reside in its territory, whether natives or foreigners. The equality between citizens and foreigners, in this respect, must be absolute and there is nothing that can justify any exception in favor of the latter, by admitting that they be permitted to present their claims by diplomatic means, instead of resorting, the same as the natives, to the tribunals of the country of their residence.

The progress of international law, in conformity with the present state of International relations, demands that all the states should co-operate towards the reciprocal respect for their sovereignty and mutual confidence. From this arises the necessity of recognizing and proclaiming three fundamental principles, which are those that in future should govern the political and juridical status of foreigners.

First. The equality of civil rights of natives and foreigners.

Second. As a consequence of the former, that a state must not present claims of its citizens, much less intervene in them, demanding indemnity for injuries suffered in another State, when the citizens of the latter have no such a right.

Third. Being also a consequence of the first mentioned, that the rights which foreigners may allege, shall be exercised before the same authorities as the citizens, excepting in case of a denial of justice.

These principles have already been accepted by conventional law because they have been recognized in numerous treaties, not only between the American nations, but also between these and European powers.

The first Internationel American Congress assembled in Washington in 1889, solemnly recognized the first two principles we have indicated as a part of the American Public Law.

Two projects on the same matter have been submitted to the present Conference, viz one signed by the delegates from five Central American Republics, and those from Colombia, Venezuela and Equador, requesting that the same principles proclaimed by the Conference at Washington be again recognized; and that of the delegation from Chili, which basing itself on the first principle, requests that the other two principles which are nothing but the result of the first, be sanctioned by treaties.

The Committeee on International Law, after a careful examination of these two projects, and also that relative to the naturalization of foreigners, has the honor to propose to the Second International American Congress that the following principles be recognized as forming part of the International American Law:

First. Foreigners shall enjoy all civil rights granted to citizens, and they may make use thereof in substance, form or procedure, and in the recourses to which they may give rise, under the same terms as the citizens.

Second. The states shall not have, nor acknowledge, in favor of foreiners any other obligations or responsibilities further than those established by the Constitution and by the laws in favor of natives.

Therefore, the states shall not be responsible for damages sustained by foreigners through acts of rebels or individuals, and, in general, for damages originating from fortuitous cases of any kind, considering as such the acts of war, whether civil or national, except in case of negligence on the part of the constituted authorities in the fulfillment of their obligations.

Third. Whenever a foreigner should have claims or complaints of a civil, criminal or administrative order against a State, or its citizens, he shall apply to a competent court, filing at the same time his demands, and such claims or complaints shall not be made through diplomatic channels, except in cases where there should have been on the part of the court a manifest denial of justice, or unusual delay, or evident violation of the principles of international law.

Fourth. The American states shall recognize the principle of native citizenship, and, therefore, they shall consider as citizens the individuals born in their respective territory.

Fifth. Naturalized foreigners, who abandon the territory of the State to establish themselves in the country of their origin with uo intention of returning, shall lose the rights that they have acquired by naturalization.

The chairman of the Committee, His Excellency Mr. de la Barra, does not agree with some of the foregoing declarations, and reserves his right to state afterwards the reasons for his disagreement.

Mexico, January 24, 1902.—(Signed).—With the reservations which I will have the honor to make before the Conference, *F. L. de la Barra.—Juan Cuestas.—Antonio Bermejo.*—With exception of the fourth resolution, *Baltazar Estupinian.—Fernando E. Guachalla.—Alejandro Alvarez*, Secretary.

SESSION OF JANUARY 27, 1902.

Secretary Macedo.—The report of the Committee on International Law, upon the declaration of the rights of foreigners, is now placed under discussion.

His Excellency Mr. de la Barra, Delegate from Mexico.—Messrs. Delegates: I am going to express briefly the motives I entertained in dissenting as stated to my honorable colleagues of the Committee, dissent that moved me not to sign without reservation the project of the resolutions, subject at this moment to the consideration of the Assembly: I am going to do so briefly, because in the first place the learning of the members of the Congress permits me not to sound too deeply the problems that have been presented in this project, and in the second, in entering upon the discussion of each article, there will be an opportunity to analyze in detail the propositions.

The Mexican Delegation cannot assent to several of the precepts, I may say, to the majority of those comprised in the project under discussion, because they conflict, in one respect, with express provisions of our law, and again with certain conveniences or political considerations, which I will state briefly.

I ought to state right here that I note a certain heterogenity in the project which is under debate. It was entitled in accord with the form given to the preamble, prepared, certainly, with a scientific care, before which the Mexican Delegation inclines, in this manner: «Report of the Committee on International Law, upon declaration of the rights of aliens,» and while this is the general enunciation of the project, there may be recognized in it certain principles that govern natural citizenship. There is then, a certain heterogenity, that places the Mexican Delegation in a position relatively difficult to enable it to vote affirmatively or negatively in general on the matter, and, therefore, I find it necessary to make some remarks to demonstrate why the Delegation of Mexico cannot approve it.

One of the greatest injuries that can be worked for the Conference by the approval of certain declarations, is that, in the opinion, not only of the Mexican Delegation but also of the most distinguished authors on international law, it is judged that we are about to take a step of greater reach than prudence would advice in the proper management of questions of state. If we, even without celebrating a convention, agree to make recommendations that later may serve as base for the celebration of treaties, and these principles extend beyond the point counselled by authorities on treaties and by a rational and sensible policy, we would expose ourselves to the danger that not only this act of the Conference, but all those relating directly to it, may lose in part their force and prestige in the eyes of the civilized world.

Some of the declarations, whose resolution is consulted, exceed the limit to which I refer. For example, Article 1 affirms that foreigners enjoy all the civil rights that natives enjoy, and that they ought to make use of them, in the form, or in procedure, and in the recourses to which they give place, absolutely in the same terms as said natives. Here is established, not only an inconvenient principle, but which, as I look at it,—and permit me to indicate it most respectfully to the honorable member who redacted this conclusion,—there is even affirmed something that is not in conformity with the spirit and letter of our Constitution and with the legal provisions of the Republics of the continent.

Our Constitution, since the year 1857, proclaimed the principle established in the first part of this article, that is to say, complete equality with regard to the enjoyment of civil rights between natives and foreigners; but it did something more. it even recognized rights that are not purely civil; it recognized certain rights, such as liberty of conscience, the expression of thought by means of the press, equality before the tribunals, amply established and in form such that it does honor to our legislators, who in the year 1857 advanced to what in Italy in the year 1858 was admitted with certain fears, as noted by Mancini in the preamble of the project of law that was later elevated to this rank.

But from the declaration of the principle of equality of civil rights between natives and aliens, it cannot be deduced that this principle may not have some exceptions, imposed, perforee, by political considerations or for the defense of citizens.

We have in our legislation,—and I think there is in all of the American Republics,—some safeguards. For example, the Chilian legislation establishes a limitation: it does not permit that property in Chilian vessels remain or be recognized in favor of foreigners. This is a limitation justified by the national defense, by the advancement of commerce, and for other considerations that I ought not to even mention to this Assembly.

Among us there exist other very just limitations; there is one imposed by the right of defense: that relating to the impossibility encountered by aliens to acquire realty in a determinate frontier or maritime zone under our law, without special permit; there is another, regarding the enjoyment of the rights of literary property. Our law in this matter is of so ample and generous a nature, that already, and since the year 1870, it may be said, the ingenious Karr realized that desideratum, which proposed that the law on the matter be reduced to a single precept reflecting the tendencies of science on this point: «Literary property is a property.» Despite this, our legislation established a limit to the enjoyment of the rights of literary property or copyright by aliens: that of reciprocity. This requisite is imposed by considerations of elevated order that I need not detail. But this retortion is a right of defense of the nations, perfectly justified. In the same manner as in copyright, we have another limitation, in matters of judicatum solvi, subject to the same requisite of reciprocity, imposed by considerations, the value of which no one can deny.

If the Mexican Delegation were to admit the redaction of this article. such as it has been proposed, we would be establishing a false principle. We have, as a general rule, equality of civil rights between natives and aliens; but this principle may have, and has in fact, perfectly justified exceptions.

Respecting the second and the third principle, although it is true that we, in conformity with constant practice, that established in treaties as well as the traditional in the adjnstment of claims by our Foreign department, we follow literally the precepts established in these two provisions; we can affirm, however, that some of them may not accord with others of the principles established in the same proposition that is being discussed as a whole.

If we were to affirm that foreigners do not enjoy more amble rights than natives, we would be making a false affirmation, as evinced by the third proposition here consigned. Aliens have all the rights to appeal to the tribunals, to avail themselves before them of all that they may consider to be in their favor and to employ all means of defense that the laws provide for natives; but once exhausted the discussion before the tribunals and decision given with order for its enforcement, still foreigners may resort to the diplomatic channel, which, whatsoever may be the term that we may want to employ, is a recourse not possessed by natives to cause a decision vested with an executive character, be modified or destroyed completely.

Thus then, in this case we expose ourselves to the danger of making an affirmation that conflicts with the fourth of the propositions presented here.

With respect to the declaration, according to which the American States recognize the principle of natural citizenship, considering, in consequence, as citizens the individuals born in their respective territories, embraces, as I was saying. a declaration that impugns, in the first place, our legisiation, and, in consequence, the Delegation of Mexico cannot accept it; and, on the other hand, I dare to affirm, it impugne the majority of the legislations of the States represented in the Conference.

It is true that the jus soli is admitted by many of these nations, but very few are those that admit the jus sanguinis without any limitation.

The same legislations, the same constitutions, that admit as foundation ot nationality of origin the jus soli, establish certain distinctions: let the case of an Argentine, for example, returning to his country, serve me as a test.

I do not desire to discuss which of these two systems, the one founded on the jus soli, or the one

bassed on the jus sanguinis, may respond best at this moment to the exigencies of science, and to the disposition of a prudent policy, neither do I wish to present to the Assembly the arguments adduced by the impugners of the jus sanguinis and of the «jus soli;» although it may be said that the tendency of contemporaneous ideas is to cause to predominate the jus sanguinis over the «jus soli,» although without rendering exclusive the dominion of the former. Especial considerations may cause a country to hol l that the second generation, the one born on the soil. whereon the progenitors have sought refuge, be considered as natives; but these considerations of policy do not exist in other countries, and confronting such reasons, others equally powerful might be opposed. It suffices to take into account that countries as refractory in admitting the jus sanguinis as the United States and England, have modified their legislation in this respect. Since the year 1870, England has admitted the preponderance in certain cases of the «jus sanguinis,» and some provisions of the United States cause us to note that the criterion applied in that of the «jus sanguinis.»

One can almost say that there is a current in this sense: the nationality of the father ought to be imposed upon the son, until the latter, arrives at the age of reason, may choose the nation he prefers as his own.

Very valuable arguments may be adduced, but this is not the occasion, nor this the place to bring them before the Conference: it suffices, that in the ideas I have expressed, to indicate that as we have in our legislation established with preference the jus sanguinis, we cannot accept the propositions that, with regard to this matter, the Committee on International Law has consulted.

The fifth proposition determines an idea that needs to be made clear perforce, in order not to expose itself to the charge of establishing general principles opposed to our legislation. It reads thus: «Naturalized foreigners who abandon the territory of the State to establish themselves in the country of their origin, withoot intention of returning, shall lose the rights that they had acquired by naturalization.»

This article might, perhaps, suggest to us the idea that the dominant thought in its preparation was that at the moment that the foreigner is departing from the country where he is naturalized, to establish himself in the country of his origin, he had lost, by that sole fact, the rights acquired. Our law on aliens establishes a condition more rational, fixed a period, which when passed causes the effects of naturalization to cease, and leaves the individual to re–acquire the nationality of origin. Consequently, the very ample redaction given to this proposition renders it inacceptable for the Delegation of Mexico. The latter had prepared already some conclusions that it submitted respectfully to the Committee on International Law, of which I form a part. In these conclusions were consigned the principles that defend the national interests, without attacking those of foreigners, and they state with all clearness, in its opinion. the cases wherein one may proceed in the diplomatic way and those wherein it is not acceptable.

The Delegation of Mexico does not wish in any way to trouble the members of this Conference with discussion on matters entirely doctrinary. I am going to read the propositions, and would beg the Secretary to please insert them in the minutes.

PROJECT of declaration on rights of foreigners.

Art. 1. The High Contracting Parties declare that the responsibility of Governments towards foreigners cannot be great than that had towards their citizens; except in the exceptional cases comprised in Chapter II of art. 3 of the present Convention.

Art. 2. The High Contracting Parties agree that their Governments are not to be responsible towards foreigners for damages, injuries or exactions caused to them by insurgents or disturbers of the peace in the case of riots, sedition or rebellion, or by Indian tribes evading obedience to said Governments, only in the case there be fault or negligence at the hands of the authorities or of its agents. Nor will there be any responsibility for acts of war whenever these shall have been indispensable as a necessity of the same.

Art. 3. The High Contracting Parties declare that the diplomatic channel can not be availed of; in the following cases:

I. Whenever the rights of foreigners are derived from contracts entered into with the authorities, in which it shall have been provided specifically that the diplomatic agents of the State of which he is a citizen must not interfere.

II. Claims or complaints of foreigners in matters of the civil order whether penal or administrative, except in the cases of denial or unjustifiable delay in rendering justice, lack of execution of an executory sentence, or when all legal recourses have been exhausted, there should be a violation of the existing treaties with the Nation to which the foreigner belongs or of the rules of Public International Law universally recognized by civilized Nations.

III. The claims or complaints of foreigners due to acts of the authorities or of their agents in the case of riot, sedition or rebellion, when they shall have taken part in the disturbance aiding voluntarily the disturbers of the peace.

His Excellency Mr. Bermejo, Delegate from Argentine Republic.—The Honorable Delegate from Mexico has said very well; this is not the moment to enage the attention of the Assembly with discussions on doctrinary subjects; but the opportunity of the discussion is justified, not only by the circumstances, but also by the antecedents of the matter.

There were two projects before this Conference: one from several delegates, reproducing the declarations made by the Congress which met at Washington in 1890, that is to say, those two recognized principles that were accepted by all the delegations, with the exception of the United States and Haití, which reserved their vote; those two principles state what has been repeated here a moment ago, to wit, that foreigners enjoy in each country the same rights as natives, etc., and second, that they shall not have the right to exact an especial protection on the part of their governments. These two principles, which are the first of those under discussion, form a literal copy of the two resolutions sanctioned by the Congress of Washington, with the vote of all the Delegations, and are the same constituting the project presented to this Conference by several Delegations.

There was, moreover, another project respecting diplomatic intervention, formulated by the delegation from Chili. What resulted from this project?

As it was passed to the Committee on the Court of Claims, it was believed that in the report of this Committee should be interlined the principles respecting pecuniary indemnizations; hence, it resulted that at the last moment there was separated from that project of a Court of Claims, the declaration of these principles, which they returned to the Committee on International Law for examination. The latter met two or three times, without arriving at any satisfactory result. What did the Committee do then? It took the two projects that it had under way and accepted in them what seemed most convenient. presenting its report in the form that the Conference has heard.

In the Committee meetings all the remarks that have been made in the Conference were not made there. The delegate from Mexico himself said merely that his country could not accept natural citizenship, because it has admitted principally the jus sanguinis; thus, that it considers as Mexican one born in France of Mexican parents, and that the son of a Frenchman born in this territory, is considered, as a general rule, a French subject. I observed that this is a doctrine that the other States could not accept, because in addition to not seeming founded, it would be perjudicial to them.

Then, I supposed that the ideas of the Mexican Delegation might be excepted respecting this point, exclusively, but not with respect to the others; now it results that all of the propositions of the project, one by one, are discussed by said Delegation. Had this been known in the Committee, it would have been seen that there could be no object in its presentation; because, in brief, if there is to be a complete divergence of opinions, what authority are we going to establish? Absolutely none. Then, I would not have brought this matter before the Assembly, which can only lead to a loss of time in discussions upon the jus sanguinis and the jus soli. If I presented the resolutions under discussion, it was in view of the fact that the foreigners who establish themselves upon our soil, generally pretend that they have not sufficient protection, that they believe themselves vexed and not respected, or not guaranteed in their property; from this proceed complaints of the greatest atrocities and violence of which they believe themselves victims, and then I said to myself, it is best to present the rules to which the doctrine respecting this matter have arrived at the present day.

I might speak very much upon this subject, because there is ground for it, commencing at the very remarks made by the Honorable Delegate from Mexico; but I will limit myself merely to manifest that the fundamental principles accepted in the project under discussion, are those proclaimed by Bluntschli in his book augmented by Covarrubias, a Mexican writer. There he establishes the conditions of citizenship in each country, recognizing that it is an absolute right of the State to determine the conditions that it believes most suitable to impose, because to do so it is in its most perfect right; he then determines the obligations that the State has with respect to foreigners established in its territory; in another chapter he establishes the rights and protection that each State exercises towards its subject. Thus it forms a whole, fixing in reality the conditions of the fereigner in the country and the rights and obligations of the country toward the foreigner. To this collection of rules, the report that has been presented by the Committee responds.

Furthermore, it seems to me that it would be time lost to enter into an examination of all the antecedents of these principles, which I have already exhausted in substance with what I have just stated.

Thus, then, I say, that if there exists this divergence of opinion, the best thing to do is not to take the matter up: for the subject with which we are occupied should carry the authority of all the countries here represented, and consequently, the expression of opinions and antecedents of American law, or we should not take them up. This is the point that I consider of importance.

His Excellency Mr. de la Barra.—Messrs Delegates: Very few will be the words that I am going to utter, and perhaps to encounter a solution for the problem that has arisen at this moment.

I have to make a rectification with regard to one of the affirmations made in this debate.

It is true that the point of departure for declaring the Mexican nationality is found in the jus sanguinis; but dominated in preference by the manifestation of the will. Thus, for example, the son of an Englishman born in Mexico, has by that sole fact acquired the Mexican nationality, except upon arriving at the age of majority, and within the terms fixed by law of aliens, he wishes to make the explicit declaration that he wants to acquire the nationality of the father.

This exception being made, I will simply state to the very honorable and distinguished Delegate from the Argentine, that in the discussions had in the meeting of the Committee on International Law, I many times made mention of the exceptions that our laws establish to the principle of equality of civil rights between natives and foreigners. Moreover, I sustained and presented the proposition of the Delegation of Mexico, which I read a moment ago, founded principally upon the proposition made by the delegates from Chili.

But placing to one side these discussions, which perhaps will never bring about any practical result whatever, permit me primarily to submit to the consideration of my honorable companions of Committtee, and then to the entire Conference, the convenience that there would be in having these principles pass to the Committee of jurisconsults, charged with the redaction of the Codes, so that they may take into account the reasons adduced in pro and con of the project as redacted, so ably, in the best spirit aud with the scientific knowledge that we all recognize in our colleague, the Honorable Delegate from Argentine, as well as the proposition presented by the Honorable Delegate from Chili and the modifications made to this motion by the Mexican Delegation.

His Excellency Mr. Estupinian, Delegate from Salvador.—In the discussions which took place in the meeting of the Committee, I stated my opinions in conformity with the theory of birth. Later I see that the Constitution of my country is opposed to it, for it has provisions that concord with the Constitution of Mexico, and, if I am not mistaken; also with that of Costa Rica and others, establishing that the individual born in the country, be considered as a native, although of foreign parentage, there remaining to him at the age of majority, twentyone years,