

*His Excellency Mr. Chavero.*—Messrs. Delegates, without doubt, one of the most difficult points which may be brought before the Conference, is the project of treaty on extradition to be entered into by nineteen republics which have different practices and ideas on the matter. In fact, there has not yet been determined in most of the nations what must be the resumé of the general points of a treaty of extradition. While in some countries, especially in the monarchical ones, there is yet maintained to a certain degree the right of refuge; in others, on the contrary there is a desire to have the greatest liberty and a full obligation to surrender the offender. In America, there are countries which exact the insertion of the lists of offenses in the treaties; and others which establish a general rule. While they all agree to have extradition for common offenses restricted, yet in the Congress of Montevideo, exceptions were made, as in the case of adultery, damages and calumny; and to-day, generally, the countries desire that there be no exception with regard to common offenses.

Therefore, the Committee has had to proceed in the following manner: To examine as far as it has been possible all the treaties entered into between the American Republics among themselves, and draw afterwards some general rules which might be common to all. To proceed otherwise would have been a mistake. In this Conference we seek to do something that may be acceptable to all; we do not come to do the best, if we do not find it practicable; we come to do what is possible, which is always well; we do not act as jurists, but as diplomats; therefore, we wish for the co-operation of all the members of this Conference. We wish to be attacked on all these points whereon the delegates may think we have made a mistake; because we do not seek the triumph of our report, but the triumph of a treaty acceptable to all the American Republics; we are not prompted by our own interests, but by common interest.

After making the above explanation, I regret to tell the Honorable Mr. Galavis that he has entered upon the discussion in detail; all his questions refer to said discussion, and when the time for these arrives, we will explain our ideas upon each article. It is a cause for regret that a member of the Committee should appear in opposition to it. We have called him to all our meetings, to all our discussions; we should have been very glad if he had helped us with his ideas; but he has not had the kindness to do so, and we will humbly answer all his questions and will enlighten him as much as he wants, as soon as the proper moment arrives, that is, when the report is placed under discussion in detail.

*His Excellency Mr. Galavis.*—If the Honorable members of the Committee who signed the project of extradition were not prompted by private interests, neither has been the delegate from Venezuela; he only wishes that this treaty be accepted by all the American Republics, and that is why I have stated that all the different constitutions and laws which form the basis of their political society must be taken into consideration.

It is true, Mr. President and Messrs. Delegates, that I was invited to attend some of the meeting of the Committee of which I formed part. But it seems to me, that you all know that I was sick for a long time; for which reason it was utterly impossible for me to attend those meetings. The Honorable Mr.

Chavero had the kindness to give me a copy of the project, shortly before I was taken sick, and here is the project; afterwards a different one was submitted to the assembly. It is claimed that we must treat here something which may be acceptable to all the American Republics, and I do not think that the right action is taken when the different Constitutions of said Republics are not taken into consideration; for a project cannot be accepted by all, or at least by one or some of the Republics, if this procedure is followed.

The Honorable Mr. Chavero has also stated that my questions cannot be considered in the discussion of the project as a whole; I think they can. Let us suppose that the project be approved as a whole; what is understood by accepting a project of a treaty as a whole, I would ask in the first place.

I do not think that it can be accepted as a whole and afterwards substantial amendments introduced in the project, because the result would then be an entirely different thing. Thus, for example, article 1 of the treaty which is intended to be approved reads as follows:

Art. 1. The High Contracting parties agree to deliver reciprocally the persons accused or sentenced by competent authority, provided there exist the following circumstances: etc."

Now, then, the Republic of Venezuela, by its Constitution, guarantees the life of its citizens and of all those persons who may find themselves in Venezuela; the Republic of Colombia has established the death penalty; in order that Venezuela, for example may surrender a Colombian citizen or any other person accused of an offense which in Colombia may be punishable with death, it is absolutely necessary that Colombia obligate itself not to punish that person with the death penalty. If we, therefore, approve this project as a whole, how could a substantial amendment be made afterwards in the discussion in detail? Would this not tend to destroy all the principles of this same treaty? I, therefore, believe that all these considerations must be taken into account before approving the treaty as a whole.

*His Excellency Mr. Walker Martínez, Delegate from Chili.*—I only wish to add a few words to those which my honorable colleague in the committee has spoken in regard to this debate as a whole. The difference between the discussion as a whole and the discussion in detail is very obvious in parliaments; it is so accepted in the practice of all the parliaments of the world that there be a discussion, as a whole and in detail, that in this case it is plain, that the only thing that is sought, is to decide whether the American Republics herein represented wish to bind themselves together in a treaty of extradition, and it therefore seems useless to enter upon discussion as to the material impossibility of discussing points which must be dealt with in detail. What good would we derive from entering at once upon a discussion in detail, what would we gain by clearing up the doubts of the honorable delegate from Venezuela?

In the way His Excellency propounded this question, it seems that it would be necessary to eliminate all the ideas which he finds contrary to his own, all the difficulties that he finds within the practice of his country, in order to cast his personal vote. The same thing would happen with all the members herein assembled; each one has his own way of think-

ing, and are we going to express all our private ideas without subjecting them to a vote, since the time has not yet arrived, and is each one of us to make exceptions with regard to his respective legislation? This would not be possible. Hence, the only thing to be done is to state whether we are or not ready to undertake this task. If there is no willingness, then it means that the project as a whole will be rejected without further procedure; on the contrary, if the idea exists, let us enter upon the discussion as a whole; and thus it should be done, without it being an obstacle, that if there are principles contrary to the Constitutions of the different countries, the Delegates may refuse to admit them; but this they may do when the discussion in detail arrives.

His Excellency has made a remark, which he points out as being very important, with regard to the fact that the death penalty has been suppressed in his country by its Constitution. I will tell him, that we all know that in Brazil the death penalty is prohibited, and I myself have signed the treaty of extradition with Brazil. Mr. President, the first objection of Brazil was in the same direction as that made by the Honorable Delegate from Venezuela, to establish that in the cases in which the person whose extradition was asked would be punished with the death penalty, he should not be condemned to that penalty. I objected, stating that in the Constitution of my country there is no such exception and that the laws provide for the death penalty.

Which is the principle that must govern the two nations signing a treaty? Is it the principle, that the legislation of the country upon which demand is made or that of the country making the demand must be applied? No, sir: it is to mutually grant the privilege as an act of reciprocity, of extending the action of the authorities of the two countries, so that their respective laws may not remain unsanctioned. Thus, I said to the representative of Brazil, in my country, and within our sovereignty, we have decreed and established the death penalty: under what pretense will the representative of Brazil restrict the application of the laws of my country? And the representative of Brazil appreciated the reason for this and although in his constitution the penal law is restricted, so much, that it guarantees life, he understood that since in other countries it was not, he could not have this privilege of reciprocity, unless the laws of our country were respected, and the treaty of extradition was signed and was ratified by his Government notwithstanding its Constitution.

However, at the present moment the question is whether we must or not enter into a treaty of extradition, and I would beg my colleagues that they confine themselves to this point, because for the very reason that there are profound juridical questions which will perhaps arise in the discussion of some of the articles, we must not act in advance; let us state whether we will or not discuss a treaty of extradition: objections will be made later, after the deliberations will follow the concessions which we make mutually in order to agree, so far as possible, with the special legislations of each one, so that this work may result as simple and easy as possible. This is the reason, why there has not been included in the treaty an article stating, that all the other treaties shall be abrogated, because we have appreciated the necessity that exists in some cases of greater restrictions; we appreciate that the neigh-

boring nations, for example, need treaties more rigorous than the nations which are far from each other. On this account this treaty could subsist without prejudice to the private treaties which the nations may enter into among themselves.

*Secretary Macedo.*—No one has the floor. The Conference is asked whether it approves the report as a whole. It is approved by a unanimous vote, the Delegation of Venezuela having abstained from voting.

*Secretary Macedo.*—Article 1, is under discussion in detail.

*His Excellency Mr. Elmore Delegate from Peru.*—In the article under discussion it is provided, that in order that extradition may be effected, the penalty to be imposed upon the offender must be more than two years imprisonment. If all the legislations of the countries herein represented should authorize the penalty of two years and one day, and in general, a certain number of years plus one day, there would be no difficulty whatever; but some legislations establish that a penalty of more than two years must be of three years. The article in question provides that the penalty of which extradition is based, be greater than two years, and this would mean, according to the legislation of the countries to which I have referred, that the penalty must be of three years or more.

In the treaties of extradition which are known to me, entered into not only with the American Republics, but also with European countries, a reasonable period is fixed, whether it be of one, two or three years, and it seems, that the intention of the committee has been to take the average term of two years, but this would leave unpunishable serious offenses.

I would, therefore, propose, that the article in question be amended to the effect that extradition be granted when the penalty be not less than two years.

*His Excellency President Raigosa.*—As the Honorable Mr. Galavis had previously requested the floor, I ought to grant it to him, were it not for the fact, that the amendment submitted by his Excellency Mr. Elmore leads the debate in a different course than that of the discussion of the article in detail. Permit me, therefore to beg the Honorable Mr. Galavis that the Committee may be allowed to reply to the Honorable Mr. Elmore, unless His Excellency agrees with the amendments submitted.

*His Excellency Mr. Galavis.*—I requested the floor exactly to make a remark similar to that which the Honorable Mr. Elmore has just made. I, therefore, do not insist upon my request.

*His Excellency Mr. Chavero.*—The Committee considers as well founded the reasons expressed by the Honorable Delegate from Peru, and, therefore, accepts the modification, and would beg the Secretary to obtain permission from the Conference, so that Fraction II of Article 1., in place of terminating with the words: " . . . with a greater penalty than two years imprisonment," will read " . . . with a penalty of not less than two years imprisonment."

*Secretary Macedo.*—The amendment proposed by his Excellency Mr. Elmore being accepted by the Committee, discussion on article 1. will continue, with the understanding, that Fraction II read as follows:

That there be given as a reason the commission

of an offence of the common order, punishable by the laws of both the demanding and the demanded State, by a penalty of not less than two years imprisonment."

*His Excellency Mr. Leger, Delegate from Hayti.*—The legislations of some countries divide the acts punished by the penal laws, giving to some the name of offenses and to others that of crimes, for which reason, and in order that the treaty under discussion may be in conformity with all the legislations, I think it well that in fraction II of the article, after the word *offence* there be added *or crime*.

*His Excellency Mr. Chavero.*—The Committee has no objection to accepting the modification proposed by the Honorable Mr. Leger, so that the treaty may be in accord with all the legislations of the American Republics, and with this understanding, after the word *offence*, there will be added *or crime*. The Committee respectfully requests the Secretary to ask the Conference if it accepts this modification.

*Secretary Macedo.*—The amendment proposed by his Excellency the Delegate from Hayti having been accepted by the Committee, discussion upon article 1 will be continued.

*His Excellency Mr. Buchanan, Delegate from the United States.*—Mr. President, I rise with considerable reluctance to speak on behalf of the United States Delegation, merely to make a statement in reference to the Article, in order to explain the position this Delegation feels it necessary to take in connection with the subject. The Delegation recognizes very gladly, and with great appreciation, the study and thought that has been given this Commission. I think every member of the Commission is entirely aware of the position taken by the United States Government in matters of extradition. They all know that it has been the policy of the Government for years,—in fact since its organization,—to deny the right of asylum, and to grant extradition. They are also aware, I am quite certain, of the fact that the penal laws of the different States composing the Union are at variance one with the other in the matter of the punishment designated for certain of the common crimes, and in view of this fact it has been impossible to harmonize them. The policy of the State Department of the United States has been that of designating in extradition treaties the crimes for which extradition could take place. That policy has been followed from the beginning of the treaties we have made upon the subject of extradition, and, hence, knowing this, and realizing, as I am quite sure all the members of the Commission do, the earnestness and desires of this Delegation to favor the project as a whole, I merely desire to make this explanation in view of the request that this delegation will make, that we be permitted to abstain from voting on the second paragraph of Article 1, if we may be, and if not, upon the Article 1 as a whole.

*His Excellency Mr. Chavero.*—I desire to give an explanation to our esteemed colleague Mr. Buchanan. In fact, the treaty concluded by Mexico with the United States still contains the list of crimes; but lists are always defective, they are subject to different interpretations and discussions, and for this reason, modern legislations have withdrawn them. With much more reason should they be suppressed in treaties.

It is true that in the United States each state has a special legislation; the same happens in Mexico:

the states are free and sovereign in their internal government, and may have, and have in fact, their special legislation; but the principle of the project is not opposed thereby. Naturally, whenever extradition is demanded, it is understood, that the penalty will be that of the place where the criminal has his domicile. If the extradition of an individual is demanded who lives in the City of Mexico it will have to be ascertained what punishment is prescribed by the Code of the Federal District and the Territories; if the extradition of an individual is demanded who lives in Guadalajara, the legislation of the state of Jalisco is consulted, for the purpose of determining the penalty. The same may be done in the United States of America, and in such case, we will suppress the objectionable lists of crimes, in order to subject ourselves strictly to the general rule, without opposing in any manner the different penalties of the federal states of the republics which may have that kind of government.

*His Excellency Mr. Buchanan, Delegate from the United States of America.*—It was for the purpose of avoiding discussion that I took the liberty of making the suggestion on the part of the Delegation which I did, and I did not think it wise or necessary to enter into the matter of the extent to which the United States could go on the difficulties which might be encountered in the laws of the various States, in the application for extradition. The Delegation is in entire and cordial accord with the Commission in its work, and merely feels that knowing, as it does, the policy of the State Department in matters of this kind, and which are of a very delicate nature, we would prefer to abstain from voting upon this one article of the proposed convention.

*His Excellency the President.*—I beg to be permitted to ask the honorable Delegation from the United States of America to please state with precision, whether the abstention to which it refers, relates exclusively to fraction II of the article under debate, or to the whole article, because the Delegation is undoubtedly in its right to vote for the whole article with exclusion of fraction II, or to make an express reservation, or vote against the whole article. I request his Excellency Mr. Buchanan to have the kindness so finish his observations, in order to include his vote in the count of the ballot by the Secretary.

*His Excellency Mr. Buchanan.*—Mr. President: this Delegation would very much prefer, if it may be permitted to do so, to vote for the article, with the explanation that it abstains from voting on paragraph second of the article.

*Secretary Macedo.*—None of the Delegates desire to speak on the question.—The Conference is asked whether it approves Art. 1, in detail, the vote having been taken, Secretary Macedo stated: Art. 1 is adopted by seventeen delegations, the delegation of the United States having abstained from voting with respect to fraction II; and that of Venezuela as to the whole article in general, with the reservation that it may adhere to the same, provided another article should be adopted which it will offer and which is related to the one adopted. Art. 2, is now under discussion.

*His Excellency Mr. Leger.*—I request the Committee to please state what it understands by acts of anarchism, and how it defines the latter.

*His Excellency Mr. Chavero.*—It is true that it is difficult to define Anarchism, and precisely for

this reason there have been no penal laws enacted for the same up to this date. The project presented to the legislative power of the United States already defines it to a certain point; but here it is well defined in the article, because it says: «The extradition cannot be granted for political crimes or for acts that may be connected therewith. Even should the criminal allege a political motive or purpose, if the act for which he has been demanded constitutes principally a common crime, the extradition shall be granted for the same. The acts of Anarchy directed against the bases of the social organization shall not be considered as political crimes.»

This is the Anarchism which attacks the bases of the social organization, and this is what should be understood by Anarchism according to our project: We cannot give a general definition of it, as long as the nations have not arrived at an agreement on that point.

*His Excellency M. Leger.*—I cannot accept the explanation which His Excellency Mr. Chavero has given, as satisfactory. The words employed in the project are too vague and elastic, because, of the robber or the incendiary who attack the right of property, and of him who wants to change the form of government of a country, it may also be said that they execute acts directed against the bases of the social organization, and who are included for that reason within the definition given by the article; while these acts really cannot be classed as anarchistic. For this reason, I believe it necessary to insist, that it should be defined with greater exactness and precision.

*His Excellency Mr. Walker Martinez.*—I have asked for the floor for the sole purpose of calling the attention of the honorable delegate from Hayti to the fact, that in this case it is not the purpose to define the crime of Anarchism in order to fix a penalty for the same, but to make the distinction between an ordinary crime and acts of Anarchism. The case which the Delegate from Hayti cites, of an incendiary for instance, is a case of an attack upon property which under all laws is punishable. Now, if this incendiary alleges a political motive, could it be accepted under any legislation whatsoever that the crime is a political one. Undoubtedly no: here it is a question of common crimes or those related therewith, which oftentimes are mixed up with political crimes. Does not the assassin, as it has happened in the United States, allege a political motive or invoke a political programme? Well, this, in spite thereof is a common crime, expressly so recognized.

In other treaties, it is enumerated, that those will be surrendered who make attempts against the life of the president of a republic, a king, an emperor or chief of a state. We do not make this enumeration, because he who directs his dagger towards the president of a republic, makes an attempt against the social order, as much as he who draws it upon the vice-president or any other functionary. The attempt against a judge is also included. Cannot the anarchists make attempts tomorrow against the first chiefs of the nations, desiring to cause the constituted authorities to disappear and with them the functionaries who dispense justice. Well, this, Sir, comes under the provision of the article: a political motive can never be alleged, when it is a question of a crime which attacks the basis of social order.

For this reason I call the attention of the Conference to the fact, that it is not a question of defining what is Anarchism, but of establishing the distinction, between ordinary crimes and political ones, and of making the exception, that a crime cannot be alleged to be a political one, when an attempt is made against the bases of the social order.

*His Excellency Mr. Leger.*—For the purpose of obviating the difficulties which the article presents, I propose the following amendment to fraction II: «The acts of anarchism directed against the life of the chiefs of states, without a political motive, or from which results the death of one or various persons, shall not be considered as political crimes.»

*His Excellency M. Walker Martinez.*—I believe that the honorable delegate from Hayti has not well understood the spirit of the project, when he proposes this modification; more than enough have we said, that we not only desire, that the attempt against the life of the chief of a state be considered as a crime of the common order; there are many attempts which are not exactly directed against the life of the chief of a state, and which nevertheless; are acts of anarchism: the bomb which exploded in the theater of Barcelona, did it attack the chief of the state? No, in as much as he was not present.

Now, let us advance a step: something is proposed which is only a beginning, it appears to me, of what humanity will have to do in time: it is proposed, that the nations here represented obligate themselves to punish acts of anarchism: we cannot establish penalties nor define anarchism; but we can contract the obligation, that our countries shall seek the manner of punishing it, that is to say, that they shall seek the remedy for this social gangrene.

We must not restrict ourselves to indicate, that there are no other acts of anarchism than the attempts against the life of the chief of a state, which is the act most commonly known up to the present day. The work is commencing, Messrs. Delegates, and it is necessary that society should also commence to defend itself.

*Secretary Macedo.*—The amendment proposed by the honorable delegate from Hayti says: «the acts of anarchism directed against the life of chiefs of states, without a political motive, or from which results the death of one or various persons.»

*His Excellency Mr. Casaus.*—I permit myself to suggest to the Committee, as a compromise between the suggestions of His Excellency Mr. Leger and the principle sustained by the Committee, that instead of making reference to acts of anarchism, it be stated in a precise manner, that it is a question of criminal acts, that is to say, crimes.

Mr. Leger is of opinion, that the acts of anarchism directed against the social organism are not political crimes, and no doubt, the Committee, in using the word «acts» has desired to refer to crimes for which a punishment has already been established, or which are generally considered as crimes, which are directed against the social organism.

If the Committee accepts this suggestion, perhaps the idea which it has desired to express will be stated more clearly.

*His Excellency Mr. Walker Martinez.*—Mr. President: we accept this, because we do not desire to make this a question of words, and the words suggested by His Excellency Mr. Casaus «criminal acts» help to make the idea clearer, more so, how-