

Hall of Committees of the Second International American Conference.

Mexico, January 28, 1902. Signed.—*Alberto Elmore*.—*Rosendo Pineda*.

The treaty on claims for pecuniary damages and loss, expressed exactly in the same terms as the

preceding report, was signed on the 30th. day of January, 1902, by the Delegations of the Argentine Republic, Bolivia, Colombia, Costa Rica, Chili, Dominican Republic, Equador, Salvador, United States of America, Guatemala, Hayti, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

NUMBER 20.

Arbitration.

SECRET SESSION OF NOVEMBER 6, 1901.

Present the Delegates from the eighteen Republics of North, Central and South America, stated in the minutes of the public session of this same date (minutes number 9), and by virtue of the resolution of the Conference, on motion of His Excellency Mr. Pardo, Delegate from Mexico, stated in the same minutes, the secret session was opened at 11.15 a. m.

His Excellency Mr. de la Barra, Delegate from Mexico read the historical part from the Statement of Reasons of the project of treaty, presented by the Mexican Delegation, upon mediation, good offices, international commissions of investigation and arbitration.

His Excellency Mr. Pardo, Delegate from Mexico, read the explanatory part of the said statement.

The Secretary read the project of treaty, and then His Excellency the President, at 12 m. declared the secret session terminated and that the public session would continue.

The historic and explanatory part of the statement of motives and the project referred to in the preceding minutes, are the following.

PREAMBLE stating the reasons and intent of the Project of a Treaty on Mediation, Good Offices, International Commissions of Inquiry, and Arbitration, presented by the Mexican Delegation.

HISTORIC PART.

Messrs. Delegates: The Mexican Delegation in the Second International American Conference formulated a project of an Arbitration Treaty which it now submits respectfully to this Assembly, manifesting, however, that it has placed itself beyond the pale of dangerous utopias and of unwarranted pessimisms.

The first work of the Delegation consisted in finding the result of the tendencies which, upon this subject, each one of the American countries have manifested in treaties and in diplomatic notes. This result, which is in accordance, and it could not have been otherwise, with the teachings of science, has a predominant importance in this project, in which we endeavor to associate to the preventive action, forces of execution and elements of coercion.

I.

The progress, in the matter which is the subject of this exposition, has been realized in three channels primarily: through its extension in the practice of arbitration; through the precision of the terms used in determining the cases in which it imposes itself obligatorily, and in determining those excep-

tions to its application; and through the organization of the arbitrations.

The first condition of those already mentioned does not presuppose, to our thinking, the limitless extension of obligatory arbitration, to all countries and under all circumstances. Whoever may so pretend, forgets the teachings of History and is only legislating for ideal societies, organized in a superior and different manner than those now existing, and it is not for these in which man moves, with high aspirations, but carried at times by passions which disturb and blind him, to pretend to apply to societies of coordination, such as those which form the great international community, the same rules which dominate in societies under subordination. In these the problem is presented and is resolved with the organisms which work to establish the prescriptions of right and to apply them; in these the tenacious and slow work productive of a customary right in conciliating the principles of the national sovereignty with those which the community of states imposes, it substitutes gradually and in an almost insensible manner, the principles of the absolute independence, of nations, that of their interdependence, rational and moderate, which is the basis of modern international right, from a positive point of view.

II.

The truth of this theory is confirmed by the study of the results obtained by the treaties which Colombia celebrated from 1822 to 1825 with Peru, Chili, Mexico and Central America; by that of the 15th. of July 1826 between these same Republics, under the generous inspirations of Bolivia; by that of the 8th. of February, 1848, subscribed to in Lima; by that of the 9th. of November, 1856, which carried the exaggerated and pompous name of «Continental Treaty;» and by that of the 23rd. of January, 1865, called the «Maintenance of Peace.» Upon studying these treaties, true anfictionic undertakings, respect becomes due to their noble inspirators, who thought it possible to constitute, by means of a confederation of the Spanish-American peoples, a body politic, with a common center and a superior authority. Their results therefore were null, if not contrary to their object.

With the experience which this study offers, the acceptance which the Arbitration Treaty of Washington in 1890 was to have met with, could have been predicted.

The treaty, signed in Washington on the 28th. of April, 1900, by nine nations out of the eighteen re-

presented in the First American Conference, although worthy of praise under some of its aspects, as pointed out by distinguished authors of treaties, and as recognized by the «*Union Inter-parlementaire de la Paix*,» at the sessions which it celebrated in Paris in 1900, in adopting one of the fundamental principles which that treaty established, it contains nevertheless, serious and transcendental deficiencies, which explain why nine of the Republics abstained from signing it, and the failure of ratification at the hands of those who signed it.

One of the apostles of obligatory arbitration, upon seeing the only exception which the compact determines—the questions which compromise the independence of the States—called it a lamentable retrograde step on the road to progress, and those who think that the problem of liberty, well understood, imposes itself upon international law, and that it is permissible to affirm, as the profound Nys has done, that if the respect due to the liberty of the political community is suppressed. International Law, will only be a false denomination, in considering that one and sole exception to obligatory arbitration, might exclaim with Pilliet: «In the name of which right can it be asked of the people that it shall submit to the arbitration of a foreign power, when its existence, its honor, or its truest interests are at stake?»

The project perhaps did not go beyond the intent of one, owing to these considerations, for those of the concert which we now study did not constitute a precise and definite tribunal, and did not flx on the sanction for the execution of the findings, due to the reasons that in combating it, were presented by the Delegates of the Republic of Chili, claimed by Rouard de Card and by Féraud-Giraud, and censured by Pradier Foderé, and also by the tenor of the note of the 30th. of December, 1880, signed by the Foreign Office of the Argentine and the Government of Colombia, refusing to sign the Convention of Bogota.

III.

Since the Conference of Washington closed its sessions, the Inter-parliamentary Union of Peace, in Christiania and in Paris, the worthy «Institute of International Right» and «International Law Association,» in their session of 1895, have expressed *desiderata* in questions of arbitration and in matters connected with it which the Mexican Delegation has had before it, as well as in the official circle, the Convention of the Fourth of July, 1891, of the «Universal Postal Union,» the «Conference of The Hague,» which intended with noble purpose, and realized in great measure «to extend the empire of right and to fortify the sentiment of international justice,» the Treaty of Arbitration of the 12th. of January, 1897, between the United States and Great Britain—not

¹ The articles of the Washington Project which refer to this point, are as follows:

Art. 2. Arbitration shall be obligatory in all controversies concerning diplomatic rights and privileges, boundaries, territories, indemnities, the right of navigation and the validity, construction and enforcement of treaties.

Art. 3. Arbitration shall be equally obligatory in all cases, other than those mentioned in the foregoing article, whatever may be their origin, nature or occasion; with the single exception mentioned in the next following article.

Art. 4. Such exception shall be when, in the judgment of any nation involved in the controversy, its independence might be endangered by the result of arbitration; for such nation, arbitration shall be optional, but it shall be obligatory upon the adversary Power.

ratified—the one on the same subject, general and permanent, celebrated by the Argentine Republic with Italy on the 23rd. July, 1898; the most recent between the Republics of Central America, and above all, the compromisory clauses inserted, it can be assured that in all the treaties of friendship which the American nations have celebrated in the last few years, whether among themselves or among those of other continents.

Nothing more transcendental for the advances of right as the outcome of those agreements and those Congresses than the conquests realized at the Peace Conference, not only from the high stand point of the interests of humanity, as Mr. Holls, Delegate to the same for the American Government said, but from the practical and experimental side of those interests. Advancing in the purview of the project worked out at the Inter-parliamentary Conference of Brussels, does then arbitration advance a new and decisive step in the true and effective road of progress, constituting a «free tribunal in the very heart of the independent states,» reminding the people and the government that there exist fixed principles of justice superior to those of a mutable and changeable political creed.

To establish upon our Continent that institution (nobly useful as called by the French Delegation to that Conference) is the principal aim of the initiative annexed. May it take root and become a faithful instrument of justice.

That the idea of arbitration may take good root and gain ground among all classes, depends in a great measure upon the organic growth (using the terminology of Descamps) of the compromisory clause which, on occasions, is restricted to the bare terms of «to study and negotiate the treaties which intend to establish the basis to submit to arbitration the questions which may arise between the contracting parties by it that questions of the discussion refer to this agreement respecting the stipulations of the treaty or upon any other one referring to its political and commercial relation,» as was established by the treaty existing between Mexico and Equador, and which, upon other occasions, become obligatory when the questions arise from the execution or interpretation of a treaty or from the consequences of a violation of some, as occurred in the last conventions celebrated between our Republic and Italy, Belgium and Holland.

Important and worthy, not only of study but of praise, are doubtless the compacts before referred to existing between the Argentine Republic and Italy and between the Republics of Central America, in which obligatory arbitration is established without any limitation, but without affirming, as Féraud Giraud does, quoted by the distinguished jurist Gaspar Toro, that the tendency to extend it by means of treaties, tying up the nations in a permanent and general manner; deserves protest at the hands of the partisans of special and obligatory arbitration, the Mexican Delegation can guide itself in a precise manner by following in this case the instructions which our Government gave in 1890 to its Delegates in Washington, to eliminate from arbitration the questions which affect the honor and national dignity.

The circumstances which the Mexican Government had in view to pursue this policy, in our opinion, have not been changed perceptibly, since then.