The fact is extremely recent, so it may have been forgotten. Here, in the City of Mexico, the Junta of Delegates for this Republic, for Equador, for Guatemala, for Salvador, for Nicaragua, for Honduras, and for Costa Rica, convened in August 1896, refused to adjourn, in spite of there being no *quorum* before having emphatically condemned «any right to territorial annexation not being the result of absolutely free transactions, no matter which may be the reason or pretext on which it could be based;» acknowledging, besides, that «the best and most splendid crowning of this edifice, would be Compulsory Arbitration, under certain rules embracing all possible origins of *casus belli*.»

One would imagine to read here, in this noble city, those manly words, written on the metal of her coins and on the stones of her secular walls.

As regards the Argentine Republic, we are authorized to repeat, in her name, to this Second Pan-American Conference, what she said to Chili in 1897, and to Colombia in 1880, what she has invariably realized in facts, and which she synthesizes in her international policy.—«that with, or without, treaties, the Argentine Government is decided to put an end to international disputes, by means of Arbitration.»

§ 2. Nine Congresses, or Conferences, in which the American States have played the only or the chief part, have successively ratified, and from the dawn of their emancipation up to the present hour, have given their adhesion to the principle of Permanent Arbitration, as a guarantee of Peace; the Panama Congress, in 1826; the Congress of Lima, in 1847 and 1463; the Conference of Caracas in 1883; the Pan-American Congress of Washington in 1890; the Iberian-American Jurisprudence Congress, of Madrid, in 1892; the Delegates'Junta, of the City of Mexico, in 1896; the Iberian-American Congress, of Madrid, in 1900; and the Scientific Congress, of Montevideo, in March 1901.

It can be assured that all the American Republics, without any exception, have acknowledged this principle, a principle pacifier *par excellence*, in their international relations, and which has been consigned—in some of their treaties—as a compulsory clause, in ample terms and without any bashful obstacles; while five of them have raised the doctrine to the high sphere of a constitutional precept, it being thus transmuted into an unmovable base of their political organization and into an unchangeable standard for peoples and governments.

As an homage and as model, we hereafter copy the relative articles of those Constitutions.

Ecuador.—Constitution of March 31st. 1878.—Art. 116. In every negotiation for the celebration of international treaties of amity and commerce, it shall be proposed that all disputes, between contracting parties, be decided by arbitration through one, or more, friendly Powers, and without having recourse to war.

Republic of Santo Domingo.—Constitution of May 20th. 1880.—Art. 97. The powers entrusted by this Constitution with the faculty of declaring war, shall not go to that extreme without previously making overtures for arbitration through one, or more, friendly Powers. In order to affirm this principle, the following clause shall be inserted in all the international treaties which the Republic may celebrate: «All disputes which might arise between the contracting parties shall be submitted to arbitration, through one, or more, friendly nations, before having recourse to war.»

United States of Brazil.—Continuation of February 24th. 1891.—Art. 34. It confers exclusively on the National Congress: . . . . . «II. To empower the Government to declare war, should arbitration have failed.»

Venezuela.—Constitution of June 21, 1893.—Art. 141. In the International Treaties of Amity and Commerce, this clause shall be inserted: «All disputes between the contracting parties shall be submitted to arbitration, through one, or more, friendly Powers, without having recourse to war.»

Greater Republic of Central America.—The Amapala Treaty of Union.—June 20th. 1894.—This Treaty, made, out of the three States of Nicaragua, Honduras, and Salvador, one single entity; and among the fundamental bases of the Union, the following is to be found: «Art. 4th., Section 2.—In every International Treatry of Amity which the Diet may celebrate, the clause shall be expressly inserted, that all disputes arising, shall be decided, in an ineludible manner and without any exception, by means of arbitration.»

Such are, Messrs. Delegate, the best and most eminent titles which Young America has to invoke before the Old World; such is the day she won in that unrelenting struggle which civilized mankind has been fighting in earnest, in order that Justice replace War, and that the juridical order which reigns in the society of men may reign in the society of Nations.

Most assuredly, the secular tree does not die in one day, nor can the ideal which the persevering labor of the most eminent statesmen has engraved in the conscience of peoples, be destroyed in a more or less hasty debate.

And, since every one of the American Nations, represented in this Conference, has bound itself, through solemn treaties—which is, for them, the supreme law—to submit to arbitration any dispute that may arise among them; which reason could be invoked not to make this reasonable means for a solution extensive to other nations?

What Mexico merited from the United States, and what the United States received from Mexico, and was transformed into a law—by the Treaty of Guadalupe-Hidalgo, (Art. 21),—shall not be deserved by the other States of America?

The engagement to submit to arbitration any disagreement or dispute about any of the stipulations of the Treaty celebrated at Washington on the 10th. of July 1888, *or about any other question relating to political or commercial relations*—that engagement in force between Mexico and Ecuador, can it not be made extensive to the other Nations called to this Conference with the purpose of affirming Peace and Fraternity,—the base of their reciprocal prosperity?

And what we say of the United States, of Ecuador, and of Mexico, can be repeated of all and every one of the States of America, bound together by treaties that comprise the compromisory clause, ample and binding.

Here is another example—not to quote many analogous ones—offered us by Brazil and Bolivia, in their Treaty of Amity, Commerce and Navigation, celebrated at Rio de Janeiro on the 31st. day

of July 1896, ratified by the latter, and pending of ratification by the former, the compromissory clause of which contains nothing objectionable to its being made extensive to all the other republics, which, all of them—nobody can ignore it—are inspired in the same spirit of keeping their friendly relations inalterable. The clause reads thus:—

«Art. 35. The High Contracting Parties, with the earnest desire of keeping inalterable their friendly relations, hereby agree that all disagreements or disputes which henceforth may arise between both Nations, even proceeding from facts or circumstances previous to this present Treaty, be decided by Arbitration in conformity with the principles recommended by the Washington International Conference (April 1890), and by the Regulation approved by the Institute of International Law, at the meeting of the Hague, in 1895, with the amendments and modifications which, henceforth, may take place between both Nations, even in case of their being previous to this present Treaty.»

What we have said about the United States, Mexico, Brazil and Bolivia, could also be said about the other American State, whose Treaties we abstain from quoting for brevity sake, especially those existing between the Argentine Republic and Chili, which, from 1855 to 1898, have entered into five treaties binding them by a clause of compulsory arbitration.

No less amicable and fraternal is the sentiment dominating the Conventional Law in force and vigor as regards standing engagements of the American Nations in their relations with European Powers.

Permanent stipulations of compulsory and ample Arbitration, bind, in fraternal ties, the United Mexican States and the Kingdom of Belgium, as follows:

«In the unhappy event of any disagreement or dispute taking place between the High Contracting Parties, which may lead to misunderstanding and interruption of their friendly relations, it is hereby agreed and stipulated that, if after all the means for a frank, peaceful, and harmonious discussion be exhausted, and no good intelligence or agreement can be reached, an *entente* then failing, both High Contracting Parties, by mutual consent, shall have recourse to Arbitration, through a third Power, the friend of both, in order to avoid, in this way, a rupture compelling them to war against each other.» (Treaty of Amity, Commerce and Navigation. City of Mexico, November 19th., 1839, art. 7).

In a similar wording, with the same foreseeing solicitude, and with like bearing as regards binding and ample engagements, there are express clauses tending to secure the peaceful solution of any conflict, in the Treaties of Amity, Commerce and Navigation, actually in force between Peru and Belgium, (London, May 16th., 1850); Costa Rica and Italy (San Jose, April 14th., 1863); Venezuela, Spain and Belgium (1882 and 1884); Salvador and Switzerland (Berne, October 30th., 1883); and Equador and Belgium, France and Spain. This last Treaty (with Spain), which was signed at Madrid on May 23rd., 1898, stipulates the following, which deserved the recommendations of the Iberian-American Congress of 1892:

«Art. 1. Any difference or dispute which may arise between Spain and Equador, either about the interpretation of Treaties in vigor and force, or about any point that may have not been foreseen in said Treaties, in case of failure to come to a mutual understanding in a friendly manner, shall be submitted to Arbitration through a friendly Power proposed and accepted by common consent.»

Well, then, Messrs. Delegates, those stipulations agreed upon by the Nations of America with the Nations of Europe, can not be eluded by the countries of this New World, if not owing to the so often repeated identity of origin, of race, and of common glories, at least owing to the not less repeated rule—never absent in any Commercial Treaty—of the «most favored nation.»

Every one of the Nations here represented has, therefore, juridic antecedents of its own to be respected, a diplomatic tradition to keep, and, above all these motives, a fidelity to the noblest ideals, which decorum, the exigencies of civilization, and even interest itself, can never allow to be forgotten.

§ 3. The Pan-American Conferences have had for object two chief ends: the adoption of means tending to secure permanent peace, and the development of commercial relations between each other of the Nations of the New World.

Different objects had called together the first Assemblies of Independent America. At the Panama Congress, convened by Bolivar and recommended by Monteagudo in his writings; at the Congress of Lima, in 1847; and at the meeting generally known as *Tratado Continental* (Continental Treaty), the foremost preoccupation was the Confederacy of the American States, their alliance, the assembling of all their armed forces in order to check the advances of European Nations. The political issues became transformed into conciliatory and economical purposes since the Argentine Government, in answer to the solicitation to give its adhesion to the Commercial Treaty, marked the new direction to be followed by future Conferences in the sense of strengthening the ties which united those Nations, by giving uniformity to the ruling principles of their respective legislations. (Note from the Argentine Government to the Peruvian Government, dated November 10th., 1862).

That attitude exerted doubtless an influence in the new tendency of the labors initiated by the Congress of Jurisprudence, held at Lima, and crowned by such a brilliant success at the Congress of Private International Law, which met at Montevideo in the year 1889.

What did the first Pan-American Conference do, to secure permanent peace in America—that being the chief point in its programme—because without peace, the time spent in the debates about railway construction, about maritime communications, about banks, etc., etc., would be a time sadly lost; because without peace there can be no production, and therefore, there can be no commercial interchange?

In response to an initiative of the Argentine and the Brazilian Delegations, the Washington Pan-American Conference approved—almost unanimously—the bases of three Projects intimately linked together, which were hailed by all friends of Justice:

1st. A declaration in favor of a pacific solution for all international disputes, and the bases for a Compulsory Arbitration Treaty, to be observed in all present and future questions not affecting national independence.

2nd. The recommendation of the same plan, as regards European Nations.

3rd. The elimination of the principle of Conquest from the American Public Law.

What shall the Second Pan-American Conference do in the same sense . . . . ?

§ 4. The Treaty framed by the Washington Conference, in 1890, marks an epoch in the diplomatic history of Arbitration, and may be compared to the one celebrated between the United States and England, on the 8th. of May 1871, which was considered by Gladstone as «the solemn international consecration of that sentiment of equity that has discovered a better means of arranging disputes between States than the brutal decision of the sword.»

M. Revon, in his book on International Arbitration, crowned by the Institute of France, does not hesitate in considering the date of that Treaty, (1890) as a glorious journey won by the friends of Peace; and Desjardins judges it as the initial point of an extraordinary progress, because the solution of international conflicts does not remain any more, as formerly, subordinate to the whims of a Government, or to the arbitrary and changing resolutions of an ignorant or prejudiced Chamber. The solution was written beforehand; and, to have recourse to force, it would have been necessary to openly step out of the precincts of Law.

You may discard all possible exaggeration from the above judgements; it will always remain, as an unquestionable truth, that the Washington Conference gave the formula and the expression of the American sentiment, consecrating in a solemn form its decision to always elude violent means—the employment of force—to affirm the reign of lawful and reasonable order.

Mr. Blaine, at the closing of the Conference, undoubtedly formulated his country's judgement and that of the civilized World, on the labors of that Assembly, when he said: «If this Congress had only one of its acts to be proud of, we should dare to call the World's attention to the reasoned, confiding, and solemn consecration, by the two vast Continents, of the maintenance of Peace, and of Prosperity, the offspring of Peace.» «We look upon this new *Magna Charta*—continued the eminent statesman—which suppresses War, and substitutes Arbitration among American Republics in its place, as the first result, and the most important one, of the International American Congress;» and President Harrison took leave of the members of that Congress, addressing them these prophetic words: «It is with pleasure that I have seen adopted this Resolution which shall be a pledge of Peace for the American States represented at the Congress: whoever raises a hostile hand against another, shall not deserve to be pardoned.»

And the same President Harrison, on addressing the Senate, asking that body to ratify the three projects of Compulsory Arbitration, of extension of the same to European Powers, and the one relating the condemning of the principle of Conquest, in his Message of the 5rd. of September, 1890, stated that «the ratification of these Treaties shall constitute one of the happiest and most hopeful incidents in the History of the Western Hemisphere.»

XII. ARBITRABLE JURISDICTION.—§ 1. Arbitration in itself needs no discussion at all. But, if it is to be an efficacions and real means of securing Peace, it is necessary not to pall it with reticences or restrictions the result of which will be exceptions, diminishing or destroying the precept. Every exception to compulsory arbitration is a door opened to war; and if it be evident that humanitarian progress must be gradual in order that the success attained prepares for the one to be achieved, it is no less evident that nothing should excuse a retrocession in the doctrines which American Law has consecrated in a solemn and definite form.

The day shall come—and assuredly that day can not be remote—when all arbitration jurisdiction is to be enclosed within one single article of Universal Positive Law, compiled in analogous wording to that of the pending Treaty, celebrated, between the Argentine Republic and the Kingdom of Italy, on the 23rd. June, 1898:

«The High Contracting Parties hereby obligate themselves to submit to Arbitrable Judgement any controversies, of whatever nature, that for any cause whatsoever, may arise between them during the time that this present Treaty has to run, and about which no friendly solution may have been attained as the result of direct negotiations. It matters not that said controversies may originate in facts anterior to the stipnlation in this present Treaty.»

This formula had already been tried, ten years before, by the United States of America and Switzerland, in their project of a General Arbitration Treaty, of July 24th., 1883, sanctioned by so high an authority as Mr. David Dudley Field, in his Project of a Code of International Law. It obtained a decided ratification from the International Law Association, at the Congress that met at Buffalo on the 31st. August, 1899; it was adopted by acclamation in the Congress of Madrid, of 1900, and in that of Montevideo, of 1901.

Without going so far as that, by merely adopting Compulsory Arbitration for all actual pending questions, or for any that might arise in future—provided that, according to the exclusive judgement of any of the Nations interested in the dispute, they do not endanger their independence, their autonomy or sovereignty—the Washington Conference had placed itself in a *juste milieu*, «keeping the necessary circumspection, as it was said at the Hague Conference, and without immeasurably spreading its sphere of application, in order not to shake the confidence that it ought to inspire, and not to impair its credit in the eyes of peoples and governments.»

The so much discussed, as well as discussible «secret cases,» in whatever form that they be expressed; the «questions of national honor and dignity,» «which affect independence,» «which endanger the vital interests of a country,» or «which affect the precepts of the Constitution,» are all reduced to one and the same meaning—the one embraced by the Right of Sovereignty, as an ensemble of the essential conditions of the existence of a nation—and they correspond, in Public Law, to the restrictions which Private Law imposes upon the faculty to submit questions to arbitration, save those that interest public order and morals; that is to say, the fundamental bases of society.

It is owing to this that the Russian project, presented at The Hague, even when dealing with money claims—which it submits to Compulsory Arbitration—determined some limitations, and said, what was repeated by the Third Committee in their Report:

«It is to be understood that, in the exceptional cases in which money claims assume a character of first-order importance, under the point of view of the State's fallaciousness, each Power *invoking national honor and its vital interests*, will have the possibility of declining Arbitration as a means for the solution of the conflict.»

By all means, it may be assured that the Compulsory Arbitration formula, adopted at Washington, has for it the support of the circumspect and eminent author of the Report submitted to the Committee on the pacific solution of international conflicts, and was accepted at the Hague Congress in its session of the 25th. July, 1899.

In the Memoir which Chevalier Descamps addressed, in 1896, to the Powers by request, and as Chairman, of the Inter-Parliamentary Committee of Brussels, compossed of members belonging to fourteen European Parliaments, after stating that, «as regards questions of honor, especially, it has been remarked—not without foundation—that precisely those questions are the very ones which it is important not to subtract *a priori* from any Arbitration,» the authorized Belgian Senator condenses his thought in the following manner:

«Very similarly, in the General Arbitration Treaties, there shall still be, for a long time to come, reservations relating to this or to that category of litigations; most to be lamented reservations, without any doubt, because their elasticity may lend itself to interpretations allowing, in certain cases, to easily elude the solution by Arbitration; but reservations founded on persistent fear—not possibly to eliminate—and that, on the other hand, could they be formulated, would react upon the very conclusion of the general treaties on the subject. We believe, therefore, that to conclude general treaties with a reservation limited to litigations which may endanger, according to the belief of the States, their independence and their autonomy, is the maximum of progress to be realized at present as regards the scope of Arbitration.»

With the same amplitude of jurisdiction, although with some change in the procedure, according to the importance of each case, and with the novelty of an instance of appeal, the problem in the Project of a General Treaty of Anglo-American Arbitration, signed at Washington on the 11th. January, 1897, was solved, being supported by a majority in the Senate, but without obtaining the two-thirds vote called for by the Constitution. The interesting note of Secretary Olney, bearing the date of the 11th. April, 1896, on this negotiation, addressed to H. B. Majesty's Ambassador, Sir Julian Pauncefote, is most particularly explicit.

In the same course of ideas, the Argentine Republic has negotiated with the Republic of Uruguay, on the 8th. of July, 1899, and with the Republic of Paraguay, on the 6th. of November of the same year, two General Treaties of Arbitration, which have been already approved by the Senate, and which solve the problem of jurisdiction of Arbitration, in the following manner:

«Art. 1. The High Contracting Parties obligate themselves to submit to Arbitration all controversies of whatever nature, which owing to any cause whatsoever, may not affect the precepts of the Constitutions of both countries, and provided they may be satisfactorily arranged through direct negotiations.

Art. 2. Any questions which may have been already definitely arranged, between the Contracting Parties, shall not be renewed in virtue of the present Treaty. In such cases, the Arbitration shall bear exclusively on discrepancies arising about the validity, the interpretation, or the fulfilment of said agreements.»

The Compulsory Arbitration, sanctioned at Washington with no more limits than those referring to questions endangering or jeopardizing the independence of a Nation, also deserved to be reproduced in the Project which Jurists Butler, Eaton and Brainerd—of New York—submitted to the Fifth Universal Peace Congress, which met at Chicago, in 1893, and in the Code of International Arbitration approved by the Sixth Peace Congress, held at Antwerp, in 1894.

§ 2. To sanction Arbitration with the simple character of voluntary or optional, would be equivalent to undertake a useless task, although not absolutely harmless. Useless, because the power to contract or to celebrate an Arbitration Compact, does not require any outside concession, being, as it is, a faculty inherent to sovereignty. And not altogether harmless, because it could be construed in the sense of independing the proceeding of arbitration from the moral precepts which ineludible control it. The more powerful State shall never propose arbitration, confident that force and might will stand for right and reason; and the weaker State, shall neither propose it, because it knows beforehand that its antagonist, making use of its discretional power, will never accept It.

The last manifestations of America have ratified the peace-making principle of permanent, compulsory and ample Arbitration, as consecrated in Washington; and have even advanced further on by recommending the absolute adoption of the principle *without any restrictions.*

The Hague Conference eluded the compulsory character of the Russian project, as a concession to Germany, and in order to secure the creation of the Permanent Court, laying the following rules:

«Art. 16. On questions of a juridical order, and, in the first place, on questions of interpretation, or of application of International Conventions, Arbitration is acknowledged by the signatory Powers as the most efficient and at the same time the most equitable means of settling litigations which may have not been arranged through diplomatic channels.

«Art. 17. The Arbitration Convention has been concluded for questions already existing, or for eventual questions.

«It may be referred to any litigation, or only to litigations of a determined category.»

Alluding to these declarations, the eloquent mouthpiece of Spanish America and Delegates for Mexico, at the Madrid Assembly of 1900, asked to himself anxiously, whether that Congress would dare what the Hague Conference not even ventured «owing to the impossibility of reconciling appetites exasperated by the distrust of making friendly hands holding arms shake each other.» «The next Pan-American Congress, to meet in Mexico—he added—should be bound to take cognizance of this work, and by so doing it should increase its transcendental influence.»

The Iberian-Spanish Congress dared, as others had dared before it.