nations; but in order to arrive at that agreement, it was necessary for more than a quarter of a century to pass, to procure their acceptance in the Conference of the Hague, as all that which the Convention of Brussels established in the year of 1874, were in the greater part only copies of the work of that of Genova in the year 1863. This demonstrates, that in order to arrive at concrete rules of law between States, at well defined juridic relations, the work required is a very laborious, very slow and patient one; so that this very thing, that is, our political jugdment, suggests to us to restrict our field of action, by giving to the American nations, which possess conjointly the same analogous principles, greater facilities for establishing a conjunction of principles more or less acceptable among them.

I pass to the second remark of the Delegate from the United States. The project says: «which shall govern the relations among the American States,» and His Excellency the Delegate from the United States proposes, that that sentence be substituted by the words «applicable to and in conformity with the existing relations between the American States.» It appeared to me, on first impression, that the scope, which the honorable Delegate from the United States gave to this propositionwas a different one, and that it might be that which many authors take into account, in order to determine what are the rules among nations, in sustaining, that there cannot be established only those which actually govern the relations among the nations, but also those which should rule them. In this case there are two elements: one already established and the element which should be established; and in this last one, I could explain to myself the modification. But to determine, that they are perfectly applicable and in conformity with these relations, is inconceivable, because those which they are going to codify, have to have for their base the relations existing between them; to the contrary, they would perform a theoretical and abstract work: it is necessary to take into account their traditions, their customs, the practices established among them, for the purpose of giving to those rules a concrete form and to codify them in the most general manner possible, in order that they may be accepted,

For these reasons, I believe that the original form responds perfectly to the object of the Commission.

His Excellency Mr. Leger.—I thank my distinguished colleague from the Argentine Republic for having given a wider scope to the discussion, carrying it into the sphere of principles. The same as he, I recognize, that there exist differences between the manner of viewing things of Europe and that of America, and that these differences have necessitated the adoption of certain special rules. He will, however, agree with me, that the harmony existing between the American republics is not perfect either, and that among some of our sister republics there exist some differences as grave as those which can possibly exist between America and Europe. These differences can be no obstacle to the formulation of codes of International Law applicable to all the countries. The International Law, being a principle superior even to the particular legislation ef the States, has precisely for its object to reconcile the differences, to destroy the difficulties. If for the rest there existed harmony of views, and uniformity in the rules followed by all the nations, it would be unnecessary to make treaties to establish those which it is compulsory to observe and to obey. The customs which frequently constitute a real law between two or various nations, certainly are not recognized everywhere with the same authority. Even the same government at times observes with respect to its neighbors a right created by custom, distinct from positive law, and from the treaties which, according to circumstances, govern its relatious with other States. The idea of a codification is a happy one, precisely, because, if it could be realized, it would have a tendency to reduce the differences, tc diminish the probabilities of conflicts, if it does not succeed in making them disappear entirely. For this reason, the codification should not be restricted only to the rules, which may be more or less useful to our continent.

My honorable opponent believes, that the work of the Commission if it were not destined to govern the relations of our republics, could be compared to the Code of Blundschli, which is applied by nobody. To this I reply, that it is not well to prejudge the result of the work of our commissioners. By selecting competent jurists, well informed as to our necessities, our ideal and the present situation of Europe, it is probable that we may arrive at having a code of practical rules, which will, no doubt, contain philosophic principles (for it is not possible to separate philosophy from International Law, especially), but which will have for their principal object the regulation of our conflicts, as well with America as with Europe. The present is not the moment to declare, that these codes are to govern only the relations between the American republics: this declaration we can make at the time of adopting the codes, in that of their ratification. We can therefore suppress without any objection whatever as far as the present is concerned, the last part of the phraseology of Art. 1., reserving to ourselves the right to reproduce it later on in the act, in which we declare the acceptation of the codes as regulators of our reciprocal relations.

His Excellency Mr. de la Barra.— Fortunately, Messrs. Delegates, the debate is taking a most elevated turn, which will permit us to see with greater clearness the point, where the real convenience of the establishment of the governing principles of the formulation of the codes is resting. The very honorable and well–informed Delegate from Haiti has presented to us a few minntes ago, in a substantial synthesis, his objections regarding this matter; His Excellency Mr. Leger believes, that the generative principles of International Law in European countries are the same as those of the rest of the continents, and that they should be embodied in the Codes in such a manner, that these should rule the relations, not only among our republics, but among all the nations of the world. This way of looking at things compelled the honorable Delegate from Argentine, on a former occasion, to call attention to what are the two sources of International Law, according to which a generative principle, or a group of such principles, may be established, which are applicable, afterwards, by true syllogisms, to concrete cases, or by which these principles may be defined, as a result or synthesis of a previous observation of facts.

From the school of Kant and of the other idealists, who established this series of principles, applicable to all relations, was born the idea of embodying in the Codes of International Law a conjunct of rules, which were to be the standard in international relations. The reason stated by the eminent Argentine author, Carlos Calvo, in the first chapters of his monumental work, appears to me to be well to the point, when he affirms, that the theory of making a Code of universal International Law is as utopian as that of realizing the tendencies of the Abbé Saint Pierre, of Rousseau and Kant etc., because, as the distinguished author whom I have cited, says, the interests are so complicated, and the circunstances that separate one country from the other, are so varied, that they would make impossible, or almost impossible, the formulation of a code, which could be accepted by all the nations.

If we pass from the generality to examine what occurs in the relations of one country with the others, we will observe, that these relations, although normalized by a common center, by the unity of interests which exist in the country from which they proceed, nevertheless may vary, when established in a different country. The treaty of extradition which a country concludes with another, may be different from that which it concludes with a third one; there may exist a certain difference in the manner of establishing mutual relations; there may be some difference in the criminal laws, etc., which may compel the establishment of different prescriptions in the treaties of the same nature concluded with two countries.

If we observe this in a matter which escapes the variable interests of politics, the difference is felt much more when it is a question of matters, which relate to the vital interests of a country and to its great economic interests. It is easy to establish a rule, as recently one has been established in February or March of this year, between the Central American nations, by their community of origin by interests that are common or at least, very similar which circumstances have permitted to easily establish rules for settling the conflicts which may arise, and for normalizing the relations which may be established between them. The South American republics could without difficulty meet in Montevideo and perform a work, alike valuable for science and useful for these republics, by formulating the Codes of Public International Law and of Private International Law, which were established in that capital there is a similarity in their interests, and above all, in their institutions.

But if we compare the results obtained in that Congress of Montevideo and those obtained in that of The Hague last year and in the Congress of Private International Law, presided over by the illustrious Asser, we will note, that although the principles of science are the same in Europe and in America, the starting points of one codification and of the other are entirely distinct. In the Treaty of Montevideo the law of Domicile was taken as a starting point, while that of nationality was the base for the settlement of conflicts, according to the way of thinking of the savants assembled at the Hague last year.

There exist, then, great, diffrences, and these differences, which are accentuated in the codification of Private International Law to which I have referred, will be still livelier, more marked, when it is desired to reconcile European and American interests in the form now proposed, and possibly may create a profound separation between the different countries.

In order to refer only to an actual fact, and I intentionally select one of very small importance, that of the law «detur priori,» we observe in the European practice some difference in the application of that principle. Bismark, a short time before the Franco–Prussian war, estblished a principle contrary to this, desiring to force it upon the other nations; which principle was afterwards objected to with well–founded reasons by the Foreign Department of the United States. We find ourselves, therefore, in the presence of great difficulties. which will not only present themselves in the solution of the problems pertaining to Public International Law, but also to Private International Law.

How could we, gentlemen, find a formula which would reconcile the rights founded upon domicile with those founded upon nationality, when these two principles are not antagonistic in their substance, but in their aplication? How could we procure, that not only between Europe and America, but among the American nations, a principle be established for determining the nationality of origin, to which the Delegate from Argentine refers in his very lucid discourse, when in some of the nations we have the «jus soli,» in others the «jus sanguinis» and in others a mixture of both, which would not permit a formula for solving the difficulties which may arise? We find ourselves, then, confronted by a problem, the solution of which is extremely difficult, although not impossible. Can we have the assurance, that in each one of the fundamental points which the Commissioners are to examine, a rational solution may be found the same for the American nations as for those of Europe? In this continent, we at least have a community of institutions; we have a well confirmed liberal spirit; we have a common origin, as regards our Public Law, even if not as to our race. This community, then, causes our difficulties for this codification to be less; but they will be much greater, almost insuperable, and we even might apply to this task the words of Mr. Calvo, to which I have referred before, that, if believing the task difficult for the American republics, we would augment the difficulty, if we should complicate the solution of this problem by taking into account European interests.

Later on, I would say to the honorable Delegate from Haiti, European nations and those constituted in Asia may be invited to join those of America and give their adhesion to these codes: in that case, indeed a practical work will have been accomplished, and it will be for the European nations, for these in general which have no objection to unite with those of America, to indicate their adhesion, with the modifications that they may think opportune. But if we, from the start, and aware of the great difficulties inseparable from such a work if we increase them, instead of simplifying them, we will have the certainty that unfortunately it will not prosper.

If on the contrary, we accomplish only something modest,—relatively ambitious by its exalted tendencies, but modest in comparison with what the honorable Delegate from Haiti desires—we shall have more probabilities of a successful consummation, than by desiring to establish a universal code.

To the reasons adduced by the honorable Delegate from Haiti, another one may be added, one which will have to be taken into account: the American republics, although they have produced

men eminent in International Law, certainly find themselves generally subject to the study of many texts, of many works by European authors, and perhaps for that reason, the honorable Delegate from Haiti desires that to the American jurists some from Europe may be added, who by their enlightened views might contribute to the successful performance of the work. This observation, which might be made in favor of the proposition of His Excellency Mr. Leger, has no weight either, in my opinion, because these savants may be very easily consulted, the opinion of each one of them on the several points which the Commissioners will have to study, may easily be taken into account, without the necessity that any European publicist should form part of the Commision that is to formulate these Codes.

I believe, therefore, Messrs. Delegates, that for the reasons stated we may arrive at the conviction, that the task which will be imposed upon the authors of the Codes of Public and Private International Law, according to the terms of the proposition of the Committee, has the proper vital elements and if we desire to give it greater amplitude, we expose ourselves to the risk, that this very great benefit may not be realized: I refer to the formation of the Codes, which contribute to the strengthening of international peace.

I believe, therefore, that Art. 1. forms a whole sufficiently clear and precise, which will allow us to hope, that the grand work that is here inaugurated, announced and desired, will soon be a fact in benefit of the American nations.

Secretary Macedo.—Nobody has asked for the floor. The Conference is asked whether it approves the amendment submitted by His Excellency Mr. Buchanan.

After the ballot had been counted, it was seen that the amendment was rejected by seventeen votes against that of the United States.

The amendment submitted by His Excellency Mr. Carbo to the effect that after the words: «in the interval from the present to the future Conference,» the following be added: «and as soon as possible,» was placed under discussion.

The above amendment was unanimously approved without discussion.

The amendment submitted by His Excellency the Delegate from Hayti, whereby it is consulted that the final part of art. 1, to wit: «. . . . which shall govern the relations between the American Nations,» be suppressed, was placed under discussion.

The above amendment was rejected by sixteen votes against that of the Delegations of the United States and Hayti.

Art. 1, as amended by the Committee having been placed under debate, was unanimously approved without discussion.

The amendment to art. 2 submitted by His Excellency Mr. Leger was placed under discussion.

His Excellency Mr. Leger.—As the amendment just read and that which I submitted to art. 3 are a consequence of that submitted by me to art. 1, I am compelled to withdraw both amendments.

After said amendments had been withdrawn, art. 2, of the Report of the Committee was placed under discussion and unanimously approved without debate.

Secretary Macedo.—Art. 3 is under discussion.

His Excellency Mr. Macedo Delegate from Mexico.—Messrs. Delegates: Art. 3, now under discussion, provides that after the observations therein referred to have been systematically classified and the Codes have been revised by the commission which is to draft them the same shall be presented to the next Pan-American Conference.

I think that His Excellency Mr. Carbo was right in his remarks to the effect that the period fixed was too vague to render the labors of the committee practically fruitful. It might happen that the next Pan-American Conference to which the Committee alludes would be delayed as long or longer than the time that has elapsed between the first and International American Conference, in order to take up this work? I believe that Article 3 in the amended form, in which His Excellency Mr. Leger has presented it, responds perfectly to this contingency, and in as much as His Excellence has withdrawn it, in spite of some amendments required by the sense in which Article 1 was adopted, I ask to be permitted to offer to the consideration of the Assembly the following amendment:

«Article 3. After these observations shall have been systematically classified and the codes have been revised in conformity with them by the Committee which drafted them, they shall be submitted again to the governments of the American republics, to be adopted by those who desire it, either in the next International American Conference, or by means of treaties negotiated directly between said republics.»

His Excellency Mr. de la Barra.—As the modifications offered by Their Excellencies the Delegates Messrs. Leger and Macedo are in harmony with the spirit of the project offered by the Committee, and may cause that even before the assembling of the next Conference the result of the work of the Commission may be known, the Committee asks permission to withraw the article under discussion, for the purpose of presenting it in the form proposed by His Excellency Mr. Macedo.

Secretary Macedo.—The Committee having accepted the amendment proposed by His Excellency Mr. Macedo, the Conference is asked if it adopts Art. 3 as amended.

The vote having been taken, the article was adopted unanimously by sixteen votes.

Art. 4, was then put under debate.

His Excellency Lazo Arriaga, Delegate from Guatemala.—If I understand this article aright, it refers to the exchange of ratifications of a treaty which has not been concluded as yet, and for that reason, it appears to me, if my understanding of the article is correct, that it should be suppressed and inserted in the treaty which may be concluded.

I would be pleased if some member of the Committee would please explain the idea which was had in view in wording the article.

His Excellency Mr. de la Barra.—The object of the Committee, in including Art. 4, in the project under discussion, was that of facilitating the adoption of said project, avoiding certain proceedings and delays which might postpone its execution for an indefinite time. This is the only object which was had in view for including Art. 4 in the project.

But the honorable delegate from Guatemala is right in remarking, that this clause would be in its proper place in the treaty or treaties which may be concluded. In fact, that is its place; but I believe, that there will be no objection to adopting the article as it is, in order that it may serve as one of the rules which may be accepted, and that it may pave the way, so that the benefit which the project is intended to accomplish, may be established as soon as possible.

His Excellency Mr. Lazo Arriaga.—I thank the distinguished Chairman of the Committee for the explanation which he has been pleased to give us; but I find that he himself appears to recognize that the article is a little out of its place in this Convention, and that it would be more proper, if it were to appear in that which may be concluded when adopting these codes, if it happens that the treaty should be concluded some day. Consequently I move, that Art. 4. of the project under discussion be suppressed.

Secretary Macedo.—The Committee has stated to the Secretary, that it withdraws Art. 4. of its project, for the purpose of suppressing it. As a consequence, the Conference will take up the discussion of Art. 5. which will now figure as Art. 4.

Art. 5. was adopted unanimously without discussion.

His Excellency Mr. Pablo Macedo.—The Committee has offered a very judicious project of Convention, and the Conference has seen fit to adopt the same. It appears to me that the Convention which the Conference has adopted, would be complete, if an article, was added, similar to that, I believe the third, of the resolution submitted to the Conference on the occassion of the assembling of a Customs Congress, which article will indicate the time and the manner in which the republics here represented are to ratify the convention which the Conference has adopted. In this sense, I ask the Committee to accept the following addition: «Art. 5. The ratification of the present convention, by the republics of America which may see fit to grant it, shall be communicated to Secretary of State of the United States, before the expiration of six months, to be counted from the closing of this Conference.»

It appears to me that in this manner the project remains, complete, and another step will have been taken in the direction of its practical realization, because otherwise, if it is not begun by requiring the assent of the American republics for this Treaty or Convention within a specified time, it will not be possible to carry it into effect.

His Excellency Mr. Bermejo.—Mr. President: Various Delegates desire to know the opinion of His Excellency Mr. Macedo, whether it would not be more advisable to fix the term at one year, instead of six months, as proposed. The latter term would be rather short for the ratification, in view of the fact that the congresses of various American nations, if not all of them, assemble, some in May, others in June, etc. For this reason, I request His Excellency Mr. Macedo, to please reform his proposition in that sense.

His Excellency Mr. Macedo.—I have no objection whatever to making the modification which His Excellency Mr. Bermejo suggests. I had put six months, following the example of what we had done in the Convention on the Customs Congress, but really the circumstances are different. There it was a question of the assembling of a Congress within the space of a year, and it was necessary to put the period of six months for the ratification of the respective convention, while in the present case, we have no such pressing term. For that reason I request the Chair to please consider my proposition amended in that sense.

His Excellency Mr. de la Barra.—The Committee on International Law accepts the proposition offered by His Excellency Mr. Macedo, with the modification suggested by Honorable Delegate from Argentine.

Secretary Macedo.—The proposition with the amendment proposed by His Excellency Mr. Bermejo, is in the following terms:

Art. 5. «The ratification of the present convention by the republics of American, which may see fit to grant it, shall be communicated to the Secretary of the United States, within one year counted from the closing of this Conference.»

Without further discussion, Art. 5. proposed by His Excellency Mr. Macedo was adopted unanimously, and the Chair ordered the papers to be referred to the Committee on Engrossing.

SESSION OF JANUARY 22 1902.

Secretary Duret.—The Committee on International Law has presented the following amendment to the project of Treaty on the formation of a Code of Public International Law and on another of Private International Law. It reads as follows:

«The Committee on International Law believes that it is desirable, that the American jurists, to whom the codification of the principles of International Law will be confided, in accordance with the project approved by the present Conference, should have before the governments of America all the prestige and all the facilities necessary to carry out their delicate mission with all possible success. We believe that this Commission of jurists should also be composed in such a manner, that its labors have such scientific importance and such conditions of prudence, as to facilitate, if possible, the adherence to that work of the European governments.

Under these considerations, we believe it proper and appropriate, that the Commission of five American jurists be made complete by adding to their number two European publicists of recognized authority. We propose, therefore, that there be added to the article 1. of the project before mentioned, to the sentence «Five American jurists,» the following words: «and two Europeans publicists of acknowledged reputation.»

Article 1. of the project would then read as follows:

Art. 1. The Ministers of the American Republics accredited in Washington, and the Secretary of State of the United States, shall appoint a Commission of five American jurists and two European publicists of acknowledged reputatiou, charged with the organization, pending the present and future