

country, and has sought refuge in Venezuela; but not in an absolute manner. But several conditions must exist: that the crime must have been committed against a Venezuelan and that the latter or any party interested may come to Venezuela to exact punishment for the crime. The principle, therefore, is not general. I accept the general principle of punishment for crimes whatever may be the place where they were committed.

In this way, if a Venezuelan commits a crime or delict in a foreign country, and seeks refuge afterward in Venezuela, and by reason of nationality Venezuela does not deliver him in case she is required to do so, I believe that the crime must not remain impune, and that it must be punished in accordance with the laws of the country. It does not seem to me that there is any objection in this, neither can it be said that a country abrogates a jurisdiction that it has not, on account of the crime not having been committed in its own territory.

There is also a case in which this same argument could be adduced however, all nations agree to punish it; the crime of piracy committed on the high seas, might be against the jurisdiction of a certain country and yet another nation, who might capture the pirate, punishes him even though the crime has not been committed within its territory, by reason of the nature of the crime itself, and all nations are in accord with this.

Therefore, it seems to me that there is no reason for the existence of the argument that the crime has not been committed in the territory, that on that account there is no foundation for applying to the delinquent the law of that territory and that he cannot be punished.

I do not suppose that the Honorable members signing the project have desired to exclude, according to the text of article 3 under discussion, other powers than those existing in a nation for the delivery of the culprit; for example, if a country establishes that it is not the executive power, but the judicial power which has to decide upon the delivery I do not think that the intention of the Honorable members who have prepared the project has been that it be the executive power and no other power in that country. Now, then, by suppressing the clause which reads: "The Executive Power, etc.," would the power of a country be deprived of authority to make the delivery if the article is left in that way? None of the contracting parties is obliged to deliver its own citizens; but in case of denial will the demanded country be obliged to punish the delinquent in accordance with its own laws? Will it not be able to deliver them if the respective authority says: "Delivery can be made?" I do not think so; it seems to me that the latter part is superfluous, and in such case, I propose that the article read as follows: "None of the contracting parties shall be obliged to deliver, by virtue of the stipulations of this convention its own citizens; but in case of refusal, the demanded country shall be obliged to punish them in accordance with its own laws."

His Excellency Mr. Chavero.—I have requested the floor in order to make an explanation to the Honorable Delegation from Argentine, whose ideas I accept entirely as the Philosophy of Law; but which in practice he himself has demonstrated to us are not acceptable, in rendering us account that the Senate of the United States exacted change in the re-

daction of one of the clauses of the treaty of extradition celebrated between those two Republics; but he makes an argument that at first tends to impress and says: Why is it not a question of Nation with Nation, in place of Executive Power with Executive Power? On this point, if the redaction of the article is read carefully, it will be noted that the question involves the material delivery of the criminal; every treaty, as in case of every law, is applied not by a sole article, by the conjunction of those composing the body of the treaty, and then we note article 9, which states:

"Art. 9. The demand for extradition, regarding the proceedings, tending to test the legitimacy of the demand and the admission and qualification of the exceptions with which it might be impugned on part of the accused, will be subject, in all not opposed to the provisions of this treaty, to the decision of the competent authorities of the country where refuge is sought, and who will arrange their procedure in accord with the provisions and legal practices established for the case in that country. The accused is guaranteed the right to employ the recourse of Habeas Corpus."

Therefore, when a Government wants to deliver a citizen, all these proceedings will be employed, and only the act of delivery, as stated in the article, will correspond to the Executive Power; for the relations of one country toward another are sustained by medium of the Executive Power.

This may serve as explanation, and I believe will satisfy the observations made by the Honorable Delegate from Argentina.

Regarding the other point as to what would happen to the accused if the native is not delivered, I have said, as a general rule, that he would remain impune; but as very timely remarked by Messrs. Cuestas and Galavis, every country, within its sovereignty, has established laws to judge natives who have been delinquent abroad. Our Penal Code is terminant in its article 186:

Art. 186. The crimes committed on foreign territory by a Mexican against Mexicans or against foreigners, or by a foreigner against Mexicans, shall be castigated in the Republic in accordance with its laws, if the following requisites concur:

I. That the accused is in the Republic, whether it be by his spontaneous entry, or by reason of extradition obtained;

II. That if the offended party were a foreigner, there exists a complaint from a legitimate source;

III. That the accused shall not have been tried definitively in the country where he committed the crime, or if he was, that he has not been discharged or granted amnesty or pardon;

IV. That the infraction for which he is accused have the character of a delict in the country where it was committed and in the Republic;

V. That in accordance with the law of the Republic, it merit a penalty graver than that of summary arrest.

So, the addition of the Honorable Mr. Guachalla results useless, and, moreover, we do not establish the principle of imposing upon the nations a change in their legislation, because if any one of the Republics have no enactment imposing penalty upon culprits foreign or native, who seek refuge in its territory, with that clause we would impose upon it an obligation and attack its sovereignty.

I think that this answers the remark of the Honorable Mr. Galavis. It is a question of the Executive making delivery; this cannot be suppressed, because if it is suppressed, in no case can a nation deliver a citizen; if it is empowered to deliver citizens, then it can be done.

His Excellency Mr. Buchanan.—Mr. President and Honorable Delegates: I desire to speak solely upon the amendment presented by the distinguished Delegate from Bolivia, the object of which is to cause the countries that do not deliver their citizens, to try and punish them. I do not know if in conformity with the corresponding laws of all the Republics here represented, that may be possible; but I believe that all are well aware that in the United States and in Great Britain it is recognized that crimes are local, or in other words, the United States cannot by means of any of its courts claim or hold jurisdiction over a crime committed by an American citizen outside of its jurisdiction. This is true in the States of the Union, and, therefore, this Delegation will be obliged to vote in contra the amendment presented to the article discussed.

Respecting the form in which the article is redacted, I think it necessary to state that the remarks made by the distinguished Delegate from Argentina, Dr. Bernejo, are entirely correct and that all the conventions of extradition are transactions, in a certain sense, and that the form employed in the article is the one that appears to approximate most the average of the conditions that actually exist in jurisprudence in relation to the subject. The phrase placed at the final part of the article, that "each country may do it," has become necessary practically in matter of extradition in the United States, by general consensus of opinion and by the belief that, in absence of a determinate authority to do so, the United States cannot deliver one of its citizens, and for this reason, the practice of our Government in its last treaties has been to include said stipulation, so that the United States may deliver the citizens of the Republic. This has been the practice, is so at present and will be in future.

I am sincerely in favor of the article in the form in which it has been redacted, and I will be very sorry to find myself obliged to vote against the amendment proposed by the Honorable Delegate from Bolivia.

His Excellency the President.—The reglamentary hour having sounded, the session is adjourned until 4 p. m., Messrs. Guachalla, Chavero and Walker Martinez having the floor.

SESSION OF JANUARY 8, 1902.
(Afternoon.)

Secretary Duret.—We will proceed with the order of the day, continuing the discussion of the amendment proposed by His Excellency Mr. Guachalla.

His Excellency Mr. Guachalla, Delegate from Bolivia.—I will be very brief, Mr. President, in replying to some of the affirmations made with respect to the proposition that I had the honor to present.

The Honorable Mr. Cuestas has said that in this country there exists a penal law to castigate natives for crimes committed abroad when they return to the country. Consequently, since that law exists in other countries, as the Honorable Mr. Chavero has stated, the modification was unnecessary in the sense that it establish that the countries refusing

to make delivery of a delinquent should punish him in conformity with its laws. I reply and state: if that law exists in Uruguay and in other parts, does this not constitute another reason in support of my opinion that the motion presented should carry? If these countries should chastize, according to their own legislation, their citizens who commit crimes abroad; if they are under this obligation, why do they not adhere to a treaty establishing that same obligation? I am of the opinion, that the argument proposed by the Honorable Mr. Cuestas is in fact favorable to the proposition presented by me.

Mr. Chavero has stated that this motion was useless, since the law exists. I ask, would the modification proposed be entirely useless, if all the legislations of the countries here represented had that same legal provision in their codes. In fact, if all the countries possessed the legislation referred to by the Honorable Delegate from Uruguay, the motion presented would be useless; but as the Honorable Mr. Chavero has manifested that such provision is not general in all the countries, but especial for some, it is clear that the modification presented by Bolivia comprises and embraces the major number of cases, all of them, better said, and not the especial ones cited in the legislation of the United States of Mexico. But it happens, moreover, that there are many countries that have that provision: consequently, why refuse recognition of an obligation that is recognized in its internal legislation?

Mr. Chavero has said that the sovereignty of a country would be attacked if there were imposed the obligation to castigate natives for crimes not committed in its own territory, for offences not in violation of the law of their country, and who were not subject to its jurisdiction.

I am sorry to state that I do not believe the same, for treaties are also laws, and laws that cannot be modified by the sole will of one of the parties, laws that to a certain point, and in the generality of cases, form an exception to the common rule of internal law.

Consequently, the stipulation is a law, and that law once approved, according to the constitutional form of each country, is obligatory within it, exception being made to the rules establishes in the generality of cases, which cannot be revoked by the Nation that has adopted it, without the consent of the other contracting party.

This causes me to see the necessity of adopting the motion, more so in order to escape that imposition mentioned by the Honorable Mr. Chavero, since each country voluntarily accepts the obligation of punishing its citizens, when they commit crimes in a foreign country.

In Bolivia exists also a penalty for Bolivians who are delinquent abroad; but that is in determinate cases: first, when treaties of extradition so establish, for example, the motion that I have presented; second, when a Bolivian commits abroad crimes against the security of the State, when he falsifies the national money or documents of public credit, or when a Bolivian commits a crime against another Bolivian, whenever the interested party or the civil authority require investigation, and where the delinquent has not been punished in the country where he committed the crime. This is stated in art. 7 of the penal law of Bolivia and in arts. 6 and 7 of the Penal Procedure.

Consequently, we recognize this principle; but more limited: we cannot punish, except in determinate cases. It is then necessary that Bolivia contract that obligation to chastize its citizens when they commit crimes abroad, or that the principle be made extensive.

There also exists a legal precept in my country, that says that the treaties of extradition (art. 109 of the Penal Code), shall be considered as part of the Code, and that they shall be inserted as continuation of it. So then, no outrage whatever is inferred to the sovereignty of my country in accepting this modification, since once accepted, it forms an integral part of its legislation, by express provision and by the general principle that the treaty is a law for the country that accepts it.

Mr. Buchanan has stated that his country could not accept this condition, for the special legislation of each one of the States that compose the Union, render it possible to adjudge only the crimes committed within its own territory or jurisdiction. Permit me to call the attention, respectfully, of the Honorable Mr. Buchanan to the fact that the treaties, in the federal regimen of Nations, obligate the entire Nation; for this reason they are submitted to the national legislative body, not to the local legislative body. When once a nation, be its regimen what it may, accepts a treaty, it is clear that it is obligatory upon all the States composing the Union, and that these, in my opinion, are obliged to modify their internal legislation, in view of a general principle, a precept accepted under the compromise of the national honor.

But I say, if it were not so, if the obstacle of the diversity of legislation of the States of the Union were presented as insuperable, and the principle established by the Honorable Mr. Buchanan were invincible, it seems to me that there is a procedure very simple: one already essayed to-day in this session, with respect to another article of the same treaty, the reservation. This is done when one does not desire to contract an obligation; for example: I, who propose the amendment, declare, in name of my Government, before the countries accepting reciprocity, that I contract the obligation of punishing my compatriots for crimes committed abroad, when it is considered that delivery should not be made: the countries accepting this reciprocity sign the treaty; but those not desiring to contract this obligation, make the corresponding reserve.

The Delegation of the United States of America could make that reservation; but there would result something that I dare not qualify. In case a citizen of the United States were to commit a crime in any of the signatory countries of this convention, and the United States, by virtue of its right, because it is facultative according to the project, were to resolve not to deliver the citizen to the country where he committed the crime, there would result, I say, impunity, and that would not be imputable to those sustaining the idea of punishment, wherever it may be.

I believe that in this case, and elevating ourselves above the level of internal legislation, to place ourselves in the serene region of Law, I think we defend a moral law, because assassination, robbery, false pretences, homicide, etc., are called the same in all countries. What do we want? That crimes shall not remain impune, that they be punished, altho it

be by sallying from the general rule, in that punishment be meted only in the country of jurisdiction. Why? Because we are in a mean term, because we are adjusting, because we cannot establish the absolute principle of unconditional delivery. We want more: to respect the preoccupations of our countries; but this does not signify that the criminal should not be delivered, that punishment should not be meted him.

In name, then, of this moral sanction that I invoke, I will not insist more on this proposition; but I believe that justice is with me when I ask that within America no crime should be impune, and that, whosoever may commit it, be punished where the crime was committed, or where it was not committed, but where the delinquent is found.

This is the only idea that I sustain and which I have submitted to the Assembly; if it is not accepted, I will be satisfied with having proposed it. I do not pretend to enforce my opinions, perhaps the humblest: I respect too much those of others to insist on my own.

His Excellency Mr. Walker Martinez.—Mr. President, three modifications have been presented. The one by Mr. Bermejo is very general: it states: "In the cases where, in accordance with 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 country making demand."

So general is this proposition, that having approved already an article which states that extradition cannot be granted for political offenses or for acts connected therewith, if we were to accept the motion of the Honorable Mr. Bermejo, in the cases wherein in conformity with the provisions of this Convention a culprit should not be delivered, each country should judge the accused or delinquent; in like manner there would have to be adjudged those who had not been delivered due to fact that the penalty had become barred by statute, or for some other reason. I call attention to this circumstance.

The other two propositions are made by the Honorable Delegates Messrs. Galavis and Guachalla, and coincide in the idea that, when the accused cannot be delivered in the case prescribed in this article, he shall be submitted to justice in the country of refuge. I, Mr. President, am partizan, and I speak here in name of my country, and not in name of Committee, because my country accepts it, of the principle that the native be tried and not delivered to the respective countries. Thus, Sir, there has been consigned in the treaties to which I have several times made reference, celebrated with Brazil and Portugal, which I had the honor to subscribe.

But if it is true that I accept this principle and that, if I had to negotiate anew with another nation a treaty of extradition, I would endeavor to have included in it again my views. I cannot deny, Mr. President, that the idea of the Committee has been to obviate difficulties. It has been manifested already with excess that we the members of the Committee have been animated by a desire to conciliate in all possible the proposition to add a page more to the history of the Pan American Congress, in order that it may give practical results.

For this reason I have insisted with my colleagues

for the establishment of the provisions that are principles of penal philosophy in my country, and contemplating the situation, we have observed that there are countries, like the United States, that could not sign this treaty, for the reason that its special legislation establishes that individuals ought to be tried only for crimes committed within the radius of action of the State. But now that we speak, Sir, of the principle, now that we manifest the necessity of advancing a degree in this conquest of philosophy, I am going to propose, in the name of my honorable colleagues of Committee, amendment that consists in soliciting the reproduction, in place of the article that we have proposed, of another which is the third of the treaty celebrated with the United States by the Argentine Republic. This treaty, as stated by Mr. Bermejo, contained the condition that the culprit be adjudged in accord with what has been manifested by His Excellency, and was not accepted by the Senate of the United States, which gave to it the redaction that I will read; redaction that was approved by the Government of the Argentine Republic and the treaty was ratified by our honorable colleague Mr. Buchanan, representing his country, in these terms: "In no case shall the nationality of the person accused impede his delivery under the conditions stipulated by the present treaty; but no Government shall be obliged to grant, in accord with this treaty, extradition of its own citizens; but each government may deliver them when in its judgment it is convenient to proceed in this form."

My honorable colleagues will see here that the Senate of the United States has consecrated the philosophic principle that in no case shall the nationality of the person accused impede his delivery under the conditions stipulated by the treaty; so things advance. If the treaty in discussion is approved, by all the American Republics, we will have consecrated this principle; but with one exception: leaving solely to the Government certain exceptional cases, certain cases that may occur, a safeguard necessary to a certain degree, gentlemen, in the state in which humanity at present encounters itself. Is not the major part of the Republics engaged in constant civil contests? Might there not arise a case, gentlemen, in which a native accused of acts originating from a civil contest, takes refuge in his country, and the question of common delict may be so involved with that of a political offense as to render it impossible to distinguish? Would it not be very just then to allow the government to protect that native impeding his delivery? For it is very difficult to distinguish in certain cases just where terminates the common delict and where commences the political offense.

For this reason, Mr. President, in America it is now necessary to maintain that restriction imposed by Senate of the United States. Thus, believing that in this manner scruples are vanquished, in order that the theory may advance a little, the theory so much discussed here, I propose in name of the Committee that article 3 be substituted, for that of the treaty celebrated between the Argentine Republic and the United States.

With respect to what has been said that safeguards may be made yet, I call the attention of the Honorable Mr. Guachalla to the safeguard that we proposed this morning; it was to vanquish a constitutional obstacle that we encountered; it was to overcome the difficulties offered by the opposing legislations of

some countries; but if we fill it with safeguards, naught will remain of this treaty.

Nobody having asked for the floor, the proposition of His Excellency Mr. Guachalla resulted rejected, by the vote of the twelve delegations present, to wit: Colombia, Costa Rica, Chili, Dominique, Equador, Salvador, United States of America, Guatemala, Hayti, Honduras, Mexico, Nicaragua.

In succession and without discussion, the amendment of His Excellency Mr. Bermejo was rejected, by unanimity of thirteen votes, that of Uruguay being added to those above enumerated.

By an equal unanimity of thirteen votes, the amendment proposed by His Excellency Mr. Galavis was rejected.

The article presented by the Committee was then placed under discussion, in substitution of the third of the project, and same was approved by unanimity of thirteen votes.

By the same unanimity and without discussion, article 4 was approved.

Secretary Duret.—Article 5 is now under discussion.

His Excellency Mr. Leger, Delegate from Hayti.—There is in the article a void with regard to which I desire to call the attention of the Committee. According to the article, the person whose extradition has been granted cannot be punished for a crime diverse from that forming the motive for the demand of extradition. What would happen if the culprit were to commit another crime immediately after his arrival in the country where he is to be tried? Would that crime remain impune? To obviate this difficulty, I have the honor to propose to the Conference the following addition to final part of article: "This stipulation is not applicable to the crimes or delicts committed at a date posterior to the extradition."

His Excellency Mr. Walker Martinez.—The Committee has no objection in accepting the addition proposed.

Secretary Duret.—The Committee having accepted the addition of His Excellency Mr. Leger, the Conference is asked if it approved the article with said addition.

The vote having been taken, it resulted approved by unanimity of the thirteen Delegations present.

There were then placed successively in debate articles 6 and 7, and were approved by unanimity of the thirteen Delegates present.

Secretary Duret.—Article 8 is now under discussion.

His Excellency Mr. Leger.—I have to suggest that after the words "to the Secretary of Foreign Affairs," there be added: "or to the competent authority." In some of the countries here represented, as I am informed, the Secretary of Foreign Affairs has not the authority necessary to accord the provisional detention of the individual claimed, which is performed by the Executive. The addition that I have the honor to propose tends to assure efficient compliance of the article.

His Excellency Mr. Chavero, Delegate from Mexico.—Altho it is stated already in article 1, that it is necessary that the requisition be made by the competent authority, there is no objection to its repetition here, and we accept the amendment of His Excellency Mr. Leger.