When Crampton signed the Copyright Treaty on 17 February he was all too aware that time was running out on the second session of the Thirty-second Congress. The Fillmore Administration had only a fortnight before it expired and Congress adjourned. On 4 March the President, Franklin Pierce, was sworn in. In a letter to Clarendon, Crampton informed him that

Congress, after a great deal of speechifying, has separated without doing anything. The Senate however remains in session for a month or so for what is called ‘Executive business’: that is to say confirmation of appointments, consideration of Treaties, etc. which is conducted in Secret Session and does not require the presence of the other House of Congress. The Copyright Treaty will come under their consideration. I hope they will pass it.

But fresh obstacles arose. Senators whose terms expired did not stay in Washington for the special session, and though their replacements arrived, they were preoccupied with the novelty of their situation and unfamiliar with the residue of unfinished business. Senators who were neither retiring nor arriving and who composed about two-thirds of the upper chamber were none the less anxious to conclude business and leave Washington as soon as possible. Men who were attentive and hard-working in January were likely to be unavailable or absent by April. For these reasons, Crampton and Levin had fervently wished that the Treaty would come to a vote prior to 4 March. However, they were helpless witnesses to legislative drift.
When Everett delivered the Copyright Treaty to the Senate on 18 February he relinquished control of it and it became the concern of the Committee on Foreign Relations whose Chairman was James M. Mason of Virginia, and whose members included Douglas of Illinois, Mangum of North Carolina, Norris of New Hampshire, and Underwood of Kentucky. As far as one can tell they did not consider the Copyright Treaty prior to the 4 March adjournment. Between adjournment and the second session of Congress beginning in December some important personnel changes occurred. Everett left the Executive Branch of the Government but claimed a seat in the Senate as one of the newly elected Senators from Massachusetts. William L. Marcy, former Governor of the State of New York and Secretary of War under President Polk, replaced Everett as Secretary of State. It may also be recalled that Marcy was one of the founding fathers of the Organization. The Foreign Relations Committee was reconstituted, with Mason still as Chairman, and Messrs Everett, Clayton, Douglas, Slidell, and Norris as colleagues.

By mid-March the prospects of Senate ratification seemed good. Everett’s presence on the Foreign Relations Committee augured well. Marcy was thought to favour the Treaty, and Levin claimed close, almost intimate ties with Marcy’s family. Crampton reported to Lord Clarendon that the fisheries issue had quietened down and without a Presidential election in the offing Anglo-American relations were improving. Of special significance was the signing on 15 March of an Anglo-American Treaty for the settlement of outstanding claims which established arbitration procedures for private claims reaching as far back as the American Revolution and the War of 1812. Crampton and Levin also seem to have been successful manipulators of the newspaper press. Of the New York Herald, Crampton commented: ‘I have been fortunate enough to get one of the most ferocious anti-British organs, but at the same time by far the most widely read and influential papers in the U.S., to go along in our favour.’ Quite independently John Jay noted that ‘the tone of our newspaper press has been more decidedly in favour of a treaty than ever before, and our publishers are I think generally in favour of it’. Jay’s personal efforts reinforced the press campaign. Through his acquaintance with Frederick Hudson, Managing Editor of the Herald, he secured some valuable statistics that showed that the majority of British works reprinted in America were handled by a comparatively few printers and publishers. He passed this information on to Everett, who
he hoped would make use of it in his new role as a member of the Senate Foreign Relations Committee.3

Despite these favourable indicators, there were signs suggesting that all was not well. In early March Jay reported to Samuel Warren, author of *Ten Thousand a Year*, concerning the Treaty:

*its fate is doubtful. I have just returned from Washington where I passed a few days with no other object than that of advancing the copyright interest, but as it had not yet come before the Senate and most of that body were ignorant of the matter, I could form no certain opinion of its chance of ratification. Mr. Crampton however was rather sanguine and, as Mr. Everett goes from the State Department into the Senate, his large personal influence will be exerted in its favor.*

As we have already seen Everett's timidity tended to undermine the cause since he was looked upon as an authority on copyright. Thus his presence on the Foreign Relations Committee was a mixed blessing. Unfortunately Marcy did nothing to help. Since assuming his cabinet post he had virtually ignored the copyright issue, claiming that the State Department had been besieged by office-seekers and patronage-pedlars. Crampton related to Clarendon:4

*The Senate are still in Session occupied with confirming appointments. Mr. Marcy still professes that he has not had time to look into a single state paper since he came into office. A good many of the Senators have dispersed, and can now barely muster a 'quorum': under these circumstances, Mr. Everett and the other friends of the Copyright Treaty have judged it better to let it lie over till next Session. I have every reason to believe however that the feeling in its favour is on the increase, and I have good hopes of our carrying it in December next.*

If there had been any hope of Marcy's applying pressure on the Foreign Relations Committee it was clearly misplaced.

The mustering of a quorum in the Senate was also becoming increasingly difficult. On 14 March Everett noted in his diary: 'a meeting of the Committee on Foreign Relations at which the Copyright Convention was read, and agreed to report it without any recommendation of its passage or rejection'. Later that same day on the floor of the Senate an attempt [was] then made to take up treaties but given up in despair in consequence of want of quorum. There is no disposition on the part of the
Senate to do business. Many of the members are light and frivolous persons without feeling of responsibility; more are absorbed in President-making and general electioneering. The public good is the last thing thought of.

The Copyright Treaty was reported out of Committee the next day, but insufficient quorums continued to frustrate Senate business.5

By mid-March the Copyright Treaty was further and perhaps fatally undermined by a prolonged debate in the Senate on Central America. Crampton set forth the issues in a letter to the British Foreign Secretary in London:6

News arrived here on the 16th of the supposed proceedings of the ‘Devastation’ at Truxillo & Limas, distorted & magnified as usual, and produced one of those violent Democratic Anti British Squalls in the Senate, during which neither reason nor common sense could be heard. The arrival of this report was very unfortunately timed, for as bad luck would have it, the Senate were still engaged in a Debate on the Clayton–Bulwer Treaty. The Democratic Party who were endeavouring to fix upon us an Infraction of the Treaty in regard to our Protectorate of Mosquito and the Colony of the Bay Islands, I need scarcely say, eagerly seized upon the report that the Mosquito Flag had been hoisted over Truxillo, a town within the limits of Honduras, and that Her M’s Steamer ‘Devastation’ was then bombarding some other Place in ‘Central America’ as a full confirmation of their assertions. This news has been since contradicted, but it served the purposes of these Gentlemen much too well not to gain their belief. It is somewhat unfortunate too that on the same day there should arrive news of a squabble between the Municipality of Greytown & the American Transit Route Company there, but as in this case, both Parties are Americans & we have no possible interest in the matter, they are inclined to take a less angry view of it.

These storms are, I think, of a transitory nature, & arise very much out of the struggle for offices. ‘Young America,’ under the Leadership of Mr. Douglas, wishes to shew Mr. Pierce that he cannot pass over its Claims with impugnity.

To understand this tangled web one must isolate the individual strands and analyse each one. In one way or another, they all originate with the Clayton–Bulwer Treaty (July 1850). The circumstances leading to its passage go some way toward explaining future complications. John M. Clayton, Secretary of State under President Taylor, was eagerly searching for a way to prevent further encroachment by the British
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in Central America; and similarly, Henry Lytton Bulwer, the British Minister to Washington, was anxious to check America's expansion there under the rubric of Manifest Destiny. The Anglo-American development of a canal across the isthmus between North and South America seemed the answer to both these problems. However, five days after such a treaty was ratified President Taylor died, and within a short length of time Daniel Webster replaced Clayton in the State Department. At the same time adverse public sentiment began to build up in America because many people disliked the idea of sharing the development of a canal with Great Britain and voiced their opinion that America should act on its own. As the months passed the proposed canal became increasingly important. The discovery of gold in California was one ingredient, but far more consequential was the incredible territorial expansion resulting from the war with Mexico. Almost overnight America had acquired Texas, Arizona, New Mexico, California, Oregon, Washington, and Eastward to the Great Plains. Within a few years she became a Pacific Ocean power in connection with the Sandwich Islands, China, and Japan. Suddenly a canal across Central America was essential to her diplomatic and strategic interests.

According to the Clayton-Bulwer Treaty, both parties agreed not to establish fortifications, protectorates, and colonies in any portion of Central America. This self-denying principle seemed clear enough but proved to be a great stumbling block. At the time of ratification Britain claimed an interest in three areas: British Honduras or Belize, directly South of Mexico and forming the South-east coast of the Yucatan Peninsula; the Bay Islands off the coast of the Republic of Honduras; and an ill-defined area along the Atlantic coast of Central America from Guatemala to Panama inhabited by the Mosquito Indians. In drawing up the Treaty, Clayton and Bulwer ignored the ultimate disposition of these areas, Bulwer assuming the tacit recognition of British rights and Clayton inferring their repudiation.

In Britain attitudes varied concerning whether these areas should be supported or abandoned. The American Minister to London reported 'that the British Government was becoming tired of continuing the protectorate and would gladly abandon it if any method could be devised of saving the national honour'. Crampton agreed:

I don't know exactly what terms may be considered as an honourable release for us from our position of protectors of the Mosquitoes, but I sincerely hope
we may be able to make a clean job of it and get out of that position for good and all.

Lord Aberdeen’s equivocal position was typical of British Government officials.7

I apprehend however that the great difficulty [of British withdrawal from the Mosquito protectorate] would not be on account of the Indians, but a certain number of English, or rather Scotch adventurers, who have obtained for a gallon of brandy, large grants of land from a drunken Savage whom we have thought fit to call a King. . I looked into this subject five and twenty years ago, and I never could discover on what pretext we made San Juan, or as we now call it, Greytown, a part of the Mosquito territory. As for the Bay Islands, our title is little better than manifest usurpation.

Until the beginning of 1853 those in America who were disgruntled by the Treaty were fairly moderate in their opposition. Then on 6 January, in a speech on the Senate floor, Senator Lewis Cass of Michigan accused the former Secretary of State of having deceived the upper chamber when he presented the Clayton-Bulwer Treaty for ratification. Though Cass was forced to retreat somewhat from this allegation he unleashed a protracted debate on Central America. Other Senators took up where he left off, all roundly condemning the Treaty. Stephen A. Douglas of Illinois was one of the most outspoken as was James M. Mason of Virginia, both members of the Foreign Relations Committee, so it was not surprising that the Committee issued a censorious report on 11 February 1853.8

While the Senate hotly debated American and British interests in the area fresh news arrived from Central America. On 15 March the official Democratic newspaper, the Washington Union, reported that a British armed steamer, the Devastation, had forced the surrender of the Honduran port of Truxillo (Tampillo) and had shelled the nearby port of Limas in the name of protecting British property. Two days later word was received that an American naval ship entered the port of Greytown to reinforce the claims of an American Transit Company.9

Remembering Crampton’s private letter to Clarendon, it is perhaps clearer what he meant by ‘these storms arise very much out of the struggle for offices’. Regarding the incident involving the steamship Devastation, Crampton continues:

Although this statement has since been in substance contradicted, belief of it subsisted sufficiently long to increase the excitement already existing in regard
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... to the affairs of Central America. Certain Senators, who impugned the Policy of the Treaty of 1850, found it convenient to refer to this vague report as an ascertained fact and as a fresh instance of a violation by Great Britain of Her Engagements. Violent and unfriendly language was again made use of by Mr. Douglas, followed by loud applause in the Galleries of the Senate.

In another dispatch written the same day he reported: 10

_The Committee on Foreign Relations had, I am also confidentially informed, prepared a report on the Copyright Treaty favourable to the adoption of a measure, which they were about to submit to the consideration of the Senate; but under the circumstances they have thought it more prudent to hold it over until the unreasonable excitement now prevailing shall have subsided._

Once the excitement over Central America subsided, Crampton had every reason to hope that the Senate would give its full attention to the Copyright Treaty. It ratified the Anglo-American Claims Convention on 15 March which seemed to imply that other Anglo-American projects might fare equally well. However, Crampton had been told by Senator Clayton that the vote on the Claims Convention was so close that it would have been defeated had it not been for the votes of one or two Senators. This news had the effect of seriously shaking Crampton’s confidence, and he became convinced that the Senate was so hostile to Britain that it would reject any other Anglo-American legislation.

From the Executive Journal of the Senate it is evident that the vote was actually not close at all. The tally showed thirty in favour and five opposed; well beyond the two-thirds majority requisite for the confirmation of treaties. What Clayton must have meant was that the Treaty almost failed for lack of a quorum. With sixty-two Senators potentially in attendance during the special session of 1853, a quorum consisted of thirty-two. Since the total number of votes cast on 15 March was thirty-five, Clayton’s story was partially true, yet hardly an accurate description of the proceedings. The list of those who voted for and against the Claims Convention is revealing. Many of the Democrats on whose support Levin was depending had supposedly departed from Washington, as their names were not recorded. None the less, there were still a substantial number of potential votes for copyright to be seen on Capitol Hill, and among the five who opposed the Claims Convention only Douglas was a worry in terms of his power and influence in the Senate. Had Crampton felt more confident and able to prod both Everett and the...
Foreign Relations Committee, the Senate might well have ratified the Copyright Treaty in late March 1853.\textsuperscript{11} As it was, his resolve was faltering and the opposition forces which had thus far remained quiet began to surface. In a letter of 7 March Crampton describes his first awareness of this.\textsuperscript{12}

I am somewhat alarmed at discovering that Messrs. 'Harper & Brothers', the great Piratical Publishers at New York have sent an Agent to Washington with 50,000 Dollars to be spent in opposition to the measure. I will do what I can to counteract the literary 'filibuster' by letting it be known that we are aware of what is going on. I suspected something of the sort, but it was only by mere accident that I discovered it.

Three weeks after this discovery Crampton found himself temporarily deserted by Levin who went South due to illness in his family. He wrote to Crampton on 22 March from Key West, Florida:\textsuperscript{13}

I shall be in Washington by the first of June. I am waiting most anxiously to hear of the action of the Senate in regard to the International Copyright. Changes were made in the Senate by the efforts of the Piratical Publishers before I left Washington. Every Engine was brought to bear and we had no time to counteract their insidious efforts. Under these circumstances, I venture to suggest, that if there were no certainty of the Treaty being ratified, that it had better lay over till next Session. I am singularly fortunate in having Mr. Marcy Secretary of State. The accompanying letter will show you the relation in which I stand to him. He will go as far as any man living to serve me, and I hope, if the questions in which you are so deeply interested have not been acted upon, that you will not press them, until I have an opportunity to see him.

It was certainly awkward to be without Levin's services just when they were most needed. Perhaps trouble should have been anticipated when too much time had been allowed to elapse and too many delays unaccounted for. The threat was always present that the opposition might some day exploit the same tactics to influence the legislators as Levin and Crampton had employed. Everett suggested this when writing to Putnam: 'great pains have been taken by outsiders to prejudice the Senate against the treaty; and not much to counteract these efforts.' On 5 April Senator Mason reintroduced the Copyright Treaty for its Second Reading and promptly moved to table the measure. Since this special Senate session ended on 11 April, the Treaty would not come up again
until Congress reconvened in December, and Crampton's slim hope was that the opposition would dissipate by then.14

Meanwhile, the Foreign Office and the Board of Trade were carefully scrutinizing the signed Treaty. Although modelled upon the 1851 Anglo-French version, the Anglo-American convention had some significant modifications. Crampton's instructions were to discourage any such changes because the Treaty would then need the approval of Parliament whereas otherwise sanction by an Order in Council would suffice. However, when Everett threatened not to sign, Crampton agreed to some alterations, later explaining to Clarendon: 'I have been led to hope that Her Majesty's Government will not disapprove of my having consented to embody them therein, without waiting for further instructions from your Lordship.' Most of the Treaty's articles were straightforward. British and American authors would enjoy reciprocal copyright protection 'of books, of dramatic works, of musical compositions, of drawings, of paintings, of sculpture, of engraving, of lithography, and of any other works of literature and of the fine arts' (Article I). Since drama and music were favourite targets of plagiarism, Article II distinguished between fair imitation or adaptation and illicit pirating, the courts in each country deciding doubtful cases. Registration in one country must take place within three months of a work's first appearance in the other. Unlike the Anglo-French Treaty, tariff duties were not imposed on imported books. Lord Malmesbury gave Crampton the option of retaining or dropping this provision, and later it was made clear why it was omitted:

\[
\text{an article involving a rate of duty would have necessitated a reference to the House of Representatives as well as the Senate and would thus probably bring on a discussion of the merits of the whole question in the former body, in which opposition to or procrastination were most to be apprehended.}
\]

Each country could prohibit undesirable forms of literature, such as works of sedition, blasphemy, and obscenity. No fewer than four Articles dealt with the exclusion of foreign reprints (Articles I, III, IV, and X), and here the principle of reciprocity proved especially convenient. Instead of specifying penalties such as seizure and destruction, piracies were subject to the respective laws of Britain and America which avoided the problem of reconciling differing legal traditions. Lastly it was specified that the Treaty had to be ratified within twelve months of its being
signed and would remain in effect for five years with the option of further renewal.

Only Article VI drew universal disfavour. It had not been a part of the Anglo-French Treaty but was strongly urged by Everett despite Crampton's vigorous opposition. 'Mr. Everett seemed to be of opinion', Crampton noted, 'that without the addition of an article such as we have adopted, the chances of success of the convention, when brought before the Senate, would be so seriously impaired as to render him unwilling to submit it to their consideration.' The offending article is worth quoting not because of its elegant style but rather its impact on later events.15

It is hereby agreed that if a work is published in either country and the copyright thereof secured by registration under the provisions of the present Treaty in the other country; and if two or more editions of such work shall have been published in either country at different prices; then such Author, his Representatives or Assigns shall publish, or permit to be published, in the other country, an edition of such work not more expensive than the cheapest of the said two or more editions published in his own country; and it is agreed that the publication of such edition shall be made within 12 months after the first publication of the work in the country where it was first published.

Though the language was complicated, the problem it was addressing was the American fear of being forced to buy high-priced British books. It was widely thought that British publishers would foist expensive copyrighted editions on the American market and by so doing would preclude domestic publication of cheaper editions. Most readers were accustomed to the phenomenon of the gradual lowering of the original price of a newly published work and the issuing of cheaper colonial editions, but there was a widespread suspicion that the British would try to extort as much as possible from America. Crampton tried to dampen such fears by publicizing the testimony of 'an English gentleman now at Washington, himself an author of great merit and popularity' (Thackeray), who insisted that Article VI 'could never prove injurious or inconvenient to British authors or publishers, and that in fact what it intends to prevent could by no possibility occur, for it would be clearly to the interest of every author or publisher of a work to supply the American market at the cheapest possible rate'. However, mistrust persisted, and when the Foreign Office reviewed the Treaty it joined the grumbling because of the likelihood that being a new provision it would necessitate an Act of Parliament. For its part the Board of Trade
doubted that this would be necessary, and after six weeks’ consideration
 approved generally of the provisions of the above convention and
 they see no objection to its ratification by Her Majesty in its present
 form.

A Foreign Office minute circulated in May observed:

Our usual course with regard to treaties with countries where the Executive
cannot ratify without the previous sanction of the Legislature, is not to prepare
the Queen’s ratification until we know that the other side is going to ratify,
so as to avoid the indignity of the Queen’s ratification being thrown away in
the event of a refusal of a requisite sanction.

Almost simultaneously the Foreign Office received a copy of a letter
which Alfred Turner, Longman’s and Murray’s legal adviser, had sent
to the Board of Trade challenging the exact meaning of Article VI.
What was meant by the phrase requiring an author to ‘publish or permit
to be published’ an edition as cheap as any in the country of origin?
Could this not be construed as ‘an absolute printing and publishing in
America’ which would have the effect of disallowing American copy-
right to copies printed in Britain? Turner continued:

But as it is a very important point to the English trader that the employment
given to paper-makers and printers should not be so transferred to a foreign
state, I beg to submit . the insertion of a few words in the article . to
make a sale or publication sufficient.

Turner’s letter raised two significant matters. First, British printers
and publishers were just as anxious to protect their trade interests as were
their counterparts in America; and second, one of the main attractions
of an Anglo-American Copyright Treaty from the British point of
view was the prospect of increasing the number of books they exported
abroad. With these concerns in mind the Foreign Office instructed
Crampton:

There are however in the 6th article of the Convention some expressions which
it is apprehended by the legal adviser of some eminent publishers in this country,
might be construed in a sense which they were not designed to bear.
although Her Majesty’s Government will accept the Convention in the terms
in which it was signed, and would not wish any difficulty to be raised on the
point referred to . if the United States Government would also be willing
to ratify as it stands, it would be well to adopt the alterations suggested by the
publishers in the event that its being found necessary hereafter to introduce any other alterations in the Convention.

When Crampton voiced British concern over Article VI to Marcy and Everett the latter admitted that he was also becoming increasingly uneasy about it and as a result was going to propose a substitute amendment to the Senate.¹⁸

The right of property or copyright provided for by this Convention shall be enjoyed in the United States only in the case of such works of British Authors which shall be stereotyped or printed and published in the United States; and it shall be enjoyed in Great Britain only in the case of such works of the United States Authors as shall be stereotyped or printed and published in Great Britain. Where a work is first published in the country of the author, no right of property or copyright in the same shall be enjoyed in the other country, unless the republication takes place within three months from the time of the first publication; and if two or more editions of a work shall be published in either country, and at different prices, no right of property or of copyright shall be enjoyed in favour of the said work, unless the republication in the other country shall be of an edition not more expensive than the cheapest of the aforesaid edition published at different prices.

Clearly Everett was succumbing to the traditional insistence of the American book trade for a 'manufacturing clause'. Ever since 1837 when Senator Clay introduced the first international copyright bill, foreign books could obtain a copyright only when they were republished in America. This assured the American printing industry of business while preventing the British from cornering the reprint market. Opponents of copyright traditionally latched on to this issue, but it was significant that ever staunch advocates like G. P. Putnam, D. Appleton, R. Carter & Bros, C. Scribner, and Stanford & Swords sent a memorial to Everett stipulating:¹⁹

that the type shall be set up and the book printed and bound in this country. The necessity of this provision is obvious, for if an English publisher or author may print and bind the book in England and at the same time secure a copyright without being required to print and bind his book here, then more than one-half of the mechanics and women employed in the type foundries, printing offices, paper mills, book binderies and the various collateral branches will be thrown out of employment, and great distress must follow.
The combination of a manufacturing clause and a mandatory republication of the cheapest editions was too much for the leaders of the London book trade. Although they should not have known about Everett’s contemplated amendment because the provisions of the Treaty were still secret, they were, in fact, made aware of it through close ties with the Board of Trade. At this juncture Longman and Murray sat down with Alfred Turner and set forth their reservations in a lengthy memorandum which ultimately formed the basis of future Governmental policy.

One of their concerns was whether a Treaty superseded all previous American legislation. That is, whether for example Congressional action would be necessary to revise the extant copyright law of 1831 which conferred protection only on American citizens or residents, or would the proposed Treaty granting reciprocity to British subjects take automatic precedence. This problem was referred in the first instance to James M. Carlisle, the Attorney for the British Legation in Washington. Citing the second clause of the sixth article of the US Constitution, he noted that duly signed and ratified treaties embodied the ‘supreme law of the land’, and that a treaty was ‘equivalent to an act of the Legislature’. However, the Supreme Court did distinguish between treaty contracts which required legislative enforcement and international treaties where no further legislation was necessary. Armed with these reassurances Crampton formally raised the issue with Secretary of State Marcy who in turn referred it to the Attorney-General, Caleb Cushing. In an Opinion dated 16 February 1854 Cushing unhesitatingly confirmed Carlisle’s findings and added ‘therefore the Convention is and must be during its continuance competent and sufficient... to secure the British subjects a right to all the capacities, privileges and property which have the objects, intent of the Convention.’

Taking a lead from the Longman-Murray-Turner memorandum, the President of the Board of Trade posed several other difficult problems were Article VI amended as Everett wished. First, as to maps and engravings:

*It would be impossible to have a facsimile of an engraved plate made in America, because the artist would not be there to do it, and if it could be so engraved there, the time limited by the Convention [three months] for securing a copyright would not admit of any work of consequence being done in that country.*

*The English proprietor of a plate of any value would not send it out to*
be printed from. The recent and beautiful invention of imitations of oil and watercolour pictures printed from prepared stones or blocks [would preclude republication in America]. Here, not only the proper original drawing on the stone or block is required but the practical experience and judgment of the workman, to take off the impression accurately.

In addition many books such as Thomson's *Seasons*, Walton's *Angler*, and Gray's *Elegy* claimed no copyright for the letterpress but solely for the engravings. Other works like the *Poems* of Rogers or Tupper's *Proverbial Philosophy* claimed copyright for both. Since amended Article VI applied a formula which varied not only with respect to production but also to price, Turner wondered seriously whether the disadvantages didn't outweigh the advantages:

*The English author or proprietor must either open a shop in America and publish himself, or sell the right to publish there to some party resident there. If as is most probable he adopts the latter course, what control can he have as to what editions the party may think it prudent or advisable to publish.*

Even an American publisher took a risk if he issued a reprint, since he might at any time be liable to produce a cheaper edition if a British publisher lowered his selling price at home.

*The effect that the amendment could have on the cost of books troubled the Board of Trade.*

*If enforced, it is calculated to unduly enhance the cost of printed books to the public of both nations. In this country it will deprive the publisher of the power of which he now avails himself, to reduce the price of a particular book by working off from the same types and illustrations an extra number of copies for exportation to the U.S., and it will have a similar operation in the U.S., where the current literature is largely derived from British authors, by requiring the repetition there of every process of printing.* Thus the public both of Great Britain and America will be unnecessarily taxed in order to establish a new species of protection for the restriction in favour of printers and publishers.

The Board further doubted whether finer and more elaborate editions could be sold in America if only the cheapest editions could claim copyright. A possible compromise might involve the letterpress being done in America with the exception of prints, engravings, and maps which could be run off in Britain from the original plates and copies sent to
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America. Failing such a compromise, the Board of Trade was 'still of opinion that the Convention, notwithstanding these blemishes, should be acceded to by this country. We anticipate that the disadvantages will be speedily so apparent to the Government of the U.S., as to lead to an early abandonment of the obnoxious provisions.'

The Foreign Office's instructions to Crampton were stiffer in tone than the recommendations of the Board of Trade.

*Her Majesty's Government would indeed regret that, upon a ground of doubtful protection, this measure, which has been so long desired and delayed, should be clogged with obstacles which must to a great extent neutralize its operation; and you will use your best endeavours to prevent the amendment from being proposed or adopted by the Government of the United States.*

He was authorized to extend the time limit, but not to sign any amended convention until he received further instructions. In a private letter of the same day (13 January 1854), Lord Clarendon somewhat softened his tone, but most significantly he did not repeat the Board of Trade's opinion that an amended treaty was better than none.  

*I send you some arguments respecting Copyright that I hope will have due weight with Mr. Everett. Pray tell him with my best regards how much importance we attach here to having an equitable working measure for the international protection of literature. The value and influence of American literature are becoming daily more felt in England.*

In the meantime, what of Lewis Charles Levin and the remnants of the Organization? True to his word, he was back in Washington by June 1853, and after making some arrangements with the Hudson's Bay Co. he told Crampton: 'if I can serve you, in any other [way], I shall always be most happy to do so. I have not lost sight of the International Copyright question, to which I shall devote myself.' This is the last we hear from Levin about the Copyright Treaty. From other sources it is clear that he was in Philadelphia or Washington during the autumn of 1853, but after that, he disappears. It is possible that Crampton despaired of accomplishing anything through his auspices and severed the connection.

By December 1853 the opposition had far from dissipated, as Crampton had hoped. A lengthy pamphlet by Henry C. Carey entitled 'Letters on International Copyright', had fanned the flames. Carey was the chief theorist and spokesman for American protectionism. His elaborate polemic ranged from contrasting the decadence of the Old World with
the vitality of the New to comparing the centralizing tendencies of
British Government with the decentralizing freedoms of American
society. In his view the essence of America was popular education
buttressed by cheap literature. Authors should content themselves with
fame not fortune. International copyright threatened all this by way of
monopoly and high prices.

Although there was little new information in Carey's pamphlet, and
he tended to be long on argument and short on facts, one assertion
struck home. He capitalized on the idea that international copyright
was being imposed by a secret treaty in the Senate.

It is an attempt to substitute the action of the Executive for that of the Legis­
lative. . . Finding that no bill that could be prepared could stand the ordeal
of the public discussion, a treaty has been negotiated, the terms of which seem
to be known to none but the negotiators, and that treaty [is to] be discussed in
secret session, by a number of gentlemen, most of whom have given little
attention to the general principle involved.

Moreover, the Senate itself was unrepresentative. 

A thoroughly adverse popular will having thus been manifested [in years
past], it was now determined to try the Senate, and here the chances for
privilege were better. With a population little better than that of Pennsylvania,
the New England states had six times the Senatorial representation. With
readers not a fifth as numerous as were those of Ohio, – Carolina, Florida,
and Georgia had thrice the number of Senators.

Carey's arguments carried weight because they were expounded syste­
matically by a professional economist and public figure. Their appear­
ance was particularly well-timed, as revealed by Everett's letter to
Crampton on 9 December 1853 explaining that the contemplated change
in Article VI owed something to Carey's pamphlet which had been
circulated to members of the Senate.

It is especially interesting to note who promoted the pamphlet. In
its preface Carey refers to a request by Senator James Cooper of Penn­
sylvania to be enlightened on the subject of international copyright. It
may be recalled from a previous chapter that Cooper was the arch
political enemy of Lewis C. Levin. Very likely the opposition forces
learned of Levin's sponsorship of the Treaty and persuaded Senator
Cooper to co-operate with them and at the same time pay off an old
political grudge.
In January 1854 members of the Philadelphia book trade began to collect petitions for Congress.²⁶

You will observe that the petition is not adapted for booksellers exclusively, taking ground, as it does, against the intended extension of executive action over constitutional legislation, and therefore is suitable for all citizens who desire to prevent this dangerous innovation.


The enclosed Petition against the International Copyright Treaty with the signatures of the principal Paper Houses attached.

We find the Booksellers are actively engaged in obtaining signatures to a similar petition, and we have therefore not interfered with them.

We have written a letter and enclosed one of our forms, to Mr. Edward Walker [a partner of Leonard Scott, the reprinter] and endeavored to persuade him to make a stir among the Bookbinders, and the same to Mr. J. F. Trow, to induce him to stir up the Printers.

Soon petitions against the Treaty began to pour in to Washington. On 9 February Senator Brodhead of Pennsylvania presented one bearing the signatures of 363 fellow citizens. The following day he introduced another, and Senator Fish of New York tabled one from Leonard Scott and 43 others. Three days later another two arrived, the larger one listing 71 citizens from Massachusetts. Senator Everett had the embarrassing task of having to present negative petitions from 127 people in his home state of Massachusetts. No petitions were forthcoming in support of the Copyright Treaty during the early months of 1854.

In addition to memorializing Congress, the opposition prevailed upon Senator Stephen R. Mallory of Florida to challenge the secrecy surrounding the Copyright Treaty. Rumours abounded as to what was contained in the Treaty, but no full text of its provisions had been made available. This was soon remedied, however, and in a somewhat unorthodox manner.²⁸

[Resolved] that the President of the Senate be directed to address a note on behalf of the Senate to each Senator putting the following interrogatories. First, whether he has any information which will enable the Senate to ascertain in what way or by whose instrumentality the treaty with Mexico, and that
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with Great Britain relating to copyright and the amendment to the latter offered by the Senator from Massachusetts, or either of them which are now pending before the Senate, had been disclosed in violation of the 39th rule and been published in the public journals?

Once the Treaty had been leaked to the press it was easier for the enemies of copyright to criticize specific provisions instead of having to address themselves to the Treaty as a whole.

By the end of February the prospects for ratification were bleak but not hopeless. It was ready for a Second Reading in the Senate whenever Everett saw fit to proceed, and provision had been made for extending the time limit. There were, for the moment, no Anglo-American crises. The session of Congress extended until July or August rather than terminating in March, thus allowing plenty of time to gather the momentum necessary to carry the Treaty through.

The great obstacle, other than the mounting pressure of the opposition, was Everett's unwillingness to formally amend Article VI in view of Crampton's objections, and Crampton's inability to act without specific instructions from London. The deadlock broke on 12 May 1854 when Clarendon gave Crampton permission to go ahead.

Much as H.M. Government would regret the substitution of the altered article, which as stated in your dispatch no. 195 of the 12th of December last Mr. Everett proposed should be substituted for article 6 of the Convention as signed, they would, in case your strongest representation should fail to induce the American Government to give way on this point, accept it as an alternative preferable to the entire abandonment of the negotiation.

By the time Crampton received these instructions events had again stolen a march on him. Everett had left Washington intending to resign from the Senate on the advice of his personal physician. Writing from Boston he told Chairman Mason of the Foreign Relations Committee that: 'the International Copyright Treaty was left to my management', and before leaving Washington he had come to the conclusion that it could not secure ratification and therefore should be dropped. Too many Senators opposed it, and furthermore he had become personally convinced that a manufacturing clause was necessary. 'I gave notice to the Senate that I should move such an amendment, but this amendment is much objected to in England by the friends of International Copyright.' Under these circumstances Everett recommended that the
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Committee not bring the Treaty to a vote, although the decision was now theirs. On 3 June he wrote to Crampton repeating these considerations and adding:

My proposed amendment was not satisfactory in England and, on submitting to practical persons in this country the objections taken in London, I despaired of an adjustment that would be approved on both sides of the water. On conferring with Mr. Prescott, when I was at home in March, I found it to be his opinion that if the Convention was likely to be defeated, in the Senate, it would be much better in the present state of the copyright law in England not to take it up. No action at all he thought would be much preferable to rejection. In this state of things I have determined, unless you should have earnestly desired it, not to call up the Convention nor ask a vote of the Senate. I have informed Mr. Mason, Chairman of the Committee on Foreign Relations, that I had come to this conclusion, and I have reason to think that no movement will be made by the Committee towards taking it up.

On 7 June Crampton replied that he agreed it would be useless to 'press the treaty to a rejection'. Ten days later he informed Lord Clarendon that unfortunately Americans were not yet ready for a Copyright Treaty and apparently preferred to exploit cheap foreign reprints rather than foster their own authors and literature.

Certain writers in America would have felt more of a sense of loss had they not assumed that Lord Campbell's decision in the Court of Exchequer in 1851 at least provided copyright protection for their works published in England. Prescott held this view so firmly that he was never a staunch advocate of the Treaty. Why, said he, risk its rejection when American authors already enjoyed copyright protection in Britain? When in 1854 the House of Lords passed judgment in Jefferys v. Boosey depriving American authors of this vestige of comfort, Prescott suffered greatly because he was one of the most highly paid American authors in Britain. It is tempting to speculate what effect the Lords' decision might have had if it had been handed down a few months earlier.

Dramatic irony such as this, however, pervaded the protracted negotiations to secure an Anglo-American treaty. From the outset they had been plagued by misunderstandings and poor timing. Initially there was the discrepancy as to the amount of money to be raised for the Organization. Who would have thought that English authors and publishers would balk at furnishing £2,000? Then followed the untimely death of Webster, and later the unexpected resignation of Everett from the Senate.
One couldn’t have foreseen that Knox Walker’s abrupt departure from Washington would fragment the Organization. It was even more unpredictable that Everett’s temporizing would reinforce Fillmore’s hesitations and cause endless awkward delays. The fisheries and Central American questions arose at particularly inopportune times. When Levin was most needed he was called away from the Capitol. Neither Crampton nor Everett was prepared for the kind of opposition generated by Longman, Murray, Turner, and the Board of Trade. Was it Lord Clarendon’s intention to curb Crampton’s power to negotiate, or did he merely procrastinate until it was too late to make it clear that a ratified treaty was better than no treaty?

There were other loose ends which may never be satisfactorily resolved. Did Lord Clarendon know about the secret arrangement with the Organization; and what became of the money subscribed? It seems unlikely that he was ever fully apprised of the Crampton–Levin plan. Nothing about it was ever mentioned in either the official dispatches or private correspondence. Only one person was so situated that he could have revealed the existence of the fund. Austen Henry Layard was not only one of John Murray’s most successful authors but he also was in the employ of the Foreign Office and had been asked to contribute to the fund. His response to the solicitation was that it was absurd for private authors and publishers to raise such large sums of money when payments such as this could be taken from Secret Service funds administered by the Foreign Office. There is no indication that Layard’s comments ever reached Lord Clarendon, however, and Crampton made no requests for Secret Service funds for this purpose. As to what became of the money subscribed, the first £1,000 was paid to Levin soon after the signing of the Treaty in February 1853. At that time the understanding was that the second instalment would be payable once the Treaty had been ratified. Since this never happened, the balance was not needed and Bulwer, Blackwood, Dickens, and Murray were saved from having to contribute twice. Crampton was also relieved from having to pay his promised £500.

The causes of failure were manifold, but a letter from Herman Melville to Richard Bentley highlights the powerful underlying attitude which predisposed defeat.

*And here let me say to you, – since you are peculiarly interested in the matter – that in all reasonable probability no International Copyright will ever be*
obtained – in our time, at least – if you Englishmen wait at all for the first step to be taken in this country. Who have any motive in this country to bestir themselves in this thing? Only the authors. – Who are the authors? – A handful. And what influence have they to bring to bear upon any question whose settlement must necessarily assume a political form? – They can bring scarcely any influence whatever. This country & nearly all its affairs are governed by sturdy backwoodsmen – noble fellows enough, but not at all literary, & who care not a fig for any authors except those who write those most saleable of all books nowadays – i.e. – the newspapers, & magazines. And tho' the number of cultivated, catholic men, who may be supposed to feel an interest in a national literature, is large & every day growing larger; yet they are nothing in comparison with the overwhelming majority who care nothing about it. This country is at present engaged in furnishing material for future authors; not in encouraging its living ones.

In 1868 H. C. Carey offered his own explanation. Inscribing a copy of the second edition of his Letters on International Copyright, he boasted: ‘With this I send you some letters on the copyright question that might interest you. They killed Everett’s treaty 14 years since.’ There is no question of the damage done by Carey’s Letters, but they hardly merit this claim. The most that can be said is that, as a collection of grievances, they helped to focus the attack of various opposition forces.36

Looking back on the negotiations, Everett concluded:

The measure suffered greatly from the apathy of its friends, particularly of the friendly press, while its opponents in the hostile press were indefatigable. Large sums of money . . . were expended by the publishing houses in printing and circulating pamphlets against the Convention [and] . this was not the worst that was done if rumor can be trusted.

Echoes of the Organization and L. C. Levin reverberated throughout the visit of a young London publisher, John Cassell, who travelled to America in November 1859 in order to arrange for the expansion of his new publishing house. His biographer tells us:38

At Washington he endeavored to put in an argumentative word or two for international copyright. He found that what international copyright wanted in Washington was not argument but cash. When he pointed out to the politicians the justice and expediency of international copyright, they cut him off short. ‘If you English publishers will only subscribe a sum of such-and-such to work the lobby’, he was told, ‘the measure could be carried. You know
that there are certain houses here which are deeply interested in the reproduction of English books; what are a few thousand dollars to them, expended to defeat any attempt to interfere with the system by which they have become millionaires?'

Perhaps the final irony of all was that British authors, publishers, and politicians had to accept in 1891 what they resisted in 1854.