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 party 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 preventine action, forces of execution and elements of coercipn.

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 exceptions 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 inspiratars, 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 represented 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 deficiences, 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 itselt 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 Pillet: «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?»[1]

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 fix 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 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.

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.

IV.

From the study of all antecedents cited, and of all the opinions of notable authors on International Law, the Delegation comes to the conclusion that the rules which represent the progress made in this matter under actual conditions, are the following:

1.—To limit the cases in which arbitration does not become obligatory;

2.—To constitute impartial and learned tribunals, which can be at the same time fixed and removable; fixed, in so far that but one law must assist in their formation; removable, because of the liberty to select the personnel element composing them;

3.—Under efficacious sanctions to impose the execution of the sentences, which in no case can be confided to courts charged with expounding the law, according to the accepted phrase.

To realize these tendencies is the object of this project of a treaty.

V.

Such is, in a broad way, the intent of the Delegation in working out this project. It must not enter into a detailed study of the reasons in which it sustains itself in each of the divisions of this work, because the exposition of motives shall be made, and because on this occasion it is unnecessary owing to the profound knowledge possessed by the Delegagates of the our sister Republics to-day honored by their visit. Their intent and ours is the same (assured as we are, owing to acquired experience) we desire, not only to give effect in these conventions to our mutual sympathies, but to favor the interests, as well of the economic order as of the political one, of the nations represented at this Conference. To seek only for the interpretation of that sentiment which vibrates amongst all of us, might expose us to recommend the celebration of Conventions which would then deserve the dictum given by Metternich to the Treaty of the Holy Alliance: «A sonorous and empty monument.»

The Mexican Delegation looks for more practical and modest results. It believes that in the project which it offers for consultation there exist advance propositions which science imposes, and which political science does not reject; propositions of no great moment, perhaps, in the opinion of some, but more plausible in the interests of Peace than the extended imaginings of those «sowers of ideas» who, when starting crusades for the constitution of the United States of Europe, and even of the World, forgetting the teachings of History and the actual conformation of societies, fight against Peace in lieu of fighting against War, as Descamps has so well observed.

Mexico, October 23th 1904.—*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.*

EXPLANATORY PART.

Messrs. Delegates:

The 18th. af April 1890 is a land-mark in the history af America, for, on that date ever memorable, Peace was proclaimed as one of the principles of International Law and one hundred millions of men, represented in the Washington Conference, recommended arbitration for the settlement of all differences and all conflicts that should occur between the Republics of the New World, and, though the exaltation of Justice to the category of the fundamental rules that must govern the dealings between Nations was only a recommendation which did not attain the stage of being sanctioned by a Treaty between the countries that took part in the deliberatlons of the First Pan-American Congress, yet, the civilizing and humanitary impulse given to the labor of pacification, so long ago undertaken, propagated until it reached the Councils of European Governments, and the Hague Conference adopted Arbitration, nine years later, as the most effective means of settling diferences that war can certainly decide, but without extinguishing the hatred and rivalries which oblige Nations to use their energies and lavish their wealth in keeping up that misnomer known as armed peace, having faith in force as a supreme resource.

To believe that the reign of Peece is assured for ever, when human blood is being shed in different parts of the world, would be a fallacy dispelled by cruel reality; but to agree in acknowledging that those great events have made war more difficult, and attained an immense progress in the sphere of International Law, is to recognize a consoling truth, that allows us to trust in the possibility of the creation, by uuiversal consent, of a Tribunal to whose supreme decisions shall submit, perhaps in a distant day, all the civilized Nations of the world.

The Second American International Conference is about to attempt a new effort to make the appliance of Arbitration practical and effective, and the Mexican Delegation has considered it a duty to prepare a plan that might serve as a basis for deliberation in the Congress of the Republics which have responded to the invitation of our Government.

Complying with this duty, the Delegation of the United States of Mexico has the honor to submit to the consideration of the Conference, a Project that, with due respect to the fundamental principles or the recommendation made the 18th. of April 1800, utilizes the precedents established by the International Conference of Peace held at The Hague in 1899; and endeavors to insert a body of rules destined to facilitate the interposal of Good Offices, Mediation or Arbitration, as the best means of settling differences that may give imminence to a war between two or more of the Republics of North, Central, and South America.

I.

The recommendations of the Washington Conference as to the manner of preventing armed conflicts between the republics which were represented at the Congress, only referred to the adjustment of a uniform Arbitration Treaty; but a propitious occasion to propose the adoption of other recourses directed to the same end, is undoubtedly offered by taking into consideration those recommendations, and inspired in the pacts of the Treaty of The Hague, the plan or Project contains special chapters destined to the interposal of Goods Offices, to Mediation, and to the International Commission of Inquiry.

Mediation and Good Offices are interposed to reconcile opposing interests and to suggest friendly solutions, leaving in absolute liberty the parties directly interested, to accept or refuse the accomodation proposed by the mediating State.

The intervention of diplomacy in this form can, in some cases and only by the natural effect of the delays which it causes, allow time to pacify resentments and moderate fits of passion which a conciliatory advice, given with opportunity, is able to dispel, saving the nations in conflict from the horrors of war.

Mediation has thus avoided some international collisions, thanks the overtures made for pacific solutions, that not one of the contending parties would have dared to propose without considering its dignity offended; and the history os diplomacy is filled with examples of this kind, which it does not seem necessary to recall now.

Therefore, the plan of the Mexican Delegation contains provisions referring to the interposal of good offlces and of mediation, preserving between both recourses the theoretical differences derived from the officious character of the first of them, in the case of a State that attempts to interfere in the dispute between two friendly Nations, while the second recourse means more specially the act of applying by the contending parties, or one of them, to a third Power, with the object of taking measures to avoid rupture of hostilities; and as this plan adjusts essentially to the rules set down by the Hague Treaty, it suffices, to explain it, to recall the deliberations that preceded the adoption of the aforesaid International Compact, which comprehends the complete development of the system then adopted.

It will not be amiss, however, to call attention to the fact that, things well considered, the plan does not recommend but what, at the present time, and independently of all pacts, can be made by the Powers that belong to the concert of civilized Nations, according to international practice and traditions, when a menace of war exists between any of them.

Good offlces, as well as mediation, preserve their essential characteristics of friendly recourses, not restraining the free acts of the States in conflict, unless they so agree, and all that is demanded of them is that in cases to be decided they abstain, except if otherwise stipulated, from dealing directly with each other, during a period whose maximum limit is established for the question that has caused the differences, as they are referred to the mediatory Powers.

This precaution seems to be indispensable to assure the success of the mediation by the maintenance of the *statu quo.*

II.

The initiative for the establishment of International Commissions of Inquiry, is not a new feature of which the Mexican Delegation can boast, for they have limited themselves to accept the principles adopted on this point by the Congress assembled through the generous invitation of the Russian Government. The plan leaves to the institution the facultative character it must have, so as not to wound legitimate susceptibilities, or to transgress against the sovereignty of the States which may have difficulties that can satisfactorily be removed by a Court of Investigation—we may say—without sacrificing the dignity of any of the contending parties, after an examination as to the causes that originated the conflict.

A provision heretofore unpublished and worthy of being mentioned, is that of article 14 of the Project, which authorizes the constitution of International Commissions of Inquiry, as a previous proceeding in the engagements for arbitration. In this wise, the task of the Arbitration Tribunal is simplified, the facts that are to be matter of litigation being presented under the form of a true instruction, so that the Tribunal has only to solve the points at issue.

The composition of International Commissions of Inquiry, the procedure to be observed and the limit of their functions, are substantially the same as in The Hague Peace Congress.

It is not to be wondered at, that the work of said Congress has been selected as a model for the Project, if it is considered that representatives of the Government of Mexico had the honor of attending the sessions held at The Hague, signing and ratifying the Treaties, the outcome of the meritorious task there accomplished: it is but natural and easily explained, therefore, that the Mexican Delegation to the Second American International Conference, should sustain principles and accept solutions that have already in their favor the adhesion of many nations, and that will probably very soon have that of all the rest of civilized ones.

III.

It is useless to dwell on the expediency of Arbitrations as one of the bases of American International Law. The excellence of that method to solve the differences that arise between Nations is neither to be discussed nor is it discussible; but the problem of the organization of arbitral justice is fraught with difficulties which up to date have frustrated the efforts of the friends of Peace in the midst of scientific corporations as well as in those of inter-parliamentary Commissions and in the Councils of Governments to decide it satisfactorily, and although it is an usual pact in the greater part of the Treaties of peace and friendship between Nations to engage in recurring to arbitration, as the best means of settling the conflicts that divide them, the idea of a general and permanent measure, has met with almost insurmountable obstacles.

A more generous and energetic attempt for the establishment of arbitral justice, according to the aforesaid conditions, than the one made by the First American International Conference, can only be equalled by that accomplished in the Peace Congress of The Hague, with better success, and this notwithstanding, the former was confined to a recommendation from which nothing practicable has yet come, and the second is liable to produce limited results caused by the deficiencies, perhaps unavoidable, it contains, principally because an efficient sanction is lacking.

The Delegates of the United States of Mexico do not flatter themselves with having solved the problem; but they venture to advance that it will not be considered presumptuous on their part to assure that, from some very important points of view, the plan confronting difficulties which hitherto have been shunned and not solved, present solutions on whose aptness the Conference is to decide; and they respectfully submit it to the competence of the honorable members.

A brief examination of the difficulties above in-