

ded, should have been accused of a crime the penalty of which is that of death, or if he should have been sentenced for such, the government the demand is made upon, may request, when granting the extradition, that said penalty be substituted by the next less in severity, by means of a commutation, which shall be granted in the manner provided by the laws of the country making the demand.»

As the Conference will observe, this article seems to reconcile the extreme opinions: on one hand, the territorial supremacy of the criminal law is respected, and on the other, it concedes to the nation which delivers the criminal, the privilege to ask for clemency in his behalf, besides, it leaves the nation which has demanded the extradition of the criminal and to which he has been surrendered, at liberty to grant clemency or not, because it is obliged to grant it in conformity with the internal laws which govern that point. In this manner, if it thinks that it should not be granted, it will not do so, and in the case that it can be granted, it certainly will accede to the request of the nation which has interposed its valuable offices.

I repeat, that I make no formal proposition, but simply offer this article to the enlightened consideration of the parties who support either of the theories, in order to see, whether it seems acceptable to them.

*His Excellency Mr. Alzamora.*—I desire to make but a few remarks. I wish to refer to an argument offered by His Excellency Mr. Walker Martinez, with certain force, but which in my opinion is not well founded.

At the outset I will state, that I am in accord with the idea expressed by His Excellency, that there is no necessity for ascending here into the realm of doctrine and of science, in order to treat on this matter. I further must declare that I am not possessed of any fixed sentiment in this matter, that I am not swayed in the present discussion by any kind of doctrinary or scientific ideas, and that my ideas are in perfect accord with the legislation of my country; I believe that in so far as the death penalty is concerned, that no absolute principles can be established, and I admit that all countries can establish it in a certain measure and in special circumstances.

The argument to which I refer is the following: If Venezuela claims for herself the right, that the death penalty be not applied, and refuses to sign the treaty, except under the condition that her request be acceded to, the other countries which sustain the contrary principle, will also refuse to sign the treaty, if the request of Venezuela be granted.

This argument is not well founded. Venezuela will not sign the treaty, except under the condition that in the case of the death penalty it be remitted, because her constitution contains the principle of the inviolability of human life. In order that the rest of the countries should be justified in refusing to sign the treaty in favor of Venezuela, it would be necessary, that their constitutions should contain the opposed principle that *in no case* can execution be avoided in the case of the death penalty; but if they do not contain that principle, if they simply contain the principle, that the death penalty should be applied in certain cases, it is clear that Venezuela may accede and deliver a criminal who may be found in her territory and may deserve the death penalty, provided that it be commuted. This is not contrary

to law, the criminal is not under the jurisdiction of the countries that admit the death penalty, and between not punishing him at all and punishing him with the penalty next inferior in severity, the latter evidently is preferable.

But it is said, that we discredit our own legislation, if we admit the exception which Venezuela wishes to make, if we admit this disavowal of the death penalty. In the first place, I do not believe, that the legislation of the countries which admit the death penalty, will be discredited by accepting that another country, which does not admit it, should stipulate the condition, that said penalty be not applied. It is not established thereby as a principle accepted by all the countries, but it simple gives to each one the right to impose that merely optional and not imperative, condition: this simply signifies an act of tolerance on the part of all the countries, but by no means the abrogation of the principles recognized in their respective constitutions, and by no means implies a discrediting of their laws. It is equally certain that it was never believed that these principles were discredited by granting extradition, because in other countries that before had admitted the death penalty, the principle has been accepted that each one of them may request the commutation of that penalty when surrendering a criminal.

It must be considered, that the state which is going to surrender the criminal, has not suffered the disturbance of its order which is the cause of the penalty; there has to be considered, that it is granted for many reasons and sentiments, which the country that is to apply the penalty in question, cannot share: and this is what explains the circumstance which I have just indicated: that the countries which establish the death penalty for a crime committed within their territory, claim the right to make an exception in favor of other countries; in this manner, the principle is in no wise endangered, that there is no objection whatever, that the countries that admit the death penalty, may defer to the opinion of those which do not admit it, whose constitutions prohibit it, and that only a desire to force that principle upon the nations that do not admit it, a desire for the predominance of their own opinions, a principle of absolute intolerance, would justify a refusal to enter into such a compromise with the nations that do not admit the death penalty.

What I have just stated, is sufficient for my purpose of contraverting the other argument of His Excellency Mr. Walker Martinez, that all countries might ask, with the same right with which Venezuela, asks, that as a condition for the surrender of a criminal the death penalty be commuted, that all other penalties be reduced, in case they should be more severe than those which the Criminal Code of the country which is to surrender the criminal designates. But it is not a question of such a case, because no country demands such a thing at present; we should confine ourselves to the cases which happen at the present time, and it is plain, that the principle which governs, is that of the jurisdiction of the country which inflicts the penalty, and consequently it is the law of the latter that must be applied; it is a question only of a special exception, based upon the principle contained in the constitution of a country, relating to the death penalty, but not to others; it is only because we are confronted by this principle of the inviolability of

human life that this discussion has arisen, and His Excellency Mr. Galavis has spoken only with reference to that principle. This disposes also of the argument advanced by His Excellency Mr. Cuestas, that the treaties which we may make here, abrogate the laws of our countries. These cannot be abrogated as far as constitutional principles are concerned, because all nations are subject to a legislation which is supposed to be never abrogated by treaties to the contrary. In the second place, because these principles are of such a nature, that they possess a lively interest for the ideas and sentiments of the countries that accept them: consequently, it would not be possible, for anybody, by reason of a treaty, to destroy these ideas and sentiments.

His Excellency Mr. Lopez Portillo has insisted on the principle that the law applied be that of the country which has to inflict the penalty and in whose territory the crime has been committed; but nobody has denied this principle; what we sustain, is, that the principle has become inoperative by the flight of the criminal, and in order to return the criminal, it is necessary to annul it; naturally it would be preferable to sustain it to its full extent, but that is not possible. The principle of national jurisdiction for the punishment of crimes committed within the national territory, may naturally suffer exceptions by reason of treaties like the present, for the purpose of procuring that the criminals, who have placed themselves outside of the jurisdiction, may be returned to the same; this is beyond discussion of any kind.

With respect to the clemency that may be asked, it is natural that we should accept the principle proposed by His Excellency Mr. Lopez Portillo, taken from the treaty concluded between Italy and Mexico, and contained also in many other treaties; but this principle may be accepted independently by the modification proposed by His Excellency Mr. Galavis, but cannot substitute it, because the latter delegate bases his argument upon a principle of the constitution of Venezuela which he cannot disregard and which prevents him from signing the treaty without the condition to which he has referred. And as the right of clemency should be voluntary and not compulsory, the difficulty remains in all its extent.

Summing up, I believe that the arguments which sustain the addition proposed by His Excellency Mr. Galavis, subsist in their entire force; I believe, that he, or rather Venezuela, is not in a position to yield; I believe that all the countries which admit the death penalty may, accede without derogating the principles contained in their legislation and without discrediting it. I believe, that they would derive no advantage from the circumstance that Venezuela does not enter into this agreement, because, if there are treaties in which both parties make concessions, and consequently what one concedes, serves as a compensation for the concession made by other, such is not the case in this instance. What would be the consequence if Venezuela should remain apart? That the other countries would not procure the surrender of the criminals who might go to Venezuela, and on the other hand they would not deliver those of Venezuela. And what advantage would we derive from this, we who in any case are advocates of the punishment of those who have committed a crime, and who have fled from the territory in which they

have committed it? What advantage would it be to have in our territories, free from punishment, the criminals that may have come to us from Venezuelan territory? Consequently, I can see no reason whatsoever for excluding Venezuela from this treaty, but on the contrary, I see an advantage in the entry of Venezuela into the treaty, because all the other countries will not insist upon the condition, that in all cases the death penalty be inflicted, if the respective crime merits it; and only in the case of Venezuela its application would not take place, provided its constitution is not modified.

Thus, no matter from what point of view the question is considered, the most practical thing is to consent to the modification which Venezuela has submitted.

*His Excellency Mr. Galavis.*—I regret really, that I cannot accept the idea of His Excellency Mr. Lopez Portillo, and my reason for this is the following: let us suppose that in the Treaty of Mexico, to which he has referred, the article which he has read were to be suppressed. Would the government of Mexico, or that of Italy, no longer have the right of requesting the other government to which a criminal is going to be surrendered, that the death penalty be commuted? Undoubtedly no: both governments have the implicit right to make such a request. Thus, to insert the article in the treaty or not amounts to the same thing. For this reason I cannot subscribe to the proposition of His Excellency Mr. Lopez Portillo and he may believe that I sincerely regret it.

*His Excellency Mr. Chavero.*—I have asked for the floor simply to make two remarks. The first one is, that, except on sentimental grounds, we cannot condemn the death penalty. All the civilized nations of the world, with the exception of very few, have this penalty, which for this reason responds to the present state of civilization.

The second remark is intended to controvert the arguments of His Excellency Mr. Alzamora. In our Mexican legislation we have the following precept: a traitor to his country can never receive clemency, and our constitution, in Art. 106. says: «Whenever a sentence has been pronounced for official crimes, no clemency can be granted to the criminal. «For this reason the Mexican Delegation could never accept the proposition offered by His Excellency Mr. Galavis.

*His Excellency Mr. Leger.*—*Delegate from Haiti.*—The honorable Delegates who have taken part in this debate, have considered the matter from the philosophical and political point of view, and I will permit myself to consider it from a different one. In the majority of the eighteen nations represented here, there is a profound line of separation between the faculties of the executive and judicial departments; only the chief of the state is able to commute or pardon; the judges, or the judicial power must apply the penalties determined by law, without being able to vary these penalties or to commute the sentence. I could not sign a treaty or resolution from which might result a confusion between the three powers constituting the republican form of government.

The judge must apply the law exactly, and if the jury finds that there are no extenuating circumstances, the judge must not reduce the penalty. In the case of homicide, the judge must pronounce sentence

of death, if the circumstances of the case are comprised in the law which established that penalty. For this reason, it appears beyond doubt, that the Executive of a state cannot obligate himself to make a substitution of the penalties, as is proposed, because it is not part of his functions either to do so himself, as to him only belongs the right to exercise clemency, or to impose such obligation upon the tribunals, which exercise their functions with entire independence. Only as a matter of mere courtesy can the governments commute the penalty of the accused, the extradition of whom they ask, when in conformity with their own laws they may have the power to make such commutation and there should be no provision in these laws opposed to such a proceeding, in the case under consideration.

I consider, therefore, the proposition of His Excellency Mr. Galavis as dangerous, as it tends to mix to confound, the attributes of the Executive and Judicial Power; however, if the honorable Delegate from Venezuela should modify it, so as to avoid the objection which I have pointed out, it is possible that I may then find it acceptable.

*His Excellency President Raigosa.*—The hour fixed by the rules having arrived, the session is suspended in order to continue the debate in the session of the afternoon, His Excellency Mr. Lopez Portillo y Rojas having the floor.

SESSION OF JANUARY 4,  
(Afternoon session)

*Secretary Macedo.*—The discussion of the article proposed by His Excellency Mr. Galavis will be continued.

*His Excellency Mr. Lopez Portillo y Rojas, Delegate from Mexico.*—Messrs. Delegates: In my opinion the discussion in which we are engaged is suffering from some confusion. We all have labored under the impression, that His Excellency Mr. Galavis found a difficulty arising from the constitution of his country, preventing him from being in accord with the project of treaty of extradition under discussion, in case the exception regarding the death penalty should not be admitted. We all have accepted this point of view, not only those who have defended his proposition, but those who have attacked it. Those who have defended it, have maintained that some of the other republics of this continent would find themselves in the same case, and that their delegates would be in the necessity of rejecting the treaty altogether, unless the Conference would adhere to the idea of His Excellency, because they could not agree to the treaty, if the proposition suggested by him is not accepted; and those who oppose his proposition, even conceding the correctness of the idea advanced by His Excellency Mr. Galavis and his supporters to its last consequence, assert, that the only result of the abstention of the honorable Delegate and of the other Delegates, whose constitutions contain a provision similar to that of Venezuela, would be, that this treaty would not obligate their respective countries, but that it would govern all the rest of the republics whose Delegations should have accepted it.

Well, as I have said before, it appears to me that we have been under a false impression: I do not believe that in the constitution of Venezuela at least in the part which His Excellency Mr. Galavis has cited, a provision exists which prevents him

from being in accord with the treaty, even in the event of its remaining in its present ample form, in case his proposition should not be adopted. The constitutional principle to which Mr. Galavis refers, is this, if I have not wrongly understood him, that in the republic of Venezuela the death penalty has been abolished. Well, this provision in my opinion has absolutely no connection with the question, because the respective constitution governs in each country only; it has no effect, except within the respective territory; it does not impose any obligation, except on the authorities which belong to the respective nation. The Constitution of Venezuela would be violated, in case the Venezuela authorities should apply the death penalty within her territory, or in case they should obligate themselves, by reason of this treaty and it would be absurd to think so, to execute the death penalty within her territory, through an obligation which she might enter into with the other nations here represented. But this is not the case; Venezuela is not going to obligate herself to apply the death penalty within her territory, she will only obligate herself to surrender the citizens of other countries, so that these may apply the law in force within their respective territories.

Consequently the constitutional principle of Venezuela has no connection with the question under debate.

It has appeared advisable to me to make this declaration, because it is important—if it has the force which I attribute to it—and it appears to me that it will place the question in its true light; that is to say: the Constitution of Venezuela will be applied, in the part to which His Excellency Mr. Galavis refers, and which is in accord with this treaty, even in the case his proposition should be rejected; it will not suffer any injury, there will not be the least disobedience on his part to the constitution of his country, in case he should declare himself in accord with the treaty, and it Venezuela should surrender citizens of other countries, even without the reservation proposed by His Excellency Mr. Galavis and these should suffer the death penalty, nothing will have been done beyond complying with the internal laws of each one of the other contracting countries.

*His Excellency Mr. Guachalla, Delegate from Bolivia.*—I did not believe that this discussion would be prolonged to such an extent, citing principles known to all; but as a proposition has been presented, which in my opinion deserves to be taken into consideration, I will state the reasons, on which the vote of the delegation of Bolivia is based.

It has been asserted, that the representatives whose countries recognize the death penalty, would depreciate their own laws, if they were to accept the motion offered by His Excellency Mr. Galavis. As my country recognizes the death penalty for very special cases, and as I have to vote for the proposition offered by the honorable Delegate from Venezuela, I desire to demonstrate that my country in this case acts with perfect logic and in no manner casts discredit upon its laws. In several treaties it has established the same conditions which the proposition of the honorable Mr. Galavis involves, that is, that when the penalty which is to be imposed upon the criminal whose extradition is demanded is that of death, the surrender will be

made under the condition that the penalty to be applied be the next inferior.

But there is a reason of weight, which can be better applied to this case, expressed by the Hon. Delegate of Venezuela. There is a treaty entered into by Bolivia and Venezuela in 1883, in which the principle now under discussion has a larger scope; it establishes that when the penalty to be imposed upon the offender is different in the country asking for extradition from that granting it, the penalty less in degree must be applied; so, as the scope of this principle is so large, it is natural that the Delegation of Bolivia should vote in favor of this proposition. The treaty to which I have referred has been in force many years, almost twenty.

In view of the above considerations, I confine myself to cast my vote in the direction I have indicated.

*Secretary Macedo.*—No one has the floor. The Conference is asked whether it approves the article submitted by the Hon. Delegate from Venezuela.

Upon the vote being taken, the article was approved by eleven Delegates against six. The votes in the affirmative were: Argentine Republic, Bolivia, Costa Rica, Ecuador, United States of America, Hayti, Honduras, Nicaragua, Paraguay, Peru and Venezuela; and in the negative: Colombia, Chili, Dominican Republic, El Salvador and Mexico.

*Secretary Macedo.*—Article 3 of the project which will take the place of art. 4 on account of the proposition of His Excellency the Delegate from Venezuela having been approved is under discussion. His Excellency Mr. Lopez Portillo has submitted the following amendment to said article: «The Nation requested shall be at liberty to surrender or not its citizens.»—The amendment submitted by His Excellency Mr. Lopez Portillo is under discussion.

*His Excellency Mr. Lopez Portillo y Rojas.*—As can be seen, the proposition I have had the honor to submit to the Delegates, and which text I wish to substitute for that of the article under discussion, is not intended to oppose the fundamental idea of the article, but only to amend its text.

The reasons I have had to make this proposition, are the following: I find that the second part of art. 3 reads—I will read the whole article so that it may be better understood:—

«Art. 3. None of the contracting parties shall be obliged to deliver its own citizens by virtue of the provisions of this Convention; but the Executive of each nation shall have the right to deliver them if he deems it proper.»

The above redaction seems to me somewhat incorrect; nations, in their interior organization, are divided into different departments; the Constitution of each country contains a provision to that effect, forming part of its political law; as far as the relations of one nation with another are concerned, there is but one collective entity; therefore, to refer to the Executive Power, seems to me to be an inadequate form in the text which must be adopted for the project. On the other hand, I find that in the project there is the following statement: «the Executive Power shall have the faculty to surrender them.» This, to a certain extent, amounts to trespass upon the interior legislation of each country, because it attributes faculties, by means of an international treaty, to one of the powers of each Nation.

I do not contradict the idea, in substance, because, although I am aware, as all the Delegates are, that at present the opinion of most of the writers on International Law is against the surrender of the citizens of one country to another, I am at the same time aware that most of the Nations interested always make this exception; and I think that the Committee, in asking the Conference that said exception be adopted, did so because it wanted to submit a practical treaty, and knowing that most of the Nations of this Continent always make such exception in their treaties, has tried not to go against the principles adopted by the American Nations, and has proposed something which might be considered as an innovation of those ideas.

I therefore repeat that I do not contradict the idea, in substance, but only the text of the article. In my opinion, the difficulty will be avoided by adopting the text I have had the honor to submit to the Conference.

*His Excellency Mr. Chavero, Delegate from Mexico.*—I take the floor to explain to the Conference, and especially to our honorable colleague Mr. Lopez Portillo, why the Committee used the words «Executive Power.» The Committee used it because it has been constantly the practice of the Department of Foreign Affairs of Mexico. In the different treaties negotiated by our Government with other Nations, it has been deemed advisable to insert, in order to avoid difficulties and doubts, the words «Executive Power.»

In the documents relating to the last treaty entered into with Italy, attention is called to this point and also to the advantage of using these words. Furthermore, there is this important consideration: all international affairs are discussed by the Executive Powers of different States; the Executive Powers are the ones who negotiate treaties, although they may be approved later by the senates; the Executive Powers are those that fulfill treaties, and in order to avoid difficulties and doubts, the Department of Foreign Affairs of Mexico has always considered it well to use the term «Executive Powers.»

Naturally, I as Delegate from Mexico, went to consult our Secretary of Foreign Affairs, and I have brought his ideas to the Conference.

*His Excellency Mr. Guachalla.*—Mr. President: I think that the article should be accepted by all the States herein represented, since it is a principle recognized by all the American Nations. With regard to the Delegation of Bolivia, it will undoubtedly vote accordingly, because it has just celebrated a treaty with the United States containing this very clause; but a doubt comes to me; something appears to be lacking: if the surrender of a citizen of a country is optional, and the Government upon which demand is made decides not to surrender him, I ask, what would happen? Would the offence remain unpunished? Would not the offender be tried in the country to which he belongs, according to its laws, especially in South America?

I would like to know the opinion of the honorable Committee as to whether it would find more or less correct the form established in the treaty of Venezuela with Bolivia, and I confine myself to stating that I consider it necessary that the article be completed, at present or later on, to the effect that the committing of a crime may not remain unpunished except in case of the non-surrender of the offender.