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EXAMINATION OF COPYRIGHT PROTECTION OF TRANSLATORS

SUMMARY

The General Conference of Unesco, during its seventeenth session, in resolution 5.141, invited the Committees of the Copyright Conventions to examine, at their meetings in 1973, the adequacy of the copyright protection enjoyed by translators under the Universal Copyright Convention, the Berne Convention and in national laws, and to propose any steps deemed necessary to ensure that such protection is adequate. In accordance with the resolution, this report, after reviewing the background of the question, presents a brief analysis of the legal protection presently granted to translators by the two multilateral international instruments and by national laws.

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I. INTRODUCTION

1. Pursuant to resolution 5.121(d), adopted by the General Conference of Unesco at its fourteenth session (Paris, 1966), a Committee of Experts to examine the moral and material situation of translators and to prepare recommendations for the amelioration of the condition of this category of intellectual workers met at Unesco Headquarters from 23 to 27 September 1968.
2. The participants were specialists, either in copyright, or in questions relating to the status of translators, nationals of fifteen Member States of Unesco, invited in their personal capacity by the Director-General of Unesco. Observers from intergovernmental and non-governmental organizations particularly interested in the questions under consideration were also present.
3. After noting that in order to encourage the dissemination of works it would be advisable to adopt certain measures to improve the situation of translators, the Committee of Experts set forth in a series of recommendations, reproduced in an Annex to this document, principles which should be applied in this area.
4. By letter CI/2012 of 10 April 1969, the Director-General of Unesco communicated the report and the recommendations of the Committee of Experts to Member States, inviting them to comment thereon, and in particular, to indicate whether they felt that the General Conference of Unesco should adopt an international instrument on the subject. The International Labour Organisation (ILO) and the United International Bureaux for the Protection of Intellectual Property (BIRPI) (which has subsequently become the World Intellectual Property Organization (WIPO)) were also invited to submit their comments.
5. After having been informed of the results of the Committee of Experts of 1968 and of the survey made by the Director-General of Unesco among Member States, the General Conference, during its sixteenth session (1970), adopted resolution 5.131(d) according to which the Director-General was authorized "to carry out studies concerning copyright protection for new categories of beneficiaries in the light of new communication techniques, particularly as regards translation..."
6. Pursuant to this resolution and in accordance with the Rules of Procedure concerning Recommendations to Member States and International Conventions provided for under Article IV, paragraph 4, of the Constitution, the Director-General of Unesco submitted to the General Conference at its seventeenth session (1972), a preliminary study of the technical and legal aspects of the protection of translators for the General Conference to decide on the advisability of adopting an instrument for the international regulation of this subject.
7. At the close of its discussions, the seventeenth session of the General Conference of Unesco adopted resolution 5.141 which provides:

"The General Conference,

Having regard to the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,

Having examined the preliminary study by the Director-General on the technical and legal aspects of the protection of translators,

Considering the outstandingly important part played by translation in the general context of development,

Noting that, for the purpose of promoting the dissemination of works, certain measures should be taken,

Taking note of resolution 4.6.1 adopted on this subject by the Executive Board at its 89th session,

1. Decides, in accordance with Article 7, paragraph 1, of the Rules of Procedure concerning Recommendations to Member States and International Conventions, to defer to its eighteenth session consideration of the advisability of adopting an international instrument on the protection of translators;
 2. Invites the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union to examine, at their joint sessions in 1973, the adequacy of the copyright protection enjoyed by translators under the Universal Copyright Convention and the Berne Convention and in national laws, and to propose any steps deemed necessary to ensure that such protection is adequate;
 3. Invites the Director-General, in accordance with Article 7, paragraph 2, of the above-mentioned Rules of Procedure, to submit to it, at its eighteenth session, in the light of the outcome of the work of the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union, a report on the desirability of an international instrument on this subject, on the possible scope of such an instrument, and on the method which should be adopted for the purpose."
8. In accordance with the above resolution, this report, drafted by the Secretariat, presents a brief analysis of the legal protection presently granted to translators by these two multilateral international instruments and by national laws.
9. It should be noted first that following a discussion between the Secretariats of the Committees, the International Bureau of WIPO, in the absence of instructions of its competent bodies, did not believe it should include the question of the protection of translators on the agenda of the Executive Committee of the Berne Union.

II. LEGAL PROTECTION OF TRANSLATORS UNDER THE UNIVERSAL COPYRIGHT CONVENTION AND THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS (Berne Convention)

1. Universal Copyright Convention

10. The Universal Copyright Convention contains, with respect to the protection of translators, the following provisions:

(a) Text of 1952:(i) Article I

11. Article I of the Convention does not expressly mention translations among protected works. However, given that Article II sets forth the principle of national treatment and that the enumeration in Article I is not exhaustive, it may be inferred that Contracting States have every possibility of including translations among the literary, artistic and scientific works protected by their domestic legislation. Thus, when in a Contracting State translations are assimilated to original works, they benefit from the conventional protection granted to the said original works by reason of the principle of national treatment and the substantive provisions of the Convention are applicable mutatis mutandis in the same way as if translations were original works themselves.

12. There is no express provision in the Universal Convention with respect to the moral right of the translator, but Contracting States, whose domestic legislation protects the moral right of their nationals, are required, according to the principle of national treatment, to grant foreigners the protection of this right.

(ii) Article V

13. Article V(2) appears to make an exception to the exclusive right of translation which authors enjoy under paragraph 1 of this Article. In effect, it institutes for the benefit of translators a system of licences when certain conditions clearly stipulated in the text are met. Where, after the expiration of a time-limit of seven years from the date of a first publication of a writing, the owner of the right of translation has not exercised this right in a Contracting State "any national of such Contracting State may obtain a non-exclusive licence from the competent authority thereof to translate the work and publish the work so translated in any of the national languages in which it has not been published" (Article V, paragraph 2). A licence may also be obtained if the owner has exercised his right but all editions are out of print. In granting translators this right the Convention stipulates a number of prior obligations to be fulfilled by translators:

the applicant for a licence shall establish that he has requested, and been denied, authorization by the owner of the right to make and publish the translation, or that he was unable to find the owner of the right;

if the owner of the right of translation cannot be found, the applicant for a licence shall send copies of his application to the publisher and to the diplomatic or consular representative of the State of which such owner is a national, or to the organization which may have been designated by the government of that State. (The licence shall not be granted less than two months from the date of the dispatch of the copies);

the original title and the name of the author of the work shall be printed on all copies of the published translation;

one provision appears to relate to the basic rights of translators: it is stipulated that due provision shall be made by the domestic legislation of the Contracting States to ensure a correct translation of the work by or on behalf of the licensee.

14. From the standpoint of the author of the original work this traditional provision establishes a kind of "moral right" in his favour; the applicant for a licence is required to ensure that the translation he has made or caused to be made is "correct". While this seems a normal condition, since every translation ought to be correct, it appears that there is a problem as regards the manner in which this provision shall be applied. The applicant for a licence may be required, in addition to the formalities to be carried out prior to obtaining a licence, to comply with the legislative provisions which may have been adopted by his country to ensure that the translation he has made or caused to be made is correct. No such condition is laid down in the case of translations done with the authorization of the owner of the copyright.

15. Article V, paragraph 2, further provides for domestic legislation to ensure to the owner of the right of translation a just compensation; also to ensure that a licence shall not be granted when the author has withdrawn from circulation all copies of the work. Licences shall not be transferable. The importation and sale of copies of translations made under licence from another Contracting State are subject to regulation: copies may be imported and sold where the national language of such other State is the same language as that into which the work has been translated, if the domestic law in such other State makes provision for such licences and does not prohibit such importation or sale. Where these conditions do not exist, the importation and sale of such copies in a Contracting State shall be governed by its domestic law.

(b) 1971 Text

(i) Article I

16. Article I has been retained exactly as it was drafted in the 1952 text.

(ii) Article V

17. Article V, as it appears in the 1952 text, was subject to only minor changes in form.

(iii) Article V ter

18. Article V ter is one of the provisions introduced in the Convention by the revision Conference, for the benefit of developing countries.

19. The period of seven years at the expiration of which a translation licence may be obtained under the provisions of Article V of the 1952 Convention and of the revised Convention, was reduced, for the benefit of developing countries as defined in Article V bis, to three years in the case of a language in general use in one or more developed countries and to one year in the case of translation into a local language. However, a developing country may, with the unanimous agreement of developed countries party to either the 1952 Convention or the 1971 Convention in which the same language is in general use and on condition that the language in question is not English, French or Spanish, substitute, in the case of translation into that language, for the period of three years a period which shall not be shorter than one year.

20. Moreover, in accordance with the rules of Article V, which constitute the normal contractual rights in the matter of translations and which provide

that the granting of a compulsory licence after a period of seven years, where the owner of the translation right has not been found, can only be made after the expiration of a period of two months from the date of dispatch to the authorities indicated in the text of the copies of the application to translate and publish the translation, the conference for revision agreed on an additional period for the granting of licences under Article V ter. This further period, which is intended to permit the author or the owner of the translation right to publish his own translation of the work, is six or nine months according to whether the period of exclusivity is for three years or one year, and begins from the date of the request for permission to translate or, if the owner of the translation right cannot be found, from date of dispatch of copies of the application for the granting of a compulsory licence to translate.

21. Conditions governing the granting of licences under Article V ter are considerably more strict than those under Article V. The licence is not exclusive and is granted only for the purpose of teaching, scholarship or research; in the interpretation given by the conference, the word 'scholarship' "refers not only to instructional activities at all levels in tutorial institutions, primary and secondary schools, colleges and universities but also to a wide range of organized educational activities intended for participation at any age level and devoted to the study of any subject". The revision conference also agreed that "the word 'research' cannot be interpreted to permit the translation, under Article V ter, of copyrighted works by industrial research institutes or by private corporations doing research for commercial purposes". In addition, the export of copies is prohibited. However, prohibition of export does not apply where a governmental or other public entity of a State which has granted a licence sends copies to another country if the language of the translation is not English, French or Spanish; if the recipients are nationals of the Contracting State granting the licence or organizations grouping such individuals; if the copies are used only for the purpose of teaching, scholarship or research, and if the sending of copies and their distribution is without the object of commercial purpose; and if the country to which the copies are sent has agreed to allow their receipt or distribution or both, and if the Director-General has been notified of the agreement.

22. The licence provides for just compensation that is consistent with the standards of royalties normally operating in the case of licences freely negotiated, and which must be paid and transmitted by the use of international machinery to ensure transmittal in internationally convertible currency or its equivalent.

23. As regards the other formalities to be fulfilled, the provisions of Article V are applicable mutatis mutandis.

24. On the expiration of the seven-year period required for obtaining a licence under the 'normal régime', the beneficiary of a licence granted under the 'preferential régime' applied to developing countries may request that this licence be replaced by a licence granted under Article V and governed exclusively by the provisions of this Article.

25. In the case of works composed mainly of illustrations a licence for translation of the text and reproduction of the illustrations can only be granted under the conditions of Article V quater, applying to the right of reproduction.

26. The licence which was originally intended only for publishers of art books was extended by the conference to include broadcasting organizations whose headquarters are located in a Contracting State conforming to the definition of a developing country, under the following conditions:

The translation must have been made in accordance with the laws of the licensing State;

The sole purpose of the translation must be for use in broadcasts for 'teaching' or 'the dissemination of the results of specialized technical or scientific research to experts in a particular profession';

The translation must be used solely for the types of broadcasting just mentioned intended for recipients on the territory of the licensing State. The broadcasts may be 'live' or made 'through the medium of sound or visual recordings', lawfully carried out for the sole purposes already stated;

Sound or visual recordings used for the broadcasts can only be exchanged between broadcasting organizations whose headquarters are all in the Contracting State which has granted the licence. In no circumstances can these recordings be sent beyond the frontiers of the country, nor can they be the subject of sales, rentals or licensing arrangements within the country;

All uses of the translation must be 'without any commercial purpose'.

A licence may also be granted under all of the same conditions 'for the translation of any text incorporated in an audio-visual fixation which was itself prepared and published for the sole purpose of being used in connexion with systematic instructional materials'.

2. Berne Convention

27. According to this instrument "translations...shall be protected as original works without prejudice to the rights of the author of the original work". (Article 2(2) of the Brussels text (1948), and Article 2(3) of the Stockholm (1967) and Paris (1971) texts). Thus, translations enjoy protection in all the countries of the Union (Article 2(4) of the Brussels text (1948) and Article 2(6) of the Stockholm (1967) and Paris (1971) texts).

28. However, a limited exception is made to this principle, the countries of the Union being free to determine the protection to grant to translations of official texts of a legislative, administrative and legal nature (Article 2(2) of the Brussels text (1948) and Article 2(4) of the Stockholm (1967) and Paris (1971) texts).

29. The duration of protection covers the life of the author and fifty years after his death; in the case where one or more countries of the Union grant a term of protection superior to that provided above, the term shall be governed by the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work (Article 7(1) and (2) of the Brussels text (1948) and Article 7(1), (6) and (8) of the Stockholm (1967) and Paris (1971) texts).

30. Since translators are considered 'authors' under the provisions of the Convention, the moral right provided by this instrument (Article 6 bis of the Brussels (1948), Stockholm (1967) and Paris (1971) texts), is also applicable to them.

31. If Article 8 of the Brussels Act according to which "Authors of literary and artistic works protected by this Convention shall have the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works" did not undergo any change during the Stockholm and Paris revisions, a paragraph 2(b) (which incorporates in part the provisions of Article 25(3) of the Brussels Act) was added to Article 30 of the Stockholm and Paris Acts. The text of Article 30(2)(b) of the Paris Act, which, except for slight changes in form, is the same as that of the Stockholm Act and incorporates the substance of Article 25(3) of the Brussels Act, provides:

"Any country outside the Union may declare, in acceding to this Convention and subject to Article V(2) of the Appendix, that it intends to substitute temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into a language in general use in the said country..." Article 5 of the Union Convention is drafted as follows: "Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works during the entire term of their right over the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing to be published in one of the countries of the Union, a translation in the language for which protection is to be claimed".

This provision is intended to facilitate the adherence of certain States whose national literature is still rather undeveloped and for which translations constitute an indispensable source of culture.

32. Moreover, the Appendix to the Paris Act (1971) contains provisions on the right of translation, for the benefit of developing countries which, mutatis mutandis, are similar to those of Article V ter of the Universal Copyright Convention as revised at Paris in 1971.

33. However, developing countries of the Berne Union may, instead of providing for translation licences make a notification with respect to the ten-year reservation mentioned in paragraph 31 above. The notification of the reservation is simplified for developing countries. Those which already belong to the Berne Union may deposit their notification even if they have not done so in the past. Developing countries adhering subsequently to the Convention may do the same without the principle of material reciprocity being applied to them, as in the case of newly adherent developed countries.

34. Thus, developing countries may choose between the system of compulsory licences and that of the reservation of ten years, but once and for all. However, the notification of the reservation of ten years may only be made at the time of its ratification or accession to the Paris Act. This reservation,

even if it is later withdrawn, excludes the possibility of providing for compulsory licences for translation. On the contrary, it is impossible to replace the system of compulsory licences by the reservation of ten years.

35. Moreover, when a country loses the status of developing country, the reservation ceases to be in force from the time when it may no longer avail itself of the other privileges. On the other hand, countries becoming developed States henceforth have the possibility, whatever prior decision they may have made, of taking advantage of the reservation of ten years, as the new Member States; the notification enters into force when the country in question ceases to have the opportunity to avail itself of the advantages provided for developing countries. However, it follows that the other countries of the Union may henceforth invoke the principle of material reciprocity.

III. NATIONAL LEGAL PROTECTION OF TRANSLATORS

1. General principles as regards protection of translators' rights

36. The principles governing the protection of translators' rights are laid down in provisions of different types in the various national legislations. Some directly recognize translators' copyright, while others assimilate the translator to the author or the translation to the original work. In some cases, a combination of these methods is to be found in the same statute. In a few rare cases there is simply recognition of the 'rights' of the translator.

(a) Recognition of translator's copyright

37. Recognition of this right is embodied in a number of enactments. It may be clearly affirmed by provisions which expressly entitle the translator or the translation to copyright; or it may be indicated less specifically in terms recognizing that the translator has "le droit de propriété intellectuelle" (copyright) or enjoys the protection provided by the law.

(i) Explicit recognition of translator's copyright

38. Provisions exist whereby the translator "shall have all the rights of an author in respect of his translation" or "shall enjoy copyright in his translation". This is the case, for example, in the following countries: Bulgaria (Copyright Statute 1951, article 17); Nicaragua (Civil Code, 1904, article 752); USSR (Bases of Legislation in Respect of Civil Law of the USSR and of the Federated Republics, amended on 21 February 1973, chapter IV, article 102).

39. The legislation of some of the Nordic countries contains almost identical wording: "...a person translating...a work...shall have copyright in the work in the new form" (Denmark: Copyright Statute, 1961, article 4; Iceland: Copyright Statute, 1972, article 5); "a person who translates...a work...shall have copyright in the new work in this form" (Finland: Copyright Act, 1961, article 4; Sweden: Copyright Statute, 1960, article 4).

40. The same principle is somewhat differently expressed in Czechoslovakia (Copyright Statute, 1956, article 3(2): "Translations of works into other languages shall also be the subject of copyright"); Poland (Copyright Statute, 1952, article 3.1: "Copyright shall also subsist in works based on the work of another person. This provision shall apply in particular to translations...");

in Romania (Copyright Statute, 1956, article 10: "The following shall also give rise to copyright: (a) translations...of a literary character...(b) translations...of technical and scientific works..."); in Uruguay (Copyright Statute, 1937, article 34: "...translators shall have copyright in their translations...").

(ii) Provisions implying recognition of translator's copyright

41. Existing Legislation can be divided into two categories. The first includes provisions whereby the translator owns, enjoys, or has "le droit de propriété intellectuelle" (copyright) for example: Argentina (Copyright Statute, 1903, article 4); Bolivia (Copyright Statute, 1909, article 2); Spain (Copyright Statute, 1879, article 2); Uruguay (Copyright Statute, 1937, article 7 (ch)).

42. The second category states that the translator "enjoys the protection provided by the law". This is the system observed in the Arab Republic of Egypt (Copyright Statute, 1963, article 3); France (Copyright Statute, 1957, article 4); Mexico (Copyright Statute, 1963, article 32); Monaco (Copyright Statute, 1948, article 5).

2. Assimilation of the translator to an author or of the translation to an original work

(a) Assimilation of the translator to an author

43. This method is adopted in the following countries: Chile (Copyright Statute, 1970, article 9: "the person who...makes a...translation ... of the original protected work enjoys copyright in the derived work ..."); Costa Rica (Decree Law of 1896, article 18: "The translator of a work shall enjoy the same protection as that granted to authors by this Law ..."); Jordan (Copyright Statute, 1912, article 14 "...each translator shall enjoy copyright in respect of his own translation ..."); Korea (Copyright Statute, 1957, Article 5 (1): "A person who translates ... a work ... shall be deemed an author ..."); Peru (Copyright Statute, 1961, article 14: "Persons who ... translate a work ... shall be deemed to be the owners of the copyright in the new derived work").

(b) Assimilation of the translation to an original work

44. Typical examples of this may be found in the laws of Morocco (Dahir (Act) 1970, Article 9 "the following shall be assimilated to original works ...(1) translations of intellectual works ...) and Portugal (Copyright Statute, 27 April 1966, article 3: "... translations ... shall be assimilated to original works ...". Assimilation may however take different forms.

45. (1) Provisions in which the wording "work", "literary and scientific work", or "intellectual work" includes translations: Kenya (Copyright Act 1966, section 2); Liberia (Copyright Statute, 1911, section 2); Malawi (Copyright Statute, 1965, section 2 (1)); Nepal (Copyright Statute, 1966, section 2 (a)(1)); Netherlands (Copyright Statute, 1912, article 10 (10)); Tanzania (Copyright Statute 1966, section 2 (1)); Venezuela (Copyright Statute 1962, article 3); Zambia (Copyright Statute 1965, section 2 (1));

In Guatemala, article 7 of the Copyright Statute, 1954, lays down that "Translations ... shall also be considered to be works ...".

In Turkey, article 6 of the Copyright Statute, 1951, includes adaptations among intellectual works and states "... shall be deemed to be adaptations ... (1) translations ...".

46. (ii) A number of countries provide for the protection of original works and state that translations are "also" protected:

Ecuador (Copyright Statute 1957, article 2: "The provisions of this Law shall apply equally to translations ..."); El Salvador (Copyright Statute 1963, article 18: "Among the creations to which the preceding article refers are included ... translations ..."); Italy (Copyright Statute 1941, article 4: "... Translations ... shall also be protected"); Lebanon (Decree of 17 January 1924, article 139: "Translations ... shall be equally protected ..."); the same provision is to be found in the Syrian Arab Republic (Decree of 17 January 1924, article 139).

47. (iii) In many countries the law protects translations "in the same manner as original works" or uses similar expressions.

48. Translations are protected "in the same manner as new works or original works" in the following countries: Algeria (Copyright Ordinance, 1973, article 3); Ethiopia (Civil Code 1960, article 1649); Hungary (Copyright Statute 1921, article 7); Liechtenstein (Copyright Statute 1928, article 4 (1)); Paraguay (Copyright Statute 1951, Article 7); Switzerland (Copyright Statute 1922, article 4 (1)); Thailand (Copyright Statute 1931, section 6).

49. Translations are protected "in the same manner as independent works" in the Federal Republic of Germany (Copyright Statute 1965, article 3); they are protected "as original works" in Yugoslavia (Copyright Statute, 1968, article 5).

50. (iv) Enactments whose provisions in relation to works extend also to translations. Assimilation may be direct or indirect. Direct assimilation is found in: India (Copyright Statute 1957, section 14 (1): "For the purposes of this Act, 'copyright' means the exclusive right ... (a) in the case of a literary, dramatic, or musical work to do ... any of the following acts, namely: ... (viii) to do in relation to a translation ... of the work any of the acts specified in relation to the work ..."); an identical provision is to be found in Pakistan (Copyright Ordinance 1962, section 3 (1)(a) (viii)). Indirect assimilation is brought about by legislations which provide that references to the doing of any act in relation to a work include references to the doing of an act in relation to an adaptation of the work; and which also include translations among adaptations of a work. This system is adopted in the following countries:

Australia (Copyright Statute 1968, article 10(c)(i) and article 31(1) (a)(vii); Ireland (Copyright Statute 1963, section 8 (5)(b) and section 8 (7)(a)(iii)); New Zealand (Copyright Statute 1962, section 2 (1)(c)(i) and section 2 (2)); Sierra Leone (Copyright Statute 1965, section 4 (5)(g) and section 4 (6)(a)(iii)). Republic of South Africa (Copyright Statute 1965, section 1 (i)(a)(iii)); United Kingdom (Copyright Statute 1956, section 2 (5)(g) and 2 (6)(a)(iii)).

3. Combined recognition of copyright and assimilation of the translator to an author or of the translation to an original work

51. This method is observed in the following two countries: Norway (Copyright Statute 1961, article 1: "By a literary, scientific or artistic work is meant in this Act ... (11) translations ..."; article 4 "A person who translates ... a literary, scientific or artistic work ... shall obtain the property rights to the work in that form ..."); Tunisia (Copyright Statute 1966, article 1: "Copyright shall subsist in: (a) all original ... works ... such as: ... (12) translations ... of the above-mentioned works". Article 5: "The authors of translations ... shall enjoy the protection provided by this law ...").

4. Specific recognition of certain translator's rights

52. Some legislations give express recognition only to certain translator's rights: Afghanistan (Copyright Provisions in the Press Act 1950, Clause 39: "If a person publishes in his own name a previously unpublished work, whether a translation or an original of any article, booklet or volume, and if another person claiming to be the actual and original compiler, author or translator, or his successor in title, files suit and proves his claim in a court of law, the person found guilty of the infringement of copyright shall be liable to pay compensation to the copyright owner and shall also be subject to a fine of from 50 to 500 Afghanis, and the facts of the case shall be published in newspapers or periodicals. If the person whose copyright has been infringed does not file a claim within six months from the publication of his work, the Press Department shall, in addition to publishing the facts of the case in newspapers, punish the infringer by a fine of not more than 1,000 Afghanis"). Greece (Copyright Statute 1920, article 1: "... authors ... of translations shall have ... the exclusive right of publication, multiplication by reproduction ...").

IV. CONDITIONS GOVERNING PROTECTION

53. There are essentially three conditions governing protection:

- (i) the consent of the author of the original work, which may or may not be required to carry out translation, publication or commercial exploitation;
- (ii) the original nature of translation; and
- (iii) the formalities expressly laid down in certain legislative texts in respect of translation.

1. Consent of the author of the original work

54. Most laws have provisions relating to the authorization which the translator of a work is required to obtain from its author. Some of these provisions recognize, or imply by their wording, the principle of consent by the author. Other provisions which are less precise can nevertheless also be interpreted to mean that consent is necessary. Some texts may be interpreted as meaning either that consent is necessary or that it is not necessary. In many cases the principle of consent is modified by the existence of various restrictions.

A. Provisions which recognize the principle of consent

55. These may concern the authorization to carry out the translation, to publish it or to exploit it commercially, either by way of separate provisions or as one joint overall provision.

(a) Authorization to translate a work

56. This requirement can be expressed in different ways: in definite and explicit terms, or as a corollary either of a provision recognizing the author's exclusive translation rights; or of a restriction whereby, for example, translators' rights are recognized only where this is without prejudice to the rights of the author of the original work.

(i) Cases where authorization is expressly granted

57. Argentina (Copyright Statute 1933, article 2: "Copyright in a scientific, literary or artistic work shall entitle the author to ... translate ... it ... or authorize its translation ..."); Belgium (Copyright Statute 1886, article 12: "Copyright in a literary work shall include the exclusive right to make or to authorize the making of a translation thereof"); Costa Rica (Decree-Law of 27 June 1896 article 7: "Copyright in scientific and literary works belongs to their authors, and such works shall not, under any circumstances, be ... translated without their consent"); Czechoslovakia (Copyright Statute 1965, section 3 (3): "A work may be ... translated ... not only with the consent of its author"); Ecuador (Copyright Statute 1957-1958, article 5: "The author of a work shall be entitled to ... (f) authorize translations"); Arab Republic of Egypt (Copyright Statute 1954, article 7: "The author alone shall ... have the right to translate the work ... No other person shall be entitled to exercise these rights ... without the written authorization of the author ..."); El Salvador (Copyright Statute 1963, article 68(1)(c): "the translation ... of a work ... without the authority of the author or his successors in title [constitutes an infringement of copyright]"); France (Copyright Statute 1957, article 40: "Any ... performance or reproduction made without the consent of the author ... shall be unlawful. This shall also apply to translations ..."); Greece (Copyright Statute 1920, article 6: "Authors or assignees of their rights shall have the exclusive right to authorize the translation of their works ..."); Guatemala (Copyright Statute 1954, article 10: "Copyright means the exclusive right of the creator of a literary ... work to use the work and to authorize the use thereof ... The general exclusive right to use the work ... includes the ... right ... (1) to translate it ..."); Haiti (Copyright Statute 1885, article 5: "Authors shall have the exclusive right ... to translate or cause to be translated ..."); Hashemite Kingdom of Jordan (Copyright Statute 1912, article 6: "... books or works shall not be published or translated by third parties without the authorization of the author or of his successors in title"); Lebanon (Decree of 17 January 1924, article 145: "... Only the author or his successors in title may authorize the reproduction ... of a work, its translation ..."); Monaco (Copyright Statute 1948, article 4: "The author shall, in addition, enjoy the exclusive right to translate or to authorize the translation of his work ..."); Panama (Administrative Code 1916, article 1925: "A work shall not be translated ... without the permission of its author."); Peru (Copyright Statute 1961, article 36: "Only the author or his successors in title ... may utilize a protected work, making use of any of the following means: ... (c) transforming it by way of translation ..."); Portugal (Copyright Statute 27 April 1966, article 163: "The translation

... of an intellectual work may be carried out only by the author of the work or by a person so authorized by him"); Spain (Copyright Statute 1879), article 2: "Copyright shall belong: ... (2) to translators ... if permission of the author has been obtained"); Syrian Arab Republic (Decree of 17 January 1924, article 145: "...the author ... may authorize the reproduction ... of a work, its translation"); Tunisia (Copyright Statute 1966, article 2: "Copyright shall include the exclusive right ... to authorize the doing of any of the following acts, namely: ... (4) to make any translation ... of the work"); Uruguay (Copyright Statute 1937, article 2: "Copyright ... shall include the right ... to translate ... or to authorize other persons so to do"); USSR (Bases of Legislation in Respect of Civil Law of the USSR and Federated Republics amended on 21 February 1973, Chapter 4, article 102: "Translation of a work ... shall be lawful only with the agreement of the author or of his successors-in-title").

(11) Recognition of exclusive translation rights of the author

58. Colombia (Copyright Statute 1946, article 6: "Copyright owners shall have the exclusive right ... (b) to exploit copyright with or without gainful intent by means of ... translation ..."); Denmark (Copyright Statute 1961, article 2: "... copyright shall carry with it the exclusive right of disposal of a work ... whether in the original or in an amended form, in translation ..."); Dominican Republic (Copyright Statute 1947, article 18: "The author of a work shall only have the exclusive right of translation into any other language when he so states expressly in all published copies ..."); Finland (Copyright Act 1961, article 2: "copyright shall include the exclusive right to control a work ... in ... a changed form in translation"); Honduras (Copyright Provisions in Patents Statute, 1919, article 2: "... Any person who has duly registered a patent for any literary work ... shall have the exclusive right ... to translate it into other languages ..."); Italy (Copyright Statute 1941, article 18: "The exclusive right of translation has for its object the translation of the work into another language or dialect"); Japan (Copyright Law 1970, article 27: "the author shall have the exclusive right to translate ... or otherwise adapt his work."); Liechtenstein (Copyright Statute 1928, article 13: "The exclusive right of reproducing the work ... shall include, in particular, the right: (1) to translate the work ..."); Norway (Copyright Statute 1961, article 2: "property rights shall include the exclusive right of disposal over a work of the type mentioned ... by producing copies thereof ... in translation ..."); Singapore (Copyright Act, 1911, section 1(2): "For the purposes of this Act 'copyright' means the sole right ... (a) to produce, reproduce, perform or publish any translation of the work"); the same provision applies in Burma, Cyprus, Israel and Sri Lanka. (1) Sweden (Copyright Statute 1960, article 2: "copyright shall include the exclusive right to control a work by producing copies thereof and by making it available to the public ... in translation"); Switzerland (Copyright Statute 1922, article 13: "The exclusive right of reproducing the work ... shall include, in particular, the right: (1) to translate the work"); United States of America (Code of the Laws of the United States of America, Title 17, Copyrights, section 1: "Any person entitled thereto ... shall have the exclusive right ... (b) to translate the copyrighted work ... if it be a literary work ...").

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- (1) In a letter dated 28 April 1966, the Singapore Minister of Finance informed the Director-General of Unesco that the United Kingdom Copyright Act of 1911, as modified in part by the Singapore Copyright Ordinance, applied to Singapore. Legislation in a number of other countries also repeats the provisions of the United Kingdom Copyright Act of 1911 governing the protection of translators. These countries are: Burma, the Copyright Act, as amended by the Union of Burma Order, 1948, Cyprus, Israel and Sri Lanka.

(iii) Authorization resulting from a restrictive provision

59. Many laws contain a provision whereby the translator or the translation are protected "without prejudice to the copyright in the original work". This is the case in the following countries: Arab Republic of Egypt: Copyright Statute 1954, article 3); France (Copyright Statute 1957, article 4); Federal Republic of Germany (Copyright Statute 1965, article 3); Monaco: (Copyright Statute 1948, article 5); Morocco: (Dahir (Act) 1970, article 9); Netherlands (Copyright Statute 1912, article 10 (10)); Paraguay (Copyright Statute 1951, article 7); Portugal (Copyright Statute 27 April 1966, article 3); Syrian Arab Republic (Decree of 17 January 1924, article 139). In some other countries the wording is different but the results are the same: Korea (Copyright Statute 1957, article 5 (1): the translator is deemed to be an author "provided ... that the rights of the original author shall not be prejudiced thereby"); Romania (Decree of 18 June 1956, article 10: translations give rise to copyright but "in no ... case shall the author's copyright in the original work be prejudiced"); Turkey (Copyright Statute 1951, article 6: "the principal examples of such works are: (1) translations"; article 8: "the author of an adaptation is the adapter, provided that the rights of the author of the original work are duly safeguarded").

Works produced in collaboration

60. The question may arise whether, in the case of a work of joint authorship, the translator is required to obtain the authorization of each of the collaborators.

61. Only three countries have provisions for this particular case: Lebanon (Decree of 17 January 1924, article 150: "When the work is the product of collaboration, and in the absence of agreement to the contrary, the collaborators or their successors in title shall not, without the consent of the other collaborators or their successors in title cause the common work to be ... translated ..."). The same provision is found in the Syrian Arab Republic (Decree of 17 January 1924, article 150, with the addition: "In case of dispute, the Courts shall decide as to the manner in which the work may be exploited"); in Uruguay a different solution has been found (Copyright Statute 1937, article 29: "Any collaborator may, in exercise of the right conferred by Article 26 ... translate ... the work, subject only to payment to the other collaborators of their proportionate share of the royalties").

(b) Authorization to publish or exploit a translation

62. Mexico (Decree of 4 November 1963, article 5: "Translations ... may not be published, diffused, presented or publicly exhibited without the consent of the author", article 9: "translations ... of intellectual ... works ... shall be protected ... but may only be published when authorized by the owner of the copyright in the work"); Syrian Arab Republic (Decree of 17 January 1924, article 147 "The following acts shall be unlawful if committed without the express authorization of the author ... public performance of a translated dramatic work ...").

(c) Authorization to make, publish and exploit a translation

63. Legislations which recognize in one and the same provision the author's right to authorize the making, publication and exploitation of a translation are worded in two ways: in the one case there is a direct affirmation and in

the other case there is an indirect provision affirming the author's right to authorize the carrying out, publication and exploitation of any adaptation of his work and including translation among adaptations of the original work.

(i) Legislations containing a direct provision

64. Bulgaria (Copyright Statute 1951, article 4: "the author shall have the right ... to authorize its translation and publication ... of his work in foreign languages"); Canada (Revised Statutes 1952, section 3 (1): "'copyright' means the sole right ... to produce, reproduce ... perform ... and includes the sole right (a) ... to publish any translation of the work ... and to authorize any such acts as aforesaid"). An identical provision is in force in Thailand (Copyright Statute 1931, section 4); India (Copyright Statute 1957, section 14: "For the purposes of this Act 'copyright' means the exclusive right ... (a) in the case of a literary, dramatic or musical work, to do and authorize the doing of any of the following acts, namely: (i) to reproduce the work in any material form; (ii) to publish the work; (iii) to perform the work in public; (iv) to produce, reproduce, perform or publish any translation of the work; (v) to make any cinematograph film or a record in respect of the work; (vi) to communicate the work by radio-diffusion or to communicate to the public by a loudspeaker or any other similar instrument the radio-diffusion of the work; (viii) to do in relation to a translation ... of the work any of the acts specified in relation to the work in clauses (i) to (vi)"); similar provisions are to be found in Pakistan (Copyright Ordinance 1962, section 3(1)(a)).

(ii) Legislations containing indirect provision

65. Ireland (Copyright Statute 1963, section 8 (6): "The acts restricted by the copyright in a literary, dramatic or musical work are: (a) reproducing the work in any material form; (b) publishing the work; (c) performing the work in public; (d) broadcasting the work; (e) causing the work to be transmitted to subscribers to a diffusion service; (f) making any adaptation of the work; (g) doing in relation to an adaptation of the work any of the acts mentioned in paragraphs (a) to (e) of this sub-section. Section 8 (7): In this Act 'adaptation': (a) in relation to a literary or dramatic work means any of the following: ... (iii) a translation of the work"); Similar provisions exist in the following countries: Australia (Copyright Statute 1968, article 10(c)(i) and article 31 (1)(a)(vii); New Zealand (Copyright Statute 1962, section 2 (1)(c)(i) and section 6 (3)); Sierra Leone (Copyright Statute 1965, section 4 (5) and section 4 (6)(a) (iii)); Republic of South Africa (Copyright Statute 1965, section 1 (1)(i)(a)(iii) and section 3 (4)); United Kingdom (Copyright Statute 1956, section 2 (5) and section 2 (6)(a)(iii)).

B. Provisions implying the author's right to grant authorization

66. Certain laws which do not explicitly affirm the principle of the right of the author to authorize the translation of his works nevertheless contain provisions which imply the existence of this right. In Brazil, article 3 of Decree No. 4.790 of 2 January 1924 makes provision for the "duly authorized translator" to request the prohibition of a spectacle; similarly under article 303 of Decree No. 4.857 of 9 November 1939, relating to the organization of Public Registers: "necessary proof must be supplied in case of authorization to translate ... a work not in the public domain"; In Nepal, (Copyright Statute 1966 section 12 (1) an application may be filed for a licence for translation where

"the owner of the copyright ... has not granted licence to the translator making request").

C. Provisions which may be interpreted as implying a right to grant authorization

67. While no definite statement can be made in that respect, other provisions admit of an interpretation in favour of the author's right to grant authorization: Uganda (Copyright Statute 1964, section 5: "... copyright shall be the exclusive right to control the doing ... of any of the following acts, namely: (a) the distribution of copies; (b) the public performance ... of the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original"); Poland (Copyright Statute 1952, article 3 (2) "Copyright (secondary copyright) in adaptations of the work of another person shall be subject to the authorization of the author of the original work ..."); a similar provision exists in Kenya (Copyright Statute 1966, section 7 (1)); in Malawi (Copyright Statute 1965, section 7 (1)); and in Zambia (Copyright Statute 1965, section 7).

D. Provisions open to an interpretation which may be either for or against the principle of authorization

68. Provisions are also found which cannot be interpreted a priori as being either favourable or unfavourable towards the principle of authorization. This is particularly the case where the author and the translator and the original work and the translation are assimilated; or where there is no clear subordination of one to the other. Examples are to be found in the following countries: Bolivia (Copyright Statute 1909, article 1: "Copyright shall include scientific, artistic and literary works"; article 2: "Copyright shall be exercisable by: (1) authors, (2) translators"); Liberia (Copyright Statute 1911, section 1: "... authors of literary, scientific and artistic works shall have the exclusive right within the Republic of Liberia to reproduce them, and to sell or authorize such reproduction"; section 2: "The term 'literary, scientific and artistic works' comprises ... translations ..."); Venezuela (Copyright Statute 1962, article 3: "Translations ... shall be deemed to be intellectual works distinct from the original work").

E. Restrictions on the principle of the author's right to grant authorization

69. Some laws modify this principle in such a way as to limit the absolute nature of authors' rights vis-à-vis translators.

In the first place there are provisions which exempt from authorization by the author translations carried out for educational or scientific purposes or for purposes of study, literary criticism and research; also translations of certain press articles.

Secondly, in order to preserve this right, the author or his successors in title may be required to exercise it within a fixed time-limit.

Some legislations have created a comprehensive system of translation licences based on the Universal Copyright Convention.

In very rare cases there are provisions which explicitly exempt the translator from obtaining the authorization of the author for any kind of translation whatsoever.

(a) Restrictions in the case of translations made for educational or scientific purposes or for purposes of literary criticism or research; also in the case of translations of press articles

70. Certain laws which assimilate translation to an adaptation of a work lay down that there shall be no infringement of copyright in a work if it is adapted or reproduced for educational or examination purposes. Such provisions exist in Ireland (Copyright Statute 1963, section 53.1 (a)(b)); in New Zealand (Copyright Statute 1962, section 21 (4)); in Sierra Leone (Copyright Statute 1965, section 34.(1)(a)(b)); and in the United Kingdom (Copyright Statute 1956, section 41).

71. It is legal to publish translations for teaching or scientific purposes or for purposes of literary criticism or research, of brief extracts (El Salvador, Copyright Statute 1963, article 43); Guatemala, Copyright Statute 1954, article 17; Mexico, Decree of 4 November 1963, article 18 (d); of "only such parts of the text ... as are indispensable for the aforesaid purposes" and up to a maximum of 1,000 words (Paraguay, Copyright Statute 1951, article 10); "of extracts of reasonable length" (Thailand, Copyright Statute 1931, section 20 (iii)); of quotations and borrowings "compatible with fair practice" and "translations ... destined exclusively for personal and private use" (Tunisia, Copyright Statute 1966, articles 8 and 9).

72. Translations may be reproduced, without the consent of the author, of articles appearing in newspapers and periodicals. A provision of this kind exists: in Greece (Copyright Statute 1920 article 13, unless a prohibition thereof by the author or the publisher appears on the work; the translation may be reproduced only in another newspaper); in Lebanon (Decree of 1924, article 141, provided there is no specific prohibition and with the exception of tales, stories or novels in serial form the reproduction of which in translation is forbidden even in the absence of such specific prohibition). An identical provision exists in the Syrian Arab Republic (Decree of 17 January 1924, article 141); and in Tunisia (Copyright Statute 1966, article 9, quotations and borrowings from articles in periodical publications may be translated in the form of press summaries).

73. Nearly all these provisions contain regulations guaranteeing certain moral rights of the original author. The translations in question must be published with an indication of the source from which they have been taken (Thailand); the source and author's name (Greece, Lebanon, Syrian Arab Republic, Tunisia); with an indication of the source and without altering the original work. (Guatemala, Mexico, Paraguay, Salvador.)

(b) Period of validity of the right to authorize

74. In some countries the author's right to authorize or forbid the translation of his works is restricted in time by fixing a time-limit on the expiration of which a translation will no longer require the author's prior consent. It is provided that the author will lose this right only if he does not exercise it

before the expiration of the time-limit. This restriction may be limited to certain works.

75. The time-limit varies according to the legislation, and may be calculated from the date of publication of the original work (post publicationem operis, hereafter p.p.o.) or from the date of the decease of the author (post mortem auctoris, hereafter p.m.a.).

76. The author may forbid the translation of his work during a period of three or five years p.p.o. in the following countries:

Arab Republic of Egypt (Copyright Statute 1954, article 8: "If the author of the work or the person who has translated it into a foreign language does not, by himself or through the intermediary of a third person, exercise the right to translate it into Arabic, the protection of this right shall terminate five years after the date of the first publication of the original work or its translation into a foreign language"); Iraq (Copyright Statute 1971, article 9: "The protection of the right of the author or translator shall be terminated on translation of his work into Arabic if he did not use such right by himself or by others within three years from the date of first publication of the work ..."); Korea (Copyright Statute 1957, article 34 (1): "If the owner of a copyright does not publish a translation within five years from the date of publication of the original work, his right of translation shall cease to exist").

77. Ten years p.m.a. in the following countries:

Argentina (Copyright Statute 1933, article 6; article 28 of Decree No. 41.233 of 3 May 1934 adds: "In the case of translations of works by authors whose heirs or successors in title have allowed a time-limit of ten years to elapse without having such works translated, registration shall be allowed in the name of the translators"); Colombia (Copyright Statute 1946, article 10: "... the successors in title shall not be entitled to oppose the translation by a third party of the works of their predecessor (de cujus) after the lapse of ten years from his death. If there is no agreement between the third party publisher and the successors in title with regard to the conditions of printing or translation, or of pecuniary remuneration, these questions shall be determined by the Courts, after hearing the advice of experts").

78. Ten years p.p.o. in the following countries:

Burma (India Copyright Act, 1914 as amended by the Union of Burma Order 1948, section 4(1): "In the case of works first published in the Union of Burma, copyright shall be subject to this limitation that the sole right to produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work. Provided that if within the said period the author, or any person to whom he has granted permission so to do, publishes a translation of any such work in any language, copyright in such work as regards the sole right to produce, reproduce, perform or publish a translation in that language shall not be subject to the limitation prescribed in this sub-section"); Nicaragua (Civil Code of 1904, article 753: the restriction

concerns only "authors who do not reside in the national territory and who publish a work outside the Republic ..."; Thailand (Copyright Statute 1931, section 29 (b): "In the case of any literary or dramatic work", the author's right to authorize "... shall be conditioned upon the publication before the expiration of the above-mentioned period ten years... of an authorized translation of the work in the language for which protection is claimed"). This provision covers works published in a foreign country which is a member of the Berne Union and all literary or artistic works the authors of which were at the time of creation of such works subjects or citizens of a foreign country that is a member of the Union, or domiciled in such a country); Turkey (Copyright Statute 1951, article 28 concerns only literary or scientific works published for the first time in a language other than Turkish: "at the termination of this ten-year period, the translation of the work into Turkish shall be freely permissible" if during this ten-year period no translation into Turkish has been published by the author or with his authorization); Yugoslavia (Copyright Statute 1968, article 44: "Where the author of a work published in a foreign language and protected under the provisions of the Berne Convention for the Protection of Literary and Artistic Works does not translate this work into one of the languages of the Yugoslav peoples or nationalities within a period of ten years from the publication of the work, or does not authorize others to translate it within the same period of time, the work may be translated into the languages of the Yugoslav peoples or nationalities without the authorization of the author." In Greece (Copyright Statute 1920) there is no indication that the exercise of the right to authorize within the prescribed time allows the author to retain this right on the expiration of the time limit. Under article 6: "Authors or assignees of their rights shall have the exclusive right to authorize the translation of their works ... in all languages for ten years from 31 December of the year in which they were published. After ten years the right of translation shall fall into the public domain".

(c) Translation licences

79. Several countries, in particular: Argentina, India, Mexico, Nepal, Pakistan, Philippines, Portugal and Yugoslavia have established a licensing system whereby under certain conditions a work may be translated and the translation published without the permission of the author.

These conditions are based for the most part on Article V of the Universal Copyright Convention. They are governed by the following texts:

Argentina: Decree No. 1155 of 31 January 1958; India: Copyright Statute 1957, Copyright Regulation of 21 January 1958, International Copyright Order of 1958; Mexico: Law of 4 November 1963; Nepal: Copyright Statute 1966; Pakistan: Copyright Ordinance 1962; Philippines: Decree on the Protection of Intellectual Property, 1972; Portugal: Copyright Statute, 27 April 1966; Yugoslavia: Copyright Statute 1968.

80. (i) Authority responsible for granting licences

Argentina: Ministry of Education and Justice (article 1); India: Copyright Board (section 32.1); Mexico: the Secretariat of Education (article 33); Nepal: the Registrar (section 12.2); Pakistan: the Registrar, by order of the Board (section 37(1) and 37(4)); Philippines: the Director

of the National Library (section 14); Portugal: the court (article 164(1)); Yugoslavia: the competent organ of the Republic in charge of cultural affairs (articles 46(2), 47 and 48).

81. (ii) Those entitled to apply for licences

Argentina: "any national or foreign person domiciled in the territory of the Argentine Republic" (article 1); India: "any person" (section 32.(1)); Mexico: "any national, or ... any foreigner residing permanently, temporarily or transitionally in the Mexican Republic ..." (article 33); Pakistan: "any citizen of Pakistan or a person domiciled in Pakistan" (section 37.(1)); Philippines: "any citizen" (section 14); Portugal: "any other person" (article 164.(1)); Yugoslavia: "the interested Yugoslav national" (article 46(2)).

82. (iii) Non-exclusive nature of the licence

This is emphasized in the following texts: "a non-exclusive licence": Argentina (article 1); Mexico (article 33); Philippines (section 14); Portugal (article 164(1)); "not being an exclusive licence": India (section 32(4)); Pakistan (section 37(4)); "such licence shall not be deemed to bestow sole ownership on the translator": Nepal (section 12(2)).

83. (iv) Purpose of the licence

Argentina (article 1: "... to translate and publish within the Republic any works originally written in a foreign language and protected by the Universal Convention of Geneva ..."); India (section 32: application may be made for a licence "to produce and publish a translation of a literary or dramatic work in any language"; section 32.(4): but it will be granted only for "the language mentioned in the application"); Mexico (article 33: "to translate and publish in Spanish, works written in a foreign language"); Nepal (section 12.(1)): provides for translation into Nepali of "any work registered for copyright pursuant to this Act"; Pakistan (section 37.(1)): application may be made for "a licence to produce and publish a translation of a literary or dramatic work in any Pakistani language or a language ordinarily used in Pakistan", the licence being granted solely for "the language mentioned in the application" (section 37.(4)); Philippines (section 14): a licence may be granted "to translate the work and publish the work so translated in the national or local language in which it has not been published ..."; Portugal (article 164.(1)): if a work has not been published in Portuguese a non-exclusive licence may be obtained "to translate and publish the work"; Yugoslavia (article 45): provides for the translation "into the languages of the Yugoslav peoples or nationalities" of works published in a foreign language and protected by the Universal Copyright Convention.

84. (v) Conditions under which a licence may be granted

The main conditions to be fulfilled for the granting of a licence are as follows:

The copyright owner shall not have published, or arranged to have published within seven years from the date of the first publication of the work, a

translation into the national language or one of the national languages of the country concerned; or, if a translation has been published, the edition must be out of print. This provision is found in Argentina (articles 1 and 3); India (section 32 (4)(a)); Mexico (articles 33 and 37); Pakistan (section 37 (4)(a)); Portugal (article 164 (1) and (3)); and Yugoslavia (article 46 (1)). The Philippines Decree on the Protection of Intellectual Property, 1972, section 14, differs from the above in that it provides for a period of "five years from the date of the first publication of a writing ...". In Nepal this condition is amplified to the effect that a licence may be granted additionally in the case where a work "having been published once, its publication has not been made for a long time or the work is not available in a cheap edition" (section 12 (1)(a)).

The applicant for a licence shall establish that he has been unable to obtain the necessary authorization from the owner of the right of translation or that he is unable to find the owner: Argentina: (article 2 (b)); India: (section 32(4)(b)); Mexico (article 34 (III)); Nepal (section 12 (1)(b)); Pakistan (section 37 (4)(b)); Philippines (section 14); Portugal (article 164 (2)); Yugoslavia (article 47).

The applicant for a licence shall establish that having been unable to obtain the agreement of the owner of the right of translation (Mexico, Yugoslavia), or having been unable to find the owner (Argentina, India, Pakistan, Philippines, Portugal, Yugoslavia), he has forwarded a copy of his application to the publisher whose name is printed on the work (Argentina, India, Mexico, Pakistan, Philippines, Portugal, Yugoslavia) together with a copy to the diplomatic or consular representative of the State of which the owner of the copyright is a national, where his nationality is known (Argentina, Mexico, Philippines, Portugal, Yugoslavia) or to the agency which may have been designated by the government of such State (Philippines, Portugal, Yugoslavia). This copy shall have been forwarded at least two months before the deposit of the application for a licence in India (section 32 (4)(c)) and in Pakistan (section 37 (4)(c)); the licence shall not be granted until after expiration of a period of two months from the date of dispatch of these copies in Argentina (article 2 (c)); Mexico (article 34 (IV)); Philippines (section 14); Portugal (article 164(4)) and Yugoslavia (article 47).

85. Conditions aimed at guaranteeing observance of the moral right of the original author

Certain provisions are necessary to guarantee that the work is correctly translated. In most cases provision is made for a commission or other nominated authority to judge of the competence of the translator: Argentina (article 2: "the applicant shall: ... (d) entrust the making of the translation of the work to a person deemed to be competent by a permanent committee, which committee shall consist of one representative of the General Directorate of Culture, one of the body representing writers and one of the body representing book publishers"); India (section 32.(4)): "... no such licence shall be granted unless ... (d) the Copyright Board is satisfied that the applicant is competent to produce and publish a correct translation of the work ..."); Mexico (article 35: "The publisher ... shall (I) ensure that the translation is entrusted to a person deemed competent for the purpose by a special Committee consisting of a representative of the Secretariat of Education, a representative of the Autonomous National University of Mexico ... and one from the Organization representative of the

major professional interests of publishers"); Nepal (section 12.(2)): the Registrar shall establish "whether or not the applicant has the capacity to make a correct translation and publication of the work"; Pakistan (section 37.(4)(d): if "the /copyright/ Board is satisfied, after consulting the representative body of authors recognized as such by the Federal Government for the purpose of this clause, that the applicant is competent to produce and publish a correct translation of the work"). In Portugal (article 168: the authorization may be revoked "if the work has been modified, distorted or reproduced in a way that is prejudicial to its reputation, or if the limits of the authorization granted have been exceeded").

The name of the author and the title of the original work shall appear on the copies of the translation: Argentina (article 5), Philippines (section 14), Portugal (article 164 (5)).

No licence shall be granted where the author has withdrawn from circulation all copies of the work the translation of which is contemplated: Argentina (article 9); India (section 32 (4)(e)); Mexico (article 39); Pakistan (section 37 (4)(e)); Portugal (article 164(8)); Yugoslavia (article 48).

86. Conditions intended to protect the economic rights of the author.

The competent authority shall satisfy itself that the applicant has the means to pay normal royalties to the owner of the copyright (India (section 32 (4)(d)); Nepal (section 12 (2)); Pakistan (section 37 (4)(d)); Portugal (article 165 (4)).

Four of the legislations mentioned stipulate that the applicant shall indicate the retail selling price of each copy of the translation: (Argentina (article 2 (e)); India (section 32 (2)); Mexico (article 35 (II)); Pakistan (section 37 (2)). Two also stipulate that the edition shall comprise a fixed number of copies: Argentina (article 2 (e)); Mexico (article 35 (II)). The retail price and the number of copies serve as a basis for the calculation of the royalties to be paid to the author under the following conditions: Argentina (article 2(f)(g) and Mexico (article 35 III), deposit of an amount equal to one-third of ten per cent of the total value of sales to the public of the declared edition, and a security to cover the remaining two-thirds, which shall be remitted within a time-limit of two years calculated from the date of the application; Nepal (section 12 (4)) the application shall be accompanied by a deposit, as security, of a sum equivalent to 7% of the roughly estimated value of the translation or 700 rupees, whichever is the higher, the applicant to undertake to pay the remainder at a later date: India (section 32 (4)) and Pakistan (section 37 (4)) payment to the owner of the copyright of royalties corresponding to public sales, at a rate to be calculated by the Copyright Board; Portugal (article 165 (4)) the licence shall be granted only when the author has shown proof that he has made the payment or that he has guaranteed the payment.

87. Miscellaneous provisions

Where possible, the owner of copyright in the work shall be given the opportunity to be heard: India (section 32 (4)(f)); Pakistan (section 37 (4)(f)).

In addition, Pakistani law prescribes that the Copyright Board must be satisfied "for reasons to be recorded in writing, that the grant of the licence will be in the public interest" (section 37 (4)(g)).

The owner of a licence to translate shall not be entitled to transfer it: Argentina (article 8); Mexico (article 32); Portugal (article 164 (7)).

Under article 4 (a) of the International Copyright Order 1958 the provisions of section 32 of the Indian law relating to the grant of licences to translate shall not apply to works first published in a member country of the Berne Union, but shall apply to works first published in a country which is not a member of the Berne Union but which is party to the Universal Copyright Convention; and to works of nationals of countries parties to the Universal Copyright Convention which have been first published in a country other than a member country of the Berne Union.

(d) Explicit exemption from authorization

88. Very few countries expressly recognize the translator's right to carry out a translation of a work without the authorization of its author. This principle is admitted: in Ethiopia (Civil Code 1960, article 1655.(1): "an author cannot object to the translation of his work").

The translator is, however, obliged to comply with certain formalities and while the author may not oppose translation, he is not deprived of all his rights: in Ethiopia "A translation made without the authorization of the author shall expressly state this fact at the beginning of the work" (article 1655.(2)), "Failing such a statement, it shall be deemed to be prejudicial to the author's rights" (article 1655.(3)).

(e) Miscellaneous restrictions

89. Some laws contain special provisions of widely different kinds aimed at imposing certain restrictions on the author's right to grant consent.

In the Federal Republic of Germany it is permissible to translate excerpts from the work "in so far as the purpose of the use may demand" (Copyright Statute 1965, article 62.(2)); in the Dominican Republic the author has the exclusive right of translation only "when he so states expressly in all published copies" (Copyright Statute 1947, article 18); in India it is permissible to reproduce or publish a translation of legislative texts into any of the languages of India if no translation in that language has been produced or published by the government, or if a translation has been produced but is not available for sale to the public (Copyright Statute 1957, section 52.(1)(r)(i)(ii)); in Nicaragua an author may reserve to himself the right to translate but "he shall indicate whether the reservation is limited to any given language or extends to all languages"; failing such reservation "the translator, in respect of his translation, shall have all the rights of an author" (Civil Code 1904, articles 751 and 752); in Panama "the works of a non-Panamanian author, printed in non-Spanish speaking countries, may be freely translated, wholly or partly, provided the name of the author is not omitted" (Administrative Code 1916, article 1925); in Czechoslovakia: the consent of the author is not necessary as regards the translation of statutory provisions, legal decisions, public documents and speeches, news of the day (Copyright Statute 1965, Section 3.(3)), nor as regards the translation into one of the languages of Czechoslovakia of foreign works for which "the Minister of Education and Culture may, by his decision, replace the author's consent ... provided that international agreements so permit" (Section 18.2); In the USSR "the competent organs ... may, in accordance with the procedure prescribed by

the laws of the USSR, authorize translation of a work into another language and publication of this translation, complying in such cases with the provisions of international treaties or international agreements to which the USSR is party". (Bases of Legislation in Respect of Civil Law of the USSR and of the Federated Republics, amended on 21 February 1973, chapter IV, article 102).

2. Original or personal character of the translation

90. Although translations are works executed at second hand a number of legislations include among the conditions for protection the original or personal character of the translation or the intellectual effort required for the translation.

Colombia (Copyright Statute 1946, article 46: a translation must be the result of "the intellectual effort which gives rise to copyright"); El Salvador (Copyright Statute 1963, article 20: "Derivative works, such as translations ... are protected, in so far as they contain original matter"); Federal Republic of Germany (Copyright Statute 1965, article 3: "Translations and other adaptations of a work which constitute personal intellectual creations of the adapter shall be protected"); Hungary (Copyright Statute 1970, article 4(2): "Copyright protection shall be afforded ... to the ... translation of the work of another author, provided that the new work has an individual, original character"); Italy (Copyright Statute 1941, article 4: "... elaborations of a creative character ... such as translations into another language ... shall also be protected"); Mexico (Decree of 4 November 1963, article 9: "translations ... and transformations of intellectual ... works which ... have originality, shall be protected"); Peru (Copyright Statute 1961, article 8: "a derived work, which results from the authorized transformation of an original work in such a manner that the new work constitutes an independent creation as a consequence of ... translation"); Romania (Decree of 18 June 1956, article 10: "The following shall also give rise to copyright: (a) translations ... of literary ... works ... provided they have a creative character; (b) translations ... of technical and scientific works ... if their accomplishment requires the knowledge of a specialist in the field of the original work, and if they represent an intellectual, creative work"); Turkey (Copyright Statute 1951, article 6: "The principal examples of such work are: (1) translations ... Adaptations bearing the individual characteristics of the adapter are considered to be works in themselves under this law").

In the Netherlands a provision stating that translations shall be protected as original works (article 10 of the Copyright Statute, 1912) is followed by a provision that "A translation ... if it does not constitute a new and original work, shall be deemed a multiplication of such work" (article 13). The conclusion may be drawn that translations which constitute new and original works shall not be deemed to be mere reproductions, and shall enjoy the protection of copyright.

3. Formalities

91. The formalities required for translations are often identical with those for original works. In Nicaragua (Civil Code 1904, Chapter VII, article 857 "The provisions of this Part of the Code shall benefit authors, translators and their respective heirs ... but in order to enjoy the benefits in question the person concerned must comply with the provisions of articles ..." (these articles deal with the formalities for the deposit and registration of copyright). Some

countries however have express provisions dealing specially with the formalities required for translations. Argentina (Copyright Statute 1933, article 23, and Decree 41.233 of 3 May 1934, article 15: registration of the translation contract with the National Copyright Registry); Brazil (Decree 4857 of 9 November 1939, article 300: registration of the translation and deposit of two copies, article 303: "Necessary proof must be supplied in case of authorization to translate ... a work not in the public domain"); Colombia (Copyright Statute 1946, article 73 (2): registration of translation contract); Dominican Republic (Copyright Statute 1947, article 18: registration and deposit of the authorization to translate within 30 days of its grant); El Salvador (Copyright Statute 1963, article 80 (e): indication of the name of the author of the primary work and the title of the work in its original language); Italy (Regulations for the Application of the Law of 22 April 1941, No. 633, article 34: deposit of the translation and indication of the source: "in the case of translations ... there shall also be indicated the language or dialect of the original work"); Mexico (Decree of 1963, Amending the Copyright Statute, article 120: registration); Panama (Administrative Code 1916, article 1914(1)(c): registration); Paraguay (Copyright Statute 1951, article 28: registration of the translation contract, article 53: registration of the translation "every authorized ... translation ... of a work must be registered in order to secure protection as an original work"; Decree No. 6609 of 4 September 1951 Regulating the Law on Copyright, article 12: "In the case of translations into Spanish or Guaraní, it shall be sufficient to register, in the appropriate volume, jointly with the work, the authorization contract or a duly certified copy thereof, the applicant for registration becoming responsible for the authenticity of the documents"); Uruguay (Decree of 21 April 1938 concerning Regulations under Law No. 9739 on Literary and Artistic Copyright, article 15: registration of the translation; article 23: "In the case of translations into the Spanish language, it shall be sufficient to register, in the appropriate Register, the authorizing contract or a notarized copy thereof").

Since in a number of countries the translator owns copyright or is assimilated to an author, he is required where necessary to comply with all the other formalities prescribed as a condition for legal protection. The formalities quoted above are thus the only ones required of the translator in this capacity, but they do not constitute an exhaustive list valid for all countries or all situations.

V. NATURE OF PROTECTION

92. The recognition of translators' copyright or translators' rights is occasionally accompanied by legislative provisions dealing with the economic rights or the moral right of the translator. A relatively large number of laws lay down details as regards the relationship between different translators of the same work, which may give rise to dispute.

1. Economic rights

93. In countries which provide the translator with the same protection as the author of the original work, the financial interests of translators are theoretically protected in the same manner as those of authors. The principle of proportional payment, which is widely admitted by many legislations in respect of authors, should thus apply equally to translators.

Although most laws contain no reference to this subject, some contain special provisions as regards the payment of translators and either define the scope of the principle of the remuneration or decide the matter, in greater or less detail, by fixing the amount to be paid to the translator.

(a) Payment on a fixed sum basis

94. Some laws expressly lay down the possibility of payment for translation on a fixed sum basis: France (Copyright Statute 1957, article 36: in the case of trade editions, the remuneration for the first edition may be in the form of a lump sum "upon the demand of the translator, for translations"); Italy (Copyright Statute 1941, article 130: "remuneration may be represented by a lump sum for ... translations"); Venezuela (Copyright Statute 1962, article 56: "In so far as concerns the publication of books, the remuneration of the author may consist of a lump sum in the case ... if a translator so requests, of translations").

It should be noted that in two countries (France and Venezuela) the intention has been to make it clear that the possibility of a lump sum payment should be invoked only at the request of the translator.

In France a translator who has accepted this form of payment may in addition benefit, in the same way as the author, from the provisions of Article 37 of the Copyright Statute, whereby the author may demand a revision of the contract where he has received, by way of lump sum payment a sum equivalent to less than 5/12 of what he would have received as an equal share in the profits from the work.

(b) Calculation of payment due

95. Some legislations prescribe more or less detailed rates of payment covering all kinds of translation, while others merely lay down precise regulations for particular cases.

(i) Calculation of general rates of pay for translation

96. Poland (Ordinance No. 190 of 11 June 1955, Appendix 1, article (4)3 and Appendix 2 provide for detailed rates depending on the type of translation (translation from a foreign language into Polish, from Polish into a foreign language or from one foreign language into another), the type of works translated (social, political literature, artistic literature, scientific and professional literature, school books and textbooks) and the number of editions produced).

(ii) Regulations governing particular cases

97. Bulgaria (Copyright Statute 1951, article 15 [Note] provides that "Remuneration shall be paid to authors for translations when they are made outside the scope of a labour contract"); Paraguay (Decree No. 6609 of 4 September 1951, article 25: "Persons who translate ... works which are outside the private domain shall be entitled ... to enjoy one half of the copyright receipts"); an identical provision exists in Uruguay (Decree of 21 April 1938 to issue Regulations for the application of the Law concerning Literary and Artistic Copyright, article 27: "Persons who translate ... works which are in the public domain ... shall be entitled to one half of any royalties received").

2. Moral right

98. In the countries which assimilate the translator to the author the moral right of translators and authors seems to be identically protected; the large majority of laws have no specific provision concerning the translator's moral right. Some rare provisions on this subject do however exist. They relate either to the translator's right of intellectual ownership in respect of his translation or to his right to have his translation respected, together with the penalties to be applied in case of infringement.

(a) Translator's right of intellectual ownership

99. Italy (Copyright Statute 1941, article 70 "The abridgement, quotation or reproduction must always be accompanied by a mention ... of the name of ... the translator, provided such indication appears upon the basic work"; article 138: "The grantee shall be obliged: (1) to perform the work ... with previous announcement to the public, in the customary manner ... of the name of any translator"; Regulations for the Application of Law No. 633 of 22 April 1941, article 33: "In the case of translated works, there shall be printed upon the cover, or upon the frontispiece of the copy, in addition to the christian name and surname of the translator ..."); Mexico (Copyright Decree of 1963, article 56: "In the case of translations ... the name of the translator ... shall be indicated"); Peru (Copyright Statute 1961, article 98: "A person who publishes a work within the national territory shall be obliged to indicate, in a visible position upon all copies, including equally any copies ultimately intended for free distribution, the following particulars: (a) ... the name ... of the translator"); Romania (Copyright Decree 1956, article 15: "In cases where the works are used as provided for in Articles 13 and 14 mention shall be made of ... the name ... of the translator").

(b) The right to have a translation respected

100. Mexico (Copyright Decree 1963, article 5: the publication, diffusion or performance of a translation "... must be effected in a manner which does not prejudice the reputation of the ... translator"; article 32 "The translator of a work ... shall enjoy, with respect to the work in question, the protection which the present Law grants to him and, accordingly, the said translation cannot be ... modified ... or altered without the consent of the translator").

(c) Penalties for infringement of the translator's moral right

101. Afghanistan (Press Act 1950, Clause 39: if a person publishes in his own name a previously unpublished translation "... and if another person claiming to be the actual and original ... translator, or his successor in title, files suit and proves his claim in a court of law" the person found guilty of infringing the translation copyright shall be liable to a fine, and the true translator shall be compensated and the facts of the case shall be published in the press; Clause 43: "If a person republishes in his own name any copyright work owned and previously published by another person, or publishes any extracts or parts of such work without specifying the name of the original ... translator ... the infringer shall be liable to pay compensation to the owner of the copyright in a sum of not more than 2,000 Afghanis; and the facts of the case shall be published in newspapers"); Mexico (Copyright Decree 1963, article 137: "A person shall be liable to imprisonment for not less than thirty days nor more

than one year or a fine of not less than 50 nor more than 50,000 pesos, or both, at the discretion of the judge, if being authorized to publish a work he does so fraudulently in the following manner: (I) without mentioning in the copies the name of the ... translator; (II) to the detriment of the reputation of ... the translator").

3. Relationship between the rights of different translators of the same work

102. It is obvious that in all cases where translation requires the authorization of the author of the original work the relations between different translators of the same work should be governed by the conditions under which the authorizations have been granted.

Since, however, in most cases the translator has copyright in his translation, it is frequently laid down that even where an authorized translation already exists the original work can be translated afresh by other translators. The translator's copyright is in his own translation, not in the original work.

103. It is self-evident that this rule may be waived if the author of the original work so desires; and a number of laws make provision for the case where the author may have granted the translator the exclusive right to translate.

104. Controversy might arise in the case where the author's exclusive right of translation ceases and his work falls within the public domain. A number of countries have passed laws conferring freedom to translate in such cases.

105. Another question which arises is that of plagiarism. The translator of a work is not entitled to oppose a fresh translation, but he is within his rights in opposing any translation which is merely a copy of his own. The exercise of this right is, however, a very delicate matter in cases where it is a primary obligation for a translator to follow the author's original work as faithfully as possible.

106. The question also arises of the relations between a translator who is followed by another translator in the case where the latter's knowledge of a work is not directly through the original text but indirectly through the first translation. Here the translation is not parallel, but subsequent to the first translation.

(a) Freedom to translate where an authorized translation already exists

107. Bulgaria (Copyright Statute 1951, article 17: "... this shall not preclude other persons from translating the same work independently."); Costa Rica (Decree-Law on Copyright 1896, article 18 "The translator ... shall have copyright only in respect of his own translation and cannot oppose the making of further translations of the same work"); the United States of America (Code of the Laws of the United States of America, Title 17, section 7: the publication of translations shall not "be construed to imply an exclusive right to such use of the original works"); Nicaragua (Civil Code 1904, article 752: "the translator ... shall not be able to prevent further translations"); Panama (Administrative Code 1916, article 1927: the translator "shall not be entitled to oppose the publication of further translations"); Portugal (Copyright Statute 27 April 1966, article 163: "Such authorization ... unless expressly agreed otherwise, shall not imply any transfer of exclusive rights").

(b) Waiver of freedom to translate

108. Three countries make provision for the author of the original work to grant an exclusive right to the translator: Brazil (Civil Code of the United States of Brazil, article 652: the translator may not oppose the making of a new translation "unless the exclusive right of translation was granted him by the author"); Nicaragua (Civil Code 1904, article 752: "unless the author has also granted this right to him"); Panama (Administrative Code 1916, article 1927, "if he has not acquired from the author the exclusive right to present his work in such new form").

(c) Freedom to translate where a translation already exists of a work which is within the public domain

109. It is laid down in the laws of many countries that the translator of a work within the public domain cannot oppose the making of further translations. Argentina (Copyright Statute 1933, article 24: "The translator of a work outside the private domain ... may not oppose the making of further translations by other persons"); Colombia (Copyright Statute 1946, article 45: "Translators of a work not protected by copyright, or in which the copyright has expired ... may not, however, oppose the publication of other translations ... The copyright in each translation shall belong to the translator thereof"); El Salvador (Copyright Statute 1963, article 20: when the primary work has passed into the public domain the translation shall be protected "without such protection involving any exclusive right to the use of the primary work"); Mexico (Copyright Statute 1963, article 9: "such protection shall not give rise to the right to the exclusive use of the basic work, nor the right to prevent the making of other versions therefrom"); Paraguay (Copyright Statute 1951, article 28: "The translator of a work in the public domain ... may not oppose the making of further translations by other persons"); Peru (Copyright Statute 1961, article 14: "If the original work is in the public domain, the owner of the new derived work cannot oppose other persons who, in turn ... translate the original work"; the Regulation of 18 October 1962, article 2, repeats this provision); Spain (Copyright Statute 1879, article 14: "The translator of a work which has passed into the public domain ... may not oppose the making of further translations by other persons"); Uruguay (Copyright Statute 1937, article 34: "but in such cases they shall not be entitled to prevent the publication of other versions of the work in the same or in any other language"; similarly in article 27 of the Regulations of 21 April 1938 issued under the Copyright Act; Venezuela (Copyright Statute 1962, article 5: "however, no exclusive right shall be conferred in respect of such original works").

(d) Plagiarism

110. Some countries have special provisions dealing with this question, either by affirming the right of the translator with respect to the plagiarist or by making provision for taking legal proceedings.

111. The translator's right to oppose plagiarism: Brazil (Civil Code of the United States of Brazil, article 652: the translator may not oppose the making of a new translation but "may oppose mere reproduction of his own translation"); Mexico (Decree of 4 November 1963, article 32: "When a translation is made in such terms that it has only slight or minor differences from an earlier translation, it shall be considered as a mere reproduction, and shall not enjoy the protection of the Law unless, in the opinion of the Secretariat of Education,

it constitutes a work of new creation. In any event, it will be subject to the right of objection which belongs to the author of the first translation").

112. Action for plagiarism in respect of a translation

Colombia (Copyright Statute 1946, article 46 "In the case of disputes before the Courts as to whether any new translation is a colourable reproduction of an earlier one, with only slight variations and lacking the intellectual effort which gives rise to copyright, expert opinion shall be heard before judgement is delivered"); Nicaragua (Civil Code 1904, article 754: "If a translator protests against a new translation and alleges it to be a reproduction of the first translation and not a new translation made from the original work, the Judge, in order to arrive at his decision, shall act in the manner provided in article 743"; article 743: "the Judge shall hear the opinion of an expert nominated by each party; he may also consult with such other persons or bodies as he may consider suitable"); Panama (Administrative Code 1916, article 1929: "In the case of dispute before the Courts as to whether a new translation ... is a disguised reproduction of an earlier one, with only slight variations and without sufficient intellectual effort to give rise to rights, the matter shall be decided in the light of expert advice").

113. The difficulty of regulating this issue is to be seen in the terms used: an opinion is required on whether the translations in question have only "slight or minor differences" from an earlier translation (Mexico), or "slight variations" (Colombia, Panama), in order to decide whether there has been sufficient "intellectual effort" (Colombia, Panama), whether there is "a new creation" (Mexico), or "a translation made from the original work" (Nicaragua). It is thus not surprising to see that of these five countries three (Colombia, Nicaragua, Panama) make provision for hearing experts, and two (Mexico and Nicaragua) for having recourse to competent bodies.

(e) Retranslation

114. The question may arise of determining whether the translator finds himself in a similar situation vis-à-vis the retranslator to that of the author vis-à-vis the translator, or whether this situation is modified by the fact that the material on which the retranslator has worked is, indirectly, the same original work.

None of the legislations studied in this report makes provisions dealing expressly with this problem of retranslation.

4. Miscellaneous provisions

115. Some countries recognize the translator's right to collect and publish his translations. This is the case: in Costa Rica (Decree-Law of 27 June 1896, article 17: "The ... translators of matter published in newspapers or reviews may collect and publish such items wholly or partly provided that there is no arrangement to the contrary with the enterprise on whose account the initial publication was made"); a similar provision exists in Spain (Copyright Statute 1879, article 30: article 32 also lays down that "The ... translator of scientific, literary or artistic works shall be entitled to publish all or part of them in a collection, even when he has partly alienated them"); in the United States of America compilations of translations are regarded as new works subject to copyright (Code of the United States of America, Title 17, section 7).

VI. RESTRICTIONS ON PROTECTION

116. Restrictions are of three different types:

- (i) in certain rare cases protection is provided only for the translation of specific categories of works;
- (ii) some provisions place a special restriction on the duration of the protection provided;
- (iii) in a larger number of cases provision is made for the author of the original work to carry out special supervision as regards translations.

1. Restrictions as to the work

117. In Mexico, the translators of the words of a musical work do not enjoy protection (Copyright Decree 1963, article 15: "When the words of a musical work are translated ... to another language, the translators ... do not acquire the rights of ownership in the literary portion of the work"). A new article 10 (2A) has been added to the Pakistan Copyright Ordinance, 1962, with respect to the use of works for educational purposes: "Copyright shall not subsist in any work referred to in sub-section (2) as respects its ... translation ... by or under the authority of the Federal Government, as textbook for purposes of teaching, study or research in educational institutions".

2. Restrictions on the duration of protection

118. Provisions dealing expressly with the duration of protection for translators are very rare. They are to be found in the following countries: Greece (Copyright Statute 1920, article 1: "Writers, composers ... of original works ... or translations, shall have, for life, the exclusive right of publication"); Jordan (Copyright Statute 1912, article 14: "copyright in translations shall only continue for 15 years after the death of the translator; that is to say half of the 30-year term /the normal period for posthumous protection/").

3. Right of the author of the original work to supervise the translation

119. In the legislative texts which recognize the author's moral right, it is stipulated that the translator must respect the moral interests of the author of the original work in the same way as any other user of the work. This particularity is emphasized by the fact that a certain number of legislations make special provision in this connexion with regard to the situation of the translator. These provisions lay down the right of the author to carry out special supervision in respect of translations of his work, or refer to the methods whereby this right may be effectively exercised in practice. Arab Republic of Egypt (Copyright Statute 1954, article 9: the translator has in principle the right to modify or mutilate the work in the course of translation without opposition from the author "unless the translator has failed to indicate the place of mutilation or modification, or unless the translation injures the reputation of the author or his professional prestige"); Portugal (Copyright Statute 27 April 1966, article 168 "The authorization provided for in article 163 may be revoked, by means of judicial notice, if the work has been modified, distorted or reproduced in a way that is prejudicial to its reputation"); Syrian Arab Republic (Copyright Decree 1924, article 146: "The author or his successors in title may apply to the Courts for an order annulling an assignment by which ...

translation ... has been authorized ... if it is proved that the assignee has distorted, modified or reproduced the work in a manner harmful to the reputation of the author"); Uruguay (Copyright Statute 1937, article 12: "Whatever may be the terms of the contract of assignment or alienation of rights, the author shall, in respect of his work, retain: ... (2) the right to supervise ... translations thereof").

120. In all the legislations referred to above, the right afforded to the author, and his successors in title to supervise translations of his work is intended to protect the basic features of the work. The aim is to ensure that translation does not harm the integrity or the meaning of the work, that the work shall not be changed without the author's consent or in such a manner as to harm his reputation, or distort it (Arab Republic of Egypt, Portugal, Syrian Arab Republic). This right of supervision is naturally granted for the duration of the legal protection of the work, to the author and his successors in title. Since however a translation may distort a work even after it has passed into the public domain, provision may be made to guarantee respect for the work beyond the period during which it is protected. This is the case in Argentina. Under article 83 of the Copyright Statute 1933, after the expiration of the normal period of protection "complaints may be lodged with the National Copyright Registry denouncing ... inaccuracy of a translation, errors of judgement and deficiencies in the knowledge of the language of the original". Such action is open to all: "Such complaints may be lodged by any inhabitant of the Argentine Republic, or they may be initiated ex officio". Provision is made for the case to be examined by a jury set up by the Directorate of the National Copyright Registry, the composition of which will vary according to whether the works in question are literary or scientific; but "In both cases, when the translation has been objected to, the jury shall also include two Argentine official translators, one appointed by each party, and another appointed by the majority of the jury".

VII. TRANSITIONAL MEASURES

121. In conclusion it should be noted that a number of laws include transitional provisions dealing expressly with translations. Provision is made for reserving the rights of authors of translations which have been legally printed, published, deposited, carried out or undertaken before the entry into force of the laws in question, whose effect would be to make these translations illegal. The exploitation of translations falling under this category continues to be legal.

Provisions of this kind are found in the following countries: El Salvador (Copyright Statute 1963, article 84); Federal Republic of Germany (Copyright Statute 1965, article 130); Liechtenstein (Copyright Statute 1928, article 63 bis 3); Netherlands (Copyright Statute 1912, article 46); Switzerland (Copyright Statute 1922, article 65); Thailand (Copyright Statute 1931, section 33); Turkey (Copyright Statute 1951, transitional article 2).

122. The right to benefit from these transitional measures is sometimes subject to certain conditions or formalities:

- (1) registration in the Special Register in El Salvador (Copyright Statute 1963, article 84);

- (ii) for translations in course of execution, completion and publication before a certain date in Turkey (Copyright Statute 1951, transitional article 2).

VIII. SCOPE OF LEGAL PROTECTION OF TRANSLATORS

123. From the preceding analysis it would seem that the great majority of national legislations and international conventions recognize translators' copyright, either directly or indirectly. It seems nevertheless that both in theory and in practice, the resultant protection for translators remains inadequate.

124. The main reason for this is firstly, that legal protection of translators' rights does not extend to all categories of translation, and secondly, it does not solve certain problems peculiar to translation.

1. National legislations and international conventions do not cover all categories of translation

125. (a) Generally speaking, only translations published in book form or in that of plays which we actually performed on the stage are protected by copyright. This is bound to be so in the case of legislation providing for legal deposit. Under other legislations, translators of unpublished books or unperformed plays could probably claim moral or economic rights, but with great difficulty as regards arbitration, since it is not customary to grant such rights. This applies for example to translations of scientific and technical articles published in newspapers and journals, and texts used for radio, television, the cinema, and so on. The point is that scientific and technical articles account for a large proportion of the texts translated, and with present-day developments, media such as radio, and particularly television, are assuming more and more importance everywhere.

126. (b) Unpublished or unperformed translations, especially technical translations, are often done by employees for their firm. In some rare cases, for example the French law of 1957, national legislations stipulate that the execution of a literary or artistic work as part of a service contract shall not deprive the author of protection under copyright legislation.

127. It would appear, however, that in most countries normal practice is contrary to this principle.

128. (c) Lastly, scientific and technical translations may be refused copyright protection on the grounds that copyright applies only to original, or rather, creative works. Admittedly the same problem arises in connexion with original or "first-hand" texts, but it is more acute in the case of translations, for the reasons mentioned above.

129. Some legislations deal explicitly with this question, but generally in a restrictive sense obviously referring to literary translations (e.g. the Federal Republic of Germany: Copyright Statute 1965, Article 3: "Translations ... of a work which constitutes ... intellectual creations ... shall be protected ..."). Somewhat more applicable to scientific and technical translations is the criterion adopted by Romanian legislation (e.g. Copyright Statute 1956, amended

in 1957, Article 10: "The following shall also give rise to copyright ... (b) translations ... of technical and scientific works ... if their accomplishment requires the knowledge of a specialist in the field of the original work, and if they represent an intellectual, creative work").

2. National legislations and international conventions do not solve certain problems peculiar to translation

130. Generally speaking, international conventions and national legislations recognize the translator's copyright in most cases by assimilating it directly or indirectly to the author's copyright.

131. However, a number of special problems arise in adapting copyright to translations, primarily due to the relations which inevitably grow up, for each translation, among several persons who are, in addition, usually nationals of different States: e.g. the author of the "first-hand" work, the publisher in the country or countries of the language in which it is written, the translator and the publisher of the translation. Over and above these various people concerned, there may be the added complication of a number of translators (relationship between several translations of the same first-hand work, whether successive translations or done at the same time; or retranslation of a work from another translation of it already existing).

132. (a) Only one of the special problems of translation has been dealt with by national legislations and international conventions, namely that of the right of translation; but this concerns primarily the author of the first-hand work, who has the right to make or authorize a translation of his work. As regards the restrictions imposed on the exercise of this right, they have been prescribed in the general interest, rather than in the particular interest of translators.

133. It is of course possible that the translator may one day find himself in the position of author vis-à-vis a translator.

134. Quite apart from this case, it would be to the translator's advantage to be informed by a central body of the possibility or otherwise of legally translating existing works.

135. (b) As regards the remaining problems, international conventions and national legislations have not settled certain basic issues, for example the following:

(a) The remuneration of translators of published works, which is still very often solely on a lump-sum basis

136. Where remuneration is proportionate, percentages are very inadequate.

137. One step towards the solution of this problem might be to establish an international translation centre which would provide a permanent link between authors, publishers and translators in the various countries, enabling them to become better acquainted with current conditions in their respective countries and to conclude model or collective agreements or contracts.

(b) Approval of a translation

138. Translators come up against special difficulties as regards an assessment of their work by the foreign author and/or publisher, and more frequently still, by the publisher of the translation itself (who considers that he has delegated authority to act for the foreign author and/or his publisher).

139. It seems natural that the right of translation, which belongs to the author, should confer on such author the right to approve the translation prior to its publication. In fact, this is a very complex question, which cannot be solved under existing regulations. Most of them are silent on the subject. Where, in exceptional cases, national legislations deal with it, they provide for an assessment of the translator's competence by a specially appointed panel or authority (Argentina, India, Mexico, Nepal, Pakistan); though this is only in cases where the translation is to be done under licence without the authorization of the author.

140. In other cases, recourse must be had to common law, which entails approval by the author or his beneficiaries. But the author is often quite unable to understand, let alone judge of, the language into which his work is translated. In practice, in most countries the author considers that he has ceded the right of commissioning and supervising the translation to his publisher, and that the latter has transmitted it to the publisher in the language of the translation. In any case, what is required is a literary evaluation, i.e. something both difficult and subjective. Even where there is no doubt as to the good faith of the parties, there is always an element of doubt here from which literary translators always suffer.

141. Several solutions have been proposed. It can be argued that the fact of choosing a translator means that he is considered sufficiently reliable to be master of his own text. This is incidentally the approach most in keeping with the literary nature of the work of translation as it should be ideally; but it must be recognized that even the best of translators are not perfect.

142. The International Federation of Translators (FIT) suggests as a solution the establishment of an international arbitrary system, which might well be entrusted to the international translation centre proposed under (i) above.

(c) Several translations of the same work

143. Although the original or first-hand work is a single work, it may be translated several times, either at different periods or simultaneously. The problems arising out of this situation, which are not covered either by national legislations or by international conventions, are generally solved in the countries negotiated by the author or his publisher in respect of the right of translation.

(d) Retranslations

144. There is no reference to the problem of retranslation in either national legislations or international conventions, notwithstanding the tricky questions involved, with each producer of a work being in the position of an author vis-à-vis the retranslator.

IX. CONCLUSION

145. Prior studies have made it possible to understand more clearly the situation of translations and translators, both on the legal and practical level.

146. The Committee of Experts of 1968, noting "that, to promote the circulation of publications, certain measures should be taken to improve the status of translators", enumerated in the recommendations it adopted (see Annex) solutions which it proposed for this purpose. It will certainly be desirable to study them more thoroughly during the course of future work, but it is necessary to ask at the present time whether an intervention on the international level is justified.

147. Although the replies to the survey made by the Director-General of Unesco, discussed in paragraph 4 of this document, are not very numerous, it is apparent that, in the opinion of several governments, measures should be taken on the international level to improve the status of translators whose rôle in the general development process is essential.

148. In the event that the adoption of an international instrument on this subject is envisaged, the question now arises as to the kind of international instrument - convention or recommendation - which should embody the basic principles to serve as a guide to Contracting States. In this respect, the possibilities offered by the system of rules in the form of a recommendation, a flexible method more suited than a convention to the complexity of the problems under consideration in this report, should not be overlooked. The recommendations which the General Conference of Unesco is authorized to adopt under Article IV of the Constitution are designed to influence the development of national legislations and practice by defining international policy. They nevertheless leave States entirely free to implement their provisions in the manner most suited to their particular situation. It thus seems desirable to have recourse to them in regulating questions which do not lend themselves to a standard solution for all countries.

The Intergovernmental Copyright Committee is invited to propose any measures it may deem necessary to improve the status of translators.

ANNEX

COMMITTEE OF EXPERTS ON TRANSLATORS' RIGHTS

Unesco House, Paris 23-27 September 1968

RECOMMENDATIONS

The Committee of Experts on Translators' Rights, meeting in Paris from 23 to 27 September 1968,

Noting that the spread of culture and the interplay of ideas facilitated by the international use, through translations, of publications helps to promote mutual understanding between peoples and co-operation between nations,

Considering the extremely important rôle that translation plays in regard to development generally,

Considering that the protection accorded to translators and/or translations largely influences the selection of works for translation as well as the quality of translations,

Considering that the principle and some of the terms of that protection are already established in international conventions and the national legislations of many countries through assimilation of the translator to the author from both the moral and the economic points of view,

Noting that, to promote the circulation of publications, certain measures should be taken to improve the status of translators,

Having adopted a report summarizing the results of its discussions,

Recommends that due account be taken of the principles set out below, as they may lead to positive results:

1. Equitable remuneration should in all cases be accorded to the translator and he should, as a general rule, participate in all subsequent exploitations of his translation;
2. A translator not paid a salary should be remunerated by a percentage of the economic return on the work translated, and given an advance on this percentage, this advance in any case to remain the property of the translator, whatever the final return; but the possibility remains to pay a lump sum for certain categories of publications, such as scientific or technical works, anthologies, educational publishing, etc.;
3. Contracts concluded between salaried translators and physical persons or legal entities employing them (service contracts in particular) should specify the purpose for which works translated under the terms of the contracts are intended, and make provision for a supplementary payment, should the normal use made of the work go beyond that contemplated under the contracts;

4. For purposes of contract interpretation, it should be assumed that only rights that have been expressly stipulated have been ceded by the translator.

Moreover, a translation of a work against payment, even of a lump sum, should, as a general rule and for copyright purposes, be regarded as made under a contract for commissioned work and not as a service contract; it should, however, be open to the contracting parties to provide explicitly and in writing that the copyright shall belong to the publisher or to any other person who has commissioned the translation;

5. Encouragement should be given to all measures calculated to improve the quality of translations, in particular, and in accordance with the systems adopted in the various countries, by intensifying contracts between authors and translators, and facilitating the consultation of the author by the translator in the course of translation; by promoting the creation of translators' professional bodies; by setting up private or public professional organs to verify the quality of translations and to settle any disputes arising in that connexion; by giving the name of the translator and the language from which the translation has been made; by taking all appropriate action to encourage the training of translators, etc.;
6. It should be acknowledged that it is generally the user of a translation who undertakes to obtain the necessary permission to use the work and is responsible to the translator for any consequences resulting from lack of permission;

It should be acknowledged that, even in the case of a lack of the author's permission, the translator (or his assigns) may prohibit the use of his own translation and that if he has carried out an unauthorized translation in good faith, he is not liable to any penalty, without prejudice for the original author to prohibit the use of the translation;

7. Article V, subsections 5 and 6 of the Universal Copyright Convention should be amended to assure that the name of a translator who has obtained a translation licence in accordance with Article V should appear on all printed copies of the published translation, as well as in the copyright notice, provided in Article III, in addition to the name of the original copyright proprietor;
8. The possibility should be studied of improving the economic status of translators, following national and international meetings which might be arranged between the representatives of the various interests concerned (authors, translators, users) and, with a view to encouraging such meetings, consideration should be given to the setting up of an appropriate liaison committee;
9. With a view to facilitating adequate remuneration of translators belonging to developing countries, funds should be provided within the framework of bilateral co-operation programmes for payment of the royalties of authors belonging to producing countries, in cases where translations of their works are used in developing countries, as proposed, inter alia, in Unesco's Draft Programme and Budget for 1969-1970;

10. Model translation contracts should be drawn up in the light of the principles set forth in these recommendations, it being understood that such contracts should make due allowance for all situations likely to arise by reason either of the translator's status or of the nature of the translation;
11. Professional statutes, collective agreements and contracts of employment based thereon, should mention explicitly the class of translators of scientific and technical texts, so as to take account, particularly as regards their professional classification, of their status as translators holding copyright;
12. The attention of governments, foundations, universities, international organizations and all other similar bodies concerned should be drawn to the need for ensuring the circulation of translations of works of outstanding importance for the promotion of education, science, technology and culture but likely to prove uneconomic, and accordingly guaranteeing adequate remuneration to the translator of such works;
13. Consideration should be given to means of including the translator's name in the material used for promoting and publicizing the translated work, and, particularly, his name should be included in all announcements or communications issued by the publishers or other users;
14. Wherever possible, the translation of an original work direct into another language should be encouraged, recourse being had to retranslation only where absolutely unavoidable;
15. Means should be sought of promoting the means of communication and meetings between translators with a view to improving the national and international organization of their profession, particularly in the developing countries.