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LEAGUE OF NATIONS

PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

REPORT BY THE FIRST COMMITTEE.

Rapporteur: M. GIANNINI (Italy).

The items on the agenda of the First Committee were so important that the Committee has had very little time to examine carefully the questions connected with the progressive codification of international law, and, in particular, the suggestions which, as a result of experience gained at the first Codification Conference, that Conference embodied in its Final Act.

Moreover, several proposals have been submitted to the Committee, either in connection with special questions—for instance, the proposal of M. Ferrara, the delegate for Cuba—or regarding the further action to be taken in the matter of codification, and particularly the procedure to be followed for the preparation of new conferences (draft resolution of the Irish delegation, draft resolution of the British, French, German, Greek and Italian delegations, with amendments proposed by the Belgian, Italian, Norwegian and Swedish delegations).

As these proposals related to the substance of the question, the Committee thought that there was insufficient time to examine them adequately, and finally agreed on the following proposal, which it submits to the Assembly for approval:

Draft Resolution.

“ The Assembly has taken note of the work of the Conference which was held at The Hague in March and April 1930, as a result of the initiative taken by the Assembly by its resolution of September 22nd, 1924, regarding the progressive codification of international law,

“ It reaffirms the great interest taken by the League of Nations in the development of international law, *inter alia*, by codification, and considers it to be one of the most important tasks of the League to further such development by all the means in its power.

“ The recommendations made by the Conference contain suggestions of the highest value, and must be taken into account in examining what would be the best methods for continuing the work which has been begun,

“ The Assembly accordingly decides to adjourn the question to its next session, and requests the Council, in the meanwhile, to invite the Members of the League of Nations and the non-Member States to communicate to it, if they so desire, their observations on these suggestions, in order that these observations may be taken into consideration by the Assembly.”

* * *

Since the proposals submitted by the various delegations represented different points of view, and since they certainly merit discussion (possibly at the next Assembly), they have been set out in the form of an annex to the present report.

The draft resolution submitted to the Assembly calls for some explanation. We take note of the work of the Hague Conference and reaffirm the interest taken by the League of Nations in the development of international law, *inter alia*, by codification, considering such development to be one of the most important tasks that the League has to accomplish.

As the Minutes of the Hague Conference have not yet been printed, and as they must be studied before an idea can be formed of the result of the work and the action to be taken thereon; and as, moreover, the Conference made recommendations containing suggestions as to the best method to be followed for future conferences, the Committee feels that, although it is obliged to propose the adjournment of this question until the next Assembly, no time should be lost. The interval between the two Assemblies might, indeed, be usefully employed by requesting the Council to notify those States which took part in the Conference to communicate to it, if they so desire, their observations on the above-mentioned suggestions, in order that these observations may be taken into consideration by the next Assembly.

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One point on which the Committee was unanimous was that a broader and less pessimistic view of the work accomplished by the first Conference is necessary, and that the results it attained should not, and are not of a nature to, discourage the efforts to continue the task which has been begun.

Annex.

I. DRAFT RESOLUTION SUBMITTED BY M. ORESTES FERRARA (CUBA).

Whereas the Conference for the Codification of International Law, held at The Hague in 1930, adopted a Convention on Nationality, and some States represented at the Conference did not accept it in its entirety, or submitted reservations in respect of certain articles thereof, and, further, no State has hitherto ratified this Convention;

Whereas the same Conference, after approving the Convention on Nationality, adopted a resolution recommending the States to study the possibility of introducing into their respective legislations the principle of the equality of the sexes in matters of nationality;

Whereas the First Commission is instructed by the Assembly to consider Item 19 of the agenda regarding the Progressive Codification of International Law:

The Cuban delegation proposes to the Commission to submit to the Assembly, among the other points dealt with in its decisions on Codification, the following resolution:

“ The Assembly begs the Council to examine whether it would be desirable to take up again, with a view to the next Conference for the Codification of International Law, the question of the nationality of women.”

II. DRAFT RESOLUTION SUBMITTED BY THE IRISH DELEGATION.

“ The Assembly:

“ Expressing appreciation of the work done by the first Conference for the Codification of International Law;

“ Affirming its determination to make an ever-increasing contribution towards the progressive codification of international law;

“ Desiring that the important work already accomplished, and the efforts to be made in the future for such codification, should be continued and directed in a manner most likely to produce the best possible results;

“ And noting, in this connection, the recommendations of the first Codification Conference as to future action in regard to the progressive codification of international law;

“ Requests the Council to appoint a Committee to examine those recommendations, and to suggest such further or other measures as may appear most likely to facilitate and encourage such codification, and to prepare a report in sufficient time for submission to the twelfth ordinary session of the Assembly.”

III. DRAFT RESOLUTION SUBMITTED BY THE BRITISH, FRENCH, GERMAN, GREEK AND ITALIAN DELEGATIONS.

“ The Assembly:

“ Having considered the work of the Conference which was held at The Hague in March and April 1930, as a result of the initiative taken by the Assembly by its resolution of September 22nd, 1924, regarding the progressive codification of international law:

“ Reaffirms the great interest taken by the League of Nations in the development of international law, and considers it to be one of the most important tasks of the League to further such development by all the means in its power.

“ The Assembly considers that the experience which has been acquired in the process of preparing for the above-mentioned Conference, and as a result of the meeting of the Conference, renders it desirable to recognise a distinction between the gradual formulation and development of customary international law, which should result progressively from the practice of States and the development of international jurisprudence, and the formulation in international Conventions, freely accepted by the States, of precise rules, whether derived from customary international law or entirely new in character, to govern particular relations between States the regulation of which by general agreement is found to be of immediate practical importance.

“ The Assembly considers that the term ‘ codification ’ as applied to the work for the development of international law undertaken by the League of Nations should be understood as an activity of the last-mentioned character, and that, in present circumstances, as was shown by the experience of the Conference at The Hague, it is not for the League or the Conferences convened by it to

endeavour to formulate the rules which are binding upon States as part of the customary law of nations.

“ The Assembly notes that, as already recognised in its resolution of September 22nd, 1924, the work of the conferences convened as the result of the activities of the existing technical organisations of the League constitutes a work of codification in the above-mentioned sense.

“ The Assembly welcomes the recommendations made by the Conference of The Hague in its Final Act as giving suggestions of the highest value regarding the preparation to be made by the League for future international conferences;

“ And, being desirous that the eventual development of the organisation of the League, for the realisation of the policy set out in the present resolution, should be considered after full opportunity has been allowed to all the Members of the League to examine the results of the experience already acquired, it decides to consider at an early session in what conditions and by what methods of procedure the work of codification can most usefully be pursued. ”

IV. DRAFT RESOLUTION SUBMITTED BY THE NORWEGIAN AND SWEDISH DELEGATIONS.

“ The Assembly:

“ Having considered the work of the Conference which met at The Hague in March and April 1930, as a result of the Assembly resolution of September 22nd, 1924, concerning the progressive codification of international law:

“ Reaffirms the high importance which the League attaches to the development of international law, and expresses the opinion that one of the most important duties of the League is to encourage such development by every means in its power.

“ The Assembly is of opinion that the term ‘ codification ’, applied to the work of developing international law undertaken by the League of Nations, should be interpreted as meaning the embodiment in a series of international Conventions, freely accepted by States, of definite rules, either based on customary international law or being entirely new law, to govern such forms of private inter-State relations as it may seem immediately practical and important to regulate by general agreement.

“ The Assembly recognises that the recommendations submitted by the Hague Conference in its Final Act contain most valuable suggestions for the preparation by the League of future international Conferences.

“ Requests the Council to institute an enquiry with a view to determining, in the light of past experience, how the work of codification may best be continued, and decides to include this question in the agenda of its next session. ”

V. PROPOSAL BY M. ROLIN (BELGIUM).

Replace paragraphs 2, 3 and 4 of the proposal of the British, French, German, Greek and Italian delegations by the following:

“ Expresses the opinion:

“ That it is of the essence of any undertaking in the field of codification of international law that it should deal with matters which are wholly or partly governed by international law or by particular Conventions;

“ But that it has been shown by the experience already acquired in this field by the League of Nations that it is hardly practicable to assign as the object of codification Conventions the determination of the existing customary law, since new elements must necessarily be introduced in any endeavour of the kind in question;

“ That, moreover, attempts imprudently undertaken in such a sense involve the risk of enfeebling law which is already in process of formation and of which the consolidation and development may be expected from the progress of international practice and jurisprudence;

“ That, accordingly, while it is advantageous that documentation regarding international practice and jurisprudence should be brought together for the purposes of the preparation for codification conferences, it will be desirable that henceforth the discussion should be to a greater degree directed towards examination of the value of the rules which it is contemplated to adopt for the future. ”

VI. DRAFT RESOLUTION SUBMITTED BY THE ITALIAN DELEGATION.

“ The Assembly:

“ Considering that the First Conference for the Codification of International Law constitutes the starting-point in the work of codification and that this work should be continued;

“ Considering that the suggestions and recommendations made by the Conference, and the results of the Conference, are deserving of most careful examination and consideration with a view to ascertaining the best methods of pursuing the work which has been commenced.

“ Decides to adjourn the question to its next session. ”

