

of literary or artistic works, confers no right of authorship, and may therefore be freely made in all the signatory countries.

Art. 12. All unauthorized indirect appropriations of a literary or artistic work, which does not present the character of an original work, shall be considered as an unlawful reproduction.

There shall also be considered as illegal the reproduction, in whatever form it may be, of a complete work or of the greater part thereof, accompanied with notes or comments, under pretext of a literary criticism, amendments or additions to the original work.

Art. 13. All fraudulent works may be confiscated in the signatory countries in which the original work may have the right of legal protection, without prejudice to the indemnities or punishments, to which the falsifiers may be liable according to the laws of the country, in which the fraud has been committed.

Art. 14. Each one of the Governments of the signatory countries reserves to itself the right to allow, watch over, and prohibit the circulation, representation and exposition of any work or production, in regard to which it may appear necessary to the authorities to exercise such right.

Art. 15. The present Convention does not alter in any manner the separate agreements, into which some of the High Contracting Parties have already entered.

Art. 16. The present Convention shall commence to take effect three months after the date on which its acceptance has been notified to the Mexican Government by at least four of the signatory Powers, and shall remain in force until the expiration of one year, counted from the date on which notice of its abrogation has been given, during which term an endeavor shall be made to arrive at a new agreement. Such notification of abrogation shall be addressed to the Mexican Government, and shall only have effect as far as regards the country which has withdrawn from the compact.

Art. 17. The governments of the signatory States, at the time of approving the present Convention, shall declare whether they accept the adherence to the same by the nations who have had no representation in the International Conference.

Mexico, January 8, 1902. (Signed,) *A. Blest Gana*, President.—*M. Sanchez Marmol*.—*Fernando E. Guachalla*.—*M. A. Martinez*, Secretary.

SESSION OF JANUARY 22, 1902.

Secretary Duret.—The report of the 12th. Committee on the proposed Conventions with regard to Literary and Artistic Copyrights, submitted by the Delegations of Chili and Hayti is under discussion, as a whole.

His Excellency Mr. Guachalla, Delegate from Bolivia.—Mr. President: Through an involuntary error, the country was not mentioned in the report to be discussed, among the others to which the members of the Committee belong. As I also form part of said Committee, I beg the Secretary to see that there be set forth in the minutes that my country adopted the principle of Literary and Artistic Copyrights on the 6th. of November, 1834, establishing a penalty for those who might not comply with it.

His Excellency the President.—As suggested by the Hon. Mr. Guachalla, the name Bolivia shall be inserted in the document to which he refers.

His Excellency Mr. Blest Gana.—I will take the floor simply to state that as there were two proposi-

tions one from the Chilian Delegations and the other from that of Hayti, the Committee thought it advisable to have among its members the Hon. Mr. Leger, with the co-operation of whom the report submitted to the Conference was drawn up in which the two propositions were merged.

The project was approved, as a whole, by a unanimous vote. Articles 1. to 7., inclusive, were also approved, in detail.

Article 8. was placed under discussion.

His Excellency Mr. Elmore, Delegate from Peru.—Mr. President: I move that the above article be added in the following manner, if acceptable to the Committee: Art. 8. Newspaper articles may be reproduced, except during the terms that local law may establish; but the publication from which they are copied must mention the name of the author, should it appear in the same.

Often the news published by the press involves great expense, efforts and sacrifices, and as soon as a newspaper is printed it is sent out to be sold, so that immediately afterward the same news may be reproduced by another paper; for this reason, it has been provided in certain countries, that a short term must elapse in order to allow the reproduction of any news given by the press. Therefore, I believe that if an addition is made to the article in question to the effect that reproductions of news shall be made after the terms provided for by the local laws of a country, there could not be any objections.

I make this proposition only in case the Committee is willing to accept it.

His Excellency Mr. Blest Gana.—The Committee accepts the suggestion of the Hon. Mr. Elmore.

Article 8., with the amendment of His Excellency Mr. Elmore was approved without discussion, by the unanimous vote of all the Delegations present.

His Excellency the President.—Considering the fact that very few propositions have been filed with the Secretary for the next session and as the hour provided for in the Regulations has passed, I propose to the Conference that the session be adjourned and that there be no session in the afternoon. Should any of the Delegates wish the session to continue. I have no objection.

His Excellency Mr. Guachalla.—If there is no objection on the part of the Conference, I ask that the session be prolonged for a few minutes, in order to finish voting on the matter under discussion.

Articles 9. to 14., inclusive, were placed under discussion, and were unanimously approved.

Art. 15. was placed under discussion.

His Excellency Mr. Pablo Macedo.—I regret to be compelled to engage the attention of the Conference, even if it be only for a minute; but I have been particularly impressed with the text of art. 15. because if this Convention, as is stated in said article, cannot in any way alter the private agreements entered into between different nations, I think that we will limit in a manner the extent of the provisions adopted by the Conference, as such private agreements exist between several States. However, should I have a wrong impression, I would like to be told so by the Committee.

His Excellency Mr. Blest Gana.—The Committee agrees with the remarks of His Excellency Mr. Mace-

do, and begs the Secretary to withdraw article 15. the discussion on article 16. will continue.

His Excellency Mr. Alvarez Calderon, Delegate from Peru.—Mr. President: I think that the text of article 16., is not clear enough: if four Republics ratify the acceptance of the Convention, will the others who have not accepted or ratified said Convention, be considered as bound thereto? Such seems to be the meaning of the text.

I cannot either see the reason why if two or three nations accept the treaty, this cannot be enforced between them, on account of the necessity that it be ratified by four countries; the number could be limited to two. I make the above suggestion.

His Excellency Mr. Carbo, Delegate from Ecuador.—Like the Hon. Delegate from Peru, I also find that the text of the article is not clear enough, and I would propose that after the words «of the signatory Powers,» should be added: «which may ratify it before the Mexican Government.»

Really, it is hard to understand what is meant by «the present Convention shall commence to take effect between the signatory Powers ratifying it before the Mexican Government, provided it is signed by four nations.» This text is not clear, and I therefore propose that it be modified.

His Excellency Mr. Sanchez Marmol, Delegate from Mexico.—The Committee has attentively listened to the objections made by the Hon. Delegate from Ecuador, to article 16. under consideration, and accepts the suggestions of His Excellency. The Committee therefore has the honor to propose to the Conference that the article in question be drafted under the following terms: «The present Convention shall commence to take effect between the States which may ratify it, three months after said ratification has been communicated to the Mexican Government, etc., etc.»

His Excellency Mr. Pineda, Delegate from Mexico.—I do not think that the text of the article is yet clear enough: first, because it seems (at least that is the way the reading of the article impresses me) that the Convention will only be enforced for one year; and, second, because the provision remains that the Convention will continue in force between the parties not having abrogated it. If I have rightly understood the intention of the Committee, the form that would perhaps clearly convey the idea would be this:

«Art. 16. The present Convention shall commence to take effect between those of the signatory states which may ratify it, three months after they may have communicated the ratification to the Mexican Government, and shall remain in force between them until one year after the date in which it may be denounced by any one of them. Such announcement shall be addressed to the Mexican Government, and shall not have any effect, except as regards the country which presented it.»

His Excellency Mr. Blest Gana.—The Committee accepts the suggestion made by His Excellency Mr. Pineda, and, consequently, the form presented by him; and also begs to be authorized to withdraw the final article of the proposition, that is, article 17.

The amended article 16. was approved without discussion by unanimous vote of all the Delegations present.

Secretary Duret.—As the Committee has withdrawn article 17. of the proposition, the Chair has

ruled that the report as amended be referred to the engrossing Committee.

SESSION OF JANUARY 24, 1902.

His Excellency Mr. Anadon, Delegate from the Argentine Republic.—Mr. President: I have requested the floor in order to make a short explanation on the stand I have taken in making a motion to consider the resolutions adopted in regard to article 17. which was withdrawn at the last moment of the previous session, by the Committee on Practice of the Learned Professions, which had submitted a project for the protection of literary copyrights.

The honorable members of said Committee have already stated to me that, on their part, they have no objection in adhering to my proposition; but as this is a matter that causes general prejudice of which I myself have had a share, I cannot fail to state in a few words why I consider that the suppression of article 17. is not advisable.

Article 17. has been taken from article 16. of the Additional Protocol of Montevideo, which reads as follows: Art. 13. is applicable to those Nations which have not attended this Conference and wish to adhere to the present Treaty.»

The main argument for excluding a foreigner from the proper protection of the rights of authorship, has been that of reciprocity, thus occasioning a complete confusion of ideas: a comparison is made of the commercial or industrial conditions of the different States, and it is said that concessions must be equivalent and that since the intellectual production of a country is inferior in quantity and quality to others, I refer especially to European countries, it is not advisable for the former country to grant those concessions. The reason for this is that the books grow higher in price; but I must state in advance that here the question is not to have an interchange, properly speaking; but the desire is to spread instruction all over the country, and in order to attain this, facilities must be given to foreigners, because the introduction of their artistic and literary work contributes largely to the increase of knowledge all over the country; it matters not that we being in accord should be unable to cooperate in spreading the same knowledge, in a practical manner, because it is a question of a country's own interest, and one's own interests are included in the principle of true liberty.

Books will become dear, it is said, and here I will repeat, a veritable confusion is created. Books published in foreign languages cannot become dear, because in Mexico, as in any other of the nations here represented, books in French, English and Italian cannot practically be reprinted, and the reason is obvious: the reprint here would be costly, and all readers in every case would prefer the edition issued in the country of its origin. So, then, the increase in price refers only to translated works, or to works printed in Spanish, edited in Spanish. With reference to works in French, experience is conclusive. What results then, gentlemen, from this lack of protection to authors in our countries? That unscrupulous editors sack (permit me the expression) the fields of European literature, and in unbecoming editions, veritable monuments of folly, not only by reason of their appearance, but in the printing as well, propagate, not a true work of art, not literature monuments, but in general, and almost without exception, the pornographic novel; this is the rule. Works on art

or science are not to be found in this case; they cannot be translated advantageously, because our countries do not afford profitable markets for the sale of those books, and then it is found best to have the translation made in Spain, according to the laws in force on the Continent. What are those laws? Protection accorded to the rights of the author. It results from this that the Spanish translator, when he undertakes the version of a foreign work, does it because he is in this manner removed from the disloyal competition that others might create, and under such conditions the translation is correct, well executed, and does not offer the risks that would be incurred in our countries, where, I repeat, by reason of the lack of markets, it is only possible to translate works of light literature.

I do not desire to insist on other considerations that I have in mind, for the reason that I have before advanced: the time of the Conference is precious, and should not be wasted, without a possible cause.

It results definitely, that neither literature, culture, nor the diffusion of knowledge in general profit anything; only unscrupulous editors are gainers, and I suppose that here it is sought to protect them; that what has been consulted is true convenience, that this form only might tend toward a veritable national culture.

Referring now to the origin of this article, I will say, that the country that I represent in this Conference, the Argentine Republic, as well as the governments of Spain, Italy and France, have recently solicited adherence to the treaty of protection of literary property, celebrated in the Congress of Montevideo; these are precisely the three nations whose commerce in books with our countries is most ample, most active, and the experience that we have had, after our incorporation, absolutely does not recommend the resolution that is proposed.

Moreover: Mexico has accepted the same principle in a treaty celebrated some years ago with Spain, in which the rights of authors in both countries are reciprocally protected, and it would not be strange that the intellectual florescence of Mexico, which owing to the lack of intimate acquaintance with others, has surprised so much the foreign delegates who have come to this country, may in great part trace its origin to the celebration of that treaty.

The United States, Sir, for many years suffered from the same prejudice, and an eminent statistician, Mr. Blaine, whose premature demise will never be sufficiently lamented, even stated on one occasion that in the United States a veritable intellectual piracy was exercised upon the works of European art. I do not know if it was under his influence or not—I judge it was so from the date—but in the year 1891, a law was issued which authorized the President to make pacts reciprocally guaranteeing protection to the rights of authors, and in fulfilment of that law several conventions have been celebrated with the principal States of Europe.

So, then, these ideas are already issuing from the stage of prejudice; they are no longer only literary speculations or criticisms, but are incorporated in the domain of positive legislation. For this reason, I pray the honorable members of the reporting Committee to accept and sustain the article, in the same form in which it was first presented.

His Excellency Mr. Blest Gana, Delegate from Chili.—The Committee, at the first session, thought

it expedient and necessary to propose that Article 17 be suppressed, for even if it were not in existence, not for this reason would the doors be closed to the nations that might wish to adhere to the treaty of Montevideo.

Obeing the general spirit that has guided the labors of the Conference, the Committee prepared the project that has been approved, entertaining the sentiment, if one may so say, of Pan-Americanism with which it was animated; but it was thought that we really ought to leave each one of the signatory countries at liberty to admit or not the adherence of other countries, according to the individual convenience of each Nation. This is the principle consulted in the article taken from the Convention of Montevideo, and which the Committee thought well to incorporate in its project.

The reasons given by His Excellency Mr. Anadon in this matter are perfectly recognized by the Committee, which does not object to the article being reconsidered.

Secretary Duret.—The Conference is asked if the report of the Committee on the Practice of the Learned Professions and Literary Relations is to be reconsidered, in order to discuss the addition proposed by the Honorable Mr. Anadon, that is to say, Article 17.

The ballot having been taken, it resulted that sixteen votes were in favor of reconsidering said article. The Mexican Delegation abstained.

Placed under discussion, the motion to reconsider was approved without debate, by unanimity of votes

SESSION OF JANUARY 28, 1902.

Secretary Macedo.—For the purposes of the decision of the 22nd. of this month,¹ the reports of the Committee on Engrossing, upon the resolutions approved by the Conference, may be found in the office of the Secretary, at the disposal of the Honorable Delegates, who may revise them and make such remarks as they may deem proper.

Among said reports may be found the one relating to Protection of Literary and Artistic Copyright that reads as follows:

Committee on engrossing.—The undersigned Committee has the honor to propose the following draft for the Convention adopted by the Conference, on Literary and Artistic Copyright.

Art. 1. The signatory States constitute themselves into a Union for the purpose of recognizing and protecting the rights of literary and artistic property, in conformity with the stipulations of the present Convention.

Art. 2. Under the term «Literary and Artistic works,» are comprised books, manuscripts, pamphlets of all of kinds, no matter on what subject they may treat and what may be the number of their pages; dramatic or melodramatic works; choral music and musical compositions, with or without words, designs, drawings, paintings, sculpture, engravings, photographic works; astronomical and geographical globes; plans, sketches, and plastic works relating to geography or geology, topography or architecture, or any other science; and finally, every production in the literary and artistic field, which may be published by any method of impression or reproduction.

Art. 3. The copyright on literary or artistic work, consists in the exclusive right to dispose of the same,

¹ See page 73.

to publish, sell and translate the same, or to authorize its translation, and reproduce the same in any manner, either entirely or partially.

The authors belonging to one of the signatory countries, or their assigns, shall enjoy in the other signatory countries, and for the time stipulated in art. 5., the exclusive right to translate their works, or to authorize their translation.

Art. 4. In order to obtain the recognition of the copyright of a work, it is indispensable that the author or his assigns, or legitimate representative, shall address a petition to the official Department, that each government may designate, claiming the recognition of such right, which petition must be accompanied by two copies of his work, said copies to remain in the proper Department.

If the author, or his assigns, should desire that his copyright be recognized in any other of the signatory countries, he shall attach to his petition a number of copies of his work, equal to that of the countries he may therein designate. The said Department shall distribute the copies mentioned among those countries, accompanied by a copy of the respective certificate, in order that the copyright of the author may be recognized by them.

Any omissions in which the said Department may incur in this respect, shall not give the author, or his assigns, any rights to present claims against the State.

Art. 5. The authors who belong to one of the signatory countries, or their assigns, shall enjoy in the other countries the right which their respective laws at present grant, or in the future may grant, to their own citizens, but such right shall not exceed the term of protection granted in the country of its origin.

For the works composed of several volumes, which are not published at the same time, as well as for bulletins or installments of publications of literary or scientific societies, or of private parties, the term of property shall commence to be counted from the date of the publication of each volume, bulletin or installment.

Art. 6. The country in which a work is first published, shall be considered as the country of its origin, or, if such publication takes place simultaneously in several of the signatory countries, the one whose laws establish the shortest period of protection shall be considered as the country of its origin.

Art. 7. Lawful translations shall be protected in the same manner as original works. The translator of works, in regard to which there exists no guaranteed right of property, or right which may have become extinguished, may secure the right of property for their translations, as established in article 3rd., but they shall not prevent the publication of their translations of the same work.

Art. 8. Newspaper articles may be reproduced, but but the publication from which they are taken must be mentioned, and the name of the author given, if it should appear in the same.

Art. 9. Copyright shall be recognized in favor of the persons, whose names, or acknowledged pseudo-

nym, are stated in the respective literary or artistic work, or in the petition to which Article 4 of this Convention refers, excepting case of proof to the contrary.

Art. 10. Addresses delivered or read in deliberative assembles, before the Courts of Justice and in public meetings, may be published in the newspaper press without any special authorization.

Art. 11. The reproduction in publications devoted to public instruction or chrestomathy, of fragments of literary or artistic works, confers no right of property, and may therefore be freely made in all the signatory countries.

Art. 12. All unauthorized indirect use of a literary or artistic work, which does not present the character of an original work, shall be considered as an unlawful reproduction.

It shall be considered in the same manner unlawful to reproduce, in any form, an entire work, or the greater part of the same, accompanied by notes or commentaries, under the pretext of literary criticism, or enlargement or complement of an original work.

Art. 13. All fraudulent works shall be liable to sequestration in the signatory countries in which the original work may have the right of legal protection, without prejudice to the indemnities or punishments, to which the falsifiers may be liable according to the laws of the country, in which the fraud has been committed.

Art. 14. Each one of the Governments of the signatory countries shall remain at liberty to permit, exercise vigilance over, or prohibit, the circulation, representation and exposition of any work or production, in respect to which the competent authorities shall have power to exercise such right.

Art. 15. The present Convention shall take effect between the signatory States that ratify it, three months from the day they communicate their ratification to the Mexican Government, and shall remain in force among all of them until one year from the date it is denounced by any of said States. The notification of such denouncement shall be addressed to the Mexican Government and shall only have effect in so far as regards the country which has given it.

Art. 16. The Governments of the signatory States when approving the present Convention, shall declare whether they accept the adherence to the same by the nations who have had no representation in the Second International American Conference.

Mexico, January 24, 1902. (Signed,) *Alberto Elmore.*—(Signed,) *Rosendo Pineda.*

The Convention for the protection of literary and artistic works, couched in exactly the same terms as the foregoing report, was signed on the 27th. day of January, 1902, by the Delegations of the Argentine Republic, Bolivia, Colombia, Costa Rica, Chili, Dominican Republic, Ecuador, Salvador, United States of America, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay.