

THE PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

One of the most interesting developments in the field of Jurisprudence is the demand in many quarters for the codification of International Law. Various opinions have been expressed as to the advisability of this, and many differences revealed as to what is meant by the term "codification." Rather surprisingly, this demand has become most vocal in the United States of America, a Common Law country, and the Pan-American Union have even had a draft Code prepared by the American Institute of International Law.

The wisdom and practicability of codification depends, of course, on what one means by the term. But much harm can be done by supposing that the mere writing down in code form of certain rules and regulations is going to introduce an international millennium, and utterly abolish all possibility of war.

There are at least three ideas abroad as to the meaning of codification. One regards it as a creation of a new body of law (similar to the "Continental Domestic Codes") for the regulation of every form of international difference or dispute. Another conception is that it is the mere setting down in black and white of the existing practice, customary or otherwise, at present governing the relations of States. Still a third looks upon it as a combination of one and two, whereby certain new ideas are embodied along with the codification of existing practice.

In connection with all this it is interesting to consider the work being done by the Committee of Jurists, appointed by the League of Nations, to deal with the progressive codification of international law.

As yet it is too early to say which of the three possible lines they are taking, but from the terms of the Assembly resolution under which they function, and from the general nature of the procedure they have adopted in carrying out these instructions, it would seem that they intend to consider codification in the third sense outlined above. That is, they will make a thorough study of all the existing rules governing the international relations of States, delete those that appear to have become obsolete, add others that appear essential; and out of the whole, try and formulate either a number of general principles, or a more detailed code that seems likely to be

accepted by a majority of States, and submits these to a Conference of the League for its consideration and eventual approval.

The Committee of Jurists itself was appointed by the Council in December, 1924, acting on a resolution passed by the Fifth Assembly which reads as follows:—

“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 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; and 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 civilisation and the principle legal systems of the world. This Committee, after eventually consulting the most authoritative organisations 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 realisable at the present moment; and

“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.”¹

The Committee is composed of the following jurists, representing all the various important legal systems of the world, as well as many of the important countries (with the usual exception—Russia):—

M. Hammarskjöld (Sweden)	M. Fromageot (France)
Professor Diena (Italy)	Professor Brierly (Great Britain)
M. Guerrero (Salvador)	M. Loder (Netherlands)
M. de Magalhaes (Portugal)	M. Mastny (Czecho-Slovakia)

¹ League of Nations, Official Journal, June, 1925, p. 842.

M. Matsuda (Japan)	M. Rundstein (Poland)
Professor Schücking (Germany)	M. Suarez (Argentina)
Mr. Wickersham (United States)	M. de Visscher (Belgium)
M. Wang-Chung-Hui (China)	M. Botella (Spain)
Sir Muhamed Rafique (India).	

Their first meeting was held in Geneva, April 1-8, 1925, under the chairmanship of M. Hammarskjöld. After a preliminary discussion as to the nature of the work entrusted to them, the Committee drew up a list of subjects that they considered ripe for investigation, with a view to the ultimate embodiment of the results of this investigation in conventions that might be agreed to by the Members of the League.

These subjects were roughly the following: Nationality; Territorial waters; Diplomatic privileges and immunities; Legal status of ships owned by States and used for trade; Extradition and criminal jurisdiction of States with regard to crimes perpetrated outside their territories; Responsibility of States for damages suffered within their territories by foreigners; Procedure of international conferences and the conclusion and drafting of treaties; Suppression of piracy; Exploitation of the products of the sea; The conception in International Law of the application of the principle of "prescription" and of "limitation" (Statute of Limitations).

Various small sub-committees were appointed to deal with each of the above subjects, to consult with various organisations interested in the development of international law, and to submit a report at the next meeting of the Committee. The organisations consulted were the American Institute of International Law; the American Society of International Law; l'Institut de droit international; The International Law Association; La Société de législation comparée et union juridique internationale; l'Institut ibérique de droit comparé; and Le comité maritime international.

The Committee held its second meeting in Geneva, January 12 to 29, 1926, with M. Hammarskjöld, Governor of Upsala, again in the chair. Several of the members were unavoidably absent, notably M. Botella, Sir Muhamed Rafique and M. de Visscher, but most of the subjects on the original list that had been submitted for investigation were reported upon and thoroughly discussed.

Unfortunately, the Committee met in strict privacy (why is not just clear), and so it has been impossible to get a complete report of the session, although the results arrived at will, no doubt, be made available. However, it is regrettable that these meetings, which are

of great interest to all students of international law, are not open to the public.

In general, the Committee concluded that the regulation of most of the questions studied was quite feasible by means of international agreement, and is submitting them, with the reports of the sub-committees, to the various Governments.

Two or three questions were dealt with rather differently, however.

The question of the legal status of ships owned by States and used for trade is to be dealt with by the Committee in a special report to the Council. The question of "prescription or "limitation" was postponed till the next meeting of the Committee, owing to the absence of the rapporteur of the sub-committee dealing with that subject, M. de Visscher.

The questions relating to extradition, and the criminal jurisdiction of States with regard to crimes perpetrated outside their territories were not considered ready for immediate solution by international agreement, and so were left over.

The Committee drew up a new list of subjects for their investigation and consideration at its next meeting. These are:

1. Communication in criminal matters of judicial and other documents; commissions to take evidence.
2. Legal status of private, non-profit making international associations and private international foundations;
3. Conflict of laws in the matter of domicile;
4. Legal status and functions of Consuls;
5. Effect of the "most favoured nations" clause;
6. Classification of diplomatic agents;
7. Competence of courts in regard to foreign states;
8. Nationality of commercial correspondence;
9. Recognition of legal personality of foreign commercial corporations;
10. Conflicts of laws concerning contracts for the sale of goods.

In addition to their other work, the Committee also examined the draft statute of the International Institute for the Unification of Private Law, which the Italian Government proposes to set up in Rome, under the partial control of the League, and reported favourably upon it.

From the Assembly Resolution and from the information available as to the procedure followed at its two first meetings, it seems that the purpose of the Committee is to proceed slowly and pro-

gressively, to make a thorough investigation of a limited number of topics that it considers ready for regulation, to submit the results of its investigation to all governments, whether members of the League or no, to examine the replies of all Governments to its suggestions and to submit a final report to the Council, and eventually the Assembly, based on these investigations and on the replies of the Governments. Then, in due course, a conference, or series of conferences is envisaged which would embody these "results" in a draft convention capable of ratification by all Governments. This procedure is also suggested in the report of Dr. José Leon Suarez on the exploitation of the products of the sea. He suggested that the Governments be invited to a conference to deal with the protection and preservation of natural maritime resources, notably that of the fauna inhabiting the waters adjacent to the Antarctic. Something of this kind already exists, notably in the protection of the seal fisheries in the Behring Sea (Pribiloff Islands) in which several Governments are interested, but much still remains to be done.

It is interesting to note how closely this procedure follows that adopted by the International Labour Organisation in the preparation and final "enactment" of its International Conventions. First a thorough investigation by a trained group of experts is undertaken. Then the results of these investigations are submitted to the various Governments, and after a careful study of their replies, the whole matter (investigation and replies of Governments) is dealt with by a Conference of Governments, employers, employees, and experts. Finally, a Convention is drafted and approved by the Conference and is submitted to the Governments for their ratification.

There are differences, it is true, particularly in the composition of the Committee of International Jurists and that of the experts of the International Labour Office (who are, in the main, permanent officials), but in general there is a remarkable similarity in the stages of procedure followed in the Codification of International Law and of international labour legislation.

NORMAN MACKENZIE.

Geneva.
