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**COLONIAL COPYRIGHT, POSTCOLONIAL PUBLICS:
THE BERNE CONVENTION AND THE 1967 STOCKHOLM
DIPLOMATIC CONFERENCE REVISITED**

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Abstract

In the annals of international copyright history—by and large synonymous with the Berne Union and the Berne Convention for the Protection of Literary and Artistic Works—translation occupies a contested space. At the end of the nineteenth century, as the nascent Convention tried to come to terms with the legal ramifications of translation and the way it challenged the perceived stability of the work, translation also acted as a conduit for geopolitical tensions between producer/user-nations. A conflict native to the Convention, the dichotomy between export/import and developed/developing nations returned with a vengeance during the calamitous Stockholm Revision Conference in 1967. In the following, I revisit this critical juncture in international copyright history to consider the divergent claims and counter-claims relating to translation and the dissemination of knowledge. The purpose of this essay is to contribute to a historically informed understanding of current processes surrounding the construction, dissemination and control of knowledge, as they materialise, for instance, in the WIPO Development Agenda.

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1. Introduction

Daniel Gervais describes the present trade-based intellectual property rights regime as pressured by challenges from “the Very Old and the Very New”.¹ Demands to protect traditional knowledge and folklore represent the first category; digital piracy, peer-to-peer networks, and bit-torrent sites such as Pirate Bay the second. What opens up between the two is a geopolitical minefield flanked by developed and developing nations, where “Very New” information technologies bring “Very Old” conflicts to light.²

This essay returns to such an “old” conflict in the development of international copyright dating back to the signing of the Berne Convention for the Protection of Literary and Artistic Works on 9 September 1886. Translation, a constant “*pierre d’achoppement*”³ in the evolutionary history of the Berne Convention, caused problems from the outset. These returned with full force at the fourth conference for the revision of the Berne Convention in Stockholm on 11-14 June 1967.⁴ Described by one participant as “the worst experience in the history of international copyright conventions”,⁵ Stockholm marked the culmination of several years’ discussion on the viability of the international copyright regime to accommodate the needs of developing nations.

There are several reasons why translation—primarily denoting Roman Jakobson’s *translation proper*⁶—occupied such a contested space in international copyright

¹ DJ Gervais, “The Internationalization of Intellectual Property: New Challenges from the Very Old and the Very New” (2001-02) 12 *Fordham Intellectual Property Media & Entertainment Law Journal* 929-990. Barbara A Ringer painted a similar scenario at the time of the Stockholm Conference, when the photocopier epitomised the tenuous relationship between technological innovation and copyright. She listed “the communications explosion and the demands of developing nations”, as the “two main challenges of our half-century” in BA Ringer, “The Role of the United States in International Copyright—Past, Present, and Future” (1967-68) 56 *Georgetown Law Journal* 1050-1079, at 1051.

² It is of course important not to interpret Gervais’ Old and New as distinct binary categories without overlaps. In addition to being useful conceptual markers however, they also highlight how two different scholarly topics in intellectual property law achieve varying levels of “public-ness”. The “New” copyright problems associated with digitisation have reached a larger constituency of readers via works by Lawrence Lessig, James Boyle, and Yochai Benkler, to name but a few. The “Old” copyright problems, on the other hand, addressed by for instance Graham Dutfield, Ruth Okediji, and of course Daniel Gervais, appear perhaps less immediately accessible to the general public and more like an opaque specialist area within the already complex global governance of WTO and WIPO.

³ D Vignes, “Aide au Développement et Droit d’Auteur: le Protocole de l’Acte de Stockholm pour la Protection des Œuvres Littéraires et Artistiques” (1967) 13(1) *Annuaire Français de Droit International* 716-741, at 722.

⁴ As conferences in Paris 1896 and Berne 1914 only produced additional Acts, strictly speaking, three revision conferences (Berlin 1908, Rome 1928, and Brussels 1948) preceded the one in Stockholm.

⁵ BA Ringer, see note 1 above at 1070. Barbara A Ringer was Assistant Registrar of Copyrights at the Library of Congress and member of the US delegation in Stockholm.

⁶ Roman Jakobson identifies three main types of translation: “intralingual translation or *rewording* (the interpretation of verbal signs by means of other signs of the same language); interlingual translation or *translation proper* (the interpretation of verbal signs by means of other signs of the some other language); and finally intersemiotic translation or *transmutation* (the interpretation of verbal signs by means of signs of nonverbal sign systems). R Jakobson, “On Linguistic Aspects of Translation” in L Venuti (ed), *The Translation Studies Reader* (London: Routledge, 2000) 113-118, at 114.

relations. Translation threatened to undermine any perceived stability of cultural works; it required that another author - the translator - enter between author and reader, turning the relationship into a threesome. Perhaps more significantly, translation acted as a conduit for tensions between centre/periphery, between import/export, and between user/producer. It was and continues to be a practice, as Susan Bassnett and Harish Trivedi contend, that “rarely, if ever, involves a relationship of equality between texts, authors or systems”.⁷

The purpose of this essay is to address the key rhetorical strategies engendered by translation during the Stockholm Conference, particularly as they played out between developed and developing nations at the time. Such a perspective is particularly relevant, I argue, because it shows how international copyright relations have always been inscribed in a colonial grid, and developed at the intersection of law and language.

2. Brussels, June 1948

It is perhaps fair to say that the Berne Convention was a grand old dame among treaties when the Swedish government announced its willingness in 1948 to host the next revision conference. The Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle (BIRPI), located in Berne, was the administrative seat from the inception of the treaty, and oversaw revision conferences in Berlin (1908), Rome (1928) and then Brussels (1948).⁸ The post-WW II copyright landscape was however no longer confined to Old World Europe. Although several important nations, most notably the US and the USSR, did not adhere to the Berne Union, the Americas was a patchwork of treaties,⁹ including the 1889 Montevideo Convention, and leading to the Pan-American Buenos Aires Conventions of 1910, 1928 and 1946 (of which the US was effectively signatory only to the first). The role of the US vis-à-vis international copyright and the Berne Convention is a lengthy and complicated affair. Proponents of a “culture of reprinting” consistently defeated pro-international copyright supporters in Congress.¹⁰ Things did not begin to change until after WW II, when the

⁷ S Bassnett and H Trivedi, “Introduction” in *Postcolonial Translation. Theory and Practice* (London: Routledge, 1999), at 2.

⁸ Article 16 of the 1886 Berne Convention explicitly mentioned the formation of a *Bureau de l'Union Internationale pour la Protection des Œuvres Littéraires et Artistiques* to handle administrative tasks associated with the Convention. Such an entity had already been established with the Paris Convention for the Protection of Industrial Property in 1883, and the two officially merged on 11 November 1892, becoming the *Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle* (BIRPI), and relocating to Berne. In 1960, BIRPI moved to Geneva and as part of the revision conference in Stockholm 1967, became the World Intellectual Property Organization (WIPO)/*Organisation Mondiale de la Propriété Intellectuelle* (OMPI). In 1974, WIPO became part of the United Nations system. For a detailed administrative history, see OMPI, *La Convention de Berne pour la Protection des Œuvres Littéraires et Artistiques de 1886 à 1986* (Genève: OMPI, 1986).

⁹ For an overview of the Pan-American Conventions, see S Ricketson and J C Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond* (Oxford: OUP, 2005), at 2:1169-1213. Ricketson and Ginsburg’s two volumes on the Berne Convention are indispensable sources for anyone venturing into its history. S von Lewinski, *International Copyright Law and Policy* (Oxford: OUP, 2008) is another standard work.

¹⁰ On the “culture of reprinting”, see ML McGill, *American Literature and the Culture of Reprinting, 1834-1853* (Philadelphia: University of Pennsylvania Press, 2003). For comprehensive overviews, see ML McGill, “Copyright” in *A History of the Book in America*, Vol 3: *The Industrial Book, 1840-1880*

US definitely moved from being an importer to a prominent exporter of cultural works.

The United Nations Educational, Scientific, and Cultural Organization (UNESCO), played an important role in trying to redress a situation in which, in copyright terms, the world emerged from the war “virtually split into two entirely separate and independent parts”.¹¹ Launched in 1945 as successor to the International Committee on Intellectual Cooperation (ICIC), UNESCO anchored its copyright policy in the 1948 Declaration on Human Rights. Prior to the Brussels conference, UNESCO had already noted how copyright was a “barrier” to the “free flow of culture among all the peoples of the world”.¹² In the next few years, UNESCO instigated a number of copyright initiatives culminating in 1952 with The Universal Copyright Convention (UCC). While an extended treatment of the UCC is beyond the scope of this essay, an important point, for the discussions that ensued in Stockholm, is that Article V of the UCC contained a provision on compulsory licensing for translations. Subject to a number of conditions, it stipulated that such licences could be issued if a) no translation in the national language had been published within seven years of the original publication, or b) if the translation had been published within this period but all editions of this translation were out of print after the seven-year term.¹³

In sum, the UCC offered an international multilateral convention with lower levels of protection than Berne, thus providing a vehicle for the US to come into the fold of multilateral international copyright agreements. Several specificities in national legislation kept the US outside Berne until 1989; these were primarily the compulsory registration of copyright and the controversial manufacturing requirement, which afforded English-language books copyright protection in the US only if manufactured on American soil. As a compromise between the formal registration required by US law and the no formalities-Berne framework, the UCC introduced the use of a © symbol, making it possible for the US and other countries to sign the UCC without having to change their national legislation.¹⁴ While developing nations viewed the UCC in a more favourable light than Berne, the so-called “Berne Safeguard Clause”, complicated the relationship between the two agreements. Any nation leaving the Berne Union in favour of the UCC automatically forfeited protection by the UCC in Berne nations. Intended to hinder mass defection from the Berne Union, the

(Chapel Hill, NC: University of North Carolina Press, 2007) 158-178; BA Ringer, note 1 above; P Jaszi and M Woodmansee, “Copyright in Transition” in CF Kaestle and JA Radway (eds) *A History of the Book in America*, Vol 4: *Print in Motion: The Expansion of Publishing and Reading in the United States, 1880-1940* (Chapel Hill, NC: University Of North Carolina Press, 2008) 90-101.

¹¹ F Honig, “International Copyright Protection and the Draft Universal Copyright Convention of UNESCO” (April 1952) 1:2 *The International and Comparative Law Quarterly* 217-227, at 218.

¹² UNESCO, “The Administrative Obstacles to the Universal Free Flow of Culture, Deriving from the Existence of Copyright” Document Free Flow Com./14, 13 October 1947, at 1.

¹³ S Ricketson and J C Ginsburg, see note 9 above, at 2:1887. Ricketson and Ginsburg also stress that this article provided a less generous reservation than what was allowed under the Berne Brussels Act.

¹⁴ For a good overview of the work done by UNESCO leading up to the UCC and especially details on the US policies at the time, see M James, “The United States and the Movement for Universal Copyright, 1945-52” (July 1955) 25(3) *The Library Quarterly*, 219-234.

mechanism effectively paralysed the international copyright community and was a major source of contention in later discussions.¹⁵

In 1948, however, when the Swedish delegate Sture Petréen extended his invitation in Brussels, he underlined that the common Nordic legal tradition came with “big windows open to the exterior”.¹⁶ He was no doubt referring to the fact that small countries need to embrace the outside world in order to avoid isolation. An alternative and less benign reading might see “big windows” as nothing but a glossed-up euphemism for an attitude that for many years made Sweden a pariah in the nascent international copyright community. Ostracised in *Le Droit d’Auteur* for its nonchalance towards international copyright, translation was the reason that Sweden remained outside the Berne Union until 1904.¹⁷

During the two diplomatic conferences of 1884 and 1885 that culminated in the definitive 1886 Convention, translation posited the interests of nations such as Sweden, with its self-image as a developing “user-nation”, against the interests of producing nations such as France, which capitalised economically as well as symbolically on its role as a major exporter of cultural goods. Following a heated exchange in 1885 with the Swedish diplomat Alfred Lagerheim, the French delegate Lavollée stated that, “when it comes to making real progress, the advanced nations need to set the example, without waiting for the others to fall in line”.¹⁸ There was little doubt that France was the advanced country in question, and that Sweden belonged to the category of “the others”. Behind the rhetoric of “user-nation” and “advanced nation” stood competing interpretations of the nature of the interests that translation rights served: those of authors or of readers? The French position was unequivocally pro-author, advocating the complete assimilation of translation into reproduction rights as the only possible way for the author to control the dissemination of his works and safeguard stable transfer into other languages. Other nations, like Sweden, saw things differently. Freedom of translation ensured the greatest possible promulgation of print, and a causal link between the authors’ control and quality was far from conceded as a given.

The momentum may have always been with the French, but it would take more than twenty years of trial and error before translation was finally incorporated into reproduction rights at the Berlin Diplomatic Conference in 1908. If “les partisans” of translation rights believed that they had vanquished “les adversaries” by that definitive assimilation, they were mistaken.¹⁹ Lavollée and the string of diplomats

¹⁵ S Ricketson and J C Ginsburg, see note 9 above, at 2:1189-1190.

¹⁶ Sture Petréen, quoted in BIRPI, *Documents de la Conférence réunie à Bruxelles du 5 au 26 juin 1948* (Genève: BIRPI, 1951), at 87.

¹⁷ See for instance the thinly veiled irony of the editorial discussing the Swedish “attitude” in (1892) (5)9 *Le Droit d’auteur* 115-118.

¹⁸ *Actes de la 2me conférence internationale pour la protection des œuvres littéraires et artistiques réunie à Berne du 7 au 18 septembre 1885* (Genève: Imprimerie K.J. Wyss, 1885), at 26.

¹⁹ The expression partisans/adversaries is from A Osterrieth, “Mémoire concernant la protection du droit de traduction” (1909) 22(2) *Le Droit d’Auteur* 24-26, at 24. Significantly, translation was not only assimilated into reproduction rights at Berlin, but the right of translators was also recognised for the first time. For an overview of the history of the two rights, see Z Radojkovic, “Le droit de traduction et le droit des traducteurs” (October 1971) *Le Droit d’Auteur* 190-210. At the time of the Paris revision conference in 1971, French commentators expressed surprise at the fact that this issue

succeeding him could hardly have predicted that the problem requiring immediate French leadership in 1885 would resurface again eighty years later. Some things had changed, of course. In 1967, it would be up to Sweden, the former advocate for freedom of translation, and foe of the French, to assume responsibility for the matter in the international copyright community. Then again, some things stayed the same. The Swedish and Norwegian arguments in favour of freedom of translation presented at the end of the nineteenth-century resurfaced in 1967: translation is fundamental to the dissemination of knowledge and as such an especially crucial tool for developing nations.

3. Brazzaville, August 1963

During the 1960s, newly independent states sought to replace colonial legal regimes with laws sensitive to their current situation.²⁰ Copyright was both a problem and a possibility in an embryonic knowledge economy. On the one hand, it raised artificial barriers that made the influx of culture and science more difficult, but on the other hand, copyright could encourage local production of culture and knowledge. This tension reverberated into the substratum of the Berne Union, and came to a head over the chauvinistic so-called “colonial clause”, which extended the reach of the Convention by incorporating dominions and colonies of the original European signatories by proxy. Following decolonisation, newly independent states were required to affirm (or denounce) their loyalty to the Union by declarations of “continued adherence”.²¹

The first and arguably most important of the numerous meetings in preparation for the Stockholm Conference was the African Study Meeting on Copyright in Brazzaville in August 1963, organised jointly by BIRPI and UNESCO.²² Twenty-three African nations sent delegates. In addition, six NGOs were present, including the ever-present Association Littéraire et Artistique Internationale (ALAI) and the International Confederation of Societies of Authors and Composers (CISAC), three non-African states, and significantly, two “experts”. Swedish Supreme Court Justice Torwald Hesser, architect of the 1967 Stockholm Conference, was one of them, and Eugene Ulmer, Professor at the Institute of Copyright Law, University of Munich, the other. In a sense, the legal expertise of Hesser and Ulmer provided the sounding board for the discussion. They delineated the history and justification of various topics within

was not solved once and for all at Berlin. See F Majoros, “Position moderne des problèmes du droit de traduction international (Un aspect dominant des Conférences de Paris (juillet 1971) en vue de la révision des Conventions de Berne et de Genève)” (Janvier-mars 1971) 23(1) *Revue Internationale de Droit Comparé* 89-112.

²⁰ Ruth Okediji makes an important point when she questions our preconceptions regarding an absolute separation between indigenous custom and European law, and instead underscores their hybridisation in forming colonial legal regimes, RL Okediji, “The International Relations of Intellectual Property: Narratives of Developing Country Participation In the Global Intellectual Property System” (2003) 7 *Singapore Journal of International & Comparative Law* 315-385.

²¹ See C Deere, *The Implementation Game. The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries* (Oxford: OUP, 2009) for a very illuminating account of this history. Ruth Okediji interprets these standardised forms as important tools supporting the colonial apparatus, see note 20 above, at 330-331.

²² For a report from the Brazzaville meeting, see IA Ntahokaja, “Réunion Africaine d’Etude sur le Droit d’Auteur” (October 1963) 76(10) *Le Droit d’Auteur* 250-259.

the intellectual property system, then followed questions and comments from the African delegates. In conclusion, Hesser and Ulmer weighed the concerns of developing nations against their interpretation of the scope of the law. It is worth noting that both legal authorities came from civil law countries. Given this, there is certain logic in the later observation of Hesser that inspiration for the African Model Copyright Laws came from the continental European legal tradition, and that rules from the Anglo-Saxon copyright tradition failed to receive support.²³

At Brazzaville, African states stated clearly that although they desired access to the best works of other nations, they also intended to export their own.²⁴ Indeed, the language used to describe the particular African experience of import/export would set the tone for what was to come in Stockholm. When the delegates turned to issues of international copyright relations, the Tunisian representative began his statement by making an association with food:

There are two kinds of intellectual foodstuffs: those drawn from the African cultural heritage that should be encouraged, and those that stem from abroad and should be acquired exempt of all rights. It is essential that Africa does not pay too much for the fruits of imported knowledge.²⁵

The quote encapsulates something of the contradictory positions adopted by developing nations at the time. Of the two intellectual foodstuffs, it is the second, the “fruits of imported knowledge”, for which Africa must not overpay. On the other end of the import/export spectrum were cultural heritage and folklore, both of which were to be encouraged. Recognised both as “millénaire” and as a base for new “créations originales contemporaines”,²⁶ the penchant to draw on the value of traditions and the “ancient” when it came to folklore, while associating imported knowledge with the up-to-date, entrenched developing nations further into the “Old”/“New” dichotomy.

The Brazzaville meeting ended with recognition of the injustices of the copyright system, and the conclusion that international copyright conventions benefited exporting nations. Of the recommendations made by the delegates, the last is perhaps the most noteworthy. First, the significant protection of folklore and the free use of copyrighted works for educational purposes were considered together.²⁷ Second, it said that folklore and cultural

heritage constitutes not only a source of inspiration for the cultural and social development of the peoples of the different African states, but contain also a potential for economic expansion

²³ T Hesser, “Det immateriella rättsskyddet och u-länderna” (1965) *NIR* 153-168, at 160. In 1967, the Vice-Chairman of the British Copyright Council called the Model laws “deplorable” and as “authorizing the stealing of other people’s property”. P Jarrett, “Why Piracy of Books is Wrong” *The Times* 13 April 1967, at 9.

²⁴ 1A Ntahokaja, see note 22 above, at 250.

²⁵ *Ibid*, 256.

²⁶ *Ibid*, 253.

²⁷ *Ibid*, 258.

susceptible of being exploited for the profit of citizens of each state.²⁸

At least in this respect, developing nations considered themselves potential exporters rather than importers. As momentum in the debate over developing nations and copyright continued to build between the meetings at Brazzaville and Stockholm, geopolitical friction related to export/import also accelerated.²⁹

4. Stockholm, 1967

What then could international delegates expect of the host nation, Sweden, in 1967? In the shadow of the illustrious year that followed, which Kjell Östberg refers to as “the Long ‘1968’”, 1967 lay half-way through the twenty-year period between the end of the 1950s and the beginning of the 1980s. More precisely, 1967 belonged to the 1965-1970 “red” period, characterised by protests against the Vietnam War and the rise of new social movements.³⁰

More than eighty years earlier, Alfred Lagerheim had travelled to Berne promoting the interests of Sweden as a developing nation, dependent on access to culture, knowledge, and information to advance national goals. He did his best to convince his European counterparts of the validity of his arguments and urged them to finalise a Convention affording copyright levels that were not too steep for his country to accept. He failed. By 1967, however, Sweden had been a signatory of the Berne Convention for more than sixty years, and was a paragon of development and social welfare.

All the work on the development dilemma done by the Swedish government in preparation for the Stockholm Conference coalesced in one key document: the Protocol Regarding Developing Countries (“the Protocol”). In the draft sent out before the conference, it was suggested that developing nations could make reservations in five areas:

the right of translation; the duration of the protection; the rights in articles on certain current events; the rights relating to the broadcasting of works; the use of protected works for exclusively educational, scientific or scholastic purposes.³¹

The Protocol encapsulated the growing presence of the Third World in Swedish consciousness and public life. During the 1960s, Swedish media increasingly allotted

²⁸ *Ibid*, 259.

²⁹ For an overview of the preparatory work following Brazzaville, see S Ricketson and J C Ginsburg, note 9 above, at 2:890-894. The Knowledge Ecology International website provides a valuable timeline for events leading up to the Stockholm Conference based on Charles F Johnson’s “The Origins of the Stockholm Protocol”, 18 *Bull. Cr. Soc. US* 91 (1970-71), which can be found at <http://keionline.org/node/983> (accessed 2 December 2010).

³⁰ K Östberg, “Sweden and the Long “1968”: Break or Continuity?” (2008) 33(4) *Scandinavian Journal of History* 339-352.

³¹ WIPO, *Records of the Intellectual Property Conference in Stockholm, June 11 to July 14, 1967* (Genève, WIPO, 1971), at 18. Of course, reservations were nothing new to Berne, but had a long history, especially in the case of translations. See S Ricketson and J C Ginsburg, note 9 above, at 2:884.

space to the fate of developing nations, and an impressive number of periodicals were published by the solidarity movement. Infrequent as their publication may have been, MPLA in Angola and Frelimo in Mozambique and Biafra had their own bulletins, as did a broad spectrum of Third World countries.³² Reports, news, and documentaries from Africa and Asia penetrated media, books, and newspapers. In her book *Att ge den andra sidan röst* (2004), Annika Olsson analyses the complicated strategies of public intellectuals, who, debating the Vietnam war and documenting life in distant Chinese villages, engaged in a particular kind of ventriloquism, “speaking on behalf of” those who had no voice for themselves.³³ The same self-proclaimed ability was perhaps the impetus for the content of the Protocol, with Sweden translating and exporting its identity as a small nation/small language, into a politics that was, at least theoretically, sensitive enough to “speak for” developing nations.

On the home front, political and public awareness of the situation of developing nations mixed good intentions with condescension. On the international stage, Sweden capitalised on its status as a small, neutral, and progressive state and emerged as both critic and mediator in world politics. It was precisely the peripheral European location, precisely the linguistic isolation of speaking a language understood by a handful of millions, and precisely the rapid economic growth channelled into the famous Swedish Model, that made Sweden seem more modern and more international than many other nations at the time. Partly justified, partly naively complacent, Swedish self-esteem permitted proactive criticism of other nation-states (notably at this particular period, of the US war in Vietnam), while it simultaneously created the rationale for Sweden as an initiator of peacekeeping missions and host of international conferences.³⁴

The Stockholm Diplomatic Conference is a perfect example of how, in the 1960s, the world came to Sweden, but also how Sweden came to the world. Regarding the latter, aid was an especially important component, given the aim of the conference. In 1965, the question of the expansion of intellectual property rights into developing nations was framed by Torwald Hesser as one in which the needs of developing nations and the encouragement of foreign investment must happily co-exist. For Hesser, the proposals made by the Swedish government to the Conference were “entirely in conformity with the traditional policy of Sweden in helping the developing nations”.³⁵ Something of a national preoccupation with the Third World might explain the motivation of the Swedish government and BIRPI’s discussion about the principle behind organising the revision conferences. “Improvements intended to perfect the system of the Union”, now not only meant

the enlargement of the protection granted to authors by the creation of new rights or by the extension of rights which are already recognized, but also the general development of copyright by reforms intended to make the rules relating to it easier to apply and

³² K Östberg, see note 30 above, at 342.

³³ A Olsson, *Att ge den andra sidan röst* (Stockholm: Atlas, 2004).

³⁴ U Bjereld, “Critic or Mediator? Sweden in World Politics, 1945-90” (February 1995) 32(1) *Journal of Peace Research* 23-35.

³⁵ T Hesser, see note 23 above, at 168.

to adapt them to the social, technical, and economic conditions of contemporary society.³⁶

The objective of the Conference, then, was not only to create new rights or expand those already established into new areas, but also to consider the *reformation of copyright*. There was distinct historical symmetry in having Sweden, who in the early years of the Berne Convention was a developing nation, now host a conference that placed the question of developing nations at the top of the agenda. The legitimacy of the Berne Union was called into question by the competing the UCC and the power balance within the Union had begun to shift in favour of developing nations, which by then constituted twenty-four of the Union's fifty-seven members. The stage was set for a turbulent diplomatic encounter in this quiet corner of the world.

5. In Committee II: June 21-July 8, 1967

It would be the task of Committee II, first convened on 21 June, to tie up the many loose ends of the draft Protocol and turn them into a cohesive text. The following narrative does not detail each intervention during the altogether ten meetings held by the Committee between 21 June and 8 July, but rather highlights a few key elements in the import/export continuum as they came to the fore in the discussion on the Protocol.

Almost immediately following the official opening statements, UNESCO framed the provisions of the Protocol within a familiar triangle of aid, hunger, and food. Mr. Adishesiah noted that while the supply of books was about 2,000 pages per person a year in Europe and North America, the average in India was 23 pages per person per year. Hard-core data made the challenges more concrete, but the solution was also something of a foregone conclusion. To measure and label the divide between the haves and the have-nots by reference to abundance at one end and shortage at the other only corroborated the standard narrative that knowledge flowed from its source in London or Paris and was transmitted from there to the colonies. In fact, knowledge acquisition occurred in what was considered the periphery, was reassembled in European centres of calculation, and then moved out again. Nonetheless, the idea that knowledge was overfull in one end and absent in the other proved remarkably resilient. It provided a blueprint for mechanisms of knowledge transfer as always one-directional rather than alternating, but even more importantly, tied them to a particular kind of receptacle. Bruno Latour would rank the material object in question among his "inscription devices",³⁷ but most of us perhaps know it better by another name: "the book".

UNESCO continued by saying that "India as a nation ran the risk of dying intellectually and spiritually if the prevailing book famine was not checked".³⁸ Books

³⁶ WIPO, see note 31 above, at 10.

³⁷ Inscription devices "transform pieces of matter into written documents". B Latour and S Woolgar, *Laboratory Life: The Social Construction of Scientific Facts* (London: Sage, 1979), at 51. My favourite description of these processes is Bruno Latour's delightful account of Laperouse's travels in B Latour, *Science in Action: How to Follow Scientists and Engineers through Society* (Cambridge, MA: HUP, 1987).

³⁸ WIPO, see note 31 above, at 2:948, 1993.3. In view of the prevalent framing of books with hunger and famine, it is slightly disconcerting to read Svante Bergström's account of the work done in

were a matter of life and death, and just as surely as food would be the solution to famine, the saturation of developing nations with printed matter would help eradicate “book hunger” and redress “the intolerable shortage of books”.³⁹ Not texts, not readers, but *books* were in short supply. The subtext of the scarcity problem led to an almost fetishistic preoccupation with the book rather than with the inaccessibility of content or the dangers of illiteracy. Faced with such a pervasive construct, it is refreshing to come across the notion of “reading hunger” in a UNESCO report from 1973. *La Faim de Lire* was prepared by Robert Escarpit, who epitomised 1970s research in *La Sociologie de Littérature*, and Ronald E Barker of the British Publishing Association. The report ended with a “Chartre du livre” where the first article stipulated, “Everybody has a right to read”.⁴⁰ Although the report appears to have left few imprints on the wider copyright narrative, its suggested recalibration of starvation from books to reading at least anticipated a more recent concern with users and user’s rights.

It might be a mere coincidence that of all the developing nations present in Stockholm UNESCO singled out India as an example of the fate that might befall countries dispossessed of books. Then again, it might have been a very conscious choice. India had secured a towering presence in Committee II, which was chaired by Minister of Education Shere Singh, and with Registrar of Copyright TS Krishnamurti as active discussant. Firmly committed to the success of the Protocol, India recommended, for instance, that developed nations should establish a redistribution scheme channelling one cost - their marketing expenditures for exports of books - into another, offsetting the costs involved in the use of the books by developing nations.⁴¹

Outspokenly sceptical of the Protocol, the UK stood as India’s main antagonist in Committee II.⁴² France, too, had serious misgivings. The reservations set forth in the Protocol, they argued, must not be constructed in such a way that they risked compromising “a structure which it had taken 80 years to build”, and any changes that “distort the spirit and undermine the foundations of the Berne Convention”,⁴³ were unacceptable. It is hardly surprising, of course, that France rallied to the defence of strong authors’ rights to protect what it saw as the spirit of the Convention, or that it played the card of universal applicability of this principle, claiming such rights to be indispensable to all countries, regardless of their level of development. Dethroned from the linguistic and cultural supremacy that once gave them the upper hand in the creation of the Convention and Union, the French witnessed English become the new

Committee I, where he draws in some detail the analogy between the topics of the conference and a *smörgåsbord*. S Bergström, “Kommitté I. Revisionen av Bernkonventionen” (1968) 37 *NIR* 7-31, at 7.

³⁹ B Stuevold Lassen, “Komité II. Utviklingslandsprotokollen” (1968) 37 *NIR* 31-45, speaks of “book hunger” at 31. The “intolerable shortage of books” is part of the title in a brief presentation of the Ranfurly Library Service in J Rudd, “Ranfurly Library Service. Coping with the Intolerable Shortage of Books” (1988) 58(4) *Africa*.

⁴⁰ R Escarpit and RE Barker, *La Faim de Lire* (Paris: UNESCO, 1973), at 165.

⁴¹ WIPO, see note 31 above, at 2:948, 1993.7. Ricketson and Ginsburg trace India’s involvement back to the beginning of the 1960s and the UNESCO General Conference of that year. See note 9 above, at 2:887.

⁴² According to Barbara Ringer, “most of the real decisions were made in camera, between the principal negotiators from India and the United Kingdom”. BA Ringer, see note 1 above, at 1070.

⁴³ WIPO, see note 31 above, at 2:949, 1994.2-3.

lingua franca of diplomatic relations. As if that was not problematic enough, there was an even greater danger on the horizon. Law was materialising at the intersection of culture and language, and the escalating linguistic presence of English, paired with the legal ascendancy of copyright, could potentially threaten to usurp both the French language and “droit d’auteur”.⁴⁴

Some Stockholm participants viewed the Convention as “one of the most completely perfect instruments in private international law”.⁴⁵ This focus on the “perfect instrument”, and the value of the Convention in its own right, partly salvaged the troubled premise that rights could be situated as universal but perceived of as exclusionary. The collective known as “authors” could do the rest. Without authors, no intellectual or artistic progress was possible and without ample protection, there would be no authors.⁴⁶ At first blush, Mexico’s support of the Berne *esprit* seems unexpected. Its argument was that expansion of the territorial reach of the Convention would never serve as justification for its deterioration, and that adoption of the Stockholm Protocol meant that the “very existence of copyright would indeed be endangered”.⁴⁷

The UK definitely shared the concerns of Mexico. William Wallace from the Trade Department began his opening statement by addressing the problems and challenges of developing nations, nations on which the UK had spent “millions of pounds in economic aid”. Trying to pull their weight helping developing nations manage copyright, the UK had “operated a scheme under which low-priced textbooks containing up-to-date knowledge in a plentiful variety of subjects were made available to many developing countries of Africa and Asia”.⁴⁸ The Protocol, however, did not signify “aid in the normal sense”, but rather meant the “giving away of the property of a part only of the community, namely, the authors”.⁴⁹ Within an author-centred context such as Berne, the UK had no other option than to place authors, and not publishers, as victims of the Protocol. Paradoxically, then, the strong author-based system in Berne provided the author-centred France as well as the copyright publishing lobby in the anti-Protocol UK with the necessary arguments to maintain the status quo.

CISAC and the International Writers Guild (IWG) opposed the tenets of the Protocol on similar grounds. Misguided and misdirected, in their view, the Protocol posed a serious threat to the interests of authors in both exporting and importing nations.

⁴⁴ In 1973, Robert Escarpit noted that the English word copyright in reality was “une fausse appellation”, and that the French ‘*droit d’auteur*’, which in fact signified ‘*le droit de l’auteur*’, was much more exact”. R Escarpit and RE Barker, see note 41 above, at 97. One of the few contemporaneous instances mentioning the ascent of the English language is S Bergström, see note 38 above, at 10.

⁴⁵ WIPO, see note 31 above, at 2:950, 1997.1.

⁴⁶ *Ibid*, 2:949, 1995.3.

⁴⁷ *Ibid*, 2:949, 1995.4 Carolyn Deere notes that Latin American countries were more inclined to modify and develop new IP legislation, which possibly could explain the Mexican standpoint. See note 21 above, at 39. B Stuevold Lassen also notes that Mexico (also representing Argentina and Uruguay) was one of the UK’s strongest supporters, see note 39 above, at 37.

⁴⁸ WIPO, see note 31 above, at 2:950, 1996.2.

⁴⁹ *Ibid*, 2:950, 1996.5.

IWG ended its intervention by encouraging developing nations to consider the wellbeing of their own national authors where these enjoyed only minimal protection. They declared that lower levels of copyright protection would clearly harm foreign authors, but would cause even greater injury to ambitions to foster authorship in developing nations.⁵⁰ This argument again deflected the copyright discussion from questions of access and reading to those of investment and incentives, predicated on the universal plight of authors. If authors were disenfranchised in developed nations, how could disenfranchising authors in developing nations be the answer to the copyright problem?

For very different reasons, France and the UK – representing the two major legal systems at Berne – each universalised authors’ rights of remuneration and encouragement, but failed to do the same for readers’ or consumers’ rights to access and use. The Senegalese delegate tried a different strategy when he noted that, “cultural borrowings were characteristic of all cultures”. Use, however, would be far more difficult to universalise than authorship, and it was even more problematic to question the innate value of property. Developing nations respected human rights “and particularly the right of ownership” he continued, but “nowhere was the absolute character of the latter acknowledged”.⁵¹ Interpreted against the backdrop of the debate in Committee II, which increasingly veered towards education and knowledge, the Senegalese aspiration to not only “borrow but also to give” is a perspective that in Stockholm gave way to an increasing emphasis on developing nations “importing” identity. Even India helped place a higher value on books by referring to these as a “more essential kind of works”.⁵²

5.1 Textual Territories

The European Broadcasting Union (EBU) was an NGO with a slightly different take on the Protocol. Less developed nations, the delegate noted, provided a huge market for “books which were out of date in the developed countries”. Supporting the non-exclusive license for translation set out in the Protocol, he believed this “would allow developing nations to publish books in their national languages, without in any way preventing the author from publishing a translation himself”.⁵³ Although the vision of developing nations happily receiving books that were more or less worthless on the original market strikes a slightly false note and smells of knowledge dumping, the EBU statement nonetheless takes us back to the critical issue of translation.

As previously mentioned, Article V of the UCC provided a compulsory licensing scheme for translations. In preparation for the Stockholm Conference India took the initiative to secure a similar caveat in the Berne Convention.⁵⁴ Although reservations

⁵⁰ *Ibid*, 2:955, 2014.4-5.

⁵¹ *Ibid*, 2:951, 1998.

⁵² *Ibid*, 2:948, 1993.10.

⁵³ *Ibid*, 2:955, 2016.1 Ricketson and Ginsburg also note the consistently positive attitude of the EBU during the deliberations at Brazzaville, see note 9 above, at 2:889.

⁵⁴ S Basalamah, “Compulsory Licensing for Translation: An Instrument of Development” (2000) 40(4) *IDEA* 503-547, at 507. Basalamah’s article provides a good overview of compulsory licensing within Berne history.

relating to translations in the draft Protocol were set at a level similar to those in the UCC, a group of developing nations felt that this was inadequate, and submitted a counterproposal. Proposal S/160 went further than the draft Protocol, calling for the termination of translation rights within a set period, and establishing a highly detailed compulsory licensing scheme.⁵⁵

As the work in Committee II progressed, it was increasingly clear that the translation issue expanded the rift between exporting and importing nations. This was especially so as overlaps began to form between translation and education. Increasingly the first language of scholarly communication, English did not suffice when it came to the wider dissemination of textbooks in developing nations, where a wealth of local languages required translators as well as translations. The emphasis on knowledge, education, and textbooks accentuated the increasing anxiety of a publishing industry that was, during the 1960s, beginning to feel the winds of change. The integration of previously independent publishers into larger conglomerates began at this time, a tendency that accelerated during the 1990s.⁵⁶

Controlling knowledge was already big business in the mid-1960s, and with educational publishing a profitable sector, UK publishers had invested heavily in markets that were then becoming independent.⁵⁷ The Stockholm Protocol, if ratified, threatened to pull the carpet from under an industry that paid lip service to the necessity of indigenous publishing and authorship, while being highly reluctant to abandon a possibly lucrative future market where it had already secured a foothold. With six titles per million inhabitants, only 20 of the 34 countries in the region producing books at all, and a per capita of *one-thirtieth of one book* per person per year, book production in Africa appeared negligible, to the point of non-existent.⁵⁸ For all its insignificance in monetary terms, it was still an important textual territory. In 1963, Rex Collings, an editor with the Overseas Editorial Department of Oxford University Press, wrote about his experiences in Ghana:

Yet in Ghana one can buy—I have myself bought them—cheap, obviously heavily-subsidised, Russian books with comparative ease: not only the inevitable books on politics and economics but gaily illustrated children’s books as well... Propaganda, of course, the books are, for they are there to demonstrate that Russia can produce and export cheap books whilst the West, Britain in particular,

⁵⁵ WIPO, see note 31 above, at 702S/160. These various standpoints on translation prompted the Committee to form a special working group for the topic, comprised of India, the Ivory Coast, Tunisia, Czechoslovakia, France, Sweden, and the United Kingdom. The fact that Sweden, and not Israel, is elected to this group will cause a diplomatic incident threatening to disrupt the proceedings completely. The day after forming the working group, the Israeli delegate asked for an adjournment to the following week, clearly upset that the detailed document in which Israel had clarified its position on the Protocol and suggested possible solutions had not secured them a place in the working group.

⁵⁶ For a longer discussion on this development, see chapter four “How Content Became King” in E Hemmungs Wirtén, *No Trespassing: Authorship, Intellectual Property Rights and the Boundaries of Globalization* (Toronto: University of Toronto Press, 2004), 76-99.

⁵⁷ See for instance statistics and data on OUP in C Davis, “The Politics of Postcolonial Publishing. Oxford University Press’s Three Crowns Series 1962-1976” (2005) 8 *Book History* 227-244.

⁵⁸ “Statistics from UNESCO” in *Book Development in Africa: Problems and Perspectives* (Paris: UNESCO, 1969), at 8-9.

operating through capitalist publishers—for so the Communist argument runs—is more concerned with making a large profit out of the books she sells to a poor and struggling people than with providing inexpensive reading matter.⁵⁹

If the USSR engaged in propaganda at the expense of the UK, the other Cold War protagonist, the US, also relied on books to disseminate values under the pretext of development and aid. Financed by the United States Information Agency (USIA), The Franklin Book Programs participated at UNESCO-sponsored events and organised meetings on copyright and developing nations themselves.⁶⁰

Collings, for one, later opposed the Stockholm Protocol by stressing the negative impact it would have on the encouragement of local authors. “The imported voice rather than the authentic local one will be heard. This is a disaster”,⁶¹ he wrote. The projected losses in case of an implemented Protocol—set at £10-12 million pounds or a quarter of total earnings annually—referred to publishers, not authors.⁶²

Supporting and building a national publishing industry was a cornerstone of the pro-copyright argument, and commentators saw failure to protect copyright as a direct threat to the promotion of a local publishing industry that would serve growing educational needs.⁶³ Yet, the statistics and experiences from the African market were discouraging. Post-independence African publishing houses were often small and heavily state-subsidised and more to the point, dependent on an infrastructure set in place during colonial rule. British presence was not diminished but rather reinforced by the setting up of joint ventures that provided know-how and training and offset some of the local costs, but that kept the colonial presence and dependency largely intact.⁶⁴ Even *The Times* worried that the best markets of British publishers included nations that were likely to take advantage of the Protocol and the “legalized piracy” it afforded in the educational sector.⁶⁵

Despite all the controversies and heated interchanges, the Conference managed to produce a final Act and Protocol. It was very far from being an unqualified success,

⁵⁹ R Collings, “Books in the Market-Place” (July 1963) 39(3) *International Affairs* 403-408, at 405-406. More on Rex Collings and OUP in the African market at the time, in C Davis, note 36 above. Interestingly, in 1975, Keith Smith noted “the absence of an indigenous commercial industry in all countries except Ghana”. K Smith, “Who Controls Book Publishing in Anglophone Middle Africa?” (September 1975) 421 *Annals of the American Academy of Political and Social Science* 140-150, at 146.

⁶⁰ In addition to the Ranfurly Library Services (note 39) initiatives, see the illuminating account of the Franklin Book Programs by LS Robbins, “Publishing American Values: The Franklin Book Programs as Cold War Cultural Diplomacy” (Winter 2007) 55(3) *Library Trends* 638-650.

⁶¹ R Collings, “Writers in Africa” *The Times* 24 July 1967, at 9.

⁶² “Publishers May Sue State” *The Times* 17 July 1967, at 1.

⁶³ See for instance CA Kennedy, “Copyright and the Developing Nations” (1969) 13(3) *IDEA* 410-418.

⁶⁴ Publishers like Macmillan, for instance, whose publishing tactics received widespread criticism. See K Smith, note 57 above, at 145-146. Also noted by UNESCO, see note 56 above, at 25. For an overview of the situation for developing nations at the end of the 1980s, see PG Altbach, *The Knowledge Context: Comparative Perspectives on the Distribution of Knowledge* (New York: State University of New York Press, 1987).

⁶⁵ “Books on the Cheap” *The Times* 17 July 1967, at 9.

however. Although the UK government did not vote against the Stockholm Act, which would have caused the whole edifice to crumble, it abstained from voting altogether. Mexico and Uruguay followed suit, but France then sided with Protocol defenders. As expected, closing speeches from 14 July were civil, diplomatic, and praised Swedish efficiency as well as summer weather. The tone was also exceedingly wary.

6. Paris, 1971

History came down hard on the Stockholm Conference. The Protocol would be judged harder still. “[G]rossly defective in meeting the needs of developing nations, while at the same time highly objectionable to the more advanced countries”, legal commentators judged it “nearly a complete failure”.⁶⁶ The Swedish hosts, though, remember a conference that took place in “a spirit of excellent international cooperation”.⁶⁷ For the first time, the Union had become “politicised”, Sam Ricketson and Jane Ginsburg note, and its continued survival was uncertain.⁶⁸

In the UK, the barrage of critique launched from publishers and copyright societies only intensified following the Conference. Copyright interest groups wanted to make sure that the British government stayed firm, did not ratify the Protocol, and adequately protected British interests. *The Times* even indicated that a lawsuit from publishers against the State for loss of revenue might be forthcoming in case the Government for whatever reason went back on its word.⁶⁹ Incensed by the British performance in Stockholm, Alan Herbert, Chairman of the Copyright Council, identified three main problems ahead. First, while the decision of the UK to abstain from voting had “admitted a delayed action bomb of dangerous principle into the flagship of Copyright”, putting ideas into “dangerous heads”. His second critique was that “politics, *foreign* politics” had guided a decision based not on “conviction but cowardice”. Finally, he noted, “anyone joining a copyright club must fully observe its rules”.⁷⁰ Ironically, while the word “club” in Herbert’s universe appeals to something akin to a presumed shared spirit of sportsmanship, African states had previously used exactly the same term in conjunction with a quite different set of values, indicating that Berne membership was reserved for the wealthy and initiated.⁷¹ The question now was what rules the club should set for the future.

⁶⁶ IA Olian, “International Copyright and the Needs of Developing Countries. The Awakening at Stockholm and Paris” (1973-1974) 7 *Cornell International Law Journal* 81-112, at 101.

⁶⁷ G Sterner, “Inledning och allmän översikt” (1968) 37 *NIR* 1-7, at 1.

⁶⁸ S Ricketson and J C Ginsburg, see note 9 above, at 2:914.

⁶⁹ “Publishers May Sue State” see note 60 above. See also the brief comments from various stakeholders in “The Government’s Decision on Copyright” *The Times* 20 July 1967.

⁷⁰ A Herbert, “Britain’s Role in Copyright Decision” *The Times* 3 August 1967, at 9.

⁷¹ WIPO, see note 31 above, at 2:952, 2004. The representative from the Cote d’Ivoire noted that the African nations meeting at the 1963 Brazzaville meeting “had felt that the members of the Berne Union constituted a club of more fortunate countries in which they had no place”. The Tunisian representative returned to the idea that the conferences were aimed at revisions. Special treatment in the Convention was nothing extraordinary, and the “purpose of the Convention was to establish a Union and not a kind of club consisting of States apparently in agreement but in fact opposed to each other because of divergent interests”. *Ibid.*, 2:951, 1999.

Any post-Stockholm stalemate was soon converted into action.⁷² During the next four years, BIRPI and UNESCO jointly convened several meetings with the express purpose of achieving simultaneous revisions of the Berne Convention and the UCC. All the topics in the Protocol were on the table, including the future fate of the safeguard clause, which, for obvious reasons, the developing nations wanted to remove. Even the highly critical UK publishing industry and the copyright lobby changed their tune and looked confidently ahead to the new Revision Conference scheduled for Paris in 1971.⁷³ The Paris Revision Conference substantially modified the reservations to the Stockholm Protocol and placed them in an appendix to the Paris Act, thereby managing to produce a text longer than the original Berne Act.⁷⁴

If developing nations were successful in securing their outlook on licences and educational uses in the 1967 Protocol, the 1971 concessions seemed to favour the publishing industry instead. Developed nations were for instance concerned that countries taking advantage of the licence could engage in exports back to the country of origin.⁷⁵ Excluded from the scheme altogether were the major exporting languages of English, French, and Spanish, while the dominant linguistic presence on the book market made the licensing scheme basically moot. Already the UCC was a cumbersome vehicle with a number of administrative procedures to negotiate, in addition to which the non-exclusive nature of the reservations limited the incentives for investing in translation. Compulsory licensing was obviously intended to reduce, not add to, the administrative burden. Yet, overall, the various licensing schemes discussed during this period did not give the impression that they facilitated in any way the situation for developing nations. Instead, the extremely dense and complicated framework that was produced at Berne is evidence of a structural realignment; a move from informal beginnings to an increasingly formalised system.⁷⁶ The fact that in twenty years no single licence has been issued under the UCC provisions, and that no nation to date has availed itself of the provisions of the appendix to the Paris Act, indicates perhaps some of the costs involved.⁷⁷

For an anti-Protocol hardliner like the UK, the Paris Revision Conference was a godsend. For India, who had previously threatened to withdraw from international copyright conventions altogether unless the UK accepted the Stockholm Protocol within six months,⁷⁸ Paris was a disappointment. Undoubtedly, the events in

⁷² S Ricketson and J C Ginsburg, see note 9, at 2:914. For a detailed exposé of the meetings convened after Stockholm, see *Ibid*, 2:916-924.

⁷³ See for instance A Herbert, "International Copyright" *The Times* 27 September 1969, at 7 and the Joint Statement from a Number of Copyright Societies in "International Copyright of Books" *The Times* 6 December 1969, at 7.

⁷⁴ S Ricketson and J C Ginsburg, see note 9 above, at 2:957.

⁷⁵ S Basalamah, see note 54 above, at 520. See also N Ndiaye, "The Berne Convention and Developing Countries" (1986-1987) 11 *Columbia VLA Journal of Law and the Arts* 47-56, at 54.

⁷⁶ Noted by RL Okediji, see note 20 above and S Basalamah, see note 54 above.

⁷⁷ IA Olian, note 64 above, at 96. See also S Ricketson and J C Ginsburg, note 9 above, at 2:957.

⁷⁸ JH Shah, "India and the International Copyright Conventions" (1973) 8(13) *Economic and Political Weekly* 645-648, at 647. B Stuevold Lassen noted India's threats during the proceedings, but he also considered India as the absolute champion of the Stockholm Conference. See note 39 above, at 37.

Stockholm “threatened to break up the entire international copyright system”,⁷⁹ but in no way did those five weeks of intense negotiations cause the undoing of the Convention.

7. Epilogue: Geneva, October 2007

In October 2007, the WIPO Development Agenda was established by the WIPO General Assembly.⁸⁰ Scholars have hailed it as a possible new departure for the international intellectual property regime, which has been completely dominated since 1994 by the trade-based rationales of WTO and the infamous Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁸¹ TRIPS has eclipsed and helped render the UCC “wholly peripheral to the current international copyright framework”⁸² and is targeted for critique by developing nations, echoing concerns already articulated already in 1967. The Stockholm Protocol, a satellite “disconnected from its orbit”,⁸³ is another instrument relegated to the cemetery where intellectual property texts go to die. Yet, each of these texts is part of the historical foundation from which the Development Agenda draws inspiration.⁸⁴

Although it remains to be seen what clout the Development Agenda will have to redress past wrongs and more recent sins in the power relations between developed and developing nations, it proposes substantial changes in both its general direction and WIPO governance. In 1884, 1885, and 1886 only a handful of nations were present to formulate the original Berne Convention, and they represented a diplomatic elite. Fifty-seven states and more than 400 inter-governmental and non-governmental organisations were present in Stockholm. At present, WIPO counts 184 member nations and over 250 NGOs among those who participate in Geneva deliberations. NGOs now outweigh states in total number, greatly accelerating the presence of civil society in these global arenas,⁸⁵ suggesting, to Ruth Okediji, that states are not as important in setting the agenda as they used to be. An amorphous consumer base, mobilised around shared interests that cut across borders, shifts the stakeholder perspective and makes it less dependent on the perimeters of the nation state.⁸⁶

⁷⁹ S Ricketson and J C Ginsburg, see note 9 above, at 2:883.

⁸⁰ WIPO, the WIPO Development Agenda, available at <http://www.wipo.int/ip-development/en/agenda/> (accessed 17 August 2010).

⁸¹ NW Netanel, “Introduction. The WIPO Development Agenda and Its Development Policy Context” in NW Netanel (ed) *The Development Agenda. Global Intellectual Property and Developing Countries*, (Oxford: OUP, 2008) 1-29, at 3. RL Okediji, “History Lessons for the WIPO Development Agenda” in *Ibid*, 136-165, at 140.

⁸² S Ricketson and J C Ginsburg, see note 9 above, at 2:1203.

⁸³ H Danelius, “U-länderna och upphovsrätten” (1970) *NIR* 68-76, at 76.

⁸⁴ See for instance Peter K Yu’s extensive discussion on the links between the “old” BIRPI development agenda and the “new” WIPO development agenda in PK Yu, “A Tale of Two Development Agendas” (2009) 35 *Ohio Northern University Law Review* 465-573.

⁸⁵ Steve Charnovitz locates the beginnings of the more direct involvement of NGOs in global governance to the Paris Peace Conference in 1919 and the establishment of the League of Nations. See “The Emergence of Democratic Participation in Global Governance (Paris, 1919)” (2003) 10 *Indiana Journal of Global Legal Studies* 45-77.

⁸⁶ Netanel notes that the expanded inclusion of civil society into the Development Agenda came after heated critique on the exclusion of organisations not accredited as permanent WIPO observers. NW

Granted, the interests of consumers, users, and readers by definition lead in slightly different directions, and the dominance of the English language as a formative force should not be forgotten, but the Development Agenda may still help to affirm the “reading rights” that were largely sacrificed on the Altar of Books in Stockholm.

A significant point of discussion in Stockholm was the import and export of knowledge, which situated developing nations as importers - as recipients of knowledge ultimately produced somewhere else. Knowledge and cultural heritage was of course already present in developing nations, but its form was unrecognisable in a legal regime biased in favour of traditional print culture and optimised for copyright. When the Brazzaville meeting connected the dots and articulated the possibility of exporting, they were on to something, and perhaps planted the first seed of what was to come in the Development Agenda. Although the jury is still out on the matter, developing nations are, under the Development Agenda, pursuing the question of proprietary rights in genetic resources, traditional knowledge, and folklore, “as an opportunity for requiring protection of resources that they have in relative abundance”.⁸⁷

Brazil and India are two such resource-rich nations. Having once played important roles in the respective revisions of the Paris and Berne Conventions,⁸⁸ they are now economic powerhouses, seeking payment of the historical debt occasioned by centuries of exploitation by “the West” of the resources and knowledge of “the Rest”. No doubt, the story of the “pathological process in the construction of IP relations between developed and developing nations”,⁸⁹ will continue beyond the Development Agenda. As it turns out, new forms of collaboration made possible by digital information infrastructures seem to resonate quite well with the practices of traditional knowledge, and might perhaps even turn the Very Old into the new Very New.⁹⁰

Netanel, see note 79 above, at 16. On the shift from States to consumers in the governance of IP, see RL Okediji, note 79 above, at 153.

⁸⁷ NW Netanel, see note 79 above, at 13.

⁸⁸ Carolyn Deere notes that during the 1960s, India was very active in copyright, Brazil in patents. See note 21 above, at 42. Brazil was also active in the work for a New International Economic Order (NIEO) in the 1970s. For a discussion on the links between developing nations and IP within the WIPO framework and NIEO, see RL Okediji, note 79 above, at 136-165.

⁸⁹ RL Okediji, see note 79 above, at 152.

⁹⁰ *Ibid*, 160.