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# Codification of International Law at Geneva

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# Codification of International Law at Geneva*

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Public International Law, according to Professor Fauchille, is the body of rules which determine the respective rights and duties of States in their mutual relations. Its roots are to be found in the nature of man, in the instincts and needs of sociability and prefectability; its creative cause resides in the international community of organized states.[1] These rules have their origins in custom and usage. From time to time they are given precision by conventions or treaties between two or more States. From time to time also decisions of arbitral tribunals, or of the high courts of justice of different nations, formulate rules which, although limited in their authoritative application to the particular controversies out of which the judgments may have arisen, or to the country of the particular tribunal, are accepted by other nations and gradually become recognized as part of the universal system of international law. The Statute of the Permanent Court of International Justice directs that tribunal, to apply in its decisions:

(1) International conventions whether general or particular, establishing rules expressly recognized in the contesting States;

(2) International custom, as evidence of a general practice accepted as law;

(3) The general principles of law recognized by civilized nations;

(4) Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

For a century past, individuals and associations have urged that this great body of jurisprudence be made more precise by means of

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[1]Fauchille, Traite de Droit International Public V. I, pp. 4. 6.

codification—that is, a logical, orderly statement of the various principles applicable to the conduct of nations under different circumstances. From time to time, scholars have produced more or less complete outlines or projects for such Codes. Very recently the American Institute of International Law has prepared for the consideration of the International Commission of Jurists engaged in the Codification of what is termed "American" International Law, a proposed Code of Thirty Articles embracing a variety of subjects. But the successful Codification of International Law depends upon the agreement of governments. Differences of language, systems of jurisprudence, history and tradition, must all be reckoned with. The wisest men in the world may write the most perfect codes of law—from the academic standpoint. They will remain counsels of perfection, unless the practical men who control the foreign policies of nations can be persuaded to accept them and the treaty making authority to adopt them as controlling. It was such considerations as these that led the Assembly of the League of Nations to determine to approach this subject cautiously, first feeling out the way, as it were, by consulting the various governments in advance regarding different subjects suggested as ripe for legislative precision, before calling an official conference of representatives of the States to undertake the work of definite formulation. The Commission of lawyers from sixteen different nations appointed in December 1924 by the Council of the League of Nations for this preliminary work recently has had a three weeks session in Geneva, and it is concerning the work of that session that I have been asked to address you.

Before describing this work, it will perhaps not be amiss to recall briefly the mandate under which the Commission is working. By resolution adopted by the Assembly of the League of Nations in September, 1924, the Council of the League was instructed to convene a committee of experts, not merely possessing individually the required qualifications, but also as a body representing the main forms of civilization and the principal legal systems of the world, who, after having first consulted 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 prepare a provisional list of the subjects of international law, the regulation of which by international agreement would seem to be most desirable and realizable at the present moment, and after communicating this list to the governments of states, whether members of the League or not, for their opinion, shall examine the replies received, and report to

the Council of the League of Nations on the questions which are sufficiently ripe and the procedure which might be followed, with a view to preparing eventually for conferences for their solution.

The first meeting of the Commission appointed pursuant to this resolution was held at Geneva in April, 1925. A list of the most authoritative organizations which have devoted themselves to the study of international law was agreed upon and communications addressed to them requesting suggestions which might be of aid to the Commission. In order not to be wholly dependent upon the voluntary assistance which might come from such sources, the Commission itself adopted a provisional list of subjects which it committed to various sub-committees of its body, for mature consideration and report at the next session.

In selecting this list, consideration at first was given to the question whether or not the Commission should deal with the laws of war. It was observed that the Assembly of the League had itself decided on the exclusion of that branch of law when it rejected the explicit recommendation made by the Committee of Jurists which had constituted the Permanent Court of International Justice. One of the members of the Commission expressed the conviction that great injury had been done to the science of international law in the past by the excessive preoccupation of jurists and international conferences with the laws of war, and he believed that the best way of restoring and developing international law was to proceed on the assumption that it was the purpose of international law to determine the normal relations between nations in time of peace and friendship. War should be regarded only as a catastrophe. It was not a change from one sort of law to another, but a breakdown and the introduction of anarchy. These views prevailed with the Commission, which determined in the first instance to confine its attention to the public international law of peace. This conclusion was fortified by the further consideration that the laws of war, already, to a certain extent at least, had been the subject of official initiative taken by particular states, notably at the Naval Limitation Conference held in Washington in the autumn of 1923, while the question of neutrality, the inseparable consequence of war, so far at least as concerned States members of the League of Nations, would be profoundly affected by the provisions of the Locarno treaties, as the Covenant of the League itself in effect had established rules concerning neutrality for the States members of the League, which were not binding upon non-member States. The Commission therefore determined to address itself in the first instance to the public international law of peace.

The method of submitting questions to the study of sub-committees was carefully formulated. The sub-committees respectively were charged to examine:

(a) Whether there are problems arising out of the conflict of laws regarding nationality, the solution of which by means of conventions could be envisaged without encountering political obstacles, and if so, what those problems are and what solutions should be given to them.

(b) Whether there are problems connected with the law of the Territorial sea, considered in its various aspects, which might find their solution by way of conventions, and if so, what these problems are and what solutions should be given to them. In particular the sub-committee should inquire into the rights of jurisdiction of a state over foreign commercial ships within its territorial waters or within its ports.

(c) What are the questions concerning diplomatic privileges and immunities which would be suitable for regulation by way of conventions and what provisions on this subject should be recommended.

(d) What is the legal status of government ships employed in commerce, with a view to the solution by way of conventions of the problems raised thereby.

(e) Whether there are problems connected with extradition which it would be desirable to regulate by way of general conventions, and if so, what those problems are and what solutions should be given to them.

(f) Whether, and in what cases, a State may be liable for injury caused on its territory to the person or property of foreigners; and whether, and if so, in what terms, it would be possible to contemplate the conclusion of an international convention providing for the ascertainment of the facts which may involve liability on the part of a State and forbidding measures of coercion before the means of pacific settlement have been exhausted.

(g) To examine the possibility of formulating rules to be recommended for the procedure of international conferences, and the conclusion and drafting of treaties, and what such rules should be.

(h) To examine whether and to what extent it would be possible to establish, by an international convention, appropriate provisions to secure the suppression of piracy.

(i) To examine whether and to what extent it would be possible to draw up treaty provisions concerning the application in international law of the conception of prescription, whether as establishing or as barring rights, and what such provisions should be.

(j) To inquire with reference *inter alia*, to the treaties dealing with

the subject, whether it is possible to establish, by way of international agreement, rules regarding the exploitation of the products of the sea.

(k) To examine whether it be possible to lay down by way of conventions, principles governing the criminal competence of states in regard to offences committed outside their territories and if so, what these principles should be.

In addition, a sub-committee was appointed to prepare and report for the consideration of the Commission at a future meeting a list of problems falling within the field of private international law, which might be considered.

During the recess of eight months which followed, reports were prepared by the various sub-committees respectively charged with the study of the above mentioned topics, which were submitted to the full commission for its consideration at the meeting held in Geneva from January 12th to 29th, 1926. As had been apprehended, no material aid was received from any of "the most authoritative organizations which have devoted themselves to the study of international law." This was anticipated because many of these organizations have annual or even bi-annual meetings only, and no machinery by which to deal with such problems as were presented by the request of the Commission, in the interval between their regular meetings. The International Law Association sent a communication calling attention to the subjects dealt with at its annual meeting held in Stockholm in August, 1925. The Commission also had before it the Project of Conventions above referred to, prepared, at the request of the governing board of the Pan American Union, by the American Institute of International Law, for the consideration of the International Commission of Jurists to be convened at Rio de Janeiro during the next year. As had been substantially agreed upon in the discussions at the April, 1925, session, the reports of the sub-committees were framed for the purpose of demonstrating why a particular subject should be recommended by the Commission as one which it was desirable and practicable to embody in international convention. Each report contains a general discussion of the subject in its various aspects, and in many instances embodies definite propositions in form suitable for expression in a code or international agreement. In general, the method of formulation of the Institute of International Law, in the resolutions which it has from time to time adopted, was followed.[2] In some instances, the reports represented the unani-

[2]See resolutions of the Institute of International Law dealing with the law of nations, published by Carnegie Endowment for International Peace, Oxford University Press, 1916.

mous views of the sub-committee. In a number of other cases, owing to the impossibility of members of the Committee meeting to discuss the reports, before the date of the Geneva conference, there were two or more separate reports. In some cases, there was considerable divergence of views between the different members of a Committee. The reports were submitted in French and in English. Most of them were originally written in French, and the French text was used as the basis of discussion in the Commission. Discussion of these reports by the full Commission developed strikingly the difficulties incident to an attempt at international agreement upon fundamental propositions of the character involved. Without attempting a description of all the reports, some of which were quite voluminous, it may be of interest to briefly refer to two or three of them.

The first report considered by the Commission was that of the Committee charged with the consideration of questions relating to diplomatic privileges and immunities, of which Mr. Diena (Italian) was *Rapporteur* and Mr. Mastny (Czechoslovakia) a member. This problem the rapporteur had subdivided into two questions: (1) what are the existing diplomatic prerogatives, and (2) to what persons do they apply. Regarding the first point, he said that

> "according to ancient and familiar doctrine, diplomatic agents should enjoy *ex-territorial* rights. The Institute of International Law recognizes this principle, for its draft contains a chapter several articles of which deal with this very question of the ex-territorial rights of diplomatic agents. The American draft decides the question in exactly the opposite sense, Article 23 mentioning ex-territoriality only to state most explicitly that 'the private residence of the agent and that of the legation shall not enjoy the so-called privilege of ex-territoriality' "

Mr. Mastny, in his separate report, while not objecting to the use of this term, nevertheless, expressed his agreement with those jurists who hold that the fiction,

> "that certain persons or things are situated outside the state"

is a fallacious figure of speech, in permanent contradiction to the fact that

> "these persons and these things cannot escape from the sovereignty of the state."

But nevertheless, he favored the retention, "though only as a metaphor," of the expression "ex-territoriality" which he said has existed for centuries, "*diplomatic ex-territoriality*" including no more than certain exemptions from the authority and power of the state enjoyed by the diplomatic residence. Other members of the Commission objected to the use of the term "ex-territoriality," contending

that there was no need to resort to such a fiction to justify prerogatives conceded to diplomatic agents. This gave rise to a very broad discussion of the whole theory of diplomatic privilege. It was observed by some of the members that the foundation of those rights of immunity consisted in the necessity to permit the unimpeded exercise of the mission of the diplomatic representative, which involves a totally different conception from that of ex-territoriality, and it was urged that if the necessary means of the exercise of his mission by the diplomatic agent be recognized as the foundation of the privileges, the solution of the question would be greatly facilitated. The discussion involved consideration of the inviolability of the person and of the domicile of the diplomatic representative and of the archives of the legation, and it led to a consideration also of the extent of the inviolability: whether it embraced immunity from civil as well as from criminal proceedings; whether or not it extended to attachés not exercising strictly diplomatic functions; whether it included the *personnel* of the legation, including domestic servants; whether it included protection against liability for acts done in the exercise of the diplomatic functions of the representative, or only acts done in his private character; whether diplomatic privileges extended to the representative of a foreign state on his way from his own country to that to which he was accredited, but while passing through another country to which he was not accredited. The discussion of all those questions led to the conclusion that the subject was one which it was most desirable should be settled by international agreement, but that in order that an agreement should be reached upon the various propositions recommended by the *rapporteur*, with or without modifications, a much greater length of time would be required than was possible within the limits of the proposed session of the Commission. The Commission, therefore, recalling that its immediate task was not codification or exact formulation, but the determination of the desirability and realizability of international agreement concerning a particular subject, agreed that in general the Commission should not attempt by discussion so to mould the various reports and the propositions recommended by the *Rapporteurs* as to meet the views of even a majority of the Commission; but if, as a result of such discussion, the Commission should conclude that the subject treated of in the report was one which, in its opinion, should be made the object of international agreement, it should report that conclusion to the various governments. It was also determined that in order that the governments should have before them a statement of the reasons for the selection of the different

subjects recommended, the various reports of the Sub-Committees also should be transmitted for their consideration. The formula adopted for this purpose was to the effect that the Commission had decided to include the particular subject mentioned in the list required by the resolution of the Assembly to be communicated to the governments of states, and at the same time to communicate to the governments the reports of the sub-committee which had considered the matter, stating that

> "The nature of the general question and the particular questions which are recommended for consideration are clearly formulated in this report. The report contains statements bearing upon the question submitted and the particular solutions derived from the principles applicable thereto. The Committee considers that these questions indicate the questions to be dealt with for the purpose of regulating the matter by international agreement. It is understood that in submitting the present subject to the governments, the Committee does not pronounce either for or against the general principles emphasized in the report, or the particular solutions for particular problems which are suggested on the basis of those principles. At the present stage of its work it is not to be expected that the Committee will put forth conclusions of this nature. Its sole, or at least its principal, task at present is to direct attention to certain subjects of international law, the regulation of which by international agreements may be considered as desirable and realizable. In doing this the Committee should doubtless not confine itself to generalities, but ought to put forward the questions which it raises with sufficient detail to facilitate a decision as to the desirability and possibility of their solution. These details are to be found in the conclusions of the report of the rapporteur. In the same spirit, the Committee begs to refer to the report for the details and to submit to the governments the following question, viz. * * *"

Mr. Suarez, the Argentine member, presented to the Commission an extremely interesting report on the exploitation of the products of the sea. The "urgent necessity for international regulation of the biological wealth of the sea," said he, "is a new phenomenon to jurists, but is familiar to all those who are brought into contact with the creatures of the deep, either in the pursuit of gain or in the interests of science. *The marine species of use to man will become extinct unless their exploitation is subjected to international regulation.*"

The report presented some challenging facts concerning the rapid destruction of whales, seal, codfish, herring, and other ocean life, and emphasized the need of a uniform international policy of conservation of the valuable products of the sea. Reference was made to

the excellent results attained in the preservation of fur seal through agreements between the United States, Great Britain and Japan. Specifically, the report recommended, that the attention of the governments of all maritime states should be called to the urgent need of establishing regulations, by holding a Conference of experts in applied marine zoology, persons engaged in marine industry and jurists, for the purpose of adopting general and local principles for the organization of a more rational and uniform control of the exploitation of acquatic animals in all its aspects; creating reserved zones, closed periods and fixed ages under which such animals may not be killed, and the determination of the most effective method of supervising the execution of the measures adopted. The Commission concluded that while the subject of this report possibly fell outside of the matters which it was charged by the Assembly resolution to consider, nevertheless it did present an important subject which it was most desirable to make the subject of international agreement and therefore it resolved to send the report to the various governments, with a statement that the practical importance of this question appeared from its text and was emphasized by the conclusions reached in it; that the Committee, being of the opinion that the report indicates problems to be resolved by means of a conference of experts on the subjects involved, believed it to be its duty to emphasize the urgency of measures to be taken.

The report of the sub-committee on Extradition, of which Professor Brierly, of All Souls College, Oxford, was the *Rapporteur*, and Mr. de Visscher (Belgium) a member, stated that the Sub-Committee believed it to be unnecessary to consider what, if any, are the rules of customary international law in the matter of extradition. "Interesting doctrinal controversies exist on that question; but actually, extradition is carried out in modern times with rare exceptions, on conditions which are regulated by treaties. The great majority of such treaties are bilateral and their number is very large indeed. A multilateral extradition treaty, however, signed in 1923, exists between the States of Central America; and another between twelve American States, including the United States, was signed in 1902, *but has not been ratified.*"

The question now presented was, therefore, "in effect the desirability or otherwise of regulating by a general convention all or some of the matters at present regulated by separate extradition treaties." The report then considered the chief matters ordinarily dealt with in the existing treaties. From this, it appeared that important differences existed in regard to the extraditability of nationals of the State

of asylum. The majority of States decline to extradite their own nationals. There are also serious difficulties in constructing a single list of extradition crimes for insertion in a general convention. There exists also considerable difference in the procedure followed by States, in determining whether or not a demand for extradition should be acceded to. The difference turns on a divergency of view as to the respective functions of the judicial and the executive organs in passing on the demand. The conclusion reached was that while on a large number of questions connected with extradition, there already exists practical uniformity in the practice of states, and in certain others the differences which exist are not founded on any seriously divergent policies, and might be capable of reconciliation, yet there are still other questions upon which states appear to hold strongly opposed views, the existence of which renders a single comprehensive convention regulating the whole practice of extradition for all states unlikely of achievement. In conclusion, the *rapporteur* reminded the Committee that extradition between states calls for a certain degree of mutual confidence in each other's judicial institutions, and that a general convention on the subject is only possible on the assumption that each state is willing to accord equal treatment to every other. Mr. de Visscher submitted observations on Mr. Brierly's report, which while expressing in general his agreement with the report, reached the conclusion that the objections did not furnish sufficient reason for discouraging governments from undertaking measures of codification limited to those points upon which an agreement in the form of a convention seems to be possible and desirable.

These reports were very fully discussed by the Commission, and there was a general consensus of opinion that it would not be possible to secure a general agreement between states to extradite their respective citizens.

The subject was again considered in connection with the Report of the Sub-Committee charged with the consideration of the question of the jurisdiction of states to punish offenses committed outside of their territory, a discussion which brought into relief the fundamental differences in the traditional and established systems of jurisprudence of States respecting crime. Such radical differences appear especially between systems like the American and English, where crime is territorial, and systems such as that of Italy and to a certain extent, France, and other countries whose jurisprudence is founded upon the Roman Law, where crime is personal, and the citizen of the country is liable to punishment by the tribunals of his own country for offenses committed in other countries.

The Commission, while concluding that neither the subject of extradition nor of the competence of states to punish for offenses committed without their territories was likely to be agreed upon by different states by way of international convention, determined to transmit to the various governments the reports of their sub-committees evidencing the study given to those subjects, and why in the opinion of the Commission, desirable as it is that the rules upon these matters should be embodied in international agreement, it is not probable that such a result can be attained.

One of the most interesting subjects considered by the Commission was that with respect to the law of the territorial sea. The sub-committee charged with the consideration of this topic was composed of Professor Schücking (German) as *Rapporteur*, and Mr. de Magalhaes (Portuguese) and Mr. Wickersham. A report was prepared by Mr. Schücking, which was, however, received in America too late for consideration by the American member until after he reached Geneva. This subject was one with respect to which the American member had had the benefit of a very careful and thorough study made for him by Dean Burdick, with the assistance of Mr. Henry S. Fraser, both of the Cornell Law School, as well as of a considerable amount of material collected, classified and arranged for him by Mr. Henry M. Masterson, of Harvard University. These reports and this material were of great value to the American member in the discussions which he had in Geneva, first, with Professor Schücking, the *Rapporteur*, resulting in the voluntary modification by the latter of a number of the provisions of his report; and secondly, in discussions with Dr. de Magalhaes the other member of the Sub-Committee, over the observations which he had submitted concerning the report; and thirdly, in the discussions over all of these reports in the full Commission. The fundamental consideration presented by Dr. Schücking's report was as to the extent and nature of the territorial waters over which a littoral state has jurisdiction. In the first proposition formulated by the *Rapporteur* it was stated that

> "the state has an unlimited right of domination over the zone of the sea which bathes its coast, so long as, according to general international law, the rights of common usage by the international community or the particular rights of a state are not opposed to this right of domination. The right of domination includes rights in the area both of such sea, the soil and the subsoil under it."

This subject had been considered at great length by the Institute of International Law and finally was dealt with in a report adopted at the Paris Session of 1894, in the following language:

"The state has a right of sovereignty over the zone of the sea washing the coast, subject to the right of innocent passage reserved in Article 5. This zone bears the name of territorial sea. * * *

"Article 5. All ships without distinction have the right of innocent passage through the territorial sea, saving to belligerents the right of regulating such passage and for the purpose of defense of forbidding it to any ship and saving to neutrals the right of regulating the passage of ships of war of all nationalities through the said sea."

Dr. Schücking accepted Mr. Wickersham's suggestion that the provisions of his first Article be changed to conform to the formulation of the Institute, there appearing otherwise to be a conflict involved in the statement of the report itself, that is to say the right which was first stated to be "unlimited," was then declared to be subject to certain rights of common usage of the international community, all vessels without distinction enjoying the right of innocent passage through its territorial waters.

Considerable discussion arose between the different members of the Committee respecting the extent of the territorial waters. Professor Schücking in his report advocated the recognition of a zone six miles in width. Professor de Magalhaes recommended extending the zone to an unlimited length, great enough to embrace the exercise of all rights which the littoral state enjoys in the waters which bathe its coast. Mr. Schücking agreed to a limitation of the territorial sea, properly so-called, to three marine miles, in view of the treaties recently made between the United States and Great Britain, Germany and The Netherlands, in which those countries respectively declared their adherence to the principle of a three mile limit of the territorial waters. But for many years States have exercised certain rights for the protection of their national interests in the waters beyond the limits of the territorial sea, particularly for the enforcement of their laws relating to pilotage, sanitary matters, customs revenues and fisheries. For example, from an early date (1796) the statutes of the United States have authorized American revenue officers to board incoming foreigu vessels "within four leagues of the coast" and examine ships' papers, etc., and to punish master and ship for unloading or transhipping cargo within that distance. The exercise of this right has been recognized by other nations, or at least acquiesced in, and, as Professor Oppenheim says, this sufferance for a period of one hundred years or longer establishes a rule of international law. The right of continuous pursuit, that is, the right to pursue a foreign vessel which has committed an offense against the laws of a state in its territorial waters, and seize it on the high seas,

provided the pursuit begun in territorial waters is instant and continuous, also is well recognized. By the recent treaties made by the United States, for the prevention of the illegal introduction of liquor, with Great Britain, Germany, Denmark, The Netherlands, Italy, Sweden, etc., those countries expressly authorize the United States revenue authorities to board and examine, and if there be reasonable cause to believe the vessel has committed, or is attempting to commit an offense against such laws, to seize and take into port for adjudication according to its laws, vessels belonging to nationals of those countries respectively, within a distance from the United States coast measured by the distance from the American coast that such suspected vessel can traverse within one hour.

As above mentioned, in these treaties with Great Britain, Germany and The Netherlands, the parties declare it is to be "their firm intention to uphold the principle that three marine miles extending from the coastline outwards and measured from low water mark, constitute the proper limits of territorial waters;" while by those with Italy, Norway, Sweden, Denmark, and other powers, the parties "retain their rights and claims without prejudice by reason of this agreement to the extent of their territorial jurisdiction"—without undertaking to define what is that extent. But all of these states, irrespective of the agreed or claimed extent of the territorial sea, by these treaties respectively agree to raise no objection to the boarding of private vessels under their flag, outside the limits of territorial waters, by the authorities of the United States, for the purpose of ascertaining whether the vessel or those on board are endeavoring to import, or have imported, alcoholic beverages into the United States, its territories or possessions, in violation of the laws there in force, and if there is reasonable cause for belief that the vessel is violating such laws, to seize and take it into a port of the United States for adjudication in accordance with such laws, and that such rights of visitation, search and seizure may be exercised within a distance from the coast of the United States which may be traversed in one hour by the suspected vessel.

It was, therefore, contended in the Commission at Geneva that any proposed general convention on the subject of territorial waters should define those waters as of a definite width, three marine miles, or whatever distance might be agreed upon, but should also recognize that there were certain rights, resulting from custom which has ripened into law, or from convention, which the littoral state may exercise in the waters adjacent to its coast, beyond the limits of its territorial sea. This contention in principle was accepted by Dr.

Schücking, who, however, proposed a broader formulation of rights beyond the territorial sea than the American member could accept, namely, the following:

> "The zone of the territorial sea extends to three marine miles from low water mark along the whole extent of its coast. Beyond the zone of domination states may exercise administrative rights depending upon usage or essential need. Included in these are rights of jurisdiction necessary to their protection. Beyond the zone of domination rights of exclusive economic enjoyment cannot be exercised. Exclusive rights of fishery remain subject to existing usages and conventions."

This was objected to by the American member as entirely too broad. He maintained that the states would not be prepared to accept so broad an admission as that any State might exercise on the high seas beyond the limits of its territorial waters, "administrative rights depending upon usage *or* essential need." Any such doctrine would render superfluous such agreements as the liquor treaties above referred to.

During the discussion, certain of the proposals of the *Rapporteur* were withdrawn, others were modified and it was then determined that the modified Report, with the critiques of Messrs. de Magalhaes and Wickersham, be transmitted to the governments as showing why, in the opinion of the Commission, it was both desirable and presently realizable that the subject of territorial waters should be embodied in an international Agreement.

Replies from the various states to which the communications above referred to have been addressed are not expected before next autumn, and it is hardly practicable to consider and digest them in time for a meeting of the Commission before the latter part of this or possibly the beginning of next year. In order, however, that the time might not be wasted, the Commission adopted a further list of subjects for study during the recess, referring them to various sub-committees created for the purpose.

These committees were charged to consider whether or not it be possible to establish by way of general convention:

(a) provisions concerning the communication in criminal matters of judicial and other documents ("*Actes Judiciares et Actes Extra judiciares*") and concerning commissions to take evidence ("*Commissions Rogatoires*") in criminal matters;

(b) provisions concerning the legal position of private non-profit making international associations and private international foundations;

(c) provisions as to the legal position and the functions of consuls;

(d) if there be questions concerning the conflict of laws in the matter of domicile, of which a solution by way of a general convention could be contemplated without encountering political obstacles and in the affirmative, what are those questions, and what solutions might be found for them;

(e) if it be possible to reach an international agreement determining, in the absence of special provisions, the effect of the most favored nations clause;

(f) if it be possible to revise the classification of diplomatic agents as established by the Congresses of Vienna and Aix la Chappelle, and if so, in what form this revision should be made;

(g) if it be possible to establish by way of convention, international rules concerning the competence of courts in regard to foreign states, and particularly in regard to states engaging in commercial operations (excluding the questions already dealt with in the report sent to the Council of the League of Nations by the Committee of Experts at the Committee's second session);

(h) if it be possible, without encountering political or economic obstacles, to formulate by way of conventions international rules concerning the nationality of commercial corporations and the determination of the question to what state the right of affording them diplomatic protection belongs;

(i) if it be possible to establish by way of a convention international rules concerning the recognition of the legal personnel of foreign commercial operations;

(j) if it be possible to establish by way of a convention international rules for the settlement of conflicts of laws concerning contracts for the sale of goods.

The study of these questions undoubtedly will result in furnishing the Commission with material for its next session, which, in addition to the subjects already submitted to governments, may furnish useful suggestions in connection with the work of the official Commission or Conference ultimately to be called for the purpose of formulating the proposed conventions.

Professor Manley O. Hudson, in two addresses delivered before the Cornell University School of Law, under the Schiff Foundation, on March 30 and 31, 1925, on "The Prospect for International Law in the Twentieth Century,"[3] refers to the difficulties in the way of carrying out plans for the more satisfactory formulation and agreement of rules of international law. He adverts to the problem of the

[3] 10 CORNELL LAW QUARTERLY 419.

manner in which formulations should be initiated; to the difficulties of procedure in international conference, growing out of their size, differences of language, and of engaging in coöperative deliberation; and to the necessity of a revision of international conventions and keeping them up to date. Nevertheless, he says, all of these problems promise to give less difficulty in the post war period than they gave prior to 1914, because fifty-five peoples are today maintaining a League of Nations, and coöperative efforts to legislate for world society can now be undertaken with far greater prospect of success than at any time in the past. His optimism found expression in the opinion that there has been no time since 1625, when the prospect for international agreement was so bright as in this twentieth century. The program outlined by the Assembly of the League of Nations in its September, 1924 resolutions, and the steps taken by the Commission up to the present time probably appear to be but tentative and halting movements towards the goal. It should not be forgotten, however, that the Permanent Court of International Justice also is engaged in considering and determining controversies of various kinds between states and necessarily formulating and making more definite principles of international law. All over the world the subject of the law of nations is under discussion. A better understanding of the problems involved is arising, and a recognition of the divers elements of language, judicial system and tradition, which must be reconciled to accomplish a satisfactory result. The labor of making international law more definite, more easily ascertainable and recognizable, is great, but the goal is of major importance to the world, and if the work be prosecuted in the spirit of frank recognition of divergencies in national institutions and traditions and that the accomplishment cannot be obtained of a sudden, or as a whole, we may have confidence that the results which are realized will tend towards the establishment of better relations between organized peoples, and thus lay the foundations for a more enduring peace.

Above all things however, patience and tolerance of differences of opinion are required. Individual States cannot accomplish the result, nor individual legislators advance it by sensational utterance. Mutual consent alone can achieve the desired end, and mutual consent is the product of mutual understanding, tolerance and confidence. It is the common will to agree, like the common will to peace, by which only can we move forward to the more perfect organization of the modern Commonwealth of Nations.