

is nevertheless very lively and happens to be espoused by the one unmistakable Super-Power. No wonder the United Nations has had difficulty in dealing with its more serious problems, or, more simply, no wonder the United Nations Members have difficulty in agreeing and coöperating!

But again the conclusion seems to be imposed by the circumstances: there is nothing to do but struggle on along the lines laid down. Any attempt to remedy the situation by conferring on the United Nations drastic powers of legislation and enforcement is totally excluded as a possibility and is undesirable to boot. Any establishment of a powerful organization among states willing to accept it, allowing the dissenting sisters to go their own way, would be disastrous, and probably unacceptable to the United States itself. Any simple abandonment of efforts at organized international coöperation—the United Nations—is unthinkable in absence of something better. It may be possible to improve the United Nations bit by bit and gradually. To repeat, things are certainly in better shape under the United Nations in October, 1949, than they were under the League in December, 1923. Devotees of international law and order, of international peace and progress, have no cause for exaggerated satisfaction on the fourth birthday of the United Nations; they would by no means be justified in giving way to despair.

PITMAN B. POTTER

FIRST SESSION OF THE INTERNATIONAL LAW COMMISSION

The International Law Commission was created by General Assembly Resolution 174 (II), of November 21, 1947. Its fifteen members were elected on November 3, 1948, through the same procedure employed for election of judges of the International Court of Justice, as follows:¹

Ricardo J. Alfaro	(Panama)
Gilberto Amado	(Brazil)
James Leslie Brierly	(United Kingdom)
Roberto Cordova	(Mexico)
J. P. A. François	(Netherlands)
Shuhsi Hsu	(China)
Manley O. Hudson	(United States)
Faris Bey el-Khoury	(Syria)
Vladimir M. Koretsky	(U.S.S.R.)
Sir Benegal Narsing Rau	(India)
A. E. F. Sandström	(Sweden)
Georges Scelle	(France)
Jean Spiropoulos	(Greece)
Jesús M. Yepes	(Colombia)
Jaroslav Zourek	(Czechoslovakia)

¹ The nationality of each member is here given for convenience; members of the International Law Commission are not chosen by, nor do they take instructions from, their respective states.

The first session met at Lake Success, April 12–June 9, 1949, with all members present except Mr. el-Khoury and Mr. Zourek. Judge Manley O. Hudson was elected Chairman; Professor Koretsky and Sir Benegal Rau became Vice Chairmen; Mr. Amado was chosen as *Rapporteur*. Officers are, according to United Nations procedure, to hold office for one year. Dr. Yuen-li Liang, Director of the Division for the Development and Codification of International Law of the Secretariat, serves as Secretary for the Commission.

A provisional agenda, as well as several documents,² had been prepared by the Secretariat. Upon this agenda, the first item was "Planning for the codification of international law: survey of international law with a view to selecting topics for codification." The next three items were topics referred to the Commission by the General Assembly: rights and duties of states; Nürnberg principles and draft code of offenses against the peace and security of mankind; an international judicial organ for genocide and other crimes. Two other items dealt with ways and means of making customary law more available, and with coöperation with other bodies.

While it was recognized that the topics referred by the General Assembly should be taken up promptly, the Commission thought that its first task was the first agenda item. In the discussion as to the powers and functions of the Commission, Professor Koretsky argued that, since the Commission is a subsidiary body of the General Assembly, any tasks which the former body undertakes must be approved by the latter; consequently, topics selected for codification must be approved by the General Assembly before the Commission could begin work on those topics. This argument was based upon Article 18 of the Statute of the Commission, which says that "when the Commission considers that the codification of a particular topic is necessary or desirable, it shall submit its recommendations to the General Assembly."³ Others maintained that this phrase meant that recommendations were to be made to the General Assembly only after the work of codification had been done, and that it was not necessary to consult the Assembly as to whether each topic was acceptable. The latter view prevailed, by a vote of ten to three.

Discussion then proceeded upon the basis of the "Survey of International Law in relation to the Work of Codification of the International Law Commission," one of the Secretariat documents.⁴ The Secretariat was asked to draw from Parts I and II of the Survey an outline of discussion as to the character of the work and the methods to be followed; and from Part II a list of topics from which selection could be made for codifica-

² The preparatory documents issued by the Secretariat were described in this *JOURNAL*, Vol. 43 (1949), pp. 325–328.

³ The Statute of the Commission is U. N. Doc. A/CN.4/4.

⁴ U. N. Doc. A/CN.4/1/Rev.1. See book review below, p. 829.

tion. It was agreed that it was undesirable at this stage to undertake a complete code of international law, and that it was preferable to select a few individual topics upon which the Commission could proceed to work. The Commission therefore has no general plan of work laid down for the future. Likewise, no decision was taken as to more precise definition of the words "codification" and "development," and the approach to its work remains open and flexible.

From the list of topics prepared,⁵ a provisional list of fourteen was accepted, it being understood that additions or deletions might be made later. The majority of the Commission opposed consideration of the laws of war since it might imply that the United Nations was not able to prevent a war. Professor Scelle thought that the law of war should now be written in terms of an international police force and in this sense that it should be one of the first preoccupations of the Commission.⁶ From the fourteen above mentioned, three topics were selected for first study, and *rapporteurs* chosen for each, as follows: The Law of Treaties, James L. Brierly; Arbitral Procedure, Georges Scelle; Régime of the High Seas, J. P. A. François.

The topics referred from the General Assembly were taken up next, and one may read between the lines a feeling of unhappiness on the part of some members because of the necessity for dealing separately with these subjects. The Draft Declaration on the Rights and Duties of States which had earlier been presented by Panama to the General Assembly⁷ was the basis of a discussion extending over many meetings. The Panama draft was reduced from twenty-four to fourteen articles, after much debate over such matters as the definition of "State," and the right of a state to exist or to have its existence recognized by other states. The draft adopted was one of general principles, the application of which would have to be worked out in more detail. The key provision, from the viewpoint of the Commission, is Article 14, which says:

Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law.

The Draft Declaration on Rights and Duties of States as a whole was adopted by a vote of eleven to two;⁸ and, since it was regarded as a special assignment from the General Assembly and not subject to the usual pro-

⁵ U. N. Doc. A/CN.4/W.3; also found in the Report of the Commission, A/CN.4/13.

⁶ U. N. Doc. A/CN.4/SR.6, p. 12.

⁷ U. N. Doc. A/285; Assembly Resolution 178 (II). The debate is found in U. N. Docs. A/CN.4/SR/6-16, and 19-25.

⁸ The Declaration as adopted may be found in the Report of the Commission, U. N. Doc. A/CN.4/13. At p. 18 of this document are summarized the reasons given by Mr. Hudson and Mr. Koretsky for their negative votes.

cedure, it was submitted to that body for decision as to whether it should be transmitted to Member States.

The third item of the agenda, drawn from Assembly Resolution 177 (II), was in two parts. The Commission was instructed to "formulate the principles of international law recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal." Did these principles constitute principles of international law? And should the Commission attempt to formulate the general principles of law which underlie the Nuremberg Tribunal and Charter? The majority felt that it was not necessary for the Commission to answer either of these questions. A subcommittee consisting of Mr. François, Mr. Sandström and Mr. Spiropoulos prepared a draft formulation of the Nürnberg principles.⁹ At this point, however, it was observed that these principles were so closely related to the other task stated in the Assembly resolution (draft code of offenses against the peace and security of mankind) that they should be considered together. Mr. Spiropoulos was therefore invited to serve as *rapporteur*, and to report to the second session of the Commission both a formulation of the Nürnberg principles and a draft code of offenses. Similarly, with regard to the fourth item on the agenda, "the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes," Mr. Alfaro and Mr. Sandström were asked to prepare a report for the second session of the Commission.

The Secretariat had prepared a volume upon the fifth item of the agenda, based upon Article 24 of the Statute of the Commission, entitled "Ways and Means for making the Evidence of Customary International Law More Readily Available."¹⁰ Discussion centered around collection and publication of documents concerning state practice and of decisions of national and international courts and, perhaps, of texts of national legislation. The Chairman agreed to present a paper on this subject at the next session of the Commission.

Finally, the matter of coöperation with national and international bodies was briefly considered. Article 26 of the Statute of the Commission, it was decided, had in mind two separate categories, one of which was organizations which the Commission might wish to consult, the other being organizations to which the documents might be supplied. The Secretariat agreed to continue to build up these lists so that national organizations of all Members would be included in them.¹¹

⁹ See U. N. Docs. A/CN.4/W.6 and A/CN.4/W.12. The Secretariat had prepared a document (A/CN.4/5) entitled "The Charter and Judgment of the Nürnberg Tribunal: History and Analysis."

¹⁰ U. N. Doc. A/CN.4/6. See book review below, p. 834.

¹¹ See U. N. Doc. A/CN.4/8.

It was agreed that the next meeting of the International Law Commission would be held in Geneva at the end of May, 1950.

The first session of the International Law Commission was a hard-working body, which, as its Report says, covered the items of its agenda. That it was able to do this much was largely due to the driving power—sometimes regarded as exerted too heavily—of its Chairman. Some of these items, or parts of them, were carried over to the next session, but this was inevitable. It would have been impossible, for example, to deal with the various topics of international criminal law and jurisdiction on which preparatory work had not been done (except for the Nürnberg principles).

It can be argued that insufficient study was given to Article 18 of the Statute, calling for systematic planning for codification of the whole field of international law, and that the three subjects for work were somewhat arbitrarily chosen. But it must be observed that the Commission is not established in such a way as to enable it to make a wide and continuous study. It is not a body remaining in continuous session with a Secretariat staff at hand to assist in its work. Its members take time out from their regular occupations, depriving themselves of an income otherwise obtainable, granted no salary, and receiving an expense account per day less than American lawyers of equal caliber charge for one hour of work. Its *rappor-teurs* are widely scattered, and must prepare working papers, each of which is a potential code of international law, with no assistance further than that which can be given at a distance by an overworked Secretariat. Consideration must be given to these papers in annual meetings which cannot well last longer than two months each, since this is all the time its members can spare from the business of making a livelihood. Under the circumstances, the achievements of the first session of the International Law Commission, though not remarkable, were decidedly commendable.

CLYDE EAGLETON

REBUS SIC STANTIBUS BEFORE THE SECURITY COUNCIL: THE ANGLO-EGYPTIAN QUESTION

On July 8, 1947, the Prime Minister of Egypt, Nokrashy Pasha, alleging, *inter alia*, that the presence of United Kingdom troops in Egypt "without its free consent" constituted "an infringement of the fundamental principle of sovereign equality, and is therefore contrary to the letter and spirit of the United Nations Charter" and that the Anglo-Egyptian Treaty of August 26, 1936,¹ "cannot bind Egypt any longer, having outlived its purposes, besides being inconsistent with the Charter," brought the "dispute" before the United Nations Security Council under Articles 35 and 37 of the Charter and requested the Security Council

to direct:

(a) the total and immediate evacuation of British troops from Egypt including the Sudan;

¹ 173 L.N.T.S. 401; this JOURNAL, Supp., Vol. 31 (1937), p. 77.