CODIFICATION OF INTERNATIONAL LAW—A BASIS OF WORLD GOVERNMENT

NORMAN BIERMAN

The past decade since the conclusion of the World War has witnessed a distinct change in the attitude of nations and peoples towards that branch of jurisprudence known as "International Law." The experience of the recent war taught the world that no nation can hereafter preserve its seclusion and live apart. The remarkable progress of invention in the fields of transportation and communication, the tremendous increase in tourist travel in Europe and Asia, the more intelligent discussion of international problems by the press, have all tended to relax the barriers of nationalism and to create a new and lively interest on the part of the nations and peoples of the world in the development of international relations and international law. The establishment of the League of Nations and the Permanent Court of International Justice mark the farthest steps in the advancement and development of machinery for the government of the world community and the amicable settlement of any disputes which may arise by the application of rules of law, rather than by the ancient institution of war with its resulting chaos and destruction.

The term "International Law"[1] is used to denote the principles and rules that express the conception that gradually has grown up of the proper behaviour of civilized nations to each other or to the members of each other. It consists of a slowly developed body of rules which all modern nations recognize as binding upon them in their intercourse with the rest of the civilized world.[2] To the formation of these rules, statesmen, diplomats, admirals, generals, judges, and publicists have all contributed. It is of comparatively modern origin, dating in effect from the end of the middle ages.[3]

[1] The expression "International Law" was created by Jeremy Bentham in 1780.

[2] REED, INTERNATIONAL LAW AND INTERNATIONAL RELATIONS (1925) 1.

[3] "So long as the States of Europe acknowledged the supremacy of a great world power, whether the spiritual dominion of the papacy or the

There are two primary sources of positive international law, (1) custom, based on tacit consent and imitation; and (2) convention, or express agreement by means of treaties. Customary international law is the "Common Law of Nations which has developed gradually from usage or precedents set by particular States as the result of acquiescence or imitation on the part of the other members of the international community. It has as its guarantee or sanction the consensus and usage of the civilized world, and it forms the oldest and intrinsically the most important portion of International Law for it is deeply rooted in the habits, sentiments, and interests of mankind."[4]

By the side of the customary law there has grown up a large body of conventional law. This consists of definite written rules, many of which are merely declaratory of pre-existing customs and practices, but many of which also consist of new rules or of innovations upon former usages. The steady transformation of international law from a mass of custom, practice, and judicial precedent into a body of written law, formulated in the main by international congresses or conferences and embodied in the texts of multi-lateral conventions, acts, or declarations which have been ratified or consented to by the whole body of states, has been the most significant development of international law during the past century. This transformation has been distinctly beneficial since much of what was formerly uncertain and indefinite has been given the character of precision and definiteness; divergence of interpretation and practice have been harmonized; the occasions for controversy have been correspondingly reduced and international law has tended more and more to acquire the characteristics of municipal law. The progress which has thus been made in the clarification of inter-

temporal overlordship of the Emperor there was no possibility of the existence of a system of International Law, but with the Reformation and the termination of the wars of religion in the middle of the 17th century, and the coming into being of a large number of independent sovereign states freed from the trammels of religious and political obedience to external authority, Pope or Emperor, the principles which Grotius and other writers had advocated became capable of realization. The way was opened for the Supremacy of a new power, the Reign of Law." Higgins, THE BINDING FORCE OF INTERNATIONAL LAW, 1.

[4] Hershey, ESSENTIALS OF INTERNATIONAL PUBLIC LAW (1912) 20.

national law has encouraged men to believe that the rules of law now found in a multiplicity of international conventions, acts and declarations, together with those which are still unwritten but which have received the sanction of practice and of judicial authority, can be collected and reduced to a single harmonious system or body, as the municipal law of many states has been. This movement towards the codification of international law was first propounded by Jeremy Bentham,[5] and was followed by private attempts at codification by Abbe Gregoire,[6] Alfons von Domin Petruschevecz,[7] Francis Lieber,[8] Bluntschli,[9] Mancini,[10] and David Dudley Field.[11]

Following these early private attempts at codification we have the formation of two great associations for the study and advancement of the science of international law. In 1873 the Institute of International Law was founded at Ghent in Belgium, and in the same year the Association for the Reform and Codification of the Law of Nations, now called the International Law Association, was also founded.[12] During the period be-

[5] BENTHAM'S WORKS, (Bowring ed.) viii, p. 537; Nys. 11 L. QUAR. REV. (1885) 226-231. He did not, however, propose codification of the existing positive law of nations, but thought of a utopian international law which could be the basis of an everlasting peace between the civilized states.

[6] Abbe Gregoire was charged by the French Convention in 1792 to create a Declaration of the Rights of Nations. In 1795 he proposed a draft of twenty-one articles which was rejected by the Convention and the matter dropped. See 1 Rivier 40, where full text is given.

[7] This Austrian jurist in 1861 made the first real attempt to show the possibility of codification by publishing in that year, at Leipzig, a "Precis d'un Code de Droit International."

[8] At the request of President Abraham Lincoln, Professor Francis Lieber, of Columbia College, New York, drafted the laws of war in a body of rules which the United States published in 1863 for the guidance of her army. See 2 Oppenheim, par. 68.

[9] In 1868, Bluntschli, the celebrated Swiss interpreter of the law of nations, published "Das moderne Volkerrecht der civilisirten Staaten als Rechtsbuch dargestellt." This draft code was translated into French, Greek, Spanish, and Russian, and the Chinese Government produced an official Chinese translation as a guide for Chinese officials.

[10] The great Italian politician and jurist Mancini raised his voice in favor of codification of the law of nations in his able essay "Vocazione del nostro secolo per la reforma e codificazione del diritto delle genti" (1872).

[11] "Draft Outlines of an International Code" published at New York in 1872.

[12] Oppenheim, L. INTERNATIONAL LAW (1912) 37.

tween the years 1880 and 1911 we find four more attempts at codification by private individuals, namely those by Leone Levi,[13] Fiore,[14] Duplessix,[15] and Jerome Internoscia.[16]

In 1899 the first Hague Peace Conference was called together by the initiative of the Emperor Nicholas II of Russia. This conference showed the possibility of partial codification of international law by producing two important conventions which might be classed as codes—namely first, "the Convention for the Pacific Settlement of International Disputes," upon which the Hague Court of Arbitration was founded, and secondly, the "Convention with respect to the Laws and Customs of War on Land." Forty-three nations became members of the Hague Court of Arbitration since 1899, when the court was established. Fifteen cases have been referred to this Court.[17] The second convention mentioned above gave the nations a model, which by its very existence teaches that codification of parts of the law of nations is practicable.

The second Hague Peace Conference met in 1907 and produced thirteen conventions and one declaration.[18] At this second Hague Conference the American delegates were instructed by Secretary of State Root to endeavor to develop the Hague Court into a permanent court, holding regular and continuous sessions, composed of judges who would be official officers and nothing else, and who would devote their entire time to the trial and decision of international disputes by judicial methods and under a sense of judicial responsibility.[19] The World War broke out while the nations in the Second Hague Conference were still discussing methods of electing the judges.

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[13] Leone Levi, in 1887 published his INTERNATIONAL LAW WITH MATERIALS FOR A CODE OF INTERNATIONAL LAW.

[14] In 1890 the Italian jurist Fiore published IL DRITTO INTERNAZIONALE CODIFICATO E SUE SANZIONE GIURIDICA. A fourth edition appeared in 1911.

[15] In 1906 E. Duplessix published his "La loi des Nations. Projet d'institution d'une autorite nationale, legislative, administarative, judiciare. Projet de Code de Croit international public."

[16] In 1911 Jerome Internoscia published his NEW CODE OF INTERNATIONAL LAW in English, French, and Italian.

[17] See Reed, *op. cit.* 111.

[18] Oppenheim, *op. cit.* 207, 213.

[19] No agreement, however, could be reached on the method of electing judges, as the great Powers were not yet willing to entrust their interests

The close of the World War found a popular demand for a lucid statement of existing international law. In many countries a host of advocates were creating a popular belief that the right way to get rid of war, and to substitute justice for force, was to draw up a great new "Benthamist code" of international law. They pointed to the great weakness of international law, that to ascertain what the law actually is one must go to textbooks and to a great variety of statements, differing, inconsistent, many of them obscure and vague and capable of different interpretations, so that the instant the occasion for the application of the law arises, there is pressed upon the conflicting or disputing nations, the question as to what the law is, without any clear and definite standard from which to ascertain it.[20]

A systematic arrangement of the law now found in a multiplicity of international conventions, acts, and declarations, and the collection and reduction to a single harmonious body of those acts and conventions which have received the sanction of practice and of judicial authority but which are still unwritten would be, therefore, a momentous step toward the establishment of a firm legal foundation upon which the agencies of a world government based upon law, could be safely built.

There are however numerous arguments advanced against the movement for codification of international law. The opponents of codification base their objections mainly upon the difficulties which stand in the way but there are still some jurists who are not convinced that it would be desirable even if it were practicable.[21] It is unquestionable that the task of reducing to the form of a written code the rules of international law is a much more difficult undertaking than the codification by a single state of its own municipal law. The task of national codification in-

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to a court on which they might not be represented, and the small nations felt that as sovereign and therefore legally equal powers, they must have an equal voice in the election of judges; if they could not come to the court as judges, they would not come to it to be judged.

[20] Root, Elihu: *Should International Law be Codified?* ADDRESSES ON INTERNATIONAL SUBJECTS (1916) 406.

[21] Mr. P. J. Baker in his article on *Codification of International Law* appearing in the BRITISH YEARBOOK OF INTERNATIONAL LAW, 1924, collects and presents the arguments of those jurists who oppose codification on the ground that it is not desirable even if it should be practicable.

volves little more than a systematic and authoritative statement of the law already enacted or accepted by the legislative and judicial authorities of the state. The codification of international law, on the other hand, involves, in the first place, agreement among the whole body of sovereign states as to what the law is which it is proposed to codify. There is no common superior authority for determining the content of the law and endowed with power to impose it on the body of the States. There is no relation of legal superiority or inferiority; states are on a footing of legal equality, and the law which governs their relations must be determined by them through common action or accepted by them voluntarily. Furthermore the mass of materials with which the international codifier must deal are wholly different in character from those with which the codifiers of municipal law have to deal. "Instead of a tangible body of statutory law and a fairly definite body of judicial precedent the codifier of international law is confronted with a vast mass of opinion and practice, often conflicting, found in the books of text writers, in treaties, in the diplomatic correspondence of different governments and in the decisions of national courts."[22] For these reasons it was argued that the time is not yet "ripe" for the codification of international law; it is not sufficiently developed to be reduced to precise and definite rules; "It was necessary, therefore," some jurists said, "to wait until an international court and perhaps a legislative organ have been established, the one to formulate the law and the other to interpret and develop it."[23] At this time it was argued that what was most needed was the establishment of an international court to which could be left the task of codification, as it has been left to the courts of England and the United States to develop their municipal law. The establishment of the Permanent Court of International Justice thus accentuated rather than diminished the desire and necessity for codification. One of the main reasons advanced by those who strongly opposed the entrance of the United States into the World Court was that the law which the court would be called upon to apply was not certain and not

[22] Garner, INTERNATIONAL LAW (1925) 762.
[23] *Ibid.* 764.

codified.[24] Mr. Balfour, as a member of the Council of the League of Nations, opposed the proposal to give the Permanent Court of International Justice compulsory jurisdiction mainly because international law was not codified.[25] This raises the interesting question as to what law the Court will apply when cases come up before it for consideration. The Statute (Article 38) of the Court provides that it shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
2. The general principles of law recognized by civilized nations.
3. International Custom, as evidence of a general practice accepted as law;
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.[26]

From a consideration of the above "laws" which the court is to apply, it can be seen that a code of international law which would be so broad and elastic that it would not cut off the organic growth and future development of the law would greatly enhance the efficiency of the Court by eliminating the uncertainty of the maze of customs and conventions which at this time constitute the body of law applied by the Court in rendering its decisions.

Some people were of the opinion before the establishment of the Permanent Court of International Justice that the organization of the Court would do away with the necessity for the codification of international law since the Court by its decisions would slowly develop a body of case law, and in time would thus build up a structure of international constitutional law which would be superior to an imperfect code. They argued that since the judges of the new Court were to write reasoned opinions, the decisions themselves should furnish in time a body of international law. However, Mr. David J. Hill, one of America's

[24] Hudson, PERMANENT COURT OF INTERNATIONAL JUSTICE (1925) 268. Senator Borah objected to the World Court because its creation was not preceded by a codification of international law.

[25] World Peace Foundation pamphlet: *The First Assembly of the League of Nations*, p. 111.

[26] Hudson, *op. cit.* 15.

learned jurists, believes that this view overlooks two important considerations:

> (1) That municipal judges derive their authority from the sovereignty of the State in which they act, while in the field of international legislation there is no single sovereignty from which that authority is derived; so that it is absurd, as Mr. Root has pointed out, to assert that a French judge may make the law for Italy, or an Italian judge for France. (2) That the Supreme Court of the United States, for example, does not make the law, but only declares what, under the limitations of the Constitution, the law made by our legislative bodies actually is. Were the Court of International Justice restrained by no law, and were it free to declare to be law its own decisions, however just these might be, the Court would possess and exercise an unlimited universal sovereign power, superior to that of any single State, and even to that of all States combined, if they were under obligation to obey it. It is therefore, only by framing projects of law which may be accepted and ratified by the legislative bodies of Sovereign States to which the law is to be applied, that is by their previous consent, that international law can grow, and at the same time possess real and undisputed authority.[27]

Mr. Hill is undoubtedly right. As long as nations adhere to the ancient ideas of sovereignty the only method of reaching agreement on any doctrines which are intended to become part of the Law of Nations is to secure the acquiescence of all the nations of the world, and this can only be obtained by means of international conferences and congresses similar to those held at The Hague in 1899 and 1907.[28]

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[27] Hill, THE PROBLEM OF A WORLD COURT (1927) 33.

[28] An interesting analogy has been drawn by Mr. Hill between the functioning of our own Supreme Court and that of the World Court. "The government of the United States," he points out, "was created by a written document in which the powers and duties of government were clearly defined. A union of States deeming themselves wholly independent and sovereign was founded upon the conception of a fundamental written law which created the government. A Supreme Court had been established for the settlement of disputes by the interpretation and applications of the law. Faith in this system had grown in the United States and had become stronger with the experience which time had afforded. Why, therefore, it was natural to ask, if the nations chose to do so, might not they also agree upon a body of laws, an international corpus juris by which the nations might be willing to be judged since it would be by their own law,

That the authors of the League Covenant and the World Court were looking forward to a codification at least of part (if not of all) of international law can be seen by an examination of the documents of these two bodies. The preamble to the Covenant of the League of Nations envisages "the firm establishment of the understandings of international law as the actual rule of conduct among Governments," and it has increased the desire that these understandings be more clearly formulated. The committee of jurists which drafted the Court statute recommended that a new interstate conference should be called to carry on the work of the Hague Conferences of 1899 and 1907, in formulating and reestablishing and clarifying international law. The proposal for this recommendation was made by Elihu Root, a member of the committee, who felt the incompleteness of any plan for a tribunal which did not contemplate an agreement upon the law of nations, and which should not provide for conferences of the nations in order to agree upon such further rules of conduct as international conditions should from time to time suggest or permit. But the suggestion at that time met considerable opposition. Lord Robert Cecil, representing Great Britain, declared that "we have not arrived at sufficient calmness of the public mind to undertake that [codification] without very serious results to the future of international law" and this view prevailed at the first Assembly of the League of Nations.[29]

It might be well to mention at this point the arguments of those jurists who oppose codification on the ground that it would not be desirable even if practicable. They maintain that codification, by putting the law into a straight-jacket, would interfere with its organic growth and natural development and that a code once agreed upon would soon fail to respond to the rapidly changing conditions of the times and would therefore

freely accepted by them? And why might not a Court of Justice be established by the Nations as well as by the American States, composed of eminent jurists chosen by them, not to make the law, or to be guided by private reasons or vague principles, but to declare the law previously formulated, agreed upon, and ratified by the nations themselves, just as the laws of the United States are made by constitutional conventions and legislatures, which by their agreement, and not by their dictum, make the laws which the courts declare and apply in concrete cases. Hill, *ibid.* 6.

[29] *Records of the First Assembly, Plenary Meetings*, 745.

not be observed by the states which had given it their approval.[30] It would seem however that the experience of those States which have codified their municipal law hardly supports this objection. The tendency towards rigidity which characterizes any code of laws could be offset by periodic revisions of the international code and its progressive development through the addition of new rules to meet changed conditions and situations as they might arise. In this way the Geneva Convention in 1864 was revised and improved and so were the Hague Conventions of 1899. The number of jurists who are, at this time, opposed to the codification on the ground that it is undesirable is very small. Many more do not favor the attempt because of the practical difficulties, but they recognize the advantages if only the difficulties could be overcome. Codification would give the law a precision, a definiteness, and a certainty which it now lacks, and if a sufficiently flexible method will be found for altering it from time to time so as to meet changing conditions and situations it is hard to see why codification would not be a benefit.[31] Mr. Elihu Root, one of the most eminent of American jurists, remarks that "there is but one way in which the weakness of international law can be cured and that is by the process of codification, a process which must extend through long periods, and which has already been going on very gradually for many years. The development of international relations in all their variety, in the multitude of questions that arise, goes on more rapidly than the development of international law; and if you wait for customs without any effort to translate the custom into definite statements from year to year, you will never get any law settled except by bitter controversy. We cannot expect custom to lag behind the action to which the law should be applied."[32]

Another distinguished American jurist remarks that "the most generally accepted conclusion appears to be that codification is desirable if the purpose be merely to obtain clearness and brevity and harmony for existing law; something more than the

[30] Garner, *op. cit.* 765.
[31] Garner, *op. cit.* 766.
[32] Root, ADDRESSES ON INTERNATIONAL SUBJECTS (1916) 406. See also his address before the American Society of International Law, 1910, 5 AM. J. INT. LAW, 577 ff.

aggregations of a digest, but not enough to retard wholesome development." And he adds, "it would seem, therefore, that whenever the civilized nations by common understanding or by special agreement have decided that certain conduct is improper and will not be tolerated, the rules governing such a situation should be finally, clearly, and definitely expressed in writing."[33]

It would seem, then, according to the preponderance of juristic opinion, that the question is largely one of scope and method rather than of desirability. Regarding the scope, some jurists maintain that the task of codification should be restricted to the mere formulation and statement of the existing rules of law, that is those rules which have already received the assent and sanction of the nations. This is, strictly speaking, all that the word "codification" really implies, and restricted to these limits the task would be relatively simple. It would not, of course, constitute very great progress if restricted in this fashion. Most jurists, however, when they advocate "codification" of international law, mean more than this. Mr. Root, for example, remarks that "the substantial work of international codification is not merely to state rules, but to secure agreement as to what the rules are, by the nations whose usage must confirm them." And he adds: "Except as a means to this end, any codification of international law can be of little value except as a topical index and guide to the student."[34] To codify international law is then primarily to set in motion and promote the law-making process itself in the community of nations. In other words, codification, in this sense, involves legislation as well as arrangement and coordination of rules.

In regarding the scope of the task of codification, almost all jurists are agreed that it is not practicable to attempt at one time to embody within the limits of a code the entire body of international law. All concur in the belief that the process must take the form of partial codification, that, following the methods already adopted by the Hague Conferences, the law relating to

[33] Address of Hon. Charles Nagel before American Society of International Law. Proceedings, 28-29.

[34] E. Root: *Codification of International Law* (1910) 5 AM. J. INT. LAW, 579. See also Reinsch in Proceedings of the American Society of International Law (1910) 37. Oppenheim, *op. cit.* 46. Compare also Nagel; Proceedings of the American Society of International Law (1910) 29.

particular subjects must from time to time be agreed upon and formulated in definite rules and that this process should be carried on until eventually the codification of the whole body of law may be accomplished. The final question and one which in the past has greatly troubled all jurists, that is, by whom and according to what procedure the drafts should be prepared, seems to be answered by the recent action of the League of Nations. On September 22, 1924, upon the proposal of the Swedish delegation, the fifth Assembly of the League adopted a unanimous resolution, requesting the Council to convene a committee of experts, representative of the main forms of civilization and the principal legal systems of the world. This committee was to be charged with the duty, among others,

> To prepare a provisional list of the subjects of international law, the regulation of which by international agreement would seem to be most desirable and realisable at the present moment; and
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> To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

Such a committee of experts was, accordingly, appointed by the Council of the League of Nations at its 32nd session in Rome in December, 1924. Following a second meeting at Geneva, January 12-29, 1926, the Committee, through the Secretary-General of the League, addressed to the Governments of the countries, whether members of the League or not, communications embodying a provisional list of the subjects of international law the regulation of which by international agreement seemed to the committee to be most desirable and realisable at the present moment. These subjects relate to: (1) nationality, (2) territorial waters, (3) diplomatic privileges and immunities, (4) responsibility of states in respect of injuries caused in their territory to the person or property of foreigners, (5) procedure of international conferences and procedure for the conclusion and drafting of treaties, (6) piracy, and (7) exploitation of the products of the sea.

The majority of the replies from some thirty governments, including the United States, laid before the Committee of Experts

at its third annual session, held at Geneva, March 22-April 2, 1927, were encouraging to the committee's view of the desirability and feasibility of agreement upon the subjects listed provisionally. At the same session, the committee determined on the recommendation to the governments of the following additional subjects as ripe for international agreement, *viz.*: (1) communication of judicial and extrajudicial acts and letters rogatory in penal matters; (2) legal position and functions of consuls; (3) revision of the classification of diplomatic agents, and (4) jurisdiction of courts over foreign states.

At the eighth ordinary session of the Assembly of the League of Nations, September, 1927, to which the subject had been referred by the 45th session of the Council in the preceding June, the work of the committee of experts of the League was examined, and the Assembly decided, among other things, (1) to summon the first Codification Conference, and to arrange for its preparation and convocation, it being considered that such a conference might be held in 1929 at The Hague; (2) to invite the committee of experts to complete its work, and (3) to submit to such first conference, for examination, the questions of (a) nationality, (b) territorial waters, and (c) responsibility of States for damages done in their territory to the persons or property of foreigners. It should be mentioned here that the official initiative for the comprehensive codification of international law was furnished by the Americas. It is impossible for lack of space to enumerate here the actual attempts at and steps toward codification taken by the Pan-American republics but mere mention can be made that at a meeting of an International Commission of American Jurists for the Codification of International Law, Public and Private, which was held in Rio de Janeiro, April 18-May 20, 1927, the conference adopted twelve projects of public international law,[35] and a code of private in-

[35] See Jacob H. Goetz, *Newer Developments and Tendencies in International Law*, 136, ANNALS OF THE ACADEMY OF POLITICAL AND SOCIAL SCIENCE (1928) 22-46. The projects of conventions thus adopted relate to: (1) The bases of international law; (2) states—their existence, equality, recognition; (3) aliens; (4) treaties; (5) official publications; (6) interchange of professors and students; (7) diplomatic agents; (8) consuls; (9) maritime neutrality; (10) asylum; (11) duties of states in case of civil war, and (12) pacific settlement. It is questionable whether it is now

ternational law, drafted by Antonio S. Bustamente, of Cuba, embracing 439 articles, which were recommended for the consideration of the Sixth Pan-American Conference to be held in Havana, January, 1928.

The codification of international law, it would appear, has passed beyond the theoretical stages of bickering and hairsplitting argument as to its desirability or practicability, and seems at this time to be in the actual course of progressive construction. The work of the League committee and the Pan-American committee for codification bid fair to make this much thought-of and oft-debated subject a reality. The leading jurists of the world have recognized the special importance of codification of international law because it is necessary at this time in order to enlarge the service rendered by the Permanent Court of International Justice, and have recommended and taken definite steps to see that it is realized. They are in agreement that the great task in the development of the World Court of Justice is not so much the "mechanical organization of a body of men to judge and decide questions of disagreement, as previous general agreement on the part of the nations of the world as to what the matured opinion of mankind considers just in the intercourse of nations." This, as the Commission of Jurists saw it, is the great problem to be solved, and they are now systematically proceeding to solve it. Mr. Elihu Root believes that the civilized world is turning its hopes for the future toward the development of three institutions, which taken together promise to facilitate the preservation of peace to a degree never before obtained. These are as follows:

> (1) An automatic system providing for immediate general conference whenever serious irritation arises between nations, whether it be upon conflicts of policy or misunderstanding or resentment.
> (2) An established system for the determination by a permanent and competent court of the questions of legal right arising between nations.

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necessary or advisable for the Pan-American states to overlap the labors of the committee of experts and the League of Nations in which most of the governments, including the United States, have been cooperating. Undoubtedly they could make constructive contributions, supplementing the more general undertaking of the League of Nations.

(3) An established system to facilitate and regulate arbitration, which will bring the opinion of impartial arbitrators, selected by the parties, to bear upon controverted questions not strictly or wholly justiciable in their nature.[36]

The first of these institutions is supplied within the limits of its membership by the League of Nations. The second is supplied for the benefit of the whole world by the Permanent Court of International Justice. The third is supplied for the whole world by the continuing organization of the original Hague Court of Arbitration established by the first Hague Conference in 1899. It will be observed that the first of these institutions "affords opportunity for conciliation, for the friendly expression of outside opinion, for the cooling effects of deliberation, for a realization of other points of view, and for reflection upon the results of braving the public opinion of the world. All three of these institutions afford opportunity for dispelling misunderstanding and suspicion by the ascertainment and determination of facts through such commissions or investigations as may be adapted to the particular requirements of the several institutions. It may also be observed that the existence of the League of Nations, with its essential feature of ever-ready conference, is a distinct advantage, not only to its members, but to nations which are not members of the League."[37]

There are some people of course who expect human institutions to be born full-grown. They oppose and condemn the codification of international law because it could not be accomplished over night. It is this class of irreconciliables who condemn and denounce the Hague Court of Arbitration, the Permanent Court of International Justice, the League of Nations, and all the international conferences of the post-war period because they have not already stopped all wars. These people would have the clock begin by striking twelve. As Mr. Reed puts it, "Immediately after planting an acorn they would dig it up and throw it away because it is not already an oak." They fail to understand that all international progress is the result, never of compulsion but always of process, and that process has to go on in the minds and feelings of many widely different nations, and

[36] Root, *Codification of International Law*, 19 AM. J. INT. LAW, 675.
[37] Root, *op. cit.* 677.

therefore it must be slow. The progressive codification of international law by slow and partial codification of those subjects which are ripe for codification, and those remaining as they become ripe for codification, will be one of the noteworthy achievements of the next century. More progress towards the abolition and outlawry of the ancient institution of war and the substitution in its stead of a means for pacific settlement of disputes through the application of law, has been made in the last thirty years than in the whole period of history before the year 1900. In conclusion let us bear in mind that although human nature cannot be changed, standards of conduct can be, but always gradually, never violently. If the path of international progress is clearly envisioned the first important question is not, what is the complete and perfect system which should be obtained. The first important question is, how many steps along that path can all these nations, differing in interests and circumstances and traditions, and modes of thought and feeling, be brought to agree upon now. That is the first thing to ascertain, and when it is ascertained, although it may be possible to get immediate agreement upon only one step, the part of wisdom is to get that step agreed upon and put into effect. Get your institution out of the realm of theory into that of fact, and then, if you are right, your fact will immediately begin to change the way in which men think. The work of codification of international law and the development and perfection of the Permanent Court of International Justice will go on hand in hand. One is the complement of the other. The steady progress of codification will help the efficient functioning of the Court, and the decisions handed down by the Court of International Justice, and the interpretation which it gives to those portions of law which are not yet settled, will help the task of codification. It may, of course, receive its setbacks and delays but in time it will become an accomplished fact. One by one, as the different branches of international law become settled, they will be codified, and periodically as particular portions of the codified law fall behind the progress of the world, they will be revised and modified to meet changing conditions. In this way, by the gradual but steady codification of parts of international law through the medium

of periodical conferences of the nations, the task of codification of international law will become no longer a subject for the amusement of cynics and the dreams of idealists, but another actual step towards the peaceful government of a world community founded upon a firm legal basis and governed and regulated not by war but by law.