

*His Excellency Mr. Bermejo, Delegate from the Argentine Republic.*—The Honorable Delegate Mr. Pineda is right. In fact, in every treaty celebrated, exception is made to the provisions of the Constitutional laws of each country. And if we are to enforce this rule, I think that this is an opportune time for it. Thus it is that, for my part, I have no hesitation in accepting the indication proposed by the Honorable Mr. Pineda.

*His Excellency Mr. de la Barra.*—In accord with the statement of His Excellency Mr. Bermejo, the Committee modifies the article under debate, in the terms indicated by the Honorable Mr. Pineda.

Without further discussion article 1 was approved by fifteen votes, the delegations of the United States and Hayti abstaining.

Article 2 was put under discussion.

*His Excellency Mr. Lopez Portillo y Rojas.*—Permit me to make two observations to the redaction of the article. This states in its first part: "The States have not nor do they recognize in favor of foreigners other obligations or responsibilities, etc."

I find that this is not true, because if it is true that the States have obligations with respect to their citizens, it is also true that they have no responsibilities respecting them, or, at least, they are responsibilities that cannot be made effective, which is not the case with respect to foreigners: foreigners do have responsibilities to make effective to the States, and in fact are so made.

The other observation is this. The second paragraph of the article in debate, says: "In consequence, the States are not responsible for the damage, suffered by foreigners caused by acts of revolutionists or by private individuals and, in general for damages originated by fortuitous case or of any other sort, etc."

This matter of fortuitous case of any sort, seems to me somewhat improper, for it is well known already just what fortuitous cases are; these may be inundations, incendiary fires, earthquakes, etc., and it has never occurred to any one that they could form motive for a claim.

For these reasons, which I submit to the criterion of the Committee, I would like to see given to the article under discussion a clearer and more precise redaction.

*His Excellency Mr. Bermejo.*—The intention of this provision is to place the foreigner who establishes himself in a country, on an equality with the natives, with respect to claims that he may make for damages suffered or for guaranties that may be exacted for the protection of his life and of his effects.

It generally occurs that a foreigners consider himself in America in a privileged situation. I need not, nor ought I, recall facts, not very distant, in which there really occurred acts of violence, veritable abuses of force on the part of European powers, with respect to the American States, which in truth signifies only that the foreigner in an American country considers himself in an exceptional condition.

In order to eradicate such an untoward belief, the project presented by the Committee has tended. In it we sustain, once for all, that the local justice or our States is sufficient to guarantee the rights of all the inhabitants of the soil, without exception. And

it is necessary to establish this principle in the most absolute terms placing ourselves on an equality of conditions with other countries, which have consigned it in their laws.

Said principle being established in these terms, it is well to state that its consignment has no other object than to formulate a premise that has to serve as base to posterior propositions, that will be no more than a consequence, the natural result of which would be: that the foreigner cannot exact greater responsibility than that which the citizen can exact. And here arises the question of determining what those responsibilities are in cases of war, having relation to vis major or fortuitous case, which constitute the causes most frequently presented for claims.

In our country, the foreigner has to recur always to local justice, in order to obtain reparation for the injuries of which he complains, and he has been given the guaranty of federal justice, considering that it lends him greater guaranty than the local justice; but in no case can it be considered that such justice is insufficient, whether for the native citizen or the foreign claimant.

But the Honorable Delegate from Mexico has interrogated: "What responsibility can the State have as toward foreigners?" Why really the same as toward its own citizens. The State may contract, with foreigners or with native citizens, and in either case claim may be made for lack of fulfillment. The case is frequent: a railway enterprise, the construction of a road, of a bridge, etc., any work of this nature, exacts a contract between private parties and the State; the moment arrives in which it is necessary to render effective the responsibility for lack of fulfillment of part of the foreign contractor, and to whom does the latter recur? We have already seen cases wherein a diplomatic minister, protector if that foreign contractor, has said: I am the interested party.

It is necessary, gentlemen, to profit by this opportunity to declare that in no case ought this to occur. The foreigner who finds himself in a civilized country where there are tribunals that mete justice to natives and to foreigners, to them alone ought he appeal. It is necessary to establish the precedent that the foreigner who establishes himself in a country has no other protection than the justice of that country, in which he ought to have full confidence, and if he has not, if he believes that he is not in a civilized nation, if he thinks that such country is barbarous, that in it he will see himself exposed to arbitrary treatment and abuses, he should not settle there; but if he does, he should have faith in its justice and have recourse to it in all cases in which he may make a claim.

The article has covered these points, that is to say, the injuries suffered by foreigners in acts of civil or national war, because they are the most frequent. Our democracies do not live very tranquilly, they have frequent agitations, and for this reason it is stated in the article that the cases of internal revolutions or external wars, are something like fortuitous case or accidents of vis major, in which natives or foreigners alike suffer damage. Do foreigners then have a right to make claim? Yes, if native citizens have a right to do so; no, if natives have no such right. This is decisive; and if history is demonstrating to us that such doctrine is true, the time has

arrived when we should consign it in a concrete form. The English Government has already said: no country would consent to the establishment of foreigners on its soil, if it had to place itself in a special situation, if they are to have privileges which they ought not to enjoy. The United States has adopted this principle some time since: after the civil war, a great number of claims were presented, and it was then declared: in no case will the Government be held responsible for damages caused by the revolutionists, because it having done all in its power to avoid that damage, it could do no more; now, respecting the ills that the federal forces might have caused, the Committee will attend to the claims, but making the significant declaration that if any one of the claimants invoke the diplomatic course, he will not be heard; indicating by this the following: I do such a thing as a measure of equity; but in no case do I admit that within my own territory any doubt be had as to my justice and that foreign justice be allowed to come here to judge my acts.

To me, then, it appears necessary and proper to put the clause, if we want to sanction the principle, if we desire that justice be made equal for all.

No one having asked for the floor, the vote was taken, the article being approved by fifteen votes. The delegations of the United States and Hayti abstained.

In the same manner article 3 was approved.

Article 4 was then placed under discussion.

*His Excellency Mr. Lopez Partillo.*—I have asked for the floor in order to insist upon the idea formulated this morning by His Excellency Mr. Matte, relative to the propriety of suppressing this article. In addition to the reasons manifested by His Excellency I am going to adduce some others on this point, with little faith that they will be heeded, perhaps, but for the purpose of expressing a sincere conviction.

I think that the principle of the nationality of persons, is not of such importance as to merit its figuring among the very elevated ones now occupying the attention of this Conference; in my opinion, it is of importance entirely secondary.

The times have changed, and with them the position of foreigners. To be one, in ancient times, signified that one must bear a sort of cross, a terrible note, because against the foreigner all manner of hostilities were permitted, and there was no excess that appeared too strong. Centuries passed, and there arose powerful states, states that became rich, that raised great armies and terrible navies. Then the position of foreigners changed. They, who until then had been victims, became a sort of executioner in modern times, for whenever they manifested any pretensions, which were not always equitable, supported by formidable armies and squadrons, they put weak nations in conflict in order to obtain immense and veritably invidious advantages.

At present, fortunately, the situation of the peoples has changed in an absolute manner respecting foreigners. These, at the present day, are not regarded with odium in any civilized country, nor do they have the pretensions that they formerly had; although they may belong at times to powerful nations, the laws of weak countries is imposed upon those whom it wishes to sacrifice. And it also occurs that the progress of international law has arrived to such a point, that even the most powerful nations

would consider it as an anomaly to patronize the claims of any of its subjects who want to sacrifice the lesser peoples.

Consequently, the importance of the character of foreigner has diminished very much of late, and the only question of moment that has any importance, is that of establishing the character of a foreigner in the moments of his birth. And here is where schools and systems become separated, some proclaiming the principle of the soil, others that of sanquinity.

The Committee takes that principle and tells us: Is the individual born in foreign parts? then he is a foreigner; was he born in the country in question? then he is a native. But this situation endures only while the individual whom the law considers as foreigner or native is a minor, until he reaches the age of majority; once attained his majority, he may choose the nationality that may appear to him most convenient, because to do so is one of the fundamental rights to which I referred a moment ago, and is a principle that no people ignores. In consequence, as will be seen, the declaration made by a country, by means of its laws, of the nationality of individuals born on its soil, because the effect endures, as I have just said, until the reaching of the age of majority, the period when the nationality is definitely adopted.

Thus, for this reason, as well as due to the circumstance that foreigners are no longer neither victims nor executioners in civilized countries, it seems to me that the principle is of very secondary importance and that it is not on a level with others contained in the project. Therefore, I am of the opinion that it ought to be suppressed.

*His Excellency Mr. Bermejo.*—I have already stated this morning that these two articles, with the preceding provisions, form one, and the proof of it is that Bluntschli, among other authors whom I might cite, in speaking of personal right in the fifth book of his work under the title of "Personal Liberty," treats first the conditions or requisites that determine nationality of persons; then he deals with the obligations of the State with respect to its natives who have established themselves in any part of the world, and finally, the obligations of the State with respect to the individuals who have established themselves within its territory.

In such manner, the union of these precepts forms a harmonious whole, but even disregarding this, it seems to me that the Honorable Delegate from Mexico accords to the matter an importance less than it really has. I consider it fully as important as those we have discussed already. In reality, we no longer occupy ourselves especially with the rights and obligations that the foreigner may have with respect to the State wherein he has taken up his abode, or vice versa, of the obligations that the State may rest under with respect to the foreigner, but as to just what determines the condition of nationality. And I think that it is well to solve the problem, because the doctrine maintained regarding this point in Europe is no longer a mystery to any body, and which is entirely diverse from ours. On this point of citizenship or nationality with respect to the personal right of individuals, the European legislation inclines to the principle of the nationality, we to that of domicile; that is, in Europe legislation inclines to the right established by blood, while with us it is a question of birth, that is to say the right of the soil.

What importance is there in determining the rule that has to prevail in the realm of Public Law? With us, it is extraordinary. If we were to admit that the son of a foreigner is an alien, we would find ourselves foreigners in our own country: many of those here are sons of foreigners, and notwithstanding, we believe ourselves as much entitled to be called natives as the sons of the natives of the country; but in the European nations it is not so; the son of a Frenchman, for example, is French, no matter where he may have been born, and the son of an Italian, is an Italian. Can we accept, new countries, formed by the incorporation of strange elements, such a theory? Absolutely no.

And the problem is as important for Mexico as for any other country.

It is true that this nation has a numerous population on its soil; but there arrives, notwithstanding, a large immigration, especially from the North, that incorporates itself with your soil, upon it establishes its home and here has its descendants. And I ask, what is the condition of the sons of those immigrants? are they Mexicans or are they foreigners?

It is said, what importance is there in deciding this point, what importance has this, if at the age of majority, one can choose his citizenship. This is a right that in fact the whole world recognizes: but it is well to note that before arriving at the age of majority, there is an obligatory service and it is a principle established by international law that the government of the country has the right to call upon its subjects in any part of the world that they may be found, to make those who have not as yet attained their majority render military service. Then, is it prudent to respect a doctrine that from all points of view tends to place us in a most disadvantageous position.

But as they tell me: not only from a point of view, but also from that of absolute justice, the principal of the soil is more rational than that of blood. Why? Because it is clearer, easier to determine. So true is this, that the authors who proclaim the principle of blood, have to establish many exceptions, because they encounter many cases wherein the theory cannot be applied; for example, when it is a question of an individual whose parents are unknown, they accept the soil, which is any easy element to determine, falsifying the rule that had been established, recognizing the law of blood. If we have then in our American doctrine this saving principle, why should we consign it?

These are the reasons that have decided me in sense favorable to the article that is under discussion.

*His Excellency Mr. Matte, Delegate from Chili.*—During the discussion in general in the session this morning of the report presented by the Committee on International Law, I stated that I did not think it opportune to avail of reasonings that in reality have no place in this discussion. The Chilean Delegation, for its part, has accepted with much pleasure the three first articles; but it will not join in the adoption of the two last.

The Delegation thinks, in the first place, that they are two questions of entirely distinct character: the fundamental purpose of the three first articles has been to establish that foreigners may not have the privilege of being protected by their nations, but

that they ought to submit to the general rule of the country and to the jurisdiction of its tribunals. The object of the three preceding articles has not been to establish that foreigners may have the same rights as natives, and for this reason I regret very much that the modification introduced by the Honorable President of the Committee was not allowed to subsist, that is to say, that foreigners enjoy the rights accorded them by the Constitution and THE LAWS. Permit me to call the attention of the Conference to this point: What is the object of the project? It is not protection for foreigners, it is not for their equality with natives, it is to cause to disappear the privilege possessed by foreigners to obtain diplomatic protection for the claims that they might advance against the government of the country wherein they are established. Consequently, they are two things entirely distinct, and it was not useless, but necessary, as I look at it, to accept the modification of the Honorable Mr. de la Barra. In that manner, the idea of the Honorable Mr. Leger would have been consulted, in whose country the foreigner cannot enjoy the political considerations that are accorded him in others, because they are matters entirely peculiar to each country. How could Mr. Leger accept a modification like this, that may involve the modification of a great political thought?

As a proof that the Republic of Hayti is not the only one who accepts this legislation, I will recall the fact that in several of the states of North America foreigners cannot acquire real estate, and we cannot say that said nation has been indifferent to the principle of equality; but by reasons of a political character, which are unnecessary for me to dwell upon, said country has deemed it convenient to deprive foreigners of that privilege and that of being equal to its citizens. I repeat that the fundamental object of the preceding articles has not been to place foreigners upon the same level as that of natives, but to restrict their right to enjoy diplomatic protection so as to bring claims against the government of the country of which they are residents.

For this reason, I think that this point has no connection with citizenship: it is a point which brings forth all sorts of discussions. For instance, according to the Constitution of the Republic of Chili, all those born within the national territory are citizens; but it also grants hereditary rights, and provides that the son of a Chilean father is Chilean. What is the meaning of this provision? Does it mean that a native of a country can only be native by the simple fact of being born there? This is an absolutely unnecessary protection; the public and the national law recognize it. Does it mean that only those who are born within the territory are natives? If this is so, the point is in contradiction with most of the constitutions and even with modern public law, which provides that the sons of natives are natives. And if we recognize it, why should we not give to foreigners the same rights. I understand that the new countries might have some interest in immigration; but we cannot accept here principles which are openly in contradiction with the constitution of each country, and even with modern public law.

For these considerations, I wish that the project would terminate in article 3, and that the two last articles be suppressed, presenting afterward a different project in regard to them, for we cannot permit that such important resolutions as the Conference

has just offered should fail by our entering into a field in which we are entirely in opposition, and if we wish to reach an agreement, we must set aside the questions, in which we are not in accord.

I therefore would ask for the suppression of those articles.

*His Excellency Mr. de la Barra.*—The Mexican Delegation being fully in accord with the remarks made by our honorable colleague Mr. Piñeda, and taking into consideration the special provision of our constitution and law of rights of aliens, considers that as that article at present reads, it does not contain all the conditions by virtue whereof citizenship may be acquired, as it only offers the means provided for said article. For this reason, the Mexican Delegation will abstain from voting.

*His Excellency Mr. Estupinian, Delegate from Salvador.*—As the article under debate is to be voted on the Delegation from Salvador, which formed part of the reporting committee, notwithstanding that being in accord in principle, as I stated this morning, will on account of the reasons so brilliantly expressed by the Honorable Mr. Piñeda and the illustrious Argentinian Mr. Bermejo, abstain from voting on the article, because it is in opposition to the provision of the fundamental law of its country.

*His Excellency Mr. Bermejo.*—I have been expecting to hear at least an argument, but in my opinion not one has been adduced against the advisability of this proposition. There is a real positive fact for us to consider, and that is that the European and American legislations differ fundamentally in this respect. According to the latter, the place of birth determines nationality; while according to European legislations, nationality is determined by that of the parents: we must accept either one or other.

It was objected that in our legislations, there exist both principles. My opinion is that this is a contradiction, as nowhere can both principles exist together. If I state that the son of a Chilean is Chilean, altho he may have been born in France, I also have to recognize that the son of a Frenchman is French, altho he may have been born in Chili. It is not then possible to accept both principle in a single constitution.

With regard to the assertion that the constitution of some countries such as Mexico and Chili establish that the son of a native, altho born in another country is a native and has the right of option, is a different question, as it refers to a right for which there is no necessity to record anywhere. What object is there in stating that the son of an Argentinian born in France may adopt the nationality of his parents? Is he not perchance at liberty to naturalize himself and adopt whatever nationality he may please, under certain formalities?

What harm could there be in establishing this judicial rule, which is the most acceptable one for all countries, to send the surplus of our population to other countries, if it is to our interest to keep the sons of immigrants?

It is true that no one can prevent a person born in another country from adopting the nationality that he prefers. But if we reject such a principle, that the nationality is determined by heredity, we commit a grave error, because the result will be that as most of those born in our territory of foreign origin, they would themselves be foreigners in the

same territory and because the principle of this doctrine compels us to establish that whatever we do to benefit ourselves must be recognized in favor of others, and it would be quite original that the advantages would be more favorable to foreigners than to natives.

There are several cases in which the son of an Argentinian may not be born in any foreign territory. He may be born on a merchant vessel or on the high seas, etc. All these cases are provided for in the laws of citizenship of each country, and this is the advantage I see in this principle. Why? Because it is an agreement for all the countries interested and that is why I believe it advisable to set it forth in order to establish a doctrine recognized by all the American states and in opposition to a doctrine which we must not accept, neither for principle, reason nor convenience.

*His Excellency Mr. Lopez Pontillo y Rojas.*—The various opinions now expressed clearly demonstrate that the best thing to be done is to prescind this declaration. His Excellency Mr. Bermejo has just referred to the advantages to be derived by the American countries in considering as natives those born within their respective territories, but it shows that His Excellency looks upon these matters from the Argentinian point of view. He has told us that most of those born there are the sons of foreigners, and, therefore, if the principle of heredity should be recognized they would be foreigners; but this statement of the Honorable Mr. Bermejo is true as regards his country, the Argentine Republic, but it is not so in other nations. For instance, in our own Republic, as the delegates may have already noticed, most of the births are in Mexican families; therefore, Mexico has no interest in declaring natives, even when of age, those who are not sons of Mexicans; whereas, it will be to her interest to declare as Mexican the Mexicans born in a foreign country, and I believe that other countries represented in this Conference are of the same opinion.

It is not probable, therefore, that we will reach an agreement. What shall we do to set aside this declaration which cannot be general? The best way for all concerned is to protect ourselves against unjust claims. Whether persons are natives or foreigners is a matter of secondary importance; it is of a lesser importance than that of former declarations.

I therefore maintain that the wisest course to pursue would be to suppress the articles in question and close here the number of provisions in this regard.

The vote having been taken, seven were in the affirmative and one negative. Costa Rica, Ecuador, Salvador, United States of America, Hayti, Honduras, Mexico, Nicaragua and Peru abstained from voting.

*His Excellency the President Mr. Raigosa.*—As the requisite number of votes were not cast on art. 4, to consider it approved, in accordance with art. 21 of the Regulations, it will again be discussed at the next session.

*Secretary Macedo.*—Discussion on the project continues. Article is now in debate in detail.

*His Excellency Mr. Leonard, Delegate from Honduras.*—It seems to me that the right of citizenship granted to a foreigner is an important privilege, and one which cannot be lightly bestowed or denied.