely pleased to convey to our Government the friendly sentiments that you have all been so kind as to show us.

‘It only remains for me to add that the British Delegation is authorized to sign the Final Act of the Conference, provided that it is clearly understood that this does not bind Her Britannic Majesty’s Government to any degree, or give any indication of its opinion.’

Dr. Janvier made the following statement on behalf of his Government:

‘In spite of the content of Article 13, the Delegate of Haiti feels bound to point out to the Conference, and wishes that it be expressly set down in the final texts of the Records of the Conference, that, in those cases in which his Government would have to assert its territorial sovereignty, either against the works of one of its natives residing abroad, or against a foreign publisher who might claim to be the owner of
Appendix

a work, anonymous, pseudonymous or of another nature, directed against the Government of Haiti, the legislative or domestic policing measures that it might take against that work could never be the subject of foreign intervention, through either diplomatic or other channels, the purpose of such measures being to obstruct, disturb or criticize in any way the action of the Haitian Government.'

Mr. Verwey, in his turn, made the following reservation:

'I wish to subscribe to the statement made by the Delegate of Great Britain, and wish to place on record, by my signature at the foot of the final minutes, both my presence within the Conference and the interest that the Government of the Netherlands has in its successful outcome; I do, however, insist on the minutes recording that my Government intends to remain entirely free regarding its accession to the Union.'

Finally, Mr. Lagerheim, the Delegate of Sweden, made the following declaration in his own name and in that of his colleague from Norway:

'The Government of His Majesty the King of Sweden and Norway has already made known to the Government of the Swiss Confederation the reasons that have prevented it from conferring on the delegates of our United Kingdoms full powers in due form for the signature of a Convention, so it remains for me to state, at the present time, that my colleague from Norway and I are willing to sign the final minutes that have been submitted to us by the Committee, and by which we undertake to submit to our Governments the draft Convention with its annexes, on which the Conference will, I hope, agree in the course of this meeting.'

After the above declarations, the preamble to the final minutes was adopted.

The Conference then proceeded to the discussion, Article by Article, of the draft Convention proposed by the Committee.

With reference to the title, Mr. Lavollée said the following:

'The French Delegation notes the comment given in the report of the Committee on the title of the Convention, from which it emerges that the expression 'protection of literary and artistic work' is equivalent to 'protection of literary and artistic property.' The title proposed by the Committee was then adopted.

The preamble to the Convention, and also Articles 1 to 4, were adopted without discussion.

Article 5 gave rise to the following statements.

Mr. Lavollée: 'The French Delegation feels bound to recall, before the vote on the Article concerning the right of translation, under what circumstances the compromise solution that prevailed was in fact adopted, and on what grounds the French Delegation has been authorized to subscribe to it.

'We are pleased to acknowledge that the Conference was kind enough to give partial satisfaction to France's wishes by the deletion of the three-year period. For its part, the French Government, while keeping its convictions on the subject intact, has, in its very keen desire for conciliation, authorized its delegates to accept the proposed solution. It has been driven to do this by the desire to afford access to the Union to a number of States, notably Great Britain. It has, moreover, been pleased to observe that the principle of assimilation is written into the draft law that the British Societies of Authors and Publishers have drawn up and which has been presented to us.

'It is the taking of a further step towards the triumph of this rule of justice that the Conference itself, in its wishes expressed last year and confirmed this year, has unanimously recommended to the sympathetic attention of all Governments. We are pleased to acknowledge the considerable progress that has been made this year in the direction and towards the objective indicated by the Conference. Not only has the draft Convention been improved with respect to the exercise of the right of translation, but also the principle of assimilation, supported by France and already written into the Spanish and Swiss laws, is on the point of being likewise included in the Belgian law, if the Belgian Parliament, as it is expected to do, adopts the so-wise and so-liberal draft that has been prepared by the central section of the Chamber of Representatives. At this Conference, the French Delegation is pleased to note that the amendment that it presented to that effect secured not three votes, as last year, but five out of eleven, in other words almost a
majority, and, among those votes, those of Spain and Belgium. Moreover, Switzerland, while having rejected the amendment in order to facilitate the establishment of the Union, has declared that, as far as it was itself concerned, it was willing to vote for it. For its part, the German Delegation has not made any fundamental objection to the system; it has even declared its desire to see that system eventually triumph; it has, however, stated that it would only be authorized to vote for it on condition that the other countries also adopted it.

‘This combination of votes and statements allows the French Government to hope that the day is near when the wish of the Conference, which is also its own, will be realized.

‘It confidently awaits this definite step forward from the combined operation of time and the spontaneous determination of the Powers represented in this building.’

Mr. Bergne: ‘With reference to the observations that Mr. Lavollée has just made, I wish to make it clear that the draft law he mentions has been drawn up by a British literary society, and in no way issues from the Government of Her Britannic Majesty.’

Mr. Lagerheim: ‘In the name of my colleague from Norway and also in my own name, I wish to place on record that the Governments of Sweden and Norway would have preferred to maintain the provisions of Article 6 of the 1884 draft Convention intact. It was only as a result of the formal declaration by the French Delegation that it could not accept any compromise other than that contained in the Italo-Swiss amendment, that we were authorized to endorse that solution. By acceding in that way to the desires of France, the Scandinavian countries have reached the maximum of concessions on this point that their particular circumstances allow them to make at the present time. We feel able to add that the protection granted by the Convention to the authors of all the countries of the Union against unlawful translations will thus become very genuine and will fully meet their requirements while also doing justice, in full measure, to the trends of our times.’

Article 5 was then adopted as proposed by the Committee.

Articles 6 and 7 were also adopted.

On the subject of Article 8, Mr. Reichardt said the following:

‘In the opinion of the German Delegation, it would have been preferable, in the interest of education and science, to retain the corresponding Article contained in last year’s draft. The German Delegation’s renunciation of its insistence on the retention of the draft in question, and its acceptance of the wording before us now, is solely due to the desire to see Great Britain accede to our Convention.’

H. E. Mr. F. O. Adams warmly thanked the Delegate of Germany for his kind words.

Article 8 was adopted according to the proposals of the Committee.

The same was true of Article 9.

On the subject of Article 10, Mr. Lavollée made the following statement:

‘The French Delegation is pleased to recognize that, as far as adaptation is concerned, the new wording of Article 10 is much preferable to the provision that was inserted in the Final Protocol last year. However, it feels bound to observe that the present provision is a compromise to which the French Government consented in a spirit of conciliation and in order to avoid hampering the establishment of the Union. Neither can it avoid recalling that, for any direct or indirect reproduction, as for any translation, the main condition to be met should, in the opinion of the French Government, be the securing of the author’s consent. That is a necessary consequence of the principle of literary and artistic property that France is pleased to recognize.’

Article 10 and also Articles 11 to 15 were adopted.

On Article 16, H. E. Mr. Emmanuel Arago made the following proposal:

‘The French Delegation has asked to speak on Article 16 in order to fill a gap. Instead of saying that the Bureau of the International Union for the Protection of Literary and Artistic Works is placed ‘under the high authority of...,’ we propose saying: ‘under the high authority of the senior administration of the Swiss Confederation.’ It is unnecessary to justify our amendment by recalling the services rendered to the world by the International Postal Bureau, by the Telegraph Bureau and by the Bureau of Industrial Property, and I am certain of being the true spokesman, in this matter, of all my distinguished colleagues.’
The Assembly expressed its unanimous approval.

Mr. Ruchonnet replied in the following terms:

‘Gentlemen,

‘You will understand that the Swiss Delegation does not have instructions to accept, without the special authorization of its Government, the exalted mandate that the members of the Conference by unanimous assent wish to entrust to Switzerland, on the proposal of the honourable Vice-President of this Assembly.

‘The Swiss Delegation will not fail to convey to the Federal Council the decision that has just been taken and on which the Federal Authority will pronounce at the same time as it ratifies the Convention that we are going to conclude; however, we feel, my colleagues and I, that we are not committing ourselves too much when we say at the outset that Switzerland will accept with gratitude this new token of the trust of the States represented here, and that it will endeavour to justify that trust by accomplishing to the utmost of its ability the mandate which you have been pleased to confer on it.’

Following the adoption of the proposal by H.E. Mr. Emmanuel Arago, it was decided that the blanks left in Article 18 of the Convention and in Articles 5 and 7 of the Final Protocol, which had to do with the International Bureau or the Government under whose supervision it was placed, would be filled according to the decision that had just been taken.

Articles 17 to 21 of the Convention, the Additional Article and the Final Protocol were then adopted without discussion.

The same was true of the last part of the final minutes of the Conference.

Finding itself unanimous on all the texts proposed by the Committee, the Conference decided to forgo voting on the draft as a whole.

The President made the following address:

‘Gentlemen,

‘Now that we have come to the end of our discussions, allow me to cast a rapid glance over the stage of intense effort that our collective work has just passed through. The hope that I expressed on opening this Conference has been fully realized: thanks to your spirit of understanding, your enlightenment and the dedicated cooperation of all of us, we have been able to overcome or set aside the numerous difficulties that have stood in our way. Even though there are still diplomatic and constitutional formalities to be accomplished, I feel able to say at this juncture that the International Union for the Protection of Literary and Artistic Works has been established, and that it has been established on foundations that are acceptable to all countries of the world.

‘Today’s date is a milestone in the history of international law: it has taken a great step forward in one of the most difficult of areas, but also one of the most useful, and we cannot but congratulate ourselves mutually on the results achieved.

‘Of course, like any convention between sovereign States, our work does have the character of a compromise. It was not in our power, neither could it be our intention, to effect the disappearance of the legislative peculiarities of all Contracting States, which after all are due to differences of doctrine, practice and procedure and tied up with the institutions of each country and its legal culture. On no point, therefore, have we encroached on the essential principles on which the legal conception of copyright rests; thus no country will have to choose here between a painful doctrinal sacrifice and abstention pure and simple. On the contrary, all are enabled to enter the Union and at the same time retain those features of their statute and case law to which they are attached, provided that they also consent to assure authors of effective protection on the points settled by the Convention. We did not want to differ over mere words when there was a possibility of our securing the thing itself.

‘One fact that should be given prominence is that our Convention is destined to bring about progress all along the line; it is a minimum to be attained by those countries that do not yet grant all the rights introduced by it, but which will not fail, we have no doubt of that, to reform their legislation without delay in order to bring into line with the principles proclaimed by the Union. It gives the other countries the certain security that their authors will be protected over a much wider area and to an extent that in some respects is greater than under existing conventions. So even for them there is no backward step, but on the contrary, in international terms, a substantial move forward. The laws and conventions that are the most liberal towards authors will be maintained, while the others will be improved by...
the very operation of the Convention. Is that not a result to delight even the most difficult?

'I have said and I repeat that progress has been made all along the line. The creation of the Union, which establishes a bond between all countries and will be a stimulus for them is, in my view as no doubt it is in yours, the first and the most important element of this progress; it is a striking affirmation of universal awareness in favour of copyright. Then there is the removal of the multitude of formalities that an author still has to comply with if he wishes to secure protection everywhere, the removal of the period of three years within which a translation had to have appeared in order to be protected, the standardization of the right of reproduction for articles in newspapers and periodical journals, the express protection of dramatic and dramatico-musical works, the treatment as slavish infringement of those numerous indirect appropriations which, in an insidious manner, have the effect of robbing the author of the fruit of his work, the introduction of clear and precise presumptions for the initiation of legal proceedings, the express recognition of select unions such as those for the protection of photographic and choreographic works, which, by virtue of the very force of the principles involved—the example of the Postal Union is proof of this—will experience no delay in becoming as universal as the parent Union; finally, without mentioning other progress of lesser importance, there is the organization of an International Bureau which will be an impartial and enlightened body responsible for watching over the general interests of the Union and working towards the achievement of further progress; who would dare say, Gentlemen, that that was not a most satisfactory set of results, a work of brotherly approbation between peoples, and an International Convention that fully deserves the approval of the Governments to which we are going to submit it?

'I have no doubt regarding the favourable reception that awaits it, and I am pleased to see this foreshadowed by the unanimity which, following the mutual concessions that we have made, has been shown within the Conference for the approval of the work as a whole.

'I venture to hope that the countries represented that have not felt able to join us at this time for signature will not delay long in doing so, and that our work will also win acceptance on the part of countries that have not been represented.

‘Gentlemen, I shall stop here. While our discussions may be at an end, our work is not. As we await the signature of the final minutes and the close of the Conference, I cannot help conveying to you the feeling of sincere satisfaction that came over me as I witnessed our hard work coming to such a gratifying conclusion. I am certain that you all share this feeling, and that you will not take it amiss if I have my expression of it recorded in the minutes of this meeting.'

A last meeting was to take place at 11 a.m. on the following day for the signature of the final minutes and the approval of the last minutes of the Conference.

The meeting rose at 7.50 p.m.

IN THE NAME OF THE CONFERENCE:

NUMA DROZ

President

CHARLES SOLDAN BERNARD FREY

Secretaries

Minutes of the Sixth Meeting of the Conference for the Protection of Literary and artistic Works September 18, 1885

Presided over by Federal Councillor Numa Droz, President

The meeting opened at 11.30 a.m.

The following were present: all the members of the Conference with the exception of Mr. Louis Ulbach, who sent his apologies.
The minutes of the fifth meeting, which had been distributed to the delegates in draft form, were adopted.

Before proceeding to the signature of the final minutes of the Conference, a second reading was made of that document, which included the draft Convention, an Additional Article and the Final Protocol. Those texts were finally adopted.

At the invitation of the President, the delegates then proceeded to sign the final minutes, their names being called in the alphabetical order of the countries that they represented.

At the request of the French Delegation, the place reserved for the name of Mr. Louis Ulbach, who at that time was away from Berne, was left blank until such time as the Delegate in question could return to Berne and sign the final document.

Pursuant to what had been agreed the previous year, it was understood, following a comment by the President, that, in deference to the Governments represented, the decisions of the Conference would not be publicized until November 1. The secretariat could nevertheless make a concise summary of the main resolutions of the Conference for the purposes of the press.

The delegates undertook to abide by what had been agreed.

The President addressed the Assembly in the following terms:

‘Gentlemen,

“The time has come for us to part. First, however, I wish to thank you most sincerely once again, in very few words, for the support that you have given me and the goodwill that you have shown me, which has made the accomplishment of my presidential duties most agreeable. In particular, I thank our kind Vice-President, His Excellency Emmanuel Arago, whose conciliatory influence greatly facilitated the work of the Conference, as it did last year; also our two Secretaries, Mr. Soldan and Mr. Frey, who really excelled themselves with the combination of intelligence and energy that they also demonstrated last year. I should like to think, Gentlemen, that you will take away friendly memories of our country, which has been so pleased to receive you. There will doubtless be no lack of future opportunities for us to see each other again and cultivate the good personal relations that have been created or renewed at this time; this is the hope of every one of us. Until then, Gentlemen, it remains for me to express the hope that our work will be well received by the Governments that we represent. I have no doubt that that will indeed be the case.’

H.E. Mr. Emmanuel Arago replied with the following words:

‘Mr. President,

“Today we shall not express thanks in reply to the kind address that you have just made. Charmed by that rare quality which has led us forward towards our common goal without upsetting anyone and without ever discrediting any essential principle, we congratulate you for having so well served this noblest of causes. It fell to you yesterday to make a striking analysis of the useful work that we have done; and also to state clearly that the desire to extend our sphere of action, to assure the genius of art and letters of new protectors, can never be allowed to cost us the very smallest sacrifice of principle. So, let us persevere; the Droz Conference—forgive me, it slipped out . . . and yet I should like to keep it!—marks a decisive step along the great road of progress.’

Professor d’Orelli made the following address:

‘Mr. President, Gentlemen,

‘Allow me to say a few more words to you, not officially but in a quite personal capacity: I have set my heart on telling you what I feel at this time.

‘On several occasions, His Excellency Mr. Emmanuel Arago, Ambassador of the French Republic, has expressed words that are kind and friendly towards Switzerland. We are very grateful to him, and as Vice-President of the Conference he has demonstrated his great interest in our work.

‘We can indeed be pleased with the very satisfactory result that we have achieved, in spite of the great difficulties that have resulted from the divergent instructions and viewpoints of the various delegations.

‘We owe this satisfactory result to the hard work that we have all done; we owe it to the thorough studies undertaken by the German
Delegation, which, in the same way as it did last year, has so frequently clarified doubtful matters and averted misunderstandings through the agency of its three wise interpreters; we owe it to the spirit of conciliation that has been shown by the French, British and Italian Delegates; we owe it above all—if I may say so, Swiss though I am—to the admirable talent of our valued President, Mr. Droz, who has so ably conducted our debates and who has always found a way out of awkward situations and a wording for resolutions that are satisfactory to all.

‘While commending you on your work, I take the liberty of thanking you, Gentlemen, in the name of legal science and in the name of the law faculties of our four Universities of Zurich, Berne, Basle and Geneva. Science is always receiving new impetus from life. I believe that I am perfectly in tune with my distinguished counterparts from Berlin and Paris, Dr. Dambach and Mr. Renault, when I state that we have really taken a step forward in international law. However, it is no more than the first step towards the aim to which we are all striving, namely the international codification of the law on the protection of literary and artistic works.

‘I also thank you, Gentlemen, in the name of my country. Switzerland is honoured and pleased to be the headquarters of a number of international bureaux and thereby, as a neutral territory, to become the center of all the aspirations that make for progress, peace and brotherhood between the various peoples. Switzerland and itself has the utmost interest in cultivating and protecting international law, which guarantees to the weaker, smaller States the same rights and the same position as the major Powers.

‘Gentlemen, I wish you a pleasant return to your countries and to your homes. May you keep a favourable memory of Switzerland and of your Swiss colleagues!’

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

The President addressed a few words of farewell to the delegates, and pronounced the Conference closed.

The meeting rose at 12.30 p.m.

IN THE NAME OF THE CONFERENCE:
NUMA DROZ
President

CHARLES SOLDAN BERNARD FREY
Secretaries

Records of the Third International Conference for the Protection of Literary and Artistic Works
Convened in Berne September 6 to 9, 1886

Minutes of the First Meeting of the Conference for the Protection of Literary and Artistic Works
September 6, 1886

The meeting was opened at 11.10 a.m., in the hall of the Council of States.

The following were present:

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