bunal, and with regard to the procedure to be followed, and to the obligation to comply with the sentence.

Art. 3. 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. 1 of this Treaty shall be referred.

Art. 4. The present Treaty shall not bind the United States of America nor the United States of Mexico, except with those governments who adhere to The Hague Convention on Arbitration, of July 29th., 1899.

Art. 5. This Treaty shall be binding on the ratifying States from the date of the ratification by five signatory governments, and shall be enforced for five years. 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 ratification it may thus receive.

Placed under discussion, as a whole, the project was approved by a unanimous vote, except that of the Delegation from Hayti. Article 1 was placed under discussion in detail.

His Excellency Mr. Leger, Delegate from Hayti. —I deplore the fact that the Committee has modified this article in so radical a manner and so open to inconveniences like those which I am now going to state with the greatest possible brevity. The article in its original form, established the obligation of submitting to arbitration all claims the amount of which might exceed $10,000 gold, and the new text has suppressed that minimum, perfectly determined and precise, establishing in place of it, that the signatory nations are only obliged to recur to arbitration when the claims are of sufficient importance to merit the expense, very elastic and vague phraseology, that opens the door wide to any of the contracting parties that may desire to elude compliance with the obligations imposed by the project of treaty.

His Excellency Mr. de la Barra.—I will explain with the greatest satisfaction, to my honorable colleague the Delegate from Hayti, the reason that has been taken into account for asking the modification of article 1, in the point that he has been placed to indicate.

In the first project of the Mexican Delegation, like the one formed with great ability and evidence of rare practical knowledge our honorable companion Mr. Lazo Arriaga, whose absence we lament at this moment, and who was Chairman of the Committee, in whose name I have the honor to speak, there was not assigned the minimum of the amount of the claim that might give rise to the question of arbitration. It appeared convenient to the Committee to fix it, in order to avoid the difficulty that might arise in submitting international litigations to arbitration, when the expense involved might be superior to the amount demanded. The Committee fixed the sum of $10,000 gold; there were discussions in the Committee meeting to modify that limit: some of the honorable members proposed for that object the sum of $5,000 gold; but after such discussion, it was agreed, taking into account the probable expenses of the court of arbitration, to designate the amount consulted in the project, as the last limit or minimum for these claims.

In my opinion, there is no door left open to elude the obligation, fully imposed in this article, to submit to arbitration any pecuniary claim. Regarding a case wherein there might arise discussion respecting the probable amount of the cost of court, well might the party having special interest in taking the matter into the court of arbitration, guarantee on his part the amount of that cost of court, and render it obligatory, in consequence, that the matter be submitted to the Court of The Hague. There is not then, the inconvenience, as regards the basis, that the very honorable Delegate from Hayti has foreseen.

The pact of the first part of this article is so precise and clear, that in no case would it be possible to elude the compromise that it establishes.

The precise obligation of submitting these questions to arbitration, remains, then, established. If this point, entirely secondary, be discussed, with respect to the question whether the amount of the claim exceeds the expenses of arbitration, this is a secondary question that will be object of negotiations, that in no case can destroy the practical importance and entirely precise phraseology of the provision of the first part of the article.

I think, consequently, that there is no reason to believe that the fulfillment of this obligation can be eluded, as alleged by the honorable Delegate for Hayti; that it is convenient to fix that limit, and that it is not now possible to determine what will be the maximum of the expenses of the litigation in the International Court. The Committee respectfully sustains before the Conference the redaction proposed.

His Excellency Mr. Elmore, Delegate from Peru. —In the final part of the article under discussion, Mr. President, it is exacted in order to entitle the matter to be submitted to arbitration, that the claimant shall not have served or aided voluntarily, after the date of the ratificacion of this treaty, the enemies of the government, against the one to whom the claim is presented.

It is scarcely comprehensible why this should be considered as a condition to submit this point to arbitration. Probably it has been desired to establish that requisite as a motive to arrest the course of the claim and in order to render it not amenable to arbitration. But as it is redacted in the article, it would result that the claimant who may have served the enemies of the government, might resort to the diplomatic protection of his government and the country upon which claim is made could not elude it; that is to say, that claimant would be in better position than those persons who make claims without having offended the government.

Thus, I would propose to the Committee that it suppress the last part of the article that establishes a restriction on arbitration, that does not appear justified.

His Excellency Mr. de la Barra.—The reason taken into account by the Committee on International Court of Claims to ask for the insertion of the final part of this article and propose it thus to the Conference, have been the following:

It is known that in a great number of cases claims have proceeded, not from individuals who have considered their interests injured by acts of a government, the former having guarded the neutral attitude that should be observed in order that governments might feel themselves obliged to indemnify the losses suffered. On many occasions—and this has been the sad experience of the hispano-american countries, especially, perturbers of order, individuals without any establishment whatever in the country to which they occur, recalling that it is ever true, as affirmed in the Latin proverb, that turbatis rebus improba valent, seek to arouse passions, interests contrary to the established order, provoking difficulties against the government, that would not be obliged in this case to indemnify for injuries caused to an individual who becomes an element of dissension in the country against which he presents his claim. This, then, is a defense perfectly justified for the countries, as established in the final part of the article that is in discussion.

For these reasons, the Committee included in the final part of art. 1, the provision that the honorable Delegate from Peru has combatted.

The Committee thinks that this explanation, summarily expressed, will bring to the min l of the Honorable Mr. Elmore the conviction that it is convenient for the interests of the American countries to insert this precept.

His Excellency Mr. Henriquez i Carvajal:—I understand, Mr. President, that the eloquent explanations given by the Honorable Mr. de la Barra do not totally destroy the objection presented by Mr. Elmore, since if it is true that the door ought to be closed to every claim when it proceeds from individuals who have been hostile to the country on which claim is made, the article seems to say, as the Honorable Delegate from Peru has observed, that the only door closed is that of arbitration, not that of the claim. I desire, then, that the Committee, or Mr. de la Barra himself, draw us from this doubt, in which, it seems to me, the Honorable Mr. Elmore still continues.

The article seems to say that the door of arbitration is closed, not that of the claim; and it might result perhaps, at a given moment, that the foreign revolutionary is in a better position than the claimant who has not been hostile to the country against which he makes claim.

His Excellency Mr. Bermejo, Delegate from the Argentine Republic.—Considering the basis of this project, I think that it represents a veritable advancement in the sense of guaranteeing peace in the American States, and for that reason, I trust that we may pass over all the deficiencies that there may be in the detail, in order to maintain the basic idea, which I consider very convenient.

Arbitration, the project states, is obligatory for pecuniary claims; it is an advancement, it is a guaranty, it is a shield for all the States liable to siege of those claims, too frequent, unfortunately, in which for one cause or another, individuals believe that the territories are something like a mass of effects without an owner, upon which they may seize and enrich themselves. But there have been formulated various remarks, which it appears to me convenient to render clear.

The Honorable Delegate from Hayti stated: I note the determination of the matter in the new change made to the project, I observe the addition of «in accord with the Convention of The Hague for the pacific arrangement of international conflicts,» and note a void in the affirmation of the informing member; his intent has not been stated, and it is necessary that it be known. They began by amending art. 1. Now then, what is the intent of that addition? Why have those words been interlined. I can give no other explanation than this: Article 19 of the Treaty of The Hague, states that the door remains open to the nations so that they may contract among themselves compromises of obligatory arbitration, and may, by means of them, recur to the Court there organized. This is the sole explanation at which I can arrive. Notwithstanding, here come interlined these words without any object. Finally, that provision of art. 19 of the treaty of The Hague, was a resolution adopted between those sustaining obligatory arbitration, who were all present, and the German delegate who did not wish to admit it, and it was then said: let us formulate this article, stating that obligatory arbitration may be accepted by all the nations that may wish to occor to it. Thus, then, this article had there its reason for existence, but here, it appears to me, it has not. At any rate, it is well that it be stated here that this phrase signifies simply a reference to art. 19 of that pact.

It is said with regard to the limit established, that it is a novelty. I do not think it is; when an individual makes claim against another, he will recur to a tribunal of some class or other, to make his claim; and if this is the form in which to decide conflicts for pecuniary claims, then the rule ought to be the same, even when the claim be less in value; why? because this is entirely ralative, because what is little for some, is a fortune for others. Thus, it cannot be said absolutely that there is a limit to determine the recourse to arbitration.

So, then, in the first place, the justice of a claim has never been subordinated, neither in public law nor in private law, to the total amount to which it ascends, it being observed in nearly every case that it is relative to the resources of the claimant and serving as base the greater or less quantity of the demand in order to fix the jurisdiction of the case for the plaintiff in order to render his rights effective; and in the second place, there is no base, absolutely none, to say: this case will go or will not go to arbitration, because it is not possible beforehand to know what decision may cost, nor the fees of the arbitrators and other incidental expenses.

A consideration very near useless of this determination. It is well to bear in mind, Messrs. Delegates, that in this case that it is not a question of an individual against a nation, but question of a demand of one nation against another. It might be explained that a private party might bring pressure to bear upon a state in order to carry into the court of The Hague a matter involving an insignificant sum; but this is not explained, from the moment that an individual cannot recur to this tribunal, but by intervention of his government, for the matter has taken on the character of international. from the moment the nation of the individual claiming says: I make this question mine. Thus, it is no longer a question between the individual A and the State B, but between the State A and the State B. Then, how suppose that a state is going to submit to arbitration a matter involving an insignificant question, the expenses of which exceed the very im-

portance of the matter in debate. There is no reason to believe it.

Consequently, the precaution is not well taken, for it does not respond to the ends proposed by this Congress, because it is not a question of individuals against states, but of states against states. This much with respect to the second observation.

Respecting the third, it is said, that the claim will not be submitted to obligatory arbitration except under two conditions: first, that its amount be greater than the expenses that the decision might entail (this is a reason that as I have already said, has no reason to exist), and second, that the claimant shall not have served with the enemies of the Government.

How introduce in a project, that is simply intended as constitution for a tribunal to decide conflicts between nations, a rule like this? Such a provision I might explain to myself in the project that relates to the rights of aliens, and which we have just discussed; that is to say, in the basis and causes that might give rise to diplomatic reclamations.

I recall that in said project there was this provision: The foreigner injured in civil strife, shall not claim when he has taken part in that strife. I do not think that he can ever claim; I think that the damage that he suffers has to be reported as a damage occasioned by fortuitous case or vis major.

Then, Sir, I ask, why place this limitation in the project in debate, when this is not its place, nor is it justified?

But it will be said: it may happen that a foreigner established in a country takes part in a revolt, suffers injuries by cause of it, and presents himself to claim damages, asking for the recourse of arbitration: he has the support of his minister, and presents himself before the tribunals of the country soliciting arbitration for the indemnization of the injuries suffered. Then, sir, purely and simply, I do not admit this recourse; and I do not admit it because I do not accept the intervention of his minister, and much less to recur to the Court of The Hague to ask for decision upon the conflict. Why? because this is not a case involving a claim.

This simple consideration suffices to demonstrate how unnecessary is the article, from the moment that we are establishing propositions of diplomatic claims that have no reason to exist.

I think we ought to reduce the project very much, abolishing this provision in order to avoid difficulties.

Is it desired to establish obligatory arbitration? there is the tribunal of The Hague that offers guaranties, and with very few words we would have said all and the proposition that we pursue would have been met.

His Excellency Mr. Buchanan, Delegate from the United Estates of America.—Objections have been made to this article under three heads: First, the change of the form from the original draft to that which now exists. It appears to me that in a matter of so much importance, it is best to deal plainly and without any questions as to the facts in the case. If this article were drawn in the form suggested by the Honorable Delegate from the Argentine Republic, the result might be this, that if there were no limitation or suggestion as to what should constitute a claim of sufficient amount to justify its being submitted to arbitration, it might result that a claim for one thousand, let us say, presented by a citizen of one country against another country, would remain indefinitely undisposed of and unsettled, instead of being settled by the simple offer of the defendant country to arbitrate the claim, because it is the universal practice of governments, so far as I have any knowledge, that claimants must pay the expenses incident to the collection of their claims, and thus settlement might be avoided, for the reason that the cost of arbitration might be three or four times the cost of the claim itself. It seems to me that the question of the amount of a claim is one frequently of very little importance, and there may be claims of one thousand dollars, say or three or five thousand, wherein there are questions involved which would make the subject one of so much merit and of such great importance that the two governments interested might agree that a decision by arbitration should be arrived at upon the claim discussed, because of a question of principle involved therein. It seems to me that what we desire here is to come just as near to an unanimous agreement between ourselves to submit to arbitration all claims of citizens of one country against another country, and still remain consistent with the practice of our different governments and with all fairness. With regard to the latter part of art. 1, wherein reference is made to citizens who have taken part in revolutious or disturbances in another country, it is a universal practice, so far as I have any knowledge, that when citizens of one country take up arms or join in revolutions in another country, those persons lose the right to the consideration of their own respective governments in any pecuniary demand that may be lodged by them. There may be, however in such a case questions of fact to arrive at as between the government to which such person belongs and the Government against which he has been in revolt, and so far as I can see, this portion of the article is entirely wise and proper and in conformity with the proper desire we all have to repress such actions on the part of citizens of our respective countries; because, we would be taking away, if we did so, from the citizen the right he must always have to the diplomatic action of his government in proper and just circumstances, and the resolution that the government will not take up his claim is as far as we can go.

His Excellency the President Mr. Raigosa.—The session is adjourned begging Their Excellencies the Delegates to attend in the afternoon, so as to continue the discussion.

SESSION OF JANUARY 28, 1902.
(Afternoon.)

Secretary Macedo.—Discussion will be continued in detail on art. 1 of the project of the Committee on International Law with regard to the Court of Claims.

His Excellency Mr. de la Barra, Delegate from Mexico.—Messrs. Delegates: In order to conciliate the diverse tendencies that have been shown in the in the discussion of this morning, by reason of the project of the International Court of Claims, the Committee respectfully asks the Conference to allow it to withdraw art. 1 in order to present it in an amended form, within the sense of the discussion, that is to say, suppressing the words, «in accord with the Convention of The Hague for the pacific arrangement of international conflicts,» and the final part of said article referring to the claimant not having served or aided the enemies of the government against which the claim is presented, the text remaining in the following form:

«Art. 1. The High Contracting Parties obligate themselves to submit to arbitration all the claims for loss and pecuniary damages which may be presented by their respective citizens, and which cannot be decided amicably through diplomatic channels, provided that the said claims be of sufficient importance to warrant the expenses of arbitration.»

Secretary Macedo.—Discussion will be continued on art. 1 as amended.

His Excellency Mr. Bello Codecido, Delegate from Chili.—I have asked for the floor to state only, Mr. President, that I accept the suppression of the phrase «in accord with the Convention of The Hague for the pacific arrangement, etc., etc.,» to which Mr. de la Barra has just referred, because I understand that said suppression is made for the reason that there is already contemplated in art. 2 the idea that this treaty is in accord with the Conventions approved in the Conference of The Hague.

I would like to have it entered that I give this signification to the phrase of the article.

His Excellency Mr. Leger, Delegate from Hayti.—From the explanations made by the Honorable Mr. Buchanan it results that the disaccord that divides us may be easily dissipated. My distinguished colleague has recognized this morning the fact that often in controversies, the question of money is insignificant. In fact, gentlemen, the principles prompting certain claims at times are vested with such importance, which is impossible to appreciate, from a pecuniary point of view. For example, by reason of a riot the house of a private party living in Mexico is set on fire. The United States asserting that the individual is an American, ask a thousand dollars indemnity. If Mexico sustains that the party is a Mexican, because he was born within its territory, will it not be permitted to decide the question of nationality by arbitration, because the amount of the expenses exceeds the sum claimed? Mexico, notwithstanding, would recognize it by paying, a principle pregnant with consequences.

The objection of the Honorable Mr. Buchanan consists: 1. In that the claimants pay the expenses; and 2. In that a government might thus impede the arrangement of a difference of small importance pecuniarily, by refusing arbitration.

There is in this an error that I trust my distinguished colleague will permit me to rectify. Generally it is not private parties who pay the expenses of arbitration. When a government intervenes in behalf of one of its citizens, the latter disappears, and the difference exists solely between two states, and these states, when they decide to submit the difficulty to arbitration, compromise themselves to pay, in equal parts, the expenses of the procedure. If a country agrees to stand the expense of arbitration, in order that a question of principle may be decided, will it be proper in the other government to deny that right, under pretext of the small pecuniary importance of the claim? This would be in many cases, to put the government against which the claim is made, at the mercy of claimant, exposing itself, thus, to decisions that would not be in conformity with law nor even with strict equity.

For these reasons, I have the honor to propose the suppression of the following phrase: «provided said claims be of sufficient importance to justify the expenses of arbitration.»

His Excellency Mr. Bermejo, Delegate from the Argentine Republic.—I consider as very just the remarks just made by the Honorable Delegate from Hayti, with respect to the last part of this article, that is to say, to the only limitation that has remained subsistent, to wit: that there can only be submitted to arbitration questions wherein the amount exceeds the costs of the judgment. That sole remaining exception, appears to me unacceptable, and I will have to vote against it.

I understand that it is very difficult and inconvenient to fix a limit to this operation. The Committee itself has proposed two amendments radically distinct: it commenced by proposing that there could only be submitted to the Court of Claims, matters involving an amount of at least ten thousand dollars gold; later it has reflected and said: Why do I put this basis? what reason is there that a claim of one thousand or one thousand five hundred dollars may not be submitted to this court? It has been said that there is no reason whatever, and then has retired that limitation, and it has done very well. But insisting on the proposition of fixing a limit that will not hold, that has no reason to exist, it has arrived at this other extreme: there shall not be submitted to arbitration those matters whose importance is such that the amount would not equal the expenses of arbitration. I say, for the reasons that I have expressed this morning and which coincide with those of the honorable Delegate from Hayti: can there be a claim of ten thousand dollars? then there comes the question if it will exceed or not the expenses of arbitration; but who is able to tell us all this beforehand? is it not leaving the door open for the interested party to refuse to resort to arbitration? It is evident, that if we take up matters of great importance, we would recur to arbitrators like those of The Hague, to a Bourgeon, to a Hollis, to one of those grand personages, whose learning and reputation are entirely recognized; and then that immense sum will be legitimately disbursed, and the parties will remain tranquil. But if it is a matter involving a thousand dollars, if recourse is had to the tribunal of The Hague, what government in so insignificant a matter, would think of molesting men of those qualities?

Meanwhile, to leave subsistent the proposition such as it is, is to leave the door open to a difficulty without solution, because then it remains at the caprice or ill will of the states, which is not convenient.

One more consideration. Is it not true that admitting this limitation, small questions are rendered more grave than they are in reality?

Thus, then, a claim for the sum of five hundred dollars cannot be decided judicially, and what will result? There remains no other remedy than for the government that may be obliged to pay, to say to the other, I will not pay, and then the question will be decided by arms, by war. Can it not be seen then, that it is in contra-position to give to small questions transcendence of such magnitude, that may tend to provoke armed conflicts? Is this not contradictory? Evidently, yes. Then, I say, what would be the form in which to sanction the article?