dicated, may explain, perhaps, the modest success on this point of the First Pan American Conference, as well as the probability of the unfruitfulness of the Hague Treaty.

Arbitration as an institution of a permanent and general character has for the first time come out of the halo of pure speculation or of utopic sphere, on being adopted by the Nations represented in the Hague Conference, for although it is a fact that, specially in America, numerous efforts were made before to organize International justice, all of them have fallen through on account of prejudices and fears, which without having deterred the acknowledgement—theoretic in some sense—of that principle, have obstructed its final adoption or its practical operation.

A Permanent Tribunal of International Arbitration, has been judged, for a long time, dangerous to the independence and sovereignty of the Nations who would agree to submit to it all their differences, and the unsuitableness of maintaining constantly the functions of a Court of this kind, seemed so serious that it was reputed impracticable. The principal defect of the system was found in the establishment of a corporation precisely formed by judges invested with a durable charge, in the same manner as tribunals instituted for deciding private litigations. To find the means of having a pre-established International Tribunal with functions only when required to decide an international dispute also, by means of convoking the judges subject to disposal, not however in constant exercise of their duties, had to be the solution of the problem.

The Treaty of the Hague reached that solution, admirably reconciling the permanence of the Court of Arbitration with the mobility—if it be permited to call it so—of its members, thanks to the happy combination suggested to the Peace Congress by the distinguished representatiye of Great Britain: this combination allows the constitution of a Permanent Tribunal of Arbitration at the disposal of the Signatory Powers of the respective Treaties, without creating judges in constant functions, as the Powers are left at liberty to make a selection from the number all of them designate, to fulfil in each concrete case their very high trust; all this without sacrificing the right to agree on a special jurisdiction.

The atmosphere of liberty in which the American Republics could move, protected by the means just indicated, would place them, of course, in the same condition as that in which the greater part now find themselves, united as they are, by private Treaties wherein arbitration has been agreed upon, and the respect due to agreements that no Nation can violate without damaging its honor, explains another of the provisions of the Project relative to the Signatory Nations of the Hague Convention, or that shall adhere to it in future; this provision gives them the right of selecting the arbiters who are to form the Tribunal, from the list of the members of the Permanent Court of The Hague, or of the Court established by the Treaty to the signing of which the American Republics are invited.

The system adopted for integrating the Court, which consists in the appointment by each of the contrrcting parties of four or more persons of competency and known respectability, so as to form a list from which can be selected the judges that shall compose the Tribunal, is, probably, the only adequate one to make compatible the permanence of said Court with the election of the arbiters that to form it, at the moment it is solicited, to decide the pending controversy.

The Delegation of Mexico confronted the question relating to the voluntary or compulsory character of arbitration, discouraged by its difficulty, but decided not to avoid it, and judging that they must not abandon the principle recommended by the First American International Conference, resolved for compulsory arbitration in all controversies that should arise between the contracting Republics, when, in the judgement of any of the interested parties, those questions do not affect their independence or national honor.

As to the controversies pending at the moment of signing or ratifying the respective Treaty, the Project is in favor of compulsory arbitration. Does it seem reasonable to withdraw from arbitral compact an international question because, at that time, it is more or less clearly and distinctly established? Certainly not, but as it might happen that some of those pending questions are of the kind which the respect that every State owes to itself forbid, according to the exclusive judgement of the same State, to submit to strange decision, it is proposed that, when the time arrives for accepting the Treaty of Arbitration, every one of the Signatory Powers can put forward the exceptions that it may think expedient.

The Washington Conference only took exception to the disputes that would be a menace to independence; but perhaps such an exclusive limitation explains the unfruitfulness of the labors of that Congress on this point, the greatest in importance of all that were the object of deliberation, for there are other interests besides those of the preservation of autonomy, that no Nation who respects itself submits to the discussion and resolution of a third party, however great may be its faith in the impartiality of the latter.

The idea of «National honor» has against it—how are we to deny it?—a great deal of vagueness, but accepting the truth of the observation without admitting that it denounces a capital defect of the system, it must be recognized that to define that idea and to concrete it, would be to attempt the accomplishment of an almost impossible task. The enumeration of the cases in which the dignity of a State forbids to submit to arbitration would be necessarily incomplete, and, on the other hand, supposing a Government would conceive the design of referring to the decision of an international tribunal, conflicts in which honor would be at stake, the invincible resistance of public opinion would frustrate such an imprudence. The weakest nations—History is full of lessons on this point—prefer to succumb rather than sacrifice their honor. And because this sentiment, worthy of respect, altho some times exaggerated, is irreducible, no Nation can consent that a third party, be it whoever it may, should decide on the question, which may be called previous, if the pending controversy with another Power affects, or does not affect, its independence or its honor. This explains why the Mexican Delegation, altho discovering throu these exceptions against compulsory arbitration numerous opportunities to avoid it, confronts the eventualities, sure that, proceeding otherwise, the Project would be exposed to accompany the large number of protocols about arbitration

now forgotten in the archives of the Cabinet and in the field of utopias that inspire disdainful pity to serious and practical authorities on the subject.

While the experience acquired in the fulfilment of the Treaty of the Hague does not allow to hope that arbitration shall be a shield for weak Nations, and not a weapon in the hands of the powerful with which they can impose their will, concealed under the mask of Justice, it is not possible to do away with the distrust, and to dispel the jealousies that unlimited and compulsory arbitration inspires.

There are cases, however, where, without imprudence or danger, arbitration can be imposed, and there are questions susceptible of being embraced in a complete enumeration of such a character that we may call real legal cases, which are admirably fit for discussion before a tribunal, because they do not affect any vital interest. The Project points out these cases and, without exception, submits them to arbitration.

The special examination of the question alluded to, produces the conviction that no matter how delicate the susceptibility of a country may be, and however exaggerated its sentiments of dignity, only obeying to obstinacy and caprice can it offer resistance to recognize arbitral jurisdiction.

Differences about boundaries that very often cause great irritation between neighboring nations, are the only ones, perhaps, that bring them some times to the brink of conflicts which affect national honor; and, foreseeing eventualities of this kind, the precaution was taken of declaring in the Project that, in such controversies, arbitration would be compulsory only when referring to purely technical questions, leaving out, this way, those of a political character.

Is it a vain jactancy to believe that the solutions proposed by the Mexican Delegation, in this matter, facilitate the common accord of the Republics represented in the Conference, and attenuate, if they do not altogether dispel, the serious differences that exist between some of them on the extension of arbitration? The Delegates of Mexico think the principle of compulsory arbitration once formulated for all class of questions, with the exception of those that in the exclusive judgement of any of the interested nations affect their independence or their national honor, discussion on the retrospective and prospective aspect of the case, or only on the prospective, has no cause for existence.

It is not doubtful that all the American Republics will refuse, with the greatest energy, to submit their independence or their honor to the discussion and resolution of a Tribunal. In this matter, opinion must be unanimous. What, then, would be the object of initiating an irritant debate on the extension of arbitration? It is well known that no controversy which in the exclusive judgement of any of the interested parties affects their autonomy, or their national honor, shall necessarily be subject to arbitration, and in respect to disputes of much less serious character, what impediment can exist to submit them to the decision of the International Court?

The project, with profound respect to the dignity of the States to whom it corresponds to raise it to an International Treaty, before the impossibility of submitting to a strange decision the question of knowing if those vital interests—as they were designated on a solemn occasion—are or are not compromised in the contest that any of the Powers in conflict desires to submit to arbitration, leaves to the exclusive judgement of each one of them that entirely individual consideration, but to avoid that such a plausible excuse of the offended Nation may be invoked efficiently by the offender, the Project proposes that the former is to preserve the aptitude of asking and demanding arbitration, while for the latter it will be, in all cases, compulsory.

* * *

The Mexican Delegation became vitally preoccupied with the necessity, indeclinable in their judgment, of creating a sanction to the obligation of submitting to arbitration and of respecting the award, because they thought, and yet think, that the want of the sanction would frustrate the desired end of organizing International Justice. It is difficult that a more arduous problem can present itself to the consideration of statesmen and jurists, but, though the road to be followed in order to obtain a plausible solution is rough and full of obstacles, it is requisite to undertake the task, however tedious.

Of what necessity is it — will be asked — to seek a sanction to the pact of arbitration, if, being the result of a Treaty, it must have the guarantee that all the international duties have: that of the fulfilment of the word given as a pledge of executing what has been promised? That necessity, the Mexican Delegation answers, is derived from the fact that the sanction, concealed under the euphemism of: respect to the pact entered into, engaging the faith of Nations, is nothing but WAR. The latter has been the guarantee *par excellence* of the execution of the great international treaties, and it would be a bitter mockery to intrust force and war with the sanction of a compact destined to assure the supremecy of Law and the preservatio of Peace!

Arbitration will not make war impossible, it is true, but certainly it will make it more difficult, and this is what naturally is to be desired. The Nation that is disposed to submit its differences with another to International Justice and to fulfil the decisions of the Tribunal intrusted with administering that Justice, confronts an adversary who either offers resistance to ask for arbitration or does not comply with the decision of the Judges selected to apply the Law, and will have to trust fatally to the chances of War the final solution of the conflict; but it would be a temerity to demand that the other Powers united by the Treaty of Arbitration would all join in a common cause with the one which shows itself willing to fulfil it, even to the extremity of participating in the conflict; as if an offensive and defensive alliance had been adjusted. The sanction, therefore, must be obtained, certainly by less rigid means, but of sure results; and these means are those mentioned in the project; the censure of Nations strangers to the conflict; the exclusion from the list of members of the Court of Arbitration of those appointed by the refractory Nation; and the denunciation of all or some of the Treaties which bind those Nations with the one that gives cause for censure; measures, all of them, that must never be considered as acts of hostility.

The Power which, without respect to its pledged word and to its dignity at stake, refuses to comply with the Treaty of Arbitration or obey the award, can not complain that, after taking due precautions to prevent a premature determination or one which

is not sufficiently justified, it should suffer a censure that — things well considered — would be nothing else but the expression of the sentiment felt in all cases when a solemn agreement is not fulfilled. The least that can be done with one who fails to keep his word is to tell him that he does wrong and to condemn his conduct. The sanction of the purely moral censure is, nevertheless, to be feared, because the judgement of international public opinion, though it may not be a positive means of constriction, can inspire dread to the most absolute Goverments and restrain those most confident in the omnipotence of force.

* * *

To consent that the Nation that violates the Treaty of Arbitration, should continue to be represented in the Court whose jurisdiction it resists, whose decisions it does not respect, would be an inconsequence without possible excuse. The refractory State, if some of those provisions are executed, must submit tolthe decision that the judges designated by itself to form part of said Court, be eliminated from the respective list, since it withdraws, voluntarily, from the concert to which it had acquiesced and it demonstrates, without possibility of doubt, that it considers itself free from obligation to fulfil the agreement.

* * *

Lastly:—The denunciation on the part of the nations strangers to the conflict of all or any of the Treaties binding them with the Nation that has incurred the censure, even though in no case would it be a collective demonstration, leaves each of the contracting Republics at liberty to attend to its respective interests and in a position to deprive the infractor of the agreement of arbitration of the special advantages that it would have obtained from any Treaty of Commerce, Reciprocity or other similar Treaty.

The fear of suffering on this account considerable damage would perhaps be a sufficient correction, but it does not seem right or equitable to impose imperatively, this recourse of constraint, since, sometimes, far from producing a preventive or repressive effect, it may act as a kind of encouragement.

* * *

The authors who have given particular attention to International Arbitration, advise, besides the recommendation made by the Mexican Delegation, other sanctions destined to insure their efficiency as a permanent and sometimes obligatory institution; but, without stopping to study them in detail, it is only just to state that they leave much to be desired as measures that can in any way appears as acts of hostility. The intervention of Republics, strangers to the conflict arising between two or more countries, one of which refuses to comply with the agreement, shall have to keep within certain bounds so that it will not cause a sort of general conflagration, and that intervention is to be compatible wiht the observance of the fundamental rules of neutrality. The Treaty of Arbitration, we have to repeat it, must not be a pact of alliance, but a concert of Peace, adjusted to prevent as far as possible the evils of war.

IV.

It seems useless to dwell on each of the clauses of the Project relative to the Permanent Administrative Council, to the International Bureau and to the procedure of arbitration, because they are all a literal reproduction of the stipulations of the Convention at The Hague, and, in the account of the sessions of the Conference held in that City in 1899, there are found as many details and explanations as may be desired, explanations and details which are, on the other hand, well known to the distinguished delegates of the Republics represented at this Second International American Conference.

* * *

The Government of the United States of Mexico and its Delegates, who have faithfully complied with their instructions, believe that their present position of desinterest in the questions, which will probably arise by the discussion of the most vital topic of those designated in the program of the labors of this Conference, compel Mexico to take the initiative in the motion for a Treaty of Arbitration, and this consideration, the exactness of which we hope shall be recognized, justifies better than any other, the filing of this Project, submitting it to the Committee on Arbitration and the Court of Arbitration.

Finally, and quoting the words of the noble victim of Czolgosz, uttered when falling mortally wounded at the feet of his assasin, allow us to say: that «our interest is in concord, not conflict, and that our real eminence rests in the victories of peace, not those of war.»

Mexico, October 1901. — *G. Raigosa. — 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.*

PROPOSED PLAN FOR RESOLUTION.

The Second American International Conference recommends to the Republics in it represented the signing of a Treaty for the pacific settlement of International disputes, as follows:

TITLE I.

On good offices and mediation.

Art. 1. The Republics of Nort, Central and South America, hereby stipulate that in case of serious disagreement, or conflict between two or more of them, which may give imminence to a war, recourse shall be had, so far as circumstances permit it, to the good offices or mediation of one or more friendly Powers.

Art. 2. Independently of this recourse, the Nations of North, Central and South America consider it useful that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow it, offer their good offices or their mediation, to the States at variance.

Powers, strangers to the dispute, have the right to offer good offices of mediation, even during the course of hostilities.

The exercise of this right can never be regarded by the one or the other of the parties in conflict as an unfriendly act.

Art. 3. The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Art. 4. The functions of mediator are at an end when once it is declared, either by one of the Parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

Art. 5. Good offices and mediation, either at the request of the parties at variance, or on the initiative of Powers strangers to the dispute, have the exclusive character of advice and never have binding force.

Art. 6. The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying or hindering mobilization, or other measures of preparation for war. If mediation occurs after the commencement of hostilities, it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

Art 7. In case of a serious difference endangering the peace, and whenever the interested Powers cannot agree in electing or accepting as mediator a friendly Power, it is to be recommended to the States in dispute, the election of a Power to whom they shall respectively intrust the mission of entering into direct negotiation with the Power elected by the other interested party, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which unless otherwise stipulated, cannot exceed thirty days, the contending Powers shall cease all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers.

If these friendly Powers do not suceed in agreeing on a solution that would be acceptable to those in conflict, they shall designate a third that is to act as mediator. This third Power, in case of a definite rupture of pacific relations, shall at all times be intrusted with the task of taking advantage of any opportunity to restore peace.

TITLE II.

On the International Commission of Inquiry.

Art. 8. In differences of international nature involving neither national honor nor independence, and arising from a difference of opinion on points of fact, the Signatory Republics recommend that the Powers who have not been able to come to an agreement by means of diplomacy, should institute, as far as circumstances allow it, an International Commission of Inquiry, to facilitate a solution of those differences, elucidating the facts by means of an impartial, conscientious investigation.

Art. 9. The International Commissions of Inquiry are constituted by special agreement between the parties in conflict.

The Convention for an inquiry defines the facts to be examined and the extent of the Commissioners' powers, and settles the procedure to which they must limit themselves. On the inquiry both sides must be heard, and the form and periods to be observed, if not stated in the Inquiry Convention, are decided by the Commission itself.

Art. 10. The International Commissions of Inquiry are constituted—unless otherwise stipulated —in the manner fixed by Art. 38 for the constitution of the Court of Arbitration.

Art. 11. The Powers in dispute engage to supply the International Commission of Inquiry, as fully as they may deem possible, with all means and facilities necessary to enable it to be completely acquainted with and to accurately understand the facts in question.

Art. 12. The Commissions shall limit themselves to ascertain the facts, without making other appreciations than those of an entirely technical character.

Art. 13. The International Commission of Inquiry shall present to the Powers that have constituted it, a Report signed by all its members. This Report, to be limited to the investigation of facts, has in no way the character of an Arbitral Award, and leaves the conflicting Powers entire liberty as to the effect to be given to this statement.

Art. 14. The constitution of Inquiry Commissions may be included in the special Acts of Arbitration (compromisos de arbitraje) as a previous proceeding in order to establish the facts that are to be subject of the litigation.

TITLE III.

CHAPTER I.

ON ARBITRATION.

Art. 15. The Nations of North, Central and South America, agree to arbitration as a principle of American International Law.

CHAPTER II.

ON THE SYSTEM OF ARBITRATION.

Art. 16. The Republics of North, Central and South America, agree to submit to the decision of arbitrators all differences that may arise between them, which diplomacy has failed to settle, when, at the exclusive judgement of the interested Nations, said differences do not affect either their independence or their national honor. Arbitration shall be compulsory in pending conflicts when, at the signing or ratification of the present Treaty, any of the Nations has not expressly reserved to itself the right of accepting or declining said Arbitration.

Art. 17. The independence and honor of the Nations shall not be considered involved in the operation of this Treaty for differences arising from the following cases:

I. When the case refers to pecuniary damages or injuries suffered by a country or its citizens through illegal acts or omissions of another country or its citizens.

II. When the simple interpretation or the fulfilment of any of the following treaties are the subject of discussion: