

master, subject to draft on state occasions. For that useful office I nominate Charles Evans Hughes of New York.

Mr. Wile also stated that the Society's dinner showed that "the age of after-dinner oratory is not gone. . . . There were five speeches. Each was a gem. They were brief, learned and witty—a combination seldom encountered."³

The printed volume of Annual Proceedings containing the complete text of all the addresses, a verbatim report of the discussions and the after-dinner speeches, together with the minutes of the meetings of the Executive Council, the revised Constitution of the Society, and a list of its officers, committees, and members, is now ready for distribution and will be sent to all subscribers. The subscription price is \$1.50.

GEORGE A. FINCH.

THE PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW

The Council of the League of Nations, at its thirty-second session, held at Rome in December, 1924, appointed a Committee of Experts for the Progressive Codification of International Law, in accordance with a resolution adopted by the Fifth Assembly of the League on September 22, 1924. The duties of this committee, as prescribed in the resolution of the Assembly, are:

- (1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable at the present moment;
- (2) After communication of the list by the Secretariat to the governments of states, whether members of the League or not, for their opinion, to examine the replies received; and
- (3) 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.¹

It was provided by the Assembly resolution that the committee should represent the main forms of civilization and the principal legal systems of the world. The Council accordingly on December 12, 1924, invited the following persons to serve upon the committee:²

- M. Hammarskjöld, Governor of Upsala, Chairman;
 Professor Diena, Professor of International Law at the University of Turin, Vice-Chairman;
 Professor Brierly, Professor of International Law at the University of Oxford;
 M. Fromageot, Legal Adviser to the Ministry for Foreign Affairs of the French Republic;
 Dr. J. Gustavo Guerrero, Minister of Salvador in Paris;

³ Evening Star, Washington, April 27, 1925.

¹ League of Nations Official Journal, Feb. 1925, pp. 120-121.

² Official Journal, *ibid.*, pp. 274-275.

- Dr. Bernard C. J. Loder, former member of the Supreme Court of The Netherlands, President of the Permanent Court of International Justice;
- Dr. Vilhena Barboza de Magalhaes, Professor of Law at the University of Lisbon, former Minister for Foreign Affairs, for Justice and Education of Portugal;
- Dr. Adelbert Mastny, Minister for Czechoslovakia in London, President of the Czechoslovak Branch of the International Law Association;
- M. M. Matsuda, Doctor of Law, Minister Plenipotentiary of Japan;
- M. Simon Rundstein, former Legal Adviser to the Ministry for Foreign Affairs of Poland;
- Professor Walter Schücking, Professor at the University of Berlin;
- Dr. José Leon Suarez, Dean of the Faculty of Political Sciences of the University of Buenos Aires;
- Professor Charles de Visscher, Professor of Law at the University of Ghent, Legal Adviser to the Ministry for Foreign Affairs of Belgium;
- Dr. Chung Hui Wang, Deputy Judge of the Permanent Court of International Justice (China);
- Mr. George W. Wickersham, former Attorney-General of the United States, member of the Committee of International Law of the American Bar Association, and President of the American Law Institute;
- A Spanish legal adviser (Mr. Botella, of Spain, was subsequently invited³);
- A legal expert in Moslem law.

All the persons invited accepted the appointment,⁴ and the committee held its first meeting at Geneva from April 1 to 8, 1925. A provisional list of subjects was selected for consideration and assigned to subcommittees as follows:⁵

- (1) *Nationality*. Rapporteur, M. Rundstein; members, M. Magalhaes and M. Schücking.
- (2) *Territorial waters*. Rapporteur, M. Schücking; members, M. Magalhaes and Mr. Wickersham.
- (3) *Diplomatic privileges and immunities*. Rapporteur, M. Diena; member, M. Mastny.
- (4) *Legal status of ships owned by the state and used for trade*. Rapporteur, M. Magalhaes; member, Mr. Brierly.
- (5) *Extradition and criminal jurisdiction of states with regard to crimes perpetrated outside of their territories*. Rapporteur, Mr. Brierly; member, M. de Visscher.
- (6) *Responsibility of states for damages suffered within their territories by foreigners*. Rapporteur, M. Guerrero; members, M. de Visscher and M. Wang.

³ Monthly Summary of the League of Nations, April, 1925, p. 105.

⁴ Monthly Summary, Jan. 1925, p. 7.

⁵ Monthly Summary, April, 1925, p. 106.

- (7) *Procedure of international conferences and the conclusion and drafting of treaties.* Rapporteur, M. Mastny; member, M. Rundstein.
- (8) *Suppression of piracy.* Rapporteur, M. Matsuda; member, M. Wang.
- (9) *Limitation.* Sole member, M. de Visscher.
- (10) *Exploitation of the produce of the sea.* Sole member, M. Suarez.
- (11) *List of subjects of private international law.* Rapporteur, Mr. Brierly; member, M. de Visscher.

The subcommittees are to make a preparatory survey of the field of investigation with a view to proposals which will be worked out in detail later. They are expected to submit the result of their investigations before October 15th next. After that the full committee will prepare a provisional list of subjects for communication to the governments pursuant to the resolution of the Assembly. From the replies received to this communication the committee will draft a final report to the Council of the League. Questions relating to war and neutrality and private international law have been held over for future consideration by the committee.

The resolution of the Assembly further provided that the Committee of Experts should consult the most authoritative organizations which have devoted themselves to the study of international law. The committee has accordingly requested the following associations to coöperate in its work: The Institute of International Law, the American Institute of International Law, the International Law Association, the *Institut ibérique de droit comparé*, the *Union juridique internationale*, the American Society of International Law, the International Maritime Committee, and the *Société de législation comparée*.⁶

The request for the coöperation of the American Society of International Law was received a few days before the Nineteenth Annual Meeting of the Society held in Washington, April 23-25, 1925. Two letters from the League of Nations containing this request were considered by the Executive Council of the Society on April 24th and referred to the Society's standing Committee for the Extension of International Law with instructions to report to the Council on Saturday morning April 25th. In accordance with these instructions, the committee, composed of Jesse S. Reeves, chairman, and Edwin M. Borchard, Charles G. Fenwick, Charles Cheney Hyde, Manley O. Hudson, Fred K. Nielsen and Quincy Wright, submitted a written report and recommendations which were approved and adopted by the Executive Council on April 25th, as follows:

TO THE COUNCIL OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW:

At a meeting of the Council held April 24, 1925, there were referred to the Standing Committee of the Society on Extension of International Law communications addressed to the Chairman of the American Society of International Law by the Director of the Legal

⁶ *Ibid.*, p. 105.

Section of the Secretariat of the League of Nations, dated April 6 and April 8 last. This Committee was directed to report to the Council at its meeting of April 25 its conclusions as to the manner and method in which the said communications should be considered by the Council. The communications disclose that the Committee of Experts created by the League of Nations for the development of international law is desirous of making contact with the American Society of International Law, as with other learned societies, and to consult with it concerning the matters to be considered by the Committee. Specifically the American Society of International Law is requested to consider what are the problems of international law the solution of which by international agreement would seem to be most desirable and most easily realized. It is a question of preparing a list of topics and not a draft of conventions. The communication indicates the desire of the Committee of Experts that the American Society of International Law choose its own means of arriving at such conclusions and of indicating them. It would seem further that the Committee of Experts would appreciate the receipt by them of whatever published material there may be issued by the Society bearing upon the general and specific problems before them.

Your Committee considers that a favorable response to the communications referred to is quite in line with the activities of this Society for many years and especially since the receipt of the Report of the Advisory Committee of Jurists at The Hague which was charged with drafting a plan for the Permanent Court of International Justice in 1920. That report included several recommendations which learned societies whose special field was international law were requested to take under consideration. These recommendations had in mind especially the restatement and clarification of principles of international law as well as the consideration of subjects not at present considered as within the scope of international law, but which might properly be brought within it. In line with the recommendation of the Committee of Jurists this Society devoted two of its annual sessions to the consideration of the topics suggested by the Advisory Committee, created special committees for the consideration of specific topics under the general recommendations, and furthermore created a Standing Committee on the Extension of International Law, all of which activities are sufficient evidence of the long and continued interest of this Society in the aims which animate the Committee of Experts now created with which coöperation has been invited. The Society was eager to extend hospitable consideration to the Resolution of the Advisory Committee of Jurists in 1920, more especially because of the participation in the work of that Committee of its honored President, Mr. Elihu Root, and at the present time it is desirous of extending the same hospitable consideration to the invitation of the Committee of Experts in which the Honorable George W. Wickersham, one of its most prominent members, is playing an important part.

The Committee therefore recommends to the Council of the American Society of International Law the following action to be taken with reference to the invitation of the Committee of Experts:

1. The Council of the American Society of International Law welcomes the invitation of the Committee of Experts and notes with great satisfaction the progress which has been made by the Committee toward the initiation of a process which it is to be hoped will lead to the development of international law in various fields. The Council therefore accepts the invitation of the Committee of Experts to collaborate in its work and takes satisfaction in the opportunity thus afforded for the realization of the purpose of the Society as expressed in Article 2 of its Constitution.

2. As a procedure for undertaking such coöperation the Council decides to request the President of the Society to appoint a committee of five or seven members from the Society at large for the purpose of drafting a report to be submitted to the Council for its consideration with a view to its later submission to the Committee of Experts on behalf of the Society. This special committee is requested to circulate a draft of a report to each member of the Council on or before September first, 1925, and the President of the Society is requested to summon a special meeting of the Council for dealing with this report not later than Septem-

ber 26, 1925, in order that whatever communication the Council decides is proper and appropriate may be in the hands of the Committee of Experts at Geneva by October 15, 1925. The special committee is directed to consider what are the subjects of international law the solution of which by international agreements appears the most desirable and possible of realization.

3. The Council further decides to instruct the Secretary to forward to the Secretary of the Committee of Experts immediately seventeen copies of the Proceedings of the Society for 1921, 1922, 1923, 1924 and 1925, and to inform the Secretary of the Committee of Experts that the Society stands ready to furnish the Committee with any further documentation concerning its work which may be requested.

The special committee provided for in this report was appointed by the President of the Society as follows: Jesse S. Reeves, of the University of Michigan, chairman; Edwin M. Borchard, of Yale University; Philip Marshall Brown, of Princeton University; Charles G. Fenwick, of Bryn Mawr College; Arthur K. Kuhn, of the New York Bar; Ellery C. Stowell, of American University, and Quincy Wright, of the University of Chicago.

Better counsels prevailed in the League of Nations in 1924 when it decided to proceed with the consideration of the development of international law than in 1920 when it rejected a similar proposal recommended by the Advisory Committee of Jurists which drafted the plan for the Permanent Court of International Justice. The first resolution adopted by the Advisory Committee of Jurists at The Hague on July 23, 1920, recommended the institution of successive conferences for the advancement of international law for the following purposes: (1) To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war; (2) to formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war; (3) to endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore; (4) to consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted. The resolution further recommended that the Institute of International Law, the American Institute of International Law, the *Union juridique internationale*, the International Law Association, and the Iberian Institute of Comparative Law, be invited to prepare projects for the work of the conferences, to be submitted beforehand to the several governments.⁷

These proposals of the Advisory Committee of Jurists received a modified endorsement by the Council of the League at Brussels on October 27, 1920,⁸ but they were finally rejected in the Assembly on December 19, 1920, upon the objection of Lord Robert Cecil, who "did not think that a stage had yet

⁷ League of Nations Assembly Doc. No. 44, p. 119; reprinted in Proceedings of the Executive Council of the American Society of International Law, 1920, pp. 79-80.

⁸ Assembly Doc. No. 44, pp. 97-103; Proceedings, *ibid.*, p. 83.

been reached in international relations at which it was desirable to attempt the codification of international law."⁹

The unfavorable attitude of the League of Nations in 1920 was naturally disappointing to those who are convinced, as was the Advisory Committee of Jurists, "that the security of states and the well-being of peoples urgently require the extension of the empire of law and the development of all international agencies for the administration of justice;" and the international jurists of America were not content to accept the non-action of the League of Nations as final.

When the American Society of International Law renewed its public annual meetings in April, 1921, after omitting them during the three preceding years when international questions were so interwoven with political strife, it adopted as its program for discussion the recommendations of the Advisory Committee of Jurists of 1920. A large committee, headed by Mr. Elihu Root as chairman, was formed and divided into four subcommittees each charged to consider and report upon one of the four purposes recommended by the Advisory Committee of Jurists as being appropriate for the advancement of international law.

In his presidential address opening the Society's annual meeting on April 27, 1921, Mr. Root declared that the task of promoting the development of international law cannot be abandoned. "The process which owes its impulse towards systematic development to Grotius and the horrors of the Thirty Years' War," he said, "cannot be abandoned. Never before was the need so great. The multitudes of citizens who now control the national governments of modern democracies and direct international policies cannot safely follow the passion of the moment or the idiosyncrasy of the individual public officer in their international affairs, without accepted principles and rules of action, without declared standards of conduct, without definition of rights, without prescription of duties too clear to be ignored. Otherwise the world reverts to chaos and savagery."¹⁰

Reports of the Society's Committee for the Advancement of International Law, with papers by individual members illustrative of the work of the several subcommittees, constituted the principal business before the Society's meetings in 1921, 1922, 1923 and 1924, the personnel of the committee in the meantime having been reduced and its name changed to Committee for the Extension of International Law. As indicated elsewhere in these columns,¹¹ the Society's meeting in April, 1925, was devoted exclusively to the consideration of the development and codification of international law.

The jurists of the United States were not alone in continuing the efforts to further the development of international law. At the Fifth International

⁹ Journal of the First Assembly of the League of Nations, Dec. 19, 1920, pp. 298-299; Proceedings, *ibid.*, p. 85.

¹⁰ Proceedings of the American Society of International Law, 1921, pp. 5-6.

¹¹ Editorial comment on the Annual Meeting of the Society, *supra*, pp. 530-534.

Conference of the American States, held at Santiago, Chile, in 1923, the first of such conferences held by the American Governments after the World War, they reorganized the International Commission of Jurists established to prepare draft codes of public and private international law by the convention signed at the Third International American Conference at Rio de Janeiro on Aug. 23, 1906.¹² That commission met at Rio de Janeiro in 1912 and appointed six committees, four to deal with questions of public international law and two with questions of private international law, as follows: I. Public International Law: (1) Maritime war and the rights and duties of neutrals; (2) War on land, Civil war, and Claims of foreigners growing out of such wars; (3) International law in time of peace; (4) The pacific settlement of international disputes, and the Organization of international tribunals. II. Private International Law: (5) Capacity, Status of aliens, Domestic relations, Succession; (6) Matters of private international law not embraced in the foregoing enumeration, including the Conflict of penal laws. With a view to the preparation of draft codes, it was provided that each committee should request from each government a detailed report as to its domestic legislation, its judicial and administrative decisions, its conventions and practices, its international cases and their solutions, and as to the regulations which it deems most suitable, on the subjects with which the committee was charged.¹³ The commission adjourned to meet in 1914, but owing to the outbreak of the World War, that meeting never took place.

With the object of continuing the work started in 1912, the Fifth International American Conference of American States adopted a resolution on April 26, 1923, reorganizing the commission and requesting each American Government to appoint thereon two delegates to meet in Rio de Janeiro on a date to be determined by the Governing Board of the Pan American Union in agreement with the Government of Brazil. The commission was requested to reconsider its work in the light of the experience of recent years, and to appoint a committee for the study of comparative civil and criminal law in America. The resolutions of the International Commission of Jurists will be submitted to the Sixth International Conference of the American States, to meet at Habana, Cuba, and, if approved, may be communicated to the respective governments for incorporation in conventions.¹⁴

To aid the International Commission of Jurists in the fulfillment of the task assigned to it, the Governing Board of the Pan American Union, by resolution adopted on January 2, 1924, requested the American Institute of International Law to consider the codification of international law and

¹² Printed in Supplement to the *JOURNAL*, Vol. 6, pp. 173-177.

¹³ See editorial comment in the *JOURNAL*, Vol. 6, pp. 931-935.

¹⁴ An English translation of this resolution is printed in the pamphlet entitled *Codification of American International Law*, Pan American Union, Washington, 1925, pp. 17-18. See press notice issued by the Pan American Union, Nov. 15, 1923, printed in the *Journal*, Vol. 18, pp. 126-127.

submit the results of its deliberations to the commission at its meeting at Rio de Janeiro.¹⁵ The American Institute responded to this request by presenting to the Governing Board on March 2, 1925, projects of conventions dealing with general declarations, Pan American unity and coöperation Fundamental bases of international law, Nations, Recognition of new nations and of new governments, Rights and duties of nations, Fundamental rights of American Republics, Pan American Union, National domain, Rights and duties of nations in territories in dispute on the question of boundaries, Jurisdiction, International rights and duties of natural and juridical persons, Immigration, Responsibility of governments, Diplomatic protection, Extradition, Freedom of transit, Navigation of international rivers, Aërial navigation, Treaties, Diplomatic agents, Consuls, Exchange of publications, Interchange of professors and students, Maritime neutrality, Pacific settlement, Pan American Court of Justice, Measures of repression, Conquests, prepared at meetings of the Executive Committee of the Institute in Europe in the summer of 1924, at a special meeting of the Institute held in Lima, Peru, in December, 1924, and at another meeting of the Executive Committee held in Habana, in February, 1925.¹⁶

The work which was being done in America to promote the development of international law doubtless came to the knowledge of the President of the United States. His Secretary of State was the Chairman of the Governing Board of the Pan American Union, and Mr. Hughes had also for many years been a Vice-President of the American Society of International Law and was chosen to be its President when Mr. Root retired in April, 1924. President Coolidge gave the following official encouragement to this work in his annual message to Congress, December 3, 1924:

Our country should also support efforts which are being made toward the codification of international law. We can look more hopefully, in the first instance, for research and studies that are likely to be productive of results, to a coöperation among representatives of the bar and members of international law institutes and societies, than to a conference of those who are technically representative of their respective governments, although, when projects have been developed, they must go to the governments for their approval. These expert professional studies are going on in certain quarters and should have our constant encouragement and approval.¹⁷

The initiative of America, coupled with the League's own experience, seem to have been responsible for the change of attitude at Geneva. The statement favoring the codification of international law contained in President Coolidge's

¹⁵ English text of this resolution will be found in the *JOURNAL*, Vol. 18, p. 269.

¹⁶ For texts of projects, see *Codification of American International Law, Pan American Union*, Washington, 1925. See also editorial by James Brown Scott, in the last issue of the *JOURNAL*, pp. 333-337, and address commenting upon the projects, in *Proceedings of the Society*, 1925.

¹⁷ Reprinted in the *JOURNAL*, Vol. 19, pp. 168-169.

message to Congress, above quoted, was specifically referred to when the report which resulted in the appointment of the Committee of Experts was submitted to the Council of the League on December 8, 1924,¹⁸ while the Assembly resolution of September 22, 1924, recited that "the experience of five years has demonstrated the valuable services which the League of Nations can render towards rapidly meeting the legislative needs of international relations, and recalling particularly the important conventions already drawn up with respect to international conciliation, communications and transit, the simplification of customs formalities, the recognition of arbitration clauses in commercial contracts, international labor legislation, the suppression of the traffic in women and children, the protection of minorities as well as the recent resolutions concerning legal assistance for the poor."¹⁹

But, however tardy the decision of the League to join the progressive movement which seeks the peace of nations through the development of international law, or whatever may have been the reasons for its decision, its action has been welcomed by the American Society of International Law and its invitation to collaborate accepted. A like attitude of coöperation will also doubtless be assumed by the International Commission of Jurists of the Americas, for, at its first meeting in Rio de Janeiro in 1912, it seemed to be the general sense that while questions distinctively American may require distinctive treatment, it was recognized that general questions of international law are necessarily questions of world wide concern and with regard to such questions the work of the commission will be essentially coöperative.²⁰

Every member of the Society and every reader of the JOURNAL will no doubt join in the hope expressed by Mr. Hughes at the annual dinner of the Society that the action of the Executive Council in pledging the Society's coöperation in the work of the Committee of Experts of the League of Nations will not give rise to a division of opinion such as originated in the controversy over the entry of the United States into the League of Nations. As explained by Mr. Hughes, "This is a matter of the codification and development of international law and an endeavor to secure appropriate international agreement to that end. In this aim all are united; we are all together working for the reign of law."

GEORGE A. FINCH.

THE SECOND CONFERENCE OF TEACHERS OF INTERNATIONAL LAW AND RELATED SUBJECTS HELD IN WASHINGTON, APRIL 23-25, 1925

The First Conference of Teachers of International Law was held in Washington in 1914 upon the invitation of the Carnegie Endowment for International Peace. At a meeting of its Trustees in 1911, the then venerable dean of the Diplomatic Corps of the United States, the Honorable Andrew D. White, proposed that the Endowment prepare and carry out "a plan for the propagation, development, maintenance and increase of sound, progressive and fruitful ideas on the subject of arbitration and international law and

¹⁸ Official Journal, Feb. 1925, p. 121. ¹⁹ *Ibid.*, p. 120.

²⁰ See editorial in the JOURNAL, Vol. 6, p. 931 at p. 935.