

GENERAL
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ORIGINAL: FRENCHCOMMITTEE ON THE PROGRESSIVE DEVELOPMENT
OF INTERNATIONAL LAW AND ITS CODIFICATIONSTATEMENT BY THE REPRESENTATIVE OF BRAZIL BEFORE THE FOURTH MEETING
OF THE COMMITTEE ON PROGRESSIVE DEVELOPMENT
AND CODIFICATION OF INTERNATIONAL LAW
15 MAY 1947

We stated, on the first day of our general discussion, that we were in favour of a permanent organ to deal with the development of international law and its codification. We summarized our opinion on codification by saying that there must be continuity of conception, and a balance must be maintained between what is static and what is dynamic.

As regards the composition of this permanent organ, we prefer the system proposed in the American document. The competence of the members of this organ cannot be better assured than by adopting for their election the procedure used for the election of the Judges of the International Court of Justice. Moreover, the Assembly and the Security Council will bear in mind not only the competence of the persons chosen but also the principle of geographical distribution. Such geographical distribution will in turn ensure the representation of the principal legal systems of the world.

A committee of jurists thus constituted would undertake the double task of codification and of the development of international law. The two tasks are distinct, but complementary. There are organic relations between the two. There will be questions of international law which may be considered suitable for codification. But an examination even of those questions which appear to us pacifically settled reveals differences of opinion and of interpretation which have to be adjusted and gaps which

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codification must not find themselves confronted with an immovable barrier. They should be free to say that several of them see the same thing in different lights, or that, in the particular case, they find that essential parts are lacking. Then their task becomes one of creation and not of repetition. These eminent men must be free to propose to the Governments of the United Nations the necessary solutions based on existing experience. The primary task of codification must not be confused with that of the development of international law, but neither must the two be separated entirely. For this reason it seems to us that the codification and development of international law can best be dealt with by a single committee, as in the American proposals. The committee will of course plan its own methods of work; it can divide its tasks, but it must have the power to co-ordinate them and if, for example, it considers that a particular subject cannot be codified without the solution of controversies or the adoption of rules previously absent, it should have the power to urge States to take the necessary action.

The suggestion put forward by the distinguished representative of the United Kingdom for a committee of scholars to prepare real model codes, which would have undoubted moral force, is certainly a very fine one. But even these jurists shut up in an ivory tower to decide what they consider just or unjust, on the basis of the historical background of each question, of what has been decided or practised in the past, will find themselves faced with differences, small or large, and they will be inclined to propose solutions resulting, to a great extent, from personal reflection.

The work of codification, like that of the development of international law, must be carried out in co-operation with the political authorities of States. This does not mean that the jurists should solve problems of a political nature, but that they are obliged to take them into account in order that their work may be effective; they must see whether their efforts have any prospect of practical success.

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Neither the codification nor the development of law can be achieved merely by the submission of learned opinions. They must take the form of resolutions by the General Assembly or of multilateral conventions. But these resolutions and conventions must not be submitted under "take it or leave it" conditions. Consultation with Governments and reconsideration by the Committee of Jurists after such consultation, as contemplated in document A/AC.10/14, paragraph 8 (d) and (e) - the American proposal - should be initiated from the outset, when the subjects for study are chosen. They should continue as and when partial solutions are arrived at. The force of the arguments advanced by the Committee, and the knowledge it will have of the points of view of the majority of States, will obviate the danger of submitting unacceptable final proposals.

I should like the collaboration between the Committee of Jurists and the Governments to assume a routine and frequent nature. Furthermore, I think it would be advisable to insert in our final recommendations a provision that the Committee of Jurists, though undertaking the study of the codification and development of the law, should not hesitate to propose the formulation of legislative texts to fill in gaps or dispel any doubts with regard to particular rules on a question which, generally speaking, is ready for codification.
