the option of declaring himself to be Salvadorean or foreigner.

In this manner, then, the principle of birth is limited, not universal; powerful reasons support the general principle adopted by the great majority of nations, that the individual be considered as native by the fact of birth, although he may be son ot foreign parents; on the contrary, there,would be created in the midst of a nation, still another nation, another sovereignty that would be foreign.

For this reason I was for the opinions manifested by the redactor of the project, His Excellency Mr. Bermejo; but later had to make this exception, not because the declaration proposed goes against my convictions, but because it is opposed to the laws of my country.

His Excellency Mr. Matte, Delegate from Chili. —Mr. President, in the remarks made by my honorable and distinguishcd colleague Mr. Bermejo. I think, Sir, that the preamble of the report of the Committee, reproduces substantially, not only the project presented by several Delegations, but that presented by the Mexican Delegation and also the project of the Chilian Delegation; all of them concur in the declaration of the two fundamental principles that were approved in the Congress of Washington in the year 1890. Consequently, in this particular, there can have been no divergence in the Assembly; there may have been in that there be incorporated in this project the question of birth, of the jus soli; but there is no divergence in the fundamental principle.

Our distinguished colleage Mr. de la Barra, has just expressed the theory of the Mexican Foreign Department; we, the members of the Delegation from Chili, in preparing the project that they have had the honor to submit to the Conference, and which has been the originating point of this debate, had in view, Sir, among other treaties the one cited, which we were honored in presenting; we took into account the one that Mexico had celebrated with Germany, and from it we have taken substantially the preamble of the project. I am going to recall the project that was presented on November 14, 1901, reproducing the reading of the preamble in the part to which I have referred. (He reads the treaty between Mexico and Germany).

Prior to this there had been enunciated a series of treaties that had been celebrated reciprocally between the American Republics and between these and powerful states of Europe. Thus, for example, the treaties between Mexico an Italy, Colombia and Germany, Belgium, etc.; this I state for the sole purpose of referring to those celebrated between the American Republics, with European powers. But prior to these there exists a most numerous index of all those that have been celebrated between the American Republics, and I think, therefore, that we are in the most perfect accord in regard to the fundamental base of the project; for I have noted that up to the present mere observations of detail have been made, that are not conducive at the present moment, since we are discussing in general, and for this reason, all this should be resesved for discussion in par. I might announce the convenience of introducing an article in the project os the Chilian Delegation.

Precisely for the purpose of facilitating the adoption of this project unanimously by the Assembly, —as has been our purpose,—precisely to avoid the hesitation that a country might feel, to confide the resolution of matters relating to natives to common justice, I indicated the convenience, in case the diplomatic method should exact, of remitting the matter to the supreme judicial power of the country. In this manner there would be a guaranty and the sovereignty of the country would be respected, leaving in its hands the resolution of the matters that formerly were decided by the diplomatic method.

I think, Mr. President, that fundamentally we are in the most perfect accord with the principles that have served as base for the present project. With regard to the question of citizenship, I think it would be well to reserve it for discussion in detail, and I am inclined to think thus, for if it is contrary to the Constitution of some American countries, it should not be tried on the part of some to impose their ideas on others, but to persuade and to respect the legislation of each country.

For this reason some observations made by my distinguished colleague Mr. de la Barra have seemed to me very justified. Why should we establish an inequality that impugns considerations of publiic order, that some countries may have, establishing provisions that are peculiar to each nation?

Due to these considerations, I think, Mr. President, that the Assembly would not compromise its opinion upon the question of citizenship, by voting on the project as a whole, and then discussing if it ought or ought not to incorporate in its text articles 4 and 5.

His Excellency Mr. Buchanan, Delegate from the United States of America.—Mr. President: I think that all the Delegates are conversant with the situation of the government of the United States with regard to matters contained in this project, and I only arise to speak in the name of my Delegation to manifest that by reason of the fact that it would be impossible for us to assent to a very great part of the report, this Delegation will abstain from taking part in it, whether in the debate or in voting, in whole or in part.

His Excellency Mr. Pineda, Delegate from Mexico.—I must ask the indulgence of this Assembly, now more than ever, for I am not even going to enter upon the matter actually in debate, and will confine myself only to the declarations that my honorable and distinguished companion, Mr. de la Barra, has just made in the matter under discussion.

It pains me very much to have to go contrary to the opinion of Mr. de la Barra; but in referring the same to essential points of interpretation of our Constitution, with respect to which I entertain a conviction contrary to the ideas expressed by him, I think it a duty to make some rectifications to what His Excellency has said, excepting the responsibility of the other members of the Mexican Delegation, for I have not had time to consult them.

I will say then that our fundamental constitution admits the two principles dividing the field of science and legislation: the law of soil and the law of sanguinity. I affirm more: these two laws have become coexistent, not only in the legislation of America, but in that of almost the entire globe, and they have coexisted in this form: the law of soil, in exacting in the laws that those born in the territory may be citizens of that territory, and the law of

sanguinity, in imposing the character of citizen of a country upon the son born to a citizen of that country on foreign territory. And this is what occurs in Mexico. And as this is an essential point, no longer of doctrine, but of our constitutional law, Mr. de la Barra will please excuse me, in the name of an ideal that we all pursue, such as the exact comprehension and faithful interpretation of our laws, has caused me to assume the attitude that I have here taken.

These ideas corroborate the declaration made by the Honorable Delegate from Salvador, in the brief discourse that with so much judgment he has pronounced before the Conference. The American States have been peopled by virtue of the law of the soil; and it could be so in no other manner, for coming into the sphere of nations, in an immense continent and with a very scarce population to proclaim the law of sanguinity would have been, as Mr. Estupinian has already said, to proclaim another sovereignty within a small one, an incipient sovereignty of those peoples of America. And at the head of all of them stand the United States, which have not yet renounced the law of the soil.

It is true that in the United States there is now noted evolution in the law of soil, due, perhaps, to the great population of which they now dispose; but this is noted more in the decisions of the courts of justice than in the legislation. In every case, my opinion is, that weak peoples, of reduced population, ought to avoid proclaiming the principle of blood, when they need precisely the populating contingent from other peoples of the globe, that like an indispensable aliment, in peopling its territories, fortifies and aggrandizes them at the same time.

But, in fact, be this as it may, I declare that my principal purpose is limited to affirm that in the Mexican Constitution there co–exist the two principles: the jus soli and the jus sanguinis; that this co–existence is observed in almost all the legislations of America; and that if it is true that the jus sanguinis has evolved vigorously, it is also true that as yet there has not yet been exiled from the legislations the law of the soil. And there is already being initiated a new tendency that modifies profoundly the jus sanguinis, and is inspired by the influence of education, or rather by parental authority, as it is by means of education that man acquires the ideas and sentiments that define his personality. This what I wished to state respecting this matter.

His Excellency Mr. de la Barra.—Messrs. Delegates: I bow respectfully before the science and political criterion that form so firm a component, especially in matter of constitutional interpretation, of my very honorable friend Mr. Pineda; I will not discuss with him the interpretation of the constitutional texts, I accept it as being from him, at once, in the certainty that he has translated it with exactness and ability. It suffices me to merely make this rectification.

In speaking for the second time in this Assembly, regarding the interpretation of the jus sanguinis, I did not say that it was exclusive of Mexico; I made some exceptions, as the Delegates will recall; but not desiring to prolong this debate upon the interpretation of our interior laws, and with regard to which the Honorable Delegate for Mexico, to whom I am now making reply, did very well in expressly rendering his interpretation, I will put to one side the examination of our internal legislation, and will manifest to the Conference, that shortly before my honorable companion Mr. Pineda took the floor, I had spoken with some of the members of the Committee in order to obtain a modification in the redaction of the articles that are now in debate, with the exceptions that may be taken in the course of this discussion. The Mexican Delegation will have no hesitation in accepting any of the modifications proposed.

No one else having asked for the floor, the report as a whole was approved by all the Delegations present, with the exception of the United States, which abstained.

His Excellency the President.—In the session of the afternoon, the discussion will continue, in detail, upon this report. The session adjourned.

SESSION OF JANUARY 27, 1902.
(Afternoon.)

Secretary Macedo—Discussion upon the report of the Committee on International Law will now continue, upon the declaration relative to the rights of aliens.

His Excellency Mr. Lopez Portillo, Delegate from Mexico.—It is to be lamented, Messrs. Delegates, that the Committee has given to the propositions the form of simple resolutions; it would have been much better to give them the form of a project of convention. In any case, their immense importance cannot be ignored, bacause if the nations here represented by their Delegations, agree that the principles contained in the articles now under debate, are those that express in the most genuine manner the purest justice and principles of International Law, they contract great compromises for the future, and it will not be possible for them, when practical cases are presented, to fail in those same principles which they now declare good, without subjecting themselves to censure from the civilized world.

The form is no other, if it be well considered, than that of the important Treaty of The Hague, relative to arbitration, because its capital part contains only declarations to the effect that the Nations celebrating it find that international arbitration is the most equitable and just manner known to arrange international differences. And, notwithstanding, that Treaty, despite the fact that it contains merely a simple declaration, is vested with immense significance, which the entire world recognizes.

Now then, the proposition that we are going to discuss has this important factor, for which reason it is well that we fix its redaction and that in its text the ideas be clearly expressed.

The Honorable Mr. Bermejo said to us this morning that the first and second proposition of the report under debate had been already approved at the prior Congress in Washington, and it is true. Surely, this text in passing through the able hands of His Excellency has undergone some change, in a very good sense, of course; because, to tell the truth, in the form in which they were redacted in Washington, they suffered grave technical defects, they were conceived in terms exceedingly inexact, from a point of view of International Law. Withal, I believe that the text of article 1, that we are discussing, is yet susceptible to improvement: I at once perceive in it certain unnecessary amplification in

its terms, and also a capital omission, and if Mr. Bermejo will fix his attention upon the indication that I am going to make, he will see that it is easily remedied, for I entertain the hope that he seconds my ideas. I refer to the laws that are known in all treaties in matters of International Law and of juridical science in general, by the name of innate, absolute or primordial, and which are those that do not depend upon the will of the State to concede to men, but which are incarnate in very human nature, the State doing nothing more than to recognize and regulate them. Of these fundamental laws no mention is made in the article, and yet they are so precious, that without them it cannot be conceived how the science of law can exist.

Figuring among the number of these laws are some of important and practical nature, like, for example, the guaranty of criminal trial, which are not mentioned. And it is not said, even remotely, that those guaranties are included in the denomination of civil laws, because these do not refer to torts, but to private rights, while the penal law pertains to the public right. Neither can it be said that within the denomination to which I refer, are comprised those rights that man sustains and defends against all, like those of life, liberty and honor.

But there are still some others relative to certain recourses, which cannot be comprised under the denomination of civil laws; I will cite as example, the English Habeas Corpus, recognized in the United States, and our own most precious recourse of amparo.

Our recourse of amparo is not a civil recourse, it is not a criminal recourse, it is a recourse that may be called political, and which, notwithstanding, is conceded to every man, because in it the individual is not taken into consideration, but the political system that governs us; it is a recourse that is brought into play whenever it is a question of saving principles, when these are in danger. In exercising it, precious individual rights are saved, notwithstanding the fact that its form has not, I repeat, either a civil or a criminal character.

This right, which our law accords to foreigners, is not mentioned in the project, and it is necessary, in my opinion, to comprise it, for if it is not, a lamentable omission would be incurred.

It might be said, respecting this point, that it is not true that the primordial human rights are at the disposition of aliens in the whole extent enjoyed by natives. I do not think that this could be sustained; I think that natives and foreigners are absolutely in possession of the totality of human rights. The only thing that happens is that the States, on some occasions, in order to provide for their own defense, are accustomed to regulate the exercise of some of these rights in foreigners, but without ever denying them. We have as example, the right of property. According to Mexican law, foreigners cannot have territorial right within a zone, the extent of which I do not recall at this moment, from our frontier; a measure that has been taken undoubtedly for the purpose of impeding the formation of large foreign settlements, that sooner or later might endanger the integrity of our territory. This disposition does not deny to foreigners the right of property, but simply regulates it, in such manner that in determinate cases they cannot make use of it.

To vanquish these difficulties, and, perhaps, some others, the most simple and opportune way, in my judgment, is to add to the text of the project certain words that will leave the States at liberty, in all referring to the reglamentation of these principles, to safeguard their interests, to thus maintain their decurity.

I have edited anew the article in discussion, and desire to read it, proposing it to the consideration of the Conference. It reads as follows:

«Foreigners shall enjoy all primordial and civil rights granted and guaranteed by the State of its natives, and shall enjoy the same privileges to establish them, with the limitations provided by the laws and by the treaties.»

Secretary Macedo.—In accord with the reglamentary provision, the amendment presented by His Excellency Mr. Lopez Portillo is now under discussion.

His Excellency Mr. Bermejo, Delegate from the Argentine Republic.—I am going to render my opinion with respect to the proposal made by my distinguished colleague Mr. Lopez Portillo.

The original article presented by the Committee was taken from the first declaration of Washington, and is the one that has been remarked as convenient to be left open to the modifications that the laws and the respective constitutions establish. This doubt manifested by His Excellency Mr. Lopez Portillo, has occurred to me, although it remains excepted since, as is known, neither treaties nor laws can reform the constitutions of the States; it is a general rule that any treaty that impugns the constitution of a country, is a dead letter. So, if it were desired to give to the article an interpretation as ample as that of granting rights that the Constitution denies, it would not be worth while taking it into account. However, as in legal questions, all repetitions result beneficial for the interpretation of the law, I have no hesitation in accepting the amendment proposed, solely for what pertains to its last part.

As respects primordial rights, it appears to me that all those additions, such as the right to life, liberty, etc., are entirely unnecessary, because it is something that is recognized as a principle of the universal legislation. And if civil rights are recognized, there remain implicitly recognized all those other rights.

For this reason I accept this part of the amendment proposed by His Excellency Mr. Lopez Portillo.

His Excellency Mr. de la Barra, Delegate from Mexico.—The Committee on International Law proposes to the Conference that it be allowed to withdraw its article, in order to present it anew amended in the sense of the discussion, that is to say, by adding as a continuation of the article itself the words: «except in what the laws and the Constitution may provide.»

His Excellency the President.—The amendment proposed by the Honorable Lopez Portillo being under debate, in conformity with the Rules and Regulations, it should be discussed and voted on first. If the Honorable Mr. Lopez Portillo withdraws his motion, then the one just made by the Honorable Mr. de la Barra may be read.

His Excellency Mr. Lopez Portillo.—I have understood from what His Excellency Mr. de la Barra has just said, that the object of the Committee, in withdrawing its article, is to add at the final part of it the exception relative to the Constitution and laws. As I have proposed, in addition to that, that there be added in the text of the article the recognition of the primordial human rights, in which I think are included capital ideas and inappreciable guaranties, I would like to have discussion continued upon the amendment that I proposed and that it try its luck before the Conference.

Secretary Macedo.—Discussion upon the amendment of His Excellency Mr. Lopez Portillo will be continued. No one has the floor. The Conference is asked is it is approved.

The vote having been taken, it resulted that sixteen were cast in the negative, the Delegation of the United States having abstained.

Article 1 was placed under discussion, with the amendment presented by His Excelledcy Mr. de la Barra.

His Excellency Mr. Leger, Delegate from Hayti.—Allow me to state to this Honorable Conference, that to my mind, the declaration that is being discussed has a character too absolute, and does not take into account the provisions established by the respective laws of the countries here represented. In mine, for example, foreigners are not permitted to acquire realty neither by purchase nor by inheritance, nor by donation, and as in the legislations of the other States there are certainly like restrictions, it seems to me that the article should not be approved in the form in which it is now redacted.

His Excellency Mr. de la Barra.—The Committee in formulating the text of the article now in debate, took into consideration the fear expressed by His Excellency Mr. Leger and other honorable members of this Assembly, and I tried, therefore, to prepare it in such terms that it might be voted on by all the Delegations, since there has been left open to exception what the different constitutions may provide and even the secondary laws of each country.

His Exeellency Mr Leger.—As I consider that the redaction of the article does not present sufficient clearness in the sense that I have expressed, I propose that it be amended in the following manner: «Art. 1. Foreigners shall enjoy all the civil rights accorded by the laws in each country, and may exercise them, in form and in practice, in the same manner as the citizens.»

His Excellency Mr. de la Barra.—The Committee esteems that even while the declaration just made by the Honorable Mr. Leger is in conformity with many of the ideas expressed in this discussion, in reality it would represent no advance for the cause of law in America, to state that foreigners have the same rights that their laws concede them; and it would signify no advance, because it does not devolve upon us to cause that our legislations be directly modified, but to indicate the routes along which these should be directed, or, taking into account the diversity of the laws, to try to conciliate them, to encounter a common formula, one ample enough to remove the difficulties with which the realization of this idea has to contend.

Consequently, as no advantage is contained in the proposition presented by His Excellency Mr. Leger, the Committee believes it a duty not to accept it and to maintain the redaction proposed.

Secretary Macedo.—No one having the floor, the Conference is asked if it approved the amendment proposed by His Excellency the Delegate from Hayti.

The amendment of His Excellency Mr. Leger being put to vote, it was rejected by fifteen votes, the delegations of the United Utates and Hayti abstaining from voting.

Article 1, as amended by the Committee, was put under debate.

His Excellency Mr. Pineda, Delegate from Mexico.—For the same reasons as expressed by the Mexican Delegate, Mr. de la Barra for not accepting the amendment proposed by Mr. Leger, I propose to the Committee that there be suppresed in the new redaction, the final words «and of the law.» Mr. de la Barra said, and very well, that the proposition of Mr. Leger was not acceptable, for the reason that it signified no advance, not a tendency toward advancement, in the way of international relations between the Republics of America, and this, which is a truth, very opportunely stated by His Excellency, impels me also to propose that the phrase to which I have referred be suppressed.

In my opinion, it suffices to put the safeguard that these laws ought not to be contrary to the political constitution of each country. I admit this safeguard, because a political constitution is the corner stone of the whole social edifice, and it being so, the changing of a constitution is someting very serious, very transcendental, and a matter that requires in all parts mature study and amplitude in the discussions and proceedings.

Notwithstanding, we have in the Mexican Constitution an article that is opportune to recall, which states that «this Constitution, the laws that from it emanate and the treaties celebrated, are the supreme law of our land.» And it is evident that the doctrine that sustains the constitutional text, is the only thing that can suffer from the celebration of international pacts, for if at each moment we must except some statement of our constitution and in addition the provisions of our laws, how will it be possible to league one people with another?

But finally, thus summarily declared my way of looking at this question, and ceding, for the case is special, that there be maintained the exception for the Constitution of each country, for myself it is inadmisible that to this condition be added another, that of laws, for then we would remain in the same statu quo for which the Honorable Mr. de la Barra reproached His Excellency Mr. Leger.

Granted that the evolution in favor of foreigners, which is simply evolution of human civilization, is appurtenant to the fundamental law of a country, yet there cannot be passea, in an Assembly desirous of opening new ways and new horizons to International Law, that to such condition there be added another, that of secondary law. At least, let us suppress this: it will signify that when in the secondary law there is something that is opposed to the greater amplitud of the rights that ought to be conceded to foreigners, the compromise is contracted by cutting in two, thus smoothing the way.

Perhaps these ideas, which surely are admissible in the criterion of the Committee, may move it to withdraw the final phrase to which I have referred. With it we will have gained here the cause in the expansive movement of International Law.