

COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW  
AND ITS CODIFICATION

Memorandum Submitted by the Representative of Argentina

The Delegation of Argentina to the Committee on the Progressive Development of International Law and its Codification is submitting the following memorandum, in which it sets forth some suggestions and points of view of possible interest to the Committee.

In accordance with the resolution adopted during the second part of the General Assembly of the United Nations (on the report of the Sixth Committee) the object of this Committee is not to engage on the work of codification properly speaking, but rather the Committee is directed to study the methods of codification. Its purpose is to submit a full and general plan of work on this subject to the next General Assembly. The Assembly also instructed the Committee to study other legal problems, but in this document we shall deal with two subjects only: the progressive development of International Law, and its codification.

Hence, the Delegation of Argentina thinks that Item 3 (a) of the provisional agenda (document A/AC.10/1) may for practical purposes be divided into two parts: the study of the methods and recommendations whereby the General Assembly should encourage the progressive development of International Law, and the study of the methods of codification.

It is true, the problem of codification is to some extent included in the general question of the progressive development of international law. Codification as it is understood in modern legal systems is not something final or static, nor is it in conflict with the progress and

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evolution of the law. On the other hand, there has been no mention of comprehensive codification, of a single body of law, but rather of partial, gradual, and progressive codification of international law. Codification is simply one of the many chapters of progressive legal development.

We have said, however, that for practical reasons it is advisable to regard the progressive development of international law and the study of the most suitable methods of codification as separate matters. Accordingly, the Delegation of Argentina believes that the Committee should refer the study of the progressive development of international law to a Sub-Committee, linking up the work of the United Nations to that which national and international organizations, such as the International Law Association and others, have for many years been doing in the same field. Joint study of these problems by members of the Sub-Committee and delegates from these organizations may be of great value and, therefore, the Delegation of Argentina would be happy if the latter were invited as advisers and observers.

Similarly the study of the methods of codification proper should, in the opinion of the Delegation of Argentina, be undertaken by a special Sub-Committee. The complexity and the number of the questions to be considered in any work preparatory to codification makes this advisable.

In advancing some ideas on the subject, the Delegation of Argentina considers it advisable that the work of codification should be carried out by permanently operating Codifying Commissions and not by special conferences summoned for the purpose. The work of drafting should be done by these Commissions and the drafts prepared may be transmitted for instance to a special conference, if this Committee considers it necessary, or even directly to the General Assembly, a procedure which may perhaps be the most practical and suitable. In view of the various

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subjects, and the nature of the problems to be dealt with, we consider it desirable that there should be two Commissions, one dealing with questions of public international law and another dealing with questions of private international law. The procedure of appointing a single Commission to be in its turn sub-divided into two bodies is, in our opinion, not advisable, considering the specialized knowledge which the elected members must possess.

The conditions governing the appointment of a delegate to the Codifying Committee as contained in the memorandum submitted by the Delegation of Argentina to the Sixth Committee during the discussions on the problem of the codification of international law which recommended that the same method be adopted in that case as in the election of judges to the International Court of Justice, questions such as whether they represent their countries or not, their number, the most important subjects to be considered (it would be desirable for the Committee to indicate which in their opinion deserve priority), the place and date of their meeting, etc., make it necessary that a special sub-committee should preferably study the problem. The Delegation of Argentina would also welcome it if the Committee considered and studied the form in which the work of codification to be initiated by the United Nations is to be co-ordinated with that done by the countries belonging to the Pan-American system, whose experience in this field may be of great value and usefulness.

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