

resulted in approval by fifteen votes, which were cast by Colombia, Costa Rica, Chili, Dominique, Ecuador, Salvador, United States of America, Guatemala, Hayti, Honduras, Mexico, Nicaragua, Peru, Uruguay, Venezuela. Argentina, Bolivia and Paraguay abstained.

The Delegations of Bolivia and Peru explained their vote in the following form:

*His Excellency Mr. Guachalla.*—The Delegation of Bolivia states that it abstains this time, due to fact that it is a special case; that it is not a partizan of abstentions, but that in this special case, it feels obliged to do so.

*His Excellency Mr. Alzamora.*—Yes; but I understand that the vote of the Delegation neither adds to nor takes away anything from the right that each country has to make the reservations that it considers convenient.

*Secretary Duret.*—The amendment to article 3 proposed by His Excellency Mr. Lopez Portillo y Rojas is under discussion.

*His Excellency Mr. Lopez Portillo y Rojas, Delegate from Mexico.*—In view of the difficulty that has arisen, the discussion of the project of treaty on extradition, and of the time that has been spent in the debate of a single article, I retire the amendment that I had proposed and hope that the Conference will please grant me its consent to do so.

*Secretary Duret.*—The amendment proposed by His Excellency Mr. Lopez Portillo y Rojas being retired, there remains under discussion article 3 of the report of the Committee.

*His Excellency Mr. Buchanan.*—I desire only, Mr. President, to request that in the English translation of the article, the words *But the Executive of*, be substituted by these: *But each Nation shall have the right.*

*His Excellency Mr. Guachalla.*—When the article, that is once more submitted to the consideration of the Conference, was placed in debate. I had the honor to call attention to something that appeared to form a vacuum in it, and said: in the case that a Nation may reserve the right of non-delivery of a native who has taken refuge in its territory, what will be done? No decision has been pronounced upon this point by the Conference, and I think it should do so, because it cannot establish impunity. The solution of the problem may be found in the acceptance of the principle established in the Treaty of Montevideo, or other measure conducive to that end. If this indication is not taken into consideration, permit me to make a formal motion, in order that the article may be completed in this sense, be it by accepting the form to which I have alluded or any other that responds to the object.

*His Excellency Mr. Chavero.*—Replying to the Honorable Delegate from Bolivia, I resume the course adopted not long ago: I employ as inspiration not my own words, which are unauthorized, but those of Dr. Saenz Peña, whose sagacity honors not only himself, not only his patria the Argentine Republic, but all America. The point referred to by the Honorable Mr. Guachalla was treated in the Congress of Montevideo and Mr. Saenz Peña said on that occasion: "I explain to myself the personalism of the laws when it is founded on legitimate interest; I explain to myself this personal statute ruling the legal capacity of persons, wheresoever they may be

found and I explain it to myself without justifying it, for tho it treats of an unnecessary protection in these modern times, it protects, in fact, licit and honest interests, as are, doubtlessly, those referring to the exercise of civil rights; but that same protection, originating from delictuous acts, protecting evil-doers and the culpable, cannot be founded on any juridic nor moral notion; protection is explained upon the subject of a right; but in no manner upon the agent of a tort.

"Extradition, otherwise, does not import judgment nor chastisement: its object is to subject the delinquent to the jurisdiction of the territory where the crime was committed, replacing things in the state they were at moment of consummation, establishing that flight alters not the legal condition of the accused, nor serves to create a reproachable complicity, with the country of origin; this principle, then, flows logically and naturally from modern International Law, which has established the solidarity of the States in pro of justice and in contra of impunity, differing from the ancient school, that protected the culpable against the exigencies of social justice; we cannot then, rupture that pact of universal solidarity, in name of a political bond, that neither aggravates nor attenuates the extent of the evil, and which cannot attack the originary jurisdiction, because as has said very well Dr. Ramirez in his notable book, society chastises the agent of the crime, as member of the social collectivity, and not as part of such political collectivity; one does not prosecute the Belgian nor the Austrian, but the conscient being as responsible before the tribunals and the law, in the territory where be committed the crime.

"It is said, in support of the principle, that if the country of origin does not attempt impunity of the subject, but claims the right to impose upon him itself the punishment; but what would be the law to determine the penalty?

"Would it be the law of the country of origin? We fall then into the inconsequence of applying a law that has not been violated nor ignored by the acts reprimanded; a penalty is imposed and a law applied to which the subject was not submitted at moment of delinquency, whenever he found himself subject to the jurisdiction and enforcement of the laws of the territory of the delict; and one explains easily all the disturbance occasioned by this duality of sovereignty exercised at the same time over the same subject; this, without taking into account the attack that is made upon the independence of a state, castigating delicts and exercising acts of security and repression that correspond originarily to the territorial sovereignty.

"If there are applied, no longer the laws of the Nation of origin, but the laws of the territory in which the delict was produced, the inconsequence is yet more evident, for the penal law, which is territorial by reason of its character, in its essence and by the unanimous vote of the Honorable Congress, would clear the frontiers of each State, and be applied by foreign judges, who would be substituted for the native judges, importing a second attack upon the principle of sovereignty; the law and the Nation outraged, would have in the case no reparation; neither would the penalty be exemplary.

"It is said that the delivery of a native is a violent and repulsive act; but the determinant causes of these sentiments are not justified. Does it consist in

justice being dispensed? Does it consist in the exercise of the respective sovereignties, united in the moralizing interest of punishment?

"Note well that I have taken for established the convenience and the advantage of the accused subject, in being judged by the country of origin; I have not cared to discuss the point especially, but it would be easy for me to demonstrate that, in many cases, one encounters more advantages in the sentences of foreign tribunals, and among others, we are offered the case of a country wherein the penalty of the crime is less grave than that of the country of origin, regarding the impartiality of justice, the condition of the foreigner, it has been well said, inspires protective sentiments and engenders interests in a favorable manner the benevolence of the judges; but I do not desire to delay over these arguments, nor over the difficulty of those processes enacted three thousand leagues from the delict, from the proof and from the accomplices; easy or impossible these latter, prejudiced or benefitted the delinquent, I need to solve the point with legal advantage of the evil-doers.

"From whence arises, I repeat, that repulsion to the delivery of the subject delinquent? Perchance do the signatory States of the present Treaty offer us no guaranties in the organization of their tribunals or in the precepts of their penal legislation? Will we have constituted an International Congress that some Governments may defend themselves against othes, denying to deliver delinquents actuated by an unjustified sentiment of disconfidence and fear.

"Such sentiments would demonstrate to us that the science of Private International Law has not yet completed the evolution of its progress, and that the antique sentiment of hostility and rancor, that history discovers to us in the hearts of the ancient peoples, has been substituted by invincible disconfidence and by the reserve that they inspire."

According to these principles, the Nations would evidently be obliged to deliver their citizens, but we have not arrived to that progress in modern International Law, the majority of the Nations still say that they ought not to deliver their subject. What will happen, then, with a native fugitive from the country wherein he has committed the crime? The only thing that can happen is that he cannot be castigated neither by the legislation of the country wherein he committed the crime, nor by the legislation of the country of which he is native. In this case we are antiquarian in International Law; but we ought to hope that some day the Nations, convinced of what they owe to Justice, may deliver their delinquent subjects.

*His Excellency Mr. Guachalla.*—I am very sorry not to be in perfect accord with the opinion of the Honorable Mr. Chavero, for the ideas that he has just read are the eloquent manifestation of contrary opinions to the article of the Committee. Consequently, it appears to me that if the Committee accepts as its own the ideas of the honorable representative of Argentina in the Congress of Montevideo, one must conclude logically that he does not accept the article condemning that honorable representative; but as he has sustained the contrary, it seems to me that the citation lacks foundation. Does the Honorable Mr. Chavero believe that impunity of the crime is preferable to its punishment, even when this is applied in diverse form? I am sorry to state that I think in a manner diametrically opposed: I believe

that in place of leaving impune the delict, it is necessary to chastise it, even when it be with a minor penalty, even when the tort was not committed in the jurisdiction wherein the culprit should be adjudged.

If it is not possible to accept in absolute manner the relative article of the Congress of Montevideo, which as stated, is more advanced, it is preferable to accept an average, which avoiding impunity, may at least castigate in some way the delict perpetrated.

For these reasons, permit me to insist upon the motion that I presented to the consideration of the Conference.

*Secretary Duret.*—His Excellency Mr. Buchanan having manifested that his modification proposed refers only to the redaction of the English text, there is no necessity of submitting it to the Conference, and, consequently, the proposition made by His Excellency Mr. Guachalla is placed under discussion.

*His Excellency Mr. Bermejo.*—Mr. President: My attention was also attracted to this article of the project, in which the Committee oxonerates natives from extradition, and confers upon the Executive of each State the power to deliver them when he deems proper.

As recalled by the Honorable Delegate from Mexico a moment ago, the point was so luminously debated in the Congress of Montevideo, that it would almost import an injury to those debates to repeat the arguments there adduced, not only by Mr. Saenz Peña, as also by Dr. Quintana. There were expressed all the considerations possible to adduce in this matter, and there prevailed then in that Treaty the doctrine that natives were not exempt from extradition. That treaty was ratified by the Argentine Republic, and, as I understand, also by Peru, Paraguay and Uruguay.

I would ask, for my part, no question upon this point, but would simply state the opinion of my country, which is convenient to incorporate as form in international legislation, for I understand that in treaties, they do not always attain to the best, but to what is practical and possible. A treaty is not a law in which legislators seek the best for their countries; in reality it is a contract establishing mutual relations, and often concessions are made to obtain others in exchange for those that have been made. Nevertheless, the adoption of the contrary doctrine gives rise to grave difficulties and the solution advanced by the Honorable Delegate as informant of the Committee, to the situation of a native fugitive after having committed the crime, appears to me so grave, that I would prefer first of all to consign the principle in all its amplitude, establishing that natives should be delivered over to justice where it should be meted.

Prior to the Treaty of Montevideo, in 1806, as recalled by one Honorable Delegate, my Republic signed a treaty with the United States, and consigned the same principle, that the nationality of the refugee would present no obstacle to his extradition; but upon being submitted for approval in the Senate of that country, there was introduced in it a modification that appeared to be a transaction between the antique principle denying extradition, sustained especially in France, which denied absolutely to deliver a native, and this doctrine incorporated as

new principle not to make any distinction between natives and foreigners.

I do not consider it necessary to repeat all these reasons, which are consigned in the treaty, to which reference was made by the Honorable Delegate from Bolivia.

In my opinion, it is necessary to choose one doctrine or the other, and if the Delegations here represented have any objection respecting the delivery of natives, it appears to me that forms no obstacle sufficient to cause a rupture in celebrating this treaty, because others may think it best to make exceptions. In case not all of the Nations are in conformity in construing the idea of the doctrine, one arrives at some possible point, harmonizing all opinions. Thus, there would be no inconvenience in signing a treaty establishing that natives should be delivered.

But the exception to allow the Executive Power, the Presidents of the respective countries, where a native is demanded, to resolve if delivery is to be made or not, does it not imply placing that native in a disadvantageous situation, with respect to a foreigner? If a foreigner refugee in a country is solicited by another in which he has committed a crime, it is not the Executive Power that decides regarding the extradition, but the tribunals, the Judicial Power, and that is the great progress that has been realized in Argentina: which divests it of all appearance of an act purely political or administrative, it is a judicial act.

France maintains the first character it is true; but in all countries, in all the American States, it is not the Executive Power that resolves for itself the delivery of the accused demanded; no, this is duty of the tribunals; there the accused renders valid his defense, and the decision of the judge is the power that orders him placed at the disposition of the authority. If we accept that the Executive may deliver a native, will we not place the latter in disadvantageous conditions, with respect to the foreigner? Do we not subject him to the will more or less prejudiced of the Executive Power, in deciding if the native is to be delivered or not? In a desire to create an advantage, there results an obstacle; so then with this final part of the article, we create an injury for those whom we desire to favor.

Another inconvenience that the Committee ought to take into account: the honorable member informant stated: in what condition does the culprit refugee in his own country remain? And he answered the question of the Honorable Delegate from Bolivia, saying: «he cannot be punished;» and cited the arguments of Mr. Saenz Peña in the Congress of Montevideo, who said: «he cannot be punished according to the law of the country of origin, because he has committed no crime there, for it cannot be said that he has infringed those laws, in as much as he did not know them when he committed the infraction in that Nation; neither can there be applied the law of the country from whence he came and where in reality he was delinquent, because it would be counter to the sovereignty, penal laws being local, and only the tribunals of the same country can exercise jurisdiction. Then he cleared the gap, saying: «the crime remains impune.» But the consequence of this is the facility created to mock, in an inevitable manner, at justice, by the passage of the criminal from one frontier to another, and thus

remaining completely impune; this would create an exceedingly grave situation. If the treaties of extradition are celebrated in this form, it would be better not to celebrate them; if the crime were to remain impune and this were to serve as a stimulus to the committing of crimes.

This country is separated from Guatemala by a line almost imaginary, and it is easy to clear these frontiers; the assassin, the robber, by placing himself on the other side of the frontier would remain impune; a Guatemalan would cross over to the adjacent country in order to commit frauds; the Mexican would do the same, and passing the frontier to his own country would be impune. It would not be possible to accept a treaty of this species.

Sir, if the treaties of extradition have any importance, it is for neighboring countries. Respecting the others, it would be difficult for a delinquent to take refuge in a distant country.

Furthermore, there are treaties that establish the extradition under the simple condition of reciprocity. I believe that by interpreting the article in the form the honorable informant member indicates, in that the crime remains impune, we would be doing a grave injury, since thus the delinquent is stimulated, in place of creating a sanction tending to repress him. Reflecting upon this difficulty, I had hoped to discover a form that would suit the purpose, foreseeing that this case might present itself frequently, in that an individual, after having committed a crime, seeks refuge in the country of origin and consequently it is necessary to declare impunity. There is another case the treaties enumerate quite often the crimes wherein extradition is granted; so that all the others may be committed without it being possible to obtain extradition. In the treaty of Montevideo, for example, duelling and adultery are not causes for extradition: they establish, at least, a limit of penalty, and then results one of two things either all crimes would remain impune or it would be necessary to foresee cases wherein extradition could not be granted.

For this reason, I had chosen a general form and established it in the following terms: «In those cases wherein, according to the provisions of this Convention, extradition should not be granted, the individual demanded shall be tried by the tribunals of the country upon which demand is made and in conformity with the laws of said country. The definite sentence must be communicated to the government making the demand.»

It is true that here results the anomaly of an individual being adjudged by a law that he did not have in view when he committed the crime; but, notwithstanding, between this inconvenience of juridical order and impunity, it seems to me that it is not possible to hesitate and that it is preferable to adopt this means, establishing that when the culprit cannot be delivered, he be tried, at least, in the country where he has sought refuge, according to the laws of this country. I see no other solution to this problem.

Personally I would vote for an article that makes no exception in the case of natives, with respect to extradition, and which would place foreigners in the same situation as natives; for I am of the opinion that in this Conference of American States, whose institutions are analogous, and almost all of which recognize the judicial system that governs them, it

would be proper to establish that precedent of mutual consideration, by creating a law that would provide for the delivery of the delinquent, whatsoever may be his nationality.

In case these opinion prevail, I have no hesitation in respecting the scruples that any other nation may have when it states: «I will not deliver my citizens,» or do like other contracting countries; the condition of reciprocity is respected.

In case exceptions are made, I would recommend this article, adding to it the provision, establishing that the culprit shall be tried according to the laws of the country wherein he has sought refuge, by the tribunals of the common order.

*His Excellency Mr. Cuestas.*—I am in perfect accord, Mr. President, with the ideas of the Hon. Delegate from Argentina, in regard to the point that the real juridical principle establish that no distinction should be made between natives and foreigners, respecting extradition. I have had occasion to make these same remarks to my honorable colleagues of the Committee, and they, like myself, have agreed that no opposition can be made to a doctrine which implies a veritable juridic principle; they recognize that the only objection that can be made to it lies in the fact that the delivery of a citizen is a violent and repulsive act; this is equivalent to a question of national self respect upon this point, an objection that has no ground when one considers that in every case it would be more repulsive to protect a delinquent than to deliver a citizen, giving thus an opportunity for the criminal to escape with impunity from the consequences of the crime that he has committed, protected by a nation under the pretext that the agent of the crime is a native. But to this point of juridical order, an objection was made, and I have accepted the objection, for there are motives of practical order, but desiring that a treaty be celebrated between all the American republics, means were sought to avoid the inconvenience and there was accepted the provision establishing a distinction between natives and foreigners, excepting the principle in the second paragraph which states: «But the Executive Power of each one of them shall have the right to deliver them (his own citizens), if he deems it convenient.»

I am of the opinion, Mr. President, that the Committee was right in proceeding thus. The Hon. Delegate from Argentina, when he spoke of the treaty celebrated between that country and the United States, stated the difficulties with which they had to contend, in ratifying that project; the same difficulties would arise if the Committee were to insert in its project an article equal to the one that could not be accepted in the treaty celebrated with the United States.

With respect to the Hon. Delegate from Bolivia, I think that the addition proposed by him to this article is groundless, Mr. President; if things were as pretended by my honorable colleague Mr. Chavero, that impunity of the crime committed by a native upon his entry in the country of origin were sanctioned, undoubtedly the Conference would be under necessity to make a declaration in this respect, because, otherwise, it would establish the principle of impunity of crime; but I am of the opinion, and I hope that Mr. Chavero will pardon me, that things do not occur as he claims. The internal legislation of all countries—I do not know them all, but I am

sure that it is a general principle, and as regards Mexico I am certain that it is so, and also that it exists in the legislation of my country and of Argentina—punishes the native who has committed a crime in other countries, upon his entry into his native country.

My country, in its penal code, establishes, by precept, that a native who has committed a crime in a foreign country, upon his entry into the national territory, must be punished in accordance with the internal legislation of the country. What Dr. Saenz Peña would not admit in the Congress of Montevideo is admissible here. He said: I accept, although I fail to comprehend, the personal statute and personal jurisdiction in civil matters; but I cannot admit it in penal cases; therefore I cannot admit other jurisdiction except territorial jurisdiction, that is to say, the jurisdiction of the place where the crime was committed.

In this case, however, personal jurisdiction arises; but as Fiore states in an extraordinary, complementary or supplementary character; it is only in that character that it can ever be placed on a level with territorial jurisdiction, but which must be, by force of circumstances, admitted, even though only as supplementary jurisdiction.

So, by establishing in all legislations the principle that the native, upon entry into his country, is punished in conformity with the laws of his own country for the crime committed abroad, the fears entertained by the Honorable Mr. Guachalla, would disappear, because the danger of impunity does not exist. Perhaps this danger will not absolutely disappear; but it will to a certain extent, and at least the principle whereby impunity of crime is not sanctioned will be established.

*His Excellency Mr. Baez.*—Mr. President: in order to honor my country, I will state before this Conference that according to its ancient legislation, the delinquent, who sought refuge in Paraguay, was punished in accordance with the laws of the country; but after the celebration of the treaty of Montevideo, no distinction has been made between natives and foreigners, as far as extradition is concerned. Natives refugees in Paraguay, who had committed a crime in other countries, were delivered by petition of the governments making demand.

Generally it is argued that it is repulsive to deliver citizens, and I must say that in Paraguay this repulsion does not exist; because according to its laws, citizenship of a Paraguayan is lost by felony; and not only citizenship in Paraguay is lost by committing crimes, but also by accepting foreign employment or emoluments. If, therefore, in the legislation of my country, individuals who are not delinquent, but who lend their services in foreign countries, lose their citizenship, for greater reasons those who are guilty of crimes should lose their citizenship. Criminals who have offended the public laws of nations and humanity, must be delivered by Paraguay to other governments; we Paraguayans do not accept that there must be repulsion in delivering our own citizens.

In accordance with this principle and these ideas, I shall vote in favor of the project under discussion I only wished to make this declaration.

*His Excellency Mr. Galavis.*—There exists in Venezuela a law which compels the punishment of the delinquent, who has committed a crime in other