

patriation, must, we repeat, still be regarded as policy, but it is a policy which is in accord with the trend of world affairs, and, as in the case of Jefferson's policy of neutrality, we may confidently expect that it will, in the not distant future, secure the support of the entire world.

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THE MONTEVIDEO RESOLUTION ON CODIFICATION

Among the ninety-four resolutions adopted by the recent Pan American Conference at Montevideo, Resolution LXX,¹ involves a radical departure from the system of procedure and technique set up by the Sixth Conference at Havana. In order to understand the new proposals it is necessary to recall to mind the efforts to establish a codification system since the matter was first broached at the Second Pan American Conference in the City of Mexico in 1901. By a convention there signed, a committee of seven jurists was to be created, serving by appointment by the Secretary of State and the Ministers of the American Republics at Washington. The convention was never in effect because ratified by only three signatories, Bolivia, Guatemala, and Salvador. The proposed committee was to consist of five American and two European members. It was to draft for presentation to the Third Pan American Conference "and in the shortest possible time," a code of public international law and another of private international law "which will govern the relations between the American nations." At the Third Pan American Conference at Rio, 1906, a new convention was signed, and later ratified by fifteen states, by which an international commission of jurists was established, consisting of one member from each of the signatory states. The first meeting of the commission was to have been in 1907 at Rio for organization and distribution of the work. Due to delay in ratification the commission did not meet until June, 1912. In July of that year the Fourth Pan American Conference was held at Buenos Aires. It took no action upon the matter. The commission sat at Rio from June 26 until July 19, 1912, with sixteen states represented. Its paper organization was elaborate with six sub-commissions, each to meet in a different capital, the full commission to meet in 1914. The World War interfered with the preparatory work of the sub-commissions, and the commission never met again.

Perhaps partly because the Rio meeting of the International Commission of Jurists had not produced the substantial results looked for, the American Institute of International Law was organized at Washington on Columbus Day, 1912, under the honorary presidency of Elihu Root. It is not too much to say that whatever has been accomplished in the way of the codification of international law under the auspices of official Pan Americanism has been due to the activities of the American Institute. It revived the project of codification at Santiago in 1923. It performed all of the preparatory work for the Rio meeting of the reconstructed Commission of American Jurists

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in 1927, of which the conventions of Havana, now in process of ratification, are the result. The Bustamante Code of Private International Law is the result of its initiative. The Sixth Pan American Conference at Havana, 1928, in recognition of its services, formally associated the American Institute with the preparatory work of codification by providing that the executive committee of the Institute should receive draft projects as prepared by various agencies, make a technical study of them, and report their results to the Pan American Union.

The resolution recently adopted at Montevideo would seem to eliminate the American Institute from the process of codification, at least officially. After premising that codification must be gradual and progressive and necessarily coördinated with the work of codification "being done by the League of Nations" (which seems at the present to be doing nothing in this respect and to have yielded its initiative in the process), the resolution "maintains" the Commission of Jurists created at Santiago in 1923, and provides for national commissions for codification in each signatory state, with a Commission of Experts for the preparatory work. The establishment of this Commission of Experts is a radical departure from the system as adopted at Havana. In some respects it resembles in projected functioning the Committee of Experts for the Progressive Codification of International Law established by the League of Nations in 1924, which performed the preparatory work for the Hague Codification Conference of 1930. It would be unfair to ascribe the meagreness of the results of the Hague Conference to the technique of the Committee of Experts. Nevertheless, no one will maintain, in the light of the event, that the subjects selected for the Hague Conference were "suitable and ripe" for codification, notwithstanding the efforts of the committee to make them so. The committee was appointed by the League and (most important for the prompt beginning and uninterrupted continuation of its labors) it was financed by the League through successive budgetary items.

The proposed Pan American Commission of Experts is evidently patterned upon the League committee. But its methods of selection and payment for services rendered are totally different. Each of the twenty-one governments is to submit to the Pan American Union a panel of five qualified persons selected for its national commission. From the total panel thus submitted each government is to select seven persons, not more than two being its nationals. These selections having been submitted to the various governments, the seven found to have the highest number of votes are to constitute the Commission of Experts. Its primary duty is that "of organizing, with a preparatory character, the work of codification." At annual meetings (the first to be held at Washington as soon as there is organized a general secretariat and judicial section in the Pan American Union, an arrangement which in itself deserves much thought and arouses the query as to how the expenses of these new instrumentalities are to be met), the commission is to examine

"all the problems of private and public international law and will make a list of those matters which it considers susceptible of codification." The technique of the League committee is then to be followed: with respect to each point it will draw up a questionnaire which is to be submitted to the consideration of all the national commissions of codification. Upon the basis of these answers, the commission is to select those topics which are susceptible of codification, the criterion being "a harmony of opinions which permits the formulation of concrete bases of discussion." The list having been thus made, the commission is to formulate these bases of discussion for the International Commission of Jurists, of which the members of the preparatory commission are to be members serving as delegates from their respective states. The plenary meeting is to be at Rio at a time not stated. The International Commission of Jurists, it is proposed, will be empowered to sign treaties, thus apparently eliminating the formal work of codification from the agenda of the Pan American Conference.

It is to be observed that the members of the preparatory commission are to serve in a double, and possibly contradictory capacity, *viz.*, as experts, for the "scientific" preparatory work, and as official representatives of their respective states with full powers for the signing of conventions.

Clearly the proposed Commission of Experts will occupy the key position in the entire process. What initial impulse will set the plan in motion remains to be seen. A resolution of the conference has no legal validity or binding force. Possibly the initiative may be taken by the Pan American Union, which was burdened by a score of new activities by the conference at Montevideo. Again, the method of financing the preparatory commission is somewhat original. Each government which is honored by having its national selected upon the preparatory commission is to pay his salary and expenses as it may for itself determine.

How this new plan will work, or if it will be tried, it is too early to predict. If it is to be launched, the only apparent initiative is, as was indicated, that of the Pan American Union. That, however, will not solve the financial problem. The budget of the Pan American Union must be greatly enlarged if a legal secretariat and a juridical section are to be organized and permitted to function in an adequate way. The permanence and activity of the proposed preparatory commission will require a more definite assumption of financial responsibilities by the various states than the resolution of Montevideo indicates. The action of the League of Nations, which has thrown the initiative as to codification upon single states, has certainly not expedited the work. The resolution of Montevideo, by rescinding in effect the resolution of Havana, and by its proposal to eliminate codification from the agenda of future Pan American Conferences, may "coördinate" the work of codification with that of the League, but together they may result in putting codification in the doldrums.

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