should, if not easily settled diplomatically, be submitted by convention, as automatically as possible, to an international court. If this were done, all parties would benefit and such tribunals as the Permanent Court of International Justice would probably never lack a full docket. International law would thus extend its beneficent regulatory power to a field in which politics now unfortunately often reigns supreme. A claimant, having a perfectly legal claim, is now dependent for relief primarily upon the political strength or influence of his nation, on its political relations with the country complained against and on the disposition and willingness of the Foreign Office to exert diplomatic efforts in his behalf. His claim becomes the plaything of politics and of their accidents. The government of the injured citizen is subjected to political pressure to espouse what may be a poor claim, often acts on insufficient evidence, and in prosecuting a claim is led to invoke the support of a whole people on behalf of a single citizen or corporation, a primitive and medieval form of collective revenge which survives in practically no other branch of public law. A people should not be involved in political entanglements arising out of an alleged legal injury to a citizen, if it can possibly be avoided. The defendant nation should not be in the position of having to yield a legal case to political arguments or of availing itself of political strength to resist a legal claim. The cause of peace and normal international relations should not be impaired and hampered by the present easy conversion of a legal into a political issue. An agreement to submit legal pecuniary claims to a legal, *i.e.*, judicial, method of settlement would be one of the greatest boons imaginable not only to the parties and peoples in interest but to a world still delicately balanced between the Scylla of law and the Charybdis of anarchy. In recent years, the forces of lawlessness have made immeasurable gains. Here, in the field of state responsibility for injuries to foreigners, lies a practical opportunity to counteract these demoralizing and disintegrating forces by lifting a most important field of international relations from the arena of politics to the realm of law.

EDWIN M. BORCHARD.

PROCEDURE OF INTERNATIONAL CONFERENCES AND PROCEDURE FOR THE CONCLUSION AND DRAFTING OF TREATIES

At its second session in January, 1926, the Committee of Experts for the Progressive Codification of International Law decided to submit a questionnaire on the subject of procedure of international conferences and procedure for the conclusion and drafting of treaties to various governments, communicating at the same time a report presented by M. Mastny, and observations on it by M. Rundstein.[1] The subject comprises two separate topics and it is not clear why they were joined together. The committee

[1] Printed in Special Supplement to this JOURNAL, July, 1926, pp. 204–221.

states that "there is no question of attempting to reach by way of international agreement a body of rules which would be binding obligatorily upon the various states." This policy would seem to be necessary in dealing with the procedure of international conferences, but it is not so clearly required in dealing with the procedure for the conclusion and drafting of treaties. The committee sets itself only the modest task of placing at the disposal of states concerned rules which could be modified in each concrete case but whose existence might save discussion, doubt and delay.

Any one who has read Oppenheim's brilliant prophecy, *Die Zukunft des Völkerrechts*,[2] must agree that the sound development of international law requires a system of continuous conferences, and every possible aid should be sought for making conferences effective when they meet. It requires but slight experience with international conferences to appreciate the difficulties which they always encounter both in organization and in the despatch of business. What M. Mastny calls "the technique of organization and procedure" has an important place in the development of method, and with the rapidly-increasing amount of international legislation in the modern world, much attention must be given to it. A national legislative body soon accumulates parliamentary precedents and traditions, but many international conferences lack the permanence which such a process requires. Often their personnel is new, and frequently they meet but for a single session. There is no body of international parliamentary law to guide them. In recent years, the conferences held under the auspices of the League of Nations have had elaborate *règlements*,[3] the early drafts of which have been carefully elaborated by the Secretariat of the League of Nations, and these *règlements* now have many common provisions. A collection of these *règlements* might serve as a source of suggestion and guidance to future conferences. But it seems to be very debatable whether it is possible to go further than to place before the bureau of a conference more than such a collection, whether, indeed, the subject is one which lends itself to any conventional regulation, facultative or otherwise. Most conferences will prefer to shape their organization and procedure to meet conditions which cannot be foreseen, and perhaps the people actually charged with management of the conference, now very frequently the Secretariat of the League of Nations, are better qualified in this regard than a group of legal experts. There always remains the fact that, whatever rules be framed for a conference, they will be more often honored in the breach than in the observance, for representa-

[2] Published at Leipzig in 1911. Republished in 1921 by the Carnegie Endowment for International Peace, under the title, "The Future of International Law."

[3] See, for example, the *règlement* of the Assembly, League of Nations Document C, 356 (1) M, 158 (1), 1923 V; that of the Council, Document 20, 31, 39 A; that of the First Conference on the Opium Traffic, Document C, 684 M, 244, 1924, XI, page 126; and that of the Conference on the Suppression of Obscene Publications, Document C, 734 M, 299, 1923, IV, page 6.

tives at international conferences are frequently vigorous personalities more given to achieving the substance than to following the form.[4]

The subcommittee's report envisages three types of codification with respect to the procedure of conferences: (1) regulation containing rules common to all types of conferences; (2) regulation applicable to a certain type of conference; (3) a convention containing certain general principles which should be observed. It sets forth objections which are deemed to make the first two types impracticable, concluding as to the second type that "the character of diplomatic and technical conferences is so different as to discourage attempts at such codification." It sets forth a long list of points to be considered in connection with the third type of codification, but the list seems to be of very doubtful utility. The composition of delegations at a conference, for example, is surely not a proper subject for any kind of international legislation, nor can "preparatory procedure" easily be regulated in advance. The modified list is more restricted than that originally submitted by the subcommittee, but it is hardly a questionnaire and it will not be surprising if some governments have a difficulty in pronouncing their opinions on it.

As to the conclusion and drafting of treaties, other considerations would seem to apply. Many diplomatic manuals may be needed for the guidance of conferences, but it seems very doubtful whether the preparation of any such manual should be attempted by a committee on codification, and certainly there are serious objections to its being embodied in an international convention. The suggestion that a useful manual might be "prepared and published by the League of Nations" is worthy of consideration, especially in view of the common provisions to be found in the many treaties recently emanating from Geneva.

The *rapporteur* will find nothing but hospitality for his suggestion that there now prevails an "anarchy as regards terminology" of treaties. But is it an anarchy which legislation could dispel? Political reasons often demand the coinage of a new name for an instrument—the word "covenant" was not in general use prior to the Peace Conference at Paris. Moreover, it is an anarchy which does little harm beyond the shock to an aesthetic sense of form. The *rapporteur's* suggestion that some "concession to the modern spirit" be made in revising the inherited official formulas of treaties will also be welcomed, though it is to be recognized that a twelfth century formula whose exact sense is enshrouded in a maze of history may afford escape from political and legal difficulties which no one would care to bare—as, for example, in the treaties sometimes made by the British Empire; and the subcommittee properly recognizes that revision of such formulas should be left to national constitutional practice.

The report draws attention to the difficulties which arise in treaty-making

[4] A close perusal of the records of the Assembly of the League of Nations will at once suggest the slight degree to which the Assembly feels itself bound to follow its own *règlements*.

because of constitutional limitations prevailing in different countries, and it contains the suggestion that each government should notify other governments of its constitutional provisions as to treaties and their interpretation. The *rapporteur's* view that "legal relations between states would greatly gain both in security and clearness" if this suggestion were followed will probably not be widely shared, for it presupposes that ignorance now prevails as to such constitutional limitations. A complete collection of constitutions, published in various languages, might be serviceable, but this again is hardly a task for a codification committee. The "list of matters susceptible of regulation" contains numerous topics, some of which would seem to be of less interest to the legislator than to the publicist.

The committee has not adopted the subcommittee's view that the subject referred to it—the formulation of rules to be recommended for the procedure of international conferences, and the conclusion and drafting of treaties—should be placed on the "list of subjects of international law the regulation of which by international agreement would seem to be desirable and realizable." The whole matter has not been placed before the governments in such a form as would induce them to express very definite views. It is to be hoped that the committee will give the subject extended further consideration before recommending to the Council any attempt at codification in this field.

MANLEY O. HUDSON.

THE QUESTIONNAIRE ON PIRACY [1]

The so called questionnaire on piracy, like the other questionnaires communicated by the Committee of Experts, has been submitted for transmission to the various governments in the hope that replies may be elicited which will indicate official opinion as to the ripeness of the subject for codification. Like certain of the other so called questionnaires, this one consists of a subcommittee's report and some draft provisions. It is a little surprising that the committee should have thought the document worth communicating to governments in its present stage, and perhaps more surprising that the committee should consider the statement of principles and solutions in the document sufficient to indicate "the questions to be resolved for the purpose of regulating the matter by international agreement."[2] A good beginning has been made, but much remains to be done. In its present immature stage, the questionnaire seems unlikely to elicit anything very useful in the way of replies.

From the rather superfluous observation that "authors of treaties [*sic*] on international law often differ as to what really constitutes this international crime," the report proceeds in the second paragraph with a wholly insufficient attempt at definition running as follows:

[1] See this JOURNAL, Vol. 20, Supplement, Special Number, p. 222. [2] *Ibid.*