LEAGUE OF NATIONS

PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW

REPORT BY THE COMMITTEE OF THREE JURISTS

By a Council resolution of December 14th, 1928, a Committee composed of Professor Diéna, His Excellency M. Guerrero and Professor Schücking was appointed to draw up a systematic survey of the subjects of international law with a view to a general codification, and to examine the question of publishing, as an accompaniment to the Treaty Series and in the form of a code, general conventions open to acceptance by States in general, in accordance with the Assembly resolution of September 24th, 1928.1

In pursuance of these instructions, the Committee met at Geneva from April 15th to 23rd, 1929.

It fulfilled its twofold mission as follows:

A. Establishment of a Systematic Survey of the Subjects of International Law with a View to a General Codification.

In carrying out this work, the Committee was guided by the following considerations:

(i) In order to adhere to its terms of reference, it included the whole of international law in its survey, without omitting any part thereof.

1 The text of the Assembly's resolution is as follows:

"The Assembly,
"Having considered the opinion expressed by the Committee of Experts regarding the proposal of the delegation of Paraguay;
"Confirms its decision to make no change at present in the method of codification adopted by it in 1924;
"Recognises, however, that there would be advantages in indicating the full extent of the subjects which, without prejudging the order to be followed, the Assembly proposes to cover by the work of codification;
"And, in view of the character of the contemplated task, addresses to the Council the request that the establishment of a systematic survey may be entrusted to a committee of three jurists, to be chosen preferably from the members of the Committee of Experts, and that the survey may be communicated to the Members of the League as soon as possible.

"It suggests that it would be desirable at the same time to distinguish, if possible, the subjects which should be reserved for the technical organisations of the League, or the international conferences which have already been initiated by particular Governments, and the subjects which appear capable of being dealt with by conferences of jurists.

"The Assembly emphasises the great immediate practical value in this connection of assembling together in the form of a code, according to a methodical classification, the various general international conventions, i.e., those which are open to acceptance by States in general.

"It accordingly asks the Council to submit to examination by the above-mentioned committee of three jurists the question of publishing, as an accompaniment to the Treaty Series and in the form of a code, of which new editions would from time to time be produced, those general conventions which have the above-mentioned character, and to report to the Assembly on the matter at its next session."
(2) In order to conform to the wish of the Assembly, it has had in mind the principal technical organisations of the League of Nations and the international conferences initiated by various Governments. These organisations and conferences have already dealt with a number of the questions which should appear in the systematic survey that the Committee has to prepare. When mentioning these questions, the Committee has indicated in a footnote the organisations or conferences dealing with them.

(3) The Committee thought that, although its work is to fulfil a practical need, it should not go into questions in detail; if it had acted otherwise, it would have incurred the risk of overlooking certain points or attaching more importance to some subjects than to others. It would also have been in danger of being obliged to take up a definite position on a large number of controversial questions. In point of fact, many fields of international law are at present in a fluid and uncertain state, and the question whether certain institutions do or do not form part of established international law is still a moot point. A committee of jurists which has simply to prepare a systematic survey of international law has no power to settle these controversial matters.

In some cases, it is true, the Committee has somewhat departed from this method and has ventured to go into greater detail; but it has done so because it had to mention the organisations dealing with certain special questions. The survey prepared by the Committee is reproduced below (Appendix A).

B. Code of General Conventions open to Acceptance by States in general.

The Committee was at pains to define precisely what it understood by general conventions for the purposes of the publication contemplated by the Assembly, before proceeding to prepare the systematic scheme for the publication of those conventions. The Committee's report containing suggestions regarding the publication of general conventions in the form of a code is reproduced below (Appendix B).

Appendix A.

Systematic Survey of the Subjects of International Law with a View to a General Codification.

Part I. — Persons in International Law.

I. International legal personality. — Conditions for its existence.
II. Essential rights and duties of States possessing the quality of persons in international law.
III. The extinction of States and the legal consequences arising therefrom.
IV. Neutralised States.
V. The League of Nations and its organisation:
   (a) Rules of law arising out of the Covenant, and their development.
   (b) Rights and duties created by treaties the execution of which is supervised by the League of Nations, particularly as regards:
      (1) The legal status of minorities in certain countries,
      (2) International mandates.
   (c) The Permanent Court of International Justice and its Statute.
   (d) The International Labour Organisation.

Part II. — Objects of International Law.

Section I.

I. State territory:
   (a) Territory in the strict sense of the term;
   (b) Inland waters;
   (c) The territorial sea;¹
   (d) The air space above territory.

II. Acquisition and loss of territory.

III. International rivers, straits and canals subject to a special regime.

IV. The high seas.

V. Vessels, their nationality; jurisdiction over vessels.

VI. The air space above the high seas or territories free from all sovereignty.

Section II. — Individuals.

I. Nationality.²

II. The legal status of aliens.³

¹ The subject of territorial waters is on the programme of the Conference for the Progressive Codification of International Law which is to be convened by the Council of the League of Nations at The Hague in 1930.
² This subject will also be dealt with by the Hague Conference of 1930 for the Progressive Codification of International Law.
³ Some aspects of this subject are being dealt with by the Economic Committee of the League of Nations.
PART III. — LEGAL RELATIONS BETWEEN STATES.

Section I. — Organs of International Relations.
I. Heads of States and Ministers for Foreign Affairs.
II. Diplomatic agents.
III. Consular agents.
IV. International organs.

Section II. — International Conventions.
I. Conditions of form and substance required for the validity of treaties.
II. Interpretation, effects and means of guaranteeing the execution of treaties; extinction of treaties.

Section III. — International Obligations formed without Conventions.
I. Source of such obligations. — International delinquencies.
II. The international responsibility of States.

Section IV. — Pursuit of Common Interests.
I. Communications and transit:
1. Maritime, fluvial and air navigation (see Part II).
2. Road traffic.
3. Postal services.
4. Telegraphs.
5. Radiotelegraphy.
II. Protection of intellectual and cultural interests.
III. Economic and financial interests.
IV. Humanitarian interests.
V. Health interests.
VI. Labour interests.
VII. Legislation and administration of justice:
2. Settlement of conflicts of laws in matters of civil and commercial law and of procedure.
3. International criminal law and mutual assistance between States with a view to the punishment of criminal offences.

PART IV. — INTERNATIONAL DISPUTES.

Section I. — Methods of settling disputes.
I. Good offices.
II. Mediation.
III. Commissions of enquiry.
IV. Commissions of conciliation.
V. Pacific methods of procedure provided by the Covenant.
VI. Arbitral settlement.
VII. Judicial settlement.

Section II. — Means of pacific constraint.
I. Retortion.
II. Reprisals.

Section III. — Collective Execution provided for by Article 16 of the Covenant.

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1 The question of damage caused in their territory to the person or property of foreigners is to be dealt with at The Hague Conference for the Progressive Codification of International Law, 1930.
2 League of Nations Organisation for Communications and Transit.
5 Advisory Commission for the Protection and Welfare of Children and Young People (which also deals with traffic in women and children). Advisory Committee of the League of Nations on Traffic in Opium and other Dangerous Drugs.
7 International Labour Organisation.
9 Brussels Conferences.
11 As regards the suppression of counterfeiting currency, International Conference of Geneva, 1929.
Part V. — War.

Section I. — The Law of War in general.

Section II. — The Conduct of War.

I. Land warfare.
II. Warfare at sea.
III. Air warfare.

Section III. — Neutrality.

Appendix B.

Publication in the Form of a Code of Conventions open to States in general.

According to the Assembly resolution, the Committee's second duty is to carry out the methodical classification of general conventions with a view to republishing them from time to time in the form of a code. This work will certainly prove of very considerable service.

In the first place, the Committee had to decide upon a definition of the term "general conventions", since the scope of the publications contemplated in the Assembly's resolution would ultimately depend upon this definition; and moreover, a criterion would thereby be established which could always be followed afterwards. The Committee then examined the method of carrying out a systematic classification of conventions, with a view to laying down a rule to govern the publication of the general conventions not only in present circumstances but in the future as well.

While realising the technical character of its task, the Committee is of opinion that, although it should take theoretical criteria into account, it should not lose sight of the practical aims envisaged by the Assembly.

The Committee had first to settle a very important and difficult question, namely, what conventions are to be regarded as general, that is to say, according to the words of the Assembly's resolution, conventions which are open to acceptance by States in general.

After a careful examination of the subject, the Committee felt able to divide conventions into two categories.

The first category would include under the term "absolutely open conventions" those to which all countries may become parties at any time by a unilateral declaration of their intention to do so.

The second category would include conventions which might be termed "relatively open", i.e., (1) conventions which, while providing for the accession of other States, require such accessions to be accepted by the original contracting parties, even though—as is the case in some of these conventions—such acceptance may be expressed tacitly (e.g., the Geneva Convention of July 6th, 1906, for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field); (2) conventions which contain clauses whereby other States may accede if invited to do so after its conclusion by the central organ which is the depository of the Convention (e.g., the Barcelona Convention on Transit of April 20th, 1921, and many other conventions concluded under the auspices of the League of Nations).

The category of closed conventions would, on the other hand, comprise those not containing a clause allowing of accession by States in general.

This classification was only adopted by the Committee after it had caused the Secretariat to examine more than 400 multilateral conventions. The Committee also utilised a study issued by the "Institut für internationales Recht" of Kiel University entitled "Systematisches Verzeichnis der völkerrechtlichen Kollektivverträge", an interesting publication which the Committee found of great service.

If a code is to be published of the existing collective conventions from which rules of international law can be derived, the Committee thinks that the conventions to be taken into consideration should not be merely those of the first category.

The Committee would add that, even among closed collective conventions, there are some which could advantageously be utilised for the preparation or codification of objective international law.

In point of fact, some of these conventions can be extended to other States, subject to the consent of the original contracting States expressed in a special diplomatic act. As an example may be quoted the Hague Conventions on Private International Law, which were afterwards opened for acceptance by certain new States by means of special protocols.

According to the information placed at the Committee's disposal, the number of conventions to be published would be about 250. This figure would seem to represent the maximum number of general conventions which it would be of practical interest to publish in a code. This figure includes general conventions of recent date which have not yet come into force, but which it is believed will shortly do so.
The Committee suggests that the conventions in question should be grouped in the proposed publication as follows:

1.—Conventions regarding the constitutional organisation of the League of Nations.
2.—Rules of law regarding:
   (a) Territory,
   (b) The sea,
   (c) The air.
3.—Conventions regarding means of communication and transit:
   (a) Straits and maritime canals,
   (b) Rivers,
   (c) Railways,
   (d) Roads,
   (e) Maritime navigation,
   (f) Air navigation,
   (g) Posts,
   (h) Telegraphs, telephones and radiotelegraphy.
4.—Conventions regarding the protection of intellectual and cultural interests.
5.—Economic conventions.
6.—Humanitarian and sanitary conventions.
7.—Labour conventions.
8.—Conventions for the creation of uniform municipal law.
9.—Conventions regarding the status of aliens.
10.—Conventions on international private law:
    (a) Civil,
    (b) Commercial,
    (c) Procedure.
11.—Conventions on international criminal law and conventions on mutual assistance between States with a view to the punishment of criminal offences.
12.—Conventions for the pacific settlement of international disputes.
13.—Conventions on the law of war:
    (a) Land,
    (b) Sea,
    (c) Air.

The work begun by the Committee in accordance with the Assembly's resolution is necessarily of a preparatory character.

If the Assembly decides to continue the study of this question, a consultation of the contracting States, or at all events of the States which are depositaries of the conventions, is essential. The Committee considers that the parties to be consulted should include the offices of the international unions established by some of these conventions, as these central organs often possess important information on the matters within their competence.

The object of the consultation which the Committee suggests as a second stage of its work would be to obtain the authentic texts of the conventions to be published and also a large amount of relevant information. This information would include, for example, the names of the original contracting parties and the acceding parties, the period of validity of the conventions, the reservations made by certain contracting parties, denunciations, etc. A questionnaire for the purpose of this consultation would be sent in due course to the various Governments and, where necessary, to the offices of the international unions.

The Committee's object in offering the Council a suggestion as to the method to be followed to give effect to the aim of the Assembly resolution is to enable the latter to have all the necessary information at its disposal.

According to the particulars supplied by the Secretariat, the proposed publication would probably consist of several volumes, of which not more than two, of about 500 pages each, could be issued in the course of 1930.

As regards the cost of the publication, the Committee has asked the Secretariat to prepare budget estimates. These are attached to the present report (Appendix C).

In submitting to the Council the systematic scheme for the publication of general conventions and in indicating the field which the Committee considers this publication should cover, the undersigned members desire to take this occasion to express their gratitude to the Secretariat for the zealous and able assistance it has rendered them.

(Signed) Giulio DIENA. (Signed) J. Gustavo GUERRERO. (Signed) Walther SCHÜCKING.

Geneva, April 23rd, 1929.
Appendix C.

ESTIMATES.

The Secretariat has been requested by the Committee of Jurists to make an estimate of the charge on the Budget which might result from the publication of general conventions in the form of a code.

Two different methods might be followed in producing the publication:

(1) As rapid as possible a publication of the conventions;
(2) Issue of a limited number of volumes each year.

In the first case, a somewhat considerable credit would be required in the Budgets of 1930 and 1931 and eventually 1932. It would also be necessary to take account of the cost of the increase of staff which would be necessary to carry out the work successfully in a brief period of time.

In the second case, publication of two volumes per annum might be contemplated. This would necessitate a credit of about 20,000 francs per annum for printing, on the assumption that the volumes were in the same form as the Treaty Series. Issue of only two volumes of general conventions in each year would not necessitate an increase of staff. Accordingly, adoption of the second proposal would involve credits of, approximately, the same sum of 20,000 francs in each successive year until all the conventions already concluded have been published.

Until the enquiry suggested by the Committee has been carried out, it is not possible to estimate the number of volumes of which the publication would consist. The systematic plan drawn up by the Committee could be followed, but it would perhaps be desirable to publish in advance those sections of the plan which are of more general interest or contain the texts which are least easily accessible in other forms.

Taking the estimates of the Committee, the publication in question might contain a maximum of 250 multilateral conventions. If the text of the conventions were inserted in full, together with their annexes and administrative regulations, some sections of the new collection, more particularly those dealing with the conventions concerning the various international unions, would fill several volumes even after the omission of texts which have ceased to be in force. Ten conventions were adopted at ten Conferences of the International Telegraphic Union, and the nine Conferences of the Universal Postal Union have produced about forty conventions. The agreements adopted at the Conference of the Universal Postal Union held at Stockholm in August, 1924, fill 550 pages of Volumes XL and XLI of the Treaty Series. In such cases the question arises as to whether it would not be desirable only to reproduce the texts of the conventions and to leave out annexes and administrative regulations which are not of general interest from the point of view of international law.

In the same connection, the question arises whether only the texts adopted at the various conferences should be reproduced or whether, as is the practice in the Treaty Series, the new collection should contain translations in the official languages of the League of Nations.

REPORT BY THE REPRESENTATIVE OF ITALY AND RESOLUTION ADOPTED BY THE COUNCIL ON JUNE 10TH, 1929.

By a resolution dated December 14th, 1928, the Council appointed a Committee composed of Professor Diena, His Excellency M. Guerrero and Professor Schücking, in pursuance of the Assembly resolution of September 24th, 1928. In this resolution the Assembly requested that the preparation of a systematic survey of the subjects of international law should be entrusted to a Committee of Three Jurists, to be chosen preferably from among the members of the Committee of Experts, and that this survey should be communicated to the Members of the League as soon as possible.

By the same resolution, the Assembly also requested the Council to submit to examination, by the above-mentioned Committee of Three Jurists, the question of publishing, as an accompaniment to the Treaty Series and in the form of a code — of which new editions would from time to time be produced — certain general Conventions [i.e., Conventions open to accession by all States] and to report to the Assembly on the matter at its next session.

This Committee of Three Jurists met at Geneva from April 15th to 23rd last and submitted a report which has been communicated to all the Members of the Council (document C.171.1929.V). In its report, the Committee explains the principles to which it has adhered in carrying out its twofold mission. The first annex (Annex A) contains a systematic survey of the subjects of international law, as requested by the Council. Annex B is the Committee's detailed report on the publication of general Conventions in the form of a code. Annex C contains budget estimates, prepared by the Secretariat at the request of the Committee, concerning the publication contemplated in Annex B.
The Assembly suggested that the survey of subjects of international law prepared by the Committee should be communicated as soon as possible to all the Members of the League. It would seem to be desirable that the Council should at the same time communicate them to the Assembly.

The second question, that of the publication of general Conventions in the form of a code, is more strictly a matter for the Assembly to deal with. The latter, though recognising the practical value of the proposed publication, reserved the right, after examining the results of the above-mentioned enquiry, to decide as to the advisability of undertaking this work.

In these circumstances, I think that the Council might thank the Committee of Three Jurists for the valuable work it has accomplished and decide that its report shall be communicated to all Members of the League of Nations and to the Assembly.

I would therefore propose to my colleagues the following resolution:

Resolution proposed by the Representative of Italy and adopted by the Council.

' The Council:
' Thanks the Committee of Three Jurists for the work it has accomplished;
' And decides that the report of the Committee shall be communicated to the Members of the League and to the Assembly.'