EDITORIAL COMMENT

COÖRDINATION BETWEEN THE LEAGUE AND THE PAN AMERICAN UNION IN REGARD TO CODIFICATION

The question of coördination between the work of codification as undertaken in the Old World and in the New has attained renewed importance since the Habana Conference of 1928. The fact that some seventeen nations of the American Continent are members both of the League of Nations and of the Pan American Union leads to the natural inquiry as to whether the work of codification which is being undertaken under the auspices of both these groups simultaneously, is competitive. We have the high authority of Mr. Elihu Root that they are not intended to be so. "These two independent proceedings," said he in 1925, "are not exclusive or competitive. They are contributory to a common end."[1] The expressed purposes of each have been somewhat differently expressed, however. The Pan American movement is declared as being "The codification of public and private international law as a means of consolidating and developing the good relations which should exist between them [the American Republics]." The preamble of the resolution of the Assembly bases the Geneva movement upon "the valuable services which the League of Nations can render towards rapidly meeting the legislative needs of international relations."

It is somewhat surprising to many persons interested in the advancement of international law that since the resolution adopted by the Assembly on September 22, 1924, for the appointment of a committee of experts for the progressive codification of international law, no steps have been taken to coördinate any part of the work with the efforts in codification being undertaken officially under the auspices of the Pan American Union. It is true that at first the work of the Geneva committee consisted only of a survey of the entire field in order to select subjects ripe for international agreement. But great progress has been made in the past four years. The results of the intensive research by able *rapporteurs* as to the recognized substantive law in many fields has now been published. Questionnaires to the various governments based upon these researches have been submitted and, in part, answered. The League has determined to submit the formulation of conventions relating to three topics to a diplomatic conference to convene some time during the year 1929 at The Hague. These steps have brought the work of codification to a new phase. Some *démarches* would now seem desirable to bring the Geneva movement into some harmonious relationship, if not actual coöperation, with the Pan American movement. This is sug-

[1] This JOURNAL, Vol. 19, p. 684.

gested, very indirectly perhaps, in the letter addressed to the Secretary General of the League by Dr. Hammarskjöld, Chairman of the Committee of Experts, on April 2, 1927:

> Lastly, it would seem—to judge from the initiative which is being taken in other quarters—that enthusiasm for codification is finding fresh channels which may prove more fruitful. It is rather for the regular organs of the League than for the Committee to decide what attitude should be adopted in this situation.

There is, in fact, some precedent for taking account of codification undertaken in other quarters. In the minutes of the session of the Council of June 13, 1927, it appears that the Committee of Experts had informed the Council that there were two subjects which it had placed on the list of questions deserving of examination and regarding which questionnaires would have been sent to the governments but for the fact that the Netherlands Government had placed them on the agenda of the Conference on Private International Law to be held at The Hague.

The roots of the movement toward codification in the New World are to be sought as far back as the Washington Conference of 1889. The meeting of the Commission of Jurists at Rio de Janeiro in 1912 may, however, be regarded as the beginning of the present movement which culminated in the drafts of the American Institute of International Law, modified and adopted by the Commission of Jurists at Rio de Janeiro in 1927. At the Habana Conference of 1928, eleven conventions were adopted,[2] with particular reservations and abstentions, and of these eleven, at least nine may be classified within the field of the general codification of international law.

An examination of the results reached at Habana with the reports of the Geneva Committee shows that the two movements have not always proceeded along parallel lines. If one can judge from the reports of the subcommittees and the tentative drafts submitted by the *rapporteurs*, it would seem that the trend is toward international legislation upon specific topics, limited as to scope, and dealing only with questions upon which world-wide agreement is within the possibilities. The Pan American method seems to incline toward a declaration of principles covering an entire subject. This, of course, is not always the case. The conventions dealing with the status of aliens, the right of asylum and with maritime neutrality, establish rules of conduct which may well be regarded as legislation applicable between the signatory states rather than as codification of international law intended to be world-wide in application. In the last named convention, for example, action is contemplated, under certain circumstances, specifically by the Pan American Union. The convention relating to treaties is fairly comprehensive and adopts the method of codification by declarations of general principles. This method is, of course, followed also in the draft relating to the fundamental bases of international law, final consideration of which was

[2] Printed in Supplement to this JOURNAL, pp. 124–166.

postponed at the Habana Conference. On the other hand, the scope of the convention relating to diplomatic agents and that relating to consuls may be considered as specific legislation, although the treatment of these two topics is broader in scope under the American conventions than anything which has yet been suggested by the Geneva committee.

So far as concerns the convention on private international law, to which the United States took a position of abstention at Habana, it may be remarked that the subject matter is not necessarily intended to be world-wide in scope. International law is one, but the rules which nations see fit to adopt in order to eliminate conflicts between domestic legislations may apply equally as well between two or three as between a larger group. It is true that the ideal of justice tends towards uniformity, not of municipal law, but in the application of law; yet even this ideal must remain an approximation for a long time to come. Many of the fields of law coming within the penumbra of the activities of the Geneva committee are definitely within the sphere of private international law. So that we are compelled to remark that the states which are members of both the League and the Pan American Union may find it awkward to have one rule of conflict applicable to one group of nations and a different rule to another. This danger was illustrated most graphically at the Habana Conference. During the discussion of the convention on aviation, a subject which involves both public and private international law, Sr. Espil of Argentina pointed out that there were three aviation conventions, the Paris convention of 1919, the Madrid convention of 1926, and the Pan American convention adopted at the Habana Conference. The conventions contain conflicting rules, yet a number of Latin American States had signed all three.

The report of M. Zaleski, approved by the Council on June 13, 1927, recognizes that the actual terms of the Assembly's resolution furnished no justification for thinking that it considered

> that any single initiative, or the work of any single body of experts, could be expected to result in the formulation of a corpus of written law governing the more important relations between the members of the international family. On the contrary, the resolution recognizes that the establishment of positive rules of law in international relations must be a gradual process, to which contribution is made from every side as the need is felt and the possibility of action presents itself.

In order, however, that the contributions shall be consistent and harmonious and not transform a theoretical uniformity into a practical diversity of law, an initiative of coördination ought to be taken before such diversity advances to a crystallized stage. Perhaps the relations between these two main movements in respect of codification might be summed up by saying that what is greatly to be desired is by no means a declaration of war but a *modus vivendi*.

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