

I think so far as has been read, but without limitation, because if that limitation is in contra-position, it is prejudicial, and I opine that it is not convenient to put it in, since it remedies nothing.

To conciliate all, I opine that the article should be voted on in two parts, so far as may be convenient.

Secretary Macedo.—As indicated by the Honorable Mr. Bermejo, the first part of the article will be put to vote, and which states:

«The High Contracting Parties obligate themselves to submit to arbitration all claims for damages and pecuniary injuries, that may be presented by their respective citizens, and which cannot be decided upon amicably by diplomacy.»

His Excellency Mr. Buchanan, Delegate from the United States of America.—Mr. President: I dislike to appear to be objecting to trifles, but it seems to me that this method of voting is clearly irregular. I fail to understand why an amendment cannot be offered to the article, and the amendment then voted on.

His Excellency the Vicepresident Mr. Estupinian.—Will His Excellency Mr. Buchanan permit me to recall to his mind, that the case has already arisen here, as we have been able to observe, that an article has been voted on in sections. If there is no objection to this, the Chair would be very grateful.

The vote was then taken and resulted approved the first part by unanimity of the Delegations present.

The second part of art. 1 being placed under discussion, it was also approved by ten votes against four. Those voting in the affirmative were Costa Rica, Chili, Equador, Salvador, United States of America, Guatemala, Honduras, Mexico, Nicaragua and Peru, and in the negative, Argentine Republic, Bolivia, Dominican Republic and Hayti.

Article 2 was put under discussion and was also approved by unanimity.

Article 3 was placed under discussion.

His Excellency Mr. de la Barra.—Method would seem to indicate, Messrs. Delegates, that the article appearing as 4th. in the project that is under discussion, occupy the place of the 3rd., the latter passing to 4th. As this in naught alters the essence of the project, the Committee begs permission from the Conference to make the change indicated.

Secretary Macedo.—Article 4 of the project, which is to become 3, is now placed under discussion.

His Excellency Mr. Bermejo.—I am going to vote also against this article, for the following reasons: The United States of America and the United States of Mexico have subscribed the treaty of The Hague. By this clause it is established that only the other states remain obligated, provided they solicit adhesion to the treaties of The Hague. Meanwhile, there is a recent pact signed in this Conference, by which the governments mentioned are charged to solicit this act of adhesion. It is known that the agreement referring to the maintenance of peace, is not an open convention, and that the signatory parties reserved the right to determine the form in which they will accept the adhesion of the other states, and if they would accept it or not. In view of this circumstance, the American nations that had adhered to that convention, recommended that action along with the two alluded to.

Now then, it would result, that these nations having accepted the charge, it cannot be subordinated to their free will whether or not to remain leagued in this Convention.

Such are the considerations that induce me to vote against this article.

His Excellency Mr. Bello Codecido.—I also desire, on my part, Mr. President, to express in the name of the Delegation of Chili, that I accept this art. 4, now under discussion; and the Delegation of Chili accepts it, for it wishes to cause to be noted that in concurring to this Convention regarding the Court of Claims, it did so, obligating itself with the powers that have adhered to the Convention of the Hague.

Consequently, in the question of recurring to the tribunal of the Permanent Court of the Hague for the resolution of pecuniary claims indicated in this treaty, it will do so with the nations that have adhered. Consequently, it must be given general redaction stating that all the nations here represented desire to make that reserve, or otherwise the Delegation of Chili asks that to the names of the United States and Mexico there be added the name of Chili.

His Excellency Mr. Alvarez Calderon, Delegate from Peru.—Allow me to bring to the notice of the Committee that this article is entirely unnecessary, for we have all asked for adhesion to the Hague; we are not going to do it again. We have charged the United States and Mexico with the duty to solicit in our name entrance as adherents to the Convention of the Hague. In what other manner could we do it? In no other directly, since we have already entrusted the matter to these two respectable nations. Consequently, the condition here proposed, is realized beforehand and is completely without motive.

His Excellency Mr. Guachalla, Delegate from Bolivia.—The article under discussion, Mr. President, puts as condition that the stipulations of this project of treaty be complied with; it puts as condition, I say, that the other nations, that is other than the United States and Mexico, through medium of their governments, solicit adhesion to the Convention of the Hague. As the Honorable Representative from Peru has just said, this adhesion is solicited, and, in consequence, the condition imposed has been changed; but if the article has the intention that the Honorable Delegate from the Argentine appears to attribute to it, in case the adhesion may not be accepted by any of the nations, it would result that it would have an interpretation distinct from its literal terms.

For this reason, being in the state of doubt that I have just manifested, I beg to request any one of the members of the Committee, to inform us just what is the sense and intend of the article: is it necessary to comply with the requisite imposed that the nations shall admitted to the Convention of the Hague, or is it necessary that they fulfill solely the condition of the solicitude?

I am in doubt, and I request any one of the honorable members of the Committee to clear it for me.

His Excellency Mr. de la Barra.—In order to render more amply comprehensible the idea that animated the Committee in redacting this article, it submits to the consideration of the Assembly the following redaction, that probably will be in unison with the ideas of all.

«The present treaty shall not be obligatory except for the states that have adhered to the Convention of the Hague, on arbitration, signed the 29th. of July, 1899.»

His Excellency Mr. Alvarez Calderon.—The modification made by His Excellency, does not satisfy me completely. The same condition is imposed upon us, which, perhaps, may be beyond our reach. It is not sufficient that we desire to adhere, it is necessary that we be admitted; if we are not, this treaty will not apply as to us. Each and every one of the other High Contracting Parties may exact from us the desire, the solicitude of adhesion; but if, despite this, we were not admitted, could we recur to the tribunals of the Hague, in conformity with the provisions of article 19, in accord with which, those that are not incorporated in the union of peace, may resort to the tribunal of the Hague.

My desire is that this treaty have the greatest amplitude and not to place conditions, that, although hypothetical, may be within the range of possibility.

His Excellency Mr. Matte, Delegate from Chili.—I have asked for the floor in order to call the attention of the Assembly and of my honorable colleague the Delegate from Peru, to the fact that this article is based on the adhesion to the Hague, and, in consequence, it is the tribunal of the Hague that will have to decide all claims. This has been the fundamental basis of the treaty. Thus, if there is no adhesion to the Hague, the treaty falls from its own weight. Therefore, I find satisfactory the redaction that the Honorable Mr. de la Barra has given to the article that is under debate.

His Excellency Mr. Bermejo.—Mr. President: A treaty has been formulated, by which it is established that there shall be submitted to arbitration all questions of pecuniary claims: what has this compromise to do with the Hague, from what point of view, from what phase of the problem is this connected with the Hague? what object is there in making this stipulation? For in fact, I suppose that the idea has been conceived of carrying into practice, if that condition is good that those forming part of this pact, be in accord in deciding through this medium all pecuniary claims, and that they adhere to the Convention of the Hague, or to that of Brussels, or to that of St. Petersburg, or to that of the Red Cross, would be the same. I am in accord that we celebrate this pact in order to decide by this means the questions we may have; but, Sir, it has been said that the Permanent Court of the Hague is open to the entire world, for pacific arrangements, and that all the signatory nations, not only those adhering but those non-adherent, may recur to the tribunal of the Hague for the decision of their questions. What is the tribunal of the Hague? It is the designation, on part of each nation, of two eminent persons, who for the purpose are called, as may be called any other not forming part of the Convention to decide the conflicts that may be presented. What advantage is offered by that personnel? This, that it is composed of individuals who have been elected by the governments among their eminent men and from those best prepared to decide those difficulties: hence, an authority that other tribunals do not have.

There, as I have said, in the same Convention to which reference has been made, it is established that anyone may designate the judge offering him the greatest guaranty, and then, what is the purpose of

this condition that adherence must be had perforce to the Convention of the Hague? It is to impose a condition impossible to realize; or it is desired in good faith to carry out the compromise, formulating it in terms that render it feasible, or it means to say that we do not want such a compromise. But to impose upon the contracting parties an obligation not dependent upon them, but upon others, is to subordinate them, which should not be accepted.

For these reasons, I ask myself: What is the practical object of this article, to what does it respond, what ends are proposed to attain?

If there were a satisfactory explanation, I would have no hesitancy in accepting it; but I see that it has absolutely no reason to exist.

His Excellency Mr. Buchanan.—Mr. President:

In answer to the distinguished delegate from the Argentine Republic, regarding the propriety of this article, may I say that it is one of the aspirations of the United States Government to see each one of the Republics of America represented by its members at the court of the Hague. With that adhesion and that personnel, the Court at the Hague would become in its fullest sense, an international court, to which with entire propriety any case might be presented, for there would then be a court of such a diversity of language and race and of such irrefragable character that impartial decisions would be assured and secured. With this end in view and that this may be the great result attained here, this delegation will support the article.

His Excellency Mr. Guachalla.—I insist in asking a question that will satisfy my doubt: Is this article intended to mean, that the acceptance of adhesion already made is necessary, in order that its stipulations may be fulfilled, or is it sufficient that the solicitude be made in order to comply with the condition in question? I request some of the honorable members of the Committee to reply, and if necessary I will continue.

His Excellency Mr. Alvarez Calderon.—I beg to be allowed in turn, to bring to the notice of the Honorable Mr. Matte that his view is erroneous: the treaty is not based upon absolute adhesion to the Hague, and so true is this that the article following, that we are going to discuss, states.

Art. 3. Provided that for any motive, there should not be opened to any one or more of the High Contracting Parties, the Permanent Court of the Hague.»

Thus, a case is offered wherein not all the powers represented here are adherents to the Hague, because if they were adherents, there would be no object in placing this stipulation. Later, I find that the article, in the form proposed by the Committee, implies a contradiction with the following, because the article supposes that this treaty is a mere vinculture to those who have adhered to the Hague; then what object has the article following that is placed in contrary sense, that is to say, with the idea that the countries are not adherents to the Hague? As I see it, there is a palpable contradiction in article 3, in the form as at present redacted, and article 4 as maintained by the Committee: the one supposes that all are adherents to the Convention of the Hague, the other supposes that all are not.

This requires, then, an explanation on part of the Committee or from some of the members that form it, or to see to it how a new redaction may be presented.

His Excellency Mr. de la Barra.—The spirit of the Committee, in redacting the article in the form now under discussion, was the following: Signed, as it is, an agreement, by virtue of which all the nations represented in this Conference have manifested their adhesion, or their desire to unite themselves to the Convention of The Hague, for the arrangement of international conflicts, there still lacks a requisite in order that this document may have the validity necessary, that is the ratification of the respective governments. If the adhesion of the governments to the tribunal of The Hague, or better said, to the Convention, for the arrangement of the international conflicts, consists solely in the adhesion of the delegations, it appears that in international law it ought not to be considered thus: it still lacks the ratification of the governments to indicate in a clear and precise manner their desire to adhere to the Convention to which I have before referred.

If to this Convention there are not admitted certain nations, for motives that escape at this moment the consideration or the prevision of the Committee, there would remain open the doors of the tribunal of The Hague by virtue of the article that is to be discussed in succession.

With this explanation, the Committee considers as answered the inquiries made by Their Excellencies Messrs. Guachalla and Alvarez Calderon.

His Excellency Mr. Matte.—As the Honorable Mr. de la Barra has very well said, it seems to me that the observations with which it is sought to impugn the project, stating that all have already signed the adhesion to The Hague, and that by this act, all the necessary requisites have been complied with for that, adhesion, are well answered, I say, with the statement made by the Honorable Mr. de la Barra, in saying that it lacks the ratification of the governments.

On the other hand, Mr. President, I ought to make patent, that in the meetings of the Committee on Court of Claims there were long discussions, and this point puzzled the spirit of its members for a long time: what should be the form to be given to this tribunal? Some of the powers there represented, said that they would not accept it if the tribunal were not composed under conditions to which they might agree. It has been believed that no tribunal outside of the tribunal represented in The Hague, can give a greater guaranty; consequently, it has been a means to facilitate arriving at this agreement, this pact, which is of vital importance to America.

His Excellency Mr. Guachalla.—I am grateful to the Honorable Mr. de la Barra for the reply given to my interrogation; but this reply does not yet satisfy me, since it is not made to depend upon the acceptance of the signatory nations of the Convention of the Hague, the fulfillment of this treaty that is under discussion, but upon the ratification that our respective governments may make of the accord already reached in regard to the adhesion to The Hague. If this is the idea of the project, which I cannot understand thus, there is nothing simpler, in my mind, than to redact it in those terms. This treaty will receive execution on part of the United States of America and of the United States of Mexico, which are the ones already adhering to the Convention of The Hague, as soon as the resolutions of such date may be ratified, made for the adhesion of the other nations.

If this is the sense, I think we will be in accord. *Secretary Macedo.*—No one has the floor.

His Excellency Mr. Guachalla.—When once I have had an opportunity to take up this incident, I will profit by the occasion to call the attention of the delegates to this point: the execution of this pact does not depend upon adhesion to The Hague, since in the article that we have discussed it is stated that if for any motive there should not be opened to any one or more of the High Contracting Parties the Permanent Court of The Hague, it is obligatory to consign in a special treaty the rules in conformity with which there shall be established and operated such tribunal. But, finally, translating the idea of the Committee, expressed by the Honorable Mr. de la Barra, I think that the article might be maintained with a simple modification. It might state: «toward the nations whose governments ratify the adhesion stipulated on such a date at the Convention, etc.»

I think that thus we might overcome all improprieties.

Secretary Macedo.—The Committee withdraws the former article 3, and presents it amended in the following terms:

«The present treaty shall not obligate the United States of America nor the United States of Mexico, except as toward the governments that may ratify the agreement reached by the Second International American Conference, for adhesion to the Convention of The Hague.»

His Excellency Mr. Bello Codecido.—I ought to observe that in this last redaction presented to the Conference, there has forgotten completely the observation that I made before. The Delegation of Chili has declared this: that it does not accept the obligatory compromise to submit to the Court of The Hague its claims, except with the nations that may have adhered to The Hague, participating in the views of the United States of America and the United States of Mexico; for this reason I said: let the provision be redacted in general terms so that we may be able to accept it, or and the name of Chili to these of the United States of America and the United States of Mexico, because Chili accepts it with the same reservation, that is to say, it does not contract the compromise except with respect to the nations that may have adhered to The Hague.

It is a question of a reservation of importance, that I ought to cause to be noted in the article, in the same manner as the United States of America and the United States of Mexico have caused it to be noted. I wanted to make this explanation in order that the Honorable Mr. de la Barra may take into account the special situation in which the Delegation of Chili is placed. For this reason, I have felt constrained to make this observation prior to the continuation of the debate.

His Excellency Mr. de la Barra.—As noted by the Honorable Delegates, the situation of the Committee is very delicate. So many opinions have been expressed in contrary sense in this discussion, that it is very difficult to reconcile them in a form that may be satisfactory to all. The delegates may believe that the labor that the Committee has had to do during the months that it has been elaborating a series of projects—I think it passes ten—has been great, inspired by the conviction sustained by all the members of the Committee, that one of the principal conquests of which this Conference may be proud, is

without doubt the celebration of a treaty for the decision of conflicts in pecuniary matters. This spirit has been constantly inspiring the Committee to endeavor to reconcile the different tendencies shown at its meetings; but we see occasionally, that trying to obtain a conciliation with one group, may give rise to difficulties with another. Notwithstanding, the Committee desirous of conciliating these good and generous intentions in one form that may embrace the desires of all, at the risk of appearing inconsequential or a little volatile due to the many changes that have been made to this article, is going to propose again another redaction. We trust that this, Messrs. Delegates, may bring about a reunion and singleness of spirit in the incorporation of the noble and commendable aspirations of all the nations represented in this Conference. The redaction of the article will be the following:

Art. 3. The present Treaty shall not be obligatory except upon those States which have subscribed to the Convention for the pacific settlement of international disputes, signed at The Hague, July 22, 1899, and upon those which ratify the protocol unanimously adopted by the Republics represented in the Second International Conference of American States for their adherence to the Conventions signed at The Hague, July 29, 1899.»

This is the form that seems to me intended to reconcile all the interests, all the manifestations and opinions.

Article 3 as amended by the Committee, being put to discussion, it was approved by unanimity of votes of the Delegations present.

Article 4 being placed under discussion, was also approved by a unanimous vote.

Article 5 was placed under discussion.

His Excellency Mr. Leger.—I would like to have the Committee explain to me the intention of the article under discussion.

His Excellency Mr. de la Barra.—The intention of the article now in discussion is the following: in order that this treaty may be held valid, it is necessary that five States ratify it, according to the project presented; and the period of the duration of this treaty is that of five years, that shall commence to be counted from the date of the ratification sent by the last of the five states that ratify it.

His Excellency Mr. Leger.—I do not consider it necessary to express that the treaty shall be in force from the date of the ratification sent by the last of the five first signatory governments, for it seems to me that the idea is made very clear by merely stating: «from the date of the ratification sent by the five signatory governments.» I propose, therefore, that the article be amended in such sense.

His Excellency Mr. de la Barra.—The Committee on the International Court of Claims accepts the indication made by His Excellency the Delegate from Hayti, and, in consequence: the article will remain in this form:

«Art. 5. This Treaty shall be binding on the States ratifying it, from the date on which five signatory governments have ratified the same, 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 shall notify the other Governments of the ratification it may receive.»

The amended article being placed under discussion was approved by unanimity of votes, and the matter was ordered passed to the Committee on Engrossing.

Secretary Macedo.—In accord with the terms of the resolution of the 22nd.¹ instant, the reports of the Committee on Engrossing upon the resolutions approved by the Conference, will remain in the hands of the Secretary at the disposal of the Honorable Delegates, who may wish to revise them and make upon them such observations as they may deem proper.

The report upon claims for pecuniary damages and loss, reads as follows:

Committee on Engrossing.—The subscribing Committee has the honor to propose the following redaction to the treaty approved by the Conference on Courts of Claims:

Art. 1. 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 cannot be amicably adjusted through diplomatic channels and when said claims are of sufficient importance to warrant the expenses of arbitration.

Art. 2. By virtue of the faculty recognized by Article 26 of the Convention of The Hague 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 Article 21 of the Convention referred to.

If a 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. 3. The present Treaty shall not be obligatory except upon those States which have subscribed to the Convention for the pacific settlement of international disputes, signed at The Hague, July 29, 1899, and upon those which ratify the Protocol unanimously adopted by the Republics represented in the Second International Conference of American States, for their adherence to the Conventions signed at The Hague, July 29, 1899.

Art. 4. If, for any cause whatever, the Permanent Court of The Hague should not be opened to one or more of the High Contracting Parties, they obligate themselves to stipulate, in a special Treaty, the rules under which the Tribunal shall be established, as well as its form of procedure, which shall take cognizance of the questions referred to in article 1, of the present Treaty.

Art. 5. This Treaty shall be binding on the States ratifying it, from the date on which five signatory governments have ratified the same, and shall be in force 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 shall notify the other Governments of the ratifications it may receive.

¹ See page 74.