

## GENERAL INTRODUCTION

### Prospect for an International Conference on Codification of International Law

On September 22, 1924, the Fifth Assembly of the League of Nations adopted the following resolution:<sup>1</sup>

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;

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 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 the 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.

In execution of this resolution, the Council of the League of Nations created the "Committee of Experts for the Progressive Codification of International Law."<sup>2</sup> This Committee of Experts met at Geneva, April 1-8, 1925, selected eleven subjects for investigation, and appointed a sub-committee to conduct an inquiry concerning each subject. It met for a second time, January 12-29, 1926, and after a study of the reports of its sub-committees, decided to send questionnaires concerning seven subjects to the various governments. A third session was held, March 22-April 2, 1927, at which the replies to these questionnaires were studied, and as a result of this study, the Committee of Experts reported to the Council of the League of

<sup>1</sup> Records of the Fifth Assembly, Plenary Meetings, p. 125.

<sup>2</sup> The Council set up the committee by a decision taken on December 11, 1924. League of Nations Official Journal, February, 1925, p. 143.

Nations that seven subjects were "ripe for codification," within the meaning of that term in the Assembly resolution of September 22, 1924. The Council transmitted this report to the Assembly of the League of Nations, by its resolution of June 13, 1927.<sup>3</sup>

On September 27, 1927, the Eighth Assembly of the League of Nations adopted the following resolution:<sup>4</sup>

The Assembly:

Having considered the documents transmitted to it by the Council in conformity with its resolution of June 13th, 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 organisation 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 scien-

<sup>3</sup> League of Nations Official Journal, July, 1927, p. 757.

<sup>4</sup> League of Nations Official Journal, Special Supplement No. 53, p. 9.

tific 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 organisation 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; . . .

On September 28, 1927, the Council of the League of Nations created a Preparatory Committee for the International Codification Conference. The members of this committee are: Professor Basdevant (France), M. Carlos Castro-Ruiz (Chile), M. François (Netherlands), Sir Cecil Hurst (Great Britain), and M. Pilotti (Italy). The committee met in Geneva February 6-15, 1928, and prepared a "Schedule of Points" which was circulated to various governments, with a request for information on the points listed.<sup>5</sup> A second meeting of this committee was held in Geneva from January 28 to February 17, 1929.

#### Organization of the Research

In view of this initiative and the prospect which it created, in November, 1927, the Faculty of the Harvard Law School undertook to organize a Research in International Law for the purpose of preparing a draft of an international convention on each of the three subjects selected by the Eighth Assembly to be dealt with at the First Conference on the Codification of International Law. Funds for the Research were granted by the Commonwealth Fund, on the recommendation of its Legal Research Committee, and were supplemented by a grant from Mr. John D. Rockefeller, Jr. The method followed by the American Law Institute, which is very similar to that of the *Institut de Droit International*, was adopted for the Research, and forty-four scholars and jurists were invited to become members of an Advisory Committee under the direction of which the Research was to be conducted.

<sup>5</sup> League of Nations Document, C. 44. M. 21. 1928.

The invitation to serve on the Advisory Committee of the Research was accepted by the following:

- CHANDLER P. ANDERSON, Washington, D. C.  
 Commissioner of the United States, German-American Mixed Claims Commission. Formerly Counsellor of the Department of State; formerly United States Arbitrator, British-American Pecuniary Claims Arbitration, United States-Norway Shipping Claims Arbitration.
- JOSEPH W. BINGHAM, Stanford University, California.  
 Professor of Law, Stanford University, California.
- EDWIN M. BORCHARD, New Haven, Connecticut.  
 Professor of Law, Yale University; Associate member, *Institut de Droit International*.
- CLEMENT L. BOUVÉ, Washington, D. C.  
 Agent of the United States, General and Special Claims Commissions, United States and Mexico. Formerly Commissioner of the United States, Mixed Commission, United States and Mexico.
- PHILIP MARSHALL BROWN, Princeton, New Jersey.  
 Professor of International Law, Princeton University; Associate member, *Institut de Droit International*.
- CHARLES K. BURDICK, Ithaca, New York.  
 Dean of the Law School, Cornell University.
- CHARLES C. BURLINGHAM, New York City.  
 Member of the New York Bar.
- BENJAMIN N. CARDOZO, Albany, New York.  
 Chief Judge of the Court of Appeals of New York.
- JOSEPH P. CHAMBERLAIN, New York City.  
 Professor of Public Law, Columbia University.
- J. REUBEN CLARK, JR., Washington, D. C.  
 Under-Secretary of State.
- FREDERIC R. COUDERT, New York City.  
 Member of the New York Bar; Associate member, *Institut de Droit International*.
- WILLIAM C. DENNIS, Washington, D. C.  
 Professor of International Law, American University. Formerly Agent of the United States in various international arbitrations; formerly legal adviser to the Chinese Government at Peking.
- EDWIN D. DICKINSON, Ann Arbor, Michigan.  
 Professor of Law, University of Michigan.
- CHARLES G. FENWICK, Bryn Mawr, Pennsylvania.  
 Professor of Political Science, Bryn Mawr College.
- GEORGE A. FINCH, Washington, D. C.  
 Managing Editor, American Journal of International Law; Assistant Director of the Division of International Law, Carnegie Endowment for International Peace.

- RICHARD W. FLOURNOY, JR.**, Washington, D. C.  
Assistant to the Solicitor, Department of State, Professor of International Law, National University.
- RAYMOND B. FOSDICK**, New York City.  
Member of the New York Bar. Formerly Under-Secretary-General of the League of Nations.
- HENRY S. FRASER**, Syracuse, New York.  
Member of the New York Bar.
- JAMES W. GARNER**, Urbana, Illinois.  
Professor of Political Science, University of Illinois. Formerly president of the American Political Science Association.
- GREEN H. HACKWORTH**, Washington, D. C.  
Solicitor for the Department of State.
- LEARNED HAND**, New York City.  
United States Circuit Judge, second circuit.
- AMOS S. HERSHEY**, Bloomington, Indiana.  
Professor of Political Science and International Law, University of Indiana.
- FRANK E. HINCKLEY**, Berkeley, California.  
Lecturer on International Law, School of Jurisprudence, University of California. Formerly United States District Attorney at Shanghai.
- CHARLES E. HUGHES**, New York City.  
Judge of the Permanent Court of International Justice; member of the Permanent Court of Arbitration; President of the American Society of International Law. Formerly Associate Justice of the Supreme Court of the United States; formerly Secretary of State.
- CHARLES CHENEY HYDE**, New York City.  
Hamilton Fish Professor of International Law and Diplomacy, Columbia University. Formerly Solicitor for the Department of State.
- PHILIP C. JESSUP**, New York City.  
Assistant Professor of International Law, Columbia University.
- ARTHUR K. KUHN**, New York City.  
Member of the New York Bar.
- WILLIAM DRAPER LEWIS**, Philadelphia, Pennsylvania.  
Director of the American Law Institute. Formerly professor of law, University of Pennsylvania.
- DAVID HUNTER MILLER**, New York City.  
Member of the New York Bar. Formerly legal adviser to the American Commission to Negotiate Peace at Paris.
- ROLAND S. MORRIS**, Philadelphia, Pennsylvania.  
Professor of International Law, University of Pennsylvania. Formerly United States Ambassador to Japan.

- EDWIN B. PARKER, Washington, D. C.  
 Umpire, Mixed Claims Commission, United States and Germany;  
 Commissioner, Tripartite Claims Commission, United States,  
 Austria and Hungary.
- PITMAN B. POTTER, Madison, Wisconsin.  
 Professor of Political Science, University of Wisconsin.
- JACKSON H. RALSTON, Palo Alto, California.  
 Formerly umpire, Italy-Venezuela Claims Commission.
- JESSE S. REEVES, Ann Arbor, Michigan.  
 Professor of Political Science, University of Michigan. Formerly  
 President of the American Political Science Association.
- ELIHU ROOT, New York City.  
 Formerly Secretary of State; Honorary member *Institut de Droit  
 International*; member of the Permanent Court of Arbitration.  
 Formerly President of the American Society of International Law.
- JAMES BROWN SCOTT, Washington, D. C.  
 President of the *Institut de Droit International*; President of the  
 American Institute of International Law; Director of the Division  
 of International Law, Carnegie Endowment for International  
 Peace. Formerly Solicitor for the Department of State; Legal  
 Adviser to the American Commission to Negotiate Peace at Paris.
- DANIEL C. STANWOOD, Brunswick, Maine.  
 Professor of International Law, Bowdoin College.
- ELLERY C. STOWELL, Washington, D. C.  
 Professor of International Law, American University.
- THOMAS RAEBURN WHITE, Philadelphia, Pennsylvania.  
 Member of the Pennsylvania Bar.
- GEORGE W. WICKERSHAM, New York City.  
 President of the American Law Institute; member of the League of  
 Nations Committee of Experts for the Progressive Codification of  
 International Law. Formerly Attorney General of the United  
 States.
- GEORGE GRAFTON WILSON, Cambridge, Massachusetts.  
 Professor of International Law at Harvard University; Editor-in-  
 Chief of the American Journal of International Law; member  
*Institut de Droit International*.
- JOHN M. WOOLSEY, New York City.  
 Member of the New York Bar.
- LESTER H. WOOLSEY, Washington, D. C.  
 Member of the District of Columbia Bar. Formerly Solicitor for  
 the Department of State.
- QUINCY WRIGHT, Chicago, Illinois.  
 Professor of Political Science, University of Chicago.

The Advisory Committee has held meetings as follows:

Cambridge: January 7, 1928.  
 Washington: April 28, 1928.  
 Cambridge: October 5, 6, 1928.  
 Cambridge: February 22, 23, 24, 1929.

The Carnegie Endowment for International Peace generously gave its hospitality for the second meeting of the Advisory Committee.

The following have served as the Executive Committee of the Research:

JOSEPH H. BEALE, Cambridge, Massachusetts.  
 Royall Professor of Law, Harvard University.  
 MANLEY O. HUDSON, Cambridge, Massachusetts.  
 Bemis Professor of International Law, Harvard University.  
 CHARLES CHENEY HYDE, New York City.  
 Hamilton Fish Professor of International Law and Diplomacy,  
 Columbia University.  
 ELDON R. JAMES, Cambridge, Massachusetts.  
 Professor of Law, Harvard University; member of the Permanent  
 Court of Arbitration.  
 FRANCIS B. SAYRE, Cambridge, Massachusetts.  
 Professor of Law, Harvard University; member of the Permanent  
 Court of Arbitration.  
 JAMES BROWN SCOTT, Washington, D. C.  
 President of the *Institut de Droit International*.  
 GEORGE W. WICKERSHAM, New York City.  
 President of the American Law Institute.

With the approval of the Advisory Committee, one Reporter was named for each of the three subjects, and each of the Reporters has been assisted by special advisers nominated by the Reporters and the Director.

The Reporter on Nationality, Mr. Richard W. Flounoy, Jr., has been assisted by the following advisers:

CLEMENT L. BOUVÉ, Washington  
 JAMES W. GARNER, University of Illinois  
 HENRY B. HAZARD, Washington  
 MANLEY O. HUDSON, Harvard University  
 CHARLES CHENEY HYDE, Columbia University  
 PHILIP C. JESSUP, Columbia University  
 ARTHUR K. KUHN, New York City  
 JESSE S. REEVES, University of Michigan  
 GEORGE W. WICKERSHAM, New York  
 LESTER H. WOOLSEY, Washington.

The Reporter on Responsibility of States, Professor Edwin M. Borchard, Yale University, has been assisted by the following advisers:

PHILIP MARSHALL BROWN, Princeton University  
 CHARLES K. BURDICK, Cornell Law School  
 WILLIAM C. DENNIS, Washington  
 CLYDE EAGLETON, New York University  
 MANLEY O. HUDSON, Harvard University  
 CHARLES E. HUGHES, New York  
 CHARLES CHENEY HYDE, Columbia University  
 ELLERY C. STOWELL, American University  
 GEORGE W. WICKERSHAM, New York  
 QUINCY WRIGHT, University of Chicago.

The Reporter on Territorial Waters, Professor George Grafton Wilson, Harvard University, has been assisted by the following advisers:

PHILIP MARSHALL BROWN, Princeton University  
 CHARLES C. BURLINGHAM, New York City  
 EDWIN D. DICKINSON, University of Michigan  
 HENRY S. FRASER, Syracuse, New York  
 MANLEY O. HUDSON, Harvard University  
 PHILIP C. JESSUP, Columbia University  
 PITMAN B. POTTER, University of Wisconsin  
 JESSE S. REEVES, University of Michigan  
 GEORGE W. WICKERSHAM, New York City  
 JOHN M. WOOLSEY, New York City.

Meetings of the Reporters and advisers have been held as follows:

*Nationality:*

New York: March 16, 17, 1928.  
 New York: May 11, 12, 1928.  
 New York: June 3, 4, 1928.  
 New York: October 26, 27, 28, 1928.  
 New York: January 11, 12, 13, 1929.

*Responsibility of States:*

New York: February 17, 1928.  
 New York: April 13, 14, 1928.  
 New York: June 1, 2, 1928.  
 New York: December 7, 8, 9, 1928.  
 New York: December 22, 23, 1928.  
 New York: January 25, 26, 27, 1929.

*Territorial Waters:*

New York: February 24, 25, 1928.  
 New York: April 6, 7, 1928.  
 New York: May 26, 27, 1928.  
 New York: November 10, 11, 12, 1928.  
 New York: December 15, 16, 17, 1928.  
 Cambridge: January 4, 5, 1929.



The Bar Association of the City of New York generously gave its hospitality for these meetings, and all of the New York meetings of Reporters and advisers were held at the House of the Association, 42 West 44th Street, New York City. At each meeting of the Reporters and advisers, drafts were discussed and modified.

#### Responsibility for the Drafts

The preparation of the drafts has been undertaken with the object of placing before the representatives of the various governments at the First Conference on Codification of International Law the collective views of a group of Americans specially interested in the development of international law. The drafts represent the result of the work of American jurists and scholars after thorough consultation, and as such it is hoped that they may have interest in connection with the work of the Conference. The work of the Research has been conducted with reference to the "Schedule of Points" drawn up by the Preparatory Committee on February 15, 1928, but without reference to the replies of various governments to the "Schedule of Points," which were not available to the Reporters.

The publication of the drafts prepared by the Research in International Law has been recommended by the Advisory Committee of the Research and authorized by the Faculty of the Harvard Law School. The proposals contained in the drafts, and the statements in the comments, are not to be taken to represent the individual views of any of the persons who have taken part either in the preparation of the drafts or in the authorization of their publication. The Advisory Committee assumes a collective responsibility for its recommendation, and the Harvard Law Faculty assumes a similar responsibility for its authorization.

The Research is wholly unofficial, and the drafts must not be taken as in any way representing the views of the Government of the United States.

MANLEY O. HUDSON,  
*Director.*

April 1, 1929.



PART I  
THE LAW OF NATIONALITY



*Reporter*

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