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THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY: A COMMENTARY, by Sam Ricketson, Oxford University Press, 2015. 992 pp. Hardcover \$450.00

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Introduction

The appearance of Sam Ricketson's ground-breaking study of the Berne Convention for the protection of literary and artistic works (1886)¹ over three decades ago was welcomed as 'a feat of scholarship'.² The timely publication coincided with the centenary of the treaty. Both reviewers and commentators were surprised by the 'careful attention to the sources'³ and the erudite, informative and 'splendid'⁴ execution of a work that was rapidly praised as 'seminal'.⁵ Ricketson's writings on Berne and other related topics made him one of the leading scholars of the discipline that has become to be known as 'intellectual property'.⁶ In what was being increasingly recognised as a fully-fledged autonomous academic subject,⁷ the book constituted a magnificent bibliographic achievement, an exemplary work. Described by Cornish as a 'work of very considerable scholarship';⁸ Ricketson's work influenced and continues to influence those who write about the history of copyright, to the extent that his commentary of the Berne Convention was surely one of those books that shaped their becoming as academics.⁹ Every page of this monumental and fascinating book contained a number interesting twists. Certainly, it was one of those universal books destined to become a key point of reference in a particular field, an indispensable volume that could impress any reader. Three decades later, Ricketson has developed the same detailed and ambitious analysis but has turned attention to a different subject, another major convention for intellectual property: The Paris Convention for the Protection of Industrial Property (1883). Although any appraisal is arguably affected by how overwhelming the volume might be for the contemporary reader, there can be no doubt that this endeavour represents an enormous step forward in intellectual property scholarship. This breakthrough of sorts possesses incalculable

value for future generations of scholars. This is already a singular and astonishing achievement as publications in the field, often focused on the immediate legal and doctrinal developments, have tended to convey solely ‘news’ or expectations of future legislative horizons.¹⁰

Taking into account that the Paris Convention is ubiquitously and routinely cited as a foundational text,¹¹ it is surprising to note that few books on its history had been published in English before Ricketson’s commentary.¹² As it turns out, there were just two or three publications covering the Convention in detail: a volume published to coincide with the centenary,¹³ an authoritative exegesis written by Georg Bodenhausen¹⁴ and two remarkable accounts given by Stephen Ladas.¹⁵ Nevertheless, a brief glance at current intellectual property scholarship shows how the mention of Paris frequently appears in references to the Berne Convention (1886) and in the wider context of the so-called ‘internationalisation’ of intellectual property. This is appropriate since, according to historians such as Adrian Johns, Paris and Berne ‘would set in train the international harmonization of intellectual property’.¹⁶ Rather than internationalisation, it might more accurately describe this shift as ‘positivisation’ of international intellectual property. As those levels were being defined (and redefined) by their histories, Ricketson’s nuanced gloss provides different lenses through which to view the shifting character of the Convention. It is not just that chronological links or similar professional and institutional networks were built around them, but that Paris and Berne conventions share a number of properties and were routinely described as historical pillars of the international intellectual property edifice.¹⁷ Ricketson is more cautious in his approach and is keen to emphasise the differences and gaps between Berne and Paris (p. 279; 787). However, if there was ever an obvious candidate to explore the historical intricacies of the Paris Convention, it is Ricketson, whose skilful sense of craftsmanship and focused disciplinary ethos permeate his whole writing. He is systematic not only in his treatment and arrangement of the topic, but also in his reflections on his previous work, either personal or professional. His style of answering questions and developing perspectives shows a particular and interesting tendency to break down any topic and organise it into different ‘levels’ (at xlix; lxi). This distinctive care and passion for the object of scrutiny is a salient characteristic that arguably made him the most suitable writer to take on what was previously perceived to be an impossible task. While the Berne Convention arguably lent itself to a systematic and clear analysis, the Paris Convention presented many obstacles that hampered its presentation as a ‘coherent and logical system, complete in itself’ (p. 119). Many factors contributed to this perception, such as the proliferation of associated and special agreements that extended or refined what Ricketson interestingly defines as the Paris ‘system’ (p. li). Moreover, the lack of minimum standards contributed to the difficulty of weaving a historical narrative after the Convention. Despite (or precisely

because) the division of intellectual property into different domains was reinforced by the passage of the conventions,¹⁸ historians found it easier to write a history of international copyright after Berne than a history of a convention such as Paris that grouped patents, designs and trademarks together.¹⁹

It is evident that the Paris Convention left puzzling interpretative questions not only about the different ways of conceptualising its respective subject matter but also about its institutional underpinnings.²⁰ Such a history was clearly affected by a period of 'stagnation and crisis' in the 1960s.²¹ Retrospectively, it is possible that the universality approach in Paris suffered much more than the one emerging from Berne.²² While the Berlin Revision Conference of the Berne Convention abolished copyright formalities,²³ the Paris Convention continued to be hampered by formalities. This remarkable difference not only reinforced the territorial nature of rights but also, and more significantly, made the task of writing about them more difficult. Ricketson's way of writing certainly helps to overcome some of these obstacles, elevating Paris to a paradigmatic case for the study of the development of industrial property in the twentieth-century. Certainly there are other ingredients that facilitated the book's systematic approach, for instance, the numbering of paragraphs, the appearance of diagrams (p. 120) and the way that Ricketson builds on previous attempts to narrate the history of the Convention.²⁴ However, the book's fluidity is provided by Ricketson's sensitive approach to the Convention at different levels: overreaching issues (pp. 121-360); organizing principles (pp. 328-360) and subject matter protected (pp. 361-751).

1. Time & Change

It is, therefore, the multi-layered approach that best defines Ricketson's book. Divided into five parts, the commentary presents a conceptual account of the history of the Paris Convention. The first section, potentially the most controversial of the book, is devoted to the Convention's origins. Although an obvious start point for the historical narrative might be a disentangling of the 'origins' of the Convention from the 'mess' of previous bilateral agreements, the question arises as to whether or not such evolutionary story that charts the path from national industrial property laws to international agreements was actually a history of origins and inevitable paths already mediated by the desire to enrol new members to the Union that the Convention established.²⁵ In this sense, it is not a coincidence that the context of justification is almost simultaneously raised and linked to the author's historical chronicling (pp. 6-24). When the book begins to narrate the antecedents to the Convention (pp. 25-61), one wonders whether such an absolute, ingenious and narrative synthesis is able to capture the imprecise and contingent ways in which the making of international conventions and its revisions actually materialised. In fact, institutional pressures,

material infrastructures and interpersonal dynamics affected not only the arrangement of the treaty, but, more importantly, the way that its history was written.²⁶ In other words, the collective emerging through the publishing endeavours of the Union created at Paris heavily invested in knowledge practices such as statistics and history in order to legitimise its own existence.²⁷ The distinct ways in which these practices impinged upon and constituted the narration of a particular history of international intellectual property merits research. Rather than considering the Convention *per se* as a major problematic civilising gesture,²⁸ the relationship between the text of the convention and its annotation is perhaps the major political issue inextricably connected to its history.²⁹ Indeed, one of the main aims of these publications was to generate political trust and transparency in relation to the inner workings of the Union.³⁰ In other words, the Convention was being largely sustained by these knowledge practices. This is particularly remarkable because many diplomatic acts connected to the Convention and its revision conferences depended on secrecy.³¹

The Paris Convention was initially signed in 1883 by eleven countries: Belgium, Brazil, France, Guatemala, Italy, the Netherlands, Portugal, El Salvador, Serbia, Spain and Switzerland.³² However, it might be more interesting to turn attention to those who declined forming part of the initial fraternal circle or those who severed their links with the Convention.³³ Such a detour enables us to avoid the epic celebratory statements on the birth of the Convention that characterised previous accounts and illustrates how particular countries had specific concerns regarding its effects. While this is not the place to map all of their diplomatic moves and responses, it would be interesting to briefly illustrate the multiplicity of histories that sprung from the prospect and the signing of a multilateral treaty.³⁴ For obvious reasons, connected to the cosmopolitan aspirations embedded in the Convention, their effect in colonial and postcolonial settings was notable.³⁵ In November 1883, Chilean representatives considered that signing was not the right action to take at that point.³⁶ Rather surprisingly, the source of contestation was not the fact that Chile was failing to protect 'foreign' industrial property, but just the opposite: that domestic Chilean laws were more generous to foreigners than the consequences of adhering to the principle of 'national treatment' that was established in Paris.³⁷ Similarly, Argentina found that although there could be benefits in joining the Convention, the 'priority' right established at Paris preventing the country from signing.³⁸ Other South American countries such as Uruguay waited to see who else would join, before deciding. Rather interestingly, Uruguay's predictions were not completely accurate since countries they thought would sign, like Colombia, did not end up entering the multilateral treaty in 1883.³⁹ Here it is worth noting that the history of the Paris Convention is also the history of alternative attempts to develop a system of industrial property such as the Pan-American Conventions, since some of these emerged in

response to Paris.⁴⁰ Understanding and unpacking the challenges posed by the relationships of these different regimes is a task left to future historians.

Another notable example of the international relations deployed is illustrated by attempts to sign the Convention by countries that had not participated in the Conferences. For instance, Serbia requested accession to the Revision Conference that took place in Madrid without having attended the original event, something that caused considerable *furor* in the Spanish headquarters.⁴¹ As it is well known, Great Britain joined the Paris Convention when it came into force in July 1884.⁴² Interestingly, one of the issues for the British Board of Trade was its increasing concern with German trade, thus it invested a considerable amount of diplomatic effort to persuade Germany to enter the Convention.⁴³ In exploring these examples, Ricketson's book provides a framework to study the complex network of relationships shaped by the establishment of the Paris Convention. As was the case with Ricketson's book on the Berne Convention, it is only a matter of time before this historical turn is taken up by future scholars interested in investigating the emergence of national histories connected to this major international event.⁴⁴

2. Paris and its Progeny

The multiple iterations of the Paris Convention meant that tracing its trajectory is a difficult task. The Convention was subsequently revised in Madrid just three years later in 1886 (pp. 66-72);⁴⁵ Rome in 1890 (pp. 72-74); Brussels in 1897 and 1900 (pp. 75-77), Washington in 1911 (78-80); The Hague in 1925 (80-82); London in 1934 (pp. 83-85); Lisbon in 1958 (pp. 86-92) and Stockholm in 1967 (93-96).⁴⁶ When one looks at the number of revisions affecting the text initially agreed on in 1883 and compares them to the revisions of the Berne Convention, which are more limited and constrained, one can see how the convention agreed to at Paris had become more and more complex, less manageable and uneven (p. 61). In exploring the work of the revision conferences, Ricketson patiently traces changes of mood, different international approaches to important issues such as the mechanics of accession, uniform classifications (p. 71) and remarkable professional events such as the formation of the International Association for the Protection of Industrial Property (AIPPI; pp. 75-76).⁴⁷ Although this constant process of revision is already an interesting historical process, the changes identified by Ricketson also reveal that some of the controversies related to the development of industrial property throughout the twentieth-century had already been identified in these conferences. As such, what made the Paris Convention even more interesting was not just the Convention itself, but its revisions and, more importantly, the series of agreements resulting from it.⁴⁸ In order to survey this trajectory of texts and cross-references, Ricketson uses an interesting metaphor that refers to this series: 'Paris and its

progeny' (p. 119). As he aptly describes, the Convention remained a 'work in progress' (pp. 65-96), an incomplete project, or to a certain extent, a 'caravan' (p. 106). Although the last revision – Ricketson notes- might be a sad story, 'a tale of blunted aspirations on the parts of different – and now entrenched –regional groupings (p. 105), the fruits of the Paris system can be seen in its interaction with and influence on some of the agreements that proliferated from it (pp. 106-120). One of them was the 'Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods' in 1891 (p. 530). While the treaty failed to achieve the support of significant trading nations such as Germany, Italy and United States,⁴⁹ it was nevertheless remarkable in elucidating and anticipating problems arising from the interpretation of Article 10 of the Paris Convention.⁵⁰ Unlike the Paris Convention, a treaty covering a range of different categories of industrial property, the Madrid Agreement precipitated specific questions underpinning the tension between the protection of manufacturers and the protection of consumers.⁵¹ Over time, some difficulties raised in the late nineteenth-century were domesticated in the twentieth century. The reform of the Madrid Agreement in the Madrid Protocol (1989) is an example of successful international law reform (p. 109). In a parallel but connected development, Ricketson follows the fragmentation of international industrial property by looking at procedural and substantial treaties that emerged after Paris (pp. 109-113) and elucidates their links to the main Convention (p. 120). While some of the associated agreements can be explained by reference to a specific momentum, their culmination might be better described as an example of patient perseverance. In fact, the ongoing and repeated process of revision undoubtedly contributed and encouraged many countries to become members of the Union.

The third part of Ricketson's commentary moves from history to theory of international law (pp. 123-165). It does so in order to discuss the structure of the Convention and its interpretation. Ironically the chapter begins with a paragraph from Lewis Carroll and juxtaposes it with a quote from the International Law Commission, commenting on its proposed principles of interpretation of the Vienna Convention (p. 123). It is not a surprise that, after highlighting the proliferation of treaties that emerged after Paris, the book turns to questions of public international law. Above all, the methodological shift serves to give coherence to the Paris Convention. Here Ricketson explains the difference between Paris and Berne *and* previous conventions dealing with posts and telecommunications (p. 125). He notes how Paris and Berne 'both depend essentially upon implementation by each contracting state for the fulfilment of their purposes' (p. 125). In fact, some of the founding members such as Spain were intensely criticised for not having implemented the Convention almost a decade after its ratification.⁵² Ricketson surveys techniques employed in treaty interpretation (pp. 139-165) in addition to tackling the preliminary question of the official language of the Convention; how it was challenged, and how languages in

associated agreements were treated differently (p. 137). In doing so, the book momentarily and eloquently grasps the changes in the underlying linguistic history of the Convention (p. 132-133). Bureaucratically structured, the specific form of organisation constituted in the wake of the Paris Convention ('a Union for the protection of industrial property') is also fully analysed in the book (pp. 166-327). Ricketson points to new theoretical directions when he compares the functions of the Paris Bureau with the Bureau of International Telegraph Union (p. 169-180). Again, analysis of the legal personality and the 'new kind of international entity [that] had come into existence' (p. 168) enables the reader to appreciate the distinctiveness and limitations of the Convention as well as enhancing the coherent narrative undertaken in the book. In a rather skilful gesture, Ricketson traces the different meanings attributed to the notion of 'union' in order to show how some accounts have tended to gloss over the issue rather 'quickly' (p. 173). Although today's discussion might be increasingly irrelevant, it does reveal a historical sensibility that moves between the past and the present smoothly, trying to emphasise the rise of distinct interpretations in their original contexts. Interestingly, Ricketson also covers the phrase 'contracting countries' and does not allow the semantics to obscure the historical settings in which the meaning of the term had to be reassessed, mainly after World War II (p. 179).

3. Industrial Property

The explicit reference to the term 'industrial property' in its title is another notable feature of the Paris Convention. While the term was not defined under the Paris Convention until the adoption of Article 1, first paragraph of the Hague Act 1925 (p. 184-185; p. 477), the expression acquired a particularly broad meaning.⁵³ Yet, it would be fascinating to consider the fate of the term in the twentieth-century.⁵⁴ Whereas some countries enacted laws giving a unified legislative framework to the term,⁵⁵ others continued to legislate patents, trademarks and designs separately.⁵⁶ Somewhat paradoxically, the Paris system found a variety of semantic resources to accommodate different meanings of its inner workings, but did not ultimately succeed in making the notion of 'industrial property' completely viable as an international legal category.⁵⁷ The failure of the term came precisely in its shift from a mere positivistic reference to an epistemic structure. For many different reasons, the notion lost its power to mobilise contemporary scholars and legislators and succumbed to the term of 'intellectual property'. A myriad of factors contributed to its demise, but surely the notion of industry was already too vague and too elusive a term, particularly in relation to a subject matter that was left primarily undefined or even outlined in Paris (p. 758). Although it makes sense to talk about industrialized nations, as Ricketson does, one interesting avenue for research would be to explore how the contours of the term 'industry' shifted in the twentieth century. It is

important not to neglect the international attempts to regulate and define ‘scientific property’ that emerged after Paris from the history of ‘industrial property’⁵⁸ In fact, the shift from the factory to the laboratory might be vital to understanding the ways in which the project of defining ‘industrial property’ also left many disparate areas such as enforcement and exploitation unresolved (p. 759). The point here is that patent or trademark laws were underpinned by tensions that were generated by different understandings of the term ‘industry’ and the way in which the two poles of distribution and production developed in unpredictable and contentious ways during the twentieth-century. Curiously, a considerable number of emerging practices triggered by failures and deficiencies of the Paris system were characterised by a tendency towards ‘verbification’ of intellectual property (e.g. merchandising, licensing, valuing, watching and searching). These activities operated at the level of an incipient legal practice where diplomatic consensus had supposedly failed. Attempts to trace some of their histories might reveal unexpected surprises, allegiances and exchanges, like those forged by some of the commentators of the Convention. One of these was Stephen P. Ladas who developed legal practices and services that tried to overcome theoretical failures ‘in house’.⁵⁹

The last two parts of Ricketson’s book are also remarkable. Part IV of the book is devoted to the specific subject matter protected by the Paris system. Again, Ricketson’s analysis skilfully pivots between the Paris Act 1883 and other conferences and revisions (p. 371-373). It charts histories of uneasy compromises (p. 393); governing principles (p. 380-381) and links several current articles to their moment of introduction (p. 390) or even earlier (p. 416). The subject matter approach provides a microcosm of ways in which national treatment and the right of priority operated in respect to each category. It also shows that, whilst the Convention might not offer clear solutions to some contemporary questions, it could be used as a starting point to think about them (p. 551). Part V closes the book by situating the Paris Convention in the wider context of debates generated after the Trade Related Aspects of Intellectual Property (TRIPS) Agreement. Ricketson uses what he considers a ‘rather crude analogy’ (p. 759) as a vehicle to describe the role of the Convention today. He suggests that the position of the Paris Convention is ‘rather like that of the elderly family relative who is always present at family functions, but who is hard to place among the guests because his or her conversation is seen to be somewhat tedious and repetitive, even outdated. Nonetheless, all family members know in a general sense that he or she has had an important role to play in family affairs in the past, and this is, of course, the very reason for his or her inclusion in present family functions’ (p. 759). More than background, the ‘family’ metaphor is at once conclusive (p. 792) and problematic because, as we all know, relatives are always a surprise.

ENDNOTES

¹ Sam Ricketson, *THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS: 1886-1986* (London: Centre for Commercial Law Studies, Queen Mary College, 1987)

² Peter Groves 'Book Review' *I.C.L.Q.* 1988, 37(4), 1033-1034; see also Jeremy Phillips 'The Berne Convention and the Public Interest' [1987] 4 *E.I.P.R.* 108.

³ W. R. Cornish 'Foreword' in Sam Ricketson and Jane Ginsburg, *INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS: THE BERNE CONVENTION AND BEYOND*, vol 1 (Oxford: Oxford University Press 2006) at v.

⁴ J.A.L. Sterling 'Book Review' *E.I.P.R.* 1988, 10(7), 223-224

⁵ S. M. Stewart, *INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS*, Volume 1 (London: Butterworths, 1999), p. 149

⁶ See, for instance, Sam Ricketson 'The Birth of the Berne Union', 11 *Columbia VLA Journal of Law and Arts* (1986) 9; Sam Ricketson, *THE LAW OF INTELLECTUAL PROPERTY* (Law Book, Sydney, 1984).

⁷ The process of researching and writing the book coincided with the development of Intellectual Property as a university discipline in Britain, and in particular with the rise of the Centre for Commercial Law Studies at Queen Mary as the centre for study of intellectual property. For a history, see Malcolm Langley, 'The Weston Papers: intellectual property law and the origins of the Centre for Commercial Law Studies at Queen Mary, University of London' (2011) *Queen Mary Journal of Intellectual Property*, vol. 1 (1) pp. 2-20.

⁸ W.R. Cornish 'Foreword' in Sam Ricketson and Jane Ginsburg, *INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS: THE BERNE CONVENTION AND BEYOND* vol 1 (Oxford: Oxford University Press 2006) at v.

⁹ Only a handful of books published in the last three decades might have achieved a similar effect of changing the way scholars looked at the past. A bibliography of these key texts would include Brad Sherman and Lionel Bently's *THE MAKING OF INTELLECTUAL PROPERTY* (Cambridge: Cambridge University Press, 1999), Mark Rose's *AUTHORS AND OWNERS: THE INVENTION OF COPYRIGHT* (Harvard University Press, 1995), and Mario Biagioli, Peter Jaszi and Martha Woodmansee (eds) *MAKING AND UNMAKING INTELLECTUAL PROPERTY* (University of Chicago Press, 2011).

¹⁰ This is particularly the case of the burgeoning literature on the impact of EU jurisprudence in the UK intellectual property landscape. As Kretschmer, Bently and Deazley noted a few years ago '[I]awyers for most of the twentieth century were functionalists, oriented towards the future'; see Martin Kretschmer, Lionel Bently and Ronan Deazley 'The History of the History of Copyright: Notes from an Emerging Discipline' in Martin Kretschmer, Lionel Bently and Ronan Deazley (eds)

PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT LAW (Open Book Publishing: Cambridge, 2010) p. 2. Some contemporary scholars are still functionalists.

¹¹Justine Pila 'Intellectual Property as a Case Study in Europeanization: Methodological Themes and Context' in Ansgar Ohly and Justine Pila (eds) *THE EUROPEANIZATION OF INTELLECTUAL PROPERTY LAW: TOWARDS A EUROPEAN LEGAL METHODOLOGY* (Oxford: Oxford University Press, 2013) p. 7; Lionel Bently and Brad Sherman, *INTELLECTUAL PROPERTY LAW* (Oxford: Oxford University Press, 2014) p. 378; Tanya Aplin and Jennifer Davis, *INTELLECTUAL PROPERTY LAW: TEXT, CASES AND MATERIALS* (Oxford: Oxford University Press, 2013) p. 546; Sebastian Haunss, *CONFLICTS IN THE KNOWLEDGE SOCIETY: THE CONTENTIOUS POLITICS OF INTELLECTUAL PROPERTY* (Cambridge: Cambridge University Press, 2015) p. 25; Michael Spence, *INTELLECTUAL PROPERTY* (Oxford: Clarendon Series, Oxford University Press, 2007) p. 4.

¹²There were however a number of commentaries in other languages such as Spanish and French: Luis Mariano de Larra, *LA UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LA PROPIEDAD INDUSTRIAL* (Madrid: 1887); Teodoro Merly de Iturralde, *LA UNIÓN INTERNACIONAL: ANÁLISIS DE LA MISMA* (Madrid: 1890); M. J. Bozérián, *LA CONVENTION INTERNATIONALE DU 20 MARS 1883 POUR LA PROTECTION DE LA PROPRIÉTÉ INDUSTRIELLE* (Paris: Pariset, 1885); Michel Pelletier, Edmond Vidal-Naquet. *LA CONVENTION D'UNION POUR LA PROTECTION DE LA PROPRIETE INDUSTRIELLE DU 20 MARS 1883 ET LES ET LES CONFERENCES DE REVISION POSTERIEURES* (Paris: Pichot, 1902) ; Yves Plasseraud and F Savignon, *PARIS 1883: GENESE DU DROIT UNIONISTE DES BREVETS* (Paris : Litec 1983).

¹³ *THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY FROM 1883 TO 1983* (Geneva: WIPO 1983).

¹⁴ G. H. C. Bodenhausen, *GUIDE TO THE APPLICATION OF THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, AS REVISED AT STOCKHOLM IN 1967* (Geneva: WIPO, 1969)

¹⁵ Stephen Pericles Ladas, *THE INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY* (Cambridge: Harvard University Press, 1930); Stephen Pericles Ladas, *PATENTS, TRADEMARKS, AND RELATED RIGHTS: NATIONAL AND INTERNATIONAL PROTECTION* (Boston: Harvard University Press, 1975)

¹⁶ Adrian Johns, *PIRACY: THE INTELLECTUAL PROPERTY WARS FROM GUTENBERG TO GATES* (University of Chicago Press, 2009) p. 284; Adrian Johns 'The Property Police' in M. Biagioli, P. Jaszi and M. Woodmansee (eds) *Making and Unmaking of Intellectual Property* (Chicago: University of Chicago Press, 2011) p. 206; see also Michael Blakeney 'International Intellectual Property Jurisprudence' in David Vaver and Lionel Bently (eds) *INTELLECTUAL PROPERTY IN THE NEW MILLENNIUM* (Cambridge: Cambridge University Press, 2004) 3-19; at 5 and Calestous Juma *THE GENE HUNTERS: BIOTECHNOLOGY AND THE SCRAMBLE FOR SEEDS* (Princeton: Princeton University Press, 2014) p. 146;

¹⁷ Graham Dutfield and Uma Suthersanen, *GLOBAL INTELLECTUAL PROPERTY LAW* (Edward Elgar, 2008) 23; see also Manuel Becerra, *La PROPIEDAD INTELLECTUAL EN TRANSFORMACIÓN* (México: Porrúa, 2009) p. 12;

¹⁸ Brad Sherman and Lionel Bently, *THE MAKING OF INTELLECTUAL PROPERTY* (Cambridge: Cambridge University Press, 1999) p. 162.

¹⁹ Catherine Seville, *THE INTERNATIONALISATION OF COPYRIGHT LAW: BOOKS, BUCCANEERS AND THE BLACK FLAG IN THE NINETEENTH CENTURY* (Cambridge: Cambridge University Press, 2006).

²⁰ Margaret Llewelyn, Mike Adcock, *EUROPEAN PLANT INTELLECTUAL PROPERTY* (Oxford: Hart, 2006) p. 4.

²¹ Friedrich-Karl Beier 'One Hundred Years of International cooperation – the Role of the Paris convention in the Past, Present and Future' *IIC*, vol. 15. No. 1/1984, pp. 1-20; 14-16; see also W.R. Cornish, *INTELLECTUAL PROPERTY. OMNIPRESENT, DISTRACTING, IRRELEVANT?* (Oxford: Oxford University Press 2004) p. 3.

²² After referring and problematising 'universality as ideal objectivity', Jacques Derrida highlighted the 'complexity, the intricacy of its casuistry as well of its philosophical presuppositions' of the Paris Convention. See Jacques Derrida, *PSYCHE: INVENTIONS OF THE OTHER, VOLUME 1* (Stanford: Stanford University Press 2007) 36-37.

²³ Stef van Gompel, *FORMALITIES IN COPYRIGHT LAW: AN ANALYSIS OF THEIR HISTORY, RATIONALES AND POSSIBLE FUTURE* (Kluwer Law, 2011) pp. 146-149.

²⁴ See, for instance, how Ricketson's approach follows that of Ladas' INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY cited above.

²⁵ For instance, Spain, one of the original members, found herself with the need to pass a law to cover industrial designs after signing the Convention, see *Industria e Invenciones*, 23 October 1886, p. 189; 'La Propiedad Industrial' *El Pais*, 11 July 1888, p. 2. Similarly, criticism was raised that some signatory members such as Serbia or the Netherlands did not have patent laws when they signed the treaty; see 'La Unión Internacional para la protección de la propiedad industrial' *El Liberal*, 21 March 1890, pp. 1-2.

²⁶ In fact, Ricketson acknowledges how the first years of the Convention shows a new Union that was institutionally 'quite unstable'; Ricketson, THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY: A COMMENTARY (Oxford: Oxford University Press, 2015) p. 69.

²⁷ See, for example, 'Statistique' *La Propriété Industrielle*, 31 January 1912, p. 10. This desire of making the territorial reach or lists of membership public is noted by Ricketson, THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY: A COMMENTARY (Oxford: Oxford University Press, 2015) p. 273; 287.

²⁸ Ruth L. Okediji, "The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System" SINGAPORE JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW (2003) pp. 315-341

²⁹ See, in the context of the Berne Convention, J. Bellido "The Editorial Quest for International Copyright - 1886-1896" BOOK HISTORY, 2014, pp. 380-405

³⁰ For instance, see 'La Conferencia de Roma' *Industria e Invenciones*, 3 April 1886, p. p. 153 [deriving the information from *Propriété Industrielle*, the official journal published by the Union]; the appointment of 'technical' representatives was another crucial ingredient from which to infer the prospective attitude of countries towards the Union – Note from the Spanish Ambassador in Italy, 7 April 1891; Negociados, S. XIX, Exp. 001 (C403-01); Archive of the Ministry of Foreign Affairs, Spain; see also Herbert Hughes' appointment and the way it was reported in *The Times*, 20 April 1886, p. 9.

³¹ Telegrams from Brussels to Madrid (Minister of State) stating that 8 March 1891; Negociados, S. XIX, Exp. 001 (C403-01); Archive of the Ministry of Foreign Affairs, Spain. For an account criticising the secrecy of the negotiations, see 'Conferencia Internacional para la Propiedad Industrial' *El Pais*, 7 April 1890, p. 1.

³² 'The Conference on Industrial Property' *The Times*, 19 March 1883; p. 6; see also 'The Patents Convention' *The Times*, 2 August 1883; p. 5; see 'Convenio para la Propiedad Industrial' *La Iberia*, 10 July 1884, pp. 1-2; some criticisms of the amount

contributed by Spain to the formation of the ‘Union’ appeared in the Spanish newspapers, see, for instance, ‘La protección de la propiedad industrial’ *El Imparcial*, 20 July 1884, p. 1; ‘Protección a la propiedad industrial’ *La Época*, 22 July 1884, p. 1.

³³ Ecuador, Guatemala and El Salvador withdrew in 1886, 1887 and 1895. An explanation of why El Salvador withdrew from Berne and Paris might be found in J. Bellido ‘El Salvador and the Internationalisation of Copyright’ in Isabella Alexander and H. Tomás Gómez-Arostegui (eds) *RESEARCH HANDBOOK ON THE HISTORY OF COPYRIGHT LAW* (London: Edward Elgar, 2016) pp. 313-331. One of the notable absences was Germany and the absence is thoroughly discussed in ‘Alemania y el Convenio Internacional’ *Industria e Invenciones*, 12 September 1885, pp. 109-110.

³⁴ It would be interesting to follow the effect of the convention on what Bently has described as the ‘extraordinary multiplicity of Intellectual Property in British Colonies’; see Lionel Bently ‘The “Extraordinary Multiplicity” of Intellectual Property Laws in the British Colonies in the Nineteenth Century’ (2010) 12 *Theoretical Inquiries in Law* 160-200. In fact, a few years after the British accession, there were still doubts as to whether or to what extent colonies have entered the treaty as well. See dispatch from Edward Wingfield to the Foreign Office, 25 July 1889 saying that ‘no colonial government has signified its desire to accede to the International Convention for the Protection of Industrial Property and that Queensland is the only Colony whose Laws comply with article IV of that Convention’; FO 83/1078; National Archives, UK.

³⁵ For instance, immediately after the Paris Convention, Spain enacted a trade mark law that specifically applied to Cuba, the Philippines and Porto Rico, see ‘Marcas y Dibujos Industriales en Ultramar’ *Industria e Invenciones*, 6 September 1884, pp. 88-89; Francisco Lastres, “La Propiedad Industrial y las Marcas de Fábrica” *Revista contemporánea*, 4/1886, no. 62, pp. 361-382; at 367-368; Juan B. Sánchez Pérez, *LA PROPIEDAD INDUSTRIAL EN ESPAÑA* (Madrid: Reus, 1945) p. 103 and Francisco Garcia Garofalo y Morales, *LA PROPIEDAD INTELECTUAL E INDUSTRIAL* (Habana: La Propaganda Literaria, 1890).

³⁶ Montt to the President of Chile, Domingo Santa Maria, 2 November 1883 (explaining the reasons for Chile not to join the Paris Convention); vol. 265; Archive of the Ministry of Foreign Affairs, Chile.

³⁷ This was significant because ‘national treatment’ is still considered today as ‘the core structural principle’ of the Paris Convention; see Susy Frankel, *Test Tubes for Global Intellectual Property Issues: Small Market Economies* (Cambridge: Cambridge University Press 2015) p. 25.

³⁸ Note to the Argentine Minister of Foreign Affairs, 14 December 1882, Serie Tratados y Conferencias; C; Caja AH; Archive of the Ministry of Foreign Affairs, Argentina.

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- ³⁹ Memo from Oscar Hordeñana to Manuel Herrera y Obes, Minister of Foreign Affairs from Uruguay, 20 December 1882; Legacion de Francia, Carpeta 311; National Archives, Uruguay.
- ⁴⁰ Stephen P. Ladas, *THE INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY* (Cambridge: Harvard University Press, 1930) pp. 756-843.
- ⁴¹ Negociados, S. XIX, Exp. 001 (C403-01); Archive of the Ministry of Foreign Affairs, Spain.
- ⁴² ‘The International Patent Convention: House Of Commons’ *The Times*, 24 June 1884, p. 7; ‘Patents In 1887’ *The Times*, 3 January 1888; p. 4 (reporting the US accession).
- ⁴³ 17 March 1886; see also David Asher, ‘Registration of Trade marks in Germany’ *The Times*, 27 January 1885, p. 7; Edmund Johnson, ‘Trade Marks in Germany’ *The Times*, 5 January 1887; pg. 7;
- ⁴⁴ Lionel Bently and Brad Sherman, (2001). Great Britain and the Signing of the Berne Convention in 1886” *JOURNAL OF THE COPYRIGHT SOCIETY OF THE USA*, 48(3), 311–340; J. Bellido ‘España en el Convenio de Berna: Vacilaciones políticas y ambigüedades jurídicas (1883-1899)’ in Ortega Domenech, J. ed. *CUESTIONES ACTUALES DE LA PROPIEDAD INTELECTUAL*. Madrid: Editorial Reus, 2011.
- ⁴⁵ ‘Industrial Property’ *The Times*, 10 July 1889, p. 5.
- ⁴⁶ See also Gabriel Galvez-Behar. The 1883 convention and the impossible unification of industrial property. *International Diversity in Patent Cultures - a historical perspective*, May 2014, Leeds, Royaume-Uni.
- ⁴⁷ See ‘Historique de l'Association’ *ANNUAIRE AIPPI*, 1897 (Berlin: Verlag, 1898) pp. 20-21.
- ⁴⁸ For instance, the Locarno Agreement in 1968, see Ricketson, *THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY: A COMMENTARY* (Oxford: Oxford University Press, 2015) pp. 502-503.
- ⁴⁹ Letter from the Spanish Minister in The Hague to the Minister of State, 17 March 1892, Negociados, S. XIX, Exp. 001 (C403-01); Archive of the Ministry of Foreign Affairs, Spain.
- ⁵⁰ Dev Gangjee, *Relocating THE LAW OF GEOGRAPHICAL INDICATIONS* (Cambridge: Cambridge University Press, 2012) pp. 49-50.
- ⁵¹ ‘La Conferencia de Madrid’ *El Imparcial*, 2 April 1890, p. 1; ‘Conferencia Industrial Internacional’ *La Dinastía*, 5 April 1890, p.1;

⁵² Teodoro Merly de Iturralde ‘La Unión internacional para la protección de la propiedad industrial’ *El Liberal*, 6 April 1890, p. 2

⁵³ Protocole de clôture annexe à la Convention d'Union de Paris du 20 mars 1883 pour la Protection de la Propriété Industrielle (ad Article Premier).

⁵⁴ See, for instance, T. A. Blanco White, *INDUSTRIAL PROPERTY AND COPYRIGHT* (London: Stevens & Sons, 1962); Bruce Cawthra, *INDUSTRIAL PROPERTY RIGHTS IN THE EEC: PATENTS, TRADEMARKS AND COPYRIGHT* (Epping: Gower Press, 1973); Michael Lehmann, ‘The Theory of Property Rights and the Protection of Intellectual and Industrial Property’ (1985) 16 *International Review of Industrial Property and Copyright Law* 525

⁵⁵ See, for instance, Real Decreto-Ley reformando la de *Propiedad Industrial* de 16 de mayo de 1902 and *Estatuto de la Propiedad Industrial* aprobado por Real Decreto Ley de 26 de julio de 1929; see also generally J. Patricio Sáiz González, *Legislación histórica sobre propiedad industrial: España (1759-1929)* (Madrid: Oficina Española Patentes y Marcas, 1996).

⁵⁶ Blanco White divided his book into three parts, ‘broadly along the lines drawn by the Acts of Parliament dealing with these branches of the law’ in T.A. Blanco White, Robin Jacob and Jeremy D. Davies, *PATENTS, TRADE MARKS, COPYRIGHT AND INDUSTRIAL DESIGNS* (London: Sweet & Maxwell, 1978) p. 2.

⁵⁷ Cornish noted that ‘there is no single generic term that satisfactorily covers them all [rights]. Industrial property is not uncommonly used in the common law world, but many would hold this to exclude copyright, particularly if they want to emphasise the special importance and vulnerability of the creative artist’ in W.R. Cornish, *INTELLECTUAL PROPERTY: PATENTS, COPYRIGHT, TRADE MARKS AND ALLIED RIGHTS* (London: Sweet & Maxwell 1981) p. 3.

⁵⁸ Stephen P. Ladas, *THE INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY* (Cambridge: Harvard University Press, 1930) pp. 844-872.

⁵⁹ 100 Years (1912-2012) Ladas & Parry: *Intellectual Property Law for the Next Century* (2012) p. 5; see also Bellido ‘Toward a history of trade mark watching’ *Intellectual Property Quarterly*, 2015 (2). pp. 130-152

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