was to provide and maintain housing accommodations, to furnish necessary implements, etc., for the proper farming of the land, but it was specifically stated that the employe, technically called a cropper, should have "no interest or estate whatsoever in the land described herein." Dooling, District Judge, before whom the petition for injunction was heard, held that the contract was not one of lease, as it passed no interest in land. Numerous cases to this effect were cited, notably the case of Caswell vs. Districh, 15 Wend. (N. Y.) 379, which "seems to run through the books as a leading one", in which it was stated that:

> Where a farm is let for a year upon shares, the landlord looks to his interest in the crops as his security, and thereby is enabled to accommodate tenants who otherwise would not be trusted for the rent.

The learned Judge quoted the opinions of text-books to the same effect. The motion for the injunction was, therefore, granted.

These cases seem to express the views held by federal courts on the Pacific Coast as to the rights acquired under the Treaty with Japan, and as to the rights which the States can exercise without violating the provisions of that treaty. Inasmuch as the questions involved in these cases may ultimately be passed upon by the Supreme Court, it seems at present advisable only to call attention to the question without indulging in further comment or criticism.

JAMES BROWN SCOTT.

PRACTICAL CODIFICATION OF INTERNATIONAL LAW

"The lack of precision," says Oppenheim, "which is natural to the majority of the rules of the Law of Nations on account of its slow and gradual growth has created a movement for its codification."

But what is meant by the term codification! Its Dictionary definition as applied to the laws of an individual country is "the reducing of its unwritten or case law to statutory form." This in the matter of international law is impossible, because no authority is empowered to enact statutes to cover it. What then in international law is the equivalent of statutory enactment? Clearly it is the general acceptance by States under treaty. Such a process consists of two parts; the scientific determination of the law as it is and should be, and the public universal acceptance of that law as it shall be, as something by which each State consents to be bound. The first process is academic, scholarly; the second process is political.

Take, as an illustration, the processes by which the Geneva Convention came into existence. First appeared the impassioned propaganda of M. Dunant describing the unnecessary suffering of the battlefield in *Un Souvenir de Solferino*, and pleading for extra-military aid to the wounded. Then came a private conference at Geneva, called by a local society, which studied the whole subject and argued for the neutralization of extra-military agencies

in war. But the movement was useless without governmental sanction, for it was based upon a suggested violation of neutrality and of the laws of war. To make its suggestions operative, a third step was necessary, the acceptance in treaty form, by duly appointed delegates from the principal Powers, of the principles laid down by the humanitarians and the scholars. Out of this sprang the Red Cross system. It was the codification of a minute portion of the laws of war.

Take another example. The laws of war on land were tolerably uniform in most particulars at the outbreak of our Civil War. To govern the Northern armies in the field, Professor Lieber was employed to draw up in codified form a set of rules adopted by the War Department. It was binding upon no other country or army. But it served as a precedent and example to be worked over by the two Brussels conferences, by the Oxford meeting of the Institute of International Law, by countless publicists, alone or in groups, until in process of time, at The Hague in 1899 and 1907, rules to regulate war on land were adopted in treaty form by the principal Powers. This was genuine codification covering an important part of international law. The sharp distinction which is emphasized, is between the labors of a hundred publicists, on the one hand, and the official action of forty-five States on the other. Academic studies by individuals and by societies are a preliminary, but they cannot make a rule that is binding. Each State must do that for itself.

It is not too much to say that this real codification has thus made some progress. But it is noteworthy that its progress has been in a highly contentious field. The London Conference of 1909 covering naval warfare failed because the strongest naval Power would not ratify its innovations.

Why has the international world attacked the hardest problems first? Why has it put the capstone of the arch at the base? May not the reason be that it has never attempted the codification of its laws as a definite and separate problem; that it has rather tried to protect itself from threatened evils in war, without thought of the larger problem.

At all events it would seem that the easier way to codify is to attack the less contentious subjects first. There are plenty of topics in the field of international law which are fairly well agreed upon, which in any case are not of a character to stir up painful differences. One could approach the rights and duties of diplomatic agents, for instance, without trepidation; the laws regulating consuls; the law regulating the status of aliens and their property; the acquisition of territory; territorial waters; jurisdiction on the open sea and in the air; extradition, copyrights, and so on. Many of the topics included in neutrality are not unduly controversial. Land warfare rules are already covered but need revision. Naval war rules could wait.

The suggestion then is that, consciously and progressively, states shall attempt codification of the rules and usages which govern their relations. That they do this piecemeal, step by step, this season a little, next season a little

more, attacking the easier problems first, putting conclusions into treaty shape and ratifying them, building up a body of law which shall be avowedly a Code of International Law. It might take years to become complete. But so far as it went, it would be the law interpreted and enforced by the Permanent Court of International Justice. Such interpretation of the law in any court adds to it certainty, clarity and authority. Where experience shows that change is desirable either in the law or in its phraseology, it could be worked over in conference and its treaty expression amended. Provision should be made for such a process, for it is one of the objections to a code of law that it tends to become hide-bound, that it lacks flexibility.

If the suggested method of codification got well under way on the line of least resistance, it appears to the writer probable that it would grow easier as the international mind became habituated to the process. The way to begin is for one State, the United States for instance, to invite other States to join it in a conference, the delegates to be jurists of repute, to discuss the desirability of a code of international laws and usages to govern their relations, and if agreed to refer to a subcommittee or committees one or more topics, these committees to report their codified rules back to the main body of delegates. Upon the adoption by the Conference of any chapter of rules, the remaining step would be ratification by each State concerned.

Here comes in a vexing question. Suppose codes covering the greater part of the law to have been drafted and ratified by some, but not all, of the nations taking part in the movement. Shall they govern those who accept them in their relations with those who do not? Such is not the present usage. This was Germany's excuse for many of her violations of the rules of land warfare. Would it be reasonable to allow a subject of the Soviet Government in Russia to enjoy property rights in France when there was no reciprocity? Probably not. Recourse must be had to time and the force of public opinion to bring all nations into line.

In the suggestion thus outlined, it has been assumed that the codification of international law is desirable. This is not the universal judgment. Objectors refer to "differences of language and of technical juridical terms." They assert that "codification would cut off the organic growth and future development of international law" through usage into custom. They argue that a court fosters hair-splitting tendencies, an interpretation which emphasizes the letter rather than the spirit. Codification, while removing some controversies, may induce others. The first objection is applicable to many treaties. Provision for periodical revision would cure the second. A court properly made up should not lean to technicalities overmuch. If it developed thus, its personnel would be changed. If the political world is not ripe for an honest attempt to make certain the laws which govern its relations now, it never will be.

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