the part of Art. 3, which has been discussed, and at the same time, have added to it the final part of the same article, which contains a precept entirely distinct, and which refers in an exclusive manner to patents of invention. The first part reads as follows:

«Art. 3. The consular agents of the nation to which belong the owners of patents, designs, models or trade marks, or in which they may be established, shall be considered by the governments to which they may be accredited, as the legitimate representatives of said owners, for the purpose of complying with the formalities and conditions required by the register of the said patents, designs, models or trade marks.»

The wording which in this case the final part of the article would have to have, would be the following: «The rights which are granted by the present convention in its articles 1 and 2 do not exempt from the obligations which the national laws may establish, to manufacture in the respective country the objects protected by a patent of invention.»

His Excellency Mr. Elmore, Delegate from Peru.—I regret very much not to be able to accept the amendment offered by His Excellency Mr. Casasus, which refers to the first part of the project submitted by the Committee, which establishes the services that the consuls may lend to the inventors who have already obtained their respective patents; because the reason of the committee, in giving this facility to those who have their patent, is that they find themselves in the same country where the consul resides.

An additional reason for not accepting the proposed modifiction is that the point of which it treats, is not a proper subject for an international treaty.

As regards the second reform which is proposed, the Committee will have no objection to accept it, if this provision is generalized, making it applicable to all the prescriptions which the convention embraces and not only to some ot them.

I believe, therefore, that the amendment proposed by His Excellency Mr. Casasus cannot be accepted, for the principal reason, that according to law, this is not a subject for a convention. That a consul must protect his own fellow citizens is a subject for the legislation of each country. The secondary reason is, that there is some danger in employing the services of certain persons who are living in the same places.

Secretary Duret.—The Committee having declined to accept the modification proposed by His Excellency Mr. Casasus, according to the Regulations the same is put under discussion. Does anyone wish to speak on the question? The Conference is asked if it approves the amendment proposed by His Excellency Mr. Casasus.

The vote having been taken, the amendment resulted adopted by eight votes against four, the United States, Haiti and Mexico having abstained from voting. In the affirmative voted the following: the Argentine Republic, Bolivia, Colombia, Costa Rica, Dominican Republic, Salvador, Guatemala and Honduras; in the negative: Chile, Ecuador, Paraguay and Peru.

His Excellency Mr. Foster, Delegate from the United States.—Mr. President: I would like to explain, why we abstain from voting on this article. The patent practice of our country is something enormous and has many ramifications. There are some of these clauses here which the Delegation from the United States confesses, it is not wise enough to say how they would affect existing laws there, and we consequently are abstaining from voting on this proposition. I have brought to the attention of the Committee one correction or discrepancy. We hope that this project passed here will be such a one as our country can adhere to, and in abstaining we wish to say that we are not in the negative, nor opposing that which has been undertaken here.

Secretary Duret.—The final part of Art. 3, in accordance with the amendment proposed by His Excellency Mr. Casasus, is now under discussion.

His Excellency Mr. Elmore.—Sir: I have accepted the amendment, at least in its first part, that is, if it is expressed in general terms, without referring to one article or another. I now desire to call attention to the fact, that the vote should be taken regarding the retaining of the first part of that article, and even if the order of voting has no importance, it must, however, be remembered that it has not been voted on.

His Excellency Mr. Casasus.—Sir: If the Conference remembers, I have desired, in proposing the amendment, to give form to the whole of Art. 3; I could not propose any modification to the first part, because I had already sustained that it would be necessary to suppress it. Consequently, in drafting the article in the form in which I have done, complying with the desires of His Excellency Mr. Bermejo, I have desired to express my entire thoughts regarding Art. 3.

His Excellency Mr. Elmore.—I did not take notice of the suppression which His Excellency Mr. Casasus intends making, because I did not believe that such was his intention; but as it is now a question of this, I must state, that it would be very objectionable to suppress the first part of the said article, because it would be equivalent to ignoring the Treaty of Montevideo and the Convention of París, in which this right is recognized. Art. 1. and 2. contain a necessary principle, because they declare the rights of the individuals established in a country with a domicile or an establishment in the same, to cause their trade marks to be registered, and Art. 3. refers to the importation of trade marks.

Consequently, the principal object of the Committee is to authorize the titles obtained in a foreign country with the same age as they have in the country of their origin; and this also the principal object of the Convention of Montevideo.

It would therefore be equivalent to nullifying the whole report, if the right to import the trade marks were to be suppressed, and for this reason the Committee asks, that this part especially be adopted by the Conference. I had not understood, that it was intended to make this suppression, and it is likely that the Assembly has not so understood it either.

His Excellency Mr. Casasus.—I ask that the Conference may pardon me for opposing with such insistence the forced interpretation which the Committee gives to Art. 1. and 2. of the project under discussion. It is not true that these articles protect only the right of foreigners that are established in the countries which it is desired to reserve the right of property to them; they recognize the right of foreigners, whether they are modiciled or not in the country in which they desire to reserve the right to their trade marks and patents. Art. 1. says in effect: «The citizens of each one of the signatory states shall

enjoy in the other nations the same advantages granted by them to citizens in regard to the trade marks of Commerce, Manufacture or Models and industrial Drawings and to Patents of Invention Consequently they have the right to the same protection and to identical remedies against any attack upon their rights.»

Or, what is the same, the citizens of each one of the nations, whether they be domiciled or not in the country in which it is desired to reserve their rights, shall enjoy in the others the same rights as the citizens.

Consequently, by this article all cases are afforded protection, whether they refer to foreigners not established in the country where they may desire to reserve their marks or patents, or whether they are established in the same. For that reason I sustain, that this Art. 3. although it is contained in the Treaty of Montevideo, is not pertinent, in as much as the rights of foreigners are already recognized in the most ample manner.

Precisely, when the project was discussed as a whole for the first time, I contended that this principle, which is more advanced than that established by the Treaty of Montevideo, be adopted; but now that it is secured, the precept which is proposed in Art. 3. results entirely unnecessary. If in this project of treaty every kind of facility for registering their patents and marks is granted to foreigners, it is inconceivable, in what other express manner they may be authorized to import their patents and marks. The concession in favor of foreigners which the first part of Art. 3. under discussion contains, is therefore unnecessary.

His Excellency Mr. Chavero, Delegate from Mexico.—I am not in full accord with the ideas of the President of the Committee. I think that the Convention ought to protect only the inhabitants of the signatory countries, and it so states in the preamble. I am going to read the corresponding paragraph: «Notwithstanding, for the purpose of clearing away the objections made during the course of the debate, it is proposed now that the citizens of the signatory nations, as well as the foreigners who may have their domicile therein, or some industrial or commercial establishment, may enjoy in the other contracting states, the same advantages and protection accorded to citizens, with respect to patents of invention, of drawings and industrial models and of trade-marks: such are the stipulations of the Convention of Paris of March 20 1883.

«It has not been possible to amplify these provisions to include foreigners without domicile nor establishment in the country, although some national laws protect them in the same manner as they do the citizens of the State; because a convention cannot be adjusted to favor transitory foreigners, and accord them in the other countries the advantages that the laws of one of them concedes to foreigners, and which those same laws may revoke when even the respective nation may deem fit. On the other hand, a like stipulation for the benefit of that class of foreigners, would tend to suppress every stimulus for the States, to which they belong, to concede to citizens of the signatory countries, equal rights, whether by adhesion to the corresponding treaty, or by reciprocity granted in a different form.»

Acting under this criterion, I have signed the present project.

His Excellency Mr. Elmore.—It seems to me, Mr. President, unnecessary to discuss this matter very much. As this affair is somwhat technical, we will give an example, so that the ideas may be rendered clearer.

Articles 1 and 2 would protect the citizens of the signatory countries, for example, in Buenos Aires, to obtain a patent there; they would also protect the foreigners domiciled there, or who might have establishment; and the project cannot be adjusted for the purpose of comprising foreigners in transit in the Argentine Republic, who have no establishments, or who were not citizens of the signatory countries, but only the residents, or those with establishments in the country. But referring to the remark of His Excellency Mr. Casasus, a foreigner, for example, in the United States, obtains a patent; he is a foreigner in the signatory countries; then that foreigner could not render, according to articles 1 and 2, his title valid in the countries of the Convention, for he is not a citizen of any of them, because he has not his domicile in them nor does he possess there an establishment, while the article proposed establishes, that the title issued in the United States, for example, is sufficient to cause it to be respected in the other signatory countries. That foreigner, who in all the signatory countries was not protected by articles 1 and 2, would be protected by article 3 of the project. For this reason I insist that the vote of the Conference be consulted regarding the retention of said first part.

Secretary Duret.—In conformity with what has been stated by the President of the Committee, a special vote will be taken upon the first part of article 3 at the proper time. Discussion will now be continued on the second amendment proposed by His Excellency Mr. Casasus.

His Excellency Mr. Bermejo, Delegate from the Argentine Republic.—I am going to indicate why I consider that it is necessary to maintain the article such as the Committee has presented it, at the risk of depriving its project of all unity. The project of treaty on trade-marks or patent rights, is a collection of provisions intimately related, and if we take a criterion distinct from that of the Committee in the drafting of the first articles, we will have to change it entirely; in order to prove this, it is sufficient to recollect the following: Art. 4. The country in which the concessionaire has his principal establishment or domicile shall be considered as the country of origin. In case he should not have any such establishment in any of the signatory countries, that the State of the Signatory Nations of which the claimant is a citizen, shall be considered as the country of origin.» The article under discussion speaks of the country of origin; if this disappears, the other articles will have to disappear also.

Then, what are we to do in this case? The project, as will be seen, responds to a more restrictive idea than that had in view by the treaty of Montevideo: in this latter, it was established, in ample terms, that a patent granted in a foreign country might be held valid in the other countries, and in the present case, no difference whatever is made. The Committee, for the reasons given in its report, states that it is not proper to allow such an extraordinarily broad scope. A foreigner finds himself in one of two cases: he is either domiciled in the country, where he seeks to obtain his patent, or he is

not, and it is then sought to have the trade mark or patent recognized in the other signatory countries. Therefore, departing from that restrictive doctrine, it may be explained why art. 3, under discussion reads as follows:

Art. 3. Patents of invention and industrial drawings and models, as well as of Trade-marks of commerce and manufacture granted in the country of their origin, may be imported to the other signatory States, for the registration and publication, as may be required by the laws of the respective country, and they shall be protected in the same manner as those granted in the State itself. For this purpose the interested parties shall be allowed to apply to the Consuls of the country in which they intend to introduce their trade-marks, drawings or models; which Consuls shall transmit to their Governments the applications, samples and models and the necessary funds, delivered to them by the interested parties. This provision does not exempt the articles for which a privilege is solicited, from the obligations which the national laws in regard to factories may establish in the respective country.

I fail to see anything objectionable in the doctrine contained in the text of the article of the Committee.

Mr. Casasus has referred to the second part of article 3, and states, that the best manner of facilitating the procedure of registry, is to confer upon the consuls the personality that, by the present laws, they can only have by special power; while under this article they are authorized at once.

This is why I am going to vote for the project of the Committee and the amendment of the Honorable Mr. Casasus, relative to the second part of article 3.

His Excellency President Raigosa.— As the Honorable Chairman of the Committee, the report of which is under debate, has asked for a special vote upon the first part of the article now under discussion, the Chair has considered it its duty to attend to the just desire of His Excellency; but as the Rules provide, that the amendments and modifications that may be proposed to the articles under debate, be considered and voted on before the article which they are intended to change, for this reason the Chair has ruled, that the second amendment proposed by Mr. Casasus be discussed, without preventing that the very just and deserving reasons which the Honorable Delegate has just manifested to the Assembly, be taken into consideration by the Conference. So that the ruling, that the amendment be discussed, does not oppose, that the subsistence or non-subsistence of the first part of the article be voted on afterwards.

His Excellency Mr. Casasus.— Sir, I am not in accord with the ruling made by the Chair, for the modification that I presented to the second part only has a reason to exist, if the first part disappears; if it has to exist in the article under discussion, I will then find myself obliged to withdraw the modification; for this latter was intended only to save a precept, which although it may have nothing to do with this article, is, notwithstanding, incorporated in the project of the Committee. I would then ask, Mr. President, that you kindly accede to the desires of the Committee, in the sense that a vote be taken upon the first part of the article now under debate.

His Excellency Mr. Alzamora, Delegate from Peru.—It seems to me, Sir, that there is some confusion of ideas in this discussion, and I myself am not quite sure of mine, for which reason I would suggest that under these circumstances the vote be not taken.

Arts. 1, 2 and 3 of this project, as I look at it, contain two distinct ideas, Arts. 1 and 2 establish a right applicable alike to citizens and to foreigners, although with some restriction upon the latter, to obtain in each of the signatory countries the patent or title referred to in the project; and art. 3 contains a very different idea, and which, in my opinion, does not interfere with the greater or less extent of the rights established in the foregoing article. Article 3 refers only to the right that citizens or foreigners have to import titles or patents that they may have obtained in one country, into another. Thus, for example, an American obtains a patent in the United States, then goes to Peru and asks that this patent be registered with the priority that it had in the United States. Before him, but after registry made in the United States, a Peruvian or any other foreigner, it matters not which, had solicited in Peru the right to the same patent. The case would be decided then by ascertaining who secured the first patent in North America, because this treaty establishes that preference be given in the order of priority had in the country of origin. Thus, this article does not interfere with the greater or less extension of the right that may be given to foreigners to obtain patents.

This provision that we are discussing establishes an idea entirely distinct; that is of enabling the importation of the patent obtained by a person in a different country from that into which such person seeks to import it, but with the priority possessed by the said patent. This is the whole project, and if this provision be suppressed what remains of it? Nothing; because all that relates to the extension of the right to obtain patents is already conceded by all American legislations.

Therefore, if article 3 be suppressed, the whole project falls, and the article under discussion will have to subsist.

His Excellency Mr. Casasus.—In truth, Sir, there is some confusion of ideas in the discussion of the project; but in measure as we advance, the less we seem to understand each other.

The interpretation that Mr. Alzamora gives to the text of the treaty, without doubt, is not the one that its authors have wanted to give it. It is not sought to protect the right to a patent in order that its owners may enjoy it in other signatory countries, with the priority that they have in the country of origin; for article 5 states:

«For the purpose of preserving the right of priority of Patents of Invention, Models, Designs or Trade-marks to be imported, a term of one year, as to the former, and of six months as to the latter, is granted, to be counted from the date of their having been originally granted, to the presentation of the application for the same to the respective authority of the country into which the privilege is to be imported.»

So then it is not a question in article 3, that patents, from the date on which they have been granted in the country of origin, should be respected in all the other signatory countries, but that within a brief period they may preserve their prority, if their owners register the patent within such period.

His Excellency Mr. Alzamora.—What Mr. Casasus has just said, is a confirmation of the ideas that I have expressed. Let us read the other three articles and the sense of the same will be rendered clear. The part under discussion, of article 3, is this:

Art. 3. Patents of invention and industrial drawings and models, as well as of trade-marks of commerce and manufacture granted in the country of their origin, may be imported to the other signatory States, for registration and publication, as may be required by the laws of the respective country, and the shall be protected in the same manner as those granted in the State itself.

«Now, articles 4 and 5 state:

The country in which the applicant has his principal establishment or domicile, shall be considered as the country of origin.

In case he should not have any such establishment in any of the signatory countries, that State of the Signatory States of which the claimant is a citizen, shall be considered as the country of origin.

Art. 5. For the purpose of preserving the right of priority of Patents of Invention, Models. Designs or Trade-marks to be imported, a term ot one year, as to the former, and of six months as to the latter, is granted, to be counted from the date of their having been originally granted, to the presentation of the application for the same to the respective authority of the state into which the privilege is to be imported.»

It is clear, that a period of time would have to be assigned, so that, when a patent is obtained in one State, it may be registered in another. The project does not intend to say, as Mr. Casasus has understood, that when a patent is obtained in the country of origin, it must be respected eternally in other countries, without any difference; no, each country preserves its autonomy and may fix a certain period. An example will illustrate this idea: a citizen of the United States obtains a patent in that country, or a foreigner domiciled there, which is the same thing; he then goes to Peru and asks for the registry of his patent. One of several cases may happen: it is presented in six months or within a year; if it is a patent for an invention, according to article 5, he goes to Peru and obtains registry; it has the same age of registry as that on which the patent was granted in the United States; in such manner, that if there had been another party who had previously solicited the patent in Peru, after the date on which it was granted in the United States, the right of the latter would be preferred in Peru; but if this party had allowed the year to pass, and meanwhile another person had come in and had obtained the patent in Peru, the right of the second is the one to be preferred, because the period of one year has passed.

This is, then, the very evident case of article 5, to which Mr. Casasus has referred; there is nothing obscure upon this point. It is sought to establish the right of carrying the patent from one country where it has been granted, to another with the age that it had in the former, in such a manner, that if a third party should intervene and ask for a patent on the same thing, his right does not prevail, nor take preference over the preceding one; this is the question. Suppress this and what have we done?

If we do not establish the right that a patent registered in one country may be imported into another within a certain period, what new feature will we have introduced?

Precisely this right gives tranquillity to the industrial world, because in effect, it is very difficult for one who makes an invention, to establish his right in all the countries of the globe; he is compelled to accredit his invention in the country in which he lives, and it is advisable to grant him a term in the other countries, so that meanwhile nobody can get ahead of him. Let the article under discussion and those which follow be suppressed, then the treaty will remain null, because all the other articles are in perfect relation with each other; it is a redundancy, because all the other principles are contained in the legislation of the countries which sign this treaty; the only thing new which is established here, is the provision of Art. 3. and the consequent provision of Art, 4. Therefore I have no doubt whatever that Art. 3. must remain.

His Excellency Mr. Elmore.—I only desire to state, that the interpretation which my distinguished collegue has given is exact, and is that which has governed in the formation of this project. Art. 6. says: «All questions which may arise regarding the priority of an invention and the adoption of a trade-mark, shall be decided with due regard to the date of the original application for the respective patent or trade-mark, in the countries in which they have been granted.»

Secretary Macedo.—The conference is asked, if the first part of Art. 3. which reads: «Patents of invention and industrial drawings and models as well as trade-marks of commerce and manufacture granted in the country of their origin, may be imported to the other signatory states for their registration and publication, as may be required by the laws of the respective country, and they shall be protected the same as those granted in the state itself.»

The ballot having been cast, there resulted a unanimous vote of twelve in the affirmative, the United States, Haiti and Mexico having abatained from voting.

Secretary Macedo.—His Excellency Mr. Casasus having withdrawn his amendment to the final part of Art. 3., Art. 4. is now under discussion.

None of the Delegates desiring to discuss the question, the vote was proceded with, the result being the unanimous approval by twelve votes, the United States, Haiti and Mexico having abstained from voting.

In the same manner Articles 5., 6., 7. and 8., were adopted without discussion.

Art. 9. was then offered for discussion.

His Excellency Mr. Casasus,—Messrs, Delegates: I have drafted an amendment to the article under discussion, which I respectfully submit to the consideration of the reporting Committee; it reads as follows:

«Trade-marks of Commerce and Manufacture which are comprised in the case of paragraph III of the preceding article cannot be obtained or recognized, nor can the rights of such trade-marks as have become public property in the country of their origin be made effective.»

The Committee does not believe that trade-marks can become public property, and in effect says in the preamble of its report:

«Patents of invention and of models and designs of manufacture may become public property, because the industry that has been protected by them may