objection, as it only implies a change in the form. It is well know, Messrs. Delegates, that the person who presides over Diplomatic Corps in general, is the Secretary of State of each respective country. It is true, and it can be said in opposition to this reason, that the person who really presides over a Diplomatic Corps is the senior member or dean of said Corps; but this is so when the Corps need an authority or representative near the Government to which they are accredited: in case of a meeting of the Diplomatic Corps at which the Secretary of State of the respective country is present, the latter will be the person who really presides over said meeting.

I think, consequently, that the wording adopted by the Committee, for the first part of this article, does not in any manner exclude the intervention of the Secretary of State of the United States to appoint the Committee. This opinion of the Committee on International Law may also be confirmed by the one so clearly expressed by Martens in his Diplomatic Guide, and the practice habitually followed in this matter; notwithstanding, as the Committee will in no manner have it that there is anything doubtful in the wording of this project, it accepts the propositions made by the Honorable Delegate from Hayti, and will therefore ask the Conference in due time that it be permitted to withdraw this article in order to modify it in the sense indicated by the Honorable Delegate from Hayti.

With respect to the other two modifications which have just been read, the Committee believes that in place of facilitating the accomplishment of the pro ject, suitable not only for America, but in general for the advancement of International Universal Law, the proposition of Mr. Leger would compromise probably the success of this purpose.

A suppression and an addition are the proposals made by Mr. Leger. He proposes that the final phrase of Article 1 be suppressed, i. e. «that regulate the relations between the nations of America.»

Two reasons that have been taken into account by the Committee to mantain the final part of this article. The first is that it established a sort of obligation between the American Nations, although subject to the conditions fixed in article 2, that is to say: that the American Nations consider the projects formed by the Committee, that the respective Governments offer their views, and that the Committee, co-ordinating these, prepare the definite project, which shall be submitted to the future Conference. Is it, then, proper to sustain that wording.

But there is another and more powerful reason. These Codes may be worded in two ways: by establishing a series of principles like those one may find in the work of Bluntschli or in any other of those cited in the preamble of this report, in which alongside of general principles are to be found practical ones, or rather that the Committee principally devote its efforts to draft rules of a practical laying aside all those circumstances that might be looked upon as utopian, without application or practical utility.

The Committee, in indicating, that these Codes ought to regulate the relations between the Nations of America, and hoping that the Conference will so decide, sets an example to the commissioners, and they are given a rule so that their labors may refer exclusively to what may be vested with importance over the relations existing between American Nations. Otherwise we would expose ourselves, perhaps, to the repetition of the statement made in the Code of Bluntschli; in it we see that alongside provisions of a character eminently practical, there are some others of a purely doctrinary character and without any practical application.

In order not to fatigue the Honorable Delegates, I will limit myself to recall that in the Code of Bluntschli there are certain articles, like that relating to the European equilibrium, to the Pentarchy and the Sacred Alliance, which, surely, will possess no interest in regulating the relations between the American Nations. If this form is not given to the authors of the Codes, we may arrive at the extreme where may be repeated those declarations that may be found very well in the work of Blunschli, but which perhaps will be out of place in a treaty having the object in view proposed by the Committee, in the resolution submitted at this time to the Conference.

It is true, gentlemen, that the principles of the science of International Law, as it is now constituted, are principles of universal character. The name given by Heffter to his famous work on International Law, to wit: «International Law of Europe,» is no longer up to date; it may be said, that what he establishes in the principles constituting his work is not an International Law of Europe; they are principles admitted by the whole civilized world: even the name given by Pradier-Foedéré to his recent work regarding this matter, «International Law of Europe and America,» is also unsuitable, for there is no exclusive law for America and Europe; Japan in these latter years, has demonstrated that she accepts all the principles that the civilized nations have adopted as their own, and, consequently merits to be included in the group of civilized nations.

Neither can Oceania be excluded, because some of the British Colonies in that part of the world also obey and accept the principles of International Law. We may also say that since the Treaty of Berlin, Africa has entered this universal concert.

It is not, the intention of the Committee to indicate to the authors of those Codes that they study the manner of constituting a project of International American Law, in opposition to any other, whether it be European, African, of Oceanica or Asiatic. No, gentlemen: within the general principles of International Public Law universally adopted there are certain especial modes for the application of those principles, according to the different character of the Governments that are addressed, the economic and social conditions, etc., of those countries: such precepts, thus applied and so understood, are not opposed in any manner in the European nations.

There may be presented as an example of this, the right of intervention. Non-intervention is admitted to-day in International Law as a fundamental principle of science, as a general rule; but notwithstanding, if in a Code destined to regulate the relations between European nations, this principle were established, it is certain that some of the States upon which devolve the rendering of an opinion regarding the acceptance of that project, would reject it. The situation of Turkey is very clear in this respect, and surely neither England, nor France, nor Germany would be in conformity with the establishment of this principle of non-intervention, that dominates in America, and which may be considered as a part of our public law.

I believe, Sir, that admitting in a general way



there exists a universal International Law that ought to regulate in the same manner the relations between European nations as between American nations, yet certain modifications may be made in its application, but without altering in any manner the generating principles of the matter, which can be altered in regard to its application, but not in regard to its essence in what refers to American nations.

I will insist no more upon this point, and will take up the addition proposed by the Honorable Delegate from Hayti.

The Honorable Delegate Mr. Léger imposes upon the United States the obligation of inviting the European nations to appoint jurisconsults who shall constitute the commission in union with those named by the American nations.

The fundamental points taken into account by the committee in preparing article 1 being already established, in the form in which it appears in this discussion, I think it sufficient to remark merely that the addition proposed by the Honorable Mr. Léger, would bring about a complication rendering perhaps impossible the accomplishment of the purpose of the Committee. To unite with the jurisconsults named by the American Nations, a group of jurisconsults from Europe, would necessarily entail a great loss of time; the very vagueness of the wording of the amendment proposed by the Honorable Delegate from Hayti, would make it impossible for the American Government to fix a time in which the jurisconsults appointed should begin their labors, in conformity with the proposition of the Committee.

Furthermore, if any of the European nations should refuse to appoint commissioners, or if these in turn should present inadmissible propositions to the American Nations, the commissioners would find themselves in great difficulty: the Code ought to be surely prepared in accord with the ideas of all the commissioners, and if there were any Europeans whose opinion might be at variance with the American commissioners, perhaps a complete organization for the preparation or dratting of the codes might never be reached. Consequently, I believe that this wording, in place of facilitating the realization of the proposition, would retard it.

For these reasons, briefly presented, the Committee on International Law, begs permission of the Conference to withdraw article 1 and that it be modified in the following manner:

«The Ministers of the American Republics accredited at Washinghon, and the Secretary ot State of the United States of America, shall appoint a Committee of five jurists of America, commissioned to organize in the interval between the present and the future Conference, a Code of International Public Law, and a Code of International Private Law, which shall govern the relations between the nations of America.»

The Committee, therefore, accepts the text, so far as the first part of the article in question is concerned, but does not accept either the suppression or the adition proposed by the Honorable Delegate from Hayti.

*Secretary Macedo.*—In expectance that the amendment referred to by His Excellency the President of the Committee be taken into consideration at the time article 1. of the Report is to be discussed, the vote on the amendment to said article, submitted by His Excellency Mr. Léger will now be taken.

After taking the vote, the Secretary made the following statement: the above amendment has been rejected by seventeen votes against that of the Delegation of Hayti.

*His Excellency the Pressident.*—At the afternoon session the discussion on the report will be continued.

The session adjourned.

SESSION OF DECEMBER 30, 1901.

(Afternoon.)

*Secretary Macedo.*—Discussion on the Report of the Committee on International Law will now be continued. Article 1, as amended by the Committee is under discussion in detail.

*His Excellency Mr. Buchanan, Delegate from the United States of America.*—I venture to suggest to the Conference that the final part of the first article be amended to read in Spanish after the word «private» «to be applied to and in accordance with the existing relations between the Republics of America.»

His Excellency Mr. Carbo, Delegate from Ecuador.—I beg the Secretary to please read article first with its amendment.

The Secretary read said article.

*His Excellency Mr. Carbo.*—I accept the article, but it seems to me that the time fixed is too vague if it is stated that the project of the Codes shall be made in the interval between the present and the future conference. Since no time is fixed for the beginning of these codes nor for their termination, it would be advisable to fix two years for their termination and an equal period of time granted to the different governments in order that they may return the projects. In this way the Codes should really form an incentive for the meeting of the future Conference. If we leave the matter from now until them, when is this Conference to meet again? When will the jurists begin their work, and when will they terminate it? This point is too vague, and I would therefore ask the Committee to please fix the terms above specified. Futher than this, I accept the article as it stands.

*Secretary Macedo.*—The Chair has ruled that as the amendment submitted by His Excellency Mr. Buchanan is pending resolution, His Excellency Mr. Carbo be requested to submit his amendment in writing in order that it may be taken into consideration in due time.

*His Excellency Mr. Leger.*—I beg the Delegates to excuse if I insist on referring to a part of the discussion of this morning, You have decided not to associate Europe in the codification of International Public and Private Law; there is nothing for me to do but to accept your decision; but is it perchance necessary to confirm this vote by declaring, as has been done in the last paragraph of art. 1, that the proposed Codes shall not govern other than relations of the American Republics? I do not believe it advisable to limit to that point the mandate of the Committee which, free from all prejudices of purely social interest, would be, perhaps, in a better position to produce a work acceptable to all. ¿Why then close at once the door to Europeans Nations which might be disposed to accept the labor of our Commissions and to adopt the rules formulated by them? Let us not lose sight, gentlemen, of the fact that the codes, the preparation of which you justly desire, will not be of any complete advantage, unless they can be ap-

plied to the conflicts which may arise both between the American Republics and between the latter and Europe. For these considerations, I have the honor to propose that the final provision of article 1 be suppressed.

*His Excellence Mr. de la Barra.*—Messrs. Delegates, the Honorable Delegate from Hayti insists upon suppressing the final part of article 1, but as in my opinion after the arguments adduced this morning it has been demostrated that the intention of the Committee has not been to formulate an American International Law in opposition to the European International Law, I think it is useless to insist on this matter.

With regard to the proposition of the Honorable Mr. Buchanan, respecting the amendment to Article 1, in the terms read by the Secretary, the Committee understands that the same spirit that prevails in the proposition of the Honorable Mr. Buchanan is to be found in the article submitted by the Committee on International Law.

The Honorable Mr. Buchanan proposes that the words: «which shall govern the relations between the American Nations,» be substituted by those read by the Secretary of the Conference, which, as I understand, are as follows: «to be applied (to the Codes), and in accordance with the relations existing between the American Republics.» In substance the two ideas agree; there is only a difference in the form. The codes prepared by the Committee shall govern the relations of America, naturally after the Nations of this Continent have made their observations and the commissioners have co-ordinated them as a whole, to submit them to the next Conference; the provision of this article is not, therefore, compulsory, without the restriction established by article 2; that these codes be the synthesis of what modern science demonstrates as prevailing in the relations of the American Republics, is stated in the preamble. Consequently, the standard given the commissioners in conformity with the project of the Honorable Mr. Buchanan, is the same as imposed on them in the preamble of the report; to make these codes applicable to the aforesaid Nations is the principal object of the proposition made, and this is clearly established in the final part of Article 1.

Consequently, I think that the proposition of His Excellency Mr. Buchanan agress in substance with the one made by the Committee, and I see no reason for modifiying the article.

Regarding the remark of the Honorable Mr. Carbo, respecting the propriety of fixing a term, not only for the Constitution of the Committee, but also for the presentation of its labors, the Committee understands that as the date for the assembling of the next conference is not determined, the time to be allowed to the commissioners for the fullfilment of their task cannot be fixed with precision; any indication, for instance, that the appointment be made at the earliest possible moment, and that the labors of the Committee commence, might perhaps be useful in accelerating the appointments for the initiation of the labors of the committee; but to fix a period of two years would perhaps be insufficient, and to fix a longer term, might exceed that which the respective Committee were to fix for the assembling of the next conference.

I think, then, that this vagueness, criticized by the honorable Delegate from Ecuador, is imposed by circumstances, although this criticism is due to a sentiment which we all recognize as very laudable, and by the desire that this proposition should not remain in the state of a project which cannot be nor has been accomplished; but it may be possible to present it in another form, by making a recommendation, in general terms as to time, but precise as to the desired ends, in view of the fact that the resolution of the Conference in that respect also has to be in general terms, the date of the assembling of the next meeting not having been fixed.

Therefore, with respect to the proposition of the Honorable Mr. Buchanan, the Committee does not accept it, for it believes that the idea he proposes is already included in the text of article 1. In regard to the proposition of the Honorable Mr. Carbo, the Committee hopes that he will give it a precise and concrete form so as to see if it is in conformity with the suggestions that I have made in the name of the Committee.

*His Excellency Mr. Buchanan.*—I dislike to expose to this Conference the very limited and superficial knowledge I have of Spanish, but I am willing to venture that the Conference will find a difference between the verb «regir« and «aplicar,» and the point I make in the amendment which I have had the honor of submitting, is tbat there is a decided difference between charging a commission to prepare something consistent with and applicable to the relations which exist. It is an entirely different proposition. In the one case, if they are to prepare something which is to govern, there is nothing that is given them as a guide for their work, they are at liberty to prepare anything they may see fit. But if the commission is charged to prepare a Code consistent with and applicable to the relations existing, then in that phrase, as I look at it, they have a plain indication as to the wish of the Conference. I am willing to leave this matter with what remarks have made, touching only upon the remarks of the Hon. Mr. de la Barra as to the preamble to this resolution. Umfortunately the preamble is not before the house, but only the resolution which we are voting on, as it is phrased.

*His Excellency Mr. de la Barra.*—The remarks of the Honorable Mr. Buchanan respecting the amendment submitted, confirm the spirit which prevails in the statements previously made by the Committee.

If the intention is to establish certain rules to be followed by the authors of the Code, said rules are already determined in the preamble, which latter, although it is not under discussion, the members of the Committee should consult, in order to know just what is the precise object of their labors. With regard to declaring as more impressive and imperative the term «shall govern» (regirán) than the words «may be applied», in either case they ought to have the same force for the purposes of these codes, when once approved by the next conference.

If the final part of Article 1 be suppressed: «that shall govern the relations between the nations of America», leaving the phrase proposed by Mr. Buchanan, there would remain simply a code or collection of codes, composed of certain applicable principles, that is to say, capable of being applied to the relations existing between the American nations. But here we need an imperative provision, in such manner that they may not only be applicable codes, but that their application be compulsory for the nations of this continent, provided these codes are approved by the next conference, after the governments



shall have made such suggestions as they may deem fit to present.

Consequently, if the proposition were put in the form suggested by Mr. Buchanan, we would find only a simple recommendation in this project and it would not contain any imperative provision or obligation for the observance of these Codes by the Nations of America. Therefore, the Committee insists upon sustaining the wording as presented.

*His Excellency Mr. Bermejo, Delegate fron the Argentine.*—Mr. President: I wish to take up the two objections that have been presented: the one made by the Honorable Delegate from Hayti, according to which there should be suppressed the latter part of the article, wherein it is established that the Codes which may be formulated, shall govern the relations between the American States; and the one made by the Honorable Delegate from the United States, according to which, the form or conclusion of this article ought to be that those Codes shall be applicable to the American States, in accordance with the relations existing between them.

Permit me to examine both suggestions very briefly with respect to the first, that of the Honorable Delegate from Haiti; he states that the Code, like every code of international law, ought to be equally applicable to all nations without exception: so that what may be established as a rule, destined to govern the relations between the American States, may be equally applicable to all the European, Asiatic and African states. The Honorable Mr. Leger acts upon the theory that this law, in course of formation, intended to govern the relations between the states, in a law eminently philosophical, founded on the rational criterion that disregards absolutely or in greater part, the lesson of history, the antecedents of the peoples and the practices established among them. For me, that point of view is defective, and hence, also that of the Honorable Delegate from Hayti in considering that only a work of universal character can be achieved.

Law has a double basis: it is not only that rational criterion according to which rules for the nations are provided, in conformity with the precepts of absolute justice, but also historical facts, the necessities of the peoples, and, in a word, the very conditions of society; to this is due the fact that many institutions of the Law of Nations, are positive laws between nations, and, notwithstanding, contrary to reason. I can cite an example that will demonstrate how the premises from which it proceeds are defective, and that, consequently, the conclusion is equally so: the condition of private property in maritime and terrestrial warfare. For forty years the abstract theory of science has been teaching us that such condition ought to be found equally in terrestrial war as in maritime war, and if in the first it is inviolable, it ought to be also in the second; and despite the treaties concluded in Paris and in The Hague, which tended to establish this same equality, the proposition was not accepted, and at the present day the law, that is to say, the fact as accepted in the light of the doctrines governing the case, is, that property finds itself in different conditions in one war and in the other, or, which is the same, that with a change of means and elements, property also changes. Reason does not approve such distinction and nevertheless, it exists, because it is the custom, it is the practice introduced among the nations.

One more example, in order not to occupy two much the attention of the Delegates: I refer to what at present takes place with respect to the diplomatic agents. Can the grading, the classification, the different rank of the agents constituted by one nation in another, be reconciled before a rational criterion? No; the doctrines of the authors, everything that conscience prompts, would suggest, that such representation should be equal, in as much as the nations are equal; the diplomatic character of their representatives should absolutely be the same; the representation which is invoked with respect to another rank, is no more than a remaining vestige of the so-called divine right; as long as this is the law, reason opposes it, sound judgment rejects it, and still the law has established it among all the nations, because reason does not change established customs. This demonstrates, that there exists a double element in all that pertains to that science, in every precept that is intended to govern international relations: it is not only the precept of reason, but also the practice and existing circunstances. By this, Gentlemen, may be explained, why in the relations of the American States, there are institutions genuinely their own and it will be easy for me to cite some of them in the Public Law of Nations, without going into details, in which the doctrine is entirely different in the European relations in comparison with American ones.

America has a criterion exclusively its own, genuinely American; and why? because it has the same origin, the same antecedents, because her nations have sprung from the same sovereignty, from which they have emancipated themselves, a different thing having occurred with the European States by conditions of race, or by the political equilibrium, or for other causes. For that reason we have here a genuinely American institution.

There is another institution, the Monroe doctrine, which I am not going to explain in detail, because everybody understands it in his own way; but which undoubtedly is genuinely American, and no sovereign of Europe has invoked it nor will ever invoke it. The political equilibrium is the fundamental base of international European politics, which is unknown in American relations.

There is another institution, the definition of nationality. The juridic doctrine of Europe is fundamentally distinct from that of America, because it is based upon the rights of consanguinity and upon the succession of ancestry; the right of the soil, which was mentioned this morning by His Excellency the Delegate from Mexico, is genuinely American. In America in the Public Law established by the past generations, by tradition and by usage, we absolutely reject the principle of intervencion.

This, Mr. President, induces me to come to the conclusion, that the determination expressed in the project, responds to the fitness of things and the established exigencies. Formulating codes intended to govern all the nations in general, would mean to compel us to constitute a commission for compiling these codes, with the intervention of all the nations. But if the codification in detail costs immense sacrifices, if for many years back there have been existing codifications on certain well defined points, it would not be well to establish one which is to embrace all the nations in general. It will be said, that there are the laws of war, which have been codified by all the