

**United Nations
Documents on the Development and Codification of International Law**

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UNITED NATIONS DOCUMENTS
concerning
DEVELOPMENT AND CODIFICATION OF
INTERNATIONAL LAW

Supplement to *AMERICAN JOURNAL OF INTERNATIONAL LAW*, Volume 41, No. 4,
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OFFICIAL DOCUMENTS

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UNITED NATIONS

DOCUMENTS ON THE DEVELOPMENT AND CODIFICATION OF INTERNATIONAL LAW *

1. HISTORICAL SURVEY OF DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION BY INTERNATIONAL CONFERENCES **

April 29, 1947

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* Documents and following note provided by Dr. Yuen-Li Liang of Division of Development and Codification of International Law of United Nations Secretariat.—M. E.

By Resolution 94 (1), adopted on 11 December 1946, the General Assembly of the United Nations, acting in pursuance of Article 13 of the Charter of that organization, established a Committee on the Progressive Development of International Law and its Codification, to consist of seventeen members and assigned to study the methods by which the General Assembly should encourage that development and codification, methods suitable for securing the coöperation of the several organs of the United Nations and for enlisting the assistance of other national or international bodies in that task.

In the Resolution of the General Assembly the Secretary-General of the United Nations was requested to provide such assistance as the Committee might require for its work. The memoranda on the development and codification of international law which follow were accordingly prepared by the Division of the Development and Codification of International Law of the Secretariat of the United Nations for the use of the Committee. These memoranda embodied (1) a historical survey of the development of international law and its codification by international conferences (A/AC.10/5), (2) a history of the codification of international law in the Inter-American system (A/AC.10/8), (3) a note on the private codification of public international law (A/AC.10/25), (4) a memorandum on the methods for enlisting the coöperation of other bodies, national and international, concerned with international law (A/AC.10/22), (5) a working bibliography on the codification of international law (A/AC.10/6), and (6) a memorandum on the methods for encouraging the progressive develop-

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ment of international law and its eventual codification (A/AC.10/7); of these items (4) and (5) are omitted here.

While most of the memoranda were intended for the purposes of reference, the Memorandum on the Methods for Encouraging the Development of International Law and its Codification (A/AC.10/7), containing observations which the Secretariat presented to the Committee, was specially designed to facilitate the discussion of the problems involved. This memorandum, as proposed in a memorandum of the Rapporteur of 16 May 1947 (A/AC.10/26), was taken by a decision of the Committee at its seventh meeting on 21 May as a general basis for discussion.

A Report was adopted by the Committee to be considered by the General Assembly during its Second Session in September, 1947; this document was reproduced in this Supplement at page 18, above. The value of the memoranda to the Committee, and the work of the Secretariat in their preparation, was suitably acknowledged both by individual members of the Committee and by the Rapporteur on the conclusion of his task.

** Memorandum prepared by the Secretariat; doc. A/AC.10/5, 29 April 1947.

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PART I

THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW

A. GENERAL

The development of the Law of Nations by means of conscious efforts of Governments may be said to have originated at the Conference of Vienna, 1814/1815. The Powers signatories of the Treaty of Paris of 1814 adopted, on 19 March 1815, Regulations regarding the rank of diplomatic agents Declaration concerning the abolition of the slave trade on 8 February 1815, and Regulation regarding free navigation on rivers on 29 March 1815 (Martens, *Nouveau Recueil*, V. II, 1818, pp. 432, 434, 449).

The work begun in Vienna was continued at Aix-la-Chapelle, where a new class of diplomatic agents was added to the Vienna Rules and where the Great Powers, on 15 November 1818, solemnly declared "leur invariable résolution de ne jamais s'écarter, ni entre eux ni dans leurs relations avec d'autres états, de l'observation la plus stricte des principes du droit des gens, principes qui dans leur application à un état de paix permanent, peuvent seuls garantir efficacement l'indépendance de chaque gouvernement et la stabilité de l'association générale" (Martens, N. R., IV, page 560).

One of the most remarkable events in the early stages of the process of formulating rules of international law at international conferences was the Declaration of Paris of 16 April 1856. Signed by seven Powers assembled at the Congress of Paris and enunciating four rules of maritime law, "the Declaration of Paris was the first and remains the most important international instrument regulating the rights of belligerents and neutrals at sea which received something like universal acceptance" (cf. H. W. Malkin, "The Inner History of the Declaration of Paris," *British Year Book of International Law*, Vol. 8, 1927, page 2).

The development of written international law through the restatement of principles of existing law or through the formulation of new law (these two methods being frequently undistinguishable), was pursued at over 100 international conferences or congresses held between 1864 and 1914, resulting in over 250 international instruments (cf. List of multipartite international instruments from 1864 to 1914 in Hudson, *International Legislation*, Vol. I, 1931, pages xx-xxxvi).

During the twenty-seven years from 1919 to 1946, over 700 multipartite agreements were concluded of which the prevalent majority entered into force for a varying number of states. Some conventions became binding upon as many as seventy states, viz., the Universal Postal Conventions were ratified or adhered to by seventy-two states. Altogether during approximately the same period 4,834 international instruments were regis-

tered with the League of Nations and published in 205 volumes of its Treaty Series.

While some of the instruments never became binding upon states, they may be said to have contributed to the experience of Governments in their search for solutions through international legislation of the manifold problems of international relations. Many instruments were isolated events dealing with particular problems. A substantial number, however, represents the fruit of a sustained effort of Governments to develop conventional international law for certain aspects of international relations at successive international conferences.

Thus the laws of war, both on land and on the sea, were progressively tackled at the Congress of Paris of 1856, and the Conferences of Geneva of 1864, of St. Petersburg of 1868, of Brussels of 1874, of Paris of 1884, of The Hague of 1899, 1904, and 1907, of Geneva of 1906, of London of 1909, of Washington of 1922, of Geneva of 1925, and 1929, and of London of 1930. Of these the Brussels Conference of 1874 for the codification of the rules and usages of war on land and the London Naval Conference of 1908/1909 resulted in instruments which never entered into force. The Brussels Conference was nevertheless regarded as "epoch-making, since it showed the readiness of the Powers to come to an understanding regarding" a code of laws and customs of war (cf. Oppenheim, *International Law*, Vol. I, 4th ed. by McNair, 1928, page 78).

The London Naval Conference represents a landmark in the movement for the codification of international law and its preparation was said to constitute "a model never yet surpassed in the annals of diplomacy. The method and care with which this Conference was prepared facilitated the proceedings enormously" (Records of the Eighth Ordinary Session of the Assembly of the League of Nations, 1927, O. J., Special Supplement No. 54, page 204). The London Naval Conference is therefore discussed separately in this Memorandum (cf. Part I).

The unification of private international law was promoted at six governmental conferences held in 1893, 1894, 1900, 1904, 1925 and 1928. Sanitary questions formed the subject of fifteen conferences held in 1851, 1859, 1866, 1874, 1881, 1885, 1892, 1893, 1894, 1897, 1903, 1907 and 1911/12, 1926 and 1938. International postal communications were regulated at twelve congresses held in 1863, 1874, 1878, 1885, 1891, 1897, 1906, 1920, 1924, 1929, 1934, 1939. Seventeen international geodetic conferences took place between 1864-1912. The protection of submarine cables was on the agenda of seven international conferences held between 1863 and 1913. Fourteen international conferences for the regulation of sugar tariffs met between 1864 and 1937. International telegraphic communications were regulated at ten international conferences meeting in the period from 1864 to 1908. Since 1932 the regulation of telegraph and telephone communications was

combined with the regulation of radio, and the Telecommunication Union was established at the Madrid Conference in 1932.

The Latin Monetary Union was the subject of nine conferences between 1865 and 1921, while four international monetary conferences were held between 1867 and 1892, and a Monetary and Economic Conference was held in London in 1933 and four conferences on bills of exchange met in 1910, 1912, 1930, and 1931.

Five general international conferences on weights and measures took place between 1889 and 1921. Eight international conferences on the transportation of merchandise by railroads were held between 1878 and 1933. Two international conferences for the publication of customs tariffs were held in Brussels in 1888 and 1890. The protection of industrial property was the subject of ten international conferences held between 1880 and 1934 and the protection of artistic and literary property was the subject of seven international conferences held between 1884 and 1928. The International Maritime Conference to define the rules of the road at sea met at Washington in 1889. International conferences on maritime law were held in Brussels in 1905, 1909, 1910, 1922 and 1926, and on safety of life at sea at London in 1914 and 1929. A Load Line Convention was adopted at London in 1930. The regulation of international waterways and certain question regarding agricultural and cultural problems were on the programme of numerous conferences.

The Hague Peace Conferences of 1899 and 1907 made a contribution to the evolution of conventional international law in many fields and, for this reason, occupy a special position.

Aerial navigation was the subject of a conference held in Paris in 1910. The Paris Peace Conferences of 1919 set up an Aeronautical Commission for the purpose of framing a convention. The result was the Convention on the Regulation of Aerial Navigation of 13 October 1919. This was the first international convention relating to aerial navigation. An Ibero-American convention was signed in Madrid on 1 November 1926, and in inter-American Convention was adopted at Havana on 20 February 1928.

Treaties concerning the protection of minorities were concluded between the Principal Allied and Associated Powers and Poland (28 June 1919), Yugoslavia (10 September 1919), Czechoslovakia (10 September 1919), Rumania (9 December 1919), and Greece (10 August 1920). Furthermore, the Treaties of Peace with Austria (10 September 1919), Bulgaria (27 November 1919), Hungary (4 June 1920) and Turkey (24 July 1923) contained provisions regarding the protection of minorities.

The Conferences resulting in the Convention concerning the International Hydrographic Bureau of 30 June 1919, the Convention for the Establishment of an International Institute of Refrigeration of 21 June 1920, and the Convention for the Creation of an International Office of Chemistry of 29 October 1927 may also be mentioned.

General Conventions concluded under the auspices of the League of Nations and international labour conventions are discussed elsewhere in this Memorandum (cf. *infra*, Part II).

B. PREPARATION OF CONFERENCES AND CONVENTIONS

General

There appears to have emerged no uniformity in the preparatory procedure for international conferences and conventions from the rich experience in promoting the progressive development of international law during a period of over one hundred years. Generally, international conferences were preceded by diplomatic exchanges. In such cases the initiating Government proposed the agenda for the conference in more or less definite form. The Hague Peace Conferences are a case in point.

In some fields certain Governments have displayed a marked continuity of interest. Thus the Government of the Netherlands initiated and prepared the conferences on the unification of private international law held successively at the Hague since 1893, the British Government initiated conferences on the safety of life at sea and the Government of Belgium took the initiative in convening conferences on the unification of maritime law (cf. below).

In the case of international unions, such as the Universal Postal Union, and the Telegraphic and Telecommunication Union a certain uniformity of method evolved.

The International Conferences of American States, the League of Nations and the International Labour Organization have made a substantial contribution to the development of conventional international law in many of its branches. They also developed techniques of preparing the work of international conferences which are discussed elsewhere in this Memorandum.

The first Conference for the Codification of International Law held at the Hague in 1930 deserves particular attention from the point of view of the preparatory technique employed by the League of Nations (cf. *infra*, Part III).

Certain private international and national scientific institutions such as the Institute of International Law, the International Law Association, the International Maritime Committee, the International Shipping Conference, the Harvard Research in International Law have facilitated and laid the ground work for some of the diplomatic conferences concerned with the progressive development of international law. It may be noted that the Conference for the Codification of International Law of 1930, highly appreciating the scientific work which has been done for codification in general and in regard to the subjects on its agenda in particular,

considered it desirable "that subsequent conferences for the codification of international law should also have fresh scientific work at their disposal and that, with this object, international and national institutions should undertake at a sufficiently early date the study of the fundamental questions of international law, particularly the principles and rules and their application, with reference to the points which are placed on the agenda of such conference" (cf. *infra*, Appendix 10).

The Hague Peace Conferences

The Russian Circular Note of 30 December 1898 contained a list of subjects to be submitted for discussion at the First Hague Peace Conference. Similarly, the Russian Notes of March/April, 1906 outlined the programme for the Second Hague Peace Conference.

In spite of the lack of adequate preliminary preparation the Hague Conferences, drawing upon the work and experiences of preceding conferences, reached agreement on several conventions of outstanding importance and thereby greatly stimulated the movement in favour of codifying international law.

The Second Hague Peace Conference, however, feeling the lack of adequate preparation of its deliberations, in recommending the holding of a Third Peace Conference, called the attention of the Powers "to the necessity of preparing the programme of this Third Conference a sufficient time in advance to ensure its deliberations being conducted with the necessary authority and expedition." With this end in view the Conference proposed that "some two years before the probable date of the meeting, a preparatory Committee should be charged by the Governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for embodiment in an international regulation, and of preparing a programme which the Governments should decide upon in sufficient time to enable it to be carefully examined by the countries interested. This Committee should further be intrusted with the task of proposing a system of organization and procedure for the Conference itself" (Final Act of the Second International Peace Conference, 18 October 1907. Malloy's Treaties . . . between the United States and Other Powers, Vol. II, 1910, page 2379).

Postal Conferences

An interesting example of preparatory technique is offered by the postal conferences. The international conference convened in 1874 for the purpose of regulating postal communications was prepared by the initiating Government, which submitted a draft of a postal union. The Regulations adopted by the Conference on 9 October 1874 for the execution of the Treaty relative to the formation of a General Post Union provided in Article XXVII, paragraph 13, that in the future the work of congresses should be

prepared by the postal administration of the host country in collaboration with the International Bureau created by that Conference. The succeeding Congress, however, in Article XXX, paragraph 8 of the Regulations attached to the Convention of 1 June 1878 for the formation of the Universal Postal Union charged the International Bureau with the task of preparing for the work of future congresses, or conferences. The International Bureau continues to be in charge of this function (cf. Article 183 of the Regulations for the Execution of the Universal Postal Convention concluded at Buenos Aires on 23 May 1939).

The preparatory procedure for postal congresses generally begins with proposals submitted by the various postal administrations to the International Bureau a year before the next Congress. The Bureau assembles proposals in a "Cahier des Propositions" which is distributed to all members for comment. Upon receipt of comments and counter proposals the Bureau prepares a new edition of the "Cahier" which serves as agenda for the Congress (cf. H. R. Turkel, "International Postal Congresses," *British Year Book of International Law*, Vol. 10, 1929, page 171).

The Universal Postal Congress, meeting in Madrid, adopted on 23 November 1920 the proposal to set up a research committee ("Commission d'Etudes") composed of representatives of seven administrations to study the possibility and the means of improving and simplifying the acts of the Postal Union with regard to their form and wording (Documents du Congrès Postal de Madrid, 1920, Vol. II, 1921, page 792).

The Committee held two meetings in 1921 and 1922 respectively and, with assistance of two sub-committees, adopted on 14 April 1922 revised texts of the Principal Convention and its Regulations and a general report. These documents were transmitted to the members of the Union with the request to let the International Bureau know by 31 December 1922 whether they agree that the projects of the Committee may serve as the sole basis of the propositions to be made for the next congress (Report of the Committee to Rearrange the Universal Postal Convention of Madrid and Recommend any Changes Deemed Necessary. Washington, 1923, page 6).

The Universal Postal Convention adopted at the Stockholm Congress on 28 August 1924, added to the organs of the Union, in Article 17, Commissions charged by the Congress or Conference with the study of particular questions. Also, following the precedent of the Madrid Congress, the Stockholm Congress established a Research Committee ("Commission d'Etudes") of fourteen member administrations to study the ways and means of simplifying and accelerating the work of the Congresses (Article XII of the Final Protocol).

The London Congress of 1929 established a Preparatory Commission of fourteen administrations to prepare the work of the next Congress and, in particular, to study, compare and co-ordinate proposals, and to submit a project and a report susceptible of serving as basis of discussion at the

next Congress. The report and project should be transmitted to each administration at least four months before the opening of the next Congress (Article XIV of the Final Protocol).

It may be noted that nearly all members of the international community are members of the Universal Postal Union.

Conferences for Unification of Private International Law

An interesting example of preparatory techniques is offered by the Conferences convened by the Government of the Netherlands for the unification of private international law. Preparatory to the First Hague Conference on private international law, 12-27 September, 1893, the Government of the Netherlands transmitted to the Governments a memorandum and the text of the laws and conventions in force in the Netherlands. The memorandum consisted of two parts. In the first part the Netherlands Government stated its views relating to the forthcoming conference and in the second part it formulated a draft programme in the form of a questionnaire which could be submitted for discussion at the Conference. The Netherlands Government suggested that the twelve invited Governments submit to the Conference statements regarding the legislation in force in their countries with respect to private international law. All the Governments responded to this suggestion (cf. Actes de la Conférence de la Haye chargée de régler diverses matières de Droit International Privé, 12-27 Septembre 1893, La Haye, 1893, Première Partie, pages 2-7 and Deuxième Partie).

The Royal Commission for the Codification of Private International Law, created in 1897 by the Netherlands Government, and similar commissions in other countries were instrumental in preparing the third Hague Conference on private international law. The Netherlands Government communicated to the invited Governments a draft programme for the third conference with the request for their observations and counter-proposals. The Royal Commission examined the documentation received from the Governments and drew up a systematic memorandum indicating, with reference to each article of the draft programme, the proposals and amendments submitted by the Governments (Documents relatifs à la Troisième Conférence de la Haye pour le Droit International Privé, 1900, page 1). The preparatory documentation thus assembled was then submitted to the conference.

The Third Conference expressed the "voeu" that the procedure "qui a été heureusement suivi pour la préparation de la Conférence actuelle" should be applied in preparation for the Fourth Conference on Private International Law, (cf. Protocol Final of 18 June 1900. Actes de la Troisième Conférence de la Haye pour le Droit International Privé 29 Mai-18 Juin 1900, page 246). The Netherlands Government complied

with the desire expressed by the Third Conference and in October 1902 communicated to the Governments a "projet de programme d'une Quatrième Conférence" and requested their replies. The Royal Commission examined the documentation received from the Governments and drafted a "tableau systématique," indicating under each article of the draft programme the proposals and amendments submitted by the Governments as well as its own thoughts on the subject (Documents relatifs à la Quatrième Conférence de la Haye pour le Droit International Privé, 1904, page V).

The method employed so successfully was resorted to again in preparing for the Fifth and Sixth Conferences of 1925 and 1928. It may be noted that questionnaires were employed by the Netherlands Government in connection with these two conferences. On the basis of the replies and documentation relative to the legislation in force in the invited countries, a "tableau synoptique" was drawn up on each of the topics which had not been discussed at the preceding conference (Conférence de la Haye de Droit International Privé, Documents relatifs à la Sixième Session tenue du 5 au 28 janvier 1928, page 11).

Conferences on Sea Transport

Conferences on sea transport may be divided roughly into those dealing with the unification of private maritime law and those concerned with safety regulations. The Belgian and British Governments have generally taken the initiative in convening the former and latter respectively, whereas the League of Nations and the International Labour Organization have been responsible for promoting the international regulation of certain related questions (cf. *infra*, Part II, A and Part II, B).

The preparatory work for conferences convened by the Belgian Government was largely performed by the International Maritime Committee, an unofficial body established in 1897 for the purpose of furthering the unification of maritime law (cf. Sir Osborne Mance, *International Sea Transport*, 1945, pages 5-27). The Conference held in Brussels in 1910, attended by all the maritime States of Europe, the United States of America, and most of the South American States, adopted on 23 September the Convention for the Unification of certain Rules of Law with respect to Collision between Vessels and the Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea. Both conventions were ratified by twenty-six states.

The Brussels conference of 1924 adopted the International Convention for the Unification of Certain Rules relating to Bills of Lading which was signed on 25 August 1924 and ratified by sixteen states. The Convention is based on the rules drafted by the International Law Association in cooperation with the International Maritime Committee and the so-called "Hague Rules 1922" adopted by the latter (cf. Mance, *op. cit.*, page 29).

At the same conference the Convention for the Limitation of the Responsibility of Ship-owners was signed on 25 August 1924. It was ratified by twelve states.

The Brussels Conference of 1926 adopted two instruments: The Convention for the Unification of Certain Rules relating to the Immunity of State-owned Vessels, and the Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages. Both were signed on 10 April 1926. The former Convention was adopted after prolonged preparatory work carried out by the International Shipping Conference and the International Maritime Committee (cf. Mance, *op. cit.*, page 31). An Additional Protocol, proposed by the British Government, was signed at Brussels on 24 May 1934, and both the Convention and the Additional Protocol were ratified by thirteen states (cf. Mance, *op. cit.*, page 32). The preparatory work for the Convention on Maritime Liens goes back to 1907 (cf. Mance, *op. cit.*, page 33). This Convention was ratified by fourteen states.

Safety at sea was the subject of the International Marine Conference held at Washington in 1889. No convention was signed at the time. Following the Titanic disaster in 1912, the British Government convened a conference in London which on 20 January 1914 adopted the Convention on the Safety of Life at Sea. Following substantial preparatory work undertaken by the International Shipping Conference since 1921, the revised Convention on Safety of Life at Sea was signed at London on 31 May 1929 (Hudson, *International Legislation*, Vol. II, No. 218, page 2,724). This replaced the 1914 Convention for those states that ratified it (cf. Mance, *op. cit.*, page 39). The 1929 Convention was ratified by thirty-five states.

The protection of life and property at sea is also treated in the Load Line Convention signed at London on 5 July 1930 (Hudson, *International Legislation*, Vol. V, No. 267, page 643). The Preparatory work for this Convention was carried out by the International Shipping Conference (cf. Mance, *op. cit.*, page 41).

It may be noted that, according to Article 61 of the Safety of Life at Sea Convention, the British Government is charged with communicating to the Contracting Governments proposals for the modification of the Convention. Such modifications enter into force if accepted by all the Contracting Governments. On 17 January 1933, the British Foreign Secretary informed the Contracting Governments that a modification of Regulation 19 (2) had been accepted and entered into force in accordance with the procedure laid down in Article 61 (cf. Hudson, *International Legislation*, Vol. VI, No. 323, page 281).

The Load Line Convention, in Article 20, provides a similar method for effecting modifications.

International Telecommunication Conferences

The Service Regulations of the Telegraphic Convention of 14 January 1872 charged the International Bureau of the International Telegraphic Union with the task of preparing future international telegraphic conferences. The duties of the Bureau were extended in 1885 to include international telephones under service regulations adopted in that year.

Conferences dealing with maritime radio-telegraphy were held in Berlin in 1903 and 1906, and in London in 1912. The Radio-telegraphic Convention of 1906 entrusted to the Bureau the same duties in regard to radio telegraphy as it already discharged in the field of telegraphy. The Radio-telegraph Convention signed at Washington on 25 November 1927, embraced all radio communications (cf. Hudson, *International Legislation*, Vol. III, No. 185, page 2,197). It provided in Article 17, paragraph 1 for the establishment of an International Technical Consulting Committee on Radio Communication. Under Article 16 the International Bureau of the Telegraph Union was charged with the work pertaining to the Conferences, including examining requests for changes in the Convention and the Regulations annexed thereto.

At a joint conference held at Madrid in 1932, it was decided to consolidate the existing international organizations for telegraphs, telephone and radio in an International Telecommunication Union (cf. Hudson, *International Legislation*, Vol. VI, No. 316, page 109). Under Article 17, paragraph 2 (a), of the Madrid Convention the Bureau of the International Telecommunication Union is charged with the work preparatory to the following conferences at which it shall be represented in an advisory capacity. Pursuant to Article 16 consulting committees may be established for the purpose of studying questions relating to the telecommunication services. Three such Consulting Committees, the Telephonic, the Telegraphic and the Radio, have been set up.

Sixty-eight States have ratified or acceded to the Madrid Telecommunication Convention.

*Air Transport Conferences**Public Air Law*

The Convention on the Regulation of Aerial Navigation opened for signature at Paris on 13 October 1919 (Hudson, *International Legislation*, Vol. I, No. 9, page 359), ratified or acceded to by thirty-nine States, provided in Article 34 for the establishment of a permanent commission under the name International Commission for Air Navigation, generally known by its French initials C.I.N.A. The C.I.N.A. was placed under the direction of the League of Nations. Under Article 34 its functions included: to receive proposals from, or to make proposals to, any of the contracting States for the amendment or modification of the provisions of the Conven-

tion, and to notify changes adopted; to discharge certain duties conferred upon it by specified Articles of the Convention and to amend the provisions of the technical Annexes A-G; and to give its opinion on questions which States may submit to it.

The activities of C.I.N.A. were summed up as follows: "(1) A Council charged with ensuring the application of the Convention and its normal evolution by proposing in due season to the contracting States the amendments called for by the development of international air navigation; (2) an international parliament having power at all times to adapt the technical regulations to the requirements of air traffic; (3) a tribunal settling in first and last instance disagreements which may arise between contracting States with regard to the technical regulations which it has the power to enact" (cf. Sir Osborne Mance, *International Air Transport*, 1944, page 18).

Protocols amending the 1919 Convention and prepared by the C.I.N.A. were adopted in 1922, 1923, 1929 and 1935 (cf. Hudson, *International Legislation*, Vol. I, Nos. 9b, 9c, 9d, and Vol. VII, No. 412).

The C.I.N.A. coöperated with the International Office of Public Hygiene in preparing the draft of the Sanitary Convention for Aerial Navigation opened for signature at the Hague on 12 April 1933 (Hudson, *International Legislation*, Vol. VI, No. 326, page 292).

Private Air Law

As the functions of C.I.N.A. were related to the 1919 Air Navigation Convention, the French Government, in 1923 proposed a conference to discuss the codification of international private air law. The First International Conference on Private Air Law, meeting in Paris in 1925, adopted a resolution for the setting up of an International Technical Committee of Aerial Legal Experts, known by the initials of its French title CITEJA, to prepare draft codes for diplomatic Conferences. The Committee of Experts was constituted in Paris in 1926. The work of CITEJA was purely advisory. Its main tasks were to study questions referred to it by the diplomatic conferences and, in particular, to prepare draft conventions on topics assigned to it by the diplomatic conferences. Such draft conventions were submitted to diplomatic Conferences convened by the French Government in 1929, 1933 and 1938. Between 1926 and 1938 CITEJA held thirteen annual sessions to some of which experts from non-member states were invited.

The Second International Conference on Private Air Law, held at Warsaw in 1929, adopted the Convention on the Unification of Certain Rules regarding International Air Transport, signed 12 October 1929 (Hudson, *International Legislation*, Vol. V, No. 235, page 100).

The Third International Conference on Private Air Law at Rome adopted the Convention for the Unification of Certain Rules relating to

Damages Caused by Aircraft to Third Parties on the Surface and the Convention for the Unification of Certain Rules relating to the Precautionary Attachment of Aircraft. Both instruments were opened for signature at Rome on 29 May 1933 (cf. Hudson, *International Legislation*, Vol. VI, Nos. 328, 329, pages 327, 337).

The Fourth International Conference on Private Air Law at Brussels adopted the Convention for the Unification of Certain Rules relating to Assistance and Salvage of Aircraft at Sea, and a Protocol on Aviation Insurance. The Convention was signed on 29 September 1938.

Not all of the draft conventions submitted by CITEJA were adopted by the diplomatic conferences. Thus the Fourth Conference referred back to CITEJA for further study the draft convention for the Unification of Certain Rules relating to Aerial Collisions. The four conventions prepared by CITEJA and adopted by the diplomatic conferences constitute an important contribution to the progressive development of international private air law.

C. THE INTERNATIONAL NAVAL CONFERENCE

London, December, 1908–February, 1909

Origins

The International Prize Court Convention

The Convention for the Establishment of an International Prize Court adopted by the Second Hague Peace Conference on 18 October 1907 provides in Article 7 that in the absence of treaty provisions applicable to the case, the Prize Court shall apply the rules of international law or, if no generally recognized rules exist, the Court shall give judgment in accordance with the general principles of justice and equity. An effort was made at the Hague Conference to reach agreement on various questions relating to maritime war. Owing to lack of time it was not possible for the powers to establish agreement on all points.

Proposal for a Conference

On 27 February 1908, the British Government proposed to the principal naval Powers (Germany, Spain, France, Italy, Russia, Japan, Austria-Hungary, the United States and the Netherlands) to hold a conference in London in order to agree on the generally recognized rules of international law and thus ensure the establishment of the International Prize Court. The following eight subjects were suggested for inclusion on the programme of the Conference: contraband, blockade, continuous voyage, destruction of neutral vessels prior to their condemnation by a Prize Court, conversion of a merchant vessel into a warship on the high seas, transfer of merchant vessels from a belligerent to a neutral flag during or in con-

temptation of hostilities, and the question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property was enemy property.

In order to facilitate the work of the proposed Conference, the British Government suggested that the Governments should interchange memoranda stating their views of the correct rules of international law on each of the subjects listed above and that these should include references to the authorities on which these views were based.

The British Government further suggested that if the idea of a conference was accepted, each government should send delegates equipped with full powers to negotiate and conclude an agreement.

All the Governments to whom the British proposal was addressed forwarded to that Government memoranda of their views as to the subjects mentioned therein.

Preparation of Bases of Discussion

On 14 September 1908, the British Government, noting that its invitation had been accepted by the Powers concerned, informed them that it would prepare for the Conference, "as a suitable basis for its deliberations, a draft declaration in terms which shall harmonize as far as may be possible the views and interpretations of the accepted law of nations as enunciated in the memoranda of the several Governments."

Codification v. Legislation

In a note of 10 November 1908, the British Government informed the Powers that "the main task of the Conference will not . . . be to deliberate *de lege ferenda*, as the Peace Conferences have been called upon, and may again be called upon, to do with a view to develop and extend the scope of the conventional law of nations. The proposed Declaration should . . . place on record that those Powers which are best qualified and most directly interested, recognize, as the result of their common deliberations, that there exists in fact a common law of nations of which it is the purport of the Declaration, in the common interest, to set out the principles." The British Government thus intended "not to suggest any new doctrines, but to crystallize, in the shape of a few simple propositions, the questions on which it seems possible to lay down a guiding principle generally accepted." The British Government also declared that "in regard to other questions which cannot be so dealt with . . . (it) will be happy to consider in the most conciliatory spirit such proposals as have been or may be put forward with the view to the adoption of special conventional stipulations" (Misc. No. 4 (1909), Cd. 4554, page 19).

The document prepared by the British Government was transmitted to other Governments on 14 November 1908, under the title: "Statement of the Views Expressed by the Powers in their Memoranda, and Observations

Intended to Serve as a Basis for the Deliberations of the Conference" (*Ib.*, pages 19, 20, 33).

Declaration v. Convention

It is apparent from this Statement, that the purpose of the Conference, as seen by the British Government, was to reach an agreement on a "Declaration" rather than a "Convention." British Government, in an introductory note to the Statement, observed that :

La 'déclaration' proposée doit avoir pour objet d'énoncer, avec le plus de précision possible, les points sur lesquels il y a identité entre les principes suivis et même, s'il y a lieu, entre leur application pratique, ainsi que les points sur lesquels l'expérience acquise et la communauté des conditions modernes du commerce maritime, de la navigation et de la guerre navale permettent aujourd'hui d'exprimer les principes généraux du droit international, qui se sont fait jour peu à peu à travers les errements séparément suivis dans chaque pays. Il ne s'agit donc pas à cet égard pour la Conférence de statuer *de lege ferenda*, comme les Conférences de la Paix ont été ou seront appelées à faire en vue de développer le domaine des stipulations conventionnelles internationales. A la différence d'une "convention," créant des règles particulières aux Etats Contractants, la "déclaration" projetée doit être, dans l'opinion du Gouvernement de Sa Majesté, la reconnaissance par les Puissance les mieux qualifiées et les plus intéressées, délibérant en commun, que, dans l'état actuel des relations mondiales, il existe véritablement un droit commun des nations, dont elle entend dégager les principes dans l'intérêt de tous. La force obligatoire de ce droit commun a été constatée par l'article 7 de la Convention de La Haye précitée.

A la différence encore d'une convention, qui ne saurait être modifiée que par de nouvelles stipulations, les règles reconnues aujourd'hui pourront être appliquées ou développées, le cas échéant, avec telles modifications que la Cour trouvera nécessaires pour donner aux principes leur vraie portée en présence des progrès du jour.

Le Gouvernement de Sa Majesté se plaint à espérer qu'en formulant ainsi 'les règles généralement reconnues du droit international' expressément prévues comme base des décisions devant être imposées par la Cour des Prises, la Conférence évitera à tous les pays les surprises et les doutes, nuisibles au commerce pacifique comme aux bonnes relations politiques, et qui n'ont actuellement souvent pour cause que le défaut d'expression autorisée d'un droit, auquel tous les Etats ont l'incontestable souci de se conformer.

En préparant le travail qui va suivre, le Gouvernement de Sa Majesté n'a donc nullement eu vue de suggérer des principes nouveaux, mais seulement de cristalliser en quelques propositions simples les questions sur lesquelles une doctrine dirigeante paraît pouvoir être formulée. Sur les autres questions, il sera heureux de participer à l'examen des propositions qui ont été ou pourront être faites en vue de stipulations conventionnelles particulières (*Proceedings of the International Naval Conference, held in London December 1908-February 1909, Misc. No. 5 (1909), Cd. 4555, pages 57, 58*).

Some of the Powers, it appears, were in favour of a code of rules "binding on the contracting parties in case of war between two or more of them, and only on condition of reciprocity, no distinction being made between rules already acknowledged by the consensus of nations to be of general validity, and others introducing new elements not hitherto admitted to have the force of international law." The British Government, in commenting upon this approach, stated that it was not likely to produce a result "which would effectually guarantee the application of known rules by the International (Prize) Court." Stressing the advantages of a Declaration as against a Convention, the British Government declared that "any proposition of law enunciated by the chief naval Powers as expressing in their opinion, the existing, correct, and general rule in the matter, would, they are convinced, carry such weight that its uniform enforcement could be almost certainly relied upon" (Sir Edward Grey to Lord Desart, 1 December 1900, Misc. No. 4 (1909), Cd. 4554, page 22).

The proposed Conference would be free to discuss new rules. Its principal task, however, would be "a restatement of the underlying principles" of the law of nations "in words adapted to present-day circumstances" which would furnish the opportunity "of arriving by common agreement at a uniform definition of the main principles of the existing law, to whose spirit all nations are without doubt anxious to conform" (*Ib.*, page 22).

The London Conference

The International Naval Conference, held in London from 4 December 1908 to 26 February 1909, was attended by delegates from Great Britain, the United States of America, Germany, Spain, France, Italy, Japan, the Netherlands, Russia and Austria-Hungary.

The Conference adopted the "bases of discussion" prepared by the British Government as a starting point for the examination of the principal questions of existing international law. After a first reading in a series of plenary meetings, the Conference decided to conduct the necessary detailed discussion in a Grand Committee, which, in fact, was the Conference sitting in Committee. This device was resorted to in order to enable the delegates to talk more informally and without the restraint of a formal record of the proceedings in official minutes. The Grand Committee concentrated on reaching agreement on the general outline of the final Declaration.

Questions presenting special difficulties were discussed in an Examining Committee, composed of one delegate of each of the participating Governments. The Conference also established a Legal Committee to discuss certain technical questions. At an advanced stage of its deliberations, on 17 February 1909, the Conference appointed a Drafting Committee which, on the basis of a draft submitted by the Delegation of Great Britain, was instructed to prepare the final text.

Results of the London Conference

The Conference, after deliberating for almost three months, adopted a Final Protocol, a Declaration concerning the Laws of Naval War, and a General Report.

General Report

The General Report to the Conference, prepared by Professor Renault and adopted by the Conference, contains "a most lucid, explanatory and critical commentary on the provisions of the Declaration." It was pointed out by the chief Delegate for Great Britain that "in accordance with the principles and practice of continental jurisprudence, such a report is considered an authoritative statement of the meaning and intention of the instrument which it explains, and that consequently foreign Governments and Courts, and, no doubt also, the International Prize Court, will construe and interpret the provisions of the Declaration by the light of commentary given in the Report" (Delegates for Great Britain at the Naval Conference to Sir Edward Grey, 1 March 1909, Misc. No. 4 (1909), Cd. 4554, page 94).

Final Protocol

The Final Protocol adopted by the London Naval Conference on 26 February 1909, in addition to formal statements contains a wish ("voeu") which was intended to pave the way for the ratification of the International Prize Court Convention of 1907 by the United States. The delegates agreed in this wish to call the attention of their Governments to the advantages of concluding an arrangement whereby States which for constitutional reasons experience some difficulty in ratifying the Hague Convention of 1907 for the establishment of an International Prize Court, should have the power, at the time of depositing their ratifications, to add thereto a reservation to the effect that resort to the International Prize Court in respect of decisions of their national tribunals shall take the form of a direct claim for compensation.

The Declaration concerning the Laws of Naval War

The Declaration, adopted by the Conference on 26 February 1909, was said to represent the *media sententia* of the views and practices prevailing in the different countries. The General Report pointed out that the rules embodied in the Declaration "must not be examined separately, but as a whole, otherwise there is a risk of the most serious misunderstandings." The success of the Conference was due to compromise and mutual concessions. The rules adopted by the Conference were therefore "not always in absolute agreement with the views peculiar to each country, but they shock the essential ideas of none" (General Report presented to the Naval Conference on behalf of its Drafting Committee, Misc. No. 4 (1909) Cd. 4554, page 34).

The Declaration, in a Preliminary Provision, striking the keynote to the following particular provisions, states: "The Signatory Powers are agreed that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law." The purpose of the Conference, it will be recalled, was not to create new rules but above all "to note, to define, and, where needful, to complete what might be considered as customary law" (General Report, *loc. cit.*, page 35). In thus enunciating principles of international law, recognized by the chief naval powers, the Declaration was intended to facilitate the establishment of the International Prize Court.

Among the Final Provisions of the Declaration there are several indicative of the technique of codification as applied by the London Naval Conference. Article 65 enunciates the principle that "the provisions of the present Declaration must be treated as a whole, and cannot be separated." The work of the Conference being the result of mutual concessions and adaptations, it was thought necessary to exclude the possibility of attaching reservations to any of the rules (General Report, *loc. cit.*, page 66).

The Declaration was subject to ratification and remained open for signature up till 30 June 1909, by the Plenipotentiaries of the Powers represented at the London Conference.

Article 69 of the Declaration provides explicitly for the right of denunciation. Such denunciation, however, "can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years." The General Report concludes that "it follows implicitly from Article 69 that the Declaration is of indefinite duration" (General Report, *loc. cit.*, page 67).

The Declaration was open to accession by Powers not represented at the London Conference. The reason for this, as stated in Article 70, was the great importance which the Powers represented at the Conference attached "to the general recognition of the rules which they have adopted."

Unsolved Problems

Two subjects, inscribed in the programme of the Conference, were not solved. These were the legality of the conversion of a merchant vessel into a warship on the high seas and the question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property was enemy property (General Report, *loc. cit.*, page 35).

Action by the Powers after the London Naval Conference

While the London Naval Conference succeeded in reaching agreement on the Declaration concerning the Laws of Naval War, none of the Powers

represented at the Conference ratified the Declaration. The Declaration therefore did not enter into force.

In the War between Italy and Turkey, 1911–1912, both belligerents in their naval operations, conformed apparently to the rules laid down in the London Declaration. Turkey was not invited to the London Conference and had not acceded to the Declaration.

During the World War I, on 6 August 1914, the Government of the United States inquired of the belligerent powers whether they would apply, upon condition of reciprocity, the rules of naval war as laid down in the unratified London Declaration of 1909. Germany and Austria-Hungary agreed. As some of the Allied Powers, however, refused to apply the Declaration in its entirety, the United States withdrew its suggestion. Nevertheless, Great Britain and France put into effect the London Declaration with some modifications. The British and French Government having found the Declaration unadaptable to the circumstances of World War I, ceased to apply it on 7 July 1916, and reverted to the rules of international law.

PART II

THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW BY THE LEAGUE OF NATIONS

A. GENERAL SURVEY OF THE LEGISLATIVE ACTIVITIES OF THE LEAGUE OF NATIONS

About one hundred and twenty international instruments were concluded under the auspices of the League between 1920 and 1939. These instruments, variously designated as conventions, agreements, arrangements, protocols, acts, procès-verbaux or declarations, promoted the progressive development of international law in many fields of international relations. The great majority of conventions concluded under League auspices had for their object the general regulation of relations between states. Some conventions related to particular situations such as the economic rehabilitation of certain countries (Austria, Hungary, Bulgaria etc.).

Preparation of General Conventions to be Negotiated under the Auspices of the League of Nations

The Committee of Experts

The Assembly of the League of Nations, in a Resolution adopted on 24 September 1929, requested the Council to set up a committee of seven experts to investigate “the reasons for the delays which still exist and the means by which the number of signatures, ratifications or accessions given to the Conventions referred to above could be increased.” The Council

accordingly appointed a committee of eight members on 15 January 1930. The Committee, meeting in Geneva from 28 April to 2 May 1930, considered two questions:

1. The reasons for the delays at present operative in the procedure or ratification of conventions concluded under the auspices of the League; and
2. The means by which the numbers of signatures, ratifications or accessions of the above-mentioned conventions could be increased.

The Committee noted that "the preparatory work of the Conferences and the discussions at the conference are not in all cases conducted by the officials who have the responsibility of advising upon the definite acceptance of the convention and its application in their countries, but is entrusted to experts on the question under consideration, who are not responsible officials of the competent Government departments." The Committee also pointed out that in the case of some conventions "their urgency may not be appreciated by the Government departments" and that some conventions "are not of special interest to all the signatories" (Report of the Committee Appointed to Consider the Question of Ratification and Signature of Conventions Concluded under the Auspices of the League of Nations, Doc. A.10 1930. O.J. Special Supplement, No. 85, pages 142, 143).

With regard to preparatory work the Committee further observed that "it would be well if more extensive preparatory work could be done before the Conference, so that the Governments may become more fully acquainted with the questions under consideration and be in a position to form their opinions on the various points raised after sufficient study and investigation. The issue of questionnaires to obtain preliminary observations, followed by the circulation of draft conventions giving the opportunity for the submission of amendments, in advance, might serve a useful purpose by bringing to the notice of the conference points which might otherwise involve delays and difficulties at a later date" (*Ib.*, page 144).

The Committee also thought "that the methods recently adopted by the International Labour Organization and the procedure recommended by the Conference on the Codification of International Law (The Hague, 1930) might be found to contain suggestions which may be useful when the adoption of a new procedure is under investigation" (*Ib.*, pages 144, 145).

The Committee, referring to a proposal that a convention should be drawn up by a conference to fix the procedure to be adopted in international conferences held under the auspices of the League and to prepare model texts for the formal articles of these conventions, declared that "if the proposals made in the foregoing paragraphs are sanctioned by a resolution of the Assembly, much more practical and useful results will be achieved than those which could be obtained by the adoption of a convention of the kind mentioned above" (*Ib.*, pages 146, 147).

The Resolution of the Assembly of 3 October 1930

The Assembly of the League adopted on 3 October 1930 a Resolution, proposed in the Report of its First Committee, which was based upon the above Report of the Committee appointed to consider the question of ratification and signature of Conventions concluded under the auspices of the League of Nations, and upon proposals made by some delegations. (For the text of the Resolution see Appendix 1). Section IV of the Resolution of 1930 was reconsidered and amended by the Assembly in 1931. (For the text of Section IV as amended by the Resolution of 25 September 1931, see Appendix 2).

Special Preparatory Procedures

The Preamble of Section IV declares that the preparatory procedure which it lays down for the conclusion of general conventions under the auspices of the League, shall be followed in all cases excepting those "where previous conventions or arrangements have established a special procedure or where, owing to the nature of the questions to be treated or to special circumstances, the Assembly or the Council consider other methods to be more appropriate." This exception was designed to safeguard the preparatory procedure developed and followed by the technical organizations of the League. In the view of some of these organizations the exception was essential. Thus the Economic Committees of the League, commenting upon the 1930 Resolution, stated that certain agreements were of use only if prepared and concluded within a relatively short time. Similarly, the Financial and Fiscal Committees noted that the preparatory procedure laid down by the Assembly may require three to four years and that in certain cases a more expeditious procedure may be desirable. The Advisory and Technical Committee for Communications and Transit, noting that the preparatory procedure proposed by the Assembly involved no modification of its own rules, declared that these rules "which involve continuous contact for the study of all questions with those specially concerned by means of discussion and inquiries carried on by the Advisory and Technical Committee and by its permanent committees, are inspired by the prudent considerations which guided the Assembly in the adoption of the resolution of 3 October 1930, and that these methods, being peculiarly adapted to the study of the technical problems of communications and transit, guard against the premature summoning of international conferences which may be called upon to conclude conventions" (cf. Doc. A.28. 1931. O.J. Special Supplement, No. 94, pages 115, 119).

Standard Preparatory Procedure

The standard preparatory procedure for the conclusions of general conventions was briefly as follows (cf. Appendix 2 for text of amended Section IV of 1930 Resolution) :

1. Any organ of the League, envisaging the conclusion of a general convention, should submit to the Council of the League a memorandum stating why it would be desirable to conclude the convention in question.

2. If the Council approves the recommendation in principle, a draft convention and an explanatory memorandum should be submitted to the Governments for their comments.

3. The draft convention together with the observations of the Governments should then be submitted to the Assembly of the League for a decision whether the subject appeared *prima facie* suitable for the conclusion of a convention.

4. In case of an affirmative action by the Assembly, the Council should arrange for a new draft convention based on the observations submitted by the Governments. The new draft convention together with the observations submitted by the Governments should be sent to the Governments for their comments.

5. The Assembly, on the basis of such comments should decide finally whether a convention should be concluded and, in case of an affirmative action, whether the draft should be submitted to a conference.

Thus the standard preparatory procedure laid down in 1931 falls into two stages: The first, called the procedure of "taking into consideration," is designed to clarify the question whether a conference should be convened. This stage ends with the decision of the Assembly that the subject is *prima facie* suitable for a convention. Then the second stage, in which the bases of discussion for the Conference are prepared, begins (Report of the First Commission to the Assembly, Doc. 83, 1930. O.J. Special Supplement, No. 84, page 571).

Altogether this procedure provided for three affirmative decisions by the chief organs of the League—one by the Council and two by the Assembly—and for two consultations of Governments prior to the convening of a conference. In this manner the League intended to ensure careful preparation of the subjects selected for conventions and a measure of Government consent which, in turn, would ensure the adoption of such conventions by a conference and their ultimate ratification by Governments (cf. paragraph 2 of the Preamble).

In addition, the Resolution of 1930 in paragraph V provides that "at future conferences held under the auspices of the League of Nations at which general conventions are signed, protocols of signature shall, as far as possible, be drawn up on the general lines of the alternative drafts set out in Annexes I and II of the present Resolution."

The protocol of signature in Annex I provides that the signatories undertake to submit the convention for parliamentary approval within an agreed period of time or to inform the Secretary-General of the League of their attitude regarding the Convention. According to paragraph II of the proposed protocol of signature a new conference may be held if the con-

vention fails to secure the ratification of an agreed number of Governments. This procedure may be suitable for most general conventions.

With regard to conventions whose usefulness depends upon their speedy entry into force for a large number of states, the protocol of signature in Annex II envisages the possibility of a new conference being convened by the Council of the League if the convention has not become binding on an agreed date for the agreed number of states.

The Assembly Resolution laid down a standard procedure but left the way open for special procedures adapted to meet special needs. Thus, with a view to speeding up the procedure for the entry into force of conventions dealing with minor or technical matters, paragraph VI of the Resolution envisages the possibility of signing instruments in the form of governmental agreements which are not subject to ratification. It will be recalled that the technical organizations of the League strongly insisted that the provision in the Preamble of paragraph IV of the Resolution for excepting existing procedures or special questions from the application of the general preparatory procedure laid down by the Assembly, was essential.

The Subject Matter of General Conventions Concluded Under the Auspices of the League of Nations (For a list of Agreements and Conventions concluded under League Auspices cf. Appendix 3)

The legislative work of the League of Nations, comprising a wide range of subjects affecting relations between States, may be roughly classified as follows:

International Law

The contribution of the League of Nations to the progressive codification and development of international law is discussed in Part III of this Memorandum. Two conventions, however, concluded under the auspices of the League may be mentioned here: The Convention for the Prevention and Punishment of Terrorism and the Convention for the Creation of an International Criminal Court, concluded on 16 February 1937 (cf. Hudson, *International Legislation*, Vol. VII, Nos. 499 and 500, pages 862, 878).

Arbitration and Security

The Committee on Arbitration and Security, set up on 30 November 1927, was responsible for the General Act for the Pacific Settlement of International disputes adopted by the Assembly of the League on 26 September 1928. The same Assembly adopted a series of model bilateral and multilateral treaties (treaties A, B, C, D, E and F) concerning the pacific settlement of international disputes, non-aggression and mutual assistance. This Committee also prepared the Convention on Financial Assistance and the Convention to Improve the Means of Preventing War, approved

by the Assembly on 29 September 1930 and 26 September 1931 respectively (cf. Hudson, *International Legislation*, Vol. V, Nos. 207 and 296, pages 751, 1,090).

In this field the following instruments may also be noted: The Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare, the Declaration regarding the Territory of IFNI, and the Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, adopted by the Conference on the Traffic in Arms on 17 June 1929 (cf. Hudson, *International Legislation*, Vol. III, Nos. 142, 142a, 143, pages 1634, 1669, 1670).

Economic and Financial

The Committees of the Economic and Financial Organization of the League contributed to the development of international law through international conventions and agreements in a number of fields. The following instruments may be noted:

Unification of Commercial Law

Three conventions were concluded on Bills of Exchange and Promissory Notes and three conventions were concluded on Cheques on 7 June 1930 and 19 March 1931 (cf. Hudson, *International Legislation*, Vol. V, Nos. 258-260, 283-285, pages 516-569, 889-932).

Settlement of Commercial Disputes

A Protocol on Arbitration Clauses of 24 September 1923, and a Convention on the Execution of Foreign Arbitral Awards of 26 September 1927 (cf. Hudson, *International Legislation*, Vol. II, No. 98, page 1,062; Vol. III, No. 183, page 2,153).

Agricultural Credit

The Convention for the Creation of an International Agricultural Mortgage, Credit Company of 21 May 1931 (cf. Hudson, *International Legislation*, Vol. V, No. 290, page 959).

Treatment of Foreigners

This question is discussed below.

Counterfeiting Currency

The Convention and two Protocols for the Suppression of Counterfeiting Currency of 20 April 1929 (cf. Hudson, *International Legislation*, Vol. IV, Nos. 216-216b, pages 2692 ff.).

Customs

The Convention relating to the Simplification of Custom Formalities and Protocol of 3 November 1923 (cf. Hudson, *International Legislation*, Vol. II, No. 100, page 1094).

Bones, Hides and Skins

One Convention and Protocol each relating to the Exportation of Bones, and of Hides and Skins of 11 July 1928 (cf. Hudson, *International Legislation*, Vol. II, Nos. 204–205, pages 2495 ff.).

Veterinary Questions

Three conventions to facilitate the trade in meat and meat products were signed at Geneva on 20 February 1935 (cf. Hudson, *International Legislation*, Vol. VII, Nos. 402–404, pages 1 ff.).

Economic Statistics

A Convention and Protocol relating to Economic Statistics were concluded at Geneva on 14 December 1928 (cf. Hudson, *International Legislation*, Vol. IV, No. 210, pages 2,575 ff.).

Whaling

A Convention for the Regulation of Whaling was entered into on 24 September 1931 (Hudson, *International Legislation*, Vol. V, No. 295, page 1,081). A further Agreement for the Regulation of Whaling was signed at London on 8 June 1937 (Hudson, *op. cit.*, Vol. VII, No. 485, page 754).

Model Conventions

In addition to promoting international legislation in various fields of international economic relations through the preparation of international conventions, the Economic and Financial Organization of the League facilitated bilateral accords between states through the preparation of model conventions. Thus it has been noted that between 150–200 bilateral conventions, in fact the majority of bilateral conventions, dealing with problems of double taxation and concluded in the 1930's, were based on model conventions drawn up in 1928 by a general meeting of Governments experts (cf. Essential Facts About the League of Nations, 1939, page 230, and Martin Hill, *The Economic and Financial Organization of the League of Nations*, 1946, page 74). The Fiscal Committee of the Economic and Financial Organization observed that the existence of draft conventions which Governments can employ as a model when negotiating bilateral treaties "has proved of real use in such circumstances in helping to solve many of the technical difficulties which arise in such negotiations." In the view of the Committee "this procedure has the dual merit that, on the one hand, in so far as the model constitutes the basis of bilateral agreements, it creates automatically a uniformity of practice and legislation, while, on the other hand, inasmuch as it may be modified in any bilateral agreement reached, it is sufficiently elastic to be adapted to the different conditions obtaining in different countries or pairs of countries. The Committee is strongly of opinion that this procedure is likely in the end to lead to more satisfactory results and to have a wider and lasting effect than the convocation of an international conference with a view to concluding a multilateral conven-

tion, even though it may at first attract less general attention and interest" (Report of the Fiscal Committee to the Council of the League of Nations on the Fifth Session of the Committee. Doc. C. 252, M. 124, 1935. II. A., page 4).

Where the method of model treaties was considered undesirable, the method used sometimes was that of formulating recommendations for the drafting of international instruments. Thus the Committee for the Study of International Loan Contracts, appointed by the Council of the League of Nations on 23 January 1936, was instructed "to examine the means for improving contracts relating to international loans issued by Governments or other public authorities in the future, and, in particular, to prepare model provisions—if necessary, with a system of arbitration—which could, if the parties so desire, be inserted in such contracts." The Committee accordingly formulated recommendations relating to the drafting of loan documents, the monetary clauses, the functions for the service of the loan, and the settlement of legal disputes (cf. Report of the Committee for the Study of International Loan Contracts. Doc. C. 145, M. 93, 1939. II. A., page 5 ff.).

Communications and Transit

One of the essential tasks of the Organization for Communications and Transit of the League of Nations was "to determine and codify the general principles of international law, both public and private, on the freedom of transit and on various means of communications, and to unify or simplify certain administrative and technical subjects" (Essential Facts about the League of Nations, 1939, page 242). Several general and partial conferences, held successively, resulted in international conventions dealing with the following matters:

Transit

The Convention and Statute on Freedom of Transit, the Convention and Statute on Waterways of International Concern, and the Declaration recognizing the Right to a Flag of States having no Seacoast, were adopted by the Barcelona Conference on 20 April 1921 (cf. Hudson, *International Legislation*, Vol. I, Nos. 41–43, pages 625, 638, 662).

Unification of River Law

The Conference held in Geneva adopted on 9 December 1930 three conventions dealing with collisions in inland waters, the registration of inland navigation vessels, and the right of such vessels to a flag (cf. Hudson, *International Legislation*, Vol. V, Nos. 275–277, page 815 ff.). A Convention regarding the Measurement of Vessels Employed in Inland Navigation had been concluded at the Paris Conference on 27 November 1925 (cf. Hudson, *International Legislation*, Vol. III, No. 151, page 1,808).

Maritime Questions

The Conference held in Paris in 1923 adopted a Convention on the International Regime of Maritime Ports (cf. Hudson, *International Legislation*, Vol. II, No. 107, page 1,156); the Lisbon Conference of 1930 adopted two Agreements on Maritime Signals and on Manned Lightships not on their Stations respectively (cf. Hudson, *International Legislation*, Vol. V, Nos. 272, 273, pages 792, 801). The Lisbon Conference also considered an agreement for a uniform system of maritime buoyage. By decision of the Council of the League of 13 May 1936 a draft agreement on this subject was opened for signature (cf. Hudson, *International Legislation*, Vol. VII, No. 440, page 308).

Railways

A Convention and Statute on the International Regime of Railways was adopted by the Geneva Conference on 9 December 1923 (Hudson, *International Legislation*, Vol. II, No. 106, page 1,130).

Road Traffic

The Geneva Conference held in 1931 adopted three instruments dealing respectively with the unification of road signals, the taxation of foreign motor vehicles, and the procedure in regard to undischarged or lost triptychs (cf. Hudson, *International Legislation*, Vol. V, Nos. 287-289, pages 935 ff.).

Emigrants

An Agreement concerning the preparation of a Transit Card for Emigrants was concluded on 14 June 1929 (cf. Hudson, *International Legislation*, Vol. IV, No. 219, page 2,844).

Electricity

The Conference held in Geneva in 1923 adopted two Conventions relating to the Transmission of Electric Power and the Development of Hydraulic Power affecting more than one State respectively (cf. Hudson, *International Legislation*, Vol. II, Nos. 108-109, pages 1,173 ff.).

Intellectual Co-operation

The Intellectual Coöperation Organization of the League of Nations, through its agencies, was responsible for two conventions dealing respectively with the International Circulation of Films of an Educational Character, of 11 October 1933, the use of Broadcasting in the Cause of Peace, of 23 September 1936, and the Declaration regarding the Teaching of History, of 2 October 1937 (c. Hudson, *International Legislation*, Vol. VI, No. 347, page 456; Vol. VII, Nos. 451 and 496, pages 417, 850).

Social and Humanitarian Questions

The League of Nations promoted the co-operation between Governments in the solution of a number of humanitarian and social questions. In this

field of the League's legislative work the following instruments may be noted:

1. The Convention for the Suppression of the Traffic in Women and Children of 30 September 1921 (cf. Hudson, *International Legislation*, Vol. I, No. 51, page 726).

2. The Convention for the Suppression of Traffic in Women of Full Age of 11 October 1933 (cf. Hudson, *International Legislation*, Vol. VI, No. 348, page 469).

3. The International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications of 12 September 1923 (cf. Hudson, *International Legislation*, Vol. II, No. 97, page 1,051).

4. The Slavery Convention of 25 September 1926 (cf. Hudson, *International Legislation*, Vol. III, No. 169, page 2,010).

5. The Convention and Statute establishing an International Relief Union of 12 July 1927 (cf. Hudson, *International Legislation*, Vol. III, No. 178, page 2,090).

In this connection several instruments dealing with the problem of refugees may be mentioned, namely:

1. The Convention relating to the International Status of Refugees (Russian, Armenian, and Assimilated Refugees) of 28 October 1933 (cf. Hudson, *International Legislation*, Vol. VI, No. 350, page 483).

2. The Provisional Arrangement concerning the Status of Refugees coming from Germany of 4 July 1936 (cf. Hudson, *International Legislation*, Vol. VII, No. 488, page 376).

3. The Convention concerning the Status of Refugees coming from Germany of 10 February 1938, and

4. An Additional Protocol to the two preceding instruments of 14 September 1939.

Narcotics

The legislative work of the League in the campaign against opium and other dangerous drugs comprises several instruments which have been most widely ratified. The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 13 July 1931 received sixty-four ratifications, the Procès-Verbal to alter the latest date of issue of the annual statement drawn up by the Supervisory Body of 26 June 1936 received sixty definitive signatures, and the Opium Convention of 19 February 1925 received fifty-five ratifications (cf. Hudson, Vol. V, No. 294, page 1,048; Vol. VII, No. 447, page 374, and Vol. III, No. 137, page 1,589). In addition the following instruments may be noted:

the Agreement concerning the suppression of the Manufacture of, and, the Internal Trade in, and Use of Prepared Opium, with Protocol and Final

Act of 11 February 1925 (cf. Hudson, *International Legislation*, Vol. III, No. 136, page 1,580) ;

the Protocol to the Opium Convention of 19 February 1925 (cf. Hudson, *International Legislation*, Vol. III, No. 137a, page 1,614) ;

the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs and Protocol of Signature of 26 June 1936 (cf. Hudson, *International Legislation*, Vol. VII, No. 446, page 359).

Method of Adopting Conventions

Generally the instruments concluded under the auspices of the League were drawn up and adopted by diplomatic conferences. In some cases the instruments were drawn up and adopted by the organs of the League themselves, viz., the Statute of the Permanent Court of International Justice and the General Act for the Pacific Settlement of International Disputes of 1928.

In the case of instruments drawn up and adopted by diplomatic conferences "the Assembly and the Council, the directing organs of the League of Nations, initiate the project, organize the preparatory work, and convene the conference, which, as a rule, assembles at the seat of League of Nations, though sometimes elsewhere. Furthermore, the Secretary-General of the League of Nations provides the secretariat for the preparatory work and for the diplomatic conference" (Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the auspices of the League of Nations, Twenty First List, 1944, O. J., Special Supplement, No. 193, page 16).

Ratifications

Of the instruments of general significance sixty-three had come into force, receiving a total of 1,758 ratifications distributed over sixty-four members of the family of nations. Of the instruments which had come into force:

- 2 received 60 or more ratifications,
- 4 received 50 or more ratifications,
- 10 received 40 or more ratifications,
- 14 received 30 or more ratifications,
- 40 received 20 or more ratifications,
- 67 received 10 or more ratifications.

Participation of Non-Member States

States not members of the League were generally invited to take part in the legislative work of the League. Frequently such States were invited to take part in the preparatory work and the resulting diplomatic conferences. Generally, conventions drawn up under League auspices were open to accession by non-member States. The Convention of 1930 concerning Financial Assistance may be noted as one of the rare exceptions.

Conference on the Treatment of Foreigners

The International Conference on the Treatment of Foreigners, held at Paris from 5 November to 5 December 1929, had its origin in a recommendation by the World Economic Conference, held at Geneva in May, 1927. The Conference recommended that the Council of the League of Nations prepare for a diplomatic conference for drawing up an international convention on the treatment of foreigners.

On 16 June 1927, the Council of the League entrusted the preparation for the Conference to the Economic Committee of the League. The draft convention prepared by this Committee was communicated to various Governments by the Secretary-General of the League in May, 1928, with a request that they inform him whether the draft Convention constituted an adequate basis for a Conference, and whether they were prepared to take part in it.

Replies from twenty-nine Governments were received by 1 March 1929. Of these twenty-three declared the intention of their Governments to take part in the proposed Conference, three were undecided, two intimated that they would not attend, and one Government, that of the Union of Soviet Socialist Republics, informed the Secretariat of the League that it would send an observer to the Conference.

The draft Convention was generally based on the principle of national treatment, *i.e.* complete equality between foreigners and nationals under the laws of the countries concerned. Several Governments questioned the basic principles embodied in the draft Convention and pointed out that they were unable to assess its possible effect in view of the fact that it was impossible to know beforehand what countries would become parties to the proposed Convention. Some were of opinion that inequalities in such treatment might result in lack of reciprocity or in a disparity between the undertakings to be given and the advantages that may accrue.

The International Conference on the Treatment of Foreigners, convoked by the Council of the League of Nations on 10 April 1929, met at Paris from 5 November to 5 December 1929.

Forty-two Members of the League and five non-members were represented at this conference.

Among the questions examined by the Conference were: safeguards for international trade; freedom of travel, sojourn and establishment; the exercise of trade, industry, and occupation; civil and legal guaranties; property rights; exceptional charges; fiscal treatment and the treatment of foreign companies (cf. Report by M. Devèz, President of the Conference on the Treatment of Foreigners, submitted to the Council of the League, 14 January 1930, O. J., February, 1930, page 169).

It was apparent at the Conference "that the countries with the most liberal laws and practice in the treatment of foreigners . . . wished to secure the adoption in the future Convention of principles which, if applied, would

constitute an advancement on the various provisions generally inserted in bilateral treaties on establishment, or would, at any rate, consolidate those which at present govern, more or less provisionally, the position of foreigners." On the other hand the majority of Governments "seemed bent on retaining as extensive freedom of action as possible, without accepting any limitations on their full sovereignty, and on endeavouring to secure recognition of the legality of the measures adopted for reasons of revenue, national defense or security, or for the protection of the home labour market" (Report by M. Devèz, *ib.*).

The Conference failed to adopt a Convention but in a Final Protocol of 5 December 1929, it envisaged a second session of the Conference to be held before 31 December 1930, and directed its Bureau to make the necessary preparations.

On 14 January 1930 the Council of the League of Nations adopted the conclusions of a report on the Conference which declared that the Conference had not met with insuperable difficulties but that "the chief thing lacking was time." It agreed in principle to the holding of a second session of the Conference. No second session, however, was held.

The draft Convention considered by the Conference may have influenced later the drafting of bilateral and regional arrangements (cf. Martin Hill, *The Economic and Financial Organization of the League of Nations*, 1946, page 42).

The Conference has been said to have attempted a more extensive codification than any undertaken by the Committee of Jurists. The Conference's efforts aimed at both a codification of international law relating to the treatment of aliens and a unification of national laws on the subject. Its chief motive, however, was probably to promote international trade rather than to promote the codification of international law (cf. Arthur K. Kuhn, *The International Conference on the Treatment of Foreigners*, 24 April (1930), page 573).

B. THE INTERNATIONAL LABOUR CONFERENCE

The International Labour Conference of the International Labour Organization, created as part of the League of Nations Organization in 1919, adopted eighty International Labour Conventions and the same number of Recommendations, in the course of twenty-nine sessions held from 1919-1946.

Preparatory Procedure

It is the duty of the International Labour Office, subject to such directions as the Governing Body may give, to prepare the documents on the various items of the agenda for the meetings of the Conference (Article 10, paragraph 2 of the Constitution). It is, on the other hand, the duty of

the Governing Body "to make rules to ensure thorough technical preparation and adequate consultation of the Members primarily concerned, by means of a preparatory Conference or otherwise, prior to the adoption of a Convention or Recommendation by the Conference" (Article 14, paragraph 2 of the Constitution).

The Governing Body of the International Labour Organization decides what questions shall be placed on the agenda of the Conference. The normal procedure followed is known as the double-discussion procedure. The Governing Body, however, may, in cases of special urgency or where special circumstances exist, decide to refer the question to the Conference with a view to a single discussion (cf. Appendix 4 for text of Article 8, paragraphs 4 and 5 of the Standing Orders of the Governing Body). The Governing Body may also "if there are special circumstances which make this desirable, decide to refer the question to a preparatory technical conference with a view to such a conference making a report to the Governing Body before the question is placed on the agenda. The Governing Body may, in similar circumstances, decide to convene a preparatory technical conference when placing a question on the agenda of the Conference" (Article 8, paragraph 3 of the Standing Orders of the Governing Body).

Preparatory Conference

If the Governing Body decides to convene a preparatory technical conference, the International Labour Office "shall prepare a report adequate to facilitate an exchange of views on all issues referred to it and, in particular, setting out the law and practice in the different countries" (Article 8, paragraph 9 of the Standing Orders of the Governing Body).

Double-Discussion Procedure

This procedure, which in 1926 replaced the so-called "second-reading procedure," was first applied in 1927 and 1928 and, with some changes, has been maintained since then. The double-discussion procedure provides, according to Article 32 of the Standing Orders of the International Labour Conference, for the following stages (cf. Appendix 4 for text of Article 32):

1. Preparation by the International Labour Office of a preliminary report setting out the law and practice in the different countries and any other useful information together with a questionnaire.
2. The report and questionnaire with a request to give reasons for their replies are communicated to the Governments by the Office so as to reach them at least six months before the opening of the Conference.
3. The Office then prepares a report on the basis of the replies from the Governments indicating the principal questions which require consideration by the Conference.

4. The preliminary report and the report are submitted to the Conference.

5. These reports are discussed by the Conference either in full sitting or in committee.

6. The Conference decides whether the subject is suitable for draft Conventions or Recommendations.

7. If the decision is affirmative the Conference adopts such conclusions as it sees fit and decides either :

(a) that the question shall be placed on the agenda of the following session of the Conference; or

(b) that the Governing Body shall place the question on the agenda of a later session.

8. The Office prepares one or more draft Conventions or Recommendations on the basis of the replies of the Governments to the questionnaires mentioned in paragraph 1 above and of the first discussion by the Conference.

9. These draft Conventions or Recommendations are transmitted to the Governments, requesting them to state within four months whether they have any amendments to suggest or comments to make.

10. The Office draws up, in the light of the replies received from the Governments, a final report containing the texts of draft Conventions or Recommendations with any necessary amendments.

11. The Office communicates the report to Governments, so as to reach them at least three months before the opening of the Conference. Article 33 of the Standing Orders of the Conference lays down the procedure for the consideration of the prepared texts by the Conference (cf. Appendix 4 for text of Article 33).

Single-Discussion Procedure

This procedure begins with a preliminary report and questionnaire prepared by the Office and circulated to Governments; the Governments prepare their replies within a period of about three months and submit them to the Office as soon as possible; the Office then prepares a final report in the light of the replies received from Governments. This report, containing one or more draft Conventions or Recommendations, is communicated to the Governments so as to reach them at least four months before the Conference. The Conference then, in accordance with Article 33 of the Standing Orders, considers the report and such draft Conventions or Recommendations as it includes. It will be recalled that this abridged procedure is designed to meet special circumstances.

Voting

In accordance with Article 19, paragraph 2, of the Constitution, "a majority of two-thirds of the votes cast by the delegates present shall be necessary for the adoption of the Convention or Recommendation, as the case may be, by the Conference." Article 21, paragraph 1, of the Constitution, however, provides that "if any Convention coming before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the delegates present, it shall nevertheless be within the right of any of the Members of the Organization to agree to such Convention among themselves."

It will be recalled that, according to the Constitution of the International Labour Organization each member Government appoints four delegates, of whom two are government delegates and the other two are delegates representing respectively the employers and the work people of each of the members. Every delegate is entitled to vote individually on all matters which are before the Conference (Article 4 of the Constitution). In consequence, it is possible for a Convention to be adopted regardless of the opposition of a large number of government delegates. While this procedure facilitates the adoption of conventions by the Conference, a convention not supported by government delegates is less likely to be widely ratified.

Ratification

Generally, a minimum of two ratifications is sufficient for a convention to come into force. Under Article 19 of the amended Constitution of 1946, Members are bound to "inform the Director-General of the International Labour Office of the measures taken . . . to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them." In case the Member concerned fails to receive the consent of the competent authority or authorities, it shall report to the Director-General, stating the difficulties which prevent or delay the ratification of the Convention.

By 31 July 1946, fifty-two conventions had come into force, the number of ratifications received being 885, distributed over fifty States. Of the Conventions which had come into force:

- 9 received 30 or more ratifications,
- 15 received 25 or more ratifications,
- 22 received 20 or more ratifications,
- 33 received 10 or more ratifications,
- 41 received 5 or more ratifications,
- 56 received 2 or more ratifications.

Follow-up Procedure

Each Member makes an annual report to the Office on the measures taken by it in order to give effect to the Conventions to which it is a party. These reports are made in such a form and contain such particulars as are prescribed by the Governing Body. The Governing Body has approved report forms for fifty out of fifty-two Conventions in force (cf. International Labour Conference, Twenty-Ninth Session, 1946, Reports on the Application of Conventions, Report V, page 1).

In 1927 the Governing Body adopted the practice of having the reports submitted by the Members examined by a Committee of Experts on the Application of Conventions. This Committee acts in an advisory capacity and submits its observations to the Governing Body. The Governing Body presents to the Conference a summary of the Reports submitted by the Members, to which the report of the Committee of Experts is usually appended.

Both the summary and the report are examined by a committee appointed by the Conference which submits its observations to the Conference.

Revision of Conventions

The International Labour Conventions generally provide that at the expiration of each period of ten years after the coming into force of a Convention, the Governing Body shall present to the Conference a report on the working of the Convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

The Standing Orders of the Governing Body, in Article 9, lay down the procedure for revision of a Convention in whole or in part. The decision to place the question of revising a Convention on the agenda of the Conference is taken by the Governing Body on the basis of a report of the Office on the working of that Convention and of replies thereon submitted by the Governments.

Subject Matter of Conventions

The topics dealt with in Conventions adopted by the International Labour Conference at its various sessions cover so wide a field that a summary becomes difficult. The "International Labour Code 1939," published by the International Labour Office in 1941, arranged the subject matter covered by international labour conventions under the following twelve main headings: Employment and Unemployment; General Conditions of Employment; The Employment of Children and Young Persons; The Employment of Women; Industrial Health, Safety and Welfare; Social Insurance; Industrial Relations; the Administration of Social Legislation; The International Seaman's Code; Standards of Colonial Labour Policy; Migration; and Statistics and Other Information.

PART III

THE FIRST CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW

A. ORIGIN

The Advisory Committee of Jurists

The Advisory Committee of Jurists, assembled at the Hague to draft the Statute of the PCIJ, adopted a resolution on 24 July 1920 concerning the advancement of international law. The resolution recommended the continuation of the work begun by the first and second Hague Conferences of 1899 and 1907 in order to promote the development of international jurisdictions and to ensure the security and well-being of nations (Text of Resolution in Appendix 5).

Action by the League

The resolution adopted by the Committee of Jurists was taken up by the Council of the League of Nations at its session held at Brussels in October 1920. The Council adopted on 27 October 1920 a report and transmitted the Committee's recommendations to the Assembly. The report also outlined the procedure to be followed in preparing a list of subjects to be submitted to the proposed conference or conferences the object of which would be "to assist in the fixing and codifying of international law."

The third Committee of the First Assembly of the League of Nations considered the recommendation of the Advisory Committee of Jurists and concluded that the Assembly itself was continuing the work of the Hague Conferences and that it was unnecessary to establish an additional organization. The Committee, being of the opinion that on the one hand "it is urgently essential to study the problems of a more precise definition and co-ordination of the rules of international law" and that on the other "it would be too ambitious to contemplate a rapid and systematic codification of international law in the near future," proposed to the Assembly the following draft recommendation:

The Assembly of the League of Nations invites the Council to address to the most authoritative institutions which are devoted to the study of international law a request to consider what would be the best methods of co-operative work to adopt for the more precise definition and more complete co-ordination of the rules of international law which are to be applied in the mutual relations of States (Records of the First Assembly, Plenary Meetings, 1920, page 745).

The Assembly, at its Thirty-First Plenary Meeting, held on 18 December 1920, considered the above draft recommendation and decided, on the motion of Lord Robert Cecil (South Africa), not to adopt it. Lord Robert Cecil thought it represented "a very dangerous project at this stage in the

world's history'' and he urged that we had not arrived at sufficient calmness of the public mind to undertake the first steps towards the codification of international law without serious results to the future of international law (*loc. cit.*, page 747).

Committee of Experts

At the Fifth Assembly of the League, the Delegate for Sweden recalled the decision of the First Assembly, and referred on the one hand to the progress achieved by the League in promoting the development of international treaty law and on the other to existing gaps in international law. He outlined a procedure for the development of international law by means of international conventions or other international instruments to be adopted by future Assemblies of the League or international conferences held under the auspices of the League. As a first step he proposed that the Members of the League be invited by the Council to indicate the subjects of international law, public or private, which in their opinion lend themselves for incorporation in international conventions or other instruments.

The Assembly of the League adopted on 22 September 1924 a Resolution on the development of international law (cf. Appendix 6). While endorsing the Swedish proposal in general, the Resolution, as drafted by the First Committee of the Assembly, laid down a different procedure. The most notable change was that instead of calling upon the Governments to indicate appropriate subjects, this initiative was entrusted to a Committee of Experts. It was felt that whereas Governments may hesitate to make definite suggestions they would not experience any difficulty in pronouncing an opinion with reference to concrete proposals submitted to them by a Committee of Experts.

Task of Committee of Experts

The Committee was to be so composed as to represent "the main forms of civilization and the principal legal systems of the world." Without trespassing upon official initiatives which may have been taken by particular states, the Committee of Experts was instructed:

1. to draw up a provisional list of subjects the regulation of which by international agreement, appeared most desirable and realizable;
2. to communicate the list to Governments of states, members and non-members of the League;
3. to examine the replies received from the Governments;
4. to submit a report to the Council of the League on questions which appeared sufficiently ripe for solution by conferences;
5. to submit a report to the Council on the procedure which might be followed in preparing for such conferences.

Acting upon the request of the Assembly, the Council of the League on 12 December 1924 adopted a Resolution appointing seventeen persons as members of the Committee of Experts for the Progressive Codification of International Law. (For text see Appendix 7.) It was understood that it was not the task of the Committee to cover the whole field, and to draw up a single code, of international law. The Committee was to proceed by stages.

First Meeting of Committee of Experts

The Committee of Experts, at its First Session held at Geneva, 1-8 April 1925, adopted a list of subjects for preliminary examination and appointed eleven sub-committees to report to the Committee on the following subjects:

- (a) conflicts of laws regarding nationality;
- (b) the law of the territorial sea;
- (c) diplomatic privileges and immunities;
- (d) legal status of Government ships;
- (e) extradition;
- (f) liability of states for injury caused on their territory to the person or property of foreigners and related problems of inquiring into the facts which may involve liability and of prohibiting recourse to measures of coercion before exhausting means for pacific settlement;
- (g) rules for the procedure of international conferences and the conclusion and drafting of treaties;
- (h) suppression of piracy;
- (i) application in international law of the conception of prescription;
- (j) rules regarding the exploitation of the products of the sea;
- (k) principles governing the criminal competence of States in regard to offences committed outside their territory.

The Committee adjourned the consideration of problems connected with war and neutrality. It also adjourned the examination of problems of private international law but appointed a sub-committee to draw up a list of such problems.

Second Meeting of Committee of Experts

At its second session, held at Geneva from 12 to 29 January 1926, the Committee of Experts drew up questionnaires on the following topics:

1. Nationality.
2. Territorial waters.
3. Diplomatic privileges and immunities.
4. Responsibility of states in respect to injury caused in their territory to persons or property of foreigners.

5. Procedure of international conferences and procedure for the conclusion and drafting of treaties.
6. Piracy.
7. Exploitation of the products of the sea.

The Committee in several of these questionnaires, including those on nationality, territorial waters, responsibility of states, procedure of international conferences, and piracy, declared that it did not pronounce itself either for or against the various resolutions suggested and that its sole task at this stage consisted "in drawing attention to various questions of international law, the regulation of which, by international agreement, would seem desirable and realizable" (Document C.43.M.18.1926.V). However, in the questionnaire on diplomatic immunities, the Committee included several questions which in its view "might advantageously be dealt with in a general convention" (Document C.45.M.22.1926.V).

With reference to the procedures of international conferences the Committee declared that there was "no question of attempting to reach by way of international agreement a body of rules which would be binding obligatorily upon the various States." The purpose was "to put at the disposal of the states concerned rules which could be modified as they chose in each concrete case but whose existence might save them much discussion, doubt and delay" (Document C.47.M.24.1926.V).

In connection with the exploitation of the products of the sea the Committee stated that the report "indicates in broad outline the problems which a conference including experts of various kinds might be called upon to solve, and feels it a duty to emphasize the urgent need of action" (Document C.49.M.26.1926.V).

The questionnaires included a report on the subject and three of these, namely, those on nationality, territorial waters and piracy also included the preliminary draft of a convention. No specific questions on any of the seven subjects were included in the different reports. The drafts attached to some of the questionnaires expressed the views of the Rapporteurs or Sub-Committees and not necessarily the view of the whole Committee of Experts (cf. Document C.197.M.71.1927.V, page 2).

In transmitting the questionnaires to the Governments, the Secretary-General of the League requested them to send him, for transmission to the Committee, "their opinion upon the question whether the regulation by international agreement of the subjects treated, both in their general aspects and as regards the specific points mentioned in the questionnaires, is desirable and realizable in the future."

In addition, the Committee transmitted to the Governments, for their information, reports on extradition and on the criminal competence of states in respect of offences committed outside their territory, and to the

Council of the League a special report on the legal status of Government ships employed in commerce.

In selecting the seven subjects referred to above "the Committee was at special pains to confine its inquiry to problems which it thought could be solved by means of conventions without encountering any obstacles of a political nature" (Report to the Council of the League of Nations on the Questions which appear Ripe for International Regulation. Adopted by the Committee at its Third Session, March-April 1927. C.196.M.70.1927.V, page 7).

Third Meeting of Committee of Experts

The Committee reported to the Council on 2 April 1927, that "generally speaking, the above questions, within the limits indicated by the respective questionnaires, are now, in the words of the terms of reference, 'sufficiently ripe'" (*ib.*).

Thirty-three Governments replied to Questionnaire No. 1 on Nationality; thirty-five to Questionnaire No. 2 on Territorial Waters; thirty-two to Questionnaire No. 3 on Diplomatic Privileges and Immunities; thirty-seven to Questionnaire No. 4 on Responsibility of States; thirty-one to Questionnaire No. 6 on Piracy; and thirty-four to Questionnaire No. 7 on Products of the Sea.

Only a small number of Governments adopted a frankly negative attitude. The favourable replies received by the Committee, however, were by no means uniform.

Nine Governments were generally in favour of codification of questions relating to nationality; while not opposed to codification, eleven Governments raised some objections; two were definitely opposed; two were partially opposed; one indicated preference for bilateral solutions; and another suggested postponement (Analysis of Replies, *ib.*, page 261).

With reference to territorial waters, twenty-one Governments replied affirmatively in principle; three Governments did not think that the conclusion of a convention was either possible or opportune; two Governments were in their replies neither definitely affirmative nor negative (Analysis of Replies, *ib.*, page 262).

The replies to the Questionnaire on Diplomatic Immunities and Privileges were on the whole favourable; twenty-four Governments were explicitly in favour of summoning a conference; two were favourable in principle, and three were opposed (Analysis of Replies, *ib.*, page 266).

On the subject of the Responsibility of States, twenty-four Governments replied affirmatively and without reservations; five Governments replied affirmatively with certain reservations; and four did not think that the conclusion of a convention was either possible or opportune (Analysis of Replies, *ib.*, page 267).

The Questionnaire on the Procedure of International Conferences was received favourably and without reservations by fourteen Governments; five Governments replied in the affirmative with reservations; and seven Governments replied in the negative (Analysis of Replies, *ib.*, page 271).

With respect to the Questionnaire on Piracy, nine Governments replied affirmatively; nine Governments replied affirmatively but with reservations; three Governments though not opposed found the question of no urgency and of limited interest; six Governments refrained from expressing any opinion and two Governments did not think the conclusion of a Convention either possible or desirable (Analysis of Replies, *ib.*, page 273).

Twenty-one Governments gave affirmative or favourable answers to the Questionnaire on Products of the Sea; five Governments gave replies which were unfavourable or opposed to the conclusions and two Governments refrained from expressing an opinion (Analysis of Replies, *ib.*, page 279).

Some Comments Made by Governments

While the general attitude of the different Governments appears with sufficient clarity from the figures given above, it may be of interest to note in particular, the reactions of some of these Governments regarding the three subjects which were eventually submitted to the Hague Codification Conference; nationality, territorial waters and responsibility of states.

Thus the Government of the United States declared that international arrangements on these subjects "would serve a useful purpose and would, therefore, be desirable, and that there would be no insuperable obstacles to the concluding of agreements on these general subjects. The Government of the United States is not prepared at this time, to state whether all the points mentioned in the questionnaires on the subjects referred to would yield to regulation by international agreement, nor does it desire to express an opinion regarding the desirability or possibility of regulating all the points by international agreement until it has had opportunity to make a more intensive study of them than it has as yet done. The details would seem to be proper matters for discussion in any negotiations which may ensue" (Document C.196.M.70.1927.V, page 160).

The British Empire made the following observation with reference to nationality: "His Majesty's Government in Great Britain consider that the questions which arise in connection with dual nationality and statelessness are subjects whose regulation by international agreement it might be desirable to attempt, and that they do not consider that it would be possible to regulate questions of nationality as a whole by this means or desirable at the present time to attempt to do so" (*Ib.*, page 144). While considering that it might be desirable to attempt the regulation by international agreement of the responsibility of states, the British Government added this reservation: "They wish, however, to place it on record that the Report of the Sub-Committee to the Committee of Experts, while making many ex-

cellent suggestions, contains conclusions with which His Majesty's Government are not in agreement" (*Ib.*, page 145). The Governments of India and New Zealand expressed similar views.

The French Government, referring to the subject of nationality replied that it "approves the terms of this preliminary draft as a whole, apart from a few reservations which it will have to make with regard to certain articles . . ." (*Ib.*, page 165). The reply of the French Government to the Questionnaire on territorial waters was as follows: "The regulation of the question of territorial waters is conditioned in the different States by such diverse requirements, due to the geographical, economic and political factors involved, that it would be difficult to regulate in a uniform manner. It has often been proposed to draw up general regulations with regard to territorial waters, and it has never yet been found possible to give practical effect to this proposal. It seems likely that in future difficulties will be encountered similar to those which have prevented success in the past" (*Ib.*, page 165). The same Government declared with reference to the responsibility of States: "Questionnaire No. 4 too closely affects the internal or the external policy of States, their social life and the stability of their institutions for it to be possible, without serious danger, to propose to establish conventional or general stipulations acceptable by every State in its relations with the other States" (*Ib.*, page 165).

The Government of Australia, expressing generally a favourable attitude, declared: "To what extent agreement is realizable can only be ascertained by a conference for the purpose of formulating rules which are generally acceptable, but it would appear to the Commonwealth Government that agreement on many points, if not on all, ought to be attainable (*Ib.*, page 137).

The Swiss Government regarded with sympathy the proposal to regulate the problem of nationality by means of international agreement, but stated that, "in view of the fact that there exists practically no uniform international usage in this field, and in view of the reasons which impel most States to maintain their present attitude towards problems of nationality, to attempt to conclude a convention for the settlement of all, or even the most important questions relating to nationality would undoubtedly be premature. Even codification on a scale as limited as that proposed in the report will, undoubtedly, meet with serious difficulties, which it would be wrong to underestimate and which appear to justify a certain scepticism" (*Ib.*, page 241).

The Norwegian Government, replying to the Questionnaire on nationality, observed "that the questions raised in the amended preliminary draft of a convention, with the exception, however, of the contents of Article 6, would be capable of solution in the way indicated.

"Without examining more closely the various questions submitted by the Committee of Experts, I would observe that, in regard to certain points,

it is doubtful whether the Norwegian Government would find it possible to accept the solution proposed by the amended preliminary draft convention" (*Ib.*, page 172). While in agreement with the desirability of clarifying the international law regarding territorial waters the same Government was of opinion "that it is difficult for a State to reply separately and definitely to the main questions until sufficient data have been obtained regarding the practice followed in other countries and the light in which they regard their own territorial waters. In the opinion of the Norwegian Government, the questionnaire is a first preliminary step towards international agreement on these questions . . ." (*Ib.*, page 172).

The Government of the Netherlands concurred in the desirability of an international regulation of the subjects covered in the seven questionnaires. On the question of whether such a regulation was realizable in the near future, it submitted the following general comment: "If the aim is to attain a comprehensive settlement which could be simultaneously accepted by all the Powers concerned, then the Netherlands Government feels that the reply to all seven points would be in the negative. None of these questions seems as yet to have reached a stage at which general, uniform and universal settlement could be secured. If, however, no attempt is made to settle these questions in their absolute entirety, international conferences might succeed, to a certain degree, in harmonizing divergent opinions and, as a consequence, diminishing the difficulties which modern practice occasions" (*Ib.*, page 180).

It is apparent from this brief survey of the actual views of several Governments, chosen at random, that even at this early stage of the preparatory work their attitude reflected varying degrees of reserve which was bound to influence the outcome of the Hague Codification Conference.

Question of Procedure

The Committee of Experts, at its Second Session, adopted three Reports with reference to procedure which might be followed with a view to preparing eventually for conferences for the solution of questions deemed sufficiently ripe. The Reports were transmitted to the Council of the League. The first Report outlined the procedure that might be followed in connection with the following five subjects: nationality, territorial waters, diplomatic immunities and privileges, responsibility of states, and piracy.

The Committee emphasized the need of additional and thorough preparation in order to facilitate and shorten the task of such conferences. The most desirable method seemed to be the preparation of complete drafts which might serve as basis for discussion. The Committee was not, however, in the position to adopt this method in all cases as the time at its disposal was too short. Furthermore, the budget voted for the Committee's work by the Assembly provided for only one session a year.

The Committee drew the attention of the council to the desirability of collecting and classifying, as part of the preparation for conferences, all the historical, legislative, and scientific data on the questions deemed sufficiently ripe.

The Committee considered the question whether a separate conference should be convoked for each of the subjects deemed ripe for international agreement or whether a single conference should be held to discuss all such subjects. It concluded from every point of view that a single conference was preferable. The Committee was of opinion that the delegations to such a comprehensive conference should include not merely jurists, but also economists, statesmen and experts in commerce and shipping.

In its recommendation to the Council, however, the Committee left it to the Council to decide whether a single conference or two or more conferences should be convoked. It recommended that all States, whether or not Members of the League, should be invited.

The Committee, in two separate Reports, recommended a special procedure in regard to the question of the exploitation of the products of the sea, and in regard to the question of the procedure of international conferences and the procedure for the conclusion and drafting of treaties.

Four new questionnaires were prepared at the Committee's Third Session and transmitted to the Governments, namely on communication of judicial and extra-judicial acts in penal matters; on the legal position and functions of consuls; on the revision of the classification of Diplomatic Agents, and on the competence of the courts in regard to foreign states.

The Report of the Council of the League of Nations, 13 June 1927

The Council of the League of Nations at its session held at Geneva, 13-17 June 1927, considered the Report submitted by the Committee of Experts on the work of its Third Session and the Report thereon. The latter pointed out that the terms of reference of the Committee of Experts as formulated by the Assembly Resolution of 22 September 1924 directed the Committee not to attempt an immediate codification of international law but "to advise as to whether there were any questions of international law, not forming the object of existing initiatives, in regard to which the conclusion of general agreements could be considered immediately desirable and realizable."

Referring to the subjects deemed sufficiently ripe for international agreement, the Report emphasized the fact that although the various Governments, in their replies to the Questionnaires, have shown a desire to further the initiative taken by the Assembly in 1924, it was "noticeable that in regard to every subject, *most Governments have not given any detailed expression of their views as to the provisions which might be inserted in an international convention to solve the various questions raised by the Committee*" (italics supplied). The Report also stressed the fact

that the Committee had carefully abstained from creating the impression "that it has given the weight of its authority to any of the detailed suggestions for the solution of particular questions which have been made by its rapporteurs." Realizing that all the subjects were not of equal importance, the Report proposed that of the five subjects for which the Committee envisaged a general conference the subjects of piracy and possibly of diplomatic privileges be excluded.

With reference to the method of convening the conference or conferences, the Report stated that there were two possibilities. One would be for the League Assembly to request the Council to hold the conference under League auspices. The other would be for the Assembly to invite a Government to convene the conference. As regards the necessary preparatory work, in the former case such work would become the responsibility of the League and in the latter of the Government concerned. In connection with the preparatory work, the Report urged that the conference was more likely to succeed if the delegates had before them a draft convention, and that it was prudent "to aim in the first instance at international law, *i.e.*, at a codification of the existing views and practices of Governments, or at least, that we should be ascertaining what such views and practice are and make them the basis of the work of the conference." In dealing with public international law, it was desirable to impose upon all the Governments the responsibility, and to give them the opportunity, of stating fully what they considered to be the present state of the law. This method appeared preferable to that actually employed by the Committee of Experts of requesting replies to questionnaires. Furthermore, it would be extremely difficult either for an individual Government or for the League Secretariat or for an expert committee to draw up questionnaires which would enable the Governments to state their views fully.

The Council, on 13 June 1927, adopted the Report outlined above and decided to transmit it to the Assembly. It may be mentioned in passing that the representative of the Netherlands Government, in the belief that the convening of a conference by a particular government might have certain advantages, stated that his Government would take the initiative if requested to do so by the League Assembly.

The Resolution of the Assembly of the League of Nations, 27 September 1927

The League Assembly considered the Council's Report at its Eighth Session. The First Committee of the Assembly, after careful preparation, adopted a Report the salient points of which were as follows:

There shall be held in 1929, if possible, at the Hague, a Conference called the First Codification Conference to consider three questions of international law: nationality, territorial waters and responsibility of states. The Convocation and preparation of the Conference should

be left entirely to the League of Nations as "any other course would be interpreted by a certain section of public opinion as a real blow to the prestige of the League."

The preparation of the Conference shall be entrusted to a Preparatory Committee composed of five persons appointed by the Council and possessing the necessary knowledge of practice, precedents and scientific data on the problems to be resolved.

The preparation shall proceed in these stages:

1. a general survey of the three subjects;
2. a specific inquiry consisting of

(a) the drawing up of schedules for each of the three questions, indicating in full detail the points on which Governments should be requested to submit information concerning:

- (i) the state of their positive law, internal and international, with, as far as possible, circumstantial details as to the bibliography and jurisprudence;
- (ii) their own practice at home and abroad; and
- (iii) their wishes as regards possible additions to rules in force and the manner of making good present deficiencies in international law;

(b) the drawing up, on the basis of the information received from the Governments, of detailed reports, showing points of agreement or divergency, as the case may be, which might serve as bases of discussion for the Conference.

After completion of the preparatory work, the Council of the League should issue invitations to the Conference enclosing the reports and bases of discussion drawn up by the Preparatory Committee as well as draft rules of procedure. Referring to the experiences of the Second Hague Conference of 1907, the First Committee made the following recommendations:

(a) Regarding voting the Committee stated: "Although it is desirable that the Conference's decisions should be unanimous, and every effort should be made to attain this result, it must be clearly understood that, where unanimity is impossible, the majority of the participating States, if disposed to accept as among themselves a rule to which some other States are not prepared to consent, cannot be prevented from doing so by the mere opposition of the minority."

(b) Regarding the possible result of the Conference the Committee was of opinion that they might be embodied in two kinds of conventions: "A very comprehensive convention of the general rules on the subject, likely to be accepted by all States; and a more restricted convention, which, while keeping within the framework of the other convention, would include

special rules binding only upon such States as might be prepared to accept them.”

(c) With the double object in view of, on the one hand facilitating the acceptance of Conventions adopted by the Conference, and, on the other, providing for their adaption to changes, the Committee proposed an “organized system of revision” along these lines: “Any convention drawn up by the Conference would be concluded for a period of ten years, renewable by tacit agreement, unless in the course of a subsequent period of ten years a certain number of signatory States should demand revision. In that case, it would be for the Council of the League to summon a conference at the earliest possible opportunity to consider what amendments were to be made in the convention the revision of which had been demanded” (Document A.1/5/1927. Official Journal, Special Supplement No. 55, page 56).

(d) In order to avoid misunderstanding, the First Committee recommended that the Governments which might be invited to the Conference should be informed that the codification effort to be undertaken by the First Codification Conference must aim at adapting existing rules to contemporary conditions. For this reason it should not be limited to the mere registration of existing law but it should refrain from making too many innovations.

The First Committee finally recommended that the Advisory Committee of Jurists should complete its work at its next session and that, before proceeding further, the results of the work already accomplished should be awaited.

The Assembly, on 27 September 1929, adopted a Resolution which was based on the above-mentioned Report of the First Committee (cf. Appendix 8 for text of Resolution).

Comparison Between the Report of the Council and the Resolution of the Assembly

It appears from a comparison of the Report adopted by the Council and of the Report of the First Committee adopted by the Assembly, that there are certain points of concordance and divergence. The Assembly, following the Council, limited the programme to three subjects and eliminated piracy and diplomatic privileges. The Assembly decided, however, that a single conference should be held to discuss all these subjects. In this it followed the proposal made by the Advisory Committee of Experts. The question arises whether in so doing the Assembly had not unduly enlarged the programme of the First Codification Conference.

As regards the method of convening the Conference, the Council's Report seemed to be in favour of the initiative being taken by a particular Government. The Assembly, on the other hand, decided that the Conference be

convened by the League of Nations. It followed that the preparatory work was in the hands of the League and not in those of a particular Government. The Assembly Resolution aimed, as regards the preparatory work, at the drawing up of comparative reports which would serve as bases of discussion for the Conference. The Council's Report, however, indicated that a conference was most likely to be successful if the delegates had before them a draft convention. The Assembly Resolution amended the method of questionnaires pursued by the Advisory Committee in favour of a new method which, in accordance with the Council's Report, placed emphasis upon detailed information to be supplied by the Governments.

The Assembly Resolution of 27 September 1927, in point 6 (d) declared that "the spirit of the codification which should not confine itself to the mere registration of the existing rules, but should aim at adapting them as far as possible to contemporary conditions of international life." The task to be set before the First Codification Conference was thus defined in terms of an optimum. It was to be expected that the solution of so delicate a task, calling at once for the talent of the statesman and the international lawyer, was bound to encounter serious difficulties in the Conference. What the Assembly had in mind was apparently a combination of codification and legislation. The difficulties involved in this approach were probably increased by the fact that a single conference was called upon to perform codification and legislation with respect to three major problems of international relations.

The Preparatory Committee

The Council of the League on 28 September 1927 authorized the Acting President of the Council to nominate the five members of the Preparatory Committee in the interval between that session and the December session of the Council. The following were appointed to serve on the Preparatory Committee: Professor Basdevant (France); Counsellor Carlos Castro Ruiz (Chile); Professor Francois (Netherlands); Sir Cecil Hurst (Great Britain); and M. Massimo Pilotti (Italy) (cf. Document 548.M.196.1927.V, page 51).

The Preparatory Committee for the Codification Conference met at Geneva from 6-15 February 1928, and adopted three lists of points on which information was desired. The Governments were requested to supply the necessary information under these heads:

- (a) The state of their positive law, internal and international, with, as far as possible, full details as to bibliography and jurisprudence;
- (b) Information derived from the practice at home and abroad;
- (c) Their views as regards possible additions to the rules in force and the manner of making good existing deficiencies in international law (cf. Document C.44M.21.1928.V).

It will be noted that under heads (a) and (b) information is requested on the *lex lata* while under heading (c) proposals *de lege ferenda* are invited.

The Preparatory Committee met again at Geneva from 28 January–17 February 1929, and examined replies received from twenty-nine Governments. The Committee noted that some of the replies did not deal with all the questions contained in the request for information. The Committee, accordingly, decided to meet again in May, 1929 for the purpose of drafting in final form, the bases of discussion on nationality, territorial waters and responsibility of States. The Committee also suggested that the meeting of the Conference should be postponed until the spring of 1930 (cf. Document C.73.M.38.1929.V, page 6).

By the time of its May session the number of replies received rose to thirty. Again the Committee noted that these replies “in whole or in part, complied with the request for information.” The Committee was now able to draft the bases of discussion in final form.

These bases of discussion, in some cases, represented views on which all or most Governments appeared to be agreed, in other instances they represented views which seemed to the Committee to offer hope of agreement being reached at the Conference itself. The Committee did not incorporate suggestions if “their realization seemed difficult” or if they were not stated in detail by the Governments concerned.

In drawing up the bases of discussion the Preparatory Committee sometimes merely to state existing law and sometimes new law which appeared acceptable to some Governments. Some of the provisions included in the bases of discussion were regarded by some Governments as statements of existing law and by others as proposals for new law (*ib.*, page 7).

It appears, therefore, that the bases of discussion as drawn up by the Preparatory Commission were neither in the nature of a mere restatement of existing law nor purely in the nature of proposals for new law. Moreover, they were not merely summaries of opinions expressed by the Governments nor were they merely statements of what, in the view of the Preparatory Commission, the law might be. Finally, in drawing up the bases the Preparatory Commission was not in the position to consider the opinions of all Governments as all Governments requested for their opinions have not complied with this request. In this context it may be proper to recall the words of Sir Cecil Hurst, the delegate for the British Empire, in the Assembly of the League of Nations: “If upon the plan submitted to you now we can secure that essential element of Government co-operation in supplying the information required, there is no reason why this task should not be carried through with success.” The fundamental issue was, as Sir Cecil put it “that, if we are to make this first Conference a success, we must have the co-operation of the Governments” (27 September 1927, O.J., Special Supplement, No. 74, page 9).

The Preparatory Committee, at the request of the Council of 7 March 1929, also drafted rules of procedure for the First Codification Conference. The preparatory work for the Codification Conference was regarded as concluded (O.J., July, 1929, page 995).

The Bases of Discussion on Nationality and Territorial Waters and Responsibility of States and the draft rules of procedure were distributed in June, 1929 to Members of the League and twelve non-Member Governments, and 13 March 1930 was provisionally fixed as the date of the Conference.

The Calling of the Conference

In the Resolution of 24 September 1929, the Assembly, "conscious of the wide scope of the preparatory work undertaken for the First Codification Conference," requested the Council "to call the attention of all the Governments invited to the Conference to the desirability of appointing without delay their representatives at the Conference . . . in order that the members of the Conference may be able to make a thorough study of the documentation already assembled" (O.J., Special Supplement, No. 74, page 9).

The Council acted on this request on 25 September 1929. All Members of the League and twelve non-Member Governments, including the Union of Soviet Socialist Republics and the United States of America, were invited to be represented at the Conference whose opening date was now definitely fixed for 13 March 1930. The Council decided, in particular, to request the Governments "to send delegations sufficiently numerous to permit of the three questions on the agenda of the Conference being discussed simultaneously in the committees appointed by the Conference" (O.J., November, 1929, page 1,701).

B. THE CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW

The Conference, meeting at the Hague from 13 March to 12 April 1930, was attended by delegates from forty-seven Governments and by observers appointed by the Union of Soviet Socialist Republics. Some of the Governments were represented by delegations commensurate with the agenda of the Conference. Members of the legal profession in the different countries provided a substantial, perhaps predominating, percentage of the personnel of the Conference.

Questions of Procedure

The first business of the Conference was the adoption of rules of procedure. The draft rules prepared by the Preparatory Committee were generally satisfactory. Draft rules XX, XXI, XXIII, XXIV and XXV, how-

ever, gave rise to discussion and were eventually adopted in an amended form. For the final texts of these rules, see Appendix 9.

The first and perhaps most important question was whether the Conference should endeavour to adopt conventions or should also, as envisaged by the draft rules, leave open the possibility of adopting declarations embodying principles of international law which the signatory states regarded as existing law. While some of the delegates desired to leave the door open, the Conference was "practically unanimous" in the feeling that no declarations should be adopted. Draft Rules XX, paragraph 3, and XXV were therefore deleted (Acts of the Conference, *loc. cit.*, page 29).

Rule XX in its original form expressed the desire of the Preparatory Commission and of the Assembly of the League to ensure success at the Conference by admitting provisions which obtained unanimity as well as those which secured a simple majority. Draft Rule XX was considered by the Bureau and the Central Drafting Committee of the Conference which proposed a new text which was adopted by the Conference with one amendment. The new text as submitted by the Bureau and the Drafting Committee required a majority of two-thirds in both paragraphs 2 and 3 of the revised Rule XX. After an illuminating discussion the Conference adopted an amendment to paragraph 3 which was introduced by M. Politis of Greece and which provided for a simple majority. The reasons which prompted M. Politis in moving that in paragraph 3 the words "by a simple majority" should be substituted for the words "by a two-thirds majority" are best stated in his own words:

This means that the minority in a Committee would, in accordance with the rules we are examining, not only have the right to prevent a particular provision, which it views with disfavour, from being inserted in a main convention, but also it might, in spite of the request made to it by a member of delegations, prevent this provision being embodied in a special protocol which certain Powers would be prepared to sign and, later on to ratify.

This is a very grave matter and the Conference cannot adopt these provisions without mature reflection. They are serious provisions, because they relate to a convention and to an enterprise which demands much time—the work of codification. They are serious provisions because, if the Conference now confers on the minority a right to dictate to the majority, it is jeopardizing the success of the work on which it is embarked (Acts of the Conference, Vol. 1, page 32).

Paragraph 5 of Draft Rule XX, providing for reservations, also gave rise to a debate in the Conference. The need for this provision was stated by Mr. Beckett (Great Britain): "I submit that there is no other possible way of treating this question of reservations than that embodied in paragraph 5 of Rule XX. If the delegations are not to know what reservations are going to be made, or even within what limits they can be made, how can any

delegation possibly sign anything at all? It cannot possibly know what the effect of its signature will be. My delegation, for one, would find the greatest difficulty in deciding anything if it did not even know within what limits reservations could be made" (Acts of the Conference, Vol. 1, page 36).

It may be noticed that the work of the Conference was done primarily in three committees, one each for the three problems on the agenda of the Conference.

The Conference decided that there should be no general discussion in plenary meetings and that the three committees should begin forthwith. These Committees, beginning 10 April 1929, that is within less than four weeks, submitted reports to the Conference as a whole, which voted on their adoption.

C. RESULTS OF THE CONFERENCE

The Conference was relatively most successful in the matter of nationality where it adopted the following instruments:

1. Convention on certain questions relating to the conflict of nationality laws, signed by thirty Governments;
2. Protocol relating to military obligations in certain cases of double nationality, signed by twenty Governments;
3. Protocol relating to a certain case of statelessness, signed by twenty-four Governments; and
4. Special Protocol relating to statelessness, signed by fifteen Governments.

In addition the Conference formulated eight recommendations on various aspects of nationality, including proof of nationality. The achievements of the Conference in this field were all the more remarkable as there was "a constant clash between two legal systems" (Acts of the Conference, *loc. cit.*, page 40).

The Conference was least successful in its work on the responsibility of States. The Committee informed the Conference that it "was unable to complete its study of the question of the responsibility of States for damage caused on their territory to the person or property of foreigners, and accordingly was unable to make any report to the Conference" (cf. Final Act of the Conference, Part C). This failure was all the more surprising as this subject appeared before the Conference to be ready for codification. The British Government expressed this view after the Conference and observed that "the Conference failed to reach agreement even on the most fundamental points. It is useless to disguise the fact that a great part of the proceedings of the Conference in relation to this subject consisted of diplomatic negotiations, ultimately unsuccessful, with the object of finding

a common factor on which, as the result of mutual concessions, agreement might be possible" (Document A.12.1931.V, page 8).

The Conference was somewhat more successful in its work on territorial waters. The Conference adopted a Resolution including as an annex thirteen Articles on the legal status of the territorial sea "which have been drawn up and provisionally approved with a view to their possible incorporation in a general convention on the territorial sea" (Final Act of the Conference, Part B). These articles do not cover the whole field. The reason for this and the absence of a convention, as stated by the Rapporteur of the Committee, was that it was impossible to reach agreement "on the main point, namely, the breadth of the territorial sea" (Acts of the Conference, *loc. cit.*, page 50).

In addition to the above mentioned Resolution the Conference adopted a Recommendation concerning inland waters and a Recommendation concerning the protection of fisheries (cf. Final Act of the Conference, Part C II and III). In spite of its failure to produce a convention on the territorial sea the Conference recommended to the Council of the League of Nations to continue the preparatory work in this matter and to convene, as soon as it deems opportune, a new conference.

It may be noted here that the Bases of Discussion had recorded lack of unanimity on the breadth of the territorial sea but pointed out that in the view of the majority, the breadth was three nautical miles. It was stated that the claim of some states to more than three miles of territorial waters was categorically disputed by other states (cf. Bases of Discussion, II. Territorial Waters, Document C.74.M.39.1929.V, page 33).

The Recommendations of the Hague Conference with Regard to Preparatory Work for Future Codification Conferences

The Conference finally adopted some recommendations with a view to the progressive codification of international law. (For text cf. Appendix 10.) Without attempting to express a view on the subject of future conferences for the codification of international law—a matter which was regarded to fall within the province of the League—the Conference felt it desirable to suggest some improvements in the technique adopted by the League in preparing for codification conferences.

An important innovation consisted of requiring the Committee to draw up a report stating the reasons why it appeared possible and desirable to conclude international agreements on certain subjects selected by the Committee for codification. The actual selection of subjects for further study, however, would not be made as in the past by the Committee, a technical body composed of individual experts, but by the Council of the League, a political body composed of Governments. Thus almost from the very start the responsibility for selecting subjects would devolve upon Governments.

The next step would be for an appropriate body to draw up draft conventions. It will be recalled that neither the Committee of Experts nor the Preparatory Committee had prepared draft conventions.

These draft conventions would be communicated to the Governments for their comments and these comments would also be communicated to all the other Governments with the request for further observations. The Governments would be asked to state their opinion as to the desirability of placing such draft conventions on the programme of a conference.

The last step in the preparatory procedure would be a decision of the Council of the League to place on the agenda of the conference such subjects as were "formally approved by a very large majority of the Powers which would take part therein." It was noted at the Hague Conference that the object of this was to point out the inadvisability of selecting subjects which did not offer a sufficiently strong prospect of agreement. Furthermore, by requiring formal approval on the part of the Governments, the recommendation stressed the desirability of engaging the responsibility of the Governments even prior to a Conference to a greater degree than had been the case heretofore.

Reasons for Failure of the Conference

As to the Conference itself, notably in the plenary meetings, some of the delegates singled out certain factors as having prevented the Conference from reaching satisfactory results in all the subjects on its agenda. The following points may be noted:

Basic of Discussion

The Delegate for Belgium declared that while the Conference disposed of valuable materials "we have no true basis of discussion." He also noted that "in particular we possess no concise documentation" (Acts of the Conference, I, page 23).

Scope of the Conference

The President of the Conference, in his closing speech, said that the delegates had dealt with three extremely delicate and complex subjects and concluded that "perhaps that was too much to attempt at once" (Acts of the Conference, II, page 57).

Time at the Disposal of the Conference

The President of the Conference also noted: "First of all, the time allowed us was short" (Acts of the Conference, I, page 57).

Voting

The Delegates for Greece, recording the fact that he was not in favour of the two-thirds majority required for draft conventions and protocols by paragraph 2 of Rule XX of the Rules of Procedure, and stating that he would nevertheless agree to it as an experiment, declared: "If, however,

the concession thus made in paragraph 2 of Rule XX of the Rules of Procedure is shown to yield regrettable results for the work of the Conference, I should not fail to point out before the Assembly of the League of Nations, or from any other platform, the injury to the great and fine work we are beginning today" (Acts of the Conference, I, page 33). On 3 April 1930, he said that he knew "that a minority had been formed, and that this minority is resolved to prevent a part of the Conference's work from being carried through" (Acts of the Conference, I, page 34).

Selection of Subjects

The Rapporteur of the Committee on territorial waters, in reporting to the Conference the deep disappointment that the Committee could not achieve success, declared: "The subjects to be codified must, however, be selected with the greatest care. Conferences convened to codify questions which are not sufficiently ripe for treatment can do nothing towards removing or reducing the divergencies of view existing between States. They may even at times increase these divergencies" (Acts of the Conference, I, page 51).

Codification v. Legislation

The Conference encountered some difficulty in drawing a distinction between codifying existing and drawing up new rules of international law. Thus the Delegate for Belgium observed: "In reality, our examination of the questions led us to believe—and the discussions in the Committees convinced us of the truth of this—that, while it is perfectly right in theory to distinguish between pure codification and the adoption of new rules, nevertheless, in practice we could not maintain this distinction in any of our Committees" (Acts of the Conference, II, page 33). A similar view was expressed by another Delegate: "The Conference has shown very clearly that it is impossible simply to codify the principles of existing international law. We are encountering the same difficulties in the codification of public law as are daily being experienced in the codification of private law. The old view, which merely consisted in preparing conventions to settle the conflict of laws, must be discarded. Whether we wish it or not, we are compelled to lay down rules in regard to the substance of the questions dealt with, or to adopt systems based on compromises, for the purpose of settling the conflict of laws. Such systems, however, are bound to touch upon questions of substance" (Acts of the Conference, I, page 52).

Diplomatic Preparation

It is apparent from a study of the proceedings of the Conference that its effectiveness for the solution of the problems inscribed on its agenda suffered from the lack of diplomatic preparation. In fact, the procedure laid down for the preparation of the Conference by the Assembly of the League in its Resolution of 27 September 1927 failed to provide for negotiations

leading to the clarification of the attitude of the Governments on the problems selected for the First Codification Conference. This was partly the result of the decision of the League Assembly to entrust the initiative to convoke the Conference to the League rather than to a particular Government. Another reason was that, as a consequence of that decision, the responsibility for preparing for the conference was conferred upon the Preparatory Committee rather than upon a Government. It was in the nature of this procedure and of the Preparatory Committee that the solution of the problem of codifying certain chapters of international law was approached from a technical point of view and that, as a consequence, political aspects were left to the Conference itself. The diplomatic Conference could not solve the technical issues without first ironing out political divergencies. Where this was possible—as in the matter of nationality—the Conference was successful; where the time was too short—as in the matter of territorial waters and the responsibility of states—the Conference failed.

D. ACTION OF THE LEAGUE OF NATIONS SUBSEQUENT TO THE HAGUE CODIFICATION CONFERENCE

The Resolution of the Council of the League of Nations, 15 May 1930

The Council of the League of Nations, on 15 May 1930, adopted a Resolution placing on the agenda of the next session of the Assembly the recommendations formulated by the Hague Conference in order to facilitate the progressive codification of international law. The Council deferred action on the Assembly Resolution of 24 September 1929, calling upon the Council to invite the Committee of Experts to hold further sessions after the Hague Conference (cf. O.J., June, 1930, pages 546, 547).

Resolution of the Assembly of the League of Nations, 3 October 1930

The Assembly of the League of Nations after prolonged discussion on the Hague Codification Conference, adopted a Resolution on 3 October 1930, in which it reaffirmed "the great interest taken by the League of Nations in the development of international law, *inter alia*, by codification, and considers it to be one of the most important tasks of the League to further such development by all the means in its power." In order to provide for the careful study of the recommendations made by the Hague Conference, the Assembly decided to adjourn the question to its next session and requested the Council of the League of Nations to invite members and non-members to communicate to it their observations on these suggestions (O.J. Special Supplement, No. 84, page 212).

While many Governments, in the Assembly debate, took a pessimistic view of the Hague Conference, the Rapporteur of the First Committee probably expressed the prevailing sentiment when he declared:

The First Conference for the Codification of International Law was neither a success nor a failure. It did all it could. It worked hard.

It made a start, and that is at least something done to promote the great movement for international concord (O.J. Special Supplement, No. 84, page 212).

The trend towards a more sober evaluation of the Hague Codification Conference manifested itself in the First Committee of the Assembly which was unanimous on the point "that a broader and less pessimistic view of the work accomplished by the first Conference is necessary, and that the results it attained should not, and are not of a nature to discourage the efforts to continue the task which has been begun" (O.J. Special Supplement, No. 84, page 565).

Various Draft Resolutions

Draft Resolutions emanating from different Governments and groups of Governments were submitted to the First Committee. But the Committee owing to lack of time and press of other business, was not in the position to examine them adequately. These draft resolutions expressed the thoughts of different Governments on the question of how a greater measure of success could be secured for future efforts at codification. The proposal submitted by the Belgian Delegate stressed the importance of thorough preparation and the need for examining the value of the rules which it was contemplated to adopt for the future.

The draft resolution submitted by the British, French, German, Greek and Italian Delegations concluded that, as demonstrated by the Hague Conference, it was not for the League to attempt to formulate existing rules of customary international law. These delegations took the view that it would be proper for the League, or the Conferences convened by it, to endeavour to formulate rules, embodied in international conventions, regardless of whether derived from customary international law or entirely new in character.

Council's Request for Comments on the Hague Conference

The Council of the League, on 19 January 1931, acting on the request of the Assembly, decided to request the Secretary-General of the League to invite the Governments associated with the Hague Codification Conference, to submit observations on the question of the progressive codification of international law. The Secretary-General was also requested to direct the attention of the Governments to the above-mentioned draft resolutions and proposals submitted by certain delegations (O.J., February, 1931, page 148).

Replies of Governments

Some twenty Governments responded to the request addressed to them (cf. O.J. Special Supplement, No. 94, 1931, pages 101-114).

The British Government, having distinguished between "legislative codification" and "consolidatory codification," pointed out that the prelimi-

nary work for the Hague Codification Conference proceeded on the assumption that the task of the Conference was one of consolidation, *i.e.* of "ascertainment and establishment in precise and accurate legal phraseology of rules of international law which have already come into existence," and not of codification, *i.e.* "free acceptance, by means of law-making conventions, of certain rules by which the parties to such conventions agree to abide in their mutual relations." The Conference, itself, however, "proceeded on the basis that its work was that of codification; and the attitude of many delegates made it clear that, in their view, their task was not so much to assist in the establishment in precise language of already existing principles of international law, as to state and defend certain rules by which their country was prepared to be bound."

Adverting to the process of codification, *i.e.* the development of international law by means of law-making conventions, actively pursued under the auspices of the League, the British Government declared:

Consolidation, on the other hand, should be reserved for subjects as to which it can be shown, that so large a measure of agreement as to the present state of the law exists that the work of consolidation can usefully be undertaken. It is for the League to decide whether, and if so by what means, the search for such subjects should be pursued; but His Majesty's Government in the United Kingdom are themselves disposed, in the light of the experience which has now been gained, to doubt the likelihood of important branches of international law being found to which the application of this method would at present be useful.

Declaring themselves in agreement with the recommendations of the Hague Conference, the British Government believed that "a great work for the development of international law can be accomplished through the instrumentality of the League" (cf. Doc. A.12.1931.V, pages 8, 9).

The Government of the United States in its reply believed "that the procedure suggested in the recommendations made by the Hague Conference would be likely to attain satisfactory results. It is suggested, however, that, after observations have been received from the various Governments on the draft Conventions referred to in paragraph 3 of those recommendations, a revised draft or drafts might be prepared and circularised with the comments of the Governments on the first draft, and that these new drafts, together with the comments by the Governments, should be communicated to the various Governments sufficiently well in advance of the Conference as to enable the Governments to study the drafts and comments and to formulate their views thereon.

It is noted from the draft resolutions submitted by certain delegations, incorporated in the report of the First Committee (Document A.82, 1930.V), that distinctions are drawn between customary international law and new rules designed to govern relations between States, and that the

view has been expressed that the term "codification" as applied to the work for the development of international law undertaken by the League of Nations should be understood as relating to the latter. It is believed that conventions adopted should be declaratory of existing customary law on the subjects dealt with, supplemented by such enlargements as are demanded by modern conditions" (cf. Doc. A.12(a).1931.V, page 2).

The French Government declared:

It is necessary to bear in mind that to attempt to negotiate and conclude conventions with the object of setting out the rules of customary law in the form of written law would involve a danger of creating unnecessary difficulties and, *inter alia*, of throwing doubt upon the existence of particular rules which an international judge, as for example the Permanent Court of International Justice, would have been in a position to recognize. It appears, therefore, that codification by way of conventions ought not to be directed towards the laying down of rules which would be declared to be already part of existing international law.

The method of conventions signed and ratified by the Governments, or open to their accession, is on the other hand, appropriate for the establishment of rules which are to be accepted by the Governments as henceforward applicable in their mutual relations without prejudging what may be the rules which the common law of nations applies as regards the matters dealt with in the conventions. In drawing up conventions of this character, account will naturally be taken of the common law of nations, with a view to reaffirming it or with a view to advancing beyond it; but the two aspects of international law would remain distinct. The question whether the law which will thus be laid down in conventions may have operated to modify the customary law will remain to be examined in each case by legal science or to be settled by judicial decisions.

The above distinction appears to be of great importance as regards continuation of the work of codification.

A good method for selecting subjects, and for preliminary study of the subjects selected, is necessary. On this point the Hague Conference made suggestions of the highest value. The suggestion that the draft conventions should be drawn up in the light of all the data of science might be reinforced by contemplating the possibility of consulting the principal institutions devoted to the study of international law. To do so might make the preparatory work slower, but this disadvantage does not seem very serious. On the other hand, it will in general be wise not to submit to the same conference too many or too desperate [sic!] questions. Concentration of attention seems likely to increase the chances of success.

It seems desirable that the drafts and the conventions should contain only really essential provisions, to the exclusion of rules on points of detail or of a secondary character. The conclusion of the conventions would thereby be facilitated and their permanence better assured. In this connection, account must be taken of the development of international tribunals whose proper function it will be to apply in particular cases the principles on which agreement has been obtained.

Finally, all the preparatory work, the importance of which has been pointed out by the Hague Conference, should, from the very outset, be supported by a very copious documentation as to the data of science and practice (cf. document A.12(a).1931.V, pages 2, 3).

The Government of the Irish Free State outlined a new preparatory procedure for codification but felt that it was possible to exaggerate the practical importance of maintaining the distinction between the two meanings of codification in the future work of the League in connection with the development of International Law (cf. document A.12(a).1931.V, page 4).

The Government of Switzerland, being in agreement with the threefold consultation of Governments recommended in the Resolution adopted at the Hague, asked in its reply whether the codification conventions should be declaratory or enactory, whether they should supplant or supplement customary law. The Federal Council of Switzerland declared that "such new law cannot have the effect of merely supplanting the old. The old law, which is derived from international practice or the decisions of international tribunals, or from both combined, remains in force in its entirety. Otherwise, we should be forced to the conclusion that States not bound by the new conventions are free from all obligations. International law would be shaken to its very foundations, and codification accepted in this sense would cause irreparable harm.

"It is not the task of codification conferences to register existing international law, but to lay down rules which it would appear desirable to introduce into international relations in regard to the subjects dealt with. Their work should, therefore, mark an advance on the present state of international law. In certain cases, indeed, it would be extremely difficult to say what the existing law really is, as it is not clearly known or is a matter of controversy. It would be most unfortunate if the attempt to discover an adequate solution of an important problem were abandoned on the ground that no such solution is to be found in the existing positive law. One of the fundamental tasks of codification conferences should be to choose between disputed rules and, within the limits of their agenda, to fill up the gaps in a law whose deficiencies and obscurities are obvious.

"The experience gained at The Hague has, moreover, shown clearly that, if a conference were empowered—supposing this to be possible—to state the existing rules of international law, the results might be disastrous. It has been proved that the conception of existing international law current in the various States or groups of States is very different. In some of them it may be extremely liberal, in others much less so. It is therefore beyond question that, on a number of subjects, unanimous agreement would be unattainable without mutual concessions. But, if existing law is to be enunciated in conventions at the cost of concessions which, in fact, would mark a retrograde movement, the law which would emerge from such bargaining would no longer represent what the friends of legal progress could rightly

regard as the existing law; it would be a compromise law, a law impaired and weakened. To accept this law as the expression of the only law in force would amount for many to a disavowal of progress. The only reasonable course is to accept such compromise law as a second best, as a kind of supplementary law in no way affecting those rules of customary law which are not incompatible with the new rules. That conventional law and customary law should thus exist side by side would undoubtedly complicate international jurisprudence, but such a state of affairs is inevitable. Customary law is stable; that is one of its virtues. But, if its stability degenerated into immutability, the virtue would become a defect. The law would become petrified, and we should be apt to forget the principle of evolution which is the guiding rule of life. This disadvantage, however, can be remedied by means of conventional law, which, by definition and by nature, is open to revision. The possibility of excessive rigidity in the one will be corrected by the suppleness of the other, and the latter's tendency to variability will be held in check by the comparative stability of the former. A kind of balance will thus be struck between the two kinds of law. The Federal Council is therefore, of opinion that the Assembly should abide by the sound principle which forms the basis of one of the draft resolutions submitted at its last session—namely, that the law laid down in codification conferences must not impair the force of customary law, “which should result progressively from the practice of States and the development of international jurisprudence” (cf. Document A.12(b).1931.V, pages 3, 4).

Procedure for Future Codification Conferences Adopted by the Assembly on 25 September 1931

The First Committee of the Twelfth Assembly, having considered the observations submitted by the Governments, formulated a new procedure for the progressive codification of international law. The Assembly of the League, in a Resolution adopted on 25 September 1931, accepted this procedure, the essential features of which are as follows. (For the text of the Resolution see Appendix VII.)

The Preamble of the Resolution, responding to the desire of several Governments as expressed in their observations, safeguards the continued development of customary international law by the traditional means of the practice of states and the jurisprudence of international tribunals. Furthermore, the Preamble distinguishes between what might be called the normal procedure, which is laid down in the Resolution and the special procedure that the Assembly may wish to adopt to meet special needs.

The Resolution reserves to the Governments, whether members or not, the initiative in proposing subjects for codification by international conventions. Such proposals must be accompanied by an explanatory memorandum and must be submitted in good time so as to enable the Governments to study them prior to the meeting of the Assembly.

It is for the Assembly of the League of Nations to determine whether the proposed subjects appear *prima facie*, suitable for codification.

Following the positive outcome of this preliminary investigation, the Assembly will ask the Council to set up a committee of experts to prepare a draft convention and an explanatory statement to be submitted to the Council for transmission to the Assembly. The Assembly will then determine whether the subject should be retained provisionally for codification. In case of an affirmative decision the Committee's report will be transmitted to states members and non-members of the League.

The comments made by the Governments will be examined by the Committee of Experts. At this stage there are two possibilities. The Committee may revise its first draft. In that case the revised draft will be submitted to the Governments for their comments. The Assembly will then examine the revised draft and the comments thereon and decide on any further action that may appear desirable, or it may decide to submit the draft to a codification conference. In case the Committee decides not to revise its first draft, the latter will be transmitted to the Assembly together with the comments of the Governments, for such action as the Assembly may wish to take.

It is thus apparent that according to this procedure, the Governments will be consulted at least three times and the Assembly will be called upon at least three times to take a decision. "If there were a considerable majority in favour of the codification of some particular subject, there would be every reason to hope that the conference would lead to positive results" (Judge Huber in the First Committee of the Assembly, 19 September 1931, O.J. Special Supplement, No. 94, page 42).

It was estimated by the Rapporteur that whereas the procedure recommended by the Hague Codification Conference would have required about four years, the procedure adopted by the Assembly in 1931, may require about ten years (O.J. Special Supplement, No. 94, page 45). He felt, however, "that we cannot be too cautious," and that frequent consultation with the Governments was desirable "in order to prevent hasty decisions being taken in the matter and to avoid any difficulties which might arise out of the examination of such a question by a conference" (O.J. Special Supplement, No. 93, page 136).

The recommendations, included in the Assembly Resolution, with regard to the co-operation between the League and national and international institutions and with regard to the work of codification undertaken by the Conferences of American States were taken over from the general recommendations of the Hague Codification Conference and are self-explanatory.

Conclusions

It appears that in 1931 the Assembly of the League of Nations established a degree of harmony between the procedure to be followed in the

future in preparing for conferences for the progressive codification of international law and the procedure to be followed in the case of general conventions to be negotiated under the auspices of the League. The two procedures may be said to be characterized by the emphasis which they place upon the co-operation of Governments in order to ensure the successful outcome of conferences for the progressive development of international law in different fields.

APPENDIX 1

RESOLUTION ADOPTED BY THE ASSEMBLY OF THE LEAGUE OF NATIONS,
3 OCTOBER 1930

Official Journal, Special Supplement, No. 84, pages 215-216.

The Assembly :

Having examined with the greatest interest the report of the Committee appointed to consider the question of the ratification and signature of conventions concluded under the auspices of the League of Nations in accordance with an Assembly resolution of 24 September 1929 ;

Being convinced that the solution of the problem of ratification depends to a great extent upon satisfactory preparation for the conferences which are convened to draw up conventions ;

Considering it to be of the greatest importance that all steps should be taken to assure that conventions concluded under the auspices of the League of Nations should be accepted by the largest possible number of countries and that ratifications of such conventions should be deposited with the least possible delay ;

Expresses its appreciation of the work of the Committee and its approval of their report ; and

Recommends that effect should be given to the proposals contained in the report of the Committee in the manner set out in the immediately following resolutions.

I

That each year the Secretary-General should request any Member of the League or non-Member State which has signed any general convention concluded under the auspices of the League of Nations but has not ratified it before the expiry of one year from the date at which the protocol of signature is closed, to inform him what are its intentions with regard to the ratification of the convention. Such requests of the Secretary-General to Governments should be sent at such a date in each year as to allow time for the replies of Governments to be received before the date of the Assembly, and information as to the requests so made and replies received should be communicated to the Assembly for its consideration.

II

That, at such times and at such intervals as seem suitable in the circumstances, the Secretary-General should, in the case of each general convention concluded under the auspices of the League of Nations, request the Government of any Member of the League of Nations which has neither signed nor acceded to a convention within a period of five years from the date on which the convention became open for signature, to state its views with regard to the convention—in particular whether such Government considers there is any possibility of its accession to the convention or whether it has objections to the substance of the convention which prevent it from accepting the convention. Information of all such requests made by the Secretary-General and of all replies received should be communicated to the Assembly.

III

That the Council of the League should, with regard to each existing general convention negotiated under the auspices of the League of Nations, consider, after consultation with any appropriate organ or committee of the League, and in the light of such information as may be available as to the result of the enquiries recommended in resolutions Nos. I and II, and any other enquiries that the Council may think fit, whether it would be desirable and expedient that a second conference should be summoned for the purpose of determining whether amendments should be introduced into the convention or other means adopted, to facilitate the acceptance of the convention by a greater number of countries.

IV

That, in the case of all general conventions to be negotiated under the auspices of the League of Nations, the following preparatory procedure should, in principle, be followed, exception made of the cases where previous conventions or arrangements have established a special procedure or where, owing to the nature of the questions to be treated or to special circumstances, the Assembly or the Council consider other methods to be more appropriate:

1. Where an organ of the League of Nations recommends the conclusion of a general convention on any matter, it shall prepare a memorandum explaining the objects which it is desired to achieve by the conclusion of the convention and the benefits which result therefrom. Such memorandum shall be submitted to the Council of the League of Nations.

2. If the Council approves the proposal in principle, a first draft convention shall be prepared and communicated, together with the explanatory memorandum, to Governments, with the request that, if they feel that the draft should be taken into consideration, they shall inform the Secretary-General of their views, both with regard to the main objects or the sug-

gested means of attaining them, and also with regard to the draft convention. In some cases, it may be desirable to annex a specific questionnaire.

3. The draft convention and the observations of Governments (together with the answers to the questionnaire, if any) shall be communicated to the Assembly, and the Assembly shall then decide whether to propose to the Council to convoke the contemplated conference.

4. If the Assembly recommends that a conference should be convoked, the Council shall arrange for the preparation of a draft convention, in the light of the replies received from Governments and the new draft convention (together with the replies of other Governments) shall be transmitted to each Government, with a request for their opinion on the provisions of the draft and any observations on the above-mentioned replies of the other Governments.

5. In the light of the results of this second consultation of the Governments, the Council shall decide whether the conference should be convoked and fix the date.

6. The Council, in fixing the date for the convocation of a conference, shall endeavour, as far as possible, to avoid two League of Nations conferences being held simultaneously, and to ensure the lapse of a reasonable interval between two conferences.

7. The procedure set out in the preceding paragraphs will be followed as far as possible in the case of draft conventions, the desirability of which is recognized by a decision of the Assembly or as the result of a proposal by a Government.

The above rules shall be communicated to the technical organizations of the League of Nations and to the Governments, for the purpose of enabling the Assembly at its next session to consider whether changes should be made therein as a result of any suggestions which may be made.

V

That, in conformity with the recommendations contained in Part III, paragraphs 2 (d), (e) and (f), of the report of the Committee appointed in accordance with the resolution of the Assembly of 24 September 1929 (see Document A.10.1930.V), at future conferences held under the auspices of the League of Nations at which general conventions are signed, protocols of signature shall, as far as possible, be drawn up on the general lines of the alternative drafts set out in Annexes I and II of the present resolution.

ANNEX I

Protocol of Signature

In signing the Convention of this day's date relating to.....
the undersigned plenipotentiaries, being duly authorized to this effect and

in the name of their respective Governments, declare that they have agreed as follows:

1. That the Government of every Member of the League of Nations or non-Member State on whose behalf the said Convention has been signed undertakes, not later than.....(date) either to submit the said Convention for parliamentary approval, or to inform the Secretary-General of the League of Nations of its attitude with regard to the Convention.

2. If on.....(date) the said convention is not in force with regard to.....Members of the League of Nations and non-Member States, the Secretary-General of the League shall bring the situation to the attention of the Council of the League of Nations, which may either convene a new conference of all the Members of the League and non-Member States on whose behalf the Convention has been signed or accessions thereto deposited, to consider the situation, or take such other measures as it considers necessary. The Government of every signatory or acceding State undertakes to be represented at any conference so convened. The Governments of Members of the League and non-Member States which have not signed the Convention or acceded thereto may also be invited to be represented at any conference so convened by the Council of the League.

Note: The procedure provided for in this Annex is generally suitable for most general conventions. In cases in which it is applied, the final article of the convention should be drafted in the usual form and should not fix any named or final date for the entry into force of the convention, but should permit its entry into force on receipt of a relatively small number of ratifications or accessions.

ANNEX II

Final Article of the Convention

Article X

The present Convention shall enter into force on.....(date), provided that, on this date, ratifications or accessions have been deposited with or notified to the Secretary-General of the League of Nations on behalf of.....¹ Members of the League of Nations or non-Member States.

Protocol of Signature

In signing the Convention of today's date relating to.....the undersigned plenipotentiaries, being duly authorized to this effect in the name of their respective Governments, declare that they have agreed as follows:

¹ The figure indicated here should be a relatively large one.

If on.....² the said Convention has not come into force in accordance with the provisions of Article X, the Secretary-General of the League of Nations shall bring the situation to the attention of the Council of the League of Nations, which may either convene a new conference of all the Members of the League and non-Member States on whose behalf the Convention has been signed or accessions thereto deposited to consider the situation, or take such other measures as it considers necessary. The Government of every signatory or acceding State undertakes to be represented at any conference so convened.

Note: The procedure provided for in Annex II is suitable for certain types of convention whose practical utility depends on their immediate entry into force for a considerable number of States.

VI

That the Council will investigate to what extent in the case of general conventions dealing with particular matters, it is possible—in view of the constitutional law and practices of different States—to adopt the procedure of signing instruments in the form of governmental agreements which are not subject to ratification, and that, to the extent that it is possible to do so, this procedure should be followed in regard to minor and technical matters.

VII

That, in future, general conventions negotiated under the auspices of the League of Nations and made subject to ratification shall not be left open for signature after the close of the conference for a longer period than six months, unless special reasons render a longer period advisable.

APPENDIX 2

RESOLUTION ADOPTED BY THE ASSEMBLY OF THE LEAGUE OF NATIONS,
25 SEPTEMBER 1931

Official Journal, Special Supplement, No. 92, 1931, page 11

The Assembly adopts the following amended text for Section IV of Resolution No. I, adopted by the eleventh Assembly on 3 October 1930:

That, in the case of all general conventions to be negotiated under the auspices of the League of Nations, the following preparatory procedure should, in principle, be followed, except in the cases where previous conventions or arrangements have established a special procedure or where, owing to the nature of the questions to be treated or to special circum-

² Same date as that indicated in Article X.

stances, the Assembly or the Council consider other methods to be more appropriate:

1. Where an organ of the League of Nations recommends the conclusion of a general convention on any matter, it shall prepare a memorandum explaining the objects which it is desired to achieve by the conclusion of the convention and the benefits which result therefrom. Such memorandum shall be submitted to the Council of the League of Nations.

2. If the Council approves the proposal in principle, a first draft convention shall be prepared and communicated, together with the explanatory memorandum, to the Governments, with the request that, if they feel that the draft should be taken into consideration, they shall inform the Secretary-General of their views, both with regard to the main objects or the suggested means of attaining them, and also with regard to the draft convention. In some cases, it may be desirable to annex a specific questionnaire.

3. The draft convention and the observations of Governments (together with the answers to the questionnaire, if any) shall be communicated to the Assembly and the Assembly shall then decide whether the subject appears *prima facie* suitable for the conclusion of a convention.

4. If the Assembly considers the subject *prima facie* suitable for the conclusion of a convention, the Council shall arrange for the preparation of a draft convention in the light of the replies received from Governments, and the new draft convention (together with the replies of other Governments) shall be transmitted to each Government with a request for their opinion on the provisions of the draft and any observations on the above-mentioned replies of the other Governments.

5. In the light of the results of this second consultation of the Governments, the Assembly shall decide whether a convention should be concluded and, if so, whether the draft should be submitted to a conference, the date of which it will request the Council to fix.

6. The Council, in fixing the date for the convocation of a conference, shall endeavour, as far as possible, to avoid two League of Nations conferences being held simultaneously, and to ensure the lapse of a reasonable interval between two conferences.

7. The procedure set out in the preceding paragraphs will be followed, as far as possible, in the case of draft conventions the desirability of which is recognized by a decision of the Assembly either on its own initiative or as the result of a proposal by a Government. In these cases, the Council will instruct either the Secretariat or some other organ of the League or specially selected experts to prepare the above-mentioned report, which shall subsequently be submitted to the Council.

APPENDIX 3

STANDING ORDERS OF THE GOVERNING BODY OF THE
INTERNATIONAL LABOUR ORGANIZATION

International Labour Organization Constitution and Rules, 1946, page 74.

Article 8

Procedure for Placing an Item on the Agenda of the Conference

1. When a proposal to place an item on the agenda of the Conference is discussed for the first time by the Governing Body, the Governing Body cannot, without the unanimous consent of the members present, take a decision until the following session. Const.
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2. When it is proposed to place on the agenda of the International Labour Conference an item which implies a knowledge of the laws in force in the various countries, the Office shall place before the Governing Body a concise statement of the existing laws and practice in the various countries relative to that item. This statement shall be submitted to the Governing Body before it takes its decision.

3. When considering the desirability of placing a question on the agenda of the International Labour Conference, the Governing Body may, if there are special circumstances which make this desirable, decide to refer the question to a preparatory technical conference with a view to such a conference making a report to the Governing Body before the question is placed on the agenda. The Governing Body may, in similar circumstances, decide to convene a preparatory technical conference when placing a question on the agenda of the Conference.

4. Unless the Governing Body has otherwise decided, a question placed on the agenda of the Conference shall be regarded as having been referred to the Conference with a view to a double discussion.

5. In cases of special urgency or where other special circumstances exist, the Governing Body, by a majority of three fifths of the votes cast, decide to refer a question to the Conference with a view to single discussion.

6. When the Governing Body decides that a question shall be referred to a preparatory technical conference it shall determine the date, composition and terms of reference of the said preparatory conference.

7. The Governing Body shall be represented at such technical conferences which, as a general rule, shall be of a tripartite character.

8. Each delegate to such conferences may be accompanied by one or more delegates.

9. For each preparatory conference convened by the Governing Body, the Office shall prepare a report adequate to facilitate an exchange of views on all the issues referred to it and, in particular, setting out the law and practice in the different countries.

APPENDIX 4

STANDING ORDERS OF THE INTERNATIONAL LABOUR CONFERENCE AS ADOPTED
AT THE TWENTY-SEVENTH SESSION ON 22 OCTOBER 1945

International Labour Organization Constitution and Rules, 1946,
pages 50-52.

Article 31

Preparatory Stages of Single-Discussion Procedure

1. When a question is governed by the single-discussion procedure the Office shall circulate to the Governments a summary report upon the question containing a statement of the law and practice in the different countries and accompanied by a questionnaire drawn up with a view to the preparation of draft Conventions or Recommendations. This questionnaire shall request Governments to give reasons for their replies. At least three months shall be given to the Governments to prepare their replies and such replies should reach the Office as soon as possible and as a general rule six months before the opening of the Conference.

2. On the basis of the replies from the Governments the Office shall draw up a final report which may contain one or more draft Conventions or Recommendations. This report shall be communicated by the Office to the Governments as soon as possible and every effort shall be made to secure that the report shall reach them in no case less than four months before the opening of the Conference.

3. If a question on the agenda has been considered at a preparatory technical conference the Office, according to the decision taken by the Governing Body in this connection, may either :

(a) circulate to the Governments a summary report and a questionnaire as provided for in paragraph 1 above; or

(b) itself draw up on the basis of the work of the preparatory technical conference the final report provided for in paragraph 2 above.

Article 32

Preparatory Stages of Double-Discussion Procedure

1. When a question is governed by the double-discussion procedure, the International Labour Office shall prepare as soon as possible a preliminary report setting out the law and practice in the different countries and any other useful information, together with a questionnaire. The report and the questionnaire requesting the Governments to give reasons for their replies shall be communicated by the Office to the Governments at the earliest possible date so as to reach them at least six months before the opening of the Conference.

2. The Office shall submit to the Conference the preliminary report referred to in the preceding paragraph, together with a further report drawn up on the basis of the replies from the Governments indicating the principal questions which require consideration by the Conference. These reports shall be submitted to a discussion by the Conference either in full sitting or in committee, and if the Conference decides that the matter is suitable to form the subject of draft Conventions or Recommendations it shall adopt such conclusions as it sees fit and may either :

(a) decide that the question shall be included in the agenda of the following session in accordance with Article 16, paragraph 3, of the Constitution; or

(b) ask the Governing Body to place the question on the agenda of a later session.

3. On the basis of the replies from the Governments to the questionnaire referred to in paragraph 1 and on the basis of the first discussion by the Conference the Office may prepare one or more draft Conventions or Recommendations and transmit them to the Governments asking them to state within four months whether they have any amendments to suggest or comments to make.

4. On the basis of the replies from the Governments the Office shall draw up a final report containing the texts of draft Conventions or Recommendations with any necessary amendments. This report shall be communicated by the Office to the Governments so as to reach them in no case less than three months before the opening of the Conference.

Article 33

Procedure for the Consideration of Texts

1. The Conference shall decide whether it will take as the basis of discussion the draft Conventions or Recommendations prepared by the International Labour Office, and shall decide whether such draft Conventions or Recommendations shall be considered in full Conference or referred to a committee for report. These decisions may be preceded by a debate in full Conference on the general principles of the suggested draft Convention or Recommendation.

2. If the draft Convention or Recommendation is considered in full Conference each clause shall be placed before the Conference for adoption. During the debate and until all the clauses have been disposed of, no motion other than a motion to amend a clause of such draft Convention or Recommendation or a motion as to procedure shall be considered by the Conference.

3. If the draft Convention or Recommendation be referred to a committee, the Conference shall, after receiving the report of the committee,

proceed to discuss the draft Convention or Recommendation in accordance with the rules laid down in paragraph 2. The discussions shall not take place before the day following that on which copies of the report have been circulated to the delegates.

4. During the discussion of the articles of a draft Convention or Recommendation, the Conference may refer one or more articles to a committee.

5. If a draft Convention contained in the report of a committee is rejected by the Conference, any delegate may ask the Conference to decide forthwith whether the draft Convention shall be referred back to the committee to consider the transformation of the draft Convention into a Recommendation. If the Conference decides to refer the matter back, the report of the committee shall be submitted to the approval of the Conference before the end of the session.

6. The provisions of a draft Convention or Recommendation as adopted by the Conference shall be referred to the Drafting Committee for the preparation of a final text. This text shall be circulated to the delegates.

7. No amendment shall be allowed to this text, but, notwithstanding this provision, the President, after consultation with the three Vice-Presidents, may submit to the Conference amendments which have been handed to the Secretariat the day after the circulation of the text as revised by the Drafting Committee.

8. On receipt of the text prepared by the Drafting Committee and Const. after discussion of the amendments, if any, submitted in accordance _____ with the preceding paragraph, the Conference shall proceed to 19 take a final vote on the adoption of the draft Convention or Recommendation in accordance with Article 19 of the Constitution of the Organization.

APPENDIX 5

RESOLUTION OF THE ADVISORY COMMITTEE OF JURISTS, 24 JULY 1920

(Procès-Verbaux of the Proceedings of the Committee, 1920, page 747)

The Advisory Committee of Jurists, assembled at the Hague, to prepare the constituent Statute of a Permanent Court of International Justice;

Convinced that the extension of the sway of Justice and the development of international jurisdictions are urgently required to ensure the security of States and well-being of the Nations;

Recommend that:

I. A new interstate Conference, to carry on the work of the two first Conferences at the Hague, should be called as soon as possible for the purpose of:

1. Re-establishing the existing rules of the Law of Nations, more especially and in the first place, those affected by the events of the recent War;

2. Formulating and approving the modifications and additions rendered necessary or advisable by the War, and by the changes in the conditions of international life following upon this great struggle;

3. Reconciling divergent opinions, and bringing about a general understanding concerning the rules which have been the subject of controversy;

4. Giving special consideration to those points, which are not at the present time adequately provided for, and of which a definite settlement by general agreement is required in the interests of international justice.

II. That the Institute of International Law, the American Institute of International Law, the Union juridique internationale, the International Law Association and the Iberian Institute of Comparative Law should be invited to adopt any method, or use any system of collaboration that they may think fit, with a view to the preparation of draft plans to be submitted, first to the various Governments, and then to the Conference, for the realization of this work.

III. That the new Conference should be called the Conference for the advancement of International Law.

IV. That this Conference should be followed by periodical similar conferences, at intervals sufficiently short to enable the work undertaken to be continued, insofar as it may be incomplete, with every prospect of success.

APPENDIX 6

RESOLUTION ADOPTED BY THE ASSEMBLY OF THE LEAGUE OF NATIONS,
22 SEPTEMBER 1924

Official Journal, Special Supplement, No. 21, 1924, page 10.

The Assembly,

Considering that the experience of five years has demonstrated the valuable services which the League of Nations can render towards rapidly meeting the legislative needs of international relations, and recalling particularly the important conventions already drawn up with respect to international conciliation, communications and transit, the simplification of Customs formalities, the recognition of arbitration clauses in commercial contracts, international labour legislation, the suppression of the traffic in women and children, the protection of minorities, as well as the recent resolutions concerning legal assistance for the poor;

Desirous of increasing the contribution of the League of Nations to the progressive codification of International Law :

Requests the Council,

To convene a Committee of Experts, not merely possessing individually the required qualifications but also as a body representing the main forms of civilization and the principal legal systems of the world. This Committee, after eventually consulting the most authoritative organizations which have devoted themselves to the study of International Law, and without trespassing in any way upon the official initiative which may have been taken by particular States, shall have the duty :

1. To prepare a provisional list of the subjects of International Law, the regulation of which by international agreement would seem to be most desirable and realizable at the present moment ;
2. After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received ; and
3. To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

APPENDIX 7

RESOLUTION ADOPTED BY THE COUNCIL OF THE LEAGUE OF NATIONS ON 12 DECEMBER 1924

League of Nations Official Journal, February, 1925, page 274.

“The Council invites the following persons to form part of the Committee for the Progressive Codification of International Law :

1. M. Hammarskjöld, Governor of Upsala (Sweden) (Chairman) ;
2. Professor Diena, Professor of International Law at the University of Turin (Italy) (Vice-Chairman) ;
3. Professor Brierly, Professor of International Law at the University of Oxford (Great Britain) ;
4. M. Fromageot, Legal Adviser to the Ministry for Foreign Affairs of the French Republic (France) ;
5. Dr. J. Gustavo Guerrero, Minister of Salvador in Paris (Salvador) ;
6. Dr. Bernard C. J. Loder, former Member of the Supreme Court of the Netherlands, President of the Permanent Court of International Justice (Netherlands) ;
7. Dr. Vilhena Barboza de Magalhaes, Professor of Law at the University of Lisbon, Barrister, former Minister for Foreign Affairs, for Justice and Education (Portugal) ;

8. Dr. Adelbert Mastny, Minister for Czechoslovakia in London, President of the Czechoslovak Branch of the International Law Association (Czechoslovakia);
9. M. M. Matsuda, Doctor of Law, Minister Plenipotentiary (Japan);
10. M. Simon Rundstein, Barrister, former legal Adviser to the Ministry for Foreign Affairs (Poland);
11. Professor Walter Schücking, Professor at the University of Berlin (Germany);
12. Dr. José León Suarez, Dean of the Faculty of Political Sciences of the University of Buenos Aires (Argentine);
13. Professor Charles de Visscher, Professor of Law at the University of Ghent, Legal Adviser to the Minister for Foreign Affairs (Belgium);
14. Dr. Chung Hui Wang, Deputy Judge of the Permanent Court of International Justice (China);
15. Mr. George W. Wickersham, former Attorney-General of the United States, member of the Committee of International Law of the American Bar Association, and President of the American Law Institute (United States of America);
16. A Spanish Legal Adviser;
17. A Legal Expert in Moslem Law.''

APPENDIX 8

RESOLUTION ADOPTED BY THE ASSEMBLY OF THE LEAGUE OF NATIONS,
27 SEPTEMBER 1927

Official Journal, Special Supplement, No. 53, page 9.

The Assembly,

Having considered the documents transmitted to it by the Council in conformity with its resolution of 13 June 1927, and the report of the First Committee (Documents A.18.1927.V and A.105.1927.V) on the measures to be taken as a result of the work of the Committee of Experts for the Progressive Codification of International Law;

Considering that it is material for the progress of justice and the maintenance of peace to define, improve and develop International Law;

Convinced that it is therefore the duty of the League to make every effort to contribute to the progressive codification of International Law;

Observing that, on the basis of the work of the Committee of Experts, to which it pays a sincere tribute, systematic preparations can be made for a first Codification Conference, the holding of which in 1929 can already be contemplated;

Decides :

1. To submit the following questions for examination by a first Conference :

- (a) Nationality ;
- (b) Territorial Waters ; and
- (c) Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners ;

2. To request the Council to instruct the Secretariat to cause its services to study, on the lines indicated in the First Committee's report, the question of the Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties ;

3. To instruct the Economic Committee of the League to study, in collaboration with the Permanent International Council for the Exploration of the Sea at Copenhagen and any other organization specially interested in this matter, the question whether and in what terms, for what species and in what areas, international protection of marine fauna could be established. The Committee will report to the Council the results of its enquiry indicating whether a Conference of Experts should be convened for such purpose at an early date ;

4. To ask the Council to make arrangements with the Netherlands Government with a view to choosing The Hague as the meeting place of the first Codification Conference, and to summon the Conference as soon as the preparations for it are sufficiently advanced ;

5. To entrust the Council with the task of appointing, at the earliest possible date, a Preparatory Committee, composed of five persons possessing a wide knowledge of international practice, legal precedents, and scientific data relating to the questions coming within the scope of the first Codification Conference, this Committee being instructed to prepare a report comprising sufficiently detailed bases of discussion on each question, in accordance with the indications contained in the report of the First Committee ;

6. To recommend the Council to attach to the invitations draft regulations for the Conference, indicating a number of general rules which should govern the discussions, more particularly as regards :

- (a) The possibility, if occasion should arise, of the States represented at the Conference adopting amongst themselves rules accepted by a majority vote ;

- (b) The possibility of drawing up, in respect of such subjects as may lend themselves thereto, a comprehensive convention and, within the framework of that convention, other more restricted conventions ;

- (c) The organization of a system for the subsequent revision of the agreements entered into ; and

(d) The spirit of the codification, which should not confine itself to the mere registration of the existing rules, but should aim at adapting them as far as possible to contemporary conditions of international life;

7. To ask the Committee of Experts at its next session to complete the work it has already begun.

APPENDIX 9

EXTRACTS FROM THE RULES OF PROCEDURE OF THE CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW

Acts of the Conference for the Codification of International Law, Volume I.
Plenary Meetings, Page 64, Doc. C.351.M.145.1930.V.

Rules Adopted by the Conference

XX

Each Committee may draw up one or more draft conventions or protocols and may formulate recommendations or *voeux*.

A Committee may embody in the draft conventions or protocols any provisions which have been finally voted by a majority containing at least two-thirds of the delegations present at the meeting at which the vote takes place.

In the case of provisions which have secured only a simple majority, a Committee, at the request of at least five delegations, may decide by a simple majority whether such provisions are to be made the object of a special protocol open for signature or accession.

The provisions referred to in the two preceding paragraphs, if they are not embodied in a draft convention, or protocol, shall be inserted in the Final Act of the Conference.

Each convention or protocol shall contain a provision expressly showing whether reservations are permitted, and, if so, what are the articles in regard to which reservations may be made.

Recommendations and *voeux* may be adopted by a simple majority.

XXI

Each Committee shall forward to the Conference the results of its work, accompanied by a report in which special mention shall be made of those provisions which have been unanimously adopted. The report shall further indicate the points on the Committee's agenda which it has not discussed, and, in general, every question which the Committee considers it desirable to bring to the attention of the Governments.

XXII

The Conference shall pronounce upon proposals submitted to it by the Committees.

XXIII

The draft conventions and protocols, recommendations and *voeux* presented by the Committees may be adopted by the Conference by the vote of the simple majority of the delegations present at the meeting at which the vote takes place.

XXIV

The Final Act of the Conference shall contain:

- (a) A statement of the conventions and protocols open for signature or accession;
- (b) The provisions referred to in the fourth paragraph of Article XX above which have not been embodied in such conventions or protocols;
- (c) Recommendations and *voeux* which are adopted.

APPENDIX 10

GENERAL RECOMMENDATIONS WITH A VIEW TO THE PROGRESSIVE
CODIFICATION OF INTERNATIONAL LAW

Adopted at the Conference for the Codification of International Law,

The Hague, March–April, 1930, Final Act, League of Nations
Doc. C.228.M.115.1930.V, Page 18.

I

The Conference,

With a view to facilitating the progressive codification of international law,

Recommends

That, in the future, States should be guided as far as possible by the provisions of the Acts of the First Conference for the Codification of International Law in any special conventions which they may conclude among themselves.

II

The Conference,

Highly appreciating the scientific work which has been done for codification in general and in regard to the subjects on its agenda in particular,

Cordially thanks the authors of such work and considers it desirable,

That subsequent conferences for the codification of international law should also have fresh scientific work at their disposal and that with this

object, international and national Institutions should undertake at a sufficiently early date the study of the fundamental questions of international law, particularly the principles and rules and their application, with special reference to the points which are placed on the agenda of such conference.

III

The Conference,

Considering it to be desirable that there should be as wide as possible a co-ordination of all the efforts made for the codification of international law,

Recommends

That the work undertaken with this object under the auspices of the League of Nations and that undertaken by the Conferences of American States may be carried on in the most complete harmony with one another.

The Conference

Calls the attention of the League of Nations to the necessity of preparing the work of the next conference for the codification of international law a sufficient time in advance to enable the discussion to be carried on with the necessary rapidity and

For this purpose the Conference would consider it desirable that the preparatory work should be organized on the following basis:

1. The Committee entrusted with the task of selecting a certain number of subjects suitable for codification by convention might draw up a report indicating briefly and clearly the reasons why it appears possible and desirable to conclude international agreements on the subjects selected. This report should be sent to the Governments for their opinion. The Council of the League of Nations might then draw up the list of the subjects to be studied, having regard to the opinions expressed by the Governments.

2. An appropriate body might be given the task of drawing up, in the light of all the data furnished by legal science and actual practice, a draft convention upon each question selected for study.

3. The draft conventions should be communicated to the Governments with a request for their observations upon the essential points. The Council would endeavour to obtain replies from as large a number of Governments as possible.

4. The replies so received should be communicated to all the Governments with a request both for their opinion as to the desirability of placing such draft conventions on the agenda of a conference and also for any fresh observations which might be suggested to them by the replies of the other Governments upon the drafts.

5. The Council might then place on the programme of the Conference such subjects as were formally approved by a very large majority of the Powers which would take part therein.

APPENDIX 11

RESOLUTION ADOPTED BY THE ASSEMBLY OF THE LEAGUE OF NATIONS,
25 SEPTEMBER 1931

Official Journal, Special Supplement, No. 92, 1931, Page 9.

The Assembly recalls that the resolution of 22 September 1924 emphasized the progressive character of the codification of international law which should be undertaken, and, in view of the recommendations of the First Conference for the Codification of International Law held at The Hague in 1930, it decides to continue the work of codification with the object of drawing up conventions which will place the relations of States on a legal and secure basis without jeopardizing the customary international law which should result progressively from the practice of States and the development of international jurisprudence. To this end, the Assembly decides to establish the following procedure for the future, except in so far as, in particular cases, special resolutions provide to the contrary:

1. Any State or group of States, whether Members of the League or not, may propose to the Assembly a subject or subjects with respect to which codification by international conventions should be undertaken. Such proposals, together with a memorandum containing the necessary explanatory matter, should be sent, before 1 March, to the Secretary-General, in order that he may communicate them to the Governments and insert them in the agenda of the assembly.

2. Any such proposals will be considered by the Assembly, which will decide whether the subjects proposed appear *prima facie* suitable for codification.

3. If the investigation of a proposed subject is approved by the Assembly and if no existing organ of the League is competent to deal with it, the Assembly will request the Council to set up a committee of experts, which will be asked, with the assistance of the Secretary-General of the League of Nations, to make the necessary enquiries and to prepare a draft convention on the subject, to be reported to the Council with an explanatory statement.

4. The Council will transmit such report to the Assembly, which will then decide whether the subject is provisionally to be retained as a subject for codification. If this is decided affirmatively, the Assembly will ask the Secretary-General to transmit the said report to the Governments of the Members of the League and non-member States for their comments.

5. The committee of experts, if it considers it desirable to do so, will revise the draft in the light of the comments made by the Governments.

If the committee of experts revises the draft, the revised draft will be submitted to the Governments for their comments and, together with the comments received, will be transmitted to the Assembly, which will then decide finally whether any further action should be taken in the matter and, if so, if the draft should be submitted to a codification conference.

If the committee does not see any reason to revise the draft, it will be transmitted, together with the comments of the Governments, to the Assembly, which will then decide finally whether any further action should be taken and, if so, if the draft should be submitted to a codification conference.

The Assembly recommends:

1. That, in relation with the further work in connection with the codification of international law, the international and national scientific institutes should collaborate in the work undertaken by the League of Nations;

2. That the work of codification undertaken by the League of Nations should be carried on in concert with that of the conferences of the American States.

2. METHODS FOR ENCOURAGING THE PROGRESSIVE DEVELOPMENT OF
INTERNATIONAL LAW AND ITS EVENTUAL CODIFICATION *

May 6, 1947

I. METHODS FOR ENCOURAGING THE PROGRESSIVE DEVELOPMENT OF
INTERNATIONAL LAW

A. Methods for Encouraging International Legislation

1. *Extension of Area of Matters Covered by International Legislation*

One of the most fruitful methods of encouraging the development of international law is to extend the area of "law-governed matters" through the conclusion of international conventions regulating fields of activity on which no agreed rules exist.¹

In considering methods whereby the scope of international legislation may be extended, the Committee might consider the possible preparation of model treaties, not only in relation to form, but also in relation to sub-

* This Memorandum contains certain observations which the Secretariat presents to the Committee on Development and Codification of International Law, in order to facilitate discussion. Doc. A/AC.10/7. The text here printed has been corrected in accordance with Docs. A/AC.10/7/Corr. 1, 7 May 1947 and A/AC.10/7/Corr. 2, 22 May 1947.

¹ See observations submitted by the Government of Great Britain to the recommendations made by The Hague Conference of 1930. *League of Nations O.J.*, 1931, p. 1592.

stance, in connection with such matters as extradition, and consular privileges and immunities, where a considerable number of bilateral conventional agreements exist. Another method which might be considered by the Committee would be the study of those abortive multipartite conventions which, by reason of extraneous factors, never came into force despite a substantial number of signatures and ratifications.

In the selection of fields of activity not covered by international agreements, and regarding which regulation by a multipartite convention may be thought desirable, the Committee may find it useful to consider first of all those fields already widely covered by bilateral conventions and concerning which evidence of a wide need for regulation is abundant.

A continuing process of new legislation is being carried on through the work of the Economic and Social Council and the various specialized agencies brought into relationship with the United Nations. In considering methods of extending the area of matters covered by international legislation the Committee may find it useful to consider here methods of securing the co-operation of the several organs of the United Nations in respect of a positive programme of international legislation.

2. *Compilation of International Legislative Materials*

Systematic compilations of international legislative materials already exist in such forms as the *League of Nations Treaty Series*, Hudson's *International Legislation*, and the *International Labor Code* of 1939. The Committee, however, might find it useful to consider such technical improvements as the preparation of a subject index or classification of the contents of multipartite instruments; a multilingual glossary to be used in the preparation of translations of multipartite instruments; and a list of short titles of multipartite instruments.

3. *Improvement in Techniques of Multipartite Instruments.*

The effectiveness of multipartite instruments might be considerably strengthened through the adoption of methods such as the following:

(a) *Uniform Treaty Clauses*

Multipartite instruments might be considerably improved if, in the body of the instrument itself, a certain uniformity of form and content were to be achieved by clauses safeguarding the obligatory effect of the convention against reservations of a far-reaching character;² clauses requiring the parties to give information regarding the steps which have been adopted by their governments in order to give effect to the convention;³ clauses

² See, for example, Article 39 of the General Act of 1928, Hudson, *International Legislation*, IV, p. 2529.

³ *E.g.* Protocol to the Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes, 1930; Article 58 of the Convention Concerning Safety of Life at Sea. For more recent examples, see Article VIII of the UNESCO Constitution.

relating to jurisdiction,⁴ denunciation,⁵ and revision;⁶ and clauses relating accession, and language.⁷

In order to ensure that these and other improvements in the techniques of international legislation may be effectively studied and worked out, the Committee might consider the usefulness of recommending the establishment of an international drafting bureau which would help secure not only those improvements suggested above, but also increased uniformity of terminology, formal clauses, and translations, as well as an orderly system of presentation and uniform rules of style.⁸

(b) *Encouragement of Ratifications and Accessions*

In this connection the Committee might consider continuing the practice of the League of Nations of periodically publishing information on the progress of ratifications of, and accessions to, conventions completed under the auspices of the League of Nations.⁹

The Committee might also consider procedures which the Secretary-General of the United Nations might take in order to encourage ratifications and accessions on the part of the states concerned.

(c) *Encouragement of the Use of Organs of the United Nations in the Conclusion of Multipartite Instruments*

The utilization of any one of the organs of the United Nations, and of the specialized agencies, in connection with the conclusion of multipartite instruments has many advantages.

⁴ Some recent examples are to be found in Article 17 of the FAO Constitution; Article 14 (2) of the UNESCO Constitution; Article 18 (c) of the International Fund Agreement; Article 9 (c) of the International Bank Agreement; Articles 84 and 85 of the Civil Aviation Convention.

⁵ *E.g.* Article 69 of the Declaration of London concerning the Laws of Maritime War; Article 95 of the ICAO Constitution.

⁶ Some recent examples of flexible revision machinery may be found in Article 8 of the UNRRA Agreement; Article 20 of the FAO Constitution; Article 13 of the UNESCO Constitution; Article 17 (a), (c), of the International Fund Agreement; Article 4 of the Constitution of ILO, Instrument of Amendment, 1945.

to the formal procedure to be taken with regard to signature, ratification,

⁷ See in this connection League of Nations, Report of the *Committee of Experts Relating to Uniform Treaty Clauses*. League of Nations Document, C.196.M.70.1927.V, p. 105; also League of Nations Document, A.10.1930.V.

⁸ See in this connection Wilfred Jenks, "The Need for an International Legislative Drafting Bureau," *A.J.I.L.*, Vol. 39 (1945), p. 163; also, by the same author, "Some Constitutional Problems of International Legislation," *British Yearbook of International Law*, 1945, pp. 11-72.

⁹ See Resolution adopted by the Eleventh Assembly of the League of Nations on the Ratification of International Conventions Concluded under the Auspices of the League of Nations, *Records of the Eleventh Assembly, 1930*, p. 215. This includes two annexes, one of which is a model protocol of provisions relating to signature, the other being a suggested model for final acts.

In the first place, the difficulty of initiative is to a large extent overcome; for any member state can propose a convention in the meetings of the organ concerned,¹⁰ or such proposals might even emanate from the Secretary-General himself. Another obstacle which such a procedure can overcome to a large extent is the difficulty of securing preliminary agreement on general principles. An organ of the United Nations might, for instance, entrust the preliminary work of drawing up a draft convention to a small group of international experts who would work with the technical assistance of the permanent secretariat. Furthermore, the holding of international conferences is greatly facilitated by the fact that such conferences can be summoned by the United Nations instead of by an individual government,¹¹ and the costs and technical preparations can all be met by the international organization instead of being the burden of one government alone.

B. Methods for Encouraging the Development of Customary International Law

While customary international law develops as a result of State practice and its growth is not dependent upon conscious international efforts, the United Nations can stimulate its development through taking steps to render more accessible the evidence of the practice of states in the form of digests of international law.¹²

It would seem that the work of ascertaining and compiling such digests should not be directed primarily toward obtaining the viewpoint of governments regarding certain points of international law. A more useful approach might be the consideration of methods whereby the materials containing such evidences can be made more readily available. The General Assembly might, for instance, promote this effort on the part of governments through recommending that they initiate the preparation of such digests of their state practice. Such a recommendation, might be implemented through the creation of a small committee which would consult with the governments concerned on the manner in which the preparation of the digests could most effectively be undertaken. This body, with the consent of the respective governments, might, for instance, nominate in each country a certain number of experts who would undertake the preliminary work of research with regard to the practice of that state.

¹⁰ In this connection Article 62 (3) of the Charter empowers the Economic and Social Council to "prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence."

¹¹ The Economic and Social Council is similarly empowered to call international conferences by Article 63 (4) of the Charter.

¹² In the United States of America, for instance, such compilations have been prepared by Wharton, Moore, and Hackworth.

C. *Methods for Encouraging the Development of International Law Through the Judicial Process.*

In considering methods for encouraging the development of international law through the judicial process, it is suggested that the collection and publication of decisions of national courts dealing with international law problems, possibly in connection with the preparation of digests of state practice suggested above, will provide a useful indication of the *opinio juris* of states.

As far as collections of international law cases are concerned, a useful method would be to encourage the continuation of the collection of cases undertaken in the *Annual Digest and Reports of International Law Cases, 1919-1942*, as well as the continuation, in respect of the International Court of Justice, of the Publications of the Permanent Court of International Justice.

II. METHODS FOR ENCOURAGING THE EVENTUAL CODIFICATION OF INTERNATIONAL LAW

A. *International Conventions as a Method*

The method of convening an international conference for the purpose of drawing up a convention on the subject or subjects to be codified has hitherto been the method most widely used. The great volume of international legislation and the notable successes of the Inter-American Conferences can be pointed to as evidence of the successful application of the convention method in regulating many diverse fields of international activity.

The convention method, however, has many drawbacks when it is considered as a method for securing international agreement on general rules and principles of international law. The diverse interests of governments makes it difficult for international agreement to be secured concerning the rules of conduct which are to be binding upon states in the indefinite future, and covering situations which cannot be foreseen. Also, the failure of governments to reach agreement, for political reasons, in a conference convened to codify rules of international law, would seem to cast doubt upon certain rules of international law whose validity has been admitted for a very long time and which has hitherto generally been assumed to be part of customary international law. The disappointing results of the first Codification Conference at the Hague in 1930 may, to a considerable extent, be attributed to the difficulties inherent in attempting to codify international law by the convention method.

B. *Restatements of International Law as a Method*

The preparation of scientific restatements of international law may be regarded as a useful step in promoting international agreement with re-

gard to the formulation of certain rules of international law which may lead to their eventual codification in an international convention. As such restatements are essentially scientific in nature, and as the weight which would attach to any such restatements would depend entirely on its scientific merit, inter-governmental agreement in regard to particular rules is not a prerequisite to the successful preparation of such restatements. If such restatements, possessing no governmental authority, were to be drawn up by a committee of jurists functioning under a mandate from the United Nations, and were to be published from time to time under the *imprimatur* of the United Nations, they might serve as a useful guide to statesmen and judges. Though lacking the imperative authority of legislative enactments or treaty stipulations, such restatements would commend themselves by their own intrinsic value, and exercise a persuasive influence of an effective and constructive nature. Their authority will be increased if they are adopted by resolutions of the General Assembly at any time when the General Assembly, on the proposal of a Member State or Member States, considers it desirable to do so.

While it is not intended to suggest that the preparation of scientific restatements of international law should serve as an alternative to international conventions as a method of codification, the preparation of such restatements might be considered as a useful preliminary step which would prepare the ground for the eventual codification of international law by international agreement.

3. OUTLINE OF THE CODIFICATION OF INTERNATIONAL LAW IN THE INTER-AMERICAN SYSTEM WITH SPECIAL REFERENCE TO THE METHODS OF CODIFICATION *

PART I

HISTORY OF CODIFICATION OF INTERNATIONAL LAW IN THE INTER-AMERICAN SYSTEM

- A. Introduction—Previous to the First World War.
- B. The Fifth International Conference of American States.
- C. The Second Meeting of the International Commission of Jurists.
- D. The Sixth International Conference of American States.
- E. The Seventh International Conference of American States.
- F. The Inter-American Conference for the Maintenance of Peace.
- G. The Eighth International Conference of American States.
- H. The Meetings of the Ministers of Foreign Affairs of the American Republics.

* Doc. A/AC.10/8, 6 May 1947. Text corrected in accordance with Doc. A/AC.10/8/Corr. 1, 12 May 1947.

PART II

ANALYSIS OF THE METHODS OF CODIFICATION IN THE
INTER-AMERICAN SYSTEM

- A. The National Committees.
- B. The Permanent Committees of Rio de Janeiro, Montevideo, and Havana.
- C. The Committee of Experts.
- D. The International Conference of Jurists.

THE CODIFICATION OF INTERNATIONAL LAW IN THE
INTER-AMERICAN SYSTEM

PART I

HISTORY OF CODIFICATION OF INTERNATIONAL LAW IN THE
INTER-AMERICAN SYSTEMA. *Introduction—Previous to the First World War*

The initial effort to codify international law in America manifested itself very shortly after the independence movement. As early as 1826, at the congress of Panama, it was suggested in one of the articles of the Pact of Union, "Pacto de Union, Liga y Confederacion Perpetual," that the ratifying nations should lay down rules and principles to be followed by the contracting parties in time of peace and war.¹ Fifty-one years later, in 1877, the government of Peru called a conference for the codification of private international law and for the purpose of establishing uniformity in civil legislation. A treaty on extradition was drawn up and a treaty on rules to co-ordinate conflict of laws was also achieved.² Upon the initiative of the governments of Argentina and Uruguay, another conference for the codification of private international law was held at Montevideo in 1888. The seven states represented (Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay) signed five conventions covering nearly all subjects pertaining to private international law (civil law, commercial law, literary and artistic copyrights, patents, trade marks).³ This Treaty was ratified by Argentina, Bolivia, Peru, Paraguay and Uruguay.⁴

¹ The International Conferences of American States, *A Collection of Conventions*, New York, 1931 (Annex to Introduction), pages xxiv-xxix.

² For text of Treaty see: F. Meili, *Die Kodifikation des internationalen Zivil und Handelsrechts* (Leipzig, 1891), pp. 91-105.

³ República Argentina, *Tratados, Convenciones, Protocolos* (Publicación oficial), Buenos Aires, 1901, pp. 120-152. See also Ernesto Restelli, *Actas y Tratados del Congreso Sud-Americano de Derecho Internacional* (Buenos Aires, 1938).

⁴ Restelli, *Ibid.*, pp. 931-962.

However, the first attempt of the American governments to set up a joint agency for the codification of international law was made at the Second International Conference of American States, held at Mexico City, October, 1901, to January, 1902. The delegates, representing sixteen American nations, signed a Convention for the "Formation of Codes on Public and Private International Law" which provided that the Secretary of State of the United States of America and the Ministers of the American Republics accredited in Washington should appoint a committee of five American and two European jurists, of acknowledged reputation, to be entrusted with the drafting of a "Code of Public International Law" and another of "Private International Law" which would govern the relations between the American nations.⁵ This Convention, receiving five ratifications only—Bolivia, Ecuador, El Salvador, Guatemala, and Nicaragua—failed to come into effect.⁶

It was not until the Third International Conference of American States met at Rio de Janeiro in 1906 that the first agency for codification was successfully organized.

The agenda of the Conference included a project providing for the creation of a committee of jurists who would prepare for the consideration of the next conference a draft of a Code of Public International Law and Private International Law.⁷ A large number of delegates favoured the total codification of international law, recommending that special attention be given to the subjects and principles on which there is agreement in existing treaties and conventions as well as those which are incorporated in national laws of American States.⁸ The Brazilian Delegate, however, strongly objected to including "supposed law" which did not seem to him to go beyond "a collection of customary and courteous rules, 'arbitrarily' adopted by sovereign states in their relations, but entirely without the possibility of attaining the coercive condition which is, nevertheless, essential and inherent to the existence of law."⁹

The committee of codification, organized by the Conference, pointed out that if codes were to have positive value, they would have to follow the filiation of general principles of law, and also to determine the real need of the American nations in their relations with other states.¹⁰

In order to cope with the problem of codification, a convention was signed

⁵ *Minutes and Documents*, Second International Conference of American States, Mexico, 1901-1902, p. 716. (Hereafter all documents pertaining to the International Conferences of American States will be cited I.C.A.S.)

⁶ *The International Conferences of American States, First Supplement*, 1933-1940 (Published by the Carnegie Endowment), Washington, D. C., 1940, p. 501.

⁷ *Third I.C.A.S., Minutes, Resolutions, Documents*, Rio de Janeiro, 1907, page 6.

⁸ *Ibid.*, pp. 283-291.

⁹ *Ibid.*, p. 530.

¹⁰ *Ibid.*, p. 297.

establishing an International Commission of Jurists to be composed of one representative from each of the signatory states.¹¹

Although the Convention provided that the first meeting of the Commission should "be held in the city of Rio de Janeiro during the year 1907," due to the delay of the governments in ratifying it, the International Conference was not convened until 26 June 1912.

The delegations of seventeen American republics,¹² under the able chairmanship of Dr. E. Pessoa, proceeded to study two codes of law, one of private international law,¹³ and one of public international law, which had been prepared by the Brazilian Government to facilitate the task of the Conference.¹⁴

No sooner had the Conference opened than two conflicting trends of thought confronted the delegates. On the one hand there were those who believed the Conference should base its work on the two Brazilian codes. They believed that total and immediate codification of international law was possible and could be achieved by careful study and elaboration of the Brazilian codes. On the other hand, the majority considered it of utmost importance to come to an agreement on the best methods to be employed thereafter, and advocated a partial and progressive codification of international law.¹⁵ It was decided, thereupon, to limit the work of the Conference to preliminary organization and adoption of working procedures.

The Commission of Jurists was divided into six working committees, four of which were assigned to work on public international law and two on private international law. They were to sit, until the next Conference of Jurists, in six different capitals.¹⁶ The first committee, stationed at Washington and made up of delegates of the United States, Mexico, Guatemala, Salvador, Costa Rica, and Panama, would study and prepare codes on maritime war and neutrality. The second committee at Rio de Janeiro, composed of Brazil, Colombia, Peru, and Cuba, would do similar work on the law of war and on claims arising from civil war. In Santiago de Chile a third committee¹⁷ (Argentina, Chile, Bolivia, Ecuador) would study the general problem of international law in peace time (*l'état de paix*). The fourth committee (Chile, Argentina, Colombia, Uruguay), sitting at Buenos

¹¹ *Ibid.*, p. 627.

¹² Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, Salvador, Uruguay, Venezuela.

¹³ For text of code see Epistacio Pessoa, *Projecto de Código de Derecho Internacional*, Rio de Janeiro, 1911, pp. 12 ff.

¹⁴ See Fifth I.C.A.S., *Actas de las sesiones de las comisiones de la conferencia* (Santiago de Chile, p. 207.

¹⁵ *Ibid.*, p. 207.

¹⁶ Fifth I.C.A.S., *op. cit.*, p. 208.

¹⁷ This committee held its first meeting during the Conference of 1912 and unanimously agreed upon the gradual and progressive codification of international law, and briefly pointed out those topics which may be ripe for codification. *Ibid.*, p. 210.

Aires, would compile rules for the pacific settlement of disputes and the organization of international tribunals. The committees on private international law, at Montevideo (composed of Paraguay, Uruguay, Brazil), and at Lima (Peru, Venezuela, Bolivia, and Cuba) would work on the treatment of aliens, and on penal law, respectively.¹⁸

It was within the duty of the committees to gather minute and detailed information regarding the internal legislation, judicial decisions, conventions, and rules of customary international law applied by the American governments. The projects prepared by the six committees, would be submitted to the following meeting of the International Commission of Jurists and all projects approved by two-thirds of the delegates would be introduced to the next Inter-American Conference.¹⁹

The first meeting of the Commission of Jurists was adjourned and its next meeting set for 1914. Owing to the First World War, this meeting failed to take place.

B. *The Fifth International Conference of American States*

The Fifth International Conference of American States met at Santiago de Chile in 1923. The juridical committee, presided over by Dr. Afranio de Mello Franco of Brazil, immediately agreed to the advisability of a gradual and progressive codification of international law as recommended by the Congress of International Jurists of 1912, and took as a basis of discussion the projects presented by Dr. Alejandro Alvarez, entitled "Codification of American International Law,"²⁰ which dealt with the following subjects: fundamental basis of international law, fundamental rights of American public international law, maritime neutrality, rights and duties of neighbouring States on disputed territories, diplomatic immunities, and status of consular agents.²¹ The projects presented by Alvarez include the work done by the Third Committee. Inasmuch as the meeting of the International Commission of Jurists had not been held since the war, and the labour of its committees had also been suspended, it was agreed by the committee and subsequently approved by the Conference to reinstate the Commission.²² The Conference's resolution dealing with the codification of international law added that resolutions adopted by the Commission of Jurists should be submitted to the Sixth International Conference of American States, "in order that, if approved," they should be "submitted to the American Governments and incorporated into Conventions."²³

¹⁸ *Ibid.*, p. 208.

¹⁹ Fifth, *Ibid.*, p. 208.

²⁰ Fifth I.C.A.S., *op. cit.*, p. 223. *Actas de las sesiones de la conferencia* (1923), p. 223.

²¹ *Ibid.*, p. 210. For text see: Fifth I.C.A.S., Vol. II, Alvarez, *La codificación del derecho internacional en América*, p. 65 ff.

²² Fifth I.C.A.S., *Actas de las sesiones*, pp. 221-222.

²³ Fifth I.C.A.S., *Tratado, Convenciones, y Resoluciones* (Pan-American Union, 1923), p. 29.

Among the agreements, within the realm of International Law, negotiated and signed at Santiago de Chile, is the Treaty to Avoid or Prevent Conflicts (gondra Treaty) which has been ratified by every American State, except Argentina.²⁴

An important step in the efforts to find methods for the successful codification of international law was taken by the Governing Board of the Pan-American Union on 2 January 1924.

A resolution was adopted requesting the American Institute of International Law to hold a special session and to prepare a series of projects of international law which might be sent to the forthcoming meeting of the International Commission of Jurists.²⁵ The American Institute appointed J. B. Scott, Louis Anderson, and Alejandro Alvarez to prepare a preliminary draft. When the Institute met at Lima in 1925, they submitted thirty projects comprising the following subjects: (1) preamble; (2) general declarations; (3) Pan-American Union; (4) fundamental bases of international law; (5) declaration of the rights and duties of States; (6) fundamental rights of the American Republics; (7) international rights and duties of natural and artificial persons; (8) nationality and naturalization; (9) immigration; (10) rights and duties of foreigners and diplomatic protection; (11) responsibility of governments; (12) maritime communication in time of peace; (13) maritime neutrality; (14) freedom of transit; (15) aerial navigation; (16) treaties; (17) recognition of new states and new governments; (18) recognition of belligerency; (19) diplomatic agents; (20) consuls; (21) extradition; (22) rights and duties of nations in territories in dispute on the question of boundaries; (23) exchange of publications; (24) interchange of professors and students; (25) pacific settlement; (26) measures of repression; (27) States; (28) jurisdiction; (29) acquisition and loss of territory; (30) national domain.

The Members of the American Institute who attended the Third Scientific Pan-American Congress at Lima discussed the above projects. Project 18 was rejected, because it was pointed out that civil war should not be legalized by Convention. Project 29 was also dropped. Two additional projects were adopted however, the first condemning acquisition of territory by conquest (project No. 30) and the second on navigation of rivers (project No. 19). The Members of the American Institute appointed a working committee.²⁶

²⁴ Eighth I.C.A.S., *Special Handbook for the Use of Delegates* (Pan-American Union, 1938), p. 13.

²⁵ Report on steps taken by the Pan-American Union in fulfilment of Conventions and Resolutions adopted by the Fifth International Conference of American States (Washington, 1925), p. 5.

²⁶ For proceedings of these meetings see American Institute of International Law, *Informal Conversations at Lima*, 20-31 December 1934. Published by the Carnegie Endowment of International Peace, Washington, D. C., 1924.

The Committee appointed by the Congress of Lima met at Havana. It rejected the projects dealing with Maritime Communications and Nationality and Naturalization, which were deemed to be subjects of private International Law and it added a project dealing with the Pan-American Court of Justice and another project dealing with a declaration on Pan-American Union.²⁷

Upon the completion of the task, thirty projects were sent to the Pan-American Union, which, in turn, sent them to the various American Governments. The Secretary of State, Charles Evans Hughes, who was currently chairman of the Governing Board of the Pan-American Union, expressed his satisfaction, saying:

At last we have the texts and projects, the result of elaborate study, for consideration. . . . I believe that this day, with the submission of concrete proposals which take the question of the development of international law out of mere aspiration, mark a definite step in the progress of civilization.²⁸

In addition to the thirty codes on international law, a committee of the American Institute under A. Sánchez de Bustamante, comprised of José Matos, Rodrigo Octavio, and Eduardo Sarmiento, prepared a code of private international law, which was also transmitted for examination to the governments.²⁹

C. *The Second Meeting of the International Commission of Jurists*

The second meeting of the International American Commission of Jurists took place at Rio de Janeiro (April–May, 1927). Every American State, excepting the Central American republics of Guatemala, Honduras, El Salvador, and Nicaragua, was represented by one or two delegates. In view of the necessary division of the conference into two large sub-commissions (A and B) dealing with private and public international law, respectively, it is regrettable that many nations limited their representation to one member. It made it necessary for single-member delegations to attend each of these two sub-commissions, thus forcing the sub-commissions to meet at different hours.³⁰

The Inter-American Commission, in session for five weeks, was a successful example of a body of official delegates, meeting for the explicit purpose of codifying public and private international law, in that it succeeded in

²⁷ Pan-American Union, *Codification of American International Law*, Washington, D. C., 1926, page 7 ff.

²⁸ Quoted in Scott, "Gradual and Progressive Development of International Law," 21 *A.J.I.L.*, p. 427.

²⁹ Pan-American Union, *Codification of American International Law, a Project of Code of Private International Law* (Washington, 1926), p. 7 ff.

³⁰ Brazil, *Comission internacional de jurisconsultos americanos*, Vol. 1 (Edición Castellana), Rio de Janeiro, 1927, pp. 31–32.

drafting, in so little time, twelve codes of public international law and a code on private international law. As Mr. James Brown Scott, who was president of the American delegation, pointed out, it "exceeds in value that of all other gatherings ever held for the purpose."³¹ The fruitful results of the Conference were made possible largely owing to the extensive preparations made in advance by individuals and competent bodies. The jurists at the meeting were presented with the following projects: A project for the codification of public international law, submitted by Dr. Eptacio Pessoa in 1912; the projects known as "Codification of American International Law," which had been presented by Dr. Alejandro Alvarez at Santiago in 1923; and the monumental projects published by the American Institute of International Law.³² In regard to conflict of laws, the Commission had for detailed examination the Conventions subscribed to at Montevideo in 1889; a draft code on conflicts presented by Mr. Lafayette Pereira at the meeting of jurists held in 1912; and a project of a code on conflicts drawn up at the request of the American Institute of International Law by Dr. A. Sánchez de Bustamante.³³

Upon an amendment submitted by Dr. Victor Maurtua, Peruvian delegate, two important sub-commissions (C and D) were created. Sub-Commission C was to suggest plans for the creation of permanent organs necessary to the further progress of future codification of international law. Sub-Commission D was assigned the field of comparative legislation.³⁴ Owing to the existence of two great systems of law in America, civil law and common law, the task of Sub-Commission D was greatly handicapped in elaborating a single code of civil law. Hence, it could only recommend the creation of a commission for the study of comparative legislation and publish the results of its labour.³⁵ Sub-Commission C was more fortunate in its task for it recommended various methods by which more efficient preliminary work could be achieved. It recommended that the International Commission of Jurists be placed on a permanent basis, and that it should meet every two years. It also recommended that two committees, at Rio and Montevideo, on public and private international law, respectively, should be charged with presenting to the various governments lists of matters "susceptible of being submitted to a contractual regulation," would submit to the various governments the viewpoints of other governments, and should entrust the American Institute to study scientifically matters referred to it by the American governments.³⁶

³¹ Scott, *op. cit.*, p. 435.

³² Brazil, *International Commission of American Jurists* (Rio de Janeiro, 1927), Vol. IV, p. 8 (English edition).

³³ Brazil, *op. cit.*, Vol. I, p. 9.

³⁴ *Ibid.*, Vol. I, p. 23.

³⁵ *Ibid.*, Vol. IV, p. 159.

³⁶ *Ibid.*, Vol. IV, pp. 153-154.

Sub-Commission A, as well as Sub-Commission B, was composed of one member for each nation. In a preliminary meeting of the plenary session, Dr. A. Sánchez de Bustamante proposed that the two projects dealing with aerial navigation and the Pan-American Union should be dropped. He pointed out that a special aeronautic conference was shortly convening in Washington and the Pan-American Union was going to do the work concerning its own organization.³⁷ It was also submitted that all questions of a political or doctrinal nature should be set aside in order to consider those projects which are exclusively juridical.³⁸ Owing to their political nature the following projects were discarded: preamble; general declaration; declaration of Pan-American unity and co-operation; declaration of rights and duties of nations, fundamental rights of American Republics, national domain, rights and duties of nations in territories in dispute on question of boundaries, jurisdiction, responsibility of governments; diplomatic protection, freedom of transit, navigation of international rivers, Pan-American court of justice, measures of repression and conquest.³⁹ The remaining twelve projects were presented to Sub-Commission A for further discussion.

Sub-Commission B of Private International Law achieved great success. Dr. Antonio Sánchez de Bustamante, Chairman of the Sub-Commission, presented his monumental code of international law of 435 articles. At the end of the meeting his code was enlarged by four articles and modified here and there, but in substance and form was substantially the same as Sánchez de Bustamante's original draft.⁴⁰

If we are to compare the texts adopted by the International Commission of Jurists of 1927 with the projects prepared by the American Institute, an essential difference is observed. The thirty codes compiled by the Institute presented a tentative plan for total codification of international law. The progress made tended toward creating a purely "American international law" for American states. The jurists, however, reverted to the theory of gradual codification and it is observed that the drafting of the twelve codes leave open the possible adherence of States outside the system.

D. *The Sixth International Conference of American States*

Aided by the preliminary work of the Commission of Jurists, the delegates of the Sixth International Conference of American States, held in Havana, 1928, concluded seven conventions of public international law and one convention of private international law.

³⁷ *Ibid.*, Vol. I, pp. 28-29.

³⁸ *Ibid.*, Vol. II, p. 28.

³⁹ *Ibid.*, Vol. II, p. 29.

⁴⁰ J. M. Yepes, *La Codificación del derecho internacional americano y la conferencia de Rio de Janeiro* (Bogota, 1927), pp. 143-149.

The twelve projects submitted by the Commission of Jurists were studied by the Committee on Public International Law of the Havana Conference. In view of the variety of subjects, seven rapporteurs were appointed. Dr. Victor M. Maurtua was appointed to study the projects on Fundamental Bases of International Law and States—Existence, Equality, Recognition.⁴¹ Within two weeks, Dr. Maurtua, in his oral presentation, gave an exposition of the purposes of codification, methods, and limitations. He deemed it essential that the formulation and development of the law of nations should be founded on unchanging principles in respect of international rights, recognized by all American governments.⁴² There followed a discussion on the general principles of sovereignty and independence.⁴³ The Sub-Committee appointed to consider the matter in all its phases realized the great political issues involved and made the following statement:⁴⁴

Recognizing that in dealing with the codification of international law, the making of a declaration which is wanting in the accord which gives weight to international law would fail of its purpose, the sub-committee recommends that the subject be given further study and that its consideration be postponed until the next conference of American States.

The articles of the draft on the status of aliens submitted by the Committee on Public International Law reproduced in substance the project drafted by the Commission of Jurists. The draft on asylum, treaties, diplomatic agents, consuls, and obligations of states in the event of civil war, was also substantially the same as that proposed by the Commission of Jurists.⁴⁵ In its original form, the project on maritime neutrality contained provisions intended to change existing practices of law in the interest of neutral states. In view of the objections raised by the delegates to these variations from the generally accepted rules of international law, the final convention was drafted with provisions based exclusively on current practice.⁴⁶ No agreement could be reached in adopting a final convention on the pacific settlement of disputes. The Conference, therefore, adopted the following resolution on this subject:⁴⁷

1. That the American Republics adopt obligatory arbitration as the means which they will employ for the pacific solution of their international difficulties of a juridical nature.

⁴¹ Sixth I.C.A.S., *Diario*, Havana, 1928, p. 81.

⁴² *Ibid.*, pp. 252, 253.

⁴³ *Ibid.*, p. 273.

⁴⁴ Sixth I.C.A.S., *Report of the Delegates of the United States*, Washington, D. C., 1928, p. 12.

⁴⁵ *Ibid.*, pp. 16-28.

⁴⁶ *Ibid.*, p. 18.

⁴⁷ Sixth I.C.A.S., *Final Act*, p. 175.

2. That the American Republics will meet in Washington within the period of one year in a conference of conciliation and arbitration to give conventional form to the realization of this principle.

Having examined all the codes submitted by the Commission of Jurists, the Havana Conference approved and signed the following conventions on international law:⁴⁸

1. Status of aliens.
2. Treaties.
3. Diplomatic agents.
4. Consular agents.
5. Maritime neutrality.
6. Asylum.
7. Rights and duties of states in case of civil war.

Subsequently, these conventions have been ratified by a large number of American states. The convention on Status of Aliens, and the convention on Rights and Duties of States in case of a civil war have been ratified by thirteen American states. The conventions that relate to Asylum and Diplomatic Agents have been ratified by twelve states; the convention on Consular Agents by ten states; the convention of Maritime Neutrality by seven states, and the convention on Treaties by six states.⁴⁹ The code on private international law, officially called the "Bustamante Code" has been ratified by fifteen American nations.⁵⁰ In addition to the conventions mentioned above, the Havana Conference passed a resolution providing:⁵¹

1. That the future formulation of international law shall be effected by means of technical preparation, duly organized, with co-operation of the committees of investigation and international co-ordination and of the scientific institutes hereinafter mentioned.

2. That the International Commission of Jurists of Rio de Janeiro shall meet on the dates which may be appointed by the respective governments for the purpose of undertaking the codification of public and private international law, the Pan-American Union being entrusted with furthering the agreement necessary to bring about its meeting.

3. That three permanent committees shall be organized, one at Rio de Janeiro, for the work relating to public international law; another at Montevideo for the work dealing with private international law, and another in Havana for the study of comparative legislation and uniformity of legislations.

⁴⁸ For text of the conventions, see Sixth I.C.A.S., *Final Act*.

⁴⁹ *The International Conferences of American States, First Supplement, 1933-1940*, pp. 501, 502.

⁵⁰ *Ibid.*, p. 502.

⁵¹ Sixth I.C.A.S., *Final Act*, p. 176.

These permanent committees were to present to the governments statements on the subjects which they deemed ready for codification, including those subjects which may be required "for prudent juridical development."⁵² Together with the resolution referred to above, the permanent committees were to send questionnaires "for the purpose of having the governments indicate which matters they deemed susceptible to study to the end that they may be used as a basis in the formulation of conventional rules or fundamental declarations."⁵³ Upon receiving the governmental viewpoints, the committees had to classify the answers in the following manner: "(1) Subjects which are in proper condition for codification because they have been unanimously consented to by the governments; (2) matters susceptible of being proposed as submitted subject to codification because, although not unanimously endorsed by, they represent a predominant opinion on the part of, most governments; and (3) matters respecting which there is no predominant agreement in favour of immediate regulation."⁵⁴

It was also within the duties of the permanent committees to present to the governments a compilation of the answers of the other governments. Lastly, the opinions solicited and obtained from the American Governments, as well as opinions requested from national bodies concerned with international law, would be co-ordinated and sent to the Pan-American Union. The drafts of the final project would be presented to the International Commission of Jurists or to the International Conference of American States.⁵⁵

In accordance with the resolution for progressive codification of international law issued at Havana in 1928, the permanent Committee of Public International Law was appointed by the Brazilian Government in September, 1931.⁵⁶ The Pan-American Union, however, believing that some time would elapse before the organization of the three committees provided for by the Sixth Conference would come into existence, requested the American Institute of International Law "to continue its work in the field of codification of international law and to send any of the projects formulated by the Institute to the governing body of the Pan-American Union."⁵⁷

E. *The Seventh International Conference of American States*

Several projects were formulated by the American Institute. It drafted code projects on the rights and duties of states, interpretation of treaties,

⁵² Sixth I.C.A.S., *Final Act*, p. 177.

⁵³ *Ibid.*, p. 177.

⁵⁴ *Ibid.*, p. 177.

⁵⁵ *Ibid.*, p. 177.

⁵⁶ Seventh I.C.A.S., *Special Handbook for the Use of Delegates*, Washington, D. C., 1933, p. 55.

⁵⁷ Seventh I.C.A.S., *Preliminary Sessions*, Montevideo, 1933, p. 3.

international responsibility, extradition, political asylum, neutrality, and the territorial sea. All these projects were placed on the agenda of the Seventh Inter-American Conference.⁵⁸ The Seventh International Conference of American States, meeting in Montevideo in 1933, had, in addition to the projects mentioned above, a project drafted by the Permanent Committee on Public International Law of Rio de Janeiro dealing with the general plans which may facilitate regional agreements between adjacent states on the industrial and agricultural use of the waters of international rivers.⁵⁹ This report was presented in essay form for brevity, and there is no evidence that the elaborate machinery of consultations set forth by the resolution of the Havana Conference was ever used.

The sub-committee on International Law presented to the Conference a convention on the Rights and Duties of States. "The principal sources," admitted Mr. Rivas, "have been the projects presented by the Commission of Jurists in 1927, but since the codification of international law is, by its very nature, gradual and progressive, only the rules generally accepted in our hemisphere have been inserted in the aforementioned Convention."⁶⁰ A Convention on the Rights and Duties of States was signed at Montevideo and has been subsequently ratified by sixteen American States.⁶¹ At Montevideo four additional Conventions on International Law were signed relating to Nationality of Women, Extradition, and Political Asylum. The Convention on Nationality has been ratified by Chile, Ecuador, Honduras and Panama; the Conventions on Nationality of Women and Political Asylum by ten States, and the Convention on Extradition by eleven States.⁶²

The Montevideo Conference adopted Resolution LXX dealing with the future codification of international law.⁶³ This resolution provided for the continuation of the Commission of Jurists and provisions were made for the creation of national committees, made up of qualified officials from the respective Foreign Offices or jurists specially qualified in international law. These committees were to act through their respective foreign offices. At the same time a commission of experts, seven in number, was created to serve as a sub-committee of the Committee of Jurists. These members were to sit "ex officio" during the meetings of the Commission of Jurists. They were to act as a centralized and systematic agency for the codification of international law. According to the resolution, they were entrusted

⁵⁸ Seventh I.C.A.S., *Special Handbook*, p. 55.

⁵⁹ Seventh I.C.A.S., *Report of the Permanent Committee on Public International Law, Pan-American Union, 1933*, p. 1.

⁶⁰ Seventh I.C.A.S., *Second Committee, Minutes and Antecedents, Montevideo, 1933*, p. 165.

⁶¹ Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Haiti, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, U. S. A., Venezuela, *The International Conferences of American States, First Supplement, 1929-1933*, p. 502.

⁶² Seventh I.C.A.S., *Ibid.*, p. 502.

⁶³ Seventh I.C.A.S., *Final Act*, p. 108.

with the duty of formulating questionnaires on subjects susceptible of codification, and these questionnaires were to be submitted to the national committees. The commission of experts was to co-ordinate the replies and formulate drafts on the observations made by the national committees. The need of a general secretariat for the administration of the work of codification was recognized, hence the juridical section of the Pan-American Union was set up for that purpose.⁶⁴

In order to give effect to the recommendations of Resolution LXX relative to methods of codification, the Pan-American Union resolved:

1. To urge the governments' members to the Union to organize as soon as possible the National Committees on Codification.
2. To request the Governments, through their representatives on the Governing Board, to send to the Pan-American Union the lists of persons from which shall be elected the members of the Commission of Experts.
3. That the office of the Secretary of the Board assume the duties of general secretariat to be created in the Pan-American Union.⁶⁵

The Committee of Experts was organized in accordance with the procedure established by Resolution LXX.

The Montevideo Conference adopted a resolution for the ratification of, and adherence to, a number of conventions, pacts and agreements for avoiding and preventing conflicts, namely, the Treaty for Avoiding and Preventing Conflicts, concluded in Santiago, Chile, 1923, and known as the "Gondra Treaty"; the Kellogg-Briand Treaty, signed in Paris in 1928; the Conciliation Convention, signed in Washington in 1929; and the Inter-American Arbitration Treaty of the same year, as well as the Anti-War Treaty, signed in Rio de Janeiro, and also known as the "Saavedra Lamas Treaty."⁶⁶ The Anti-War treaty is intended, as stated in its principles, to co-ordinate and make effective these various instruments. This pact has been ratified by twenty American States and seven European States have deposited ratifications of their adherence.⁶⁷

F. *The Inter-American Conference for the Maintenance of Peace*

The deliberations of the Committee on Juridical Problems of the Inter-American Conference for the Maintenance of Peace which met at Buenos Aires in 1936 were not extensive because the primary interest of the Conference was in questions closely related to peace. Also, the Committee of Experts, already appointed by the Pan-American Union, was to meet in

⁶⁴ Seventh I.C.A.S., *Final Act*, p. 108. For Text of Resolution LXX, see Appendix I.

⁶⁵ *Organisation of the Committee of Experts Entrusted with the Work of Codification by Resolution LXX of the Seventh I.C.A.S.* (Washington, D. C.), 1935, p. 5.

⁶⁶ Seventh I.C.A.S., *Final Act*, p. 6.

⁶⁷ *The International Conference of American States*. First Supplement, 1933-40, p. 503.

the near future, hence it was considered preferable to recommend that the study of the question of pecuniary claims, and the subject of the immunity of government vessels, be undertaken by the Committee of Experts.⁶⁸

Resolution VI on the Codification of International Law adopted by the Conference provided for a procedure somewhat at variance with that prescribed by the Seventh International Conference of American States. It was resolved:

1. To re-establish the Permanent Committees created by the Sixth International Conference of American States in order that they may undertake the preliminary studies for the codification of international law.

2. That these studies shall be made in the following manner, in view of the recommendations of the Sixth and the Seventh International Conference of American States:

(a) The National Committees on Codification of International Law shall, in their respective countries, undertake studies of the doctrine on the various subjects to be codified, and shall transmit the results thereof to the Permanent Committees on Codification.

(b) The Permanent Committee shall prepare draft conventions and resolutions based on discussions and preparatory work for the Commission of Jurists.

(c) The studies of the Permanent Committees shall be transmitted in ample time to the members of the Committee of Experts, at Washington, who will meet to revise and co-ordinate them.

(d) Upon completion of the work of general revision of the studies of the Permanent Committees, the Committee of Experts, at Washington, shall transmit all such preparatory studies with a detailed report to the Pan-American Union, for the transmission to the governments of the American Republics and ultimate submissions for discussion and consideration by the International Commission of American Jurists.

(e) The Committee of Experts may act by a majority of the members present at a meeting, provided, however, that the two great juridical systems of the hemisphere are represented thereat.⁶⁹

The Committee of Experts on the Codification of International Law held its first session at Washington in 1937. The following projects were entrusted, to the members indicated below, "for examination and study, and with an understanding that the opinion of the other members of the Com-

⁶⁸ Dr. Victor M. Maurtua, Peru; Dr. Alberto Cruchaga, Chile; Dr. Carlos Saavedra Lamas, Argentina; Dr. Luis Anderson, Costa Rica; Dr. Eduardo Suarez, Mexico; Dr. A. de Mello Franco, Brazil; Mr. J. Ruben Clark, United States. See Eighth I.C.A.S., *Special Handbook for the Use of Delegates* (Washington, 1938), p. 33.

⁶⁹ *Ibid.*, p. 8.

mittee with respect to each subject, shall be ascertained and considered.”⁷⁰ Dr. Mello Franco was assigned the topic on Definition of the Aggressor, Sanctions, and the Prevention of War; Dr. Maurtua, Investigation, Conciliation and Arbitration; Dr. Cruchaga, Nationality; Dr. Anderson, Code of Peace; Dr. Suarez, Immunity of Government Vessels; and Dr. Borchard was assigned Pecuniary Claims.⁷¹ At the same meeting the experts made the following suggestions:

To place on record that the Committee considers susceptible of codification the rules relative to the codification of international law on the continent, through the conclusion of a convention, subject to ratification, which will reintegrate, after revision, all the organic provisions in the matter contained at present in the various resolutions on the subject adopted by the International Conferences of American States.

The Committee resolved likewise to submit the question of such a convention to the consideration of all the national commissions of codification, and to call their attention to the desirability that the convention, in addition to clarifying, improving, and establishing in a satisfactory manner the relevant rules of codification, be extended to include the following points:

1. That the governments agree to appoint within a set period, and to maintain in activity, through the filling of any vacancies that may occur, the permanent committees or national commissions of codification which it is incumbent upon each government to designate; and furthermore, that in the event the appointment is not made, the functions of such committees or commissions shall be undertaken by the Ministry of Foreign Affairs of the respective country;

2. That the governments agree to inform the Pan-American Union at least once a year regarding the work accomplished in the corresponding period by the respective permanent committees or national commissions, for the purpose of enabling the Union to take such reports into consideration when preparing those which it is charged, by Resolution VI of the Inter-American Conference for the Maintenance of Peace, with preparing and transmitting at least once a year to the governments with regard to the developments in the field of codification; and

3. That the new convention will expressly stipulate that it will enter into effect after it has been ratified by all the American governments, and that until the new instrument becomes effective, the provisions of the relevant resolutions shall govern the labour of codification.⁷²

As previously mentioned, in its last session, the Committee of Experts agreed to entrust to its advisory members for examination and study, and

⁷⁰ First meeting of Committee of Experts, *Final Act*, in Eighth I.C.A.S., *Special Handbook for the Use of Delegates*, 1938, p. 37.

⁷¹ *Ibid.*, p. 38.

⁷² *Ibid.*, pp. 37-38.

with the understanding "that the opinion of the other members should be ascertained and considered, the topics above-mentioned, in order that reports might be submitted to the Eighth Pan-American Conference."⁷³

At the second meeting of the Committee of Experts, Lima, 1938, attended by Dr. A. de Mello Franco, chairman, and Drs. Alberto Cruchaga, Luis Anderson, and Edwin M. Borchard, the reports were studied and approved and subsequently submitted to the Eighth International Conference of Inter-American States.⁷⁴

G. *The Eighth International Conference of American States*

When the Eighth Conference met at Lima in 1938, it had for its consideration the following projects:

1. Definition of the aggressor and sanctions.⁷⁵
2. Investigation, conciliation, and arbitration.⁷⁶
3. Nationality.⁷⁷
4. Code of peace.⁷⁸
5. Immunity of government vessels.⁷⁹
6. Pecuniary claims.⁸⁰

It was deemed that the national committees should send to the Committee of Experts antecedents and all material relevant to the subject of nationality.⁸¹ Due to the universal character of the problems involved in immunities of government vessels, the Experts suggested, and the Conference recommended, that those countries which had not yet done so should adhere to the Brussels Convention of 1925.⁸² The Lima Delegates considered further study necessary on the last topic submitted by the Commission of Experts, pecuniary claims, as well as the project submitted by the Delegations of Argentina, Peru, and Mexico. They were to be sent back for further examination, to the three permanent committees, the national committees, and the Committee of Experts.

The Committee of Experts was not the only juridical organ of the Inter-American system which submitted projects to the Lima Conference. The

⁷³ Eighth I.C.A.S., *Special Handbook for the Use of Delegates*, Washington, D. C., 1938, p. 38.

⁷⁴ Pan-American Union, *General Report on the Status of the Work Provided for in the Resolutions on the Codification of International Law Approved by the Eighth International Conference of American States*, Washington, D. C., 1944, p. 11.

⁷⁵ Eighth I.C.A.S., *Diario de sesiones*, Lima, Peru, p. 101.

⁷⁶ *Ibid.*, p. 109.

⁷⁷ *Ibid.*, p. 341.

⁷⁸ *Ibid.*, p. 114.

⁷⁹ *Ibid.*, p. 343.

⁸⁰ *Ibid.*, p. 293.

⁸¹ *Ibid.*, Resolution XXXII, p. 985.

⁸² *Ibid.*, Resolution XXXIII, p. 986.

permanent committee of Rio de Janeiro also prepared a project on the uniformity and improvement of methods for the preparation of multi-lateral treaties.⁸³ Its major contribution was in preparing a project on codification of international law which was submitted to the Lima Conference by the Committee of Experts.⁸⁴ This report pointed out that the previously existing system of carrying out the work of codification was "unnecessarily complicated and hindered rather than facilitated codification."⁸⁵ In the same report, it was also pointed out that "none of the national commissions have given their opinion on questions referred to them by the Committee of Experts. The national committees," it added, "must be maintained, because these committees are specially called to stimulate, in their respective countries, the task of codification."⁸⁶ Therefore, on the basis of the project submitted by the Experts, as well as additional projects presented by Argentina, Chile, and Mexico, a comprehensive resolution was adopted by the Lima Conference. This resolution attempted to co-ordinate, by classifying the successive stages of the work and by establishing the precise duties to be performed by each of the agencies, the codification of international law in America. Resolution XVII recommends that the studies of the national committees were to be submitted in the form of preliminary drafts to the Permanent Committee, now reorganized by the addition of six non-national members. The Permanent Committee in turn has to submit its drafts to the Committee of Experts now enlarged from seven to nine members. The drafts prepared by the Committee of Experts on the basis of the material submitted to it were to be forwarded to the Pan-American Union, and from the Union to the American Governments. The last stage of the work was to be carried out by the International Conference of American Jurists, successor to the former International Commission of Jurists. Instead of having the delegates to a regular international conference pass upon the drafts prepared by a technical body, as had happened in Havana in 1928, the Lima Conference provided that the Conference of Jurists should be composed of the delegates with plenipotentiary powers and that the function of the Conference should be "the revision, co-ordination, approval, modification or rejection of the draft prepared by the Committee of Experts."⁸⁷ Nothing would remain to be done then, except to submit the instrument signed by the Conference of Jurists to the Pan-American Union, and from the Union to the American Governments for ratification.⁸⁸

⁸³ *Ibid.*, pp. 347-350.

⁸⁴ *Ibid.*, p. 285.

⁸⁵ *Ibid.*, p. 286.

⁸⁶ *Ibid.*, p. 286.

⁸⁷ Paragraph 12, Resolution XVII of the Eighth I.C.A.S.

⁸⁸ Paragraph 14, Resolution XVII.

Before the elaborate machinery thus set up at the Lima Conference could be set in motion, however, the outbreak of the Second World War created separate and more urgent problems in the field of neutrality. Consequently, in order to deal with these problems, the foreign ministers, meeting at Panama in 1939, created an ad hoc committee, the Inter-American Committee, to deal with these problems. It was composed of seven experts in the field of international law who were designated by the governing board of the Pan-American Union.⁸⁹ The following year, at a meeting of foreign ministers at Havana, the neutrality committee was entrusted with "the drafting of a project of Inter-American convention which will cover completely all the principles and rules generally recognized in international law, and especially those contained in the resolution of Panama."⁹⁰

H. *The Meetings of the Ministers of Foreign Affairs of the American Republics*

Following the attack upon the United States at Pearl Harbor it became apparent that the International Neutrality Committee, which had been created at Panama, should be reorganized to meet new conditions. The foreign ministers thereupon held a meeting at Rio de Janeiro in 1942, and adopted the resolution providing that the Neutrality Committee should continue to function in its existing form under the name of the American Juridical Committee. The seat of the new committee was to be in Rio de Janeiro, and its function was "to develop and co-ordinate the work of codifying international law, without prejudice to the duties entrusted to other existing organizations."⁹¹ Having thus far studied the historical development of the agencies created by the American Governments for the codification of international law, it may now be profitable to make an analysis of each of them individually in order to determine, if possible, why particular agencies have failed to function efficiently and what further co-ordination may be necessary to produce the desired results.

PART II

ANALYSIS OF THE METHODS OF CODIFICATION IN THE INTER-AMERICAN SYSTEM

The following analysis is based on the report of the Inter-American Juridical Committee which accompanied their recommendations on the codification of international law.

⁸⁹ Reunion de consulta entre los ministros de Relaciones Exteriores, *Diario*, Panama, 1939, p. 53.

⁹⁰ Second meeting of the Ministers of Foreign Affairs of the American Republics, Final Act, Havana, 1940, p. 5.

⁹¹ Republica Argentina, *Tercera reunión de consulta de ministros de relaciones extranjeras de las Repúblicas americanas* (Buenos Aires, 1942), p. 127.

A. *The National Committees*

These committees are appointed by each separate government. Their function is to undertake doctrinal studies in public and private international law and comparative legislation, and to transmit preliminary drafts, with explanatory summaries, to the three permanent committees at Rio de Janeiro, Montevideo, and Havana respectively. The Lima resolution (VII) made provision that they should serve as consultative agencies for their respective governments. "It would appear," stated the report, "that the extensiveness of the work of the national committees will depend to a greater or lesser degree upon the financial support which they may be able to obtain. Few jurists have the leisure to devote themselves to the doctrinal studies asked of them."⁹²

For this reason, the contribution of the national committees to the work of codification has not been significant. None of the committees have thus far reported projects bearing upon the work of codification contemplated by the Lima Conference.

B. *The Permanent Committees of Rio de Janeiro, Montevideo, and Havana*

These committees were created by the Havana Conference to do preliminary technical work for the International Commission of Jurists on codification of private and public international law and of comparative legislation. Members of the three committees were to be selected respectively by each of the three governments from among their national societies of international law. Their functions were to inquire into the subjects ripe for codification and on the basis of the answers received from the American governments "to prepare draft projects which might be ultimately submitted to the International Commission of Jurists."⁹³ The failure of the three committees to function within the succeeding five years led the Montevideo Conference of 1933 to establish new agencies, the Committee of Experts and the national committees, but the permanent committees were re-established by the Conference for the maintenance of peace, in 1936. In making a new attempt to co-ordinate the agencies entrusted with the work of codification, the Lima Conference of 1938 continued the three permanent committees, but made provision that in addition to the members appointed by the governments of the countries in which the committees had been set, six members should be designated by the other American states. The report of the Inter-American Juridical Committee states that the addition of six non-national members proved to be unfortunate. "Theoretically it was desirable to make the committees more Inter-American in character. But," they add, "the means taken

⁹² Inter-American Juridical Committee, *Recommendations and Reports*, Official Documents, 1942-1944 (Rio de Janeiro, 1945), page 113.

⁹³ *Ibid.*

were not adequate. Unless the non-national members were to be selected from the members of the diplomatic corps of their respective countries, it could hardly be expected that jurists from distant countries would be able to attend sessions of the committees with sufficient regularity.”⁹⁴

Apart from the difficulty created by the provision of non-permanent members, it is doubtful whether the permanent committees could meet the heavy burden of work entrusted to them. Lists of the national members of the committees include the names of jurists distinguished in their respective fields of law but they are, in most cases, occupied with other official duties. The report shows that, while the committees met from time to time, the permanent committee of Rio de Janeiro was the only one which was able to take preliminary steps towards the actual work of codification. The inability of the permanent committees to organize themselves effectively has made it difficult for them to produce any official action on a large scale.⁹⁵

C. *The Committee of Experts*

This committee was created by the Montevideo Conference of 1933 with the object of organizing the preparatory steps of the work of codification. Members are selected by the following system: each Government draws up a list not exceeding five persons, and from the combined list each government designates seven persons, of whom only two may be its own nationals. This committee was to perform functions similar to those which had been assigned to the permanent committees, namely, the selection of subjects suitable for codification, the submission of questionnaires to the national committees, and the preparation of draft projects for the International Commission of Jurists.

The Juridical Committee finds that the Inter-American membership of the Committee of Experts is a feature of the highest importance, “which should be preserved as an essential part of the preliminary work of codification. But the experience of the Committee of Experts makes it clear that if a committee of that character is to do effective work it must be organized upon a more permanent basis. The personnel of such a permanent committee should not be only jurists of the highest qualifications, but jurists who are in a position to give a large part of their time to the work of codification.”⁹⁶

No reflection upon the distinguished jurists who composed the committees between 1936 and 1942 is made because the committee did not make a great deal of progress in the field of codification. The obstacle lay in the fact that the work required a far greater concentration of effort than was possible under the circumstances.

⁹⁴ *Ibid.*, p. 114.

⁹⁵ *Ibid.*, p. 114.

⁹⁶ *Ibid.*, p. 117.

D. *The International Conference of Jurists*

The International Conference of Jurists is the legal successor of the International Commission of Jurists created by the Rio de Janeiro Conference of 1906, but its functions differ from those of the earlier body. When first created, the International Commission of Jurists was intended to do the preliminary work which was later entrusted to the permanent committees. When, however, the Lima Conference adopted resolution XVII, it was provided that a commission of jurists, thereafter to be called the International Conference of Jurists, should function as the last stage of the procedure and have as its function the ultimate revision, co-ordination, approval or rejection of the drafts prepared by the Committee of Experts. In view of the fact that the International Conference of American Jurists has not yet received projects from the committees engaged in the preparatory work of codification, it is not possible to estimate the work of the Conference in the role it has been called upon to perform.⁹⁷

As far as the Inter-American efforts relating to codification are concerned, the Inter-American Juridical Committee has concluded that the Inter-American system of codifying international law is unnecessarily complicated and difficult of co-ordination. It has recommended, therefore, that a small committee of technical experts, representative of the whole Inter-American community, and permanent in character, be created as a central agency for the co-ordination of activities relating to codification. One of the chief functions of this proposed committee would be to act as an organ of communication with the various bodies, both public and private, engaged in the work of codification, as well as with outstanding American jurists. It is significant that the Inter-American Juridical Committee has recommended that any codification committee thus set up should maintain close contact with the Secretariat of any new international organization to be established after the war. In accordance with the spirit of Article XIII (1) of the Charter of the Inter-American Juridical Committee, it has been recognized that the task of codifying international law is inextricably bound up with the progressive development of that law. In the words of the Committee itself, "The task of codifying international law is in large part a work *de lege ferenda*, the formulation of new rules to meet the changing conditions in the mutual relations of States."⁹⁸

The said recommendations of the Juridical Committee are under the study of the American governments. The problem raised therein is also being considered by the governing board of the Pan American Union according to Resolution XXV of the Inter-American Conference on Problems of Peace and War, held in Mexico in 1945. Resolution XXV deals with the re-organization of the Inter-American system and also with the co-

⁹⁷ *Ibid.*, page 118.

⁹⁸ *Ibid.*, pp. 119-122.

ordination of the agencies of codification. "As soon as the approval of the various governments has been obtained," states the resolution, "the Pan American Union entrusts to the Inter-American Juridical Committee the functions of a central agency for the codification of public international law."⁹⁹

Thus it is left to the Ninth International Conference of American States to give permanent form to the juridical machinery of the Inter-American system.

4. NOTE ON THE PRIVATE CODIFICATION OF PUBLIC INTERNATIONAL LAW *

A. *Individuals*

The codification of the whole of international law was first proposed by Jeremy Bentham in the last quarter of the eighteenth century.¹ Since his time numerous attempts have been made by private individuals, by scientific organizations, and by governments to reduce international law more or less completely to the form of written rules, and to substitute for the vagueness of the customary law the precision and definiteness of the statute.

Bentham not only first proposed the reduction of the totality of international law to a code, but he coined the term "codification" itself.² His *Principles of International Law*, in which is set forth the propositions which must serve as a basis for the construction of an international code, was written in the period 1786-1789, but it was not published until after his death.³ It is not a code, properly speaking, but is general in nature, and aims not at a restatement of the existing international law but rather at providing a scheme for an everlasting peace between nations. In explanation of the purpose of his work Bentham said that although "unhappily there has not yet been any body of law which regulates the conduct of a nation, in respect to all other nations on every occasion . . . yet let us do as much as is possible to establish one."⁴ Asking what would be the object of a citizen of the world if he were to prepare a universal international code, he answers that it "would be the common and equal utility of all nations; this would be his inclination and his duty."⁵ The "line of com-

⁹⁹ Inter-American Conference on Problems of War and Peace, *Final Act*, Resolution XXV.

* Doc. A/AC.10/25, 16 May 1947.

¹ Nys, "The Codification of International Law," 5 *American Journal of International Law*, 876.

² *Ibid.*, 872.

³ Nys says, *Ibid.*, 877, that the *Principles* was not published until 1843, but it appears in Bowring's edition of Bentham's *Works* published in 1839.

⁴ *Works*, II, 538.

⁵ *Ibid.*, 537.

mon utility once drawn, this would be the direction towards which the conduct of all nations would tend—in which their common efforts would find least resistance—in which they would operate with the greatest force—and in which the equilibrium once established, would be maintained with the least difficulty.”⁶ The disinterested international legislator would “set himself to prevent positive international offenses—to encourage the practice of positively useful actions.”⁷ Wars were to be prevented by means of:

1. Homologation of unwritten laws which are considered as established by custom.
2. New conventions—new international laws to be made upon all points which remain unascertained; that is to say, upon the greater number of points in which the interests of the two States are capable of collision.
3. Perfecting the style of the laws of all kings, whether internal or international.⁸

In 1802 Bentham's *Traité de législation civile et penale* was published at Paris by Etienne Dumont, the twenty-third chapter of which contained a *Plan du Code International*, a general discussion of a code which should be “a compilation of the duties and rights of the sovereign toward every other sovereign.”⁹ In the British Museum there is a Bentham manuscript dated 1827, in which is proposed the adoption of a brief code by the nations of the world acting on a plane of equality, for the purpose of “the preservation, not only of peace (in the sense in which by peace is meant absence of war), but of mutual good-will and consequent good mutual offices between all the several members of this confederation.” The benefits which he expected to flow from the adoption of a code of international law based upon his proposals he summarized as follows:

Good which it is capable of effecting: minimizing the occasion of resentment for supposed injury, to wit, by definition of right and obligation established antecedently to the time when, by means of individual occurrences, the idea of rights accruing thence of rights violated stirs up angry passions and anti-social affections.¹⁰

Bentham made little attempt to base his plans for an international code upon the existing law of nations, but sought to create a code which should be merely a detailed application of his principle of utility. He sought, in other words, to set up a new natural law in place of the old philosophical law of nature which he had rejected. Although he was indebted to his predecessors in his emphasis on the enacted or legislative element in law,

⁶ *Ibid.*, 537.

⁷ *Ibid.*, 538.

⁸ *Ibid.*, 540.

⁹ For a reprint see *Proc. Am. Soc. I. L.*, 1910, 224–226.

¹⁰ Quoted, Nys, “The Codification of International Law,” *Am. J. I. L.*, 5, 880. See *Proc. Am. Soc. I. L.*, 1910, 223.

Bentham may be called the founder of the English school of analytical jurisprudence. Law was for him "an instrument of politics and a useful instrument in accomplishing results"¹¹ and was to be found, not in deductions from *a priori* notions of the rational nature of man, but in the principle of "utility general," and when found it was to be made cognizable by promulgation in written form. "That which is called unwritten law," said Bentham, "which consists of rules of jurisprudence, is a law which governs without existing. The learned may exercise their ingenuity in guessing at it; but the unlearned citizen can never know it."¹²

The first general statement by a natural law philosopher of the principles which should underlie a code of international law was made by the Abbé Grégoire, who introduced, on 7 June 1793, his *Declaration of the Rights of Nations* in the French Convention.¹³ The *Declaration* was a brief enumeration in twenty-one articles of general rights and principles and could be no more than a mere framework for a code. Like Bentham, Grégoire stated what he believed international law should be, and aimed at setting forth "the principles of eternal justice which ought to guide nations in their respective transactions."¹⁴ Pointing out the fact that much time had been wasted in prolonged debates upon diplomatic relations because the terms used were indefinite and the ideas vague,¹⁵ he asserted that the voluntary or secondary law of nations was an incoherent and bizarre assemblage of usages which ought to be submitted to a new examination and clarification.¹⁶ The *Declaration* was rejected because the members of the "Committee of Public Safety thought these principles proclaimed in the face of Europe would irritate the despots with whom it was proposed to enter into negotiations."¹⁷

During the disturbances which followed the revolution in France no serious efforts looking toward the codification of international law were made. In 1815 Lorenzo Colline, a Florentine lawyer, sent to the leading powers represented at the Congress of Vienna copies of a draft code, *La Codice de gius delle gente in terra et in mare*, but it apparently received no consideration.¹⁸ James Mill in 1825 suggested an international code and a tribunal. "It is perfectly evident," he said, "that nations will be much more likely to conform to the principles of intercourse which are best for all, if they can have an accurate set of rules to go by, than if they have not. In the first place, there is less room for possible pretexts; and last of all, the appro-

¹¹ Nys, "The Codification of International Law," *Am. J.*, 5, 880.

¹² *Essay on the Promulgation of Laws*, Works, I, 157.

¹³ *L'Ancien Moniteur*, XXIV: 294-296.

¹⁴ *Ibid.*, 295.

¹⁵ *Ibid.*, 296.

¹⁶ *Ibid.*, 295.

¹⁷ Quoted from Grégoire's *Memoirs*, Nys, *Am. J. I. L.*, 5, 893.

¹⁸ Nys, "The Codification of International Law," *Am. J. I. L.*, 5, 881.

bation and disapprobation of the world is sure to act with tenfold concentration, where a precise rule is broken, familiar to all the civilized world and venerated by it.”¹⁹ A Spanish jurist, Don Esteban Ferrater, published in 1846 his *Código de derecho internacional*,²⁰ and in 1851 appeared Auguste Paroldo’s *Saggio di codificazione del diritto internazionale*.²¹ Codification of international law by jurists representing all nations was suggested by Katchenowsky, a Russian, in two papers read in 1858 and 1862 before the Juridical Society of London.²² The first real attempt to show the possibility of a code of international law was made in 1861 when Alphonso de Domin-Petrucchevez, the Austrian jurist, published his *Précis d’une code du droit international*.²³ In it he attempted to state not only the customary law but also the common principles which were to be found in the great body of contemporary treaties.²⁴

The efforts for the codification of international law which were made by the various peace societies formed in the United States during the first part of the last century are highly worthy of notice. In the memorials addressed by these societies to the legislature of Massachusetts and to Congress, and in the writings of William Ladd and Elihu Burritt, there is shown a clear realization of the difficulties of codification and a moderate and thoughtful statement of its anticipated benefits. In a petition of the New York Peace Society addressed to Congress in 1838 it is said that the “present law of nations could be thrown into the form of a code, without a single alteration; and that code, duly recognized by the nations, would be binding. Here would be a definite and certain rule; and even this would be a desideratum. But your memorialists would have, *if practicable*, some improvement made in its principles. They would at least have an *attempt* made to improve them. They would have suitable delegates from the various nations *convene*, and discuss and investigate principles, and *see* if they could not agree on some improvements; and if they could not do this, then let them explicitly state the principles on which they might agree, and this would form a definite code.”²⁵ Elihu Burritt, in an address before the International Peace Congress held at Brussels in 1848, said that in asking for a “fixed code of international law, we do not necessarily ask for any serious innovation upon the established usages and acknowledged principles of nations. We do not directly ask that what is now called unconstitutionally the law of nations should be modified by a single material alteration. We do not propose to set aside the system of maxims, opinions,

¹⁹ *Ibid.*, 882.

²⁰ *Ibid.*, 883.

²¹ *Ibid.*, 885.

²² *Ibid.*, 886.

²³ Oppenheim, *International Law*, I. 38.

²⁴ Garner, *Recent Developments in International Law*, 711.

²⁵ Ladd, *An Essay on a Congress of Nations*, Appendix, 152.

and precedents which Grotius and his successors or commentators have produced for the regulation of international society, or to weaken the homage which the world has accorded to that system. But if it is to continue to be the only recognized base of international negotiation, treaties, intercourse, and society; if it is to be accepted, in the coming ages of civilization, a universal common law among nations, then we do insist that it should not only retain the spontaneous and traditionary homage accorded to it by the different governments of the civilized world, but that it shall also acquire the authority which the suffrage of nations can only give it through the solemn forms of legislation."²⁶ In his *Essay on a Congress of Nations* William Ladd recommended the compilation of a code with the unanimous consent of all the nations represented at an international conference.²⁷ The House of Representatives of Massachusetts in 1838 passed a resolution, which was approved by the Senate and the Governor, stating its belief that "the institution of a Congress of Nations for the purpose of framing a code of international law, and establishing a high court of arbitration for the settlement of controversies between nations is a scheme worthy of the careful attention and consideration of all enlightened governments."²⁸ In making an unfavourable report upon the memorial of the New York Peace Society to Congress Mr. Legare, Chairman of the Committee of Foreign Affairs, asserted that "international law is a body of jurisprudence which is, and of necessity must be, exclusively the growth of opinion."²⁹

A work which was to have a great influence upon the subsequent history of codification was accomplished by Francis Lieber in 1863 when he published, at the request of President Lincoln, his *Instructions for the Government of the Armies of the United States in the Field*, which were issued by the War Department as General Orders 100.³⁰ Bluntschli, the celebrated Swiss-German jurist, translated the instructions into German, and upon the request of Lieber undertook to prepare a code of international law which was published in 1868 as *Das Moderne Völkerrecht der civilisirten Staaten als Rechtsbuch dargestellt*.³¹ His purpose was "to formulate clearly the actual ideas of the civilized world."³²

David Dudley Field, the American jurist and advocate of the codification of municipal law, published in 1872 his *Draft Outlines of an International Code*, consisting of nine hundred and eighty-two articles with explanatory notes.³³ Although Field aimed for the most part at stating clearly the

²⁶ "A Congress of Nations," *Old South Leaflets*, 442.

²⁷ 9-10, 97.

²⁸ Ladd, *Essay on a Congress of Nations*, Appendix 128.

²⁹ *Ibid.*, 140.

³⁰ Scott, "The Gradual and Progressive Codification of International Law," *Am. J. I. L.*, 21, 420-421.

³¹ Translated into French as *Le Droit International Codifié*, 2d edition, 1874.

³² *Le Droit International Codifié*, Intro., 6.

³³ A second edition was published in 1876 as *Outlines of an International Code*.

existing practice of nations, he did not hesitate to introduce amendments where the law was lacking or in need of improvement.³⁴ In the preface to the first edition he says: "The scheme embraced not only a codification of existing rules, but the suggestion of such modifications and improvements as the more matured civilization of the present age would seem to require. The purpose was to bring together whatever was good in the present body of public law, to leave out what seemed obsolete, unprofitable or hurtful, and then to add such new provisions as seemed most desirable."

In 1890 Pasquale Fiore, the Italian jurist, published his *Il Diritto Internazionale Codificato e la sua Sanzione giuridica*, the most elaborate of the projects thus far proposed.³⁵ In it he aimed "to set forth international law, taking into account the existing law and such rules as may be capable of becoming law." He intended "systematically to formulate the body of rules which consist in part of those accepted by states in general treaties, in their legislation or in diplomatic documents, and in part of those rules found either in the popular convictions which have manifested themselves in our time, or in the common thought of scholars and the most learned jurists. As a natural consequence the rules systematically assembled in the present volume represent in part present international law, and in part the international law of the future."³⁶

Dupplessix published in 1906 a code of public international law and a scheme for international organization—*La Loi des Nations. Projet d'Institution d'une Autorité nationale, législative, administrative, judiciaire. Projet de Code de Droit international public*. The project for a code was confined to the existing law of nations.³⁷

In 1910 Jerome Internoscia, a Canadian lawyer, published a *New Code of International Law*, an elaborate project of 5657 articles printed in English, French and Italian. The character of work is indicated by the author's statement in the introduction that "two-thirds of this code contain what is found in books on international law published during the last two or three generations. The rest, while it is not to be found in such books, is yet not altogether new to modern minds; in fact it is something felt by almost every heart beating in this twentieth century, something which, if expressed in one phrase, might be said to be a longing for universal peace."³⁸ Again, he says: "I do not pretend to have entirely created the most important body of laws that has ever been compiled, laws that could rule the whole world without conflict; I have merely collected the produc-

³⁴ Garner incorrectly states that Field's *Outlines* was "limited to a statement of the rules of international law that were actually accepted and regarded as being in force." *Recent Developments in International Law*, 713.

³⁵ Translated by E. M. Borchard as *International Law Codified*, 1918.

³⁶ *International Law Codified*, Intro., 78.

³⁷ Garner, *Recent Developments in International Law*, 715.

³⁸ *New Code of International Law*, Intro., VII.

tions of many minds of many centuries; I have analyzed and scrutinized their ideas and have endeavoured to separate from that infinity of intellectual production, all that was base or tainted with envy and jealousy and selfishness, and I have left what I have believed to be approximately perfect."³⁹

In 1911 appeared the *Projecto deCodigo de Diritto Internacional Publico*, by Eptacio Pessoa, the Brazilian jurist, and Klein's *Codified Manual of International Public and Private Law*.

B. Non-Governmental Organizations

Among the non-governmental organizations devoted to the codification of international law, suffice it to outline briefly the work of the Institute of International Law, the International Law Association, the American Society of International Law, and the Harvard Research in International Law.

(a) *The Institute of International Law*

On 10 September 1873, the Institute of International Law was founded at Ghent. The purposes of the body are set forth in the first article of its statute:⁴⁰

1. To assist the progress of international law, in endeavouring to become the organ of the juridical conscience of the civilized world;
2. To formulate the general principles of the science, as well as the rules which are derived from them, and to propagate the knowledge of them;
3. To give its co-operation to every serious attempt at gradual and progressive codification of international law;
4. To endeavour to obtain the official adoption of the principles which shall have been recognized as being in harmony with the needs of modern society.

The Institute has prepared draft projects upon many important subjects of international law. In 1880 a *Draft Code of Laws of War on Land* was prepared by the Institute and it may be noted that this code facilitated and influenced the work of the Hague Conferences of 1899 and 1907. A brief survey of the Institute's activities in the past few years shows that it has adopted a number of drafts on public and private international law, notably: *Declaration of the International Rights of Man*; *Extension of Compulsory Arbitration*;⁴¹ and *Juridical Nature of the Advisory Opinions of the Permanent Court of International Justice—their Value and Significance in International Law*.⁴²

³⁹ *Ibid.*

⁴⁰ *Annuaire de l'institut de droit international*, I.

⁴¹ *Ibid.*, 1929, p. 298.

⁴² *Ibid.*, 1937, pp. 268-278.

(b) *The International Law Association*

The International Association for the Reform and Codification of the Law of Nations, which has been known since 1895 as the International Law Association, was also founded in 1873. The International Law Association has devoted a great part of its annual meetings to discussing codification and the pacific settlement of international disputes. The main object of the Association has been to provide a code of international law as a preliminary step in the substitution of international arbitration for war.

The Association has prepared draft projects on important subjects of international law. The *Rules on Bills of Exchange*, drafted in 1908 by the Association, have served as a basis of discussion for the Hague Conference of 1910. In 1921, at the Hague, the *Regulations for the Treatment of Prisoners of War* was drafted and has since been adopted in substance by the British Government. At Vienna in 1926 important drafts were adopted by the Association on the *Statutes of a Proposed International Penal Court* and on rules relating to the *Protection of Minorities*.⁴³

In September, 1934, the conference of the International Law Association at Budapest adopted the so-called Budapest Articles of Interpretation of the Pact of Paris. This Interpretation recognized that the Pact "is a multiparite law-making treaty whereby each of the high contracting parties makes binding agreements with each other and all the other high contracting parties."⁴⁴ It recognized *inter alia* that a signatory state cannot by denunciation or non-observance of the Pact release itself from its obligations thereunder. Article 4 of the Budapest Interpretation stated that a signatory state by threatening a resort to armed force or aiding a violating state itself violates the Pact.

(c) *The American Society of International Law*

At its Third Annual Meeting, 24 April 1909, the American Society of International Law appointed a committee for the codification of the principles of justice which should govern the intercourse of nations in time of peace.⁴⁵ Valuable reports were submitted by the committee to the Society, including the outline of a Code of International Law, suggested by Professor Paul S. Reinsch.⁴⁶ The First World War, however, interrupted the progress of the efforts at codification on the part of the Society.

In 1925 the American Society created a Committee for the Progressive Codification of International Law in response to an invitation from the Secretary-General of the League of Nations requesting the coöperation of

⁴³ International Law Association, *Report of the Thirty-Eighth Conference, 1934*, p. XII.

⁴⁴ *Ibid.*, 1934, p. 4.

⁴⁵ American Society of International Law, *Proceedings, 1909*, p. 263.

⁴⁶ *Ibid.*, 1911, pp. 257-338.

the Society with the Committee of Experts appointed by the League to study the question of progressive codification of international law. The Committee has consistently endeavoured to follow the progress made in official and unofficial efforts directed toward the codification of international law and has coöperated effectively with the Harvard Research in International Law.

(d) *Harvard Research in International Law*

In April, 1926, the Committee of Experts of the League of Nations drew up a list of eighteen topics as suitable for consideration. These points were considered by a new committee set up by the Assembly of the League of Nations, the Preparatory Committee, which submitted "schedules of points drawn up by the Preparatory Committee for submission to the Governments." After the announcement was made by the League of Nations that a codification conference would soon be held, it was felt by a group of lawyers and scholars in the United States that a scientific study of the topics proposed might be properly instituted in the United States. Due to the initiative of the faculty of the Harvard Law School, the Research in International Law was organized under the directorship of Professor Manley O. Hudson, and a grant of funds was secured for the purpose of conducting such an investigation. The Research had for its purpose the preparation of draft conventions on the subjects which had been placed on the agenda of the First Conference for the Codification of International Law called to meet at The Hague in 1930. The first phase of the work of the Research in International Law was devoted to, and drafts were published on, the following subjects:

1. *Nationality*, with Richard Flournoy as Reporter;
2. *Responsibility of States for Injuries to Foreigners*, with Edwin M. Borchard as Reporter; and
3. *Territorial Waters*, with George Grafton Wilson as Reporter.

In 1930 the Research published a *Collection of Nationality Laws of Various Countries* edited by Richard W. Flournoy and Manley O. Hudson. In 1930 the Harvard Research published drafts on the following four subjects:

1. *Diplomatic Privileges and Immunities*, with Jesse S. Reeves as Reporter;
2. *Legal Position and Functions of Consuls*, with Quincy Wright as Reporter;
3. *Competence of Courts in regard to Foreign States*, with Philip C. Jessup as Reporter; and
4. *Piracy*, with Joseph W. Bingham as Reporter.

In 1932 a volume was published containing a *Collection of Piracy Laws of Various Countries*, edited by Stanley Morrison, and the following year the Research published a *Collection of the Diplomatic and Consular Laws and Regulations of Various Countries*, edited by A. H. Feller and Manley O. Hudson. In 1932 the scope of the Harvard Research was extended to include the following subjects:

1. *Extradition*, with Charles K. Burdick as Reporter;
2. *Jurisdiction with respect to Crime*, with Edwin D. Dickinson as Reporter; and
3. *Law of Treaties*, with James W. Garner as Reporter.

Finally in 1939 the Harvard Research published three drafts covering the following subjects:⁴⁷

1. *Judicial Assistance*, with James Grafton Rogers and A. H. Feller as Reporters;
2. *Neutrality*, with Philip C. Jessup as Reporter; and
3. *Rights and Duties of States in Case of Aggression*, with Philip C. Jessup as Reporter.

In addition, a *Collection of Neutrality Laws, Regulations and Treaties of Various Countries*, edited by Francis Deák and Philip C. Jessup, was published.

The individual studies on the topics selected are in the form of draft conventions, the articles of which are followed by extensive comments consisting of quotations from the opinions of writers, decisions of courts, national legislations, and practice. Practically all of these drafts also include extensive appendices giving extracts from, and an analysis of, municipal laws, treaties, and other official documents.

⁴⁷ The draft convention and the *Recognition of States* was in the course of preparation, but circumstances prevented its completion.

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