

*His Excellency Mr. Chavero.*—I think that the amendment submitted by our esteemed colleague Mr. Lopez-Portillo should be voted on first, and afterwards I will be pleased to answer the Hon. Mr. Guachalla.

*His Excellency Mr. Walker Martinez, Delegate from Chili.*—I believe, Mr. President, that we must all give an explanation of our actions. Out of deference to my colleagues, I will explain the reason why I abstain from voting on this matter, although without attacking the proposition of the Hon. Mr. Lopez-Portillo.

This morning, when I seconded the opinion of my honorable colleagues, I was not sustaining personal ideas, nor new ideas which might bear upon my Government so as to be accepted by it; I was seconding principles which have been long ago adopted in my country, principles with regard to which I had on two occasions received direct instructions from my Government with both Brazil and Portugal. I have had the honor to be commissioned to celebrate treaties of extradition; in both countries the death penalty is prohibited; I therefore had to sustain the principles of my country against those of the representatives of the other two countries, whose propositions were similar to that accepted now by the Conference, and in both instances I had instructions from my Government not to accept them, and also in both instances I was fortunate enough to obtain the acceptance of the principles, so intelligently explained by the Hon. Mr. Lopez-Portillo, for the reciprocity of the countries and to have the sanction of its laws extended, without involving the granting of a constitutional power. Chili, Mr. President, will not sign the project under discussion, if it is to contain the principle adopted by the Conference; and if Chili cannot sign it, I do not think it proper that its representatives should exercise any influence by voting in favor of or against a resolution.

To my mind, the treaty, with the above provision, is not reciprocal; the prime condition of all treaties between Nations, that is, reciprocity, will cease to exist. The laws of Venezuela and of other countries, Ecuador among them, which do not accept the death penalty, will be fully sanctioned, since all Nations adhering to said treaty bind themselves to have said laws fully sanctioned in their respective countries, while the laws of the other Nations will not be fully sanctioned, since one of those laws, that providing for the death penalty, will not be complied with in the Republics not accepting the death penalty, because there is another principle requiring that the law must be complied with such as it is.

There may happen this most particular case, which I fail to see how might be decided: Two prisoners have committed a crime together and have the same responsibility; one of them escapes and the other is arrested: the one who escapes is arrested in Venezuela, a country where the death penalty is abolished, and is surrendered upon the condition that said penalty be not imposed; the one who was arrested in the country where the crime is committed undergoes the death penalty, while the one who has escaped is punished with perpetual imprisonment.

The fact that I cannot go beyond my powers, if I should accept that part of the article in question,

will prevent me from signing the project, for which reason I will abstain from taking part in the debate and also from voting on any of its points.

*His Excellency Mr. Reyes, Delegate from Salvador.*—I request the floor only to second the opinion of the Hon. Mr. Walker Martinez; and I am compelled to do so, because the Constitution of Salvador prohibits the President of the Republic to commute the death penalty, established by our laws, without a prior report from the Supreme Court of Justice. The President of the Republic, in the present case, would have to violate a constitutional law, because the report of the Court of Justice would be according to the circumstances in the case; and if from such circumstances it would appear that the death penalty ought not to be commuted, the Supreme Court of Justice would have to pass a decision against the offender, and the President would then be compelled to disobey the decision of the Supreme Court on account of the provision adopted by this Conference.

On that account, I will abstain from taking part on the debate, due to the fact that the treaty is contrary to the Constitution of Salvador.

*His Excellency Mr. Chavero.*—As two members of the Committee have withdrawn from the debate, and one of them is against the proposition, I believe that the Committee no longer exists. I request the President to decide this difficult point.

*His Excellency Mr. Foster, Delegate from the United States of America.*—I would ask the unanimous consent of the Conference to change the vote of the Delegation of the United States on the proposition on the honorable Delegate from Venezuela, and if this permission is granted, I rectify the vote referred to and cast it in the negative.

*Secretary Duret.*—The affirmative vote of the United States of America on the article proposed by His Excellency the Delegate from Venezuela, has been rectified, and consequently there remain ten votes in the affirmative and six for the negative.

*His Excellency Mr. Cuestas, Delegate from Uruguay.*—I only desire to call attention to the fact, that the circumstance of having arrived at the moment when the ballot terminated, has prevented me from taking part in the same; but if my vote can be added to the votes in the negative, I request that it be done, and if not, that it be so stated in the minutes of today.

*His Excellency Mr. Guachalla.*—I request the Hon. Mr. Foster to please state, whether in withdrawing his vote cast for the proposition of the honorable Delegate from Venezuela, he has given it against the same, or has abstained from voting altogether?

*His Excellency Mr. Foster.*—My vote is in the negative.

*Secretary Macedo.*—The vote of the Delegation of Uruguay being included, the result of the ballot is as follows: for the affirmative 10; negative 8.

*His Excellency the President.*—His Excellency Mr. Chavero having stated that two of the members of the Committee have abstained from continuing to sustain the debate, and that another is against the proposition, it is evident that the Committee remains incomplete, and for this reason the present debate is suspended, so that the Committee may come to an agreement or withdraw its report. Consequently the order of the day will be continued with the project which was announced as Number 2.

SESSION OF JANUARY 6, 1902.

Secretary Duret read the minutes of the previous session, which was offered for discussion.

*His Excellency Mr. Chavero, Delegate from Mexico.*—The minutes read as follows: «His Excellency Mr. Chavero, basing his argument on the fact, according to the Constitution of México, that whenever a sentence has been pronounced for a crime of official responsibility, clemency cannot be granted to the criminal, said, that the Delegation of Mexico could not accept the proposition of His Excellency Mr. Lopez Portillo.»

My principal argument was the Penal Law which prohibits clemency to a traitor of his country, who must be punished with death, according to article 23 of the Constitution. I request that the rectification be made.

*His Excellency Mr. Galavis, Delegate from Venezuela.*—The minutes say: «His Excellency Mr. Galavis did not accept the argument proposed by His Excellency Mr. Lopez Portillo, for the same reasons as those stated by the honorable Delegate from Perú.»

I added something more: I said that I did not believe that in the treaty any of the government would be prohibited to ask for a commutation of the death penalty, when they were delivering a criminal; consequently, that to put the clause proposed by His Excellency Mr. Lopez Portillo into the treaty, or not, amounted to the same thing. I desire that the rectification be made.

*Secretary Duret.*—The rectifications proposed by Their Excellencies Messrs. Chavero and Galavis will be made, and the Conference is asked, whether it approves the minutes as corrected.

*His Excellency President Raigosa.*—It is adopted.

*His Excellency Mr. Leger, Delegate from Hayti.*—In voting in the last session on the additional article 3. offered by the honorable Delegate from Venezuela, there was a miscomprehension on my part, because I believed that in speaking of the commutation of the death penalty, it was not established as compulsory, but that it was left simply as optional for the state making the demand. I have come to understand the real sense of the article, and according to the ideas which I expressed yesterday in this honorable assembly, I cannot maintain my affirmative vote, and will have to rectify it in the sense of not approving the said additional art. 3.

*His Excellency Mr. Galavis.*—According to the provisions of the article, the country the demand is made upon is not obliged to request the commutation of the death penalty, but it is compulsory for the country that has made the demand, to commute that penalty, if the country the demand is made upon imposes that condition, provided in its constitution exists the guaranty of the inviolability of human life, as expressed in the article I proposed.

*His Excellency Mr. Leger.*—The confirmation of the sense of the article which the honorable Delegate from Venezuela has just made, compels me to insist upon the rectification of my vote, and I request that it be so stated in the minutes.

*His Excellency the President.*—As the observation made by the honorable Delegate from Hayti, does not refer to any modification of the minutes of the previous session, but to a rectification of his vote, I have to rule, that this rectification be made in the minutes of today, but not as a rectification of the previous ones.

*His Excellency Mr. Chavero.*—In the minutes of the previous session it is stated, that the proposition was adopted; and now, as the honorable Mr. Leger has withdrawn his vote, the result is that the proposition has not received the ten votes, that is, the majority which the Regulation required.

*His Excellency Mr. Galavis.*—I ask, whether a proposition, after having been adopted, can afterwards be rejected.

*His Excellency the President.*—The question which has been submitted to the Chair is really a difficult one, because no provision has been made for the same in our Rules. However, following the parliamentary practice which is universally recognized, I have to declare, except the Conference decide otherwise, that when the minutes are once approved, the rectifications which do not refer to their text, cannot influence the votes which are stated in the minutes. Consequently the article must be considered as definitely adopted.

*His Excellency Mr. Chavero.*—His Excellency Mr. Leger having made his rectification, for the reason that there was an error committed, by not comprehending what was going on,—which is easy to comprehend, as his language is not the Spanish,—it cannot be said that a question is adopted and at the same time rejected; for that reason, with all respect, following the parliamentary practice, and if His Excellency the President does not object, I would request him to submit his ruling to the vote of the assembly.

*His Excellency the President.*—The Chair has to submit in any case, and especially when its rulings are concerned, to the decision of the Conference, but I only ask to be permitted to call attention to the fact, that in as much as the minutes of the previous session have been approved, it would be equivalent to re-opening the debate on a matter which has been already adopted definitely. However, the motion of His Excellency Mr. Chavero having been made, the Chair will ask the Conference, whether or not it sustains the ruling.

*His Excellency Mr. Carbo, Delegate from Ecuador.*—The best way we can proceed is to reconsider the matter, and not subject the ruling of the Chair to the decision of the Conference.

*His Excellency the President.*—According to the motion offered by the honorable Mr. Carbo, the Conference will be asked, whether Art. 3. offered by the honorable Mr. Galavis is to be reconsidered.

*Secretary Duret.*—The Conference is asked whether Art. 3. offered by His Excellency Mr. Galavis is to be reconsidered.

The vote having been taken, thirteen votes were in the affirmative and five in the negative. In the affirmative voted: Colombia, Costa Rica, Chili, Dominican Republic, Ecuador, Salvador, United States of America, Guatemala, Haiti, Honduras, México, Nicaragua and Uruguay; and in the negative, the Argentine Republic, Bolivia, Paraguay, Peru and Venezuela.

*Secretary Duret.*—Art. 3. is again under discussion.

*His Excellency Mr. Bermejo, Delegate from Argentina.*—I never imagined that this article could be the cause of all the proceedings which it has provoked in the Conference, and I never imagined it,



Mr. President, because it appeared to me to be a clause so common, so general, so often repeated in the different treaties of extradition, that its adoption or rejection, in my opinion, could but be the consequence of a special situation, in which one might find himself, regarding some doctrinary point with respect to the application of the death penalty. In my country the death penalty exists; but never, in no case, under no circumstance, has the support of that penalty been made a fundamental question for accepting or rejecting an extradition treaty. The proof of this is, that in the Treaty of Montevideo of 1889, which as a juridical work, may be said to be perfect, if that word may be applied to human works, it was established in one of its articles, the 29th. as follows: «When the penalty which is to be applied to the criminal is that of death, the state which grants the extradition may require that it will be substituted by the next inferior one.»

It is asked regarding the manner of making such substitution, and the answer is given: if it is a question of a pardon, the Constitution does not permit the pardon on the part of the Executive, without a previous report of the Judiciary. In effect, this is a constitutional provision; but for me, this presents no difficulty: a treaty should foresee such a case, and consequently, if the treaty says when the death penalty has to be commuted to the next inferior one, it simply says, that there is no necessity for commutation, but that simply the compliance with that provision of the treaty is insisted on, and therefore, without the necessity that the Executive should say: I make use of my constitutional power. No, gentlemen, that faculty has no restrictions; whenever a criminal is condemned to the death penalty and the Executive wishes to reduce it to the next inferior one, he does so because he wishes to do so; but not because he may want to invoke the provisions of a treaty. In this case, a constitutional faculty is confounded with the precept, that whatever is sanctioned by a treaty is law for the nation. What happens then? That whenever a criminal condemned to the death penalty is surrendered, he knows that some punishment is going to be applied, whether it be that of the judicial power or that of the Executive, or of whoever it be; and consequently, he knows that he cannot be condemned to be decapitated, but to the next inferior penalty, which will be confinement. Thus it is seen, that the commutation and the application of this principle have nothing to do with the Constitution.

And, Mr. President, what objection is there to the acceptance of this provision, which, as I have said, exists in the Treaty of Montevideo, and has been accepted by four nations in which the death penalty exists? Our own country, whenever this condition has been indorsed for the surrender of criminals, has experienced no difficulty, because really there is none. For that reason, Mr. President, notwithstanding this penalty exists in my country, have I accepted the addition proposed by the honorable Delegate from Venezuela, and I believe that all difficulties would be removed by reproducing the text of the Treaty of Montevideo: there is no need to speak of commutation, it is sufficient to say: this is the condition which can be established between nations in whose territory the death penalty is not admitted.

But it is said, that there is no reciprocity. Sir, I

believe that extradition is today so generalized, the nations have become convinced to such an extent that they derive no advantage from retaining criminals in their territory, that they now impose no conditions whatever; and still more: things have arrived at such a point, that if a state in whose territory an individual has committed a crime does not request extradition, there is the right of expulsion. Thus the nations are to such an extent desirous of not retaining pernicious individuals in their territory, that when they are not demanded by the state in which the crime has been committed, the state of refuge goes so far as to expel them.

What objection, Sir, can there be, then, that this condition be established, when nobody is opposed to it? Because, if one nation limits the penalty and requires that capital punishment be not imposed, our adhesion simply implies a deference; and if this principle really has not been established, it will be established some day. I believe that at the present time the death penalty cannot be abolished, and I cannot see why this circumstance should be regarded as an objection, and one of such magnitude, as to make the treaty impossible. I cannot explain this to myself.

These observations have been the basis of my vote, and they will be its basis in the new ballot, in the present form of the article or in any other that may be discussed.

*His Excellency Mr. Galavis.*—Art. 3., as proposed by me, is not opposed to the Constitution of Mexico, according to the article which the honorable Mr. Chavero has had the kindness to read in the last session. The article in the Mexican Constitution imposes the death penalty in the case of treason and prohibits the pardon, for which reason His Excellency says, it will not be possible to accept my proposition; but to pardon is one thing and to commute is another: the pardon is prohibited, that is to say, the remission of the penalty; but commutation is not prohibited, that is to say, the change of one penalty for another. Thus the article proposed by me is not in conflict with the Mexican Constitution, as has been maintained, I believe, that Mexico could accept this article perfectly without violating its constitution.

As far as the Delegation of Venezuela is concerned, if the article is not approved, as it cannot sign a treaty which is in opposition to the constitutional laws of its country, it will be in the necessity of abstaining from voting on the same.

*His Excellency Mr. Chavero.*—I am not surprised at the errors of the honorable Mr. Galavis with regard to the Mexican legislation, because he is not under the obligation of knowing it. The Constitution imposes the death penalty for the crime of treason to the country; our Penal Law says that the traitor of his country cannot be pardoned, and in our legislation the pardon is not absolute, except in very rare cases; the pardon consists in commutation. For this reason Mexico cannot accept the obligation of commutation, because in Mexico it means the pardon prohibited by law.

No other delegates having desired to speak on the question, Secretary Duret proceeded to put the question to vote, the result being nine votes in the affirmative and nine for the negative. For the proposition voted: Argentine Republic, Bolivia, Costa

Rica, Ecuador, Honduras, Nicaragua Paraguay, Perú and Venezuela; and against Colombia, Chili, Dominican Republic, Salvador, United States of America, Guatemala, Haiti Mexico and Uruguay. The vote being a tie, His Excellency the President ruled that another ballot be taken, and the result was the same, nine votes for and nine votes against.

*His Excellency Mr. Chavero.*—Before the Chair makes any declaration, I request that the second part of Art. 21 of the Regulations be read.

Secretary Duret read the second part of Art. 21. referred to.

*His Excellency the President.*—The ballot having resulted in a tie for the second time, according to parliamentary practice the discussion must be deferred, to be continued in the next following one; in our Regulations, and according to the article which has just been read, it is simply provided, that whenever there is no absolute majority of the Delegations present in favor of an article or project, it cannot be considered adopted; neither can it be considered rejected, because the same reasons apply to the negative vote as to the affirmative. Consequently, it appears rational to defer the discussion of the article to the next session, provided the Conference should not decide otherwise.

*His Excellency Mr. Chavero.*—Parliamentary practice should be observed, whenever there are no express provisions in the Rules; those of the Conference say, that the proposition cannot be considered adopted, because it has no absolute majority. It should be declared that the proposition of His Excellency Mr. Galavis is not adopted.

*Secretary Duret.*—The Chair rules that discussion on the article be deferred until the next session.

*His Excellency Mr. Walker Martinez, Delegate for Chili.*—After declaration that the proposition made is rejected?

*His Excellency the President.*—I request the Honorable Mr. Walker Martinez to please consider that article 21 of the Rules may be interpreted in two senses. It is evident that the article proposed by the Honorable Delegate from Venezuela is not approved; but it cannot be declared as rejected either; there are nine votes against and nine in favor, and consequently there is no majority in any sense; nor can it be said that it is definitely rejected, nor can it be said either that it is approved. In this difficult situation, the prudent, the logical course is to await and see if at the next session some of the Honorable Delegates have changed their votes in favor or against it, and then make the declaration in the sense of the majority; but it would be irregular, and unusual where a matter before the Conference has resulted in a tie of exactly one half of the total number of votes present, for the Chair to declare it resolved in one sense or the other. It is true that the Rules state: «Except in cases expressly indicated in these Regulations, the propositions presented to the Conference, shall be considered as approved when there is a united affirmative vote of the absolute majority of the Delegations represented by one or more of its members in the session in which the vote is taken; the Delegation sending to the Secretary its vote in writing being considered as represented and present.»

But the final part of the article also states: «When by reason of abstention, there results no absolute majority in the vote of the Delegations present, at

the Conference the matter shall be reconsidered at the next session, and if at the latter the abstentions continue, the matter shall be decided by a majority of the Delegations voting.»

Here may be applied by analogy, the idea enclosed in the final part of art. 21, and say: «if in case of abstention, that is to say, when a Delegation has not pronounced its opinion, the matter is not decided by a majority of votes in an affirmative sense, it cannot for this reason be considered as approved or rejected, but must be reconsidered at the next session, so that it may be decided. If this analogy can be applied to the present case, then the resolution of the Chair is in conformity with the spirit of art. 21.»

Of course, Messrs. Delegates, the Chair does not try to exercise pressure in any sense, much less in a question involving a reunion of Plenipotentiaries, wherein solely by analogy can one cite the practices of parliaments, and these have no force nor value if they are not approved by the Conference.

Therefore, the Chair, not desiring to antagonize in any sense, pro or con, the votes cast, is of the opinion that the matter should be adjourned for consideration at the next session, for final decision.

*His Excellency Mr. Pineda, Delegate from Mexico.*—Sir: Without any intention of opposing the declaration of the Chair, and actuated by a desire to arrive at a resolution of this incident in the most expeditious and satisfactory manner possible, I am of the opinion that in this case we may appropriately invoke art. 18 of the Regulations, in order that the Conference may constitute itself in general committee. If this debate is adjourned for the next session, as proposed by the Honorable President of the Conference, when two ballots have demonstrated to the Assembly that there are nine votes in pro and nine in contra, and when there is no possibility of changing this number, as at present the Conference consists of eighteen Delegations, it is sure that at the next session there will be cast nine votes in pro and nine in contra, and then it would be necessary to invoke the article referred to for the purpose of constituting the Conference in general committee, in order to decide this incident. Would it not be better to debate the question immediately, in order to arrive at a resolution? My opinion is that we will thus gain time and it may be possible to arrive at an agreement, respecting the merits of the question, or at least with respect to the intelligence conveyed in the reglamentary article which has been so extensively discussed. I propose, then, that the Conference be constituted in general committee.

*His Excellency Mr. Galavis.*—I ask for the floor, Mr. President.

*His Excellency the President.*—I pray the Honorable Delegate to permit the Secretary to read art. 18, prior to conceding him the floor.

*Secretary Duret.*—Art. 18 of the Regulations reads: «The Conference may, at any time, in pursuance of corresponding proposition, constitute itself into a general committee, in order to change ideas, without subjection to the Rules, upon any matter inserted in the order of the day, or any incident proceeding from it. The proposition to constitute itself into general committee, shall be considered in preference and shall be submitted to vote without discussion. During the general committee, no vote can be taken, and the representatives of