

Qualification of the International, Public and Private Law of America.

SESSION OF NOVEMBER 8, 1902.

Secretary Macedo.—The Delegation of Brazil has presented the following initiative for the formation of Codes on International Public Law and on International Private Law. This project, by ruling of the Chair passed to the united Committee on International Law and on Reorganization of the Bureau of the American Republics. The initiative reads as follows:

Considering that it is the primordial aim of the Pan-American Conference to organize the union of the Republics of America on juridical bases;

Considering that of these bases the principal are the following:

(a) Arbitration as the proper means for the solution of differences which may arise between the nations of America.

(b) A permanent International Tribunal to which these litigations may be submitted.

(c) International legislation according to which they be adjudged.

Considering that the final *desideratum* cannot be attained without careful study and previous submission to the approval of the Governments interested, so that the Delegates be in possession of the necessary instructions at any future Conference.

The Delegate from the Republic of Brazil has the honor to make the following proposition:

Art. 1. The Executive Committee of the Bureau of American Republics will appoint a Committee of three jurists charged with the organization, within the interval between the present and the succeeding Conference, of a Code of Public International Law and a Code of Private International Law, which will govern the relations between the nations of America.

Art. 2. After drafting said Codes the Executive Committee will have them printed and submitted to the consideration of the Governments of the American Nations, in order that they may comment thereon as they may consider proper.

Art. 3. These commentaries being systematically arranged and the Codes having been revised by the Committee that drafted them, they will be submitted to the succeeding Pan-American Conference that will meet four years after the present one.

Art. 4. To enforce the treaty that may be sanctioned by the Codes referred to, the simultaneous exchange of ratifications will not be necessary by all the nations subscribing it, it being quite sufficient that the Government of each of the other nations shall state it has approved the same in accordance with their internal laws.

Art. 5. The Committee entrusted with the drafting of the Codes may carry out its duties at any of the capitals of America or Europe, as may be agreed upon, and the expenses shall be paid by the Bureau of American Republics.

Hall of Sessions, November 4., 1901.—(Signed.)
Jose Hygino Duarte Pereyra, Delegate from Brazil.

SESSION OF DECEMBER 20, 1901.

Secretary Macedo.—The Committee on International Law has presented the following report upon the project of the Delegation of Brazil, relative to the codification of International Law; the Chair rules that the report be printed and distributed to the Delegates. It reads as follows:

The Committee on International Law in reporting to the Honorable Conference on the proposition submitted to its consideration thinks it its duty to begin by offering a homage to the memory of its regretted President, the illustrious jurist, Jose Hygino Duarte Pereyra, who has also been the author of the project, which, with slight modification, we submit now to the consideration of the Conference.

* * *

The most characteristic point in international relations is the ambiguity and sometimes the obscurity and confusion of many of the provisions governing them, a circumstance which is the case that each State accepts, rejects or modifies said provisions according to its necessities or convenience.

These deficiencies and omissions constitute in a great number of cases an obstacle to the real harmony of international relations, because in order to obtain this harmony it is essential that the principles governing said relations be precise, well defined and, if possible, sanctioned by the States, and only in this manner a precept can be dictated to be obeyed by all.

For a long time back, people generously inclined, have endeavored to fill this void by asking for the drafting of Codes of International Law, submitted thus to fixed rules, like Private Law, the former should establish and determine the rules to which nations must subject themselves in their reciprocal relations.

Men of genius, during the French Revolution, conceived and endeavored to accomplish the drafting of both codes.

By a decree of the National Convention, of October 28, 1792, the drafting of a «Déclaration du Droit des Gens» was ordered. The Abbé Gregoire submitted a proposition whose sole object was to proclaim some general principles, but this proposition was rejected by the Convention of 1796 to which it was submitted.

After that time private initiative and philanthropic associations have undertaken to push and facilitate the work of drafting said Codes.

Among the works due to private initiative, those most worthy of mention are: that of Bentham, which is a sketch of codification; that of Paroda, which contains a project of codification of International Private Law; that of Domin-Petrushevcev, which is an essay on the subject of international treaties; that of Lieber, «Instructions for Armies in Campaign;» that of Bluntschli, entitled «International Law Codified;»

that of Dudley Field, which contains a «Project of International Code;» and finally, that of Fiore, «International Law Codified.» In America there has been published the work of Agustin Aspiazu (Bolivian) «Dogmas of International Law,» which proposes the same object as the preceding.

Along the individual initiative, there have been corporations of savants, which have undertaken in a more or less exclusive manner, the noble task of facilitating the codification of International Law. In this number should be enumerated the «Association for the reform and codification of the Law of Nations,» founded in 1873 in London, and which since 1895 has been denominated «Association of International Law.» In 1873 there was founded in Ghent the «Institute of International Law,» whose most important labors are projects of codification on this line. In Saint Petersburg there was founded, in 1880, an Association of International Law, which has the same object. Finally, the Universal Peace Congress at its session in Budapesth, in 1896, voted the first articles of an International Code.

If private initiative has produced splendid labors referring to projects of codification, some of which, it is true, have nothing in common with codes except in external form, being in reality, expositions of International Law and of the personal doctrines of their authors, the International Congresses and Conference, and in general, the Foreign Offices of the different countries have exerted themselves little in carrying out that important work.

From the 25th. of August, 1888, to the the 19th. of February, 1889, there assembled in Montevideo a South American Conference, which proposed the codification of International Private Law in civil and commercial matters; the same has not been, however, ratified except by some countries, despite the fact that all of them were recommended to study and adopt it by the Conference of Washington in 1889.

The present Conference will be the first Assembly of diplomats that will give its opinion in favor of codifying all the Laws of Nations, that is to say, of collecting in one clear and precise doctrine all the fundamental precepts which govern the relations among the nations.

The Committee of which we are members, in reporting the project of the Brazilian Delegation relative to said codification, can not limit itself to taking into consideration the noble intentions of that initiative and the advantages which its realization will produce to the cause of right, but it must consider with diplomatic judgment whether it is possible and opportune to enter upon such an arduous undertaking, and the best manner in which it can be brought to a conclusion, in order that it may give the results which in reality it is called upon to produce.

The Committee does not ignore the serious objections which are opposed to the complete realization of the project submitted for consideration, objections which do not exist, or are much smaller, in the case of the codification of Private Law.

The basis of the relations between nations being the liberty and integrity of each one of them, it is necessary, for the perfecting of an International Code, that all contribute freely towards establishing it, and if it be possible, to sanction the rules which are to govern them in their mutual relations.

Such harmony is not always easy to procure, by the very nature of the principles of International Law,

which, the same as all of political and social sciences, have their origin and foundation in the real necessities of the life of nations, and which, as such, and in what may affect the special character of each, are not susceptible of uniform and unvarying rules.

Out of this circumstance arises a difficulty of a triple nature for the codification which it is necessary to duly take into consideration.

The first difficulty arises from the fact that international relations, by their nature, are intimately connected with the interior and foreign policies of each State, which policies, in their turn, are dominated by the interests, prejudices, and passions more or less firmly rooted in public opinion. This logically produces political and economic antagonism between the nations, and consequently in their mutual relations from which results the want of accord on many of the principles which should govern these relations.

This we see practically illustrated in the treaties, which, with regard to any special matter, a State concludes with other states. In such treaties neither the same principles nor the same rules of conduct are always adopted, but they vary according to the political conditions of the countries and their existing relations.

Still more clearly this may be observed in the proceedings of an International Conference like the present. Whenever it is desired to discuss the project of a Convention among all the countries represented in the same, which conventions really are nothing more than codifications of determined matters, they encounter much resistance to their adoption, and still more to their ratification by all the countries. In such debates there are expressed divergent opinions with regard to the most fundamental ideas and principles, which it was believed would meet with the approval of all; and it even happens that States refuse to collectively subscribe conventions, which they might be ready to celebrate with a determinate country.

The second difficulty arises from the fact that, inasmuch as the principles of International Law have their origin and foundation in the real necessities of the life of peoples, they are as varied as those necessities and follow them in their development and modifications.

The history of international relations shows that the great political and economical events have always produced intense modifications in those relations, so that there has always existed a parallel march between the political and economical history of the States and the progress of international law.

The third difficulty which is opposed to the codification, comes also from the intimate relation of the precepts of International Law with the life and development of the States.

As these progress politically and economically, new necessities arise which regulate in a different manner their reciprocal relations. The principles of International Law develop themselves for that reason in a gradual and constant manner without the possibility of determining them in a complete way.

It results from this that, without taking into account the antagonistic character of international relations, and supposing therefore that all the States be at a given moment in perfect accordance with all the rules and regulations which are to direct their reciprocal relations, the variable character of those relations and their continuous development render very difficult a rigorous codification.

There are some matters, however, which not being essentially variable by reason of their nature, that as a general rule exist in international relations, are almost exempted from the difficulties referred to. We allude to those which, owing to their general character, do not affect, nor are linked to, the interests of any one particular country,—those which do not suffer scarcely any alteration in the changes of the political life of the States, and which, notwithstanding the progress of civilization, do not give signs of any such changes. To this number pertain many matters of Private International Law, the conventions known under the name of International Unions and lastly, those which rest on the noble sentiments of human nature, such as those tending to render the laws of warfare less cruel.

The difficulties which are opposed to the codification of International Law, although serious, are not, after all, absolutely insuperable. It becomes necessary to take them under consideration in order to know accurately up to what point it is possible and useful to undertake that codification, and in what manner it can be carried into effect.

It becomes, therefore, necessary, and as an indispensable condition that the work be undertaken by a Committee of American jurists, so that it may gather the various opinions which exist in our countries upon each one of the matters which shall become the object of the codification.

That Committee must not intend to devote its work to the detailed regulation of all the matters which constitute International Law, for, in view of the difficulties presented by the codification of that branch of political science and the dearth of sufficient elements contributory thereto, it is neither necessary nor convenient.

The codification must be limited to the most important matters wherein is felt the necessity of regulation, and to those possessing important precedents in the practice of the American Nations, so that the precept which may be established shall be come the consecration of the real relations which actually exist between them, and which manifest themselves above all in its usages and treaties, finding inspiration, as well, in the exigencies of scientific proof and in the fundamental principles of law.

The Committee must take into account the greater or lesser variability of the matters which it intends to codify. Wherein the international relations are intimately connected with the policy of the country, or within those matters which, owing to their nature, change incessantly under the impulse on the development of civilization, the only wise and the only feasible thing to do, is to establish, merely the fundamental principles which are in accord in all countries, but which must at the same time be proclaimed in a general manner so that they may have the authority of the law.

Those matters which, due to their nature, are not subject to political changes, and have no development rapidly progressive, can be regulated with greater detail and in a more complete manner.

It is also indispensable that the codification be inspired and guided by some fundamental principles that may serve as a starting point, which will give life to all institution, and will fill their voids and establish proper unity and concord between them.

Having this in mind, the fundamental starting point and the basis of all institutions should not be

the absolute independence of the States, but the recognition of the idea of international community, by virtue of which each State, although preserving its independence, is naturally bound to the others by material and moral interests; in a word, the idea of solidarity between them, which has for its consequence the recognition of mutual rights and duties.

The institutions must also be imbued with the republican and democratic spirit which characterises those of all American countries.

The Committee that effects the conditions must, upon the completion of its work, submit it to the examination of the governments of the different American States, in order that they may make their observations, which shall be taken into consideration by the former at the time of perfecting the final project. Only by taking into account all the foregoing circumstances, will it be possible to accomplish a happy essay of codification, at least, of some of the principal subjects of International Law; a trial which will have for its prime object the establishment, in clear and precise terms, recognized by all the American countries, of the relations between the States, the terms of which are at present generally vague and easily evaded.

It will also contribute, and this will not be one of its least merits, to the modification of the relations between the States, and make them more fraternal by the manifestation of the solidarity which exists among them; and to strengthen and elevate the political and juridical conscience of the countries, which is the best support of International Law.

In conformity with all the ideas expressed in this report, we submit to the consideration of the present International American Conference the following.

PROJECT OF CONVENTION.

Art. 1. The Diplomatic Corps of the American States residing at Washington shall appoint a Committee of five American jurists, entrusted with the drafting, during the interval from the present to the next Conference, of a «Code of Public International Law,» and of a «Code of Private International Law,» which will govern the relations between the American Nations.

Art. 2. As soon as said Codes have been drafted, the Committee shall cause them to be printed and shall submit them to the consideration of the respective Governments of the American Nations, in order that they may make such suggestions as they may deem advisable.

Art. 3. After said suggestions have been systematically classified, and said Codes have been revised by the Committee which drafted them, they shall be submitted to the next Pan-American Conference.

Art. 4. For the validity of the Treaty sanctioning said Codes, a simultaneous exchange of ratifications, by all the signatory countries, shall not be necessary, it being sufficient that the Government of each country send a communication to the Government of the United States to the effect that the Treaty has been approved in accordance with its interior laws.

Art. 5. The Committee in charge of the drafting of the Codes shall conduct its work at such European or American capital as the Diplomatic Corps, who have appointed the Committee, may designate. Such expense as may be incurred in the execution of the present project, shall be defrayed by the Amer-

ican Governments in the same form and proportion as those in force with regard to the Bureau of American Republics.

Committee Room, Mexico, December 20, 1901.
—Francisco L. de la Barra.—Juan Cuestas.—Baltasar Estupinian.—Fernando E. Guachalla.—Emilio Bello Codecido.—Isaac Alzamora.—A. Bermejo. Alejandro Alvarez, Secretary.

SESSION DECEMBER 30, 1901.

Secretary Macedo.—The order of the day will be taken up, commencing with the discussion, as a whole, of the report of the Committee on International Law, on the project of the Delegation of Brasil, relative to the codification of International Public and Private Law. Said report was inserted in the Minutes of the 20th day, as annex No. 2.

His Excellency Mr. Leger, Delegate from Hayti.—The proposition submitted to the Conference by our lamented colleague Mr. Duarte Pereira, Delegate from Brazil, is the best evidence of the necessity felt by the American Republics to lay down the principles destined to rule relations between countries of the civilized world; but if we limit the application of those principles to one hemisphere, to one part of the great human family only, the realization of our ideal would be rendered more difficult, nay, would be endangered altogether. The honorable members of the Committee on International Law are fully aware of this fact; on page 16 of their interesting report they admit that a Code on International Law cannot be of any value, unless every Nation joins freely in its formation. They however, owing to scruples worthy of being taken into account, have decided upon the organization of a committee of American jurists, entrusted with the drafting of a Code, the provisions of which would only govern the relations of the American Republics.

In other words, they ask us to proclaim the existence of an American International Law. This idea, certainly, is not new. Eminent jurists have spoken of an European International Law, and before and after the meeting of this Conference, I have often heard the idea of an American International Law. In my humble opinion, the Conference has nothing to gain if it establishes, through its vote, this new division of International Law, which is not scientific at all; for if we understand by International Law all of the rules usually observed by civilized nations, and if such rules are the expression of all that is just and true they cannot vary from one hemisphere to another; for that which is truth in Europe cannot be an error in America, and vice versa.

A strictly American International Law might be so understood, if our Republics had only mutual relations among themselves; but every one keeps them also, constantly: with Europe. From these relations with Europe conflicts must necessarily arise for the settlement of which it is necessary to recur to the rules of International Law. Shall we then have two series of rules: one applicable to settle only American differences, and the other reserved for the settlement of our differences with Europe? Two great continents might, in this way, find themselves in opposition with each other, each relying on its special Code. I think that such antagonism would be disadvantageous to our interests. On the other hand, why should we deprive ourselves of the aid of Europe, of the benefit of her old traditions and of the expe-

rience of her jurists? We cannot overlook the fact that we are indebted to her for great a part of our progress, and for the conquests of modern law; let us, therefore, associate her in our proposed work, with the assurance that we will thereby gain great authority.

I therefore have the honor to submit to your consideration the following amendments to the first three articles of the proposition approved by the Committee on International Law:

Art. 1. The Ministers of the different American Republics accredited at Washington and the Secretary of State of the United States, shall appoint a Commission of five jurists, who will have in charge the preparation of a project of Code on International Public Law and on International Private Law.

The Government of the United States shall invite the Powers of Europe to co-operate in said work and in the election of the jurists who will form part of the Commission.

Art. 2. As soon as the projects of Code have been drawn up, the Commission shall cause them to be printed and submit them to the consideration of the different interested countries, in order that they make such amendments, changes, and suggestions as they may deem necessary.

Art. 3. The proposed changes and suggestions shall be examined by the Commission having in charge the final drafting of the project of Codes, and these shall be submitted to the next Pan-American Conference, unless such Codes shall have not been accepted by the interested Governments at the Special Convention held for the purpose before the meeting of the Conference takes place.—(Signed).—J. N. Léger.

Secretary Macedo.—The Chair, in consideration of the fact that the amendments submitted by His Excellency the Delegate from Hayti refer specially to the three first articles, has ruled that, in compliance with art. 19 of the Regulations, the project of the Committee be placed under discussion, as a whole, with the understanding that when said articles are discussed in detail, the amendments above referred to shall be taken into consideration.

Without discussion the Project of Convention was approved, as a whole, by a unanimous vote.

Secretary Macedo.—As the proposition will now be discussed in detail, according to the provisions of the Regulations, the amendments to art. 1. submitted by His Excellency Mr. Léger, is under discussion.

His Excellency Mr. de la Barra, Delegate from Mexico.—The Committee on International Law appreciates the lofty purposes that have prompted His Excellency the Delegate from Hayti in submitting the amendments read by the Secretary; but it must state that although it accepts the amendment relating to the first part of the article in question, it cannot adopt the text proposed in the final part thereof, nor the suppression as suggested. I will briefly state the reasons that the Committee has had for acting in the way it did.

The suggestion of the Hon. Delegate Mr. Léger that the text of the first part of the article be amended by inserting, instead of: «The American diplomatic Corps residing at Washington,» words to the effect that the appointment of the commissioners be made by the Ministers at that City and by the Secretary of State of the United States can be accepted without