

the press and the stenographers will not be allowed in the hall.»

*His Excellency the President.*—In conformity with the article cited, the floor cannot be conceded to His Excellency Mr. Galavis. The Conference is asked if it will be constituted in general committee.

The ballot taken by Secretary Duret, His Excellency the President announced: By unanimous vote the Conference is constituted in general committee.

The Conference constituted in general committee, and one o'clock p. m. having arrived without any definite agreement having been reached, the session was adjourned until the following day at 10 a. m.

SESSION OF JANUARY 8, 1902.

*Secretary Duret.*—By virtue of the difference of opinions at the general committee into which the Conference was constituted yesterday, the Chair rules that the vote be again taken upon art. 3, proposed by His Excellency Mr. Galavis.

*His Excellency Mr. Walker Martinez, Delegate from Chili.*—Prior to a vote on the article, I wish to explain something. The committee, Mr. President, has considered that perhaps it might be possible to exert one more effort in order to procure a just harmony in the Conference. It is of the opinion that one of the labors that may prove most fruitful for this Congress, will be to leave to the American countries a treaty of extradition; but it understands at the same time that if the treaty proposed cannot be obtained in its entire extent, if the signatures of the eighteen nations represented here cannot be secured in their totality, perchance we may reach an agreement in some form by which the American nations will remain united. Thus, for example, if there are some countries that maintain capital punishment and would offer no objection to the treaty, remaining by this fact leagued among themselves, there are also other countries that do not accept it, because it does not constitute the safeguard that they desire to create.

For this reason, and in conformity with the proposition that I shall have the pleasure to present, these countries may remain leagued with those that have declared themselves disposed to make the concession that in the judgment of others means naught less than the rupture of reciprocity. Thus, the same treaty may unite, on one side, those who accept capital punishment, and on the other, those who do not accept it, and even those who are disposed to make that concession.

Still, Mr. President, as I have already stated, there are countries that, despite the fact that their legislation prohibits capital punishment, have recognized, however, that the principle of reciprocity is superior in order to facilitate the sanction of its laws, and I am of the opinion that what the representatives cannot do here, because they find themselves in presence of a constitutional article, perhaps may be accomplished by the Governments by means of the ratification of a treaty. Hence, Mr. President, to facilitate this labor, for the future, the Committee proposes a temporary provision to be added after the termination of this treaty, and one which would permit the Honorable Delegates to whom I have referred, to sign, submitting it to their respective Governments, within a prudent space of time, for

approval and ratification, eliminating in this manner the difficulties that have arisen. In any event there would result, a treaty that would unite thirteen Republics having in their legislation capital punishment, and would separate only those who have not been able to accept it. The temporary provision reads thus:

«The Representatives of Costa Rica, Ecuador, Honduras, Nicaragua and Venezuela sign this treaty, with the reservation that their respective governments will not deliver the delinquents exposed to capital punishment, according to the legislation of the demanding countries, except under promise that said penalty will be commuted for the one immediately inferior. If their Governments maintain the same reservation upon ratifying the present treaty, this will unite their countries only with those that accept the condition mentioned.»

I present this amendment in order that it may be published, studied, corrected and improved by the Honorable Delegates. I have previously consulted with various of my honorable colleagues, who have pronounced it acceptable.

*His Excellency Mr. Chavero, Delegate from Mexico.*—I think that in conformity with the changes of the Regulations, a modification once presented must be discussed at once. It is not important that it be approved prior to its presentation, for later it will be put in its place, that is at the end of the treaty; but perhaps this difficult point may be resolved at once, by accord of the Conference. The Honorable Mr. Walker Martinez is in conformity with this.

*His Excellency Mr. Galavis, Delegate from Venezuela.*—Before opening the session, the Honorable Representative of the United States, Mr. Buchanan, spoke to me, and requested me, in case of a tie, upon revoting the proposition, to accede to the modification that the Honorable Mr. Walker Martinez had so kindly presented. I acceded, stating to him that I would have no objection, provided this idea were presented as a proposition, and that in such case I would withdraw my article, if it were stated that the proposition had been made to-day.

*Secretary Duret.*—In conformity with article 17 of the Rules, as amended, there is now under discussion the amendment proposed by His Excellency Mr. Walker Martinez.

*His Excellency Mr. Buchanan, Delegate from the United States of America.*—I request that the Secretary please read the proposition in English.

Secretary Godoy read the proposition, translated into English.

*His Excellency Mr. Buchanan.*—Mr. President: I desire to know from the Committee, if it considers that the article now proposed, must follow immediately the article now under discussion, or if it will come after all the articles of the treaty. In this case, it certainly is not opportune to decide regarding it.

*His Excellency Mr. Chavero.*—This article is an amendment of the one we are now discussing. Perhaps there may be some irregularity in having presented it at this time, when it ought to be presented at the final part of the Convention; but this irregularity is pardoned, because it tends to save a difficulty that arises in the Conference, and it may be said here, as in mathematics: the order of the factors does not alter the product.

*His Excellency Mr. Bermejo, Delegate from the Argentine Republic.*—As I comprehend, Mr. President, the amendment proposed, is of the following import: the Nations that by reason of their fundamental law cannot deliver criminals condemned to capital punishment, may retain the attitude that they observe upon signing this treaty, in substance, leaving without effect their previously having sanctioned it.

As the country that I represent does not attach great importance to this question, since it has accepted some treaties with this clause and others that do not contain it, according to the exigencies of the law in the contracting countries, I do not see what vote can be had in this case, if it is not one to the effect that the Delegations of Costa Rica, Venezuela, etc., may make the reservations that they esteem convenient. I am of the opinion that we have nothing whatever to do on this point, we who have naught to reserve: so the Delegation of Argentine will take no part in this vote.

*His Excellency Mr. Walker Martinez.*—Undoubtedly the Honorable Delegate from the Argentine Republic has failed to comprehend the fundamental idea that I conceived in presenting this amendment. We have to vote admitting the fact that various of the Honorable Delegates have abstained, and for this reason I presented the relative article, in order to confirm this fact. For this reason, in order to obviate the difficulty in which we find ourselves, the indication of the Honorable Mr. Chavero seems to me most acceptable.

So, then, in facing the actual situation, we admit the fact that certain Delegates have abstained from signing the treaty for the reasons given, and then we establish a provision that has to be temporary, for it is to determine the procedure necessary to secure the signatures of the others and of the ratification of the Government; when the ratification of these is obtained, it will be known between what Nations this treaty will have effect then we will see who accept it, without reserve, and just who accept it with a certain reservation. If for example, the Government of Venezuela insists in sustaining the reservation of its Delegate, and the Government of Argentina sustains that it must not accept this exception, there will be no treaty between Venezuela and Argentina, but there will be one between Argentina and other Nations of the Continent.

Thus, we ought to approve this temporary provision, for it tends to prescribe the manner of definitely signing the treaty and between what Nations it will be in force.

*His Excellency Mr. Bermejo.*—In my opinion, each Delegation having the right to accept or not certain conditions, the Argentine Delegation has nothing to do in this particular, and, for this reason, as I have said before, abstains from voting on the question.

*His Excellency Mr. Chavero.*—I think it convenient to state to the honorable Delegate from the Argentina, that in voting this proposition and in signing this treaty, there is absolutely nothing contrary to the sage and advanced politics of the Republic that he represents. For this I ought to return to the Congress of Montevideo and repeat the words used there by the sage parliamentarians Messrs. Saenz Peña and Quintana, who so greatly honored their country in that Conference and suppress my words,

although I believe that the arguments that I have used in this question have not even been answered. The Congress of Montevideo was of the highest order, as regards the principles of Modern International Law: article 1 of its treaty is a summary of all of them. It states: «Art. 1. The crimes or offenses whatsoever may be the nationality of the agent, of the victim or of the condemned, will be tried by the tribunals and the penalty fixed by the laws of the nation in whose territory jurisdiction is established.»

All those signing that treaty, have affirmed the law established by Mexico, in soliciting that in extradition its own laws be respected.

This principle appeared so obvious, that some of the Honorable Delegates of Montevideo failed to see the necessity of confirming it, and then Dr. Saenz Peña stated that, despite the universality of the principle invoked, there are many legislations, like that of Belgium and those of other countries, in which the principle is accepted, and then is debilitated or annulled by casuistic provisions, and added that the circumstances of confirming principles in the project that serve as base to the jurisdiction, cannot be interpreted in a dubious manner and much less negatively.

Replying to the remarks of Mr. Prats, he explained the extent and signification of the article in discussion, and stated that the Congress had not been organized to establish a Penal Code, to which the Nations represented should subject themselves, but to provide for cases of conflict, to adjust them; but leaving to each one of them power in its legislation.

Thus, there can be no doubt in regard to this article. And then later, Mr. Quintana added: «If each of the Nations represented in the Congress had to invoke its internal laws as an impassable obstacle for the international convention, the reunion of the Congress would have lacked a purpose. None of these nations can reasonably aspire to cause the others to ignore their own laws in order to accept exclusively others. All are equally independent: all are equally sovereign. Since Brasil could not adhere to a treaty by reason of her internal laws, the Argentine Republic, Chili and all the others, might say the same, and the treaty would be in consequence, impossible. We have, then, to examine the foundation, the object and contents of the treaty, not decisions of interior laws of each country, but in the elevated principles that the science of International Private Law consecrates. We the Argentinian Plenipotentiaries have offered a fruitful example of this order of ideas. We have never limited ourselves to what our national codes dispose, but we have, on the contrary, endeavored to ascertain accurately if such provisions, in so far as they refer to International Private Law, are just or no. When we have opined that they are not fortified by sciences and experience, we have not hesitated in taking the initiative to place them aside and base our votes upon the principles counselled by interest and the most sound jurisprudence. Solely animated by this spirit, as are undoubtedly our illustrious colleagues, can we arrive at an elaboration of the treaties to which we aspire. On the contrary, the reunion of this Congress will have proved chimerical and useless.»

I repeat the words of the sage Delegates from Argentine to the Congress of Montevideo.

*His Excellency Mr. Galavis.*—I did not propose,

Mr. President, to return to this matter; but since Mr. Chavero has taken the floor to insist upon his arguments regarding the article proposed by me, and which I have withdrawn, I also desire to say a few words.

It is probable, Sir, and it fails to astonish me, that we have not been able, not only to reply, but not even to comprehend the arguments used by His Excellency in attacking the proposition made by me, that ought to be part of article 3 of this proposed of treaty: not only we who take the floor to defend the article, but also the majority of the Assembly were in the same state, unable to comprehend the arguments of the Honorable Mr. Chavero.

I also admire the Congress of Montevideo; I am of the same opinion as His Excellency in that article 1 is a synthesis of all the labors done there in respect to Penal Law; but I also admire article 29, which states: When the penalty to be applied to the criminal is that of death, the State granting the extradition may exact that it be substituted for the penalty immediately inferior.

It is not that the Congress of Montevideo and those who signed that treaty pretended that the law of their respective countries were to govern in each of the countries subscribing the treaty: they only desired to commute the penalty, not that their laws might be applied; one and the other conceded or not, accepted or did not accept, and in such case they would or would not make delivery of the criminal.

I have said, Mr. President, that I did not desire to return to this subject; but the Honorable Mr. Chavero has compelled me to make this explanation.

*His Excellency Mr. Bermejo.*—I profit by this occasion, Mr. President, to thank the Honorable Delegate Mr. Chavero for the flattering allusion that he makes to the labors of the Argentinian representatives in the Congress of Montevideo.

In fact, that treaty of Penal Law—that in a prior session I have referred to as a model, in so far as a work of jurisconsults can be—is perfect, and really if the Committee had reproduced it, I would accept it without removing a single comma.

As I have said, I appreciate very much the recollection, although I do not consider it opportune: it appears to me that we are no longer discussing the point introduced by the Honorable Delegate from Venezuela; Article 29 of the treaty is not pertinent, nor are the others cited with it; we are simply examining a modification proposed by the Honorable Delegate from Chili, which consists, in my opinion, in that such and such Delegations allege the reservations that they may judge opportune in signing the treaty.

So, then, I say, I do not think a vote can be cast here in favor nor against, since the Delegation that I represent is not going to make any reservation at all. And it could not be otherwise. For this reason I arose to state that the Delegation of the Argentine Republic reserved its vote, despite the fact that it might have used the right held by every Delegate to do so without any explanation, but I usually avoid reservations, and vote yea or nay.

I have not pretended to exhaust a debate that I had not aroused; but upon casting the vote in this form, I desired to state why my Delegation abstains from voting. That is all.

*His Excellency Mr. Chavero.*—I will commence by saying that the Honorable Delegate from the

Argentine is correct: we ought not to discuss article 3, since the amendment that we have presented is under discussion, and that certainly was not my intention; but I will not speak again upon that point.

But I wish to rectify the statement of the Honorable Mr. Galavis, when he says that he respects the clause of the treaty of Montevideo, which is in accord with his proposition, respecting article 3.

If the Honorable Mr. Galavis reads the minutes of the Congress of Montevideo, he will see that said article was approved without discussion, which was not sustained by any reasoning, and this makes it clear that it was either arranged by some diplomatic transaction, or was made in one of those moments of fatigue that occur in Assemblies; but as it was not founded on any reasoning, those of Dr. Saenz Peña subsist and the general rule of article 1 of that Treaty.

*His Excellency Mr. Guachalla, Delegate for Bolivia.*—I will add another reason to those already expressed by the Honorable President of the Committee and by the Honorable Delegate from the Argentine Republic.

In fact, reservations are not voted; reservations are made by the country who desires them, because it has a right to make them, without taking into account the affirmations or negations of other countries.

Nor does it ever appear correct to me this system of abstentions, for in my opinion we come here to render an affirmative or a negative opinion; but really, we are now confronted by a situation that places us in a position where we have to do what we have never done, to abstain.

To this reasoning, I ask to be permitted to make a remark. It appears that the discussion of this article signifies the approval of the original article of the Committee, since reservation is mentioned of an article that has not been approved. This seems irregular, and I call the attention of the Honorable President to this point, for I would like to know if the primitive article of the Committee is considered as approved and the proposition made by the Honorable Mr. Galavis rejected.

I shall abstain from voting, consequently, if no better form can be given to the article under discussion.

*His Excellency President Raigosa.*—Replying to the statement of the Honorable Mr. Guachalla, I must declare that by virtue of the remarks made by His Excellency Mr. Galavis in withdrawing the article that he proposed and which caused the tie in the vote, the only matter pending resolution of the Conference at this moment is the new additional article proposed by the Committee. Consequently, the vote will rest exclusively upon the admission or non-admission of this addition to the project.

*His Excellency Mr. Guachalla.*—I respectfully extend my thanks, Sir, for the explanation that you as President have deigned to render us, and permit me to state, with equal respect, that I had not understood that the Honorable Delegate from Venezuela had withdrawn the article; but this being so, in my opinion he could not withdraw it without the consent of the Conference, because this would be the parliamentary procedure. I would be permitted then, in order to regulate the debate, to request the Honor-

able President to previously rule that the Secretary ask the Conference if it allows that article to be withdrawn in order to discuss the one that occupies our attention at this moment.

*His Excellency the President.*—The sole approval by the Conference on the project presented by the Committee have been articles 1 and 2, for His Excellency will recall that in entering upon discussion of article 3, the Honorable Mr. Galavis proposed a substitution of that article, causing a tie in the two preceding votes. So, then, what is now under discussion is the addition proposed by the Committee, the article of Mr. Galavis, once withdrawn such addition considered as a new transitory article will remain at the final part of the entire project. His Excellency, therefore, has a perfect right to vote in pro or in contra, making the reservation that he may deem convenient; the Chair can do naught else but comply with article 17 of the Regulations. For this reason, I have to sustain the ruling of the Chair, insisting that the amendment or addition proposed by the Committee be voted.

*His Excellency Mr. Guachalla.*—I have asked and it appears to me correct, that a vote be cast as to whether or not the withdrawal of the motion of Mr. Galavis be accepted not only because this is a universal parliamentary practice, but also this is because such motion on article was approved first and later tied the vote. Now, could he withdraw an article the legal situation of which was a tie? I believe not. For this reason I have asked that a vote be taken to determine if that withdrawal was accepted, for otherwise we establish the precedent that it is sufficient that the Honorable President declare that any proposition may be withdrawn without the previous permission of the Assembly being necessary.

*His Excellency the President.*—The proposition made by the Honorable Mr. Guachalla being already perfectly defined, the Chair finds it convenient in regulating the debate, interrupting for a moment the discussion on the amendment pending, and consulting the Conference as to whether or no it authorizes the Honorable Mr. Galavis to withdraw the article proposed. If the Conference sustains this ruling of the Chair, it will immediately be asked if it concedes or no permission to enable the Honorable Mr. Galavis to withdraw the article that he had presented.

*His Excellency Mr. Galavis.*—I am of the opinion that he who makes a proposition has the right to withdraw it at any moment. Now, if the members of the Conference desire to adopt the resolution proposed by the Honorable Mr. Guachalla, they may do so; but I feel obliged to make this rectification. In fact I should have consulted with the honorable colleagues who have had the kindness to accept my proposition; but I really do not see the necessity of permission in order to withdraw it.

The ballot being taken regarding the question as to whether the Honorable Delegate from Venezuela would be permitted to withdraw art. 3, the permission solicited was conceded by eleven votes against six. The affirmative votes were: Colombia, Costa Rica, Chili, Salvador, United States of America, Guatemala, Hayti, Honduras, Mexico, Nicaragua, Uruguay; negative votes: Argentina, Bolivia, Dominican Republic, Equador, Paraguay, Peru. Venezuela abstained.

*Secretary Duret.*—The article proposed by the

Honorable Mr. Galavis is withdrawn. Discussion continues upon the addition presented by the Committee.

*His Excellency Mr. Baez, Delegate from Paraguay.*—Mr. President, I desire to make an explanation relative to the abstention of the Delegation that I represent, regarding this article, for two reasons. The first is, because the abstention of one or more Delegations is absolutely of no interest to the Delegation of Paraguay; in the second place, because in this session of the Assembly, the argument presented by the respective Committee has just been discredited. It has been declared, by the Honorable Mr. Chavero, by the Honorable Mr. Bermejo and by many other jurisconsults, that the Treaty of Montevideo is a treaty superior in matter of extradition, because in its making they have conserved the soundest principles of law. Thus, it would be an act of inconsistency on the part of the Delegate from Paraguay, whose country has signed that treaty and recognizes with many that it is superior, to come and sign here a treaty inferior to that of Montevideo.

As this Assembly is an Assembly of Law, in which are united notable jurisconsults, and ought, therefore, to proclaim the highest and soundest principles in this matter, I in turn desire to accredit my country, I desire to honor it in this form, casting my vote and my opinion in favor of those most elevated principles.

The honorable Mr. Chavero has had an opportunity to read the discourses pronounced in the Congress of Montevideo, and in accord, Mr. President, with those very elevated ideas, I again state, without desire to reopen discussion, that the vote of the Delegation of Paraguay will have to be excused, regarding the proposed amendment.

*His Excellency Mr. Cuestas, Delegate from Uruguay.*—I am going to vote, in accord with art. 3, proposed by the Committee, as I have already stated, and with the amendment proposed by the Honorable Mr. Walker Martinez. I do not think that by acting in this manner I will fail to honor my country.

In the preceding session, I had occasion to state the cause that actuated the Committee in deviating from the resolutions expressed in the Congress of Montevideo, in reference to the present question. I said then, as stated in the minute, that the Honorable Mr. Chavero explained in the first session what sustained this subject, that the members of the Committee had pretended to consult a treaty, studying it more in character of diplomats than as jurisconsults, and that this was why they had modified some of the points resolved in the Congress of Montevideo. In this case, the greater part of the legislations of the States here represented, retain capital punishment, and that circumstance induced the Committee to put in its project the safeguard made in the Treaty of Montevideo, because it considered as very feasible that the treaty would be approved by the eighteen Nations, without said clause of safeguard. This was what animated the Congress, without ignoring the high principles approved at the Congress of Montevideo, and that was the cause, I repeat, which actuated the redaction of the article in the form in which it was presented.

The vote on the additional article presented by His Excellency Mr. Walker Martinez having been taken,