

ever, than was necessary, because as it is a question of an article which will go into effect after the former one has been adopted, that is to say, whenever the case should happen of an individual, who according to the laws of the demanding state and of that upon which the demand is made, should merit more than two years of imprisonment, that is, when he already has been sentenced. Undoubtedly, by the proposed words the idea expressed in Art. 1. is again reproduced, that is to say «criminal act;» but I repeat, there is no objection to accepting the words proposed by His Excellency Mr. Casasus.

*His Excellency Mr. Foster, Delegate from the United States.*—It seems to us proper that we should say a word upon this case. Our country has lately suffered the loss of its great man to the manifestation of this philosophy, if it be such, which has for its purpose the destruction of governments. The echos of the incident at Buffalo have not yet died away, and we are glad to inventory again the dignified acts that were performed there, where nothing disagreeable was done, and where the majestic force of the law meted out punishment to the criminal. We greatly appreciate the sympathy manifested towards us on the part of the republics of this hemisphere, and the incident of the loss of our President no doubt inspires you all to a serious consideration of this great task of protecting in every way possible organized government. But there has been through all the ages a contest between those who criticize and seek to reform and those who administer a government, and we therefore ask you, that with calm, careful and sober considerations, you select language that does not put into the hand of organized authority, the right to oppress free innocent people. Your libraries are full of books which furnish you ample reference, and I ask you on this occasion, that you select that language, and those words, that will perfectly describe the intent that is in your minds, and that under the administration of free speech we shall go on to greater things and to evolutions and reformations in all our affairs, not hindered by the hand of anarchy. I ask that you use that calm language here in this resolution, and words that cannot be criticized by any scholiast. We all greatly feel our loss and bereavement and thank you for your sympathies. We have lost as much as a nation can lose in any one man, and following the calm behaviour of those people in our city of Buffalo, and their subsequent acts, let us deal with this matter in a dignified and calm manner, and say nothing that we can possibly regret.

*Secretary Macedo.*—According to the provisions of the Rules, the amendment offered by His Excellency the Delegate from Hayti to section II. of Article 2. is under discussion.

*His Excellency Mr. Carbo, Delegate from Ecuador and the Dominican Republic.*—I believe Mr. President, that the best way to proceed in this matter, is to resolve the suppression of the fraction offered by the Committee, and not to accept, either, the proposition of the honorable Delegate from Hayti, because both are included in the article. It reads: «Extradition shall not be granted for political crimes or for acts connected therewith. Even if the culprit should 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 this latter reason. The acts of anarchism

directed against the bases of the social organization, shall not be considered as political crimes.»

What is anarchism, except a common crime? And the attempt against the life of the chief of a state, it goes without saying, is anarchism. For this reason, extradition must be granted.

Consequently, I believe, that the fraction is superfluous, and for that reason I propose that fraction of the article be suppressed, without accepting the proposition of the honorable Delegate from Hayti.

*Secretary Macedo.*—None of the delegates desire to speak on the question. The Conference is asked whether it accepts the amendment of the honorable Delegate from Hayti.

The vote having been taken, the amendment was rejected by sixteen votes against that of the Delegation from Hayti, that of Paraguay having abstained from voting.

*Secretary Macedo.*—The Chair rules, that the amendment offered by His Excellency Mr. Carbo, consisting in the suppression of Fraction II. of Art. 2. of the project, be put under discussion.

*His Excellency Mr. Guachalla, Delegate from Bolivia.*—I believe, Sir, that we are all agreed on the substance, and the question is to give appropriate form to the article. For that reason I propose, if there is no objection, that the vote be deferred, not only because it is the hour fixed by the Rules, but also, because I believe that it will be easy to give a convenient wording to the article under discussion in the Committee.

*His Excellency the President.*—In accord with the remark of His Excellency Mr. Guachalla, the Chair will suspend the session, observing only, that the time has not yet concluded, because as this session is in substitution of that of this morning, it should last three hours. However, as the reasons stated by His Excellency Mr. Guachalla are weighty ones, the Chair rules, that the session be suspended, the pending debate to continued in the next one.

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*Secretary Macedo.*—The order of the day will be taken up.—The discussion on the proposition of His Excellency Mr. Carbo, regarding the suppression of the second paragraph of Art. 2. will be continued.

*His Excellency Mr. Chavero, Delegate from Mexico.*—Before the continuation of the debate, the Committee desires to present two additional articles, in order to have them translated and printed in the next minutes, so that the Delegates may study them. If the Chair permits, I will read them:

**ADDITIONAL Articles to the proposed Treaty of Extradition presented by the Committee on Extradition and Protection against Anarchy.**

I. If by reason of the Federal form of Government of some of the High Contracting Parties, is shall not be possible to determine the punishment corresponding to a crime for which extradition has been demanded, the following list of crimes shall be taken as a basis for the demand:

1. Murder, comprehending the crimes known as parricide, assassination, poisoning and infanticide.
2. Rape.
3. Bigamy.
4. Arson.
5. Crimes committed at sea:

(a) Piracy, as commonly known and defined by the laws of nations.

(b) Destruction or loss of a vessel, caused intentionally; or conspiracy and attempt to bring about such destruction or loss, when committed by any person or persons on board of said vessel on the high seas.

(c) Mutiny or conspiracy by two or more members of the crew, or other persons, on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain or commander of such vessel, or by fraud, or by violence, taking possession of such vessel.

6. Burglary, defined to be the act of breaking and entering into the house of another in the night time, with intent to commit a felony therein.

7. The act of breaking into and entering public offices, or the offices of banks, banking houses, savings banks, trust companies, or insurance companies, with intent to commit theft therein, and also the thefts resulting from such acts.

8. Robbery, defined to be the felonious and forcible taking, from the person of another, of goods or money, by violence or by putting the person in fear.

9. Forgery or the utterance of forged papers.

10. The forgery, or falsification of the official acts of the Government or public authority, including courts of justice, or the utterance or fraudulent use of any of the same.

11. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, bank notes, or other instruments of public credit; of counterfeit seals, stamps, dies, and marks of State or public administration, and the utterance, circulation, or fraudulent use of any of the above mentioned objects.

12. The introduction of instruments for the fabrication of counterfeit coin or bank notes or other paper current as money.

13. Embezzlement or criminal malversation of public funds committed within the jurisdiction of either party by public officers or depositaries.

14. Embezzlement of funds of a bank of deposit or savings bank, or trust company, chartered under Federal or State Laws.

15. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed.

16. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons in order to exact money from them or from their families or for any other unlawful end.

17. Mayhem and any other wilful mutilation causing disability or death.

18. The malicious and unlawful destruction or attempted destruction of railways, trains, bridges, vehicles, vessels, and other means of travel, or of public edifices and private dwellings, when the act committed endangers human life.

19. Obtaining by threats of injury, or by false devices, money, valuables or other personal property, and the purchase of the same with the knowledge that they have been so obtained, when such crimes or offences are punishable by imprisonment or other corporal punishment by the laws of both countries.

20. Larceny, defined to be the theft of effects, personal property, horses, cattle, live stock, or money, of the value of twenty five dollars or more, or

receiving stolen property, of that value, knowing it to be stolen.

21. Extradition shall also be granted for the attempt to commit any of the crimes and offences above enumerated, when such attempt is punishable as a felony by the laws of both Contracting Parties.

22. The offences of anarchism.  
II. If any of the High Contracting Parties should have previously concluded treaties of extradition among themselves, such treaties shall be amended only in the part modified or altered by the provisions of the present Treaty.

*Secretary Macedo.*—The Chair rules, as the Committee asks, that, the additional articles be translated and published in the minutes of this session. The discussion of the amendment offered by His Excellency Mr. Guachalla will be continued.

*His Excellency Mr. Pablo Macedo.*—Delegate from Mexico.—Mr. President: The conference has seen, that as soon as it had arrived at the discussion of Art. 2 of the project of the treaty on Extradition, several distinct ideas have been advanced, all directed to the point, that it should be designated in a clear manner and without any kind of doubt or ambiguity, what class of crimes are those which are considered as anarchistical. To this purpose was directed the modification of His Excellency the Delegate from Hayti, Mr. Leger; to the same end tends, although by a different method, the modification proposed by His Excellency Mr. Carbo, because in view of the difficulty of defining what are the crimes of anarchism, His Excellency Mr. Carbo proposes, that the respective fraction be suppressed. In fact, Messrs. Delegates, there is a great difficulty to define in a treaty what crimes should be considered as crimes of anarchy or anarchism; and for that purpose I should like to be permitted also to make a few remarks regarding the second part of Fraction I. of the article, which is likewise somewhat vague, in the opinion of some of the Delegates, with whom I have the honor to be in accord. That part says: «The acts of anarchism directed against the bases of the social organization shall not be considered political crimes.»

In the opinion of some of the Delegates, and I believe with reason, it is dangerous to restrict in a treaty the sense which should be attached to the phrase «political crime or offense,» because in fact, it generally happens, that the political crimes are mixed up with crimes of the common order; it may be said that they almost always partake of the nature of both of these infractions of the criminal law: he who rises against the constituted authority of his country and arms a part of the nation against the government, usually commits acts which constitute infractions of the common criminal law, if they are not judged otherwise than in the light of the same common law; there are wounds, homicides, plunder of property and many other violations of individual rights. When a crime has been committed under these circumstances, is it a political one or not? The legislation of each country defines this, and I believe that we should be governed by the same. For instance, the attempt against the life of the chief of a state, against the public functionaries, against a judge on account of the justice that he has meted out, they have never been considered by any legislation as crimes of a political nature; and nevertheless, it usually happens that the fanatics who commit acts

of this kind, obey almost always political motives.

I believe, Messrs. Delegates, that the best thing that can be done with Art. 2. would be to leave it limited to its first part, that is to say: «Extradition shall not be granted for political crimes or acts connected therewith. Even if the culprit should allege a political motive or purpose, if the act for which he is demanded constitutes principally a common crime, extradition shall be granted for the latter reason.» And as regards crimes of anarchism, which occupy our attention especially, let us leave them, so that they may be defined by the legislations of the respective countries, and insert in the treaties simply a clause which will say: The acts, which by the legislation of the demanding country and that of the country the demand is made upon, are designated as acts of anarchism, shall not be considered as political crimes.»

I understand that my honorable colleague Mr. Carbó and the worthy members of the reporting Committee are in accord with this modification which I have the honor to propose; and I would ask them to please state, whether I am right in this, so that the discussion may proceed with less difficulty.

*His Excellency Mr. Carbó, Delegate from Ecuador and the Dominican Republic.*—Mr. President: I accept the modification proposed by His Excellency Mr. Macedo, being one which best interprets the general opinion and consequently I hope that the Committee may also accept it in order to facilitate the debate.

*His Excellency Mr. Walker Martínez, Delegate from Chili.*—The Committee, Mr. President, has gladly accepted the amendments submitted by the Hon. Mr. Macedo. Therefore, I only have to confirm his words; but I think it necessary to add two more with regard to the doubt he has expressed, relative to the suppression made in this treaty as to the specification of certain offences or attempts against certain public functionaries. The reason for not having included in the specifications the provision that the attempt against the Chief of the Nation, which attempt might, on the other hand, be directed against the Vicepresident or against the President of the Court of Justice, shall not be considered as a political offence, was that having provided that acts of anarchism shall not be considered as political offences, we thought that in this was included any attempt against the President of the Republic and other functionaries. An attempt against the life of a president of the Republic presents phases: it is either considered as a political offence, or as an act of anarchism, in which case it comes within this latter meaning.

I therefore thought it necessary, Mr. President, not only to confirm the words of the Hon. Mr. Macedo, but also to make this explanation so that it may be recorded in the history of the treaty, and serve to give, for its better understanding, the idea by which we were prompted in voting it.

*Secretary Macedo.*—As the amendment submitted by Mr. Macedo has been accepted both by His Excellency Mr. Carbó and the Committee, discussion on the article drafted in the following terms will continue: «Art. 2. Extradition shall not be granted for political offences or for deeds connected therewith. There shall not be considered as political offences acts which may be classified as pertaining to anarchism, by the legislation of both the demand-

ing country and the country upon whom the demand is made.»

After the vote had been taken, it was unanimously approved by eighteen votes.

*Secretary Macedo.*—Art. 3. Is under discussion.

*His Excellency Mr. Galavis, Delegate from Venezuela.*—Mr. President: The day before yesterday I stated that I would not cast my vote on art. 1, until I knew whether an article that I am to submit and which I think ought to be voted on after article 2, taking the place of article 3, would be approved. I submit said article to the honorable members of Committee who have signed the project. It reads as follows:

Art. 3. When the individual whose extradition is demanded, has been accused of an offence which deserves capital punishment in the demanding country, or who has already been sentenced therefor, the Government upon whom the demand is made may impose as a condition, in order to grant the extradition, if its Constitution contain the guarantee of the inviolability of life, that said penalty be commuted by the next one in a lower degree.

The Hon Mr. Walker Martínez stated the day before yesterday that Chili and Brazil had entered into a treaty in which he took part as representative of the Republic of Chili, and in which both countries bound themselves to grant extradition, even though the crime or offence committed were to be punished with the death penalty, notwithstanding the fact that said penalty has been abolished in Brazil. Venezuela will not enter into a treaty under such terms: the reasons given by the Hon. representative of Chili do not satisfy me. I am not acquainted with the constitution of the Republic of Brazil, but it seems to me that there are, perhaps, laws on which said treaty may have been based, or else the Republic of Brazil has violated its Constitution.

In Venezuela no laws exist which may allow the extradition of a criminal when the death penalty is to be imposed upon him in the country making the demand, on the contrary, the Constitution guarantees the life of all Venezuelans and of all those who tread the territory of Venezuela. I do not see, and I think Venezuela would not see either the difference between imposing the death penalty and surrendering the offender to another country which will impose it upon him. For this reason Venezuela will not sign the treaty in question, and I have therefore submitted the article referred to. I do not see any objection for the countries which have established the death penalty in their legislation to accept said article. For, either the treaty is not executed by Venezuela, or it is intended that Venezuela change its legislation and the fundamental principles of its political constitution; and, in this case, I think that such pretensions are very strange. I therefore submit the article in question and beg the honorable members signing the project of treaty to accept it.

*His Excellency Mr. Chavero.*—I must, above all, ask whether the new article submitted by the Hon Mr. Galavis is under discussion, and then I will reply.

*His Excellency President Raigosa.*—As the proposition of His Excellency Mr. Galavis has been submitted as an addition or amendment to the project; said proposition is under discussion.

*His Excellency Mr. Chavero.*—Our esteemed colleague in the Committee states that it is neither desired that Venezuela may not sign the treaty, or that it may violate its Constitution. I will try to prove to him that Venezuela will not violate its Constitution by signing the treaty we have submitted.

The Constitution of Venezuela is enforced in the Republic of Venezuela, not an inch outside its territory the Constitution of Venezuela, in prohibiting the death penalty, orders that the courts of Venezuela shall not impose the death penalty and that said penalty be not carried out in Venezuela. Let us suppose that Venezuela asks for the extradition of a prisoner who must suffer the death penalty in Mexico; the Constitution of Venezuela cannot prohibit said penalty in Mexico, cannot prohibit that the Mexican courts impose it nor can it prohibit that it be carried out in Mexico. Therefore, if the prisoner is executed in Mexico, the Constitution of Venezuela has not been violated, and consequently, it can sign the treaty.

*His Excellency Mr. Galavis.*—I acknowledge the ability of the Hon. Representative of Mexico; but to my mind his argument is this: the Constitution of Mexico is enforced in Mexico, and the Constitution of each country is enforced in the country for which it was created, not in another country. To exact from Venezuela the surrender of a person so that it be punished with the death penalty in the country making the demand, amounts to as much as to be punished with the same penalty in Venezuela; Venezuela guarantees the life of all its citizens and of all those who enter its territory; to a man who is to be decapitated it is the same thing that his head be cut off in Venezuela or in Colombia, any way it is a death penalty; what is the difference? a few days longer; to make a journey which will take more or less time.

Venezuela guarantees the life of all those who live within its territory, and says: I do not impose the death penalty nor allow anybody to impose it. Therefore, if it is pretended that Venezuela be compelled to surrender an offender upon whom the death penalty is to be imposed in the country making the demand, it means as much as to tell Venezuela: you must violate your Constitution. Besides, what objection is there in agreeing that the country making the demand may impose upon the offender a penalty of less severity than death? I see no objection whatever.

If there are countries which have abolished the death penalty, it is because they believe that there is no offence deserving such punishment. Why shall they then be compelled to grant extradition against that public feeling? Besides, what is to be lost if in a country a certain offence is punished and in another country the same offence is not punished? If the offence is committed in the former country the offender seeks refuge in the latter, and there is no room for extradition; nor can it be even tried; why? because in the latter country the act is not considered an offence. Well, in this case there is less reason for it. Why? Because there is, any way, a punishment: extradition is granted not to punish the offender with the death penalty, but with that next in severity, and therefore the offence shall not be left unpunished, but, on the contrary it shall be punished, any way.

This second instance is simpler than the first. Why then pretend that when in a country the

death penalty is abolished, extradition be granted to have that penalty imposed upon the offender without allowing that the country upon which the demand is made may exact as a condition to grant the extradition that the penalty be committed. I see no objection whatever.

I therefore sustain the article which I have submitted and which has yet a larger scope. Let us suppose that in Venezuela there is to-morrow or any other day a change of ideas, and that the death penalty be established, there would be no opportunity for changing the article, because it reads: «the Government upon which demand is made may exact as a condition, in order to grant the extradition, if its Constitution contains the guarantee of the inviolability of life, that said penalty be commuted by the next one in a lower degree.»

Therefore, if Venezuela, Brazil or any other Republic—I do not know whether there is another country which has not established the death penalty—should establish it at any time by its constitution, or they either withdraw that guarantee and establish in their legislation said penalty, the same treaty can be enforced, because it is not then in the constitution of those countries the provision whereby life is guaranteed. I do not see any objection for the countries which have established the death penalty in their legislation to sign this treaty.

*His Excellency Mr. Cuestas, Delegate from Uruguay.*—Mr. President: I will commence by declaring that if all the representatives herein assembled should appeal to the internal laws of their respective countries as an unsurmountable obstacle in order to reach a conclusion, the meeting of this Conference would be useless. In the case under discussion to which the Hon. Mr. Galavis refers, the ground for his opposition to the article submitted by the Committee is that the constitution of Venezuela guarantees the life of all its inhabitants; I would ask: what constitution is there in the American Continent that does not guarantee not only the life, but also the property and other individual rights that we all enjoy? I am sure Mr. Galavis cannot mention a single one to me.

On the other hand, we must keep in mind that the International Penal Law is based on competence, it is a law of competency, of jurisdiction; and the power of competency to judge these cases rest upon laws that have been violated not on those which have not been violated. The Hon. Mr. Galavis states: if Venezuela should surrender to-morrow a refugee whose extradition was demanded because of his being sentenced to the death penalty, it would amount to as much as if he were executed in the territory of Venezuela; there is no difference: for the man to be decapitated it is the same thing to him whether his head is cut off in Venezuela or in Colombia. It may be the same thing for the offender; but not for the offended society, which must repair an offence and amend an injury and an insult to its laws; and it is not the society of Venezuela the one having jurisdiction to judge of an offence not committed in its territory which has not offended it in any way; but it is the society of Colombia which must take cognizance of such offence; it comes within its competency, because the right of repression belongs exclusively to the State whose laws have been violated.

I believe, Mr. President, that the Committee can-