

- A. Those that refer to international protection of the great arteries of universal communication, or to the intellectual and moral interests of any of the High Contracting Parties.
- B. Those which have for their object to establish principles of either Private, Civil or Penal, International Law.
- C. Those of commercial reciprocity, and those relating to monetary matters.
- D. Those that refer to the system concerning international waterways and fisheries.
- E. Those of international boundaries, when differences are caused by merely technical questions.

Art. 18. In the differences arising amongst the Nations of North, Central and South America which affect independence and national honor. Arbitration shall be voluntary for the nation that considers itself offended and, in all events, compulsory for the offending nation.

Art. 19. The agreement to accept arbitration implies the engagement to submit loyally to the award.

The Nation that for any cause refuses to comply with this duty, shall be subject to censure by the Nations strangers to the difference.

Art. 20. The censure shall be in the form of an official and public declaration of reproach, and it is to be signed, either conjointly or separately, by all or the majority of the Nations strangers to the difference.

Art. 21. The effects produced by the declaration of censure shall be as follows:

- I. To leave at liberty the Nation that accepts the award, to proceed as she deems fit, with respect to the Nation that has given cause for censure.
- II. To exclude *ipso facto* from the list of members of the Court of Arbitration those appointed by the Nation that has refused to comply with the award.

Art. 22. The Nations strangers to the conflict may denounce, if they deem it convenient, within the period of six months, which is not to be extended, from the date of the declaration of censure, any or all the treaties which bind them to the one that has given cause for censure. The denunciation shall produce its effects from the date to be designated by the Nation which denounces the treaties.

Art. 23. The censure shall also be decreed against the Nation that refuses from the beginning to accept arbitration, in cases when that recourse is compulsory, in accordance with article 17.

Art. 24. Neither the censure or the effects derived from it, nor the denunciation of treaties can be considered as acts of hostility by the Nation that has given cause for them.

CHAPTER III.

ON THE PERMANENT COURT OF ARBITRATION AND ON THE ARBITRATION TRIBUNAL.

Art. 25. With the object of facilitating that the Republics of North, Central and South America may have recourse to arbitration for the international differences which it has not been possible to settle

by diplomacy, said Republics undertake to organize a permanent Court of Arbitration which, unless otherwise stipulated by the Parties, shall operate in accordance with the Rules of Procedure inserted in the present Treaty.

Art. 26. The Permanent Court shall be competent for all arbitration cases, unless the Parties agree to institute a special Tribunal. When any of the Signatory Nations of the Hague Convention or any of those which may adhere to it, at a later date, considers itself offended, in the conflicts which may arise with another Nation that is also a Party to said Convention, the offended Power has the right to select the arbitrators who are to form the Tribunal, either from the list of the members forming the Hague Permanent Court of Arbitration or from that of the members of the Court established by the present Treaty.

Art. 27. Within the three months following the ratification of the present Treaty, each contracting Party shall select four or more persons of known competency in questions of International Law and of the highest moral character, disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed as members of the Court, on a list which shall be notified by the International Bureau, which hereafter is to be mentioned, to the contracting Parties, said Bureau being also instructed to notify the same Parties of any changes made in the list.

The same person can be selected as member of the Court by one or more Nations. The members of the Court are appointed for a term of six years. Their appointments can be renewed. In case of death, resignation or of temporary disability of a member of the Court, his place shall be filled in accordance with the method of his appointment.

Art. 28. When the contracting Parties desire to have recourse to arbitration for the settlement of a difference that has arisen between them, the arbitrators called upon to form the Tribunal, must be chosen from the aforesaid list of members, but members appointed by the Nations interested in the conflict cannot be elected.

If the Parties fail to constitute in the special Act of Arbitration, the Tribunal which is to judge their differences, the following course shall be pursued: each Party appoints two Arbitrators, and these together choose an Umpire is intrusted to the Government of one of the Nations strangers so the conflict, selected by the parties in common accord.

If an agreement is not arrived at, each Party selects a different Government and the choice of Umpire is made in concert by the Powers thus elected.

The Tribunal being thus organized, the Parties notify the International Bureau their determination to have recourse to the Court, with the names of the Arbitrators and the referees shall meet on the day fixed by the Parties.

The members of the Court, when out of their own country and in discharge of their arbitral duties, shall enjoy diplomatic privileges and immunities.

Art. 29. The Court of Arbitration shall have its seat and perform its duties at the City of Quito, the capital of the Republic of Ecuador, and, except in cases of necessity, the place of sessions can only be changed with the common assent of the Parties.

Art. 30. The International Bureau is authorized to place its premises and its staff at the disposal of

the contracting Parties for the sessions of any special Board of Arbitration.

The jurisdiction of the Permanent Court, may, within the conditions laid down in the Regulations, be extended to existing treaties between non-signatory Powers of the present, or between signatory and non-signatory Powers, if the Parties should agree upon recourse to this Tribunal.

Art. 31. The Signatory Powers of the present compact consider it a duty to remind those threatened with a conflict, that arbitral jurisdiction is open to them. Consequently, they declare that the fact of reminding the Parties in conflict of the provisions of the present Convention, and the advice given to them, in the interest of peace, to have recourse to the Permanent Court, can only be regarded as good offices.

CHAPTER IV.

ON THE PERMANENT ADMINISTRATIVE COUNCIL AND THE INTERNATIONAL BUREAU.

Art. 32. Within two months after the ratification of the present Treaty, a Permanent Administrative Council composed of the Diplomatic representatives of the Signatory Powers accredited to the Government of Ecuador, and of the Minister for Foreign Affairs of the same Government, who will act as President, shall be constituted in the City of Quito, the capital of said Republic.

The duties of this Council will be as follows:

- I. To establish and organize the International Bureau which will be under the direction and control of the council.
- II. To notify the Powers of the constitution of the Permanent Court of Arbitration and provide for its installation.
- III. To settle the Rules of Procedure and all other necessary regulations.
- IV. To decide all questions of administration which may arise with regard to the operations of the Permanent Court.
- V. To have entire control over the appointment, suspension or dismissal of the officials and employees of the Bureau.
- VI. To fix the payments and salaries of said officials and employees.
- VII. To revise the accounts and expenditures made by the Bureau.

Art. 33. The duties of the members of the Administrative Council, are:

- I. To attend to the meetings or sessions when duly called.
- II. To communicate without delay to the Contracting Powers the regulations adopted in virtue of the faculty consigned in section III of the foregoing Article.
- III. To furnish annually to the said Powers a Report on the labors of the Permanent Court, the working of the administration, and the expenses.

Art. 34. The expenses of the International Bureau shall be borne by the Signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

Art. 35. At meetings duly summoned, the presence of five members of the Administrative Council is sufficient to render the discussions valid.

The decisions are taken by a majority of votes and

in case of even voting, the President's vote shall be decisive. The members of the Administrative Council cannot exercise their functions in the cases when the Nation they represent is an interested Party in the controversies which are to be the object of the resolutions of said Council.

CHAPTER V.

ON ARBITRAL PROCEDURE.

Art. 36. With a view to encourage the development of arbitration, the Signatory Powers have agreed on the following rules which shall be applicable to arbitral procedure, unless other rules have been agreed upon by the parties.

Art. 37. The Powers who have recourse to arbitration shall execute and sign a special Act (compromiso) in which the subject of the difference is clearly defined as well as the extent of the Arbitrator's powers. This Act implies the understanding of the Parties to submit in good faith to the award.

Art. 38. The duties of Arbitrator may be conferred on one Arbitrator alone, or on several Arbitrators, selected by the Parties as they please, or chosen by them from the members of the Permanent Court of Arbitration, established by the present Treaty.

Should the constitution of the Tribunal fail owing to non-agreement between the Parties, the course to be followed is the one established by art. 28.

Art. 39. When a chief of State is chosen as Arbitrator, the arbitral procedure is settled by him.

Art. 40. The Umpire is by right President of the Tribunal of Arbitration.

Art. 41. In case of the death, resignation or disability of one of the Arbitrators, his place shall be filled in accordance with the rules provided for the appointment of the first Arbitrator.

Art. 42. The Tribunal's place of session shall be selected by the interested parties, and failing this selection, the Tribunal shall sit at the City of Quito. The place thus fixed, cannot, except in case of necessity, be changed by the Tribunal without the assent of the Parties.

Art. 43. The Parties have the right to appoint Delegates or special agents to attend the Tribunal, for the purpose of serving as intermediaries between them and the Tribunal. They are further authorized to retain, for the defense of their rights and interests, counsel or attorneys.

Art. 44. The Tribunal decide on the choice of languages to be used in the proceedings.

Art. 45. As a general rule, the arbitral procedure comprises two distinct phases: preliminary examination, and discussion.

Preliminary examination consists in the written, or printed communication, made by the respective agents to the members of the Tribunal, and to the opposite Party, of all the facts and of all the documents containing the arguments involved in the case. This communication shall be made in the form and within the periods fixed by the Tribunal, in accordance with art. 55.

Discussion consists in the oral statement, before the Tribunal, of the arguments of the Parties.

Art. 46. Every document produced by one Party must be communicated to the other Party.

Art. 47. The discussions are under the direction of the President of the Tribunal; they are only

public if it be so decided by the Tribunal with the assent of the Parties, and they are recorded in the minutes (actas) drawn up by the Secretaries appointed by the President. These minutes (actas) alone have an authentic character.

Art. 48. When the preliminary examination is completed, the Tribunal has the right to refuse to allow the discussion of all fresh acts or documents which one Party may desire to submit to it, without the consent of the other Party.

Art. 49. The Tribunal is at liberty to take into consideration fresh acts or documents to which its attention may be drawn by the agents or counsel of the Parties; in this case the Tribunal has the right to require the production of those acts or documents, but is obliged to make them known to the opposite Party.

Art. 50. The Tribunal can, besides, require from the agents of the Parties the production of all proofs, and can demand all necessary explanations. In case of refusal, by the respective party, it shall be so stated in the minutes.

Art. 51. The agents and counsel of the Parties are authorized to present to the Tribunal all the arguments they may think expedient in defense of their case.

Art. 52. The agents have the right to raise objections and points. The decisions of the Tribunal on those points are final and cannot form the subject of a subsequent discussion.

Art. 53. The members of the Tribunal have the right to put questions to the agents and counsel of the Parties and to demand explanations from them, on doubtful points. Neither the questions put nor the remarks made by members of the Tribunal, during the discussions, can be regarded as an expression of opinion by the Tribunal in general or by its members in particular.

Art. 54. The Tribunal is authorized to declare its competency in interpreting the Act of Arbitration (compromiso) as well as the other Treaties which may be invoked in the case, applying the principles of International Law.

Art. 55. The Tribunal has the right to make rules of procedure for the conduct of the case, to decide the form and periods within which each Party must conclude its arguments, and to establish all the formalities required for dealing with the evidence.

Art. 56. When the agents and counsel of the Parties have submitted all explanations and evidence in support of their case, the President shall pronounce the discussion closed.

Art. 57. The deliberations of the Tribunal shall be private and every decision shall be taken by a majority of votes. The refusal of an arbitrator to vote must be recorded in the minutes (acta).

Art. 58. The award, given by a majority of votes, shall be accompanied by a statement of reasons, drawn up in writing and signed by all the members of the Tribunal.

Those members who are in the minority, may record their dissent when signing.

Art. 59. The award shall be read at a public meeting of the Tribunal, the agents and counsel of the Parties being present, or having been duly summoned to attend.

Art. 60. The award, duly pronounced and notified to the agents of the Parties at variance, puts an end to the dispute definitely and without appeal.

Art. 61. The Parties can reserve to themselves in the special Act (compromiso) the right of having recourse to the revision of the award. In this case, and unless there be an agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence on the award, and which, at the time that the discussion was closed, was unknown to the Tribunal and to the Party demanding the revision.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the foregoing paragraph and declaring the demand admissible on this ground.

The Act (compromiso) shall fix the period within which the demand for revision must be made.

Art. 62. The award is only binding on the parties which have executed the Act (compromiso).

When there is a question of interpreting a Compact to which Powers, others than those concerned in the dispute, are Parties, the latter shall notify to the former the special Act (compromiso) they have concluded. The first mentioned Powers have the right to intervene in the case. If one or more of them avail themselves of this right, the interpretation contained in the award is equally binding on them.

Art. 63. Each Power pays its own expenses and an equal share of those of the Tribunal.

TITLE IV.

General Provisions.

Art. 64. The treaties and stipulations on Arbitration previously entered into between the Nations which sign or adhere to the present Treaty, shall continue in all their force and vigor in what refers to compulsory Arbitration in cases of controversy not included in this Treaty and considered in said treaties and stipulations. In all other points, the aforesaid treaties and stipulations shall only be in force in the parts that do not modify the provisions of this Treaty.

Art. 65. The Nations not signing the Treaty of Arbitration, may adhere to it at any time. If any of the Signatory Powers desires to withdraw, it shall denounce the Treaty, but the denunciation will only produce effect on the Nation which denounces, one year after the formalities of the denunciation have been complied with. When the denouncing Nation has any Arbitration negotiations pending, after the period of one year expires, the denunciation will not cause any effect with respect to the unsettled case.

Art. 66. To celebrate the Treaty which may result of the approval of the present Project, it is sufficient that six Nations of North, Central and South America should sign the same.

The ratifications shall be exchanged in the City of Quito, within the period of two years, from the date of said Treaty.

Mexico, October 1901. — *G. Raigosa*, President. — *Pablo Macedo*. — *Emilio Pardo (Jr.)*. — *Joaquín D. Casasus*. — *Alfredo Chavero*. — *Jose Lopez Portillo y Rojas*. — *Francisco L. de la Barra*. — *M. Sanchez Marmol*. — *Rosendo Pineda*.

SESSION OF NOVEMBER 27, 1902.

His Excellency Mr. Anadon, Delegate from the Argentine Republic.—I will submit a report prepared by the Delegation of the Argentine Republic, and which will be referred to the Second Pan American Conference:

Mr. President:

Messrs. Delegates:

The Delegation of the Argentine Republic has perused, with the greatest interest, the cordial invitation which the Delegation of Mexico has been pleased to extend to their colleagues in this Conference, on the occasion of their luminous report, which contains a recapitulation of all that this country has done in the sense, and following the recommendations of the Congress of Washington. Undoubtedly, a report, inspired in like purposes, with regard to each one of the nations here represented, will constitute the best information and the most valuable guide for our labors, suggesting elements of judgement, in which we are as yet lacking in the endeavor to make the ties between our peoples more strong, more practical, and in a large measure productive of good.

It is not possible to deny that the previous American Assemblies, without excluding the two last ones, have been governed by vague sentiments of a community of history, of institutions and of race, which they have not been able to reduce to a concrete form. The Continental Union has become an ideal that has endeared itself to the Americas, by all those ingenious devices, half precursory, half sentimental, which only live in aspiration or in recollection; but whenever public men have desired to take a practical action, commercial facilities have been converted into vexations and annoyances by Custom House employees; political intercourse has been replaced by ever-recurring wars over uninhabited wastes; nor have we been able to establish even literary relations, in order that, at least, poets and artists might have hastened the hour of that fraternity so vaunted.

In order that Pan-Americanism be not, then, a mere thesis under discussion, and that the recommendations and the professions of principles may not remain idle words, it is necessary to descend from abstract heights, to conform oneself to the spirit of modern times, and to map out the great lines of a positive policy, inspired in justice, in equality, in territorial integrity, and in commercial relations, founded upon a competition open to all.

The honor of the happy initiative belongs to the Mexican Delegation. They have, at once, comprehended that orations and votes of thanks are not sufficiently important to be the only results of a Congress, in order to justify a call for another to the sister Republics, and they expect that we declare our respective positions as they have done, because, «one of the most important ends aimed at by assemblies of this nature, is that the peoples should know each other intimately, in order to be able to duly esteem and appreciate each other.»

The Argentine Delegation defer with pleasure to such an authoritative insinuation, and present to their honored colleagues of the Second Conference a General Report on the status and condition of their country, deploring only that the limited time at their command and the scarcity of data have not permitted them to produce a work worthier of the Assembly

to which it is addressed. The Argentine Delegation must add, that in their desire to furnish the greatest abundance of facts and information, to the several Committees that have asked for them, they have believed it proper to amplify their information, and not to limit themselves strictly to the recommendations of the First Conference.

The undersigned know only too well the defects from which this Report is suffering, to enable those reading it to form a judgement upon the status and condition of the nation which they represent; but they are equally sure, that their brothers and friends, throughout the whole Continent, will receive with sympathy this exhibition of a people which is young and is sure of its strength, although it is exempt from all ambition save that of remaining at peace with all, and of honestly working out its destiny.

Then follows a series of chapters referring to the following matters: Sanitary Regulations, Railroads, Maritime Communications, Port Taxes, Commercial Reciprocity, Banking Institutions, Agriculture and Cattle Raising, Patents of Inventions and Trade Marks, Extradition, Treaties of Montevideo, Arbitral Laws and Jurisdiction.

I had intended, Mr. President, to read three or four of these matters; but as the hour is well advanced and I fear to encroach upon the kindness of the Delegates, I will, with the permission of the Chair, cede the floor to Mr. Bermejo, so that he may read the last two chapters referring to arbitral laws and jurisdiction, since it is a matter upon which it is very important to us that the delegates may know the ideas of the Argentinian Delegation.

His Excellency, Mr. Bermejo, Delegate from the Argentine Republic, read the following:

XI.—ARBITRATION.—ARBITRAL JUSTICE IN AMERICA.—§ 1. In the development of the international relations of the XIXth. Century, Arbitration constitutes one of the brightest pages of the political history of the New World, because it has exalted the ideal of Law above the prepotency of Might, extending the empire of Justice—which is Peace—to where reigned before, as the absolute sovereign, Violence.

Arbitration, in America, is, therefore, an institution of Common Law, a Law of Nations, because—as Grotius teaches us—when a practice has become generalized in the international community, it can not be founded but in its harmonizing itself with the rational criterion of men, with the dictates of morals; or, otherwise, it is the expression of their will. In the first case, it is an institution of Natural Law; in the second case, it is an institution of Common Law.

The Delegates for the Argentine Republic are ignorant whether the Nations of the New World that, in the century just closed, hoisted the flag of Arbitration—which represents the reign of Justice before the peoples—only to let it fall in the present century, or to allow it to pass into the hands of European, Asiatic, or African States, out of selfishness, or out of impotence.

But they are aware that, in the last decade, after the Washington Conference, they have reiterated their adhesion, and have strengthened the fraternal ties which unite them, wherever they have met—only a few of them, or many of them—to deliberate about their most vital interests. Let us cite, at once, a single antecedent which directly concerns us.