TREATIES ON PRIVATE INTERNATIONAL LAW

Signed at the Second South American Congress on Private International Law, Montevideo, 1939–1940, with treaties of the first congress held at Montevideo, 1888–1889, which have not been revised*

INTRODUCTION

BY J. IRIZARRY Y PUENTE, *of the New York Bar*

With full grasp of the significance of the labors that the *Congreso Sudamericano de Jurisconsultos*, which met in Lima in 1877–78, was about to undertake, Rospigliosi, the Foreign Minister of Peru, greeted the delegates with the statement that they were assembling "to formulate the Tables of the American New Decalogue." [1] While the work of that Congress was disappointing to Latin Americans generally, because of its manifest subservience to European legal theories, the phrase of Rospigliosi could quite suitably be applied to the labors of the *Congreso Sudamericano de Derecho Internacional Privado*, which met at Montevideo in 1888–89.

Opinion in Latin America concerning the work of this Congress has always been high. The official view is that the treaties there elaborated "were extremely influential as an expression of the juridical science of the time," [2] and that their effective importance and excellence in application, have been thoroughly demonstrated.[3] Without a doubt, they constitute a definite landmark in the development of the Latin American conception of private international law. As one recent commentator has said: [4]

> What *Wittenberg—1517* means to the independent evolution of Lutheran doctrine and confession, *Montevideo—1889* means to the independent evolution of juridical science in South America, *monumentum aere perennius*, to use a celebrated phrase of the great Horace, a monument which marked the opening of new paths in the New World.

ANTECEDENTS

The first official attempt, feeble and rudimentary though it was, to lay down certain principles of private international law, was made in the *Continental Treaty* of 1856, negotiated by Peru, Chile, and Ecuador,[5] and covered

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[1] 1 *Congresos Americanos de Lima, Recopilación de Documentos precedida de prólogo por* Alberto Ulloa, Lima, 1938, II *Archivo diplomático peruano*, 161.

[2] *Segundo Congreso Sudamericano de Derecho Internacional Privado, de Montevideo, Ministerio de Relaciones Exteriores y Culto de la República Argentina*, Buenos Aires, 1940, p. 5.

[3] *Actas y Tratados del Congreso Sud-Americano de Derecho Internacional Privado, Montevideo 1888–1889, compilación de* Ernesto Restelli, Buenos Aires, 1928, p. 5.

[4] Prof. Roberto Reich, Montevideo 1889–1939, Tomo VI, No. 21, *Revista de la Universidad de San Francisco Xavier*, Sucre (Bolivia), 583.

[5] 1 *Congresos Americanos de Lima*, 613–620.

such questions as the recognition and enforcement of foreign judgments,[6] the exercise of the liberal professions,[7] extradition,[8] and piracy.[9] Indeed, Latin America's awareness of its need for some sort of continental legislative unity could be traced even to earlier years.[10] But it was not until 1877–78 that the call went out to the governments of Latin America to meet for the avowed purpose of framing a code of rules on private international law. On December 11, 1875, the Government of Peru took the initiative in inviting them to Lima "to harmonize their legislation as far as possible." [11] Representatives of Argentina, Chile, Bolivia, Ecuador, Venezuela, Costa Rica and Cuba attended. They agreed on certain basic principles, such as the condition and capacity of persons, property and contracts (Tit. I), marriage (Tit. II), inheritance (Tit. III), competency of national courts with respect to juridical acts (Tit. IV), jurisdiction over crimes (Tit. V), execution of foreign judgments (Tit. VI), legalizations (Tit. VII), and certain provisions common to these titles (Tit. VIII),—principles which were incorporated in the *Tratados para establecer reglas uniformes en materia de Derecho Internacional Privado.*[12] Although the Treaty of 1877–78 was never ratified, except by Peru,[13] chiefly because of the general opposition it aroused in connection with the European thesis of *legal personalism,* which it adopted,[14] the treaty unquestionably is of great historical importance as the work of the first official gathering to undertake the codification of private international law.[15]

The concern felt in Latin America over the acceptance of that European thesis at Lima resulted in the calling of the first *Congreso Sudamericano de Derecho Internacional Privado,* celebrated at Montevideo, in the years 1888–89.

Purpose of the Original Montevideo Congress

The main purpose of this Congress was "to standardize by means of a treaty, the various matters embraced in private international law." [16] The invitation addressed by the Foreign Ministers of Argentina and Uruguay to the Governments of Chile, Brazil, Peru, Bolivia, Ecuador, Colombia, Venezuela and Paraguay,[17] pointed out existing differences in the legislation of the various South American countries within that branch of law, and the

[6] Art. V. [7] Art. VIII. [8] Art. VI. [9] Art. XVII.

[10] 1 *Congresos Americanos,* 301–333.

[11] 2 *Ibid.,* 119. [12] 2 *Ibid.,* 343–52.

[13] Alvarado, *Apuntes de Derecho Internacional,* Lima, 1940, Sec. II, "*El Sistema de Derecho Internacional Privado adaptado por el Artículo V del Código Civil,*" p. 51.

[14] Art. 2; 2 *Congresos Americanos,* 311, 344; Alvarado, *op. cit.,* 51; Rodrigo Octavio, *A Codificação do Direito Internacional Privado,* Rio de Janeiro, 1910, p. 88.

[15] Rodrigo Octavio, *op. cit.,* 89.

[16] Protocol of Ministers for Foreign Affairs of Argentina and Uruguay, February 14, 1888, in *Actas y Tratados,* 18–19. [17] *Ibid.,* 21–23.

hardships which those differences entailed for their nationals. The invitation reads in part as follows: [18]

> The difference in legislation which causes the difficulties, is the result of the exercise of sovereignty, responding to the peculiar exigencies of each State. Although it is easy to understand that while those differences may be abated, they will not disappear, howsoever enlightened the efforts made to that end, it is nevertheless the duty of governments to struggle for the realization, as far as possible, of unity among the diverse legislations which are the origin of the conflict, by establishing, in every case of diversity, the single international law destined to resolve the difficulty.

Colombia, Ecuador and Venezuela, although they were in sympathy with the purpose of the meeting, did not attend. The accomplishments of the Congress were singularly striking. The treaties which were concluded, covered: International Civil Law, International Commercial Law, International Penal Law, International Procedural Law, Literary and Artistic Property, Trade-Marks, Patents of Invention, Exercise of Liberal Professions, and an Additional Protocol.

The treaties were ratified in their entirety by Peru and Paraguay (1889), Uruguay (1892), Argentina (1894), and Bolivia (1903). In addition, the following adhesions have been tendered: [19]

Brazil (1890, Liberal Professions);
Colombia (1917, Literary and Artistic Property; 1920, Procedural Law; 1934, Civil Law, and Commercial Law);
France (1896, Literary and Artistic Property);
Italy (1900, Literary and Artistic Property);
Belgium (1903, Literary and Artistic Property);
Austria (1923, Literary and Artistic Property);
Germany (1925, Literary and Artistic Property);
Hungary (1931, Literary and Artistic Property).

Second Montevideo Congress

(*1939, 1940*)

In 1939, after a lapse of fifty years, the Governments of Argentina and Uruguay called a second meeting at Montevideo, for July of that year. On August 4, the States represented—Argentina, Uruguay, Peru, Bolivia, Chile, and Paraguay—signed treaties on the following subjects: [20] Political Asylum

[18] Protocol of Ministers for Foreign Affairs of Argentina and Uruguay, February 14, 1888, in *Actas y Tratados*, 22.

[19] *Ibid.*, 933–61, 969–1008; Gabriel Giraldo Jaramillo, *Los Tratados de Montevideo de 1940*, Bogotá, 1941, p. 21; Kraiselburd, *Los Tratados de Montevideo y el Derecho Internacional Privado*, 13.

[20] *Segundo Congreso Sudamericano de Derecho Internacional Privado de Montevideo*, 58–77, 81–98, 101–109.

and Refuge, Intellectual Property, and Exercise of the Liberal Professions.

But the 1939 meeting saw that it was desirable, not merely to commemorate the Congress of 1888–1889, but also to hold a new Congress, officially known as the *Segundo Congreso Sudamericano de Derecho Internacional Privado*, for the revision and, if necessary, the amplification of American doctrine in such a way as to include new concepts in the sphere of private international law.[21] This second meeting took place in March, 1940, and was attended also by Brazil and Colombia. The results of the 1940 meeting, are treaties on:[22] International Civil Law, International Commercial Terrestrial Law, International Commercial Navigation Law, International Penal Law, International Procedural Law, and an Additional Protocol.

The revisions of 1939–40 left the Treaties on Trade-Marks and Patents of Inventions of 1888–89 as they were. The Treaty of 1939 on Political Asylum and Refuge, is an expanded exposition of Title II—"Concerning Asylum," Articles 15–18, of the Treaty on International Penal Law of 1888–89. The Treaties of 1940 on International Commercial Navigation Law and International Commercial Terrestrial Law constitute a division and amplification of the Treaty on International Commercial Law of 1888–89.

Conclusion

The treaties of the Congresses of 1888–89 and 1939–40, some think, betray a "regional political tendency," which has resulted in their being called "the System of the Plata."[23] Be that as it may, the truth is that those congresses have defined, for most of Latin America, at least, the origin and direction of private international law.[24] While the countries of the Old World clung tenaciously to the theory of *legal personalism*, which influenced considerably the juridical thought of that period, and which definitely triumphed in the Lima Treaty of 1877,[25] the governments of Latin America were not disposed to accede to the juristic principles laid down in the Lima treaty, since those principles were harmful to their sovereignty, would seriously disturb family ties as well as the relations between aliens and nationals, would hamper the jurisdictional competency of the local tribunals, and threatened to obstruct the growth of an American conception of nationality.[26] Instead, the Congresses of 1888–89 and 1939–40 adopted integrally

[21] José Luis Bustamante y Rivero, "*El Tratado de Derecho Civil Internacional de 1940*," 2 *Revista Peruana de Derecho Internacional*, No. 4 (1942), 230, 231.

[22] *Segundo Congreso Sudamericano*, 143–211, 215–284, 287–355, 359–418, 421–448, 451–454.

[23] Bustamante y Rivero, *op. cit.*, 233.

[24] Kraiselburd, *op. cit.*, 14.

[25] Art. 2. *The conditions and juridical capacity of persons shall be determined by their national law, even when acts executed or property located in another country are concerned.*" 2 *Congresos Americános*, 344.

[26] Baez, *Curso de Derecho Internacional Privado Americano*, Asunción, 1926, p. 28.

and without qualification, the principle of *territoriality*,[27] in civil,[28] criminal,[29] and procedural [30] matters.

One of the many excellent features of these treaties is the demotion of the foreign State to the position of a juristic person in private law, with the corresponding responsibilities,[31] especially in regard to cases where such States employ vessels in carrying on ordinary commercial transactions.[32]

TREATY ON POLITICAL ASYLUM AND REFUGE *

Signed at Montevideo, August 4, 1939

His Excellency the President of the Republic of Peru; His Excellency the President of the Argentine Republic; His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Republic of Bolivia; His Excellency the President of the Republic of Paraguay, and His Excellency the President of the Republic of Chile.

In view of the fact that the principles governing asylum which were established by the Treaty on International Penal Law signed at Montevideo on January 23, 1889, require amplification in order that they may cover the new situations which have arisen and may serve to confirm the doctrines already sanctioned in America, have agreed to conclude the present Treaty on Political Asylum and Refuge through the medium of their respective plenipotentiaries, assembled in congress in the City of Montevideo as a result of the initiative taken by the Governments of the Oriental Republic of Uruguay and the Argentine Republic.

For the execution of this purpose, His Excellency the President of the Republic of Peru has designated as his representatives:

Dr. JOSE LUIS BUSTAMANTE I RIVERO, and
Dr. LUIS ALVARADO GARRIDO.

His Excellency the President of the Argentine Republic has designated as his representatives:

Dr. JUAN ALVAREZ,
Dr. DIMAS GONZALEZ GOWLAND,
Dr. CARLOS M. VICO,
Dr. RICARDO MARCO DEL PONT,

[27] Reich, *op. cit.*, 583–84. Peru, which ratified the Treaty of 1877, switched to the principle of *territoriality* when it ratified the treaties of 1889. Alvarado, *op. cit.*, 51.

[28] Art. 56, *Tratado de Derecho Civil Internacional.*

[29] Art. 1, *Tratado de Derecho Penal Internacional.*

[30] Art. 1, *Tratado de Derecho Procesal Internacional.*

[31] Art. 3, *Tratado de Derecho Civil Internacional.*

[32] Arts. 34–42, Title X. *"De los buques de Estado," Tratado de Derecho de Navegación Comercial Internacional.*

* Translated from *Segundo Congreso Sudamericano de Derecho Internacional Privado, Acta Final, Segunda Edición*, Montevideo, 1940, pp. 11–16.

Dr. CARLOS ALBERTO ALCORTA, and
Dr. JUAN AGUSTIN MOYANO.

His Excellency the President of the Oriental Republic of Uruguay has designated as his representatives:

Dr. JOSE IRURETA GOYENA,
Dr. PEDRO MANINI RIOS,
Dr. JUAN JOSE DE AMEZAGA,
Dr. JOSE PEDRO VARELA, and
Dr. ALVARO VARGAS.

His Excellency the President of the Republic of Bolivia has designated as his representatives:

Dr. RUBEN TERRAZAS, and
Dr. JORGE VALDES MUSTERS.

His Excellency the President of the Republic of Paraguay has designated as his representatives:

Dr. LUIS DE GASPERI,
Dr. LUIS A. ARGAÑA, and
Dr. RAUL SAPENA PASTOR.

His Excellency the President of the Republic of Chile has designated as his representatives:

Dr. JOAQUIN FERNANDEZ Y FERNANDEZ, and
Dr. JULIO ESCUDERO GUZMAN.

The aforesaid representatives, having presented their full powers, which were found to be in due form, and after holding the appropriate conferences and discussions, have agreed upon the following provisions:

Chapter I. On Political Asylum

ARTICLE 1. Asylum may be granted without distinction of nationality, and without prejudice to the rights and obligations of protection appertaining to the State to which the refugees belong.

The State which grants asylum does not thereby incur an obligation to admit the refugees into its territory, except in cases where they are not given admission by other States.

ARTICLE 2. Asylum may be granted only in embassies, legations, men-of-war, military camps or military airplanes, and exclusively to persons pursued for political reasons or offenses, or under circumstances involving concurrent political offenses, which do not legally permit of extradition. The chiefs of mission may also receive refugees in their residences, in cases where the former do not live on the premises of the embassies or legations.

ARTICLE 3. Asylum shall not be granted to persons accused of political offenses, who shall have been indicted or condemned previously for common offenses, by the ordinary tribunals.

The determination of the causes which induce the asylum appertains to the State which grants it.

Asylum may not be granted to deserters from the sea-, land-, or air forces, except when the act is clearly of a political character.

ARTICLE 4. The diplomatic agent or military commander who grants asylum shall immediately communicate the names of the refugees to the Ministry for Foreign Affairs of the State where the act in question occurred, or to the administrative authorities of the locality, if the said act has taken place outside the seat of government, except when grave circumstances materially impede such communication or make it dangerous to the safety of the refugees.

ARTICLE 5. While the asylum continues, the refugees shall not be permitted to commit acts which may disturb the public tranquillity or may tend toward participation in, or influence upon, political activities. The diplomatic agents or military commanders shall require of the refugees information as to their personal history, and a promise not to enter into external communications without the express intervention of the former. This promise shall be in writing and signed; and if the refugees should refuse to accept, or should violate, any of these conditions, the diplomatic agent or commander shall immediately terminate the asylum. The refugees may be forbidden to carry with them articles other than those destined for personal use, the papers which belong to them, and the money necessary for their living expenses, the deposit of any other securities or articles in the place of asylum being prohibited.

ARTICLE 6. The Government of the State may demand that a given refugee be removed from the national territory within the shortest possible time; and the diplomatic agent or military commander who has granted the asylum may, for his part, demand the necessary guaranties before the refugee is permitted to leave the country, with due regard for the inviolability of the latter's person, and of the papers belonging to him and carried with him at the time when he received asylum, as well as for the funds necessary to support him for a reasonable time. In the absence of such guaranties, the departure may be postponed until the local authorities shall make them available.

ARTICLE 7. Once they have left the State, the refugees shall not be landed in any other part of it. In case an ex-refugee should return to the country in question, he shall not be accorded new asylum if the disturbance which led to the original grant subsists.

ARTICLE 8. When the number of refugees exceeds the normal capacity of the places of refuge specified in Article 2, the diplomatic agents or military commanders may provide other places, under the protection of their flag,

for the safety and lodging of the said refugees. In such cases, the agents or commanders must communicate that fact to the authorities.

ARTICLE 9. Men-of-war or military airplanes temporarily located in dry-docks or workshops for repairs, shall not accord protection to persons who take refuge in them.

ARTICLE 10. If, in a case of severance of relations, the diplomatic representative who has granted asylum should have to leave the territory of the country where he is located, he shall depart from it accompanied by the refugees; or, if this should be impossible for some reason not dependent upon the choice of the refugees or of the diplomatic agent, he may deliver them to the agent of a third State, with the guaranties specified in this treaty. Such delivery shall be effected by the transfer of the said refugees to the premises of the diplomatic mission which shall have accepted the charge in question, or by leaving the refugees on the premises where the archives of the departing diplomatic mission are kept; and these premises shall remain under the direct protection of the diplomatic agent to whom that function has been intrusted. In either case, the local Ministry for Foreign Affairs shall be duly advised, in conformity with the provisions of Article 4.

Chapter II. On Asylum in Foreign Territory

ARTICLE 11. Asylum granted within the territory of the high contracting parties, in conformity with the present treaty, is an inviolable asylum for persons pursued under the conditions described in Article 2; but it is the duty of the State to prevent the refugees from committing within its territory, acts which may endanger the public peace of the State from which they come.

The determination of the causes that induce the asylum appertains to the State which grants it.

The grant of asylum does not entail for the State which makes that grant, any obligation to admit the refugees indefinitely into its territory.

ARTICLE 12. Political emigrants shall not be permitted to establish *juntas* or committees for the purpose of instigating or promoting disturbances of order in any of the contracting States. Such *juntas* or committees shall be disbanded, upon proof of their subversive character, by the authorities of the State where they are found to exist.

Discontinuance of the benefits of asylum does not imply authorization to place a refugee in the territory of the pursuing State.

ARTICLE 13. Upon the request of the interested State, the one which has granted asylum shall undertake to keep watch over or to intern political emigrants, within a reasonable distance from its frontiers. The State receiving the request shall determine the propriety of the petition and shall fix the distance in question.

ARTICLE 14. The State making the request shall be liable for all expenses incurred in the internment of political refugees and emigrants.

Prior to the internment of the refugees, the States involved shall come to an agreement concerning their maintenance.

ARTICLE 15. Political internees shall advise the Government of the State where they are located, when they decide to leave its territory. Their departure shall be permitted on condition that they do not go to the country of their origin, and notice of this permission shall be given to the interested State.

Chapter III. General Provisions

ARTICLE 16. Any difference which may arise concerning the application of this treaty shall be decided through diplomatic channels, or, in default thereof, shall be submitted to arbitration or judicial decision, provided that there is a tribunal whose jurisdiction both parties recognize.

ARTICLE 17. Any State which has not signed the present treaty may adhere to it by sending its instrument of adhesion to the Ministry for Foreign Affairs of the Oriental Republic of Uruguay, which shall notify the other high contracting parties, through diplomatic channels, of that adhesion.

ARTICLE 18. This treaty shall be ratified by the high contracting parties in accordance with their constitutional rules. The original treaty and the instruments of ratification shall be deposited with the Ministry for Foreign Affairs of the Oriental Republic of Uruguay, which shall communicate the ratifications, through diplomatic channels, to the other contracting States. The treaty shall go into effect among the high contracting parties in the order in which they have deposited their ratifications. The corresponding notification shall be considered as an exchange of ratifications.

ARTICLE 19. This treaty shall remain in force indefinitely, but may be denounced through notice given two years in advance, after the lapse of which period it shall cease to bind the denouncing State, but shall continue to be binding upon the other signatory States. Denunciations must be addressed to the Ministry for Foreign Affairs of the Oriental Republic of Uruguay, which shall transmit them to the other contracting States.

In Witness Whereof, the above-mentioned Plenipotentiaries sign the present treaty in the City of Montevideo, on the 4th day of August, 1939.

TREATY ON INTELLECTUAL PROPERTY *

Signed at Montevideo, August 4, 1939

His Excellency the President of the Republic of Peru; His Excellency the President of the Argentine Republic; His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Republic

* Translated from *Segundo Congreso Sudamericano de Derecho Internacional Privado, Acta Final, Segunda Edición*, Montevideo, 1940, pp. 17–21.

of Bolivia, and His Excellency the President of the Republic of Paraguay, have agreed to conclude a Treaty on Intellectual Property, through the medium of their plenipotentiaries, assembled in congress in the City of Montevideo as a result of the initiative taken by the Governments of the Oriental Republic of Uruguay and the Argentine Republic, the respective representatives being:

For His Excellency the President of the Republic of Peru:
Dr. JOSE LUIS BUSTAMANTE I RIVERO, and
Dr. LUIS ALVARADO GARRIDO.

For His Excellency the President of the Argentine Republic:
Dr. JUAN ALVAREZ,
Dr. DIMAS GONZALEZ GOWLAND,
Dr. CARLOS M. VICO,
Dr. RICARDO MARCO DEL PONT,
Dr. CARLOS ALBERTO ALCORTA, and
Dr. JUAN AGUSTIN MOYANO.

For His Excellency the President of the Oriental Republic of Uruguay:
Dr. JOSE IRURETA GOYENA,
Dr. PEDRO MANINI RIOS,
Dr. JUAN JOSE DE AMEZAGA,
Dr. JOSE PEDRO VARELA, and
Dr. ALVARO VARGAS.

For His Excellency the President of the Republic of Bolivia:
Dr. RUBEN TERRAZAS, and
Dr. JORGE VALDES MUSTERS.

For His Excellency the President of the Republic of Paraguay:
Dr. LUIS DE GASPERI,
Dr. LUIS A. ARGAÑA, and
Dr. RAUL SAPENA PASTOR.

The aforesaid representatives, having presented their full powers, which were found to be in due form; having taken into consideration the fact that the Treaty on Literary and Artistic Property signed in Montevideo on January 11, 1889, might well be subjected to a process of revision for the purpose of adapting it to the new circumstances prevailing in regard to this matter, and after holding the appropriate conferences and discussions, have agreed upon the following provisions:

ARTICLE 1. The signatory States agree to recognize and to ensure the rights of intellectual property and the exercise thereof, in conformity with the provisions of the present treaty.

ARTICLE 2. It is hereby declared that the said provisions apply to the

authors of all works which involve intellectual creation and are susceptible of being published or reproduced by any process, and in particular: to authors of books, pamphlets, and writings of all kinds, whatsoever their distribution and scope; of public lectures, school or university lectures, speeches, addresses, sermons, and oratorical pieces in general; of musical compositions (with or without words), dramatic, musicodramatic, choreographic and pantomimic works, and simple pageants, whenever it is possible to individualize such works in writing or graphically; of original creations intended to be projected through the cinematograph and the corresponding musical accompaniments; of works in the fields of engineering, drawing, painting, sculpture, architectural composition, engraving, lithography, photography, and comparable arts; of graphic and plastic illustrations prepared for scientific, technical or artistic purposes; or of cartographic, schematic and statistical works.

ARTICLE 3. The authors' rights to which the foregoing article refers, include the power to dispose of one's own works, to publish, transfer, translate and adapt them, or to authorize their translation and adaptation, as well as their orchestration, execution, reproduction and diffusion by means of cinematography, photography, telephotography, phonography, radiotelephony, or any other technical means.

ARTICLE 4. Translations, adaptations, musical arrangements, and every other transformed reproduction of literary or artistic works (such as cinematographic versions thereof), as well as compilations of various works, shall be considered for the purposes of this treaty as original productions, without prejudice to the rights which, in each case, the authors of the primary works or the lawful successors of those authors, may invoke.

ARTICLE 5. Persons who publish, translate, adapt, arrange, reproduce or disseminate, by any process, productions in connection with which the rights guaranteed by this treaty do not exist or have expired, shall enjoy with respect to their own work the rights proclaimed in Article 3; but they may not forbid the making of new editions, translations, adaptations, arrangements, and reproductions, or renewed dissemination of the said productions.

ARTICLE 6. Authors whose rights are protected in accordance with the laws in force in any of the States which have adhered to the treaty, except in so far as concerns rights whose protection depends upon treaties concluded by that State with other States which have not adhered, shall enjoy in all of the other States, those same rights and guaranties accorded them, respectively, by the said laws; and the legal organisms of the adhering States should create among themselves the coördination necessary to supply one another directly with the information and security pertinent to the establishment of such claims, at the expense of the persons interested. The entities created legally for the purpose of protecting authorship rights, provided that they are adequately authorized by the interested parties, shall be competent to carry on their respective lawsuits, in the other States, but shall con-

form in so doing to the laws of the country where the proceedings take place.

ARTICLE 7. No State shall be bound to recognize a right of literary or artistic property for a longer time than the period applying to authors who secure such rights in that State itself. The time may be limited to that fixed in the country of origin, if the latter period is shorter.

ARTICLE 8. Newspaper articles may be reproduced, provided that mention is made of the source.

ARTICLE 9. Speeches delivered or read in deliberative assemblies, before courts of justice, or in public gatherings, may be published in newspapers, without need for any authorization.

ARTICLE 10. Indirect and unauthorized appropriations of a literary or artistic work, which do not themselves have the character of an original work and which are designated by various terms, are considered unlawful reproductions.

ARTICLE 11. The rights of authorship shall be recognized, except upon proof to the contrary, in favor of the persons whose names or pseudonyms appear on the literary or artistic works in question.

If the authors choose to withhold their names, the publishers should expressly state that the rights of authorship belong to them.

ARTICLE 12. The liabilities incurred by persons who usurp the rights upheld in this treaty shall be determined by the tribunals and laws of the State where the unlawful act has been committed; or, in the event that it has been perpetrated in a non-adhering State, by the tribunals and laws of the State in whose territory the effects of the act shall be felt.

ARTICLE 13. Any unlawful reproduction of a work whose author is entitled to legal protection may be seized by the competent authorities of any adhering State.

ARTICLE 14. The recognition of the right of property in regard to literary or artistic works does not deprive the signatory States of the power to forbid, in accordance with their laws, the reproduction, publication, dissemination, representation or exhibition of works considered inimical to morality or to good habits of conduct.

ARTICLE 15. Independently of the ownership rights protected by this treaty, authors retain the power to assert their claim to authorship of their works, as well as to oppose any defacement, mutilation, or other modification thereof which they may consider injurious to their honor or reputation.

This right may be exercised by the legal successors of an author, in accordance with the domestic laws of the respective adhering States.

ARTICLE 16. The simultaneous ratification of this treaty by all of the signatory States is not necessary in order to bring it into operation. The States which approve it shall communicate their approval to the Government of the Oriental Republic of Uruguay, so that the latter may notify the other contracting States to that effect. This procedure shall take the place of an exchange.

ARTICLE 17. When the exchange has been made in the form indicated by the preceding article, this treaty shall be effective from that time forth indefinitely; and the treaty signed in Montevideo on the 11th day of January, 1889, shall accordingly be without force.

ARTICLE 18. If any of the signatory nations should deem it advisable to withdraw its adherence to the treaty or introduce changes into the said instrument, it shall so advise the other signatories; but the withdrawal shall not take effect until two years after the date of denunciation, during which time an effort to reach a new accord shall be made.

ARTICLE 19. Article 16 applies also to countries which have not attended this Congress, but which wish to adhere to the present treaty.

In Witness Whereof, the plenipotentaries of the aforesaid nations sign the present treaty, in Montevideo, on the 4th day of August, 1939.

CONVENTION ON THE EXERCISE OF LIBERAL PROFESSIONS *

Signed at Montevideo, August 4, 1939

His Excellency the President of the Republic of Peru; His Excellency the President of the Argentine Republic; His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Republic of Bolivia, and His Excellency the President of the Republic of Paraguay, have agreed to conclude a Convention on the Exercise of Liberal Professions, through the medium of their plenipotentiaries, assembled in congress in the City of Montevideo as a result of the initiative taken by the Governments of the Oriental Republic of Uruguay and the Argentine Republic, the respective representatives being:

For His Excellency the President of the Republic of Peru:
Dr. JOSE LUIS BUSTAMANTE I RIVERO, and
Dr. LUIS ALVARADO GARRIDO.
For His Excellency the President of the Argentine Republic:
Dr. JUAN ALVAREZ,
Dr. DIMAS GONZALEZ GOWLAND,
Dr. CARLOS M. VICO,
Dr. RICARDO MARCO DEL PONT,
Dr. CARLOS ALBERTO ALCORTA, and
Dr. JUAN AGUSTIN MOYANO.
For His Excellency the President of the Oriental Republic of Uruguay:
Dr. JOSE IRURETA GOYENA,
Dr. PEDRO MANINI RIOS,
Dr. JUAN JOSE DE AMEZAGA,
Dr. JOSE PEDRO VARELA, and
Dr. ALVARO VARGAS.

* Translated from *Segundo Congreso Sudamericano de Derecho Internacional Privado, Acta Final, Segunda Edición*, Montevideo, 1940, pp. 22–24.

For His Excellency the President of the Republic of Bolivia:
Dr. RUBEN TERRAZAS, and
Dr. JORGE VALDES MUSTERS.
For His Excellency the President of the Republic of Paraguay:
Dr. LUIS DE GASPERI,
Dr. LUIS A. ARGAÑA, and
Dr. RAUL SAPENA PASTOR.

The aforesaid representatives, having presented their full powers, which were found to be in due form, and after holding the appropriate conferences and discussions, have agreed upon the following provisions:

ARTICLE 1. Nationals and aliens who in any of the States signatory to this convention shall have obtained degrees or diplomas for the exercise of liberal professions, issued by the competent national authority, shall be considered qualified to exercise those professions in the other States, provided that the said degrees or diplomas represent studies and practical work which are reasonably equivalent to the work required, during the same period, of local students in the university to which application is made for confirmation of validity; and also provided that the applicants satisfy the general requisites laid down for the exercise of the respective professions. If necessary, the said applicants may take an examination on the subjects needed to complete the equivalence of their status.

ARTICLE 2. The requirements for equivalent status shall be regarded as completely satisfied when the holder of the diploma shows that he has held a university professorship for ten years in any of the subjects pertaining to the profession in question.

ARTICLE 3. In order that the degree or diploma mentioned in the foregoing articles may have the effects indicated, the following requisites are imposed:

(a) Exhibition of the same, duly legalized;

(b) Proof by the individual exhibiting it that he is the person in whose name it was issued.

ARTICLE 4. The simultaneous ratification of this convention by all of the signatory States is not necessary in order to bring it into operation. The States which approve it shall communicate their approval to the Government of the Oriental Republic of Uruguay, so that the latter may notify the other contracting States to that effect. This procedure shall take the place of an exchange.

ARTICLE 5. When the exchange has been made in the form indicated by the preceding article, this convention shall be effective from that time forth indefinitely; and the treaty signed in Montevideo on the 4th day of February, 1889, shall accordingly be without force.

ARTICLE 6. If any of the signatory nations should deem it advisable to withdraw its adherence to the convention or introduce changes into the said

instrument, it shall so advise the other signatories; but the withdrawal shall not take effect until two years after the date of denunciation, during which time an effort to reach a new accord shall be made.

ARTICLE 7. Article 4 applies also to countries which have not attended this assembly of jurisconsults, but which wish to adhere to the present convention.

In Witness Whereof, the plenipotentiaries of the aforesaid nations affix their signatures hereto, in Montevideo, on the 4th day of August, 1939.

TREATY ON INTERNATIONAL COMMERCIAL NAVIGATION LAW *

Signed at Montevideo, March 19, 1940

His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Republic of the United States of Brazil; His Excellency the President of the Republic of Colombia; His Excellency the President of the Republic of Bolivia; His Excellency the President of the Argentine Republic; His Excellency the President of the Republic of Chile; His Excellency the President of the Republic of Peru, and His Excellency the President of the Republic of Paraguay,

In the belief that the principles governing maritime law, which were confirmed by the Treaty on International Commercial Law signed at Montevideo on February 12, 1889, should be amplified in such a manner as to embrace the new concepts that have been accepted in regard to that matter,

Have agreed to conclude the present treaty through the medium of their respective plenipotentiaries, assembled in congress in the City of Montevideo as a result of the initiative taken by the Governments of the Oriental Republic of Uruguay and the Argentine Republic.

For the execution of this purpose,

His Excellency the President of the Oriental Republic of Uruguay has designated as his representatives:

Dr. JOSE IRURETA GOYENA,
Dr. PEDRO MANINI RIOS,
Dr. JUAN JOSE DE AMEZAGA,
Dr. JOSE PEDRO VARELA, and
Dr. ALVARO VARGAS GUILLEMETTE.

His Excellency the President of the United States of Brazil has designated:

Dr. SEBASTIAN DO REGO BARROS,
Dr. HAHNEMANN GUIMARAES,
Dr. PEDRO BAPTISTA MARTINS,

* Translated from *Segundo Congreso Sudamericano de Derecho Internacional Privado, Acta Final, Segunda Edición,* Montevideo, 1940, pp. 31–40.

Dr. MARIO BULHOES PEDREIRA, and
Dr. ALEXANDRE MARCONDES MACHADO, Jr.

His Excellency the President of the Republic of Colombia has designated:
Dr. ROBERTO URDANETA AUBELAEZ, and
Dr. RAIMUNDO RIVAS.

His Excellency the President of the Republic of Bolivia has designated:
Dr. JORGE VALDES MUSTERS,
Dr. FEDERICO GUTIERREZ GRANIER, and
Dr. GUILLERMO FRANCOVICH.

His Excellency the President of the Argentine Republic has designated:
Dr. JUAN ALVAREZ,
Dr. DIMAS GONZALEZ GOWLAND,
Dr. CARLOS M. VICO,
Dr. RICARDO MARCO DEL PONT,
Dr. CARLOS ALBERTO ALCORTA, and
Dr. JUAN AGUSTIN MOYANO.

His Excellency the President of the Republic of Chile has designated:
Dr. JOAQUIN FERNANDEZ Y FERNANDEZ, and
Dr. JULIO ESCUDERO GUZMAN.

His Excellency the President of the Republic of Peru has designated:
Dr. JOSE LUIS BUSTAMANTE I RIVERO, and
Dr. JOSE JACINTO RADA.

His Excellency the President of the Republic of Paraguay has designated:
Dr. RAUL SAPENA PASTOR, and
Dr. EMILIO SAGUIER ACEVAL.

The said representatives, having presented their full powers, which were found to be in due form, and after holding the appropriate conferences and discussions, have agreed upon the following provisions:

Title I. Of Vessels

ARTICLE 1. The nationality of vessels is determined and regulated by the law of the State which permitted the use of its flag. Proof of this nationality is afforded in the appropriate certificate, lawfully issued by the competent authorities of the said State.

ARTICLE 2. The law of the State which gives its nationality to the vessel governs everything relative to the acquisition and transfer of ownership thereof, to liens and other real rights, or to publicity measures whose object is to ensure that interested third parties shall have knowledge of these matters.

ARTICLE 3. In so far as liens and other real rights are concerned, a change of nationality does not affect existing rights to the vessel. The duration of such rights is regulated by the law of the flag legitimately flown by the vessel at the time when the change of nationality was effected.

ARTICLE 4. The right to attach and sell a vessel by judicial procedure is regulated by the law of its location.

Title II. Of Collisions

ARTICLE 5. Collisions come under the law of the State in whose waters they occur, and are subject to the jurisdiction of its tribunals.

ARTICLE 6. If the collision occurs outside of territorial waters, between vessels of the same nationality, the law of the State whose flag they fly shall be applicable, and the tribunals of that State shall have jurisdiction to try the civil and criminal causes arising from the collision.

ARTICLE 7. If the collision occurs outside of territorial waters, between vessels of different nationalities, each vessel shall be bound by the terms of the law corresponding to its flag, and may not recover more than the said law allows.

ARTICLE 8. In the cases covered by the foregoing article, the civil actions must be filed, according to the preference of the libelant:

(a) Before the judges or tribunals of the libelee's domicile;

(b) Before those of the vessel's port of register;

(c) Or before those having jurisdiction in the place where the vessel was attached by reason of the collision, or where it makes its first call, or where it chances to put into port.

ARTICLE 9. In these same cases, the shipmaster and other persons serving on the vessel cannot be prosecuted criminally or in disciplinary proceedings, except before the judges or tribunals of the State whose flag the vessel was flying at the time of the collision.

ARTICLE 10. Every creditor of the owner or outfitter of the vessel whose claims as creditor are based upon the collision, may obtain the judicial attachment or arrest of that vessel, even though it be on the point of departure.

This right may be exercised by nationals or by aliens domiciled in any one of the contracting States, with respect to vessels of the nationality of any of the said States, when the vessels are within the jurisdiction of the tribunals of the said State of domicile.

Proceedings relative to the attachment, release from attachment, or judicial arrest of the vessels, and matters incidental thereto, are subject to the law of the judge or tribunal who ordered such measures.

ARTICLE 11. The foregoing provisions relative to collisions between vessels, apply also to collisions between a vessel and any moveable or immovable property, as well as to indemnity for damages caused in consequence of the passage or navigation of one vessel in the vicinity of another, even when no physical contact has occurred.

Title III. Of Assistance and Salvage

ARTICLE 12. Services of assistance or salvage rendered within the jurisdictional waters of one of the States shall be governed by the national law of the State in question.

If such services are rendered outside of territorial waters, they shall be governed by the law of the State whose flag is flown by the assisting or salvaging vessel.

ARTICLE 13. Questions which may arise concerning services of assistance or salvage shall be decided:

1. In the case of services rendered within territorial waters, by the judges or tribunals of the place where such services were rendered;

2. In the case of those rendered outside of territorial waters, according to the choice of the libelant:

(a) Before the judges or tribunals of the libelee's domicile;

(b) Before those corresponding to the register of the vessel assisted;

(c) Or, before those who exercise jurisdiction in the place where the vessel assisted makes its first call, or chances to put into port.

ARTICLE 14. The foregoing provisions apply to services of assistance or salvage rendered by vessels and airplanes at sea, or conversely. They apply also to services rendered to such vessels or planes, by persons on shore or by means of floating structures.

Title IV. Of Average

ARTICLE 15. The law corresponding to the nationality of the vessel determines the character of the average.

ARTICLE 16. Particular average relative to the vessel is governed by the law of the latter's nationality; that relative to the merchandise shipped, by the law applicable to the contract of charter-party or transport.

The judges or tribunals of the port of discharge, or, in default thereof, those of the port where the discharge should have been made, are competent to try the respective libels.

ARTICLE 17. General average is governed by the law in force within the State in whose port its settlement and distribution is made.

All matters relative to the conditions and formalities of the act of general average are excepted, and remain subject to the law of the nationality of the vessel.

ARTICLE 18. The settlement and distribution of the general average shall be made in the port of destination of the vessel, or, if the vessel fails to reach that destination, in the port where the discharge is made.

ARTICLE 19. The judges or tribunals of the State in whose port the settlement and distribution are effected, are competent to try actions for general average; and any stipulation conferring jurisdiction on the judges or tribunals of another State is void.

Title V. Of the Shipmaster and Personnel on Board Ship

ARTICLE 20. Contracts of employment are governed by the law corresponding to the nationality of the vessel on which the officers and members of the crew serve.

ARTICLE 21. Everything concerning the internal order of the vessel, and the rights and obligations of the shipmaster, officers and members of the crew, is governed by the laws of the State of the vessel's nationality.

ARTICLE 22. The local authorities of a port of one of the States, do not have jurisdiction in regard to the discipline and maintenance of internal order on a vessel located in the waters of that port but having the nationality of one of the other States. An exception is made to this rule when the security or public order of the port where the vessel is located, has been or tends to be disturbed, or when the intervention of the said local authorities is requested by the shipmaster or the appropriate consul.

ARTICLE 23. Civil controversies relating to the discharge of their duties which may arise between the shipmaster and crew members in service on a vessel of the nationality of any of the States, while that vessel is in the territorial waters of another State, are outside the jurisdiction of the local authorities. Such controversies must be decided by the authorities of the State whose flag the vessel flies, according to the laws and regulations of the said State.

ARTICLE 24. Civil controversies between the shipmaster or the crew members of a vessel having the nationality of one of the States, and persons who are not in the permanent employ of that vessel, occurring while the disputants are within the territorial waters of another State, shall be subject to the law of the latter, and be decided by the local judges or tribunals.

Title VI. Of Charter-Parties and Transport of Merchandise or Persons

ARTICLE 25. Contracts of charter-party, and of transport of merchandise or persons, concerned with effecting such transportation between ports of one and the same State, are governed by the laws of that State, regardless of nationality of the vessel involved. Cognizance of actions which may arise falls under the jurisdiction of the judges or tribunals of the said State.

ARTICLE 26. When the contracts above-mentioned are to be executed in one of the States, they are governed by the law in force in that State, regardless of the place where they were concluded or the nationality of the vessel. The phrase "place of execution" refers to the port where the merchandise is unloaded or the persons are disembarked.

ARTICLE 27. In the cases specified in Article 26, the judges or tribunals of the place of execution, or, at the option of complainant, those of the defendant's domicile, shall be competent to try the respective actions; and any stipulation providing otherwise shall be null.

Title VII. Of Insurance

ARTICLE 28. Contracts of insurance are governed by the laws of the State where the insurance company or its branches or agencies are domiciled; and in cases involving branches or agencies they shall be regarded as having their domicile in the place where they operate.

ARTICLE 29. Insurance which covers enemy property is valid even when the contract is made by the enemy, except when that contract relates to contraband of war. Payment of indemnities must be postponed until the conclusion of peace.

ARTICLE 30. The judges or tribunals of the State where the insurance company is domiciled, or, in the case of branches and agencies, the corresponding judges or tribunals, are competent to try actions based upon the contract of insurance.

When insurance companies, or their branches or agencies, are plaintiffs, they may sue before the judges or tribunals of the place where the insured party is domiciled.

Title VIII. Of Hypothecations

ARTICLE 31. Hypothecations on, or any other real right of guaranty over, vessels of the nationality of one of the States, regularly executed and recorded according to the laws thereof, shall be valid and enforceable in the other States.

Title IX. Of Bottomry Loans

ARTICLE 32. Contracts of bottomry are governed by the law of the State in which the particular loan is made.

ARTICLE 33. Questions which may arise between the lender and the borrower shall be subject to the jurisdiction of the judges or tribunals of the defendant, or to those of the place where the contract was concluded.

Title X. Of Vessels belonging to the State

ARTICLE 34. Vessels which are the property of the contracting States or operated by them, the freight and passengers carried by such vessels, and the cargoes which belong to the States, in so far as concerns claims relative to the operation of the vessels or the transport of passengers and freight, are subject to the laws and rules of responsibility and competency applicable to private vessels, cargo and equipment.

ARTICLE 35. The rule laid down in the preceding article does not apply to men-of-war, yachts, airplanes, or hospital-, coast guard-, police-, sanitation-, supply-, and public-works vessels; nor to other vessels which are the property of the State, or operated by it, and which are employed, at the time when the claim arises, in some public service outside the field of commerce.

ARTICLE 36. In the actions or claims to which the preceding article re-

fers, the owner-, or outfitter-State cannot avail itself of its special immunities if the case comes under one of the following heads:

1. Actions arising from collisions or other accidents of navigation;

2. Actions arising from services of assistance or salvage, or relating to general average;

3. Actions based upon repairs, supplies, or contracts on other matters relative to the vessel.

ARTICLE 37. The vessels to which Article 35 refers cannot in any case be the object of attachment, or of any other judicial proceeding, not authorized by the law of the owner- or outfitter-State.

ARTICLE 38. The same rules apply to freight belonging to a given State and transported in any of the vessels mentioned in Article 35.

ARTICLE 39. Freight which belongs to a given State, and which is transported on board commercial vessels in the performance of public services outside the field of commerce, cannot be the object of attachment or arrest or any judicial proceeding.

However, actions based on collision or other accidents of navigation, assistance, salvage, or general average, and likewise actions arising out of contracts relative to the freight, may be brought in conformity with Article 36.

ARTICLE 40. In every case of doubt as to the character of a public service unrelated to the commercial rôle of the vessel or its freight, the attestation of the State, signed by its diplomatic representative, shall constitute full proof for the purposes of release from attachment or arrest.

ARTICLE 41. The privilege of immunity from attachment cannot be invoked for acts performed during the employment of a vessel of the State in a public service outside the field of commerce, if at the time when the judicial proceeding is undertaken, the ownership of the vessel, or its operation, has been transferred to private third parties.

ARTICLE 42. Vessels of a State which are assigned to commercial service, and private vessels engaged in postal service, cannot be attached by their creditors at the ports of call where they are obliged to perform the services in question.

Title XI. General Provisions

ARTICLE 43. The provisions of this treaty shall apply likewise to fluvial, lacustrine, and air navigation.

ARTICLE 44. The simultaneous ratification of this treaty by all of the contracting States is not necessary in order to bring it into operation. The States which approve it shall communicate their approval to the Government of the Oriental Republic of Uruguay, so that the latter may notify the other contracting States to that effect. This procedure shall take the place of an exchange.

ARTICLE 45. When the exchange has been made, in conformity with the preceding article, this treaty shall be effective from that time forth indefi-

nitely; and the treaty signed in Montevideo on February 12, 1889, shall accordingly be without force.

ARTICLE 46. If any of the contracting States should deem it advisable to withdraw its adherence to the treaty or introduce changes into the said instrument, it shall so advise the other signatories; but the withdrawal shall not take effect until two years after the date of denunciation, during which time an effort to reach a new accord shall be made.

ARTICLE 47. Article 44 applies also to States which have not attended this Congress, but which wish to adhere to the present treaty.

In Witness Whereof, the plenipotentiaries of the aforesaid States sign the present treaty, in Montevideo, the 19th day of March, 1940.

Reservation

By the Delegation of Boliva:

The Delegation of Bolivia subscribes to the present treaty in so far as it refers to fluvial, lacustrine and air navigation.

TREATY OF INTERNATIONAL PROCEDURAL LAW *

Signed at Montevideo, March 19, 1940

His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Republic of the United States of Brazil; His Excellency the President of the Republic of Colombia; His Excellency the President of the Republic of Bolivia; His Excellency the President of the Argentine Republic; His Excellency the President of the Republic of Peru, and His Excellency the President of the Republic of Paraguay,

Have agreed to conclude the present treaty through the medium of their respective plenipotentiaries, assembled in congress in the City of Montevideo as a result of the initiative taken by the Governments of the Oriental Republic of Uruguay and the Argentine Republic.

For the execution of this purpose,

His Excellency the President of the Oriental Republic of Uruguay has designated as his representatives:

Dr. JOSE IRURETA GOYENA,
Dr. PEDRO MANINI RIOS,
Dr. JUAN JOSE DE AMEZAGA,
Dr. JOSE PEDRO VARELA, and
Dr. ALVARO VARGAS GUILLEMETTE.

His Excellency the President of the United States of Brazil has designated:

Dr. SEBASTIAN DO REGO BARROS,
Dr. HAHNEMANN GUIMARAES,
Dr. PEDRO BAPTISTA MARTINS,

* Translated from *Segundo Congreso Sudamericano de Derecho Internacional Privado, Acta Final, Segunda Edición*, Montevideo, 1940, pp. 41–48.

Dr. MARIO BULHOES PEDREIRA, and
Dr. ALEXANDRE MARCONDES MACHADO, Jr.

His Excellency the President of the Republic of Colombia has designated:

Dr. ROBERTO URDANETA ARBELAEZ, and
Dr. RAIMUNDO RIVAS.

His Excellency the President of the Republic of Bolivia has designated:

Dr. JORGE VALDES MUSTERS,
Dr. FEDERICO GUTIERREZ GRANIER, and
Dr. GUILLERMO FRANCOVICH.

His Excellency the President of the Argentina Republic has designated:

Dr. JUAN ALVAREZ,
Dr. DIMAS GONZALEZ GOWLAND,
Dr. CARLOS M. VICO,
Dr. RICARDO MARCO DEL PONT,
Dr. CARLOS ALBERTO ALCORTA, and
Dr. JUAN AGUSTIN MOYANO.

His Excellency the President of the Republic of Peru has designated:

Dr. JOSE LUIS BUSTAMANTE I RIVERO, and
Dr. JOSE JACINTO RADA.

His Excellency the President of the Republic of Paraguay has designated:

Dr. RAUL SAPENA PASTOR, and
Dr. EMILIO SAGUIER ACEVAL.

The said representatives, having presented their full powers, which were found to be in due form; having taken into consideration the fact that the Treaty on International Procedural Law signed at Montevideo on January 11, 1889, might well be subjected to a process of revision for the purpose of modifying and harmonizing the rules therein laid down, and bearing in mind the conference and discussions held in this connection, have agreed upon the following provisions:

Title I. General Principles

ARTICLE 1. Trials and their incidents, of whatsoever nature, shall be conducted in accordance with the procedural law of the State in which the trials are held.

ARTICLE 2. Proofs shall be admitted and weighed according to the law applicable to the juridical act which forms the subject-matter of the proceedings. Those proofs are excluded which, by their character, are not authorized by the law of the place where the trial is held.

Title II. Of Legalization

ARTICLE 3. Sentences and homologated awards rendered [in a signatory State] in regard to civil, commercial or contentious-administrative matters,

public indentures and other documents executed by functionaries of a [signatory] State, and letters requisitorial or rogatory [therein issued], are considered authentic in the other signatory States, in accordance with this treaty, provided that they are duly legalized.

ARTICLE 4. The legalization shall be considered as executed in due form when it is carried out in accordance with the laws of the country from which the document in question issues, and when that document has been authenticated by the diplomatic or consular agent accredited to the said country by the Government of the State in whose territory the execution is requested.

Title III. Of the Enforcement of Letters Requisitorial, Judgments, and Arbitral Awards

ARTICLE 5. Judgments and arbitral awards rendered in civil and commercial matters in one of the signatory States shall have in the territory of the other signatories, the same force as in the country where they were pronounced, provided that they comply with the following requirements:

(a) They must have been rendered by a tribunal competent in the international sphere;

(b) They must have a final character, or the authority of *res judicata*, in the State where they were rendered;

(c) The party against whom they were pronounced must have been legally summoned, and either represented or declared in default, in conformity with the law of the country in which the trial was held;

(d) They must not conflict with public order in the country of their enforcement.

Civil judgments rendered in any signatory State by an international tribunal, and relating to private persons or interests, are included under the provisions of this article.

ARTICLE 6. The documents indispensable in order to request enforcement of a judgment or arbitral award, are the following:

(a) A complete copy of the judgment or arbitral award;

(b) A copy of the documents necessary to show that paragraph (c) of the preceding article has been complied with;

(c) An authenticated copy of the order which declares that the judgment or award in question is final, or has the authority of *res judicata*, together with an authenticated copy of the laws upon which that order is based.

ARTICLE 7. The execution of the aforesaid judgments and arbitral awards, including the judgments of international tribunals mentioned in the last paragraph of Article 5, must be requested of the competent judges or tribunals, who, upon hearing the State's Attorney, and after receiving proof that those judgments or awards meet the requirements of the said article, shall order enforcement through the proper channels, in conformity with the corresponding provisions of the local law of procedure.

In any case, upon request of the State's Attorney, or even independently

of such a request, the party against whom enforcement is sought for the judgment or arbitral award in question, may be heard, without taking any other measures of defence.

ARTICLE 8. The judge from whom the enforcement of a foreign sentence is requested, acting upon petition of one of the parties or even *ex officio*, without entering into additional proceedings, may take all the measures which are necessary to ensure the effectiveness of that sentence, conformably with the provisions of the law of the local tribunal regarding sequestrations, inhibitions, attachments or other preventive measures.

ARTICLE 9. When the case calls solely for the establishment of the fact that a given judgment or award has the authority of *res judicata*, such judgment or award should be offered in judicial proceedings, supported by the documents to which Article 6 refers, at the proper time and in accordance with the local law; and the judges or tribunals shall pass upon the merit thereof in the sentence which they pronounce, after ascertaining in a hearing of the State's Attorney that the requisites laid down in Article 5 have been met.

ARTICLE 10. Procedural acts of a non-contentious nature, such as inventories, the reading of wills, appraisals, and the like, which have been carried out in one State, shall have in the others the same force as if they had taken place in the territory of the latter, provided that they meet all of the requirements set forth in the preceding articles.

ARTICLE 11. Letters requisitorial and letters rogatory, which have as their object the issuance of notices, the taking of depositions, or the execution of any other judicial measure, shall be complied with in the signatory States, provided that the said letters meet the requirements laid down in this treaty. Likewise, such letters must be prepared in the language of the State which issues them, and must be accompanied by a duly certified translation in the language of the State to which they are addressed. Rogatory commissions in civil or criminal matters, transmitted through the diplomatic agents—or, in their absence, the consular agents—of the country which issues the letter, will not require legalization of signature.

ARTICLE 12. When the letter requisitorial or letter rogatory refers to attachments, appraisals, inventories or any preventive measure, the judge to whom it is addressed shall make the necessary provisions for the appointment of experts, appraisers, receivers, and in general, for everything conducive to the better discharge of the commission involved.

ARTICLE 13. Letters requisitorial or rogatory shall be acted upon according to the laws of the country which is asked to execute them. If they relate to attachment, the propriety of that measure shall be governed and determined by the laws and the judges of the place where the proceedings are held.

The process and form of attachment, and the exemption from attachment of the property designated with that end in view, shall be governed by the

laws and ordered by the judges of the place where the said property is located.

In order to execute the judgment rendered in the proceedings in which it was ordered that property located in another territory be attached, the procedure indicated in Articles 7 and 8 of this treaty shall be followed.

ARTICLE 14. When attachment proceedings have been instituted, the person affected by this measure may allege before the judge to whom the letter requisitorial was addressed, the pertinent third-party claim, with the sole purpose of having that claim communicated to the judge of origin. When the latter has been notified of the interposition of the third-party claim, he shall suspend the principal proceedings for a term not to exceed sixty days so that the third-party claimant may assert his rights. The third-party claim shall be examined by the judge of the principal proceedings, in conformity with the laws of his locality. Any third-party claimant who appears before the court after the expiration of the sixty-day term must accept the existing status of the case.

If the third-party claim urged is based upon ownership or upon real rights over the property attached, it shall be passed upon by the judges in accordance with the laws of the country where the said property is located.

ARTICLE 15. Persons interested in the execution of letters requisitorial and letters rogatory may appoint agents, shall be responsible for expenses incurred in the exercise of the agents' powers or in the resultant proceedings.

Title IV. Of Civil Meetings of Creditors

ARTICLE 16. Civil meetings of creditors are governed and conducted in accordance with the laws, and before the judges, of the country where the debtor has his domicile.

ARTICLE 17. In cases involving property located in one or more signatory States, other than property in the debtor's domicile, the creditors may institute independent proceedings in each of the said States.

ARTICLE 18. When the insolvency has been declared, and without prejudice to the right established in Article 17, each judge shall take the pertinent preventive steps with respect to the property located in other countries, and, in so doing, shall proceed according to the forms established for such cases in the preceding articles.

ARTICLE 19. When the preventive measures have been complied with, the judges to whom the letters requisitorial were addressed shall publish proclamations, throughout a thirty-day period, announcing the insolvency hearing, the appointment of the receiver and his domicile, the time-limit for submitting the evidence of claims, and the preventive measures which may have been taken.

ARTICLE 20. In the cases mentioned in Article 17, the local creditors, within a period of sixty days immediately after the last publication provided for in Article 19, may ask for insolvency proceedings against the debtor, with

respect to property located in their own country. In these instances, just as in cases involving a single insolvency hearing which is held before the tribunals and according to the laws of the country of the debtor's domicile, the local creditors shall have preferential rights in regard to property located in the territory where their claims should be met.

ARTICLE 21. When several insolvency hearings are in order, any surplus which may be left over in favor of the debtor of one signatory State, shall be held to await the outcome of the other hearings, and shall preferably be handed over, through judicial channels, for the purposes of the hearing first announced.

ARTICLE 22. Liens are determined exclusively by the law of the State where each proceeding is opened, subject to the following limitations:

(a) The special lien on immovables and the real right of mortgage, shall be subject to the law of the State where the property is located;

(b) The special lien on moveables is subject to the law of the State where those moveables are located, without prejudice to the rights of the State in regard to taxes due.

The same rule prevails with respect to rights based on possession or tenancy of moveable property, or on public registry, or on any other form of publicity.

ARTICLE 23. The authority of the receivers, or of the legal representatives of the creditors, shall be recognized in all of the States; and these shall permit in their territory the exercise of the functions allowed the said receivers and representatives by the insolvency law and by the present treaty.

ARTICLE 24. Incapacity affecting the debtor shall be decreed by the judge of his domicile, according to the law thereof. Incapacity relative to property located in other countries may be declared by the local tribunals in accordance with their own laws.

The rehabilitation of the insolvent party and the effects thereof shall be governed by the same rules.

ARTICLE 25. The rules relative to insolvency proceedings shall likewise be applicable to the judicial liquidations, precautionary agreements, suspensions of payment and other analogous measures which may be provided for in the laws of the contracting States.

General Provisions

ARTICLE 26. The simultaneous ratification of this treaty by all of the signatory States is not necessary in order to bring it into operation. The States which approve it shall communicate their approval to the Government of the Oriental Republic of Uruguay, so that the latter may notify the other contracting States to that effect. This procedure shall take the place of an exchange.

ARTICLE 27. When the exchange has been made in the form indicated by the preceding article, this treaty shall be effective from that time forth in-

definitely, among the States which shall have complied with the said formality; and the treaty signed in Montevideo on the 11th day of January, 1889, shall accordingly be without force.

ARTICLE 28. If any of the signatory States should deem it advisable to withdraw its adherence to the treaty or introduce changes into the said instrument, it shall so advise the other signatories; but the withdrawal shall not take effect until two years after the date of denunciation, during which time an effort to reach a new accord shall be made.

ARTICLE 29. Article 26 applies also to States which have not attended this Congress, but which wish to adhere to the present treaty.

In Witness Whereof, the plenipotentiaries of the aforesaid States sign the present treaty, in Montevideo, on the 19th day of March, 1940.

Reservations

1. By the Delegation of the United States of Brazil:

(a) *As to Article 2*—The Delegation understands that the weighing of the proof must be governed by the *lex fori*.

(b) *As to Article 5*—It understands that the provisions of Articles 776 and 778 of the Brazilian Code of Procedure are excepted from the effects of Article 5.

2. By the Delegation of the Argentine Republic:

(c) *As to Article 11*—The Delegation understands that when a request for issuance of letters requisitorial is opposed, before the judge to whom the request is made, by pleas based upon pendency of action or upon incompetence of jurisdiction but which nevertheless attribute cognizance of the case to tribunals of the State to which the said judge belongs, the latter, in defense of his own jurisdiction, may refuse absolutely or in part to carry out the request.

TREATY ON INTERNATIONAL PENAL LAW *

Signed at Montevideo, March 19, 1940

His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Republic of the United States of Brazil; His Excellency the President of the Republic of Colombia; His Excellency the President of the Republic of Bolivia; His Excellency the President of the Argentine Republic; His Excellency the President of the Republic of Peru, and His Excellency the President of the Republic of Paraguay,

Have agreed to conclude the present treaty through the medium of their respective plenipotentiaries, assembled in congress in the City of Montevideo as a result of the initiative taken by the Governments of the Oriental Republic of Uruguay and the Argentine Republic.

For the execution of this purpose,

* Translated from *Segundo Congreso Sudamericano de Derecho Internacional Privado, Acta Final, Segunda Edición*, Montevideo, 1940, pp. 49–60.

His Excellency the President of the Oriental Republic of Uruguay has designated as his representatives:

Dr. JOSE IRURETA GOYENA,
Dr. PEDRO MANINI RIOS,
Dr. JUAN JOSE DE AMEZAGA,
Dr. JOSE PEDRO VARELA, and
Dr. ALVARO VARGAS GUILLEMETTE.

His Excellency the President of the United States of Brazil has designated:

Dr. SEBASTIAN DO REGO BARROS,
Dr. HAHNEMANN GUIMARES,
Dr. PEDRO BAPTISTA MARTINS,
Dr. MARIO BULHOES PEDREIRA, and
Dr. ALEXANDRE MARCONDES MACHADO, Jr.

His Excellency the President of the Republic of Colombia has designated:

Dr. ROBERTO URDANETA ARBELAEZ, and
Dr. RAIMUNDO RIVAS.

His Excellency the President of the Republic of Bolivia has designated:

Dr. JORGE VALDES MUSTERS,
Dr. FEDERICO GUTIERREZ GRANIER, and
Dr. GUILLERMO FRANCOVICH.

His Excellency the President of the Argentine Republic has designated:

Dr. JUAN ALVAREZ,
Dr. DIMAS GONZALEZ GOWLAND,
Dr. CARLOS M. VICO,
Dr. RICARDO MARCO DEL PONT,
Dr. CARLOS ALBERTO ALCORTA, and
Dr. JUAN AGUSTIN MOYANO.

His Excellency the President of the Republic of Peru has designated:

Dr. JOSE LUIS BUSTAMANTE I RIVERO, and
Dr. JOSE JACINTO RADA.

His Excellency the President of the Republic of Paraguay has designated:

Dr. RAUL SAPENA PASTOR, and
Dr. EMILIO SAGUIER ACEVAL.

The said representatives, having presented their full powers, which were found to be in due form, having taken into consideration the fact that the Treaty on International Penal Law signed at Montevideo on January 23, 1889, might well be subjected to a process of revision for the purpose of modifying and harmonizing the rules therein laid down, and bearing in

mind the conferences and discussions held in this connection, have agreed upon the following provisions:

Title I. Of Jurisdiction and the Law Applicable Thereto

ARTICLE 1. Crimes, whatever may be the nationality of the agent, of the victim, or of the injured party, shall be tried by the tribunals, and punished according to the laws, of the State in whose territory they are committed.

ARTICLE 2. Crimes affecting two or more States and committed by one or more offenders, shall come under the jurisdiction of the judges or tribunals of the place where the said crimes were perpetrated; and the local laws must be applied in the corresponding proceedings.

If the crime was perpetrated in more than one country, it shall come under the jurisdiction of the tribunals of the first State to take judicial cognizance thereof, and the laws of that State must apply.

ARTICLE 3. In cases involving connected crimes committed by one or more offenders, whether as principals, as accomplices, or as harborers, in the territory of two or more signatory States, preference shall be given in regard to trial of the crime, to the authorities and penal law of the country in which the more serious offence was perpetrated, a matter which shall be left to the discretion of the requested State.

ARTICLE 4. In the cases to which Articles 2 and 3 refer, the judge of the proceedings shall communicate with the Executive Power, in order that the latter may notify the States interested in the trial, of the institution of proceedings.

ARTICLE 5. Acts committed in the territory of a given State, which are not susceptible of punishment according to its own laws but which are punishable by the State wherein they produce their effects, may not be tried by the judges or tribunals of the latter unless the offender shall be found within its jurisdiction.

A similar rule applies with respect to those crimes for which the extradition of the offenders is not authorized.

In cases involving acts committed by public functionaries who are serving in a foreign country, if such acts constitute a criminal violation of the specific duties attached to the office with which they have been entrusted, the foregoing rule shall not apply, and the said functionaries shall be tried and punished by the judges or tribunals of the offenders' own State, in conformity with its laws.

ARTICLE 6. Any of the signatory States may expel, in accordance with its laws, alien offenders who have taken refuge in its territory, provided that after the appropriate request has been presented to the authorities of the country where any of the extraditable crimes were committed, the surrender of the said offenders is not requested, through the channel of extradition, within ninety days.

ARTICLE 7. The principles of public international law shall be observed for the trial of crimes committed by any of the functionaries of a diplomatic mission or by any member of their respective suites.

A similar procedure shall be followed with respect to Chiefs of State and their suites; and also with respect to members of armed forces, when the crime has been committed within the bounds of the place where they are stationed, and bears a legal relationship to the said forces.

ARTICLE 8. Crimes committed on the high seas, whether on board airplanes, or on men-of-war, or on merchant ships, must be tried and punished according to the law of the State whose flag the vessel flies.

ARTICLE 9. Crimes perpetrated on board men-of-war or military planes of one State, while these are in the territorial waters of another State, shall be tried by the tribunals, and punished according to the laws, of the State to which the said men-of-war or airplanes belong.

If only persons who do not belong to the crew of the warship or airplane, participate in the commission, on board, of such acts, prosecution and punishment shall be conducted in accordance with the laws of the State within whose territorial waters the warship or airplane is located.

The laws of the country to which the ship or airplane belongs, shall also govern the trial and punishment of such punishable acts as are committed elsewhere than on board by members of the crew or by individuals charged with the exercise of some function on board, when the said acts affect only the disciplinary order of those ships or planes.

ARTICLE 10. Crimes committed on board vessels other than vessels of war shall be tried and punished by the judges or tribunals, and according to the laws, of the State in whose territorial waters a given vessel was located at the time when such a crime was committed.

If the crimes are committed on board private airplanes which are not in flight, the corresponding trial and imposition of punishment shall be conducted according to the laws, and by the judges, of the territory where the crimes occurred.

ARTICLE 11. Trial and punishment for crimes committed on board airplanes or on men-of-war or on merchant ships, under the conditions specified in Articles 2 and 3, shall be conducted according to the provisions laid down in those articles.

ARTICLE 12. For the purposes of criminal jurisdiction, territorial waters are declared to be those included in a belt five miles wide running along the coast of the mainland or of the islands which constitute part of the territory of the various States.

ARTICLE 13. A riparian State has the right to continue on the high seas a pursuit begun within its territorial waters, as well as the right to arrest and try the vessel that has committed an offence within the said waters. In all cases where a capture is effected on the high seas, that fact shall be communi-

cated without delay to the State whose flag the vessel flies. The pursuit must be broken off instantly when the vessel enters [other] territorial waters, or a port belonging to its own country or to a third State.

ARTICLE 14. International piracy, traffic in narcotics, white slavery, and the destruction or damage of submarine cables, are subject to the jurisdiction and law of the State into whose power the offenders may come, regardless of the place where such crimes were committed; but without prejudice to the preferential right of the State in which the criminal acts were perpetrated, to request the extradition of the offenders.

ARTICLE 15. Crimes committed on board airplanes in flight over a foreign State shall come under the jurisdiction of the latter if the airplane should make its first landing there. Otherwise, such jurisdiction shall appertain to the State in whose territory that first landing is made, and the laws of the subjacent State shall apply. When it is not possible to determine the territory over which the crime was committed, the case shall be governed by the law of the State whose flag the plane flies.

The pilot of an airplane in flight, who has been notified of the commission of a crime, is bound to land at the first known airport and inform the authorities of that port.

ARTICLE 16. Prescription of actions and of penalties shall be determined by the judges or tribunals, and in accordance with the laws, of the State to which cognizance of the crimes in question appertains.

ARTICLE 17. A judgment rendered in any of the signatory States shall be recognized in those States for the purpose of establishing the repetition or habitual commission of the offence, or a tendency thereto, on the part of the accused; and also in order to make it obligatory that he accede, while he is in their territory, to indemnification of the damage, to measures of security against his person, and to the interdiction resulting from the proceedings.

The signatory States shall furnish reports in regard to the judicial or police antecedents on file in their archives, if they are requested to do so by another interested State.

Title II. Of Extradition

CHAPTER I. OF THE SYSTEM OF EXTRADITION

ARTICLE 18. The contracting States bind themselves to surrender, if they are requested to do so, persons who have been prosecuted or condemned by the authorities of one of those States, and who are found in the territory of another.

The request for surrender shall be granted in accordance with the procedural formalities in force within the requested State, provided that the following conditions are both met:

(a) The person to be surrendered must have been condemned by final judgment to one year in prison, at least; or, if the case concerns an indicted person, the crime that constitutes the subject-matter of the prosecution

must be punishable, according to the laws of the requesting State, by a minimum intermediate penalty of two years' imprisonment. Half the sum of the extremes within which the particular penalty involving deprivation of liberty is fixed, shall be considered as the intermediate penalty.

(b) The requesting State must have jurisdiction to try and to pass sentence concerning the crime which motivates the demand, even when the acts involved have been committed outside the territory of the contracting States.

ARTICLE 19. The nationality of the accused may not be invoked as a reason for refusing extradition, except when a constitutional provision establishes otherwise.

ARTICLE 20. Extradition shall not be granted:

(a) For the crime of duelling;

(b) For the crime of adultery;

(c) For the crimes of libel and slander, even when perpetrated through the medium of the press;

(d) For political crimes;

(e) For common crimes committed with a political purpose, except when, in the opinion of the judge or tribunal receiving the request, the common character manifestly predominates;

(f) For common crimes in cases where, in the opinion of the judge or tribunal of the requested State, it can be inferred from the attendant circumstances that the purpose in making that request is preponderantly political;

(g) For essentially military crimes, exclusive of those governed by the common law. If the person sought is charged with a military crime which is also punishable by the common law, he shall be surrendered with the reservation that he is to be tried only in accordance with the said law and by the ordinary tribunals;

(h) When the person sought has been or is being tried, for the same act and in accordance with the provisions of this treaty, in the requested State; or when the action or penalty has been invalidated by prescription, according to the laws of the requesting State, before the seizure of the accused;

(i) When the person sought would have to appear before a tribunal or court taking cognizance of exceptions.

The determination of the character of the offences involved appertains exclusively to the authorities of the requested State, on the basis of the law more favorable to the accused.

ARTICLE 21. No civil or commercial action involving the accused shall hinder his extradition.

ARTICLE 22. When the individual sought is deprived of his freedom by virtue of a prosecution or a service of sentence in the requested State, his surrender may be postponed until the restriction on his freedom has been removed, or the sentence has been served; but in the meantime, prescription of the action or penalty in question shall be suspended.

ARTICLE 23. The murder of the Chief of a contracting State, or an attempt upon his life, shall not be regarded as a political crime or act connected therewith.

ARTICLE 24. Persons whose extradition has been granted may not be tried for crimes previous to those on which the extradition is based.

Crimes constituting grounds for extradition may be tried and punished, provided that the requested State gives its consent previously and in conformity with the terms of this treaty.

ARTICLE 25. When the extradition of a given individual is demanded by different States, and the demands are based upon the same crime, preference shall be accorded to that of the State in whose territory the crime was perpetrated; or, if it was committed in different countries, preference shall be given to the first demand.

If different acts are involved, preference in granting the extradition shall be given to the State in whose territory the more serious crime was committed, according to the judgment of the requested State.

In cases involving different acts which the requested State regards as equally serious, the preference shall be determined by the order in which the requests are received.

ARTICLE 26. In the cases contemplated in paragraphs 2 and 3 of the foregoing article, the requested State may, as a condition of granting the extradition, stipulate that the person demanded must also be subject to ulterior extradition.

ARTICLE 27. In no case shall the death penalty be imposed for the crime for which extradition has been granted.

ARTICLE 28. The foregoing rules will apply in the case of persons condemned to measures of security, provided that the latter consist of deprivation or restriction of freedom, and that for their extinction more than a year has yet to elapse.

CHAPTER II. OF EXTRADITION PROCEDURE

ARTICLE 29. The demand for extradition must be made by the appropriate diplomatic agent or, in default thereof, either by the consular agents or directly from Government to Government; and it must be accompanied, according to whether the persons involved are accused or condemned persons, either by a copy of the order of imprisonment or judicial order providing for deprivation of freedom, issued by the competent authorities, or by an authenticated copy of the judgment of condemnation.

The records supplied must include a precise statement as to the act on which the charge is based, and the date and place of its occurrence. The said records shall be accompanied by copies of the laws applicable to the case, as well as by copies of those relative to prescription as it affects the action or penalty in question. Data and information regarding antecedents, to facilitate identification of the person sought, shall also be included.

ARTICLE 30. The demand for extradition of a condemned person cannot be based on a sentence rendered by default, that is to say, a sentence rendered when the accused has not been personally summoned to defend, or when he has been summoned but has not appeared. However, the requested extradition may be granted if the requesting State promises to reopen the case in such a way as to allow for the defence of the accused.

ARTICLE 31. If the demand for extradition has been made in due form, the requested Government shall send the documents on the case to the competent judge or tribunal, who must pass upon the propriety of the said demand, on the basis of the provisions contained in Articles 29 and 30; and, whenever the case warrants such action, the said judge or tribunal shall take the necessary steps for the apprehension of the person sought, ordering his arrest and the seizure of the articles involved in the crime, if they believe this to be the proper procedure.

ARTICLE 32. If the judge of the requested State considers that the demand is legally inadmissible because of some defect of form, he shall advise the judge of the requesting State as to what documents are lacking, and shall fix a reasonable time-limit for their remission.

ARTICLE 33. In cases where the arrest is made, the party concerned shall be informed of the cause of arrest within twenty-four hours.

Within a period of three days and no more, reckoned from the day following the notification, the interested party may oppose exceptions based on the following grounds:

(a) Incompetence of the judge of the requested State who ordered the arrest;

(b) The fact that the said party is not the person sought;

(c) Defects of form in the documents presented;

(d) Impropriety of the demand for extradition.

ARTICLE 34. In cases where it is necessary to verify the allegations, the question shall be laid open for proof; and the provisions of the procedural law of the requested State shall govern with respect to such proof and to the time allowed for it.

ARTICLE 35. When the proof has been produced, a decision on the question shall be reached without further proceedings, by a declaration as to whether or not grounds for extradition exist.

In cases where cognizance of the demand appertains originally to the judge of first instance, the decision shall be appealable to the competent tribunal.

ARTICLE 36. If the sentence is favorable to the demand for extradition, the tribunal which renders the decision shall communicate it immediately to the Executive Power, in order that he may take the steps necessary for the surrender of the culprit.

If the sentence is unfavorable, the judge or tribunal, once it has become final, shall order the immediate release of the prisoner and shall so advise

the Executive Power, enclosing a copy of the said sentence in order that the Executive may bring it to the knowledge of the requesting Government.

ARTICLE 37. If the prisoner acquiesces in the demand, the judge or tribunal shall draw up a statement regarding the terms of that acquiescence, and shall, without further proceedings, declare that extradition is proper.

ARTICLE 38. Articles found in the possession of the person sought, if they were acquired in consequence of the act in question, if they were used in its execution, if the act was perpetrated upon them, or if they constitute evidence in some other way, shall be seized and delivered to the demanding State, even though the extradition may fail to take place owing to the death or disappearance of the accused.

ARTICLE 39. In cases where the delivery of the accused is to be effected over a land route, the requested State shall transfer him to the most suitable point on the frontier.

When his transfer must be effected over a maritime, fluvial or air route, he shall be delivered to those agents whom the requesting State may appoint, at the most suitable port or airdrome of embarkation.

The requesting State may, in any case, appoint one or more police agents; but they shall act as subordinates of the agents or authorities representing the territory of the requested State, or that of the State of transit.

ARTICLE 40. If it should be necessary to traverse the territory of an intermediate State in order to surrender a prisoner whose extradition has been agreed to by one State in favor of another, such transit shall be permitted by the said intermediate State without any requirement other than the exhibition through diplomatic channels of the proper attestation, in the form of a decree of extradition which authorized the surrender.

ARTICLE 41. The expenses incurred in the extradition of the offender shall be borne by the requested State until the moment when the surrender takes place; and thenceforth, they shall be borne by the requesting Government.

ARTICLE 42. When extradition of a person under indictment has been accorded, the Government whose request was granted shall communicate to the Government that granted it, the final judgment pronounced in the case which constituted the grounds for extradition.

ARTICLE 43. When extradition has been accorded, and the person sought has been placed at the disposal of the diplomatic, consular or police agent of the demanding State, he shall be released if, within a period of forty days from the date of the pertinent communication, he has not been sent to his destination; always provided that no request for a reasonable delay has been presented. In such circumstances, no new demand based upon the same grounds will be admissible.

ARTICLE 44. When the request for extradition has been granted, the requesting State agrees to try the accused, in accordance with Article 24, exclusively for the act for which he was surrendered and not for any previous

act, unless he should remain voluntarily for more than thirty days, after being released, in the territory of the requested State.

ARTICLE 45. During the extradition proceedings the person detained may not be released on bail.

Title III. Of Provisional Arrest

ARTICLE 46. In urgent cases, the contracting States may request by post or by telegraph that steps be taken for the arrest of the accused and for the seizure of articles connected with the crime, once the nature of that crime has been determined and the existence of an order of imprisonment issued by a competent judge, has been invoked.

In such cases, the prisoner shall be released if, within sixty days from the date of his arrest, the formal demand for extradition, duly drawn up, has not been presented to the requested State.

When that interval has elapsed and the prisoner has been released, his arrest cannot be requested again until after the documents required by Article 29 have been presented.

ARTICLE 47. In cases of provisional arrest, the release of the accused shall be effected without prejudice to the retention of the articles mentioned in Article 38, for a reasonable time, to be fixed by the judges of the State which proceeded to the arrest and in accordance with the attendant circumstances.

ARTICLE 48. In all cases of provisional arrest, the responsibilities which may arise therefrom appertain to the State that requested it.

Title IV. General Provisions

ARTICLE 49. The simultaneous ratification of this treaty by all of the signatory States is not necessary in order to bring it into operation. The States which approve it shall communicate their approval to the Government of the Oriental Republic of Uruguay, so that the latter may notify the other contracting States to that effect. This procedure shall take the place of an exchange.

ARTICLE 50. When the exchange has been made, in the form indicated by the preceding article, this Treaty shall be effective from that time forth indefinitely.

ARTICLE 51. If any of the contracting States should deem it advisable to withdraw its adherence to the treaty or introduce changes into the said instrument, it shall so advise the other signatories; but the withdrawal shall not take effect until two years after the date of denunciation, during which time an effort to reach a new accord shall be made.

ARTICLE 52. No demand for extradition in connection with a crime committed before the exchange of the ratifications of this treaty may be based upon the provisions therein contained.

ARTICLE 53. Article 49 applies also to States which have not attended this Congress, but which wish to adhere to the present treaty.

In Witness Whereof, the plenipotentiaries of the aforesaid nations sign the present treaty in Montevideo on the 19th day of March, 1940.

Reservation

The Delegation of the Argentine Republic reserves the right to differentiate between "political offender" and "international terrorist."

TREATY ON INTERNATIONAL COMMERCIAL TERRESTRIAL LAW *

Signed at Montevideo, March 19, 1940

His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Republic of the United States of Brazil; His Excellency the President of the Republic of Colombia; His Excellency the President of the Republic of Bolivia; His Excellency the President of the Argentine Republic; His Excellency the President of the Republic of Peru, and His Excellency the President of the Republic of Paraguay,

In the belief that the principles governing international commercial terrestrial law, which were confirmed by the Treaty on International Commercial Law signed at Montevideo on February 12, 1889, should be amplified in such a manner as to embrace the new concepts that have been accepted in regard to that matter,

Have agreed to conclude the present treaty through the medium of their respective plenipotentiaries, assembled in congress in the City of Montevideo as a result of the initiative taken by the Governments of the Oriental Republic of Uruguay and the Argentine Republic.

For the execution of this purpose,

His Excellency the President of the Oriental Republic of Uruguay has designated as his representatives:

Dr. JOSE IRURETA GOYENA,
Dr. PEDRO MANINI RIOS,
Dr. JUAN JOSE DE AMEZAGA,
Dr. JOSE PEDRO VARELA, and
Dr. ALVARO VARGAS GUILLEMETTE.

His Excellency the President of the United States of Brazil has designated:

Dr. SEBASTIAN DO REGO BARROS,
Dr. HAHNEMANN GUIMARAES,
Dr. PEDRO BAPTISTA MARTINS,
Dr. MARIO BULHOES PEDREIRA, and
Dr. ALEXANDRE MARCONIES MACHADO, Jr.

His Excellency the President of the Republic of Colombia has designated:

Dr. ROBERTO URDANETA ARBELAEZ, and
Dr. RAIMUNDO RIVAS.

*Translated from *Segundo Congreso Sudamericano de Derecho Internacional Privado, Acta Final, Segunda Edición*, Montevideo, 1940, pp. 61–72.

His Excellency the President of the Republic of Bolivia has designated:

Dr. JORGE VALDES MUSTERS,
Dr. FEDERICO GUTIERREZ GRANIER, and
Dr. GUILLERMO FRANCOVICH.

His Excellency the President of the Argentine Republic has designated:

Dr. JUAN ALVAREZ,
Dr. DIMAS GONZALEZ GOWLAND,
Dr. CARLOS M. VICO,
Dr. RICARDO MARCO DEL PONT,
Dr. CARLOS ALBERTO ALCORTA, and
Dr. JUAN AGUSTIN MOYANO.

His Excellency the President of the Republic of Peru has designated:

Dr. JOSE LUIS BUSTAMANTE I RIVERO, and
Dr. JOSE JACINTO RADA.

His Excellency the President of the Republic of Paraguay has designated:

Dr. RAUL SAPENA PASTOR, and
Dr. EMILIO SAGUIER ACEVAL.

The said representatives, having presented their full powers, which were found to be in due form, and after holding the appropriate conferences and discussions, have agreed upon the following provisions:

Title I. Of Facts, Acts of Commerce and Merchants

ARTICLE 1. Facts and juridical acts shall be considered as civil or commercial, according to the law of the State where they occur.

ARTICLE 2. Attribution of the character of "merchant" to a given person is determined by the law of the State where that person has his commercial domicile. Registration and its effects are governed by the law of the State in which the registration is required.

ARTICLE 3. The commercial domicile is the place where the principal seat of business of the merchant or commercial partnership is located.

However, if such merchants or partnerships set up establishments, branches, or agencies in another State or in other States, they shall be considered as domiciled in the place where they operate, and as subject to the jurisdiction of the local authorities, in so far as concerns their transactions in that place.

ARTICLE 4. Merchants and auxiliary agents of commerce are subject, as regards the activities inherent in their trade, to the laws of the place where they conduct those activities.

ARTICLE 5. Books of account are subject, as regards kind, number and formalities, to the law of the place where the obligation to keep them is imposed.

The same law governs the obligation to exhibit such books.

The law governing the act for which proof is sought determines the admissibility of books of account as a means of such proof and their evidentiary value.

The form and mode of exhibition shall be subject to the law of the judge who intervenes in the said exhibition.

Title II. Of Partnerships

ARTICLE 6. The law of the commercial domicile determines the character of the document required for the partnership agreement.

Requirements relating to the form of the contract are determined by the law of the place where that contract is made.

Matters relating to forms of publicity are subject to such provisions as may be made by the respective States.

ARTICLE 7. The content of the partnership contract, as well as the juridical relations between partners, between them and the partnership, or between the latter and third parties, are governed by the law of the State where the partnership has its commercial domicile.

ARTICLE 8. Commercial partnerships shall be governed by the laws of the State of their commercial domicile, shall be accorded full legal recognition in the other contracting States, and shall be considered qualified to perform acts of commerce and to appear in law suits.

However, for the customary performance of the acts incident to the purposes which motivated their creation, they shall observe the provisions of the law of the State where they intend to perform those acts.

The representatives of such partnerships incur, with respect to third parties, the same responsibilities as those incurred by the administrators of local partnerships.

ARTICLE 9. Partnerships or corporations created in a given State, in a form unknown to the laws of another State, may perform acts of commerce in the latter, subject to the local laws.

ARTICLE 10. The legal requirements relative to the issuance or negotiation of stocks or bonds of commercial partnerships are determined by the law of the State in which such issues or negotiations are carried into effect.

ARTICLE 11. The judges of the State where the partnership has its domicile are competent to try actions which may arise between the partners in their character as such, or which third parties may institute against the partnership.

However, if a partnership domiciled in one State conducts, in another State, transactions which result in judicial controversies, it may be sued before the judges or tribunals of the latter.

Title III. Of Insurance

ARTICLE 12. Contracts of terrestrial insurance are governed by the law of the State where that property is situated which is the object of the insurance at the time when the contracts are concluded; and life insurance

contracts are governed by the law of the State where the insurance company, or its branches or agencies, are domiciled.

ARTICLE 13. The judges competent to try actions instituted in regard to terrestrial or life insurance, are those of the State whose laws govern the said contracts according to the provisions of the foregoing article; or alternatively, at the option of the plaintiff, either those of the State where the insurers, or their branches and agencies (in cases involving the latter), are domiciled, or those of the place where the insured parties have their domicile.

Title IV. Of Carriage by Land, and Mixed Carriage

ARTICLE 14. Contracts of carriage relating to merchandise, whose performance is destined to take place in different States, are governed as regards their form and effects, and the character of the obligations imposed upon the contracting parties, by the law of the place where the contracts are made. Those which are to be performed within the territory of one State only, shall be governed by the law of that State. The law of the State where the merchandise is, or should have been, delivered to the consignee, governs all matters connected with the performance and form of execution of the obligations involved in the said delivery.

ARTICLE 15. A contract of international carriage by joint services shall be regarded as a single contract, when it is concluded by issuing one direct bill of lading, even though the transportation is effected with the intervention of companies in different States.

This provision applies also to mixed carriage, by land, water or air.

ARTICLE 16. Actions based on international carriage by joint services may be instituted, at the option of the plaintiff, against the first carrier with whom the shipper contracted, or against the last one to receive the merchandise which was to be delivered to the consignee.

Such actions shall be instituted, at the option of the plaintiff, before the judges of the place of shipment, the judges of the place of destination, or those of any one of the places of transit where there is a representative of the carrier sued.

Actions instituted by the various carriers against each other are excepted.

ARTICLE 17. Contracts of carriage relating to the transportation of persons through the territories of different States, whether concluded by only one company or by joint services, are governed by the law of the State which is the passenger's destination.

The competent judges shall be those of the latter State, or those of the State where the contract was concluded, at the option of the plaintiff.

ARTICLE 18. Transportation of baggage which has been registered in a special document issued by the carrier or commission agent, and which is not taken along by the passenger in the place assigned to him for the trip, is governed by the rules for transportation of merchandise.

Baggage which the passenger takes with him and which has not been registered, is governed by the law applicable to transportation of persons.

Title V. Of Commercial Pledges

ARTICLE 19. The law which governs a particular contract of pledge determines the character of the corresponding document. The forms and requirements involved are regulated by the law of the place where the contract is made; the means of publicity, by the laws of the respective States.

ARTICLE 20. The rights and obligations of the contracting parties in regard to the object given as a pledge, are governed, whether that object has been moved or not, by the law of its location at the time when the pledge was constituted as such.

ARTICLE 21. A change in the location of the object given in pledge does not affect the rights acquired in accordance with the law of the State where the pledge was constituted as such; but, for the preservation of those rights, it is necessary to comply with the conditions of form and substance imposed by the law of the State of the said object's new location.

ARTICLE 22. In the case to which the foregoing article refers, the rights of *bona fide* third parties with respect to the object given in pledge, are regulated by the law of the State of that object's new location.

Title VI. Of Bills of Exchange and Other Instruments Payable to Order

ARTICLE 23. The form of drafts, endorsements, acceptances, guaranties, protests, and acts necessary for the exercise or preservation of rights relating to bills of exchange, shall be governed by the law of the State in whose territory the said acts are executed.

ARTICLE 24. If the obligations contracted in a bill of exchange are not valid under the law to which the preceding article refers, but do conform to the law of the State where an ulterior obligation has been contracted, the irregularity in the form of the said bill does not affect the validity of that obligation.

ARTICLE 25. Juridical relations which arise between the drawer and the payee of a bill of exchange, as a result of the drawing thereof, shall be governed by the law of the place where the bill was drawn; those which result between the drawer and the drawee shall be governed by the law of the locality where the acceptance was to take place.

ARTICLE 26. The obligations of the drawee with respect to the bearer and the exceptions which may favor the former, shall be regulated by the law of the locality where the acceptance took place.

ARTICLE 27. The juridical effects which endorsement produces as between the endorser and the transferee shall depend upon the law of the place where the bill was negotiated or endorsed.

ARTICLE 28. The juridical effects of acceptance by intervention shall be governed by the law of the State where the third party intervenes.

ARTICLE 29. The time-limit for bringing an action of reëxchange is determined, for all the signers of a bill, by the law of the State in whose territory the obligation was created.

ARTICLE 30. A bill of exchange drawn in currency without legal rate in the State where it is collectible, shall be honored in the currency of that State at the rate of exchange corresponding to the date of maturity.

If the debtor delays payment, the bearer may demand, according to his preference, that the amount of the bill be paid at the rate of exchange corresponding to the date of maturity, or that it be paid at the rate corresponding to the date of payment.

If the amount of the bill is specified in currency which has the same name but different values in the State of issue and in the place of payment, it is presumed that the specification refers to the currency of the latter.

The law of the place of payment determines the other conditions and circumstances of payment, such as maturity occurring on holidays, days of grace, etc.

ARTICLE 31. The law of the State where the bill is to be paid determines the measures that should be taken in case of theft, loss, or destruction of the document, or circumstances rendering it materially useless.

ARTICLE 32. The provisions set forth under this title govern, in so far as they are applicable, in regard to vouchers, banknotes, and other instruments payable to order.

ARTICLE 33. The provisions set forth under this title also govern in regard to checks, with the following modifications:

The law of the State where the check is to be paid determines:

1. The time of presentation;

2. Whether or not the check can be accepted, crossed, certified or confirmed, and the effects of these operations;

3. The rights of the holder in regard to remittance of funds, and the nature of such funds;

4. The right of the drawer to revoke the check or to oppose payment;

5. The necessity of protest or some equivalent act, for the preservation of rights against the endorsers, the drawer, or other obligated parties;

6. Such other circumstances as relate to the modal attributes of the check.

ARTICLE 34. Rights arising from bills of exchange, checks, and other instruments payable to order or to the bearer, and the validity of obligations originating in such instruments, are not subordinated to observance of the provisions contained in the laws relative to the stamp tax. However, the laws of the contracting States may suspend the exercise of the said rights until payment has been made of the tax and of such penalties as may have been incurred.

ARTICLE 35. Questions arising between persons who have intervened in the negotiation of a bill of exchange, check, or other instrument payable to order or to the bearer, shall be laid before the judges of the place which was

the domicile of the defendants on the date when they incurred the obligation, or which is their domicile at the time of the action.

Title VII. Of Bonds and Instruments Payable to Bearer

ARTICLE 36. Formalities relative to bonds and other instruments payable to bearer, as well as the juridical effects of such instruments, are governed by the law in force within the State where these were issued.

ARTICLE 37. Transfer of bonds and instruments payable to bearer is regulated by the law of the State where the transfer is effected.

ARTICLE 38. The formalities and requirements which must be complied with, as well as the juridical effects which may result, in the cases contemplated in Article 31, are subject to the law of the debtor's domicile; and publicity may also be given to the matter in the other contracting States.

ARTICLE 39. In the cases specified in Article 31, the rights of the third holder in regard to the bonds or commercial instruments in question are regulated by the law of the State where he acquired possession.

Title VIII. Of Bankruptcy

ARTICLE 40. The judges competent to formulate an adjudication of bankruptcy, are those of the domicile of the merchant or commercial partnership involved, even though the latter may incidentally be engaged in acts of commerce within another State or other States, or may have in one or more of these, agencies or branches which operate in behalf, and on the responsibility, of the principal establishment.

ARTICLE 41. If the bankrupt has two or more independent commercial houses in different territories, the judges or tribunals of the respective commercial domiciles shall be competent to take cognizance of the proceedings in bankruptcy relative to each of the said houses.

ARTICLE 42. Adjudication of bankruptcy, and other acts relative thereto, whose publication is required by the laws of the State where the adjudication took place, shall also be publicly announced in the States where the bankrupt has agencies, branches or establishments; and such publication shall be effected in accordance with the formalities prescribed by the local laws.

ARTICLE 43. When adjudication of bankruptcy has been pronounced in a given State, the precautionary measures of security and conservation prescribed in the corresponding bankruptcy proceedings, shall also be enforced in regard to the property which the bankrupt may possess in other States; and this enforcement shall be effected in conformity with the local laws.

ARTICLE 44. Once the precautionary measures have been duly taken by means of the appropriate letters rogatory, the judge to whom the letters are addressed shall order the publication during a thirty-day period, in the places where the bankrupt possesses property, of advertisements announcing both the adjudication of bankruptcy and the measures which have been prescribed.

ARTICLE 45. Local creditors may institute in their respective States, within a period of sixty days after the last of the notifications mentioned in the foregoing article, new proceedings in bankruptcy against the bankrupt; or, if the circumstances do not permit an adjudication of bankruptcy, they may bring civil action against him. In such cases, the several proceedings in bankruptcy shall be conducted quite independently of one another, and the law of the State where each particular proceeding is instituted shall be applied thereto. Likewise, the corresponding laws shall apply to each distinct and separate proceeding, in all matters relative to the conclusion of precautionary agreements or to other, analogous measures. All of the foregoing provisions shall be interpreted without prejudice to compliance with the measures specified in Article 43, to the provisions of Article 47 under this Title, or to the objections which may be interposed by the assignees or representatives of the whole body of creditors involved in the other proceedings.

ARTICLE 46. The expression "local creditors," in regard to a bankruptcy case adjudicated in a given State, shall be interpreted as referring to those persons whose claims should be satisfied in the said State.

ARTICLE 47. In cases where more than one proceeding in bankruptcy may properly be instituted, according to the provisions set forth under this title, the balance left over in one State for the account of the bankrupt shall be placed at the disposal of the judge who has cognizance of the bankruptcy proceedings in another State, and the respective judges should come to a mutual understanding with that end in view.

ARTICLE 48. In cases where only one proceeding in bankruptcy is instituted, either because only one is proper under the provisions set forth in Article 40, or because the local creditors have not made use of the right conceded to them by Article 45, all of the creditors of the bankrupt shall present their claims and make use of their rights in conformity with the law, and before the judge or tribunal, of the State which has pronounced the adjudication of bankruptcy.

In such cases, the local claims existing in a particular State enjoy preference over those existing in other States, with respect to the sum total of the assets in the State where the former are located.

ARTICLE 49. The authority of the assignees or administrators, in cases involving a single bankruptcy proceeding, by whatsoever name they or their representatives may be designated, shall be recognized in all of the contracting States.

They may undertake measures of conservation or administration, appear in suits, and exercise the functions and rights accorded them by the laws of the State where the bankruptcy was adjudicated; but execution in regard to assets located outside of the jurisdiction of the judge who has cognizance of the proceeding must conform to the law of that location.

ARTICLE 50. Even when only one proceeding in bankruptcy is involved, mortgagees or pledgees constituted as such before the date of definitive stop-

page of payment may exercise their rights before the judges of the State where the property mortgaged or pledged is located.

ARTICLE 51. In cases involving more than one proceeding in bankruptcy, property belonging to the debtor and located in the territory of another State where no proceeding in bankruptcy, civil action of insolvency, or other, analogous proceeding has been instituted, shall form part of the bankruptcy assets in the particular proceeding whose judge has been the first to act.

ARTICLE 52. When more than one proceeding in bankruptcy is involved, the judge or tribunal within whose jurisdiction the bankrupt is domiciled shall be competent to dictate all measures of a civil character which may concern the latter personally.

ARTICLE 53. The rules relative to bankruptcy shall apply, in so far as is suitable, to judicial liquidations, precautionary agreements, suspensions of payment, and other analogous measures provided for in the laws of the contracting States.

General Provisions

ARTICLE 54. The simultaneous ratification of this treaty by all of the contracting States is not necessary in order to bring it into operation. The States which approve it shall communicate their approval to the Government of the Oriental Republic of Uruguay, so that the latter may notify the other States to that effect. This procedure shall take the place of an exchange.

ARTICLE 55. When the exchange has been made, in the form indicated by the preceding article, this treaty shall be effective from that time forth indefinitely, among the States which shall have complied with the said formality; and the treaty signed in Montevideo, on the 12th of February, 1889, shall accordingly be without force.

ARTICLE 56. If any of the contracting States should deem it advisable to withdraw its adherence to the treaty or introduce changes into the said instrument, it shall so advise the other signatories; but the withdrawl shall not take effect until two years after the date of denunciation, during which time an effort to reach a new accord shall be made.

ARTICLE 57. Article 54 applies also to States which have not attended this Congress, but which wish to adhere to the present treaty.

In Witness Whereof, the plenipotentiaries of the aforesaid States sign the present treaty in Montevideo, on the 19th day of March, 1940.

Reservations

By the Delegation of the United States of Brazil:

The Delegation of Brazil, upon signing the present treaty, declares that the provisions of Article 45 apply in the cases contemplated in Articles 40 and 41.

By the Delegation of Colombia:

The Delegation of Colombia signs the present treaty, but gives to its pro-

visions the broadest possible interpretation, that is to say, the interpretation that the spirit of the treaty is in harmony with the constitutional provision in force in the Delegation's own country, to the effect that the capacity and recognition of partnerships and other juristic persons, and in general the rules regarding them, are determined by Colombian law.

TREATY ON INTERNATIONAL CIVIL LAW *

Signed at Montevideo, March 19, 1940

His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Republic of Colombia; His Excellency the President of the Republic of Bolivia; His Excellency the President of the Argentine Republic; His Excellency the President of the Republic of Peru, and His Excellency the President of the Republic of Paraguay,

In the belief that the principles governing international civil law, which were confirmed by the Treaty on International Civil Law signed at Montevideo on February 12, 1889, should be amplified in such a manner as to embrace the new concepts that have been accepted in regard to that matter,

Have agreed to conclude the present treaty through the medium of their respective plenipotentiaries, assembled in congress in the City of Montevideo as a result of the initiative taken by the Governments of the Oriental Republic of Uruguay and the Argentine Republic.

For the execution of this purpose,

His Excellency the President of the Oriental Republic of Uruguay has designated as his representatives:

Dr. JOSE IRURETA GOYENA,
Dr. PEDRO MANINI RIOS,
Dr. JUAN JOSE DE AMEZAGA,
Dr. JOSE PEDRO VARELA, and
Dr. ALVARO VARGAS GUILLEMETTE.

His Excellency the President of the Republic of Colombia has designated:

Dr. ROBERTO URDANETA ARBELAEZ, and
Dr. RAIMUNDO RIVAS.

His Excellency the President of the Republic of Bolivia has designated:

Dr. JORGE VALDES MUSTERS,
Dr. FEDERICO GUTIERREZ GRANIER, and
Dr. GUILLERMO FRANCOVICH.

His Excellency the President of the Argentine Republic has designated:

Dr. JUAN ALVAREZ,
Dr. DIMAS GONZALEZ GOWLAND,

*Translated from *Segundo Congreso Sudamericano de Derecho Internacional Privado, Acta Final, Segunda Edición*, Montevideo, 1940, pp. 73–85.

Dr. CARLOS M. VICO,
Dr. RICARDO MARCO DEL PONT,
Dr. CARLOS ALBERTO ALCORTA, and
Dr. JUAN AGUSTIN MOYANO.

His Excellency the President of the Republic of Peru has designated:

Dr. JOSE LUIS BUSTAMANTE I RIVERO, and
Dr. JOSE JACINTO RADA.

His Excellency the President of the Republic of Paraguay has designated:

Dr. RAUL SAPENA PASTOR, and
Dr. EMILIO SAGUIER ACEVAL.

The said representatives, having presented their full powers, which were found to be in due form, and after holding the appropriate conferences and discussions, have agreed upon the following provisions:

Title I. Of Persons

ARTICLE 1. The existence, status and capacity of physical persons, are governed by the law of their domicile. No incapacity of a penal character, and none based upon considerations of religion, race, nationality or opinion, shall be recognized.

ARTICLE 2. Change of domicile does not restrict capacity that has been acquired.

ARTICLE 3. States and other foreign juristic persons in public law may exercise their capacities in the territory of another State in conformity with the laws of the latter.

ARTICLE 4. The existence and capacity of juristic persons of a private character are governed by the laws of the country where they have their domicile.

The character with which they are invested, fully enables them to practice, outside the place where they were created, all the acts and rights properly pertaining to them.

However, for the habitual performance of acts comprised within the special purpose of their creation, they shall be subject to the provisions established by the State in which they intend to perform those acts.

The same rule shall apply to civil associations.

Title II. Of Domicile

ARTICLE 5. In those cases which are not specially provided for in the present treaty, the civil domicile of a physical person, in so far as international juridical questions are concerned, shall be determined, in the order indicated, by the circumstances enumerated immediately below:

1. Habitual residence in a given place, coupled with the intention to remain there;

2. In the absence of such a determining factor, the habitual residence in a

single place of the family group composed of the spouse and the minor or incompetent children; or that of the spouse with whom the said person lives; or, in the absence of a spouse, that of the minor or incompetent children with whom the person lives;

3. The location of his principal place of business;

4. In the absence of all of these circumstances, mere residence, which shall be regarded as constituting domicile.

ARTICLE 6. No person may be without a domicile; nor may he have two or more domiciles at one time.

ARTICLE 7. The domicile of incompetent persons subject to paternal control, guardianship or tutelage, is that of their legal representatives; and the domicile of the latter is the place where their representation is exercised.

ARTICLE 8. The conjugal domicile is the place where the spouses live together. In default thereof, the domicile of the husband shall be regarded as the conjugal domicile.

ARTICLE 9. A judicially separated or divorced wife retains the domicile of the husband as long as she does not acquire another domicile. A married woman abandoned by her husband retains the conjugal domicile, unless it is proved that she has established a separate domicile of her own, in another country.

ARTICLE 10. Juristic persons of a civil character have their domicile where their principal place of business is located.

Establishments, branches, or agencies created in one State by a juristic person whose domicile is in another State, are considered as domiciled in the place where they operate, in so far as concerns the acts which they perform there.

ARTICLE 11. In the event of a change of domicile, intent shall be determined, except upon proof to the contrary, by the declaration that the resident makes before the local authorities of the place to which he comes; or in default thereof, by the circumstances of the change.

Title III. Of Absence

ARTICLE 12. The juridical effects of a declaration of absence upon the property of the absentee are determined by the law of the place where that property is situated. The other juridical questions involving the absentee shall continue to be governed by the law which governed them previously.

Title IV. Of Marriage

ARTICLE 13. The capacity of persons to contract marriage, the form of the act by which it is contracted, the fact that the act did take place, and its validity, are governed by the law of the place where it was performed.

However, the signatory States are not bound to recognize a marriage performed in one of them when any of the following impediments vitiates the marriage:

(a) The fact that either of the contracting parties was under age, the minimum age required for the male being fourteen years, and for the female, twelve years;

(b) Kinship in a direct line by consanguinity or affinity, whether legitimate or illegitimate;

(c) Kinship between legitimate and illegitimate brother and sister;

(d) The fact of having put to death a spouse of one of the parties, either as principal or as accomplice, in cases involving intention to marry the surviving spouse;

(e) An earlier marriage not legally dissolved.

ARTICLE 14. The rights and duties of the spouses in all that refers to their personal relations are governed by the laws of the conjugal domicile.

ARTICLE 15. The law of the conjugal domicile governs:

(a) Conjugal separation;

(b) Dissolubility of the marriage; but recognition of the dissolubility shall not be obligatory upon the State where the marriage was solemnized, if the ground invoked for dissolution was divorce and if the local laws do not admit of that ground as such. In no case shall the celebration of a subsequent marriage, in accordance with the laws of another State, constitute the crime of bigamy;

(c) The effects of the nullity of a marriage contracted according to Article 13.

ARTICLE 16. Matrimonial contracts and the relations between spouses with respect to property, are governed by the law of the first conjugal domicile, in so far as is not prohibited, in matters of a strictly real character, by the law of the place where the property is located.

ARTICLE 17. Change of domicile does not effect any change in the law competent to govern the relations between spouses in regard to property, whether that property was acquired before or after the change.

Title V. Of Paternal Control

ARTICLE 18. Paternal control, with reference to personal rights and duties, is governed by the law of the domicile of the person who exercises such control.

ARTICLE 19. The same rule governs the rights and obligations inherent in paternal control over the property of children, as well as the transfer of such property and the other acts of which it may be the object, in so far as is not prohibited, in matters of a strictly real character, by the law of the place where the property is located.

Title VI. Of Filiation

ARTICLE 20. The law which governs the celebration of the marriage determines questions of legitimate filiation or of legitimation by subsequent marriage.

ARTICLE 21. Questions as to legitimacy of filiation which have no relation to the validity or nullity of the marriage are determined by the law of the conjugal domicile at the time of the child's birth.

ARTICLE 22. Rights and obligations in connection with illegitimate filiation are governed by the law of the State wherein they are to be made effective.

Title VII. Of Adoption

ARTICLE 23. Adoption is governed, in so far as relates to the capacity of the persons concerned, and with respect to the conditions, limitations and effects involved, by the laws of the domiciles of the parties, to the extent of their mutual conformity, provided that the act of adoption is evidenced by public indenture.

ARTICLE 24. Other juridical questions in which the parties may be involved, are governed by the laws to which the said parties are respectively subject.

Title VIII. Of Guardianship and Tutelage

ARTICLE 25. Appointment of guardians or tutors is governed by the law of the place where the incompetents in question have their domicile.

ARTICLE 26. The official status of a guardian or tutor appointed in any of the signatory States shall be recognized in the other signatory States.

The obligation to serve as guardian or tutor, and excuses in avoidance thereof, are governed by the law of the place where the person called to serve has his domicile.

ARTICLE 27. Rights and obligations inherent in the exercise of the guardianship or tutelage are governed by the law of the place where the incompetents have their domicile.

ARTICLE 28. The powers of the guardians and tutors with respect to property of the incompetents which is situated outside the place of the latter's domicile, are governed by the laws of the said domicile, in so far as is not prohibited, in matters of a strictly real character, by the law of the place where the property is located.

ARTICLE 29. Legal hypothecation conceded by the laws to incompetents shall have effect only when the law of the State where the office of guardian or tutor is discharged, is in accord with that of the State where the property affected by the hypothecation is located.

Title IX. Provisions Common to Titles IV, V and VIII

ARTICLE 30. Urgent measures which concern the personal relations between spouses, and the exercise of paternal control or of guardianship or tutelage, are governed, in each individual case, by the law of the place where the spouses, heads of family, guardians, or tutors reside.

ARTICLE 31. The remuneration which the laws grant to the parents, guard-

ians, and tutors, and the form which that remuneration takes, are governed and determined by the law of the State wherein the paternal control is exercised or the representatives were appointed.

Title X. Of Property

ARTICLE 32. Property, of whatsoever kind, is governed exclusively by the law of the place where it is located, in so far as concerns its classification, its possession, its absolute or conditional transfer ability, and all legal suits of a real character in which it may become involved.

ARTICLE 33. The *situs* of creditors' rights is held to be the place where the corresponding obligation is to be met. If this place cannot be determined at the time when such rights accrue, the domicile which the debtor has at that time shall be regarded as the *situs*.

Titles evidentiary of the said rights, and transferable by mere delivery, are regarded as having their *situs* in the place where they are found.

ARTICLE 34. A change in the location of movable property does not affect rights acquired in accordance with the law of the place where that property was located at the time of acquisition. However, the interested parties are bound to comply with the requirements of substance and form prescribed by the law of the new location for the acquisition and conservation of such rights.

A change in the location of a movable which is under litigation, effected after the commencement of the real action in question, does not alter the rules of legislative and judicial competency which were applicable originally.

ARTICLE 35. Rights acquired by third parties over the same property, in conformity with the law of its new location, after the change is effected and before the requirements above mentioned are complied with, take precedence over the rights first acquired.

Title XI. Of Juridical Acts

ARTICLE 36. The law which governs juridical acts determines the character of the corresponding documents. The forms and formalities relating to such juridical acts are governed by the law of the place where they are concluded or executed; the methods of publication, by the laws of the respective States.

ARTICLE 37. The law of the place where a contract is to be performed determines:

(a) Its actual existence;
(b) Its nature;
(c) Its validity;
(d) Its effects;
(e) Its consequences;
(f) Its execution;
(g) In fine, all matters relative to the contracts, from every point of view.

ARTICLE 38. Consequently, contracts concerning things which are certain

and specific, are governed by the law of the place where those things were located at the time when the contract in question was concluded.

Contracts concerning things described under a general head, are governed by the law of the place where the debtor had his domicile when the contract was concluded.

Those concerned with consumable things are governed by the law of the place where the debtor had his domicile when the contract was concluded.

Those which relate to the rendering of services are governed:

(a) If they refer to things, by the law of the place where the said things were located when the contract was concluded;

(b) If their efficacy is bound up with some special locality, by the law of the place where the contract is to take effect;

(c) In other cases, by the law of the place where the debtor had his domicile, when the contract was concluded.

ARTICLE 39. Acts relating to charity are governed by the law of the benefactor's domicile.

ARTICLE 40. Acts and contracts whose place of performance cannot be determined according to the rules laid down in the preceding articles at the time when they are celebrated, are governed by the law of the place of celebration.

ARTICLE 41. Accessory contracts are governed by the law which governs the principal contract.

ARTICLE 42. The fulfilment of contracts concluded through correspondence or by agents, is governed in each case by the law of the place where the accepted offer originated.

ARTICLE 43. Obligations which originate apart from any agreement are governed by the law of the place where the lawful or unlawful act that gave rise to such an obligation took place, and, if necessary, by the law which regulates the corresponding juridical suits.

Title XII. Of Inheritances

ARTICLE 44. The law of the place where hereditary property is located at the time of death of the person whose estate is involved, governs the form of the testament.

Nevertheless, a nuncupative or sealed testament executed by solemn act in any of the contracting States, shall be accepted in all of the other States.

ARTICLE 45. The same law of location governs:

(a) The capacity of the heir or legatee to inherit;

(b) The validity and effects of the testament;

(c) The hereditary titles and rights;

(d) The existence and proportion of the legitime;

(e) The existence and amount of the available assets;

(f) In fine, everything relative to the legitime or testamentary estate.

ARTICLE 46. Debts which are to be paid in any of the contracting States

shall enjoy preference in regard to property located there at the time of the decedent's demise.

ARTICLE 47. If that property is not sufficient for payment of the said debts, the creditors shall recover a balance proportionally from the assets left by the decedent in other places, without prejudice to the preferential rights of the local creditors.

ARTICLE 48. When the debts are to be paid in a place where the debtor has left no assets, the creditors shall demand payment proportionally from the assets left in other places, subject to the reservation already specified in the preceding article.

Credits guaranteed by realty are not subject to the provisions of this article and the two which precede.

ARTICLE 49. Legacies of assets described under a general head, in cases where no place of payment is designated, are governed by the law of the testator's domicile at the time of his death. They shall be made effective through the assets which he may leave in the said domicile; and, in the absence of such assets, or for the purpose of completing the balance of the legacies, payment shall be made proportionally out of the other assets of the testator.

ARTICLE 50. The obligation to collate (*colacionar*)* is governed by the law which governs the inheritance, where collation is required.

If the hotch-pot consists of real or movable property, it will be restricted to the estate to which that property belongs.

When it consists of a sum of money, it shall be apportioned among all the estates to which the heir who owes the hotch-pot contributes, proportionally to his assets in each of them.

Title XIII. Of Prescription

ARTICLE 51. The extinctive prescription of personal actions is governed by the law to which the correlative obligations are subject.

ARTICLE 52. The extinctive prescription of real actions is governed by the law of the place where the property is located.

ARTICLE 53. If the property is movable and if its location has been changed, such prescription is governed by the law of the place where the time necessary for prescription has elapsed.

ARTICLE 54. Acquisitive prescription of movable or immovable property is governed by the law of the place where the property is situated.

* TRANSLATOR'S NOTE. — "Collation" (*colación*) in the Civil Law refers to the declaration which, in the distribution of an inheritance, the child or other legitimate descendant makes of the property which he received out of the paternal or maternal fortune during the lifetime of his parents; so that, added to the estate, such property may be considered as part of the assets which will go to him in the distribution (1 *Diccionario Enciclopédico de la Lengua Castellana*, new ed. by Zerolo, 'Colación' (9), p. 615). The New English Dictionary (Vol. 2, Pt. 2, p. 617) defines "Collation," as "The throwing together of the possessions of several persons, in order to [effect] an equal division of the whole stock; hotch-pot."

ARTICLE 55. If the property is movable and if its location has been changed, such prescription is governed by the law of the place where the time necessary for prescription has elapsed.

Title XIV. Of Jurisdiction

ARTICLE 56. Personal actions should be instituted before the judges of the place whose law governs the juridical act that constitutes the subject-matter of the action.

They may likewise be instituted before the judges of the defendant's domicile.

Territorial extension of jurisdiction is permitted if, after the action has been instituted, the defendant consents voluntarily to such an extension, always provided that the action in question relates to patrimonial personal rights.

The intention of the defendant must be expressed in a positive, and not in a fictitious form.

ARTICLE 57. The declaration of absence must be requested before the judge of the last domicile of the presumptive absentee.

ARTICLE 58. The judges of the place where a given tutor or guardian was appointed are competent to take cognizance of actions relative to accountings.

ARTICLE 59. Actions for annulment of marriage, divorce, or dissolution, and, in general, actions regarding all questions which affect the relations of spouses, shall be instituted before the judges of the conjugal domicile.

If the action arises between persons coming under the provisions of Article 9, the judge of the last conjugal domicile shall be competent to take cognizance thereof.

ARTICLE 60. The judges of the place where matrimonial property is located shall be competent to decide questions arising between spouses as to alienation of that property, or other acts which affect it, in matters of a strictly real character.

ARTICLE 61. The judges of the place of residence of the persons involved are competent to take cognizance of the measures to which Article 30 refers.

ARTICLE 62. The judges of the social domicile are competent to take cognizance of actions between partners which relate to the partnership.

ARTICLE 63. Actions to which succession by reason of death may give rise, shall be instituted before the judges of the places wherein the hereditary assets are located.

ARTICLE 64. Real actions and those known as mixed actions must be brought before the judges of the place where the thing at issue is located.

If such actions involve things located in different places, the action must be instituted before the judges of the various places where the things are respectively located.

General Provisions

ARTICLE 65. The simultaneous ratification of this treaty by all of the signatory States is not necessary in order to bring it into operation. The States which approve it shall communicate their approval to the Government of the Oriental Republic of Uruguay, so that the latter may notify the other contracting States to that effect. This procedure shall take the place of an exchange.

ARTICLE 66. When the exchange has been made, in the form indicated by the preceding article, this treaty shall be effective from that time forth indefinitely, among the States which shall have complied with the said formality; and the treaty signed in Montevideo on the 12th of February, 1889, shall accordingly be without force.

ARTICLE 67. If any of the signatory States should deem it advisable to withdraw its adherence to the treaty or introduce changes into the said instrument, it shall so advise the other signatories; but the withdrawal shall not take effect until two years after the date of denunciation, during which time an effort to reach a new accord shall be made.

ARTICLE 68. Article 65 applies also to States which have not attended this Congress, but which wish to adhere to the present treaty.

In Witness Whereof, the plenipotentiaries of the aforesaid States sign the present treaty in Montevideo, on the 19th day of March, 1940.

Reservations

By the Delegation of the Oriental Republic of Uruguay:

The Delegation of Uruguay makes a reservation with respect to Articles 9 and 59, believing that the application of their content would result, in so far as many cases of a real character are concerned, in abandonment of the general principle of domicile which has been adopted as a fundamental basis of this treaty, for the determination of the legislative and judicial competency of the contracting States.

By the Delegation of the Republic of Peru:

1. The articles of this treaty relative to the status and capacity of physical and juristic persons should be understood as approved by Peru without prejudice to the provisions of its own national law, in so far as concerns Peruvians and juristic persons established as such in Peru.

2. The rules adopted in this convention on legislative and judicial competency, in all cases referring to persons, family rights, personal relations between spouses and the administration of property, shall not interfere with the application of the provisions of Peruvian law in favor of Peruvian nationals.

3. It must be understood that Article 11 of this treaty is approved without prejudice to the provisions of the last part of Article 20 of the Civil Code of Peru.

4. Peru refrains from voting on Articles 15 and 22 of this treaty, because

it is bound by the rules which the Bustamante Code establishes regarding the law applicable to matrimonial matters and to filiation.

5. It must be understood that Article 36 is approved without prejudice to the optative law adopted in Article XX of the Preliminary Title of the Peruvian Civil Code, regarding the form of juridical acts and indentures.

6. Peru abstains from voting on Articles 37 to 39 of this treaty, because of their conflict with the provisions of Article VII of the Preliminary Title of the Peruvian Civil Code.

7. Neither does it vote for Articles 44 and 45; because it deems that the law applicable to the form of testaments should be that of the place of execution thereof, or that of the testator's domicile, and also because, with reference to the administration of estates, the law applicable in Peru is the law established by Article VIII of the Preliminary Title of the Peruvian Civil Code.

8. The Delegation understands that the proper jurisdiction for the cases referred to in Article 63 of this treaty is that of the place by whose law the estate in question is governed, according to Article VIII of the Preliminary Title of the Peruvian Civil Code.

ADDITIONAL PROTOCOL *

The plenipotentiaries of the Governments of the Oriental Republic of Uruguay, the Republic of the United States of Brazil, the Republic of Colombia, the Republic of Bolivia, the Argentine Republic, the Republic of Chile, the Republic of Peru and the Republic of Paraguay, perceiving the advisability of establishing general rules for the application of the laws of any contracting State within the territory of the other contracting States, in the cases specified by the treaties which have been concluded regarding the various aspects of private international law, have agreed upon the following provisions:

ARTICLE 1. The laws of the contracting States shall apply in such cases as may arise, whether the persons interested in the particular juridical situation involved are nationals or aliens.

ARTICLE 2. Application of those laws shall be made *ex officio* by the judge of the case, without prejudice to the right of the parties to allege and prove the existence and content of the law invoked.

ARTICLE 3. All remedies allowed by the legal rules of procedure of the place where the trial is held, for cases decided according to the laws of that place itself, shall likewise be admissible for those which may be decided by applying the laws of any of the other States.

ARTICLE 4. The laws of other States shall never be applied adversely

* Translated from *Segundo Congreso Sudamericano de Derecho Internacional Privado, Acta Final, Segunda Edición*, Montevideo, 1940, pp. 86–88.

to the political institutions, laws of public order, or good moral habits of the place where the trial is held.

ARTICLE 5. The jurisdiction and law which are applicable according to the respective treaties, may not be modified at the will of the parties, except in so far as the said law may authorize such modifications.

ARTICLE 6. In accordance with the provisions of this protocol, the various Governments agree to transmit to one another two authenticated copies of the laws now in force, and of those which may subsequently come into force, within the respective States.

ARTICLE 7. The Governments of the signatory States shall declare, upon approving the treaties which have been concluded, whether or not they agree to the adhesion of States not invited to this Congress, by the same process that is provided for the adhesion of those which have adhered to the idea motivating the Congress but have not participated in its deliberations.

ARTICLE 8. The provisions laid down in the foregoing articles shall be regarded as an integral part of the treaties in question, and they shall remain in force during the same period of time.

In Witness Whereof, the plenipotentiaries above mentioned, sign this protocol in Montevideo, on the 19th day of March, 1940.

Reservation

By the Delegation of the Republic of Peru:

1. The Delegation of Peru repeats, with respect to the subject-matter of Articles 1 and 2 of this Protocol, the reservations which it formulated in connection with the Treaty on International Civil Law.

2. The Delegation interprets Article 5 of this Protocol as meaning that the will of the parties cannot alter the rules established by the Treaties in regard to legislative and judicial competency.

TREATY ON TRADE-MARKS *

Signed at Montevideo, January 16, 1889

His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Argentine Republic; His Excellency the President of the Republic of Bolivia; His Excellency the Emperor of Brazil; His Excellency the President of the Republic of Chile; His Excellency the President of the Republic of Paraguay and His Excellency the President of the Republic of Peru, have agreed to conclude a Treaty on Trade-Marks, through the medium of their plenipotentiaries, assembled in Congress, in the City of Montevideo, as a result of the initiative taken by the Govern-

* Translation based upon text in International American Conferences. Reports of Committees and Discussions thereon, Washington, 1890, Vol. II, pp. 565–566; and De Martens, *Nouveau Recueil Général de Traités*, 2d sér., Vol. 18, pp. 453–455.

ments of the Oriental Republic of Uruguay and of the Argentine Republic, the respective representatives being:

For His Excellency the President of the Oriental Republic of Uruguay:

Dr. ILDEFONSO GARCÍA LAGOS, Minister of Foreign Affairs, and
Dr. GONZALO RAMIREZ, Envoy Extraordinary and Minister Plenipotentiary to the Argentine Republic.

For His Excellency the President of the Argentine Republic:

Dr. ROQUE SAENZ PEÑA, Envoy Extraordinary and Minister Plenipotentiary to the Oriental Republic of Uruguay, and
Dr. MANUEL QUINTANA, Academician of the Faculty of Law and Social Sciences of the University of Buenos Aires.

For His Excellency the President of the Republic of Bolivia:

Dr. SANTIAGO VACA-GUZMAN, Envoy Extraordinary and Minister Plenipotentiary to the Argentine Republic.

For His Excellency the Emperor of Brazil:

Dr. DOMINGOS DE ANDRADE FIGUEIRA, Counselor of State and Deputy to the General Legislative Assembly.

For His Excellency the President of the Republic of Chile:

Mr. GUILLERMO MATTA, Envoy Extraordinary and Minister Plenipotentiary to the Oriental Republic of Uruguay and to the Argentine Republic, and
Mr. BELISARIO PRATS, Minister of the Supreme Court of Justice.

For His Excellency the President of the Republic of Paraguay:

Dr. BENJAMIN ACEVAL, and
Dr. JOSÉ Z. CAMINOS.

For His Excellency the President of the Republic of Peru:

Dr. CESÁREO CHACALTANA, Envoy Extraordinary and Minister Plenipotentiary to the Oriental Republic of Uruguay and to the Argentine Republic, and
Dr. MANUEL MARÍA GÁLVEZ, Member of the Supreme Court of Justice.

Who, after exhibiting their full powers, which were found in due form, and after holding the appropriate conferences and discussions, have agreed upon the following stipulations:

ARTICLE I

Any person to whom shall be granted in one of the contracting States the exclusive right to a trade-mark shall enjoy the same privilege in the other

States, but with due respect to the formalities and conditions established by their laws.

ARTICLE II

The ownership of a trade-mark shall include the right to use or to sell or otherwise convey it.

ARTICLE III

By trade-mark shall be understood the sign, emblem, or exterior motto which the merchant or manufacturer adopts and applies to his wares and products in order to distinguish them from those of other dealers or manufacturers trading in articles of the same character.

To this class of marks shall belong those called trade devices, or designs, which by means of weaving or stamping are affixed to the product exposed for sale.

ARTICLE IV

Counterfeits or alterations of trade-marks shall be prosecuted before the courts, according to the laws of the State in whose territory the fraud was committed.

ARTICLE V

The simultaneous ratification of all the contracting nations shall not be necessary to the effectiveness of this treaty. Those who adopt it will communicate the fact to the Governments of the Argentine Republic and the Oriental Republic of Uruguay, who will inform the other contracting nations. This formality will take the place of an exchange.

ARTICLE VI

The exchange having been made in the manner prescribed in the foregoing article, this treaty shall remain in force for an indefinite period after that act.

ARTICLE VII

If any of the contracting nations should deem it advisable to be released from this treaty, or to introduce modifications into it, said nation shall inform the rest; but it shall not be released until two years after the date of notification, during which time measures will be taken to effect a new arrangement.

ARTICLE VIII

The provisions of Article V are extended to all the nations which, although not represented in this Congress, may desire to adopt the present treaty.

In Witness Whereof, the plenipotentiaries of the aforesaid nations sign and seal the foregoing to the number of seven copies, in Montevideo, on the 16th day of January, 1889.

TREATY ON PATENTS OF INVENTION *

Signed at Montevideo, January 16, 1889

His Excellency the President of the Oriental Republic of Uruguay; His Excellency the President of the Argentine Republic; His Excellency the President of the Republic of Bolivia; His Excellency the Emperor of Brazil; His Excellency the President of the Republic of Chile; His Excellency the President of the Republic of Paraguay, and His Excellency the President of the Republic of Peru, have agreed to conclude a Treaty on Patents of Invention, through the medium of their plenipotentiaries, assembled in congress, in the City of Montevideo, as a result of the initiative taken by the Governments of the Oriental Republic of Uruguay and of the Argentine Republic, the respective representatives being:

For His Excellency the President of the Oriental Republic of Uruguay:

Dr. ILDEFONSO GARCÍA LAGOS, Minister of Foreign Affairs, and

Dr. GONZALO RAMIREZ, Envoy Extraordinary and Minister Plenipotentiary to the Argentine Republic.

For His Excellency the President of the Argentine Republic:

Dr. ROQUE SAENZ PEÑA, Envoy Extraordinary and Minister Plenipotentiary to the Oriental Republic of Uruguay, and

Dr. MANUEL QUINTANA, Academician of the Faculty of Law and Social Sciences of the University of Buenos Aires.

For His Excellency the President of the Republic of Bolivia:

Dr. SANTIAGO VACA-GUZMAN, Envoy Extraordinary and Minister Plenipotentiary to the Argentine Republic.

For His Excellency the Emperor of Brazil:

Dr. DOMINGOS DE ANDRADE FIGUEIRA, Counselor of State and Deputy to the General Legislative Assembly.

For His Excellency the President of the Republic of Chile:

Mr. GUILLERMO MATTA, Envoy Extraordinary and Minister Plenipotentiary to the Argentine Republic and the Oriental Republic of Uruguay, and

Mr. BELISARIO PRATS, Minister of the Supreme Court of Justice.

For His Excellency the President of the Republic of Paraguay:

Dr. BENJAMIN ACEVAL, and

Dr. JOSÉ Z. CAMINOS.

For His Excellency the President of the Republic of Peru:

Dr. CESÁREO CHACALTANA, Envoy Extraordinary and Minister Pleni-

* Translation based upon text in International American Conference, Reports of Committees and Discussions thereon, Washington, 1890, Vol. II, pp. 566–568; and De Martens, *Nouveau Recueil Général de Traités*, 2d sér., Vol. 18, pp. 421–423.

potentiary to the Argentine Republic and the Oriental Republic of Uruguay, and

Dr. MANUEL MARÍA GÁLVEZ, Member of the Supreme Court of Justice.

Who, after exhibiting their full powers, which were found in due form, and after holding the appropriate conferences and discussions, have agreed upon the following stipulations:

ARTICLE I

Any person who shall obtain a patent or privilege of invention in any of the contracting States shall enjoy in all the others the rights of inventor, if within a year at the utmost he shall cause his patent to be registered in the form prescribed by the laws of the country in which he shall ask for its recognition.

ARTICLE II

The duration of the privilege shall be that fixed by the laws of the country in which it is to take effect. This period may be limited to that prescribed by the laws of the State in which the patent was first granted, if such period be the shorter.

ARTICLE III

Questions arising as to the priority of invention shall be settled according to the date of the request for the respective patents in the country where they were granted.

ARTICLE IV

By invention or discovery shall be understood any new method, mechanical or manual apparatus, for the manufacture of industrial products; the discovery of any new industrial product, and the application of perfected methods for obtaining results superior to any previously known.

No patents shall be granted—

(1) To inventions or discoveries already made public in any of the contracting States, or in others not bound by this treaty.

(2) To those contrary to good morals or to the laws of the country in which the patents are to be issued or recognized.

ARTICLE V

The rights of the inventor shall include that of enjoying the use of his invention and of transferring it to others.

ARTICLE VI

Those persons interfering in any way with the rights of the inventor shall be prosecuted and punished according to the laws of the country in which the offense may be committed.

ARTICLE VII

The simultaneous ratification of all the contracting nations shall not be necessary to the effectiveness of this treaty. Those who adopt it will communicate the fact to the Governments of the Argentine Republic and the Oriental Republic of Uruguay, which will inform the other contracting nations. This formality will take the place of an exchange.

ARTICLE VIII

The exchange having been made in the manner prescribed in the foregoing article, this treaty shall remain in force for an indefinite period after that act.

ARTICLE IX

If any of the contracting nations should deem it advisable to be released from this treaty, or to introduce modifications in it, said nation shall so inform the rest; but it shall not be released until two years after the date of notification, during which time measures will be taken to effect a new arrangement.

ARTICLE X

The provisions of Article VII are extended to all nations which, although not represented in this Congress, may desire to adopt the present treaty.

In Witness Whereof, the plenipotentiaries of the aforesaid nations sign and seal the foregoing to the number of seven copies, in Montevideo, on the 16th day of January, 1889.