

the vote was proceeded with, the article being adopted by thirteen votes, the United States and Haiti abstaining from voting.

In the same manner, and without discussion, art. 18. and 19. were adopted.

*Secretary Duret.*—The Chair rules that the matter be referred to the Comité on Engrossing.

SESSION OF JANUARY 24, 1902.

*Secretary Duret.*—In compliance with the resolution of the 22nd. inst.,<sup>1</sup> there remain of the disposition of the Honorable Delegate the report of the Comité on Engrossing, upon the following resolutions of the Conference:

I. Treaty upon Patents of Invention, Models and Drawings and Marks for commercial use.

The report referred to, reads as follows:

*Committee on Engrossing.*—The undersigned have the honor to propose the following draft of the Treaty on Patents of Invention, Industrial Designs and Models and Trade marks of Commerce and Manufacture:

Art. 1. The citizens of each of the signatory States shall enjoy in other nations the same advantages granted by them to their own citizens in regard to the trade-marks of commerce, or of manufacture, to the models and industrial drawings, and to patents of invention.

Consequently, they shall have the right to the same protection and to identical remedies against any attack upon their rights.

Art. 2. For the purpose of this Treaty, foreigners domiciled in any of the signatory countries, or who may have in them an industrial or commercial establishment, shall be considered the same as citizens.

Art. 3. Patents of invention and those of industrial drawings and models, as well as of trade-marks of commerce or manufacture, granted in the country of their origin, may be imported to the other signatory States, for registration and publication, as may be required by the laws of the respective countries, and they shall be protected in the same manner as those granted in the State itself. This provision does not remove the obligation imposed by national laws requiring the privileged articles to be manufactured in the country enacting such laws.

Art. 4. The Consular Agents of the Nation, to which belong or wherein reside the owners of patents, drawings, models, or trade-marks, shall be considered as the legal representatives of said owners for the purpose of complying with the formalities and conditions established, in order to present the application and secure the filing of said patents, drawings, models or trade-marks, in the country wherein it is intended to use them.

Art. 5. The country in which the grantee has his principal establishment or domicile, shall be considered as the country of origin.

In case he should not have any such establishment in any of the signatory countries, that State of the Signatory Nations of which the claimant is a citizen, shall be considered as the country of origin.

Art. 6. For the purpose of preserving the right of priority of Patents of Invention, Models or Designs and of imported Trade-marks, a term of one year

<sup>1</sup> See page 73.

is granted as to the former, and of six months as to the latter, to be counted from the date of their having been originally issued, for the presentation of the application of the same to the respective authority of the country, into which the patent right is to be imported.

Art. 7. All questions which may arise regarding the priority of an invention and regarding the adoption of a Trade-mark, shall be decided with due regard to the date of the application for the respective Patent or Trade-mark, in the countries in which they have been granted.

Art. 8. The following shall be considered a inventions: any new method of manufacturing industrial products; any mechanical or manual apparatus which may be used for the manufacture of said products; the discovery of any new industrial product; and the application of improved methods, for the purpose of producing results superior to those already known. The drawings and models of manufacture are subject to the rules of inventions and discoveries, in all that does not apply specially to the latter.

The signs, emblems or exterior names, that merchants of manufacturers may adopt or apply to their goods or products, in order to distinguish them from those of other manufacturers or merchants, who deal in articles of the same kind, shall be considered trade-marks of commerce or manufacture.

Art. 9. No Patent of invention can be granted with respect to the following:

I. Inventions and discoveries, which may have been published in any country, whether it be a party to this Treaty or not.

II. Those that are contrary to morals, or to the laws of the country, in which the patents of inventions are to be granted or to be recognized.

Art. 10. Trade-marks of commerce or manufactures which are in the class provided for in paragraph II of the foregoing article, are likewise debarred from being granted or recognized.

Art. 11. The ownership of a patent of invention or of a trade-mark of commerce or manufacture, covers the right to enjoy the products of the invention, or the use of the trade-mark, and the right to assign them to others.

Art. 12. The number of years of the patent right shall be that which the laws of the country, in which it is desired to make them effective, may establish. Such term may be limited to that established by the laws of the country in which the patent of invention was originally granted, if the latter should be shorter.

Art. 13. The civil and criminal responsibilities, which those who injure the rights of inventors, incur, shall be prosecuted and punished in accordance with the laws of the country, in which the injury has been committed.

The falsification, adulteration, or unauthorized use of Trade-marks of commerce and manufacture, shall likewise be prosecuted in accordance with the laws of the State, in whose territory the infringement has been committed.

Art. 14. The declaration of nullity of a patent or trade-mark made in the country of its origin, shall be communicated in an authentic form to the other Signatory countries, so that they may decide in an administrative manner regarding the recognition, which may be solicited for the respective

patent or trade-mark granted in the foreign country, and as to what effect such declaration is to produce with regard to the patents or trade-marks previously imported into said countries.

Art. 15. The Treaties on Patents of Invention and Trade-marks of commerce and manufacture, previously concluded by and between the countries subscribing the present Treaty, shall be substituted by the present Treaty from the time of its being duly perfected, as far as the relations between the signatory countries are concerned.

Art. 16. The communications, which the Governments who may ratify the present Treaty shall address to the Government of Mexico, for the purpose of making them known to the remaining contracting countries, shall be considered equal to the customary exchange of ratifications. The Government of Mexico shall likewise communicate to them its ratification of this Treaty, if it should resolve to ratify the same.

Art. 17. The exchange of copies in the form of the foregoing article having been made by two or

more countries, this Treaty shall take effect thenceforward for an indefinite time.

Art. 18. In case any one of the Signatory Powers should desire to withdraw from this Treaty, it shall make its abrogation known in the manner prescribed in art. 16, and the effect of this Treaty, as far as the respective nation is concerned, shall cease one year from the date of the receipt of the respective communication.

Art. 19. The countries of America, that may not have signed this Treaty originally, may adhere to the same in the manner prescribed by art. 16.

Mexico, January 24, 1892.—(Signed), *Alberto Elmore.*—*Rosendo Pineda*

The Treaty on Patents of invention and Trade-marks, conceived exactly in the same terms as the foregoing report, was signed on January 27, 1902, by the Delegations of the Argentine Republic, Bolivia, Colombia, Costa Rica, Chili, Dominican Republic, Ecuador, Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

NUMBER 9.

## Extradition and Protection against Anarchy.

SESSION OF DECEMBER 23, 1901.

*Secretary Duret.*—The Comité on Extradition and Protection against Anarchism has submitted its report, and the Chair has ruled that it be published and distributed among their Excellencies the Delegates. (The report was read.)

SESSION OF DECEMBER 23, 1901.

(Afternoon Session.)

*Secretary Duret.*—The Comité on Extradition and Protection against Anarchism has presented some modifications to its report which was read this morning, and asks that it be printed with those modifications. The text of the reformed report is as follows:

### REPORT of the Comité on Extradition and Protection against Anarchy.

Several treaties of extradition have already been entered into between various of the American Republics in order to enforce, in an effective manner, their laws against offenders seeking refuge outside of their own territory, but the signing of a general treaty by all the Republics, establishing common rules and principles, as has already been suggested at the Congress of Montevideo, will doubtless prove to be more convenient. By this means universal justice will be better satisfied. In order to form said treaty, it is necessary to consult the different provisions of the treaties already in existence so as to consider all, or most of them. In this manner it will be well received, because it will not antagonize any pre-existing idea, nor any acquired interests. Such are the bases of the present project.

It begins by establishing the obligation of delivering the criminals whose extradition is asked for.

In the second place it establishes its application as against all accused, or guilty, of common of-

fences. Treaties contain as a rule a list of offences; but if the enumerations contained in the laws are deficient and dangerous, these can easily be corrected through their abrogation; hence there is all the more reason for their exclusion from treaties and for their substitution by general provisions. Mexico has already done so in the last treaty celebrated with Italy, and Chili; in those celebrated with Spain, Brazil and Portugal, in 1896 and 1897.

It is provided that none of the contracting parties shall be obliged to deliver its own citizens, a rule which is always exacted by some of the American Republics; but they are at liberty to deliver them whenever they should deem it advisable.

The present treaty provides, as it has been prescribed in former ones, that the nation upon whom the demand has been made shall have the right to try and punish the offender for the acts committed within its own territory; the right of denial of the surrender is granted, if the penalty has prescribed, for whenever there is prescription the offence ceases to exist legally.

The case of an offender being claimed by two or more nations is taken under consideration, and the right of preference is given in favor of that wherein the more serious offence has been committed.

It establishes the general principle of all treaties in existence, providing that the offender demanded cannot be tried for a previous offence, unless it be the very one to which the extradition applies, or another connected therewith.

The proceedings for demanding the extradition provide also for those connected with the transit of the offender in a clear and simple manner.

It was difficult to apply the principle of extradition to anarchists because, on the one hand, the individual liberty of man in his ideas and beliefs must be considered and, on the other, the crimes

committed by them, such as the assassination of the ever-lamented President McKinley, come under the class of common offence. But there is doubtless a cause for which anarchists become amenable to punishment, and that is the one relative to the propagation of anarchy.

The existence of man in society is a law of nature, for in no time in history, nor at any place on the earth, is he found to be alone, but always living with his fellow creatures. In like manner, by the law of nature there is found in communities, from the most primitive ones up to the most cultured, an existing authority to rule and govern society. The anarchists themselves form a society governed by authorities to whom they blindly obey. Therefore, to attack the existence of the authorities, as anarchists do, is to attack the right of nature, which is the prime rule of international relations.

For these reasons it is consulted: 1. That the High Contracting Parties establish in their legislations a punishment for the propagation of anarchy; and 2. That the extradition of anarchists be granted, even if their punishment be less than two years.

In the project, the average penalty of two years is fixed in order to give rise to extradition, for in the treaties in existence the term of one year, and in others of three years, is considered in some instances. Thus, instead of a list of offences, the penalties are taken into consideration, which is more logical and affords a common rule which can be easily appreciated.

As extradition forms part of the peaceful means of international relations, it is demanded that all controversies which may arise regarding the interpretation or execution of the treaty be submitted to arbitration. The appointment of an arbitrator of each party, and of an umpire by the arbitrators appointed, is therefore established, in order to determine at once the formation of the court. This Committee will previously determine the procedure of arbitration in each case.

Finally, the term of five years is fixed for the convention, although it can be extended by the mere tacit consent of the parties.

Based on the above considerations the undersigned Committee submits the following proposed Resolution:

The Second International American Conference recommends to the Republics represented, the execution of a Treaty in the following terms:

Art. 1. The High Contracting Parties agree to deliver reciprocally the persons accused or sentenced by competent authority, provided there exist the following circumstances.

I. That the demanding State who presents the demand of extradition has jurisdiction to proceed against the offender.

II. That the commission of an offence of common order which the laws of the demanding State, and those of the State upon which the demand is made, punish with a greater penalty than imprisonment of two years, be duly invoked.

III. That the demanding State present documents which, according to its laws, authorize the provisional arrest and the legal commitment of the offender.

IV. That either the offence, or penalty, has not prescribed, in conformity with the respective laws of the contracting countries.

V. That the offender, if already sentenced, has served his sentence.

Art. 2. Extradition cannot be granted for political offenses or for acts connected therewith. Even though the offender may allege a political motive or purpose, if the offence for which he is demanded constitutes principally a common offense, the extradition will then be granted on that account.

The acts of anarchists directed against the basis of social organization shall not be considered as political.

Art. 3. None of the contracting parties shall be obliged to deliver its own citizens by virtue of the provisions of this Convention; but the Executive of each nation shall have the right to deliver them, if he deems it proper.

Art. 4. If the person whose extradition is demanded is subject to penal proceedings, or is detained for having committed an offence in the country where he has sought refuge, his delivery shall be delayed until the end of the proceedings, or until he has served his sentence.

Civil obligations contracted by the accused in the country of refuge shall not be an obstacle to his delivery.

Art. 5. Extradition, when granted, does not authorize the trial and punishment of the party surrendered, for a crime different from the one that may have served as ground for the corresponding demand; unless it has connection therewith and is founded upon the same proof as that of the demand.

Art. 6. If another State, or States, by virtue of stipulation in treaties, should ask for the surrender of the same individual, for different crimes, the demand of that country in which, in the opinion of the State wherein the request was made, the greatest offense has been committed, shall be allowed. If the crimes should be considered of the same enormity, preference shall be given to the State that shall have priority in the demand for extradition, and, if all the demands bear the same date, the country upon which the demand is made shall determine the order of delivery.

Art. 7. The requests for extradition shall be presented by the respective diplomatic or consular agents; and, in the absence of these, directly by one government to another; and they shall be accompanied by the following documents:

I. In regard to alleged delinquents, a legalized copy of the penal law applicable to the offence for which the demand is made, and of the commitment and other requisites referred to in Clause III of Article 1 shall be furnished.

II. With regard to those already sentenced, a legalized copy of the final sentence of condemnation.

All data and antecedents necessary to prove the identity of the person whose surrender is asked for, shall also accompany the demand.

Art. 8. In cases of urgency, the provisional detention of the individual asked for may be granted on a telegraphic request, from the demanding government to the Minister of Foreign Affairs of the country upon which the demand shall be made, and wherein a promise shall be made of sending the documents mentioned in the foregoing article; but the person detained shall be set free, if such documents are not presented within the term that may be designated by the nation on which the demand has been made, provided such term shall not exceed two

SESSION OF JANUARY 2, 1902.

*Secretary Macedo.*—The report of the Committee on Extradition and Protection against Anarchy is under discussion as a whole.

*His Excellency Mr. Galavis, Delegate from Venezuela.*—I desire to ask some questions regarding this project of the treaty.

When the country called upon has in its fundamental law a provision which guarantees the life of its citizens, and by logical extension that of all individuals which may be found in its territory, and in the country which makes the claim, the crime for which the accused is pursued, is punishable with death, has the country called upon the obligation, according to this treaty, to make the surrender without dispute or contention, without being able to interpose any condition whatever regarding the punishment which will be given to the accused?

There is an article which says, that no country is obligated to surrender its own citizens. I ask, in this case has, the respective country no obligation, and does the crime remain unpunished, or has such country the obligation of punishing the crime, according to the treaty?

It may also happen, that the accused may be a citizen by naturalization, and the latter has taken effect before the crime has been committed; in this case, has the country called upon the right to refuse to extradite, according to the proposed treaty?

It may also happen, that the extradition is of the character called in international law voluntary; in this case, can the country making the claim punish the accused for a crime different from that which served as the base for asking the extradition and without any formalities with respect to the country called upon?

It may also happen, that a delinquent be demanded by a third country, and in that case, it may happen, that according to the laws of the country of transit the crime or the penalty is barred by limitation; will the country which permits the transit have no right whatever according to this treaty?

It may also happen, that the legislation of the country making the demand, may punish the respective crime with capital punishment, and that in the country of transit the death penalty does not exist, but on the contrary, the life of its citizens who put foot on its soil are guaranteed; in such case, will such country have any right to grant the transit? Will it be under obligation to grant it without dispute or contention? And in case the government of the country of transit should grant it, without making any objection, will the delinquent not have the right to ask the protection of the laws of the country through which he is going to pass?

It may also happen that when the extradition has been effected, a third country may claim the respective culprit from the country that has demanded the extradition, for one circumstance or another, and that as a consequence of the negotiation, the country which has claimed him first agrees, that the third country is the one which has the right to inflict the penalty: has the country which has first obtained the extradition no obligation under this treaty to grant the extradition?

I desire, Mr. Presidente, that these questions should be discussed before entering upon the approval of the treaty as a whole, because it appears to me, that they are essential questions.

months, to be counted from the date of the detention.

Art. 9. The demand for extradition, in so far as the procedure is concerned, the determination of the genuineness of its origin, the admission and competency of the exception with which they can be opposed by the criminal or fugitive demanded, shall be submitted, whenever they do not conflict with the prescriptions of this Treaty, to the decision of the competent authorities of the country of refuge, which shall proceed in accordance with the legal provisions and practices established for such a case, in said country. The fugitive criminal is guaranteed the right of *habeas corpus* or the protection of his individual guarantees.

Art. 10. All property which may be found in the possession of the accused, should he have obtained it through the perpetration of the act of which he is accused, which may serve as a proof of the crime for which his extradition is asked shall be confiscated and delivered up with his person. Nevertheless, due recognition shall be given to the rights of third parties to the confiscated articles, provided they are not implicated in the accusation.

Art. 11. The transit through the territory of one of the contracting states of any individual delivered by a third country to another state not belonging to the country of transit, shall be granted on the simple presentation, either of the original, or of a legalized copy of the resolution granting the extradition by the Government of the country of refuge.

Art. 12. All expenses connected with the extradition of the fugitive shall be for the account of the demanding state, with the exception of the compensation to the public functionaries who receive a fixed salary.

Art. 13. The High Contracting Parties agree that the propagation of anarchism is to be considered a crime punishable by their respective legislations. The extradition of any individual who may have propagated anarchism can therefore be demanded from the date on which punishment therefor may have been decreed, by the nation demanding the extradition. In such case, it shall be granted, although the individual whose extradition be demanded may be liable to imprisonment of less than two years.

Art. 14. The Contracting Governments agree to submit to arbitration all controversies which may arise out of the interpretation, or carrying into effect of this Treaty, when all means for a direct settlement by friendly agreements shall have failed.

Each Contracting Party shall name an arbitrator, and the two shall name an umpire, in case of dispute. The Committee of Arbitrators shall adopt the rules for the arbitration proceedings in every case.

Art. 15. The present Treaty shall remain in force for five years, from the day on which the last exchange of ratifications shall have been made, and shall remain in force for another lapse of five years, if it should not have been abrogated twelve months before the expiration of that period. In case any government or governments should abrogate it, it shall remain in force among the other contracting parties. This Convention shall be ratified, and the ratifications shall be exchanged in the City of Mexico within one year from the time of its being signed.

Mexico, December 20, 1901.—(Signed).—*Francisco A. Reyes*, Chairman.—*Joaquín Walker Martínez*.—*Alfredo Chavero*.—*Juan Cuestas*.