

not accept the amendment submitted by the Hon. Mr. Galavis, because it would mean to go backwards in this question of International Private Law, and sanction a principle which, in my opinion, has no legal basis whatever.

*His Excellency Mr. Carbó.*—Those who are against the death penalty, cannot but agree with the motion of the Honorable Delegate from Venezuela. A country which guarantees the inviolability of human life, cannot surrender an offender who is to be executed without becoming an accomplice; that is to say, without violating the spirit of its legislation. International justice does not suffer any injury, as the Honorable Delegate from Uruguay has stated, since the country upon which the demand is made only asks that a penalty next in a lower degree be imposed. As representative of Ecuador, which has abolished the death penalty, I fully agree with the motion under discussion.

*His Excellency Mr. Baez, Delegate from Paraguay.*—I want to add several statements to those made by the Honorable Delegate from Ecuador. In behalf of the principles of humanity, so highly proclaimed by this Honorable Assembly, I sincerely accept the proposition submitted by the Honorable Delegate from Venezuela. The universal conscience of civilized countries rejects the death penalty, and its adoption is only due to a cold consideration of the matter by statesmen; the universal conscience of civilized countries rejects it, because most of the constitutions give the Chief of the State the faculty to commute the death penalty; it is a right for pardoning in order to ameliorate the terrible factor of this penalty and to save the people the horrible sight of the scaffold.

The Congress of Montevideo inspired by those high sentiments of humanity, had erased all distinction between natives and foreigners and had established that extradition would take effect even if it applied to citizens of the country upon which demand was made.

The project under debate, the principles of which I do not intend to discuss—I do not pretend to deny—has been diverted somewhat from the principles established by the Congress of Montevideo, because a distinction has been made again between natives and foreigners, establishing that the country upon which the demand is made is not obliged to surrender its own citizens. What is the reason for this, Mr. President? The reason is egoism; it is that a citizen must not be tried except according to the laws of his own country.

My country, the Republic of Paraguay, has accepted the Treaty of Montevideo and has in addition special treaties of extradition with the Argentine Republic, Uruguay and other Republics; in those special treaties, and I do not recall at this moment if also in the Treaty of Montevideo, it is established, that the Executive of the State who surrenders a criminal, in case he is condemned to suffer the penalty of death, may petition that his penalty be commuted. Of that privilege, the President of the Argentine Republic, Mr. Roca, availed himself. Mr. Roca, whose country had surrendered to Paraguay a criminal condemned to death, appealed to the Chief Executive of my country, who obeying the provisions of that Treaty, at once commuted the penalty, and the criminal was sentenced to the penalty next in category, that is, to life imprisonment.

In this Assembly, where the most distinguished men of America meet, and where only the high principles of justice and of humanity should be heard, I would like, even though it be in a platonic manner, to see the principle of respect for life recognized, even if nations do not find it convenient or opportune to abolish the death penalty; in an Assembly, like this, of distinguished jurists, philanthropists and friends of the highest principles of humanity, I think that a few words of praise should be consecrated to the rights of humanity; and the rights of humanity, it is known, are naught more than the aggregate of individual rights.

I do not oppose the project presented by the honorable Committee on Extradition; I believe that Paraguay would sign the Convention which would deny the right of clemency that the Executive of a State would like to make use of whenever he may have to surrender a criminal. But I wish to state, that I accept with hearty accord the proposition of the Delegate of Venezuela, because it is a principle consecrated in the Constitution of the Republic of Paraguay, which accords to the Executive of the State the power to commute the death penalty for the one immediately less in grade, and at the same time, because I feel it necessary, obligatory, to publicly render my homage, my sense of admiration and respect, to the high principles brought here, at so opportune a moment, by my Honorable colleague, the Delegate from Venezuela.

*His Excellency Mr. Alzamora, Delegate from Peru.*—Probably I would not have asked for the floor, if I had known that others of the delegates present were going to defend the same ideas that I sustain.

It appears to me that this question presents a double phase: as a doctrinary question, in order to ascertain what would be best from a scientific point of view, or as a political and diplomatic question, which are the ones we are acting upon here. From the doctrinary point of view, I see no objection arising from universal principles of jurisdiction or penal laws, to the admitting of the addition proposed by the Honorable Mr. Galavis.

It is very true, that the country where the offense was committed, is the one that has jurisdiction to judge, and, consequently, to apply its laws; but this on condition that it may have the delinquent in its hands, when he is in another country, it is clear, that the latter has the right, before surrendering him, to impose any condition it may see fit, and this in no manner lessens the jurisdiction of the country within whose territory the offense was committed. If in a country the death penalty exists for a certain offense, and that country should not have the delinquent in its power, there can be no objection whatever in demanding him from the one wherein he has taken refuge, and that the condition imposed by that country, of commuting the penalty, be accepted.

This has been the course followed at all times; the principle sustained by the Honorable Delegate from Venezuela not only has existed and still exists in some treaties, but it has been carried even further, and even in the cases, where the legislation of the two countries, the one making the demand and the one on which demand is made, admit the death penalty, it has been established, that in cases of extradition, the country on which the demand is made, may impose as a condition, that the criminal

shall not be executed. From a certain humanitarian sentiment, by the fact that the criminal has chosen such country, naturally a sentiment of benevolence is aroused there, and renders disagreeable the task of surrendering him to death.

I repeat, then, that from a doctrinary point of view I find no objection whatever to the ideas upon jurisdiction expressed by the Honorable Delegate from Uruguay, and I understand, like some others of the Delegates, that they exercise no influence whatever over the matter.

Now, with regard to the diplomatic or political aspect, to put the question is to answer it; if there is a state which says: «I cannot, according to my Constitution, surrender a criminal in order that he may suffer the penalty of death, and I would only accept the treaty upon condition if it admitted as a basis that in any case it might be stipulated as a condition, that the criminal should not be put to death,» it is well to accede to the wishes of that State, and the treaty remains intact for all. We would always have, with respect to the State imposing the condition, the advantage of being able to obtain extradition in all cases, and of being able to impose in the majority of them the penalty established in its legislation, and only in case of that of death, would we have to lessen the penalty and not condemn the delinquent to capital punishment. And would it be advisable to leave out of this treaty a Nation that does not accept that condition, because it would be deprived in the majority of cases, of extradition by its refusal to accept this simple modification. Evidently, we would gain nothing by this.

Will it be said, that in this case such Nation would be deprived of the right to make demand upon all the other signatory States for extradition of criminals? Do the other States obtain any advantage by it? In no way; it is a disadvantage, for they have no interest in preserving those delinquent foreigners within their limits, nor in making their impunity more secure.

For this reason I said, that to ask the question is to answer it. If there are States that do not want to sign the treaty except upon that condition, it is best to defer to their wishes; hence, it is necessary to admit that those States are right, because if the Constitution of a country contains the principle of the inviolability of human life, it is clear that such State not only cannot apply the death penalty in its own territory, but cannot surrender a man in order that he may be put to death in other parts.

It is repeated here that the country where the penalty is imposed shall have jurisdiction, and that the one imposing the penalty is not the one of refuge; but it is to be noted that the latter country has the man who is to be subjected to that penalty in its power; that it may surrender him or not, that it may obligate itself by this treaty or not, and in consequence, it amounts to the same thing, to apply the penalty in the same country, or to surrender the delinquent to another State to receive that punishment. It is clear that if in the legislation of a country the principle of the inviolability of human life is established, it is because the ideas and sentiments in conformity with that principle dominate there. And how can we admit that the ideas and sentiments of a country be violated, that they be defied in a matter of so much interest? Why not admit this simple exception for cases that happen so rarely? If the sen-

timent of a people is against the penalty of death, how can it admit that a man be calmly surrendered who it is known is to be put to death? This would outweigh the idea proposed, because if there is some one who has not committed a crime in the country, who has not excited any adverse sentiment, but, on the contrary, has sought refuge, this latter fact excites the sentiments of humanity.

Thus it is that in the case in question, it would not be possible, I repeat, to exact from a country to deliver up a criminal it may have in its power, so that another may apply the penalty of death.

From any point of view from which the question is examined, the Peruvian delegation will give its vote to the addition made by His Excellency Mr. Galavis.

*His Excellency Mr. Cuestas.*—I have asked for the floor simply to make a statement with respect to the remarks just made by His Excellency the Delegate from Paraguay, with reference to the Congress of Montevideo.

This gentleman recalls that in said Congress an article was sanctioned analogous to the one proposed by the Delegate from Venezuela. This is true: that article which I am going to read states: «Art. 29. When the penalty that is to be applied to the criminal is that of death, the State granting extradition may exact that it be substituted for the penalty immediately inferior.»

At the same time, the Honorable Delegate from Paraguay said, that the Committee had somewhat departed from the Congress of Montevideo, by including in the project the article which states, that none of the contracting parties shall be obliged to surrender their own citizens, by virtue of the stipulations of this convention; but the Executive Power of each one of them shall have the power to surrender them, if it believes proper; in the Congress of Montevideo the following was established in Article 20: «Extradition exercises all its effects, without the nationality of the accused preventing it in any case.» Mr. Chavero, when he replied in the preceding session, in part, to the interrogations formulated by the Honorable Delegate from Venezuela, stated, that in the Committee, upon formulating this project, not only had its members proceeded as juriconsults, but that they also pretended to act as diplomats, which is equivalent to saying that they desired that a truly Pan American treaty might be concluded between the nineteen Republics of the continent.

This reply made by Mr. Chavero, explains why the Committee has not followed the terms adopted by the Congress of Montevideo in the case of the application of the penalty of death; it took into account, without doubt, that in almost all the countries of America, the death penalty is sanctioned by their national laws. And in the case of Article 3, which refers to the provision that none of the contracting parties shall be obliged to surrender its own citizens, surely the Committee took into consideration the circumstance that, in general and at present, all treaties sanction this same principle.

For this reason I think that a sound explanation has been given for the non-acceptance on the part of the Committee of the articles of the Treaty of Montevideo with respect to these two points. I simply wished to make this explanation.

*His Excellency Mr. Galavis.*—I have asked for the floor, Mr. President, in order to accept as my



own the arguments given by the Honorable Representative of Uruguay; they favor my way of reasoning, and for this reason I second, without reserve of any kind, what he has stated.

His Excellency has said that article 3 of the project establishes an idea in opposition to that stated in the Treaty of Montevideo, and that this, as he understands, has been done for the purpose of making a treaty that can be accepted by all the American Republics, and which will not conflict with the sentiments felt in some or all of them.

I suppose, and in fact it is so, that a State may be compared to a father of a family, and a father, it need not be said, would never willingly surrender one of his sons for another to chastise, even though the offense might have been committed in some other place; he himself would punish him and not permit another to do it, because that would be repugnant to his sentiments.

There are countries wherein the idea of the death penalty is condemned in such manner that it is impossible to establish capital punishment under any pretext.

If article 3 has been established precisely for the purpose of not shocking those delicate sentiments existing in almost all countries, for what reason is it sought to establish the obligation of surrendering a delinquent, upon whom the penalty of death is to be inflicted in the country making the demand, if such surrender is repugnant to the sentiments of the country where the delinquent has taken refuge?

This proves precisely that I have not erred in my reasonings, and as I said at the beginning, I adopt the arguments of the Honorable Representative from Uruguay in favor of my cause.

*His Excellency Mr. Walker Martinez.*—I believe, Mr. President, that we ought not to elevate ourselves so high as to lose our footing on the ground we tread; that it is not well to enter upon philosophical discussions, forgetting that we are a Congress of Plenipotentiaries, and that consequently we ought to act in accord with the ideas of our respective countries and with due respect for the legislations of the others. Furthermore sir, it is useless to discuss, whether the death penalty is or is not a question of civilized countries; the countries that sustain it, gentlemen, pretend to be civilized nations, and the greater part of those of America, as I have already said, with the exception of three, have established the death penalty. My country has treaties of extradition with Germany, with England, with the United States, with the first nations of the globe, and all of them have the penalty of death established in their legislation. Thus, I believe that the non-application of this penalty cannot be termed a special distinction of civilized countries; I declare, in the name of the countries that sustain the death penalty, that in order to guarantee the lives of their citizens is precisely why we have established it. So, if I can explain that Mr. Galavis should oppose the report under discussion, I cannot explain how the representatives of the countries whose legislations establish the death penalty, can come here, in the character of official representatives of their nation, and in a manner depreciate their own legislation. I can not explain to my self how they can cast their vote against a law established by their Governments, thus implying a censure for the legislation of their own countries.

With respect to the remarks of His Excellency Mr. Galavis, I ask to be permitted to call attention to this fact: if His Excellency claims in favor of his country that the death penalty does not exist there, and that the criminal surrendered should be exempt from that punishment, His Excellency does not stop to consider that he claims an exception in favor of the legislation of his country in this case. If his country surrenders a criminal, under the condition that the respective penalty be attenuated or reduced, does he not place the other nations in the analogous position of claiming the reduction or attenuation of the punishment of the criminals that may be surrendered to Venezuela? There are countries in which the same crime is punished with different penalties: larceny, for instance, is punished in the Argentine Republic, with three years imprisonment, taking in consideration the different acts of larceny, and the penalty is applied as many times as an act of theft has been committed: the cashier, who abuses the confidence placed in him and steals one day twenty dollars, another fifty and another thirty, makes himself liable to the three penalties, for which nine years imprisonment are applied to him. Now as soon as this treaty is signed, with the conditions proposed by the Representative of Venezuela, any nation would have the right to say: why is the penalty of nine years applied to this criminal, when our legislation only would apply three or four years to him? The same is the case with other crimes; in some countries the death penalty is applied, in others that of twenty years; some apply perpetual confinement and others solitary confinement; and following the theory sustained by His Excellency Mr. Galavis, that the penalty of the most lenient legislation be applied, all the countries would claim, Sir, that the penalty should always be reduced in conformity with their legislations, or, in other words, we would arrive at establishing the principle, that the laws applied are to be those of the country the demand is made upon, and not those of the country asking for extradition. And under these circumstances, Messrs. Delegates, would any of the representatives sign a treaty, in which it is stipulated that the penalty which is to be applied, shall be that of the nation the demand is made upon, and not of that making the demand?

Where, then, is the reciprocity? Which are the acts of reciprocity, which the nations that have no death penalty established in their laws, would perform towards the others? There would be none in favor of the others.

It was for that reason, that Brasil made a concession in the case I cited in the last session. It was not because in Brasil exist federal laws which permit the making of treaties in the form in which her government signed it, no, Sir; the case was, that I had a lengthy discussion with the representative of Brasil, who wanted precisely that which His Excellency Mr. Galavis desires; but Brasil comprehended, that it had to accept the theory so lucidly expounded by His Excellency Mr. Chavero, that is, that the countries must respect the laws of the others, in order that these may give them all facilities for which their laws authorize them. As soon as we enter upon the domain of exceptions, as soon as the demanding state has to conform to the laws of the country the demand is made upon, then reciprocity ceases to exist.

His Excellency Mr. Alzamora asked: why, Sir, do we not accept in this case: I turn the argument around, and ask him: why should we make a concession in favor of one nation and condemn all the rest? If His Excellency Mr. Galavis cannot sign this treaty, because it is contrary to the legislation of his country, because he wants to go a step farther than Brasil, we for our part do not wish that our legislation be set aside in making a concession in this case. We, who support the doctrine of His Excellency Mr. Chavero, relative to the necessity of reciprocity, and that one nation should facilitate another in the observance of its laws, how will we sign a treaty, when in this case our laws are not respected? How could a treaty be signed by the representatives of the nations here assembled, accepting the proposed clause, without violating the laws of their respective countries? How can I consent, sustaining as I do the theory of His Excellency Mr. Chavero, that in a given case the laws of my country will be nullified, even after the surrender of the criminal?

It is plain that we are not to have unanimity in this case. The reason which prevents His Excellency Mr. Galavis from accepting the project will prevent the rest of the nations, which sustain the death penalty, from accepting what the honorable Mr. Galavis proposes according to the laws of his country.

I call the attention of the honorable members here present to the fact, that the question is bound to arrive at this practical case: as this treaty is to supplant all the existing treaties in the parts in which it may modify them, it goes without question that the greater part of our colleagues cannot sign it, if in their countries exist criminal laws similar to ours. I respect the noble sentiments of the gentlemen who represent countries, in which there is no death penalty. I believe that they may ask to be excused from signing the treaty; but I also believe, that we could refuse to sign it, in case it should be modified in the manner the honorable Delegate from Venezuela.

*His Excellency Mr. Lopez Portillo y Rojas, Delegate from Mexico.*—Messrs. Delegates: the idea of the abolition of the death penalty appeals strongly to our sympathies: much has been written on this particular and it has been much debated: but, generally, those who support it and those who oppose it, assume two extreme positions: the former desire, that it be always applied, and the latter, that it be never applied. After having discussed this point, after having extensively debated it, it seems that the conclusion has been reached, that the abolition of the death penalty should not be considered in an abstract and absolute manner, but in a practical one, so to speak, and according to the requirements of the surrounding circumstances: there are cases, in which the abolition of the death penalty is feasible, and there are cases in which it must be sustained; this depends altogether on the state of civilization in which the different countries find themselves, and also on the respective historical epoch of humanity. There are nations which for a long time have not been able to abolish it, and today could do so easily, because they possess excellent institutions and a good system of penitentiaries.

It seems thus, that the question relating to the death penalty is not such an absolute matter as it has been believed to be, but an eminently relative

one; that some countries do well in retaining it and others in abolishing it; each country is the sole judge competent to resolve this particular question, as far as itself is concerned.

There is another unquestioned principle involved, which is that of the territorial nature of the criminal law: this principle is respected by all the other nations; one respects the law of the other, in the same manner as all other laws which relate to their internal government are respected. Consequently, no nation can interfere in anything which refers to the legislation of the other, one benign as sovereign as the other. The treaties of extradition have for their object that the nations may facilitate each other in the application of their respective laws: they are an act of international justice, by which the nations aid one another in carrying out their internal laws, which in their opinion it is advisable and just to establish for the system of government adopted by them. It is true, that when a foreigner finds himself in a country, this latter may refuse to surrender him, if such should seem expedient in its opinion; but it is also true, that this would be contrary to the philosophy of the treaties of extradition, when according to the general principle of solidarity among nations it should be obliged to surrender him for the due administration of justice. Consequently, in my humble judgement, the Committee is on firm ground, when it sustains that the principle of this treaty, which is being opposed by the proposition of His Excellency Mr. Galavis, should be upheld.

However, there is an element of strong sympathy in this, which consists in the intervention of the nation, which surrenders the foreigner, who is to be condemned to the death penalty, to the nation which asks for his delivery; I say, the effort which the former may make to obtain from the latter, by means of a respectful request that that penalty be not inflicted, is a most sympathetic one. Such an effort, of so sympathetic a nature, I repeat, does not pertain to the sphere of obligations, but it certainly belongs to the sphere of humanitarian sentiment; it does not belong to the sphere of obligation, but to that of courtesy.

The same question which at this moment is being discussed in this Conference, was extensively canvassed when the last treaty between Italy and Mexico was concluded. Italy has abolished the death penalty and Mexico maintains it; Italy requested that in framing the treaty with Mexico an article should be introduced which would contain a stipulation, similar to that proposed by His Excellency Mr. Galavis; and after the point had been amply discussed, Italy, out of respect for the territorial sovereignty of the criminal law, agreed to rescind her request, and the concession then obtained from the Mexican government, by way of compromise, is what the Conference will now learn, being contained in the 8th. article of the treaty now in force between the two countries. Without making a formal motion that the proposition submitted by His Excellency Mr. Galavis be modified, I ask to be permitted to read said article, for the purpose of seeing whether the Committee as well as His Excellency Mr. Galavis and the person who have supported his opinion, find in it a neutral ground in which the different opinions pronounced here may be reconciled. The article says as follows:

When the individual whose extradition is deman-