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COMMITTEE FOR THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION

Statement by the Representative of the Union of Soviet Socialist Republics before the Ninth Meeting of the Committee, 22 May 1947.

The Soviet representative remarked that he had already expressed his views regarding the close and indissoluble connection between the progressive development of international law and its codification. He did not consider it necessary to repeat those views. He only thought he might refer, in confirmation of his remarks, to the opinion expressed by the Inter-American Juridical Committee on p. 31 of document A/AC.10/8, reading as follows:

> "In accordance with the spirit of Article XIII (1) of the Charter of the Inter-American Juridical Committee, it had been recognized that the task of codifying international law is inextricably bound up with the progressive development of that law. In the words of the Committee itself, 'the task of codifying international law is in large part a work de lege ferenda, the formulation of new rules to meet changing conditions in the mutual relations of States'".

In speaking of methods of progressive development of international law and its codification either one or two methods were customarily mentioned, viz., the convention method and the informal compilation method which had no binding form. Some contended that the convention method should be regarded as the only method for the progressive development of international law and its codification. Others considered that the convention method was the only one which can be accepted for the progressive development of

/international law

international law and the informal compilation method for codification, whilst others again admitted that for codification the adoption of both methods was conceivable, i.e., the convention method and the method of drawing up informal compilations.

The Soviet representative considered that the method of concluding multilateral conventions should be considered as the only method for both the progressive development and the codification of international law. He based this statement on the view that rules resulting from the work of codification must be drawn up which may become generally obligatory rules, but that end could only be achieved by the method of concluding multilateral conventions. There must be no enforcement of the adoption of standards laying down rules for the conduct of States in the future, against the will of any States. It was possible, acting within the framework of concluded agreements and of the Charter of the United Nations, to enforce the fulfilment of obligations assumed by the States under agreements which they had concluded, or assumed by them under the Charter of the United Nations, but no laws must be established for them without their volition. It should be borne in mind that the United Nations was not a super-state legislative body. The Philippine delegation proposed at Dumbarton Oaks that:

> "The General Assembly should be vested with the legislative authority to enact rules of international law which should become effective and binding upon the members of the Organization after such rules have been approved by a majority vote of the Security Council....In the exercise of this legislative authority the General Assembly may codify the existing rules of international law with such changes as the Assembly may deem proper."

In accordance with the foregoing the Chairman of the Second Committee of the Second Commission at San Francisco raised the question:

> "Should the Assembly be authorized to enact rules of international law which should become binding upon members after such rules shall have been approved by the Security Council?"

/Only one delegation

Only one delegation (the Philippine) voted for the proposal then, and that was understandable because any other decision in the matter would have meant that the Assembly was being transformed into a supra-national body.

Usually, no objections are raised in principle to the application of the convention method to codification. It is considered sufficient to point out that considerable difficulties are encountered in reaching agreements making it possible to conclude a convention. These difficulties are not feared in connection with the progressive development of international law. Why, then, is it considered that the convention method can give positive results as regards instruments directed towards the progressive development of international law, yet at the same time denied that that method can be applied to codification? Surely it is easier to ratify what exists than to create something new. It would be possible to understand those opposing the application of convention methods to codification, if they denied the possibility of concluding multilateral conventions in general, but that is already refuted by the very fact of the existence of many multilateral conventions, and of the Conference of San Francisco, which brought about the creation of the United Nations Organization. Many difficulties existed and many complicated questions arose, yet they were overcome and solved. When is it impossible to achieve results at international conferences? Only when there is no desire to act in a spirit of co-operation, when there is a tendency to dictate to other States. The Soviet representative does not perceive any

insurmountable difficulties in reaching the agreement necessary for the conclusion of multilateral conventions directed toward the codification of certain sections of international law, provided only, of course, that the States endeavour to act in a spirit of democratic co-operation. There have been failures in achieving codification in the past, but we must not be discouraged by them. The explanation of those failures must be sought not in the form adopted for codification, namely, that of the conclusion of the conventions, but on other grounds. That the League of Nations was unable to achieve results was not only to be explained by the fact that a democratic tendency did not prevail there, but also by the fact that the two democratic great powers (the USSR and the U.S.A.) were not then in the League. In the 'thirties, Fascism was increasingly active in undermining peaceful relations between the States. There were two conflicting tendencies at work in those relations: the tendency towards aggression and towards tolerance of aggressors, and the tendency towards democratic co-operation. The tendency towards democratic co-operation failed to triumph, and therefore a situation was not created favourable to the codification of international law. More was done for the work of codification in the Pan American system of States than in other parts of the world. There were failures there too in the codification of international law, but it must be remembered that real measures for the codification of some of the most important sections of international public law were adopted within the Pan American system in the 'thirties, especially at the Montevideo Conference of 1933. The shadow of Fascism however was already growing and threatening

/even the Western Hemisphere

even the Western Hemisphere, and the prevailing situation was not propitious for the codification of international law. When the war ended, the desire for codification was reborn, and that explains the resolution at the 1945 conference. With the destruction of Fascism, conditions have been created which should guarantee the possibility of effecting the codification of international law in the form of international conventions.

Advocates of the compilation of theoretical restatements as a method of codification are, it would seem, promoting the cause of codification. Learned institutions have been engaged in preparing such compilations. The "Harvard Research in International Law" may be cited as an example of investigations into codification. This research organized by learned institutions has of course scientific importance, but such research alone is insufficient. That cannot satisfy the States and cannot, therefore, satisfy the General Assembly. The General Assembly may report and make recommendations only in regard to whatever may lead to the conversion of recommendations into something practically feasible into whatever by agreement between the States may be converted into something binding, serving the aims of the peace and security of the nations.

The United Nations Organization is not to be compared with learned institutions as regards its working methods. Even if learned institutions prepare a restatement having a theoretical significance (and that is all they can do) this promotes the work of codification, since it facilitates the preparation of a draft convention. If the Organs of the United Nations Organization draft a restatement, which has only theoretical significance and is therefore informal, that will render the

/possibility

possibility of real codification remote, because it will weaken efforts directed towards real codification and, will mislead public opinion by inspiring an unjustified confidence that codification in the form of informal compilations is adequate, and that there therefore remains nothing more to be done. The nations await the consolidation of legality in international relations. Legality demands precise legal forms. That can only be achieved by the method of concluding international conventions; for informal compilations are insufficient and if drafting is restricted to such compilations, that can only delay the achievement of the established objective. The Committee which is to be selected must concern itself with the preparation of draft conventions in respect of those sections of international law which must be codified. If it restricts itself only to restatements, does not prepare draft conventions and does not aspire to getting those conventions signed, and consequently put into effect, we shall be working in vain.

There is no difference between the method rendering possible the codification of international law and that method making possible the progressive development of international law. There can be but one method, namely, that of concluding multilateral conventions.
