Art. XXII. The counsel or agents of the contending parties shall have the right to raise such objections, and make such motions, as may be pertinent in the case, but notice thereof shall be previously given to the other party. Any decision of the Tribunal on incidental motions of this kind shall be final, and no further discussion of the points thus settled shall be permited.

Art. XXIII. The Tribunal shall have the power, at all times, and at whatever stage of the case, to examine into the question of its own jurisdiction. If, for instance, it should appear that the claimant has not exhausted the judicial proceedings, the Tribunal shall have the right to reserve its decision, and direct the claimant, to go and seek justice, if they so wish, before the proper courts.

Art. XXIV. No discussion shall be allowed as to the rules of procedure which the Tribunal may deem fit to adopt, and the manner and form of taking the evidence, or of presenting the arguments. The rules of the Tribunal shall be obeyed in good faith.

Art. XXV. After having heard the verbal arguments made by the parties, the Tribunal shall make an order closing the debate.

The deliberations of the Tribunal shall be in secret sessions.

All decisions shall be taken by a majority of votes.

Art. XXVI. The decision shall give the grounds upon which it is based. It shall be in writing and signed by all the members of the Tribunal. The dissenting member, if there be any, shall have the right to express his opinion.

The decision shall be read at a public meeting of the Tribunal, in the presence of the counsel or agents of the respective parties, or in their absence, if they have been properly notified and failed to appear.

Art. XXVII. The decision of the Tribunal, after being duly communicated to the contending parties through the channel either of the Presiding Justice of the Tribunal, or of the Justice entrusted with this function, shall set at rest the contention forever. It shall be executed in good faith. in the time fixed by the Tribunal, or by the Protocol, unless something else to the contrary has been stipulated by the contending parties.

Art. XXVIII. If within the period of six months subsequent to the notification of the decision to the contending parties some new fact or documents is discovered materially affecting the disposal of the case, and which was unknown at the time the decision was rendered, to the Tribunal or to the interested party which produced it, said party shall have the right to ask for the reopening of the case and the revision of the decision.

Notice of this application shall previously be given to the other party; and the latter shall have the right to join in the request, if in its opinion it is well founded. Should this be the case, revision shall be made either by the same Justices who rendered the decision, or by new Justices chosen in the manner and form provided for by this convention.

Art. XXIX. If no agreement can be reached by the contending parties as to the necessity of the revision, the party which asks for it shall, within one month after the date of the refusal of the other party, give notice of its application to the Bureau of American Republics, and the Bureau shall transmit the application with the documents in support thereof which may have been communicated to it, to the Justices who rendered the decision. The Bureau shall also give notice of this to the other party.

If the Justices think that the revision is proper, they shall endorse the application by making an order to that effect, and shall return the paper to the Bureau of American Republics, which shall then give the proper information thereof to the interested parties.

It shall then be incumbent upon the parties themselves to fix the time when the Justices shall meet again for the rehearing of the case; but this time shall not exceed three months to be counted from the date of notification to the parties of the endorsement by which the revision was ordered.

The rehearing shall take place in the same manner and form as the original hearing.

In the case of death, or disability of any one of the Justices, or of the Umpire, who decided the case, and to whom the application for the rehearing should be referred, as provided before, the application shall then be sent, if no agreement is reached by the parties, to a third power designated by the parties. If the said power decides that the rehearing is proper, it shall then take place before new Justices named by the parties.

Art. XXX. Each Government shall pay its own counsel or agents, and share equally the expenses of the Tribunal.

If the decision be favorable to the claimants, the beneficiaries of the award shall contribute to defray the expenses of the Tribunal to the extent which shall be fixed by agreement between the parties, and which in no case shall exceed a sum equal to five per cent of the amount awarded.

If the claim be rejected as groundless, the Tribunal shall have the power to condemn the claimant to pay damages.

Art. XXXI. In order that the principles and doctrines of International Law, held by the Tribunal be duly known, the decisions of the Tribunal, as well as the brief in each case, shall, be published in the Bulletin of the Bureau of American Republics.

Art. XXXII. The present Convention shall be ratified as soon as practicable and the records of said ratifications shall be preserved in the Bureau of American Republcs.

An entry shall be made of the filing of each record or ratification, and a certified copy thereof shall be forwarded to all of the contracting powers.

Art. XXXIII. Powers not represented at the International American Conference in the city of Mexico, shall have the right to join in the present convention by sending notice to the Bureau of American Republics which shall transmit information of this fact to the other Powers.

Art. XXXIV. If any of the contracting Powers should wish to terminate this convention, notice of this intention shall have to be given in writing to the Bureau of the American Republics to be communicated by it to the other contracting Powers; but this Convention shall not cease to be in force and vigor until after one year from the day of its having been denounced, and shall only affect the Power who may withdraw.

His Excellency Mr. Lazo Arriaga.—I would like to add only, Mr. President, that I did not prepare a statement of motives for this project, for it is not my purpose that it be submitted to the deliberation of the Conference, at once, but that the Committee receive before all the other initiatives and suggestions that may be made, so that there may be presented as its work the definite plan that is to serve as basis for the project. In the Committee I will say just what are the reasons I had for including each one of the articles, and I will be disposed as member of it, to accept all the improvements that may be suggested, for the intention of the Delegation from Guatemala is not to maintain this project, but simply to contribute to the organization of an International Court of Claims.

Secretary Macedo.—The Chair rules that the project of His Excellency Mr. Lazo Arriaga pass to the fourth Committee on the Pan-American Court of Equity or Claims.

SESSION OF NOVEMBER 8, 1901.

His Excellency Mr. de la Barra, Delegate from Mexico.—The Mexican Delegation has the honor to present to this Conference the statement of motives actuating the project of International Courts of Claims, formed by it, and which reads as follows:

Few are the special considerations on which the Mexican Delegation need have sought a basis to justify the project of a treaty for the establishment of the International Courts of Claims, and which project it now submits to the deliberation of the Conference.

The difficulty which has been encountered at times in order to celebrate permanent treaties of arbitration, limited as they may be, cannot exist now, since the object of such a treaty is to afford easy, prompt and inexpensive means which will permit the questions arising from pecuniary claims, brought against one of the States at the Conference, to be decided.

With the former treaties there comes into play, or at least may come up, political or social interests which have the danger, pointed out by Corsi, of awakening passions which give International Law, the idea of honor, such as was conceived by feudalism.

The present treaty refers only to pecuniary interests, and the questions arising therefrom turn, as a rule, to those which can assume a juridic form.

This project, however, does not provent the decision of such questions being submitted to the Courts constituted in accordance with the provisions of the general treaty of arbitration, or to special courts of jurisdiction.

The treaty of January 12th., 1897, between the United States and Great Britain has served as a basis for the Mexican Delegation in drawing up the enclosed project.

The Delegation amended that agreement in some substantial points, but followed the easy and expeditious manner recomended thereby for the constitution of International Courts.

The Treaty Olney-Pauncefote (above mentioned) deserved the eulogies of statesmen and scientific men, and was the object of some attacks in the American Senate. This body rejected it fouuded principally in that the territorial questions, or those which affect the interior or exterior politics of the United States, should not be submitted to arbitration, in the opinion of the Senate, or that in each case they should resort to this institution there should be constituted a special court.

These inconveniences are done away with in the enclesed project.

It is consulted that the arbitrators should not be natives of any of the contending countries, so as to render them impartial according to Olivi's opinion, a Professor of the University of Bolonia, and to the agreements entered into for the purpose coutained in the Treaty of Permanent Arbitration executed by Switzerland and the United States on the 24th. of July, 1883 and in the Universal Postal Convention of July 4th., 1891.

There are reasonable periods fixed for the establishment of the Court of Arbitration, for passing sentence and for appealing to proceedings so as to avoid lengthy litigations, which may on that account grow in importance.

The idea of the Delegation has not only been to organize impartial courts, having a simple constitution, but also to subject them to expeditious procedures.

The above are the three principal objects which have been taken into consideration in drawing up the project, and as the reasons on which they have been based are obvious, the Mexican Delegation confines itself to respectfully request that the project be referred to the appropriate Committee for its consideration and study, as well as the statement containing the general reasons expressed by the undersigned in regard to arbitration, and its foundations.

Mexico, October 23rd., 1901.—*G. Raigosa*, President.—*Joaquin D. Casasus.—Jose Lopez Portillo y Rojas.—Emilio Pardo (Jr.)—Pablo Macedo.—Alfredo Chavero.—Francisco L. de la Barra.—Manuel Sanchez Marmol.—Rosendo Pineda.*

Secretary Macedo.—The project of treaty for the construction of International Courts of Claims, presented by the Mexican Delegation and which by ruling of the Chair, passes for examination to the fourth Committee, reads as follows:

PROJECT OF TREATY.

Art. 1. The High Contracting Parties bind themselves to submit to the study and resolution of the International Courts to be constituted in accordance with the present agreement, the claims proceeding from pecuniary losses and damages caused to any State, or its citizens, on account of legal actions or omissions from another State or any of its citizens, provided that such claims cannot be arranged through diplomatic channels. This obligation commences from the date on which it is demanded by any of the contracting Governments.

Art. 2. The International Court of Claims shall be organized, in each case, in the following manner: each of the contracting parties shall appoint an arbitrator, who shall be a jurist of repute, not a native of the State naming him, and the two arbitrators shall elect a third one who will preside over the Court, and who shall also be a jurist of repute. If the arbitrators cannot agree as to the appointment of a third, they shall appear before the President of the Supreme Court of Justice of any of the American Republics, in order that he may designate the arbitrator, who must not be a native of any of the States interested in the controversy.

If the Presiding Judge of the Court should not make the election within three months after the date of the appoinment of the two arbitrators, their appointment can be revoked, and the States who made the appointment can name new arbitrators in the way heretofore established.

Art. 3. Should the States requesting arbitration in the form established in the Treaty, be more than two, each of the contracting parties shall appoint an arbitrator, and these shall provide, in the manner prescribed in the foregoing article, to the appointment of the Presiding Judge of the Court. The latter shall enjoy, in case of a tie, the ranking vote.

Art. 4. In the absence of an express stipulation to the contrary, the Court shall designate the name, place and date of its session, and shall determine and define the procedure to be followed. The State presenting the claim shall clearly define the nature of the matter under litigation; the defendant shall present his defense, and both shall present to the Court the proofs and allegations which they may deem pertinent to the matter, within the terms fixed in each case by agreement, or, in the absence of such an agrement, within those fixed by the Court The Court can ask the plaintiff and the defendant to produce documents, require the attendance and examination of witnesses, or carry on any other proceedings it may deem necessary to enlighten it at any time before issuing the decree.

Ari. 5. The decree will be announced within the three months counting from the date on which the case is declared closed; it will state the reasons of the decision and will be subscribed by all the members of the Court; if it shall be decided by a majority of votes, the member or members dissenting, may give their individual vote, but they shall sign the decree.

Art. 6. If the decree shall be given by a unanimous vote, it will be final, permitting only the right of review by the same Court within the two months counted from the date of the decision, in case its interpretation may give rise to doubts, various interpretations or discrepancies, or omitting to decide any of the points at issue.

The Court hearing both parties, will decide the matter within one month from the date on which the proceding has been resorted to.

Art. 7. If the decree has been given by a majority of the votes, the losing party may appeal to an International Court composed of five members, of the qualifications expressed in article 2, of which two will be selected by each of the contending States; the four arbitrators will elect the fifth, who will preside over them. If they are unable to agree, they will proceed in the manner established in said article. If the States in the controversy should be more than two, each one shall elect an arbitrator with the qualifications heretofore stated.

Art. 8. If the recourse of appeal should not be resorted to within three months from the date of the decree, the latter shall be irrevocable.

Art. 9. The International Court of Appeals, taking into consideration the proofs adduced by each of the contending parties before the Court of the first instance and the allegations at the appeal, within the term fixed by the Court for the purpose, shall issue its decree, which shall be irrevocable.

Art. 10. The International Court of Claims and that of Appeals, on its part, may order the payment of the expenses of the Court by one of the contending parties. Should the order not be given, the amount of the expenses shall be equally divided between the contending parties. The contending parties shall pay their own expenses.

Art. 11. The individual claimants shall not appear before the Court personally; they will always appear through their respective States.

Art. 12. The contracting States may submit, by mutual agreement, the decision of the questions at issué, referred to in Article I, to a jurisdiction different from that established in this Treaty; but they shall bind themselves to appeal to arbitration in order to decide the differences they may have when they have been unable to arrange them amicably.

Art. 13. The High Contracting Parties obligate themselves in good faith to comply with the stipulations of the present agreement; but in the unfortunate and unlikely case that one of them should fail to comply with them, the States may subscribe a collective note of censure which shall become public and official, provided that it is rendered by at least three of the States.

Art. 14. This Treaty shall be in force during five years to be counted from the date on which the exchange of ratifications, by at least three of the States subscribing it, shall have been made. The exchange shall take place in the City of . . . . . as soon as possible.

Art. 15. The notice of abrogation of this Treaty, made by any of the States subscribing it, shall take effect one year after the date of the said notice, and will only affect that State.

The Powers desiring to adhere to this agreement may do so at any time, it being sufficient therefor to announce their decision to those Powers who have previously executed it, by giving notice in writing, addressed to the Government of the United Mexican States, which decision shall be communicated by the the Mexican Government to the other contracting Governments.

Mexico, October 23rd. 1901.—*G. Raigosa*, President.—*Joaquin D. Casasus.—Jose Lopez Portillo y Rojas.— Emilio Pardo (Jr.)—Pablo Macedo.—Alfredo Chavero.—Francisco L. de la Barra.—Manuel Sanchez Marmol.—Rosendo Pineda.*

SESSION OF JANUARY 27, 1902.

Secretary Duret.—The Committee on International Courts of Claims has rendered the following report, which the Chair rules be printed and distributed among the Honorable Delegates. The report is as follows:

Messrs. Delegates: The Committee on International Courts of Claims has the honor of submitting to the consideration of the Conference the following project of Treaty, for the solution, by means of Arbitration, of the questions which may arise by reason of the claims of private parties for pecuniary damages and injuries caused by a government.

The reasons on which the expediency of the projects is based, are obvious. The difficulties at present existing, in the opinion of some of the Delegations to this Conference, for the establishment of a general treaty of Compulsory Arbitration, are not presented in the body of this report: the questions mentioned in art. 1st. are independent of those political and social ones, which excite the passions of the peoples, or are in direct relation with their vital interests. Those questions, besides, are generally of a juridical character.

It is proposed to submit those cases to the Tribunal of The Hague, in accordance wiht the tendencies, of which this Assembly has given such a unanimous evidence.

We believe that, if this project, the provisions of which we shall amply justify before the Conference if any of the Delegates should so desire, is adopted, one of the most vexatious and frequent causes of differences between friendly nations will have been removed.

PROJECT OF TREATY.

Art. 1st. The High Contracting Parties agree to submit to Arbitration all claims for pecuniary loss or damage which may be presented by their respective citizens and which, in accordance with International Law, can be submitted through diplomatic channels, and cannot be adjusted through such channels, provided such claims exceed the sum of ten thousand dollars gold; and, provided further, that such claimants shall not have voluntarily served or aided, subsequent to the ratification of this Protocol, the enemies of the Government against which the claim is presented.

Art. 2nd. By virtue of the faculty recognized in Article 26th. of the Convention for the peaceful settlement of international conflicts, the High Contracting Parties agree to submit to the decision of the Permanent Court of Arbitration established by said Convention, all controversies which are the subject matter of the present Treaty, unless both parties should prefer that a special jurisdiction be organized, according to Article 21st. of the Convention referred to.

It the case is submitted to the Permanent Court of The Hague, the High Contracting Parties accept the provisions of the said Convention, in so far as they relate to the organization of the Arbitral Tribunal, and with regard to the procedure to be followed, and to the obligation to comply with the sentence.

Art. 3rd. If the Permanent Court of The Hague should not be opened, on any account, to one or more of the High Contracting Parties, they shall be bound to stipulate, in a separate Treaty, the rules for the establishment and procedure of the Court to which the questions mentioned in art. 1st. of this Protocol shall be referred.

Art. 4th. The Governments which apply to the Court shall accredit their representatives before the Tribunal and entrust their defence to lawyers or agents, as they may deem best. Private claimants shall not treat directly with the Tribunal, but shall aid the lawyers or agents of their respective Governments.

Art. 5th. The present Treaty shall not bind the United States of America nor the United States of Mexico, except with those of the signatory Nations whose Governments may solicit adherence to the Conventions for the peaceful settlement of International Conflicts, signed The Hague, on July 29th., 1899.

Art. 6th. This Treaty, without any exchange of ratifications, shall be in force for five years from the date of the ratification thereof by the last of the first five signatory States which approve it. The ratification of this Treaty by the signatory States shall be transmitted to the Government of the United States of Mexico, which Government shall notify the other Governments of the ratifications in may thus receive.

Mexico, January 20, 1902.—(Signed.) *Francisco A. Reyes.—Antonio Lazo Arriaga.—William I. Buchanan. — L. F. Carbo. —J. N. Leger. — Augusto Matte.—F. L. de la Barra.—J. Starr Hunt*, Secretary.—*Miguel T. Molina*, Secretary.

SESSION OF JANUARY 28, 1902.

Secretary Macedo.—The report of the Committee on International Courts of Claims is under discussion as a whole.

His Excellency Mr. Cuestas, Delegate from Uruguay. —I have asked for the floor simply to state, that if I have not signed the report presented to the Conference, it is due to the fact that I was not cited in time; but I adhere to all of the pacts formulated in the report by the other colleagues forming the Committee, and desire that it be so entered.

His Excellency Mr. de la Barra, Delegate from Mexico. —I ought to state, Messrs. Delegates, that the Committee on International Courts of Claims has not proceeded in an intentional manner in omitting to cite the Honorable Delegate from Uruguay. The successive changes that have taken place in the Committee due to the absence of some of the members forming it, has been the cause of this omission, which is entirely involuntary; we sincerely appreciate the declaration made by Mr. Cuestas and take note of it, which is very satisfactory to the Committee on International Courts of Claims.

Certain conversations had lately and the instructions received also in these last moments by some of the Delegates that form part of the Committee, have moved the latter to make some modification to the project that is under discussion. These modifications, as the Honorable Delegates will see, obey principally changes in form and in no manner alter the basis of the project; the basis of the project, as the Honorable Delegates will have seen, is incorporated in the proposition now in debate, with the character of obligatory arbitration for pecuniary claims, and is only altered in some provisions and some of the articles of the project are suppressed.

I will now read the amended project, in order. if the Conference deems it proper, that the one under debate may be substituted by the one that I am going to read. The project of treaty reads thus:

Art. 1. The High Contracting Parties agree to submit to arbitration, under The Hague Convention for the pacific settlement of international disputes all claims for pecuniary loss or damage which may be presented by their respective citizens and which cannot be amicably adjusted through diplomatic channels, provided such claims are of sufficient magnitude to warrant the cost of arbitration; and, provided further, that such claimants shall not have voluntarily served or aided, subsequent to the ratification of this Treaty, the enemies of the government against which the claim is presented.

Art. 2. By virtue of the faculty recognized in Art. 26 of the Convention, for the pacific settlement of international disputes, the High Contracting Parties agree to submit to the decision of the Permanent Court of Arbitration, established by said Convention, all controversies which are the subject matter of the present Treaty, unless both parties should prefer that a special jurisdiction be organized, according to Art. 21 of the Convention referred to.

In the case of submitting to the Permanent Court of The Hague, the High Contracting Parties accept the provisions of the said Convention, in so far as they relate to the organization of the Arbitral Tri-