

in seeking, while Solicitor of the Department of State and later as a private citizen, to bring into being the Court of Arbitral Justice recommended by the Second Hague Peace Conference of 1907. Both Mr. Root and Dr. Scott later participated in the formulation of the Statute of the Permanent Court of International Justice, the signature of which actually brought the Court into being. Both suffered the disappointment of seeing the Court rejected by the Government of the United States, and neither lived to see their Government become a member.

Judge Hudson's career spans the three eras, first, when there was no international court in existence, then during the Court's twenty years of successful operation without membership of or assistance from the United States, and, finally, after the Court survived a devastating World War and has been restored with the United States a fully supporting member. His articles are consequently completely informative and highly authoritative. They deserve republication in a single volume marking the first twenty-fifth anniversary in recorded history of the judicial settlement of international disputes. An evolutionary concept which has become an actual reality and persisted in the life of nations for a quarter of a century cannot die. It can only progress.

GEORGE A. FINCH

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**ENCOURAGEMENT OF THE DEVELOPMENT OF INTERNATIONAL LAW  
BY THE UNITED NATIONS**

In pursuance of its mandate under Article 13 of the Charter, the General Assembly of the United Nations has taken a significant step toward encouraging "the progressive development of international law and its codification." On December 11, 1946, it adopted the following resolution:<sup>1</sup>

The General Assembly

Resolves to establish a committee of sixteen Members of the United Nations to be appointed by the General Assembly on the recommendation of the President, each of these Members to have one representative on the committee.

<sup>1</sup> Journal, No. 58 (Supp. A), p. 470.

The preamble proposed by the Sixth Committee but not read to the General Assembly, ran as follows (Document A/222, 6 December 1946):

"The General Assembly recognizes the obligation laid upon it by Article 13, paragraph (2), of the Charter to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification;

"Realizes the need for a careful and thorough study of what has already been accomplished in this field as well as of the projects and activities of official and unofficial bodies engaged in efforts to promote the progressive development and formulation of public and private international law, and the need for a report on the methods whereby the General Assembly may most effectively discharge its obligations under the above-mentioned provision."

A Secretariat paper, Document A/122, 17 October 1946, traced the historical background of the provision in Article 13.

Directs the committee to study :

(a) the methods by which the General Assembly should encourage the progressive development of international law and its eventual codification ;

(b) methods of securing the coöperation of the several organs of the United Nations to this end ;

(c) methods of enlisting the assistance of such national or international bodies as might aid in the attainment of this objective and to report to the General Assembly at its next regular session.

Requests the Secretary-General to provide such assistance as the committee may require for its work.

This matter had been placed upon the agenda at the request of the United States delegation, and a first draft was offered by the American and Chinese representatives ;<sup>2</sup> proposals were made also by the delegations of the Argentine Republic<sup>3</sup> and Saudi Arabia.<sup>4</sup> On the other hand several delegations deemed the present world situation to be unfavorable for the work of the codification of international law and, without opposing it in principle, would have postponed a consideration of the subject.

The matter was first considered by a sub-committee of the Sixth Committee, and later by the Sixth Committee itself.<sup>5</sup> Account was taken of the doubts expressed by the insertion of the word "eventual" before codification. It was generally agreed that the initial task was to study methods, and the mandate of the committee was thus limited. Sub-paragraph (b) of the resolution grew out of a proposal for consultation with the Economic and Social Council. Sub-paragraph (c) is notable for its recognition of the essential rôle of "national and international bodies" which may be official or unofficial. The size of the committee was debated at some length, a smaller number of members having been proposed. The report of the Sixth Committee<sup>6</sup> envisaged a "fresh approach" to the problem, "in view of difficulties encountered in past efforts"; and it wished the committee to be set up to be "genuinely representative of the main forms of civilization and of the principal legal systems of the world."

The President of the General Assembly designated the following States to be represented on the committee : Argentina, Australia, China, Colombia, Egypt, France, India, The Netherlands, Panama, Poland, Sweden, Union of Soviet Socialist Republic, United Kingdom, United States of America, Venezuela and Yugoslavia. Later, after a tribute to the "strong legal tradition" of South American countries, he added Brazil and thus increased the membership to seventeen. A meeting of the Committee is now scheduled for an early date.

<sup>2</sup> Document A/C.6/54, 6 November 1946.

<sup>3</sup> Document A/C.6/72, 17 November 1946.

<sup>4</sup> Document A/C.6/81, 21 November 1946, and Document A/C.6/108, 3 December 1946.

<sup>5</sup> Journal, No. 56, Supp. No. 6, pp. 122-127.

<sup>6</sup> Document A/222, 6 December 1946.

The General Assembly referred to the same committee the draft declaration on the rights and duties of States, proposed by the Panamanian delegation, and it directed the committee "to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offenses against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal."

A new vista thus opens for developing international law! Those who work in the field will take an intense interest in the work of the committee, and they will feel reassured if it includes among its members men who, having lived with the subject, are capable both of valuing the methods followed in the past and of appraising the changes in the world which now necessitate a "fresh approach." It is gratifying to feel that our progress in international organization may mean that continuous attention can now be given to "revitalizing and strengthening international law," and it is a happy augury that a high official of the United Nations Secretariat, Mr. Y. L. Liang, has been charged with responsibility to that end.<sup>7</sup>

A significant contribution to the committee's deliberations was made in the paper<sup>8</sup> read by Sir Cecil Hurst before the Grotius Society in London on October 16, 1946. Out of his long experience, Sir Cecil submitted that the work to be done with respect to codification, to have "any chance of success," (1) "cannot be done by Governments or by delegates working under Government instructions"; (2) "cannot be done upon a purely individual basis" as the "work of one man alone"; and (3) "must be undertaken on both a national and an international basis."<sup>9</sup> Even if these views should not be wholly shared by the members of the committee they are stated with such cogency that they merit the most serious consideration.

MANLEY O. HUDSON

#### INTERNATIONAL LAW AND INTERNATIONAL ORGANIZATION

International law is a law between independent states. The effort to form a centralized or super government, evident during the last thirty years, implies on the other hand an abolition of independent states. This finds its reflection in the League of Nations, which had to recognize the continued existence of states, and less strongly in the United Nations Organization, which may have abolished the independence of the small states not possessing a veto power. It is inherent in the proposal of Judge Roberts and his friends for a world government. They would have domestic de-control, but believe in international control, even of individuals. All

<sup>7</sup> Journal, No. 58 (Supp. A), pp. 475, 485.

<sup>8</sup> Printed privately, under the title "A Plea for the Codification of International Law on New Lines."

<sup>9</sup> See Elihu Root, "The Function of Private Codification of International Law," *this JOURNAL*, Vol. 5 (1911), p. 577.