maximum of restraint and good will or international public spirit, however limited their intelligence and skillfulness may have been. In spite of everything the military occupations in Germany and Japan are so reminiscent of Belgium in the years 1914–1918, the Hague Conferences, and the Brussels Code as to be positively quaint. This is largely the result—it cannot be repeated too often—of the almost inexplicable, extremely culpable, and very dangerous neglect of this section (among others) of international law by the governments and peoples of the world since 1919.

On the other hand, the resulting pattern of international organization and administration in the occupied countries is fraught with greatest uncertainty and peril, if also with considerable promise. It will be recalled that at a certain point in the period 1919–1939 the question of transferring to the League of Nations various tasks assumed by the victorious Allied and Associated Powers of World War I arose and that such transfer was both resisted for different reasons by different Powers and proved rather difficult from a purely practical and mechanical viewpoint. The bar to any such transfer to the United Nations of contemporary problems of international pacification and reorganization, in Article 107 of the Charter, is even clearer and stronger. Yet it is perfectly certain that continued prolongation of the deadlock over the peace treaties, of the super-normal military occupation, and the conduct of international territorial administration in disguise, will elicit insistent demands for adequate attention to this problem. It may soon appear that the conclusive argument in favor of world government, which most internationalists regard as objectionably radical, lies in the simple inability of internationalism to carry the load.

PITMAN B. POTTER

PREPARATION FOR THE INTERNATIONAL LAW COMMISSION

At the Third Regular Session of the General Assembly of the United Nations the members of the International Law Commission [1] were elected, and the Commission was summoned to meet on April 11, 1949. In accordance with Resolution 175 (III) of the Second General Assembly, the Secretariat has (with the aid of various consultants from the outside) been engaged in the preparation of necessary materials for the work of the Commission. Previously, documents had been prepared for the Committee which met in 1947, among them a Historical Survey of Development of International Law and its Codification by International Conferences,[2] and the Codification of International Law in the Inter-American System with Special Reference to

[1] For the background of this development, see articles by Yuen-li Liang in this JOURNAL, Vol. 42 (1948), pp. 66–97, and in the Year Book of World Affairs (London, 1948), pp. 237–271.

[2] U. N. Doc. A/AC.10/5, Apr. 29, 1947; this JOURNAL, Supp., Vol. 41 (1947), p. 29.

the Methods of Codification,[3] which are invaluable to anyone interested in the development of international law.

The terms of reference of the International Law Commission are to be found in its Statute [4] and in resolutions of the Second Assembly referring to it the specific subjects, Rights and Duties of States,[5] and Nuremberg Principles.[6] The question of an International Criminal Jurisdiction was referred to it at the Third Regular Session of the General Assembly. It may be (and has in some cases been) suggested that the International Law Commission should deal with such matters as Human Rights, Genocide (now adopted), Status of Women (*e.g.*, Nationality), Reparation for Injuries Suffered by United Nations Officials, et cetera.[7]

The most important of the materials prepared for the International Law Commission is The Survey of International Law in Relation to the Work of Codification of the ILC.[8] This is divided into three parts: The Function of the Commission and the Selection of Topics for Codification; A Survey of International Law in Relation to Codification; The Method of Selection and the Work of the International Law Commission.

In Part I, it is noted that the Committee on the Progressive Development of International Law and its Codification had adopted the view that, while codification itself is largely restatement of existing law, it is actually broader than mere registration of that law; and the Commission must think in terms of "development" as well as of "codification." If the Commission were to be confined to fields with regard to which there was already full measure of agreement among states, the scope of its task would be reduced to a bare minimum. The mere registration of existing law might perpetuate obsolete or unsatisfactory law, and might replace customary law by less satisfactory treaty law. The extent of existing agreement is not an adequate criterion for the selection of topics; a better criterion is "the importance of the subject matter from the viewpoint of the needs of the community."

The problem of selection is simplified by the elasticity of the Statute of the Commission. Thus, new questions are covered by the phrase "development of international law," and "eventual codification" implies the entirety of international law, which must be an ultimate objective. Further, the form may vary from a mere draft having the authority of "writings of the

[3] U. N. Doc. A/AC.10/8, May 6, 1947; this JOURNAL, Supp., Vol. 41 (1947), p. 116. Doc. A/AC.10/6 contains a bibliography.

[4] Resolutions of the General Assembly, 2nd Sess., No. 174 (III), U. N. Doc. A/519; see also this JOURNAL, Supp., Vol. 42 (1948), p. 1.

[5] Resolutions of the General Assembly, 2nd Sess., No. 178 (II).

[6] Resolutions of the General Assesmbly, 2nd Sess., No. 177 (II).

[7] See U. N. Doc. A/674 and debates concerning it in the Sixth Committee, 3rd Regular Session of the General Assembly.

[8] U. N. Doc. A/CN.4/1.

most qualified publicists'' to a treaty submitted for adoption. The procedure need not be governed by the necessity of producing drafts likely to secure immediate acceptance. The problem now is not, as under the League of Nations, to select certain topics; a long-range plan can be built, not based on priority of some and the exclusion of other topics.

It is impossible here to consider the discussion of topics found in Part II (to which Dr. Lauterpacht and other consultants made contributions), which contains many interesting ideas and suggestions. Although it is denied in Part II §1, there seems to be an implication that what is usually known as private international law, or some borderline fields therein, should be included; and those who prepared the memorandum are not discouraged by topics having political qualities, such as recognition or state succession. Paragraph 55, it may be suggested, should include now the increasingly important question of immunities (and jurisdictional position in general: Can an ''armed guard'' of the United Nations carry and use a gun within a state?) of international organizations. Paragraph 58 might be extended, not only as a ''law of nuisance,'' but to systematize and enlarge existing practice in such matters as health, aviation, economic intercourse, etc., fields in which development is most needed. Prescription is apparently recognized as of more importance than is usually given to it; the rights of individuals are properly regarded as worthy of more attention than they have had in the past.

It is not easy, Part III goes on to say, to assign any clear priority to the subjects surveyed in Part II; nor is it necessary to do so. If those are chosen which are regarded as ''necessary or desirable,'' the International Law Commission might find itself reverting to the subjects considered by the League of Nations Committee. The League Committee, however, was limited, as the United Nations Commission is not, by the word ''realizable.'' It is suggested that the work should be organized under broad topics, rather than limited ones, on each of which a *Rapporteur* and subcommittee would work continuously, the plenary International Law Commission meeting occasionally to consider the reports of the subcommittees. Comments would be sought from scientific bodies,[9] and the texts would be reconsidered. The Commission would decide in each case what should be done, whether to submit a text as a treaty or to leave it as merely a scientific statement.

In addition to the document described above, which suggests plans and methods of work, other materials of a supplementary nature are in preparation by the Secretariat. One of these is a ''Study Concerning a Draft Declaration on the Rights and Duties of States.'' Such a draft was presented earlier by Panama, and it was referred to the International Law

[9] In this connection, the revival of the Research in International Law may be regarded as a matter of some significance.

Commission.[10] The document will survey previous official and unofficial antecedents and furnish annotations to the Panama draft.

Another document in preparation is entitled "Ways and Means for Making Available the Evidence of Customary International Law," in accord with Article 24 of the Statute of the International Law Commission. It will survey the compilations and digests now in existence, both national and general, including decisions of international tribunals and national legislation relative to international law. This should prove to be an invaluable bibliographical guide, and indispensable for recommendations which the Commission may make for the further development of source materials. Also under way is the paper on the Nuremberg Principles mentioned in the Report of the Secretary General.[11] In a less advanced stage is a "Study on the Question of Establishing an International Criminal Organ."

To round out this survey of materials of interest to the international lawyer, mention should be made of a series, of which Volume I has appeared, entitled *Reports of International Arbitral Awards,* a joint effort of the Secretariat and the Registry of the International Court of Justice. It includes thirteen cases between 1920 and 1925, each document being given in the language in which it appeared. The latter volume brings up to date the League of Nations volumes of similar title. Several documents called for by the Interim Committee are of much interest to international lawyers, especially, perhaps, the one bringing up to date the valuable earlier study by the League of Nations entitled *Systematic Survey of Arbitration Conventions and Treaties of Mutual Security Deposited with the League of Nations.*[12]

It seems probable that the most constructive and fruitful work which the United Nations can do, at least while political relationships remain so uncertain, will be done by the International Law Commission and by the Interim Committee. At the very least, the scientific studies now being made by them should contribute greatly to thinking concerning the development of international law and procedures for pacific settlement of disputes. In both cases, a great deal of preparatory work must be done before consideration of any final and systematic arrangement is undertaken. It will not be sufficient to repeat the rubrics of the past; the needs of today are different and wider. The law of nations must now reach into such new fields as aviation, health, food supply, or atomic energy. The International Law Commission will need to have a far-sighted vision, and to bring into its deliberations experts from many fields. Its job will last over many years, and international lawyers, through research in new fields and contribution of new ideas, can and should contribute greatly to its work.

CLYDE EAGLETON

[10] Resolution No. 178 (II) of the 2nd General Assembly; see also this JOURNAL, Supp., Vol. 42 (1948), p. 9.

[11] U. N. Doc. A/565, p. 108.

[12] For a list of these documents, see U. N. Doc. A/605, Part III.