

Research in International Law

*Under the Auspices of the Faculty of the
Harvard Law School*

I. Extradition

II. Jurisdiction with Respect to Crime

III. Law of Treaties

DRAFTS OF CONVENTIONS PREPARED FOR THE
CODIFICATION OF INTERNATIONAL LAW



*Parts I and II bound in this volume
Part III, with Index, bound separately*

SUPPLEMENT TO THE
AMERICAN JOURNAL OF INTERNATIONAL LAW
Volume 29, 1935

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AMERICAN SOCIETY OF INTERNATIONAL LAW
WASHINGTON, D. C.

PRINTED IN THE UNITED STATES OF AMERICA
AT THE RUMFORD PRESS, CONCORD, N. H.

RESEARCH IN INTERNATIONAL LAW

UNDER THE AUSPICES OF THE FACULTY OF THE
HARVARD LAW SCHOOL

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GENERAL INTRODUCTION

Previous Work of the Research in International Law

The Research in International Law was organized under the auspices of the Faculty of the Harvard Law School in 1927 and 1928, for the purpose of preparing a draft of an international convention on each of the subjects which had then been placed on the agenda of the First Conference for the Codification of International Law.

In 1929, the Research published a volume ¹ containing the following draft conventions, with comments:

- (1) Nationality, with Richard W. Flournoy, Jr., of the Department of State, as Reporter;
- (2) Responsibility of States for Injuries to Foreigners, with Edwin M. Borchard, of the Yale Law School, as Reporter; and
- (3) Territorial Waters, with George Grafton Wilson, of Harvard University, as Reporter.

In 1930, the Research published, through the Carnegie Endowment for International Peace, *A Collection of Nationality Laws of Various Countries*, edited by Richard W. Flournoy, Jr., and Manley O. Hudson.

In a second phase of its work, from 1929 to 1932, the Research published a volume ² containing the following draft conventions, with comments:

- (1) Diplomatic Privileges and Immunities, with Jesse S. Reeves, of the University of Michigan, as Reporter;
- (2) Legal Position and Functions of Consuls, with Quincy Wright, of the University of Chicago, as Reporter;
- (3) Competence of Courts in regard to Foreign States, with Philip C. Jessup, of Columbia University, as Reporter; and
- (4) Piracy, with Joseph W. Bingham, of Stanford University, as Reporter.

The 1932 volume also contained *A Collection of Piracy Laws of Various Countries*, edited by Stanley Morrison, of Stanford University.

In 1933, the Research published, through the Carnegie Endowment for International Peace, *A Collection of the Diplomatic and Consular Laws and Regulations of Various Countries* (in two volumes), edited by A. H. Feller and Manley O. Hudson.

Third Phase of the Work of the Research in International Law

In 1932, the Advisory Committee of the Research in International Law decided to continue its work for a third phase, from 1932 to 1935, and to

¹ Republished, with the same pagination, as a special supplement to Volume 23 of the *American Journal of International Law*.

² Republished, with the same pagination, as a supplement to Volume 26 of the *American Journal of International Law*.

deal with three additional subjects. During this period, the membership of the Advisory Committee has been as follows:

- GEORGE W. WICKERSHAM, *Chairman*, New York City.
President of the American Law Institute. *Formerly* Attorney General of the United States.
- CHANDLER P. ANDERSON, Washington, D. C.
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- WILLIAM DENMAN, San Francisco.
Judge of the United States Circuit Court, Ninth Circuit. *Formerly* Chairman of United States Shipping Board; President of the Emergency Fleet Corporation.
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President of Earlham College. *Formerly* Agent of the United States in various international arbitrations; legal adviser to the Chinese Government at Peking.
- EDWIN D. DICKINSON, Berkeley, California.
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Professor of Government, New York University.
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Member of the New York Bar. *Formerly* Under-Secretary-General of the League of Nations.
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Member of the New York Bar.
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Legal Adviser, Department of State.
- LEARNED HAND, New York City.
Judge of the United States Circuit Court, second circuit.
- FRANK E. HINCKLEY, San Francisco.
Member of the San Francisco Bar. *Formerly* Lecturer on International Law, School of Jurisprudence, University of California; District Attorney, United States Court for China.
- MANLEY O. HUDSON, Cambridge, Mass.
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- ROLAND S. MORRIS, Philadelphia, Pennsylvania.
 Professor of International Law, University of Pennsylvania. *Formerly* United States Ambassador to Japan.
- STANLEY MORRISON, Stanford University, California.
 Professor of Law, Stanford University.
- PITMAN B. POTTER, Geneva, Switzerland.
Institut Universitaire de Hautes Études Internationales, University of Geneva.
- JACKSON H. RALSTON, Palo Alto, California.
Formerly Umpire, Italy-Venezuela Claims Commission.
- JESSE S. REEVES, Ann Arbor, Michigan.
 William W. Cook Professor of American Institutions, University of Michigan; Associate of the *Institut de Droit International*. *Formerly* President of the American Political Science Association.
- ELIHU ROOT, New York City.
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 Professor of International Law, American University.
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 President of the Maritime Law Association of the United States. *Formerly* Judge of the United States District Court.
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 Member of the Pennsylvania Bar.
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 Professor of International Law, Princeton University.

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Professor of International Law, Harvard University; Editor-in-Chief of the *American Journal of International Law*; Member of the *Institut de Droit International*.

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Judge of the United States District Court.

LESTER H. WOOLSEY, Washington, D. C.

Member of the District of Columbia Bar. *Formerly* Solicitor for the Department of State.

QUINCY WRIGHT, Chicago, Illinois.

Professor of International Law, University of Chicago.

The Advisory Committee has had the following meetings since the beginning of the work of the Research:

- (1) Cambridge: January 7, 1928.
- (2) Washington: April 28, 1928.
- (3) Cambridge: October 5, 6, 1928.
- (4) Cambridge: February 22, 23, 24, 1929.
- (5) Cambridge: February 20, 21, 22, 1931.
- (6) Cambridge: February 19, 20, 21, 1932.
- (7) Cambridge: February 22, 23, 24, 1934.
- (8) Cambridge: February 21, 22, 23, 1935.

In 1932, the Executive Committee of the Research invited Mr. Charles K. Burdick, Dean of the Cornell Law School, to act as Reporter on the *Law of Extradition*; Mr. Edwin D. Dickinson, of the School of Jurisprudence of the University of California, to act as Reporter on *Jurisdiction with respect to Crime*; and Mr. James W. Garner, of the University of Illinois, to act as Reporter on the *Law of Treaties*.

(1) *Law of Extradition*. In 1925, this subject was studied by the League of Nations Committee of Experts, and a subcommittee consisting of Professors J. L. Brierly and Charles de Visscher was appointed to report upon it. Having before it the report of this subcommittee,³ the Committee of Experts reached the conclusion on January 29, 1926, that the difficulties in the way of a general agreement on this subject were too great for their solution to be realizable in the near future, though such solution "appeared very desirable." In spite of this view taken by the Committee of Experts, the Executive Committee of the Research was of the opinion that the subject should be explored. It is to be noted that two multipartite conventions on extradition have recently been opened to signature, at Montevideo on December 26, 1933,⁴ and at Guatemala City on April 12, 1934.

The Reporter on the *Law of Extradition*, Mr. Charles K. Burdick, has

³ *League of Nations Document C.51.M.28.1926.V*; 20 *American Journal of International Law* (Special Supplement, 1926), p. 243.

⁴ The Montevideo Convention came into force for the United States and the Dominican Republic on Jan. 25, 1934.

been assisted by Mr. V. G. Terentieff, Mr. Lucien Tharaud, and by the following advisers:

JOSEPH R. BAKER	GREEN H. HACKWORTH
EDWIN M. BORCHARD	CHARLES C. HYDE
HERBERT W. BRIGGS	PHILIP C. JESSUP
FRANCIS DEÁK	JESSE S. REEVES
EDWIN D. DICKINSON	DANIEL C. STANWOOD
A. H. FELLER	GEORGE W. WICKERSHAM
GEORGE A. FINCH	GEORGE GRAFTON WILSON
HENRY S. FRASER	LESTER H. WOOLSEY

Meetings of the Reporter and advisers on the *Law of Extradition* have been held as follows:

New York: January 20, 21, 22, 1933

Ithaca: June 1, 2, 3, 1933

Ithaca: December 1, 2, 1933

Ithaca: May 13, 14, 1934

New York: November 30, December 1, 2, 1934

(2) *Jurisdiction with respect to Crime*. In 1925, the League of Nations Committee of Experts for the Progressive Codification of International Law studied the subject of "Criminal Competence of States in Regard to Offences Committed Outside Their Territories," and appointed a subcommittee consisting of Professor J. L. Brierly and Professor Charles de Visscher to report upon it. Having before it the report of this subcommittee,⁵ the Committee of Experts reached the conclusion on January 29, 1926, that "international regulation of these questions by way of a general convention, although desirable, would encounter grave political and other obstacles."⁶ In spite of this fact, the Executive Committee of the Research was of the opinion that the subject should be explored.

The Reporter on *Jurisdiction with respect to Crime*, Mr. Edwin D. Dickinson, has been assisted by Mr. William W. Bishop, Jr., as Assistant Reporter, by Mr. Benjamin Akzin, Mr. Lawrence Preuss, and by the following advisers:

JOSEPH W. BINGHAM	STEPHEN I. LANGMAID
EDWIN M. BORCHARD	ALBERT LÉVITT
CHARLES K. BURDICK	JAMES P. MCBAIN
JOHN U. CALKINS	DUDLEY O. MCGOVNEY
WILLIAM DENMAN	ORRIN K. MCMURRAY
A. H. FELLER	STANLEY MORRISON
FARNHAM P. GRIFFITHS	MAX RADIN
FRANK E. HINCKLEY	JESSE S. REEVES
PHILIP C. JESSUP	CHESTER G. VERNIER
ALEXANDER M. KIDD	AUGUST VOLLMER
ARTHUR K. KUHN	

⁵ *League of Nations Document C.50.M.27.1926.V*; 20 *American Journal of International Law* (Special Supplement, 1926), p. 253.

⁶ *Ibid.*

Meetings of the Reporter and advisers on *Jurisdiction with respect to Crime* have been held as follows:

Ann Arbor: December 16, 17, 1932
 Berkeley: December 21, 22, 23, 1933
 Berkeley: December 20, 21, 22, 1934

(3) *The Law of Treaties*. In 1925, the League of Nations Committee of Experts for the Progressive Codification of International Law studied the subject of "Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties," and appointed a subcommittee consisting of MM. Mastny and Rundstein to report upon it. With the report of this subcommittee before it,⁷ the Committee of Experts placed the subject on its provisional list and sought the comments of Governments.⁸ On April 2, 1927, the Committee of Experts reached the conclusion that the subject was "sufficiently ripe" for codification,⁹ but it suggested¹⁰ a special procedure for this subject. When its report came before the Council and Assembly of the League of Nations, these bodies were content to have the subject investigated by the Secretariat.¹¹ On February 20, 1928, a convention on "Treaties" was adopted at Havana by the Seventh International Conference of American States,¹² but it has not been ratified by all the States represented at that conference. In view of this situation, the Executive Committee of the Research was of the opinion that the subject should be explored.

The Reporter on the *Law of Treaties*, Mr. James W. Garner, has been assisted by Mr. Valentine Jobst, as Assistant Reporter, and by the following advisers:

BENJAMIN AKZIN	PHILIP C. JESSUP
CHARLES M. BARNES	HOWARD T. KINGSBURY
CLARENCE A. BERDAHL	HUNTER MILLER
CLYDE EAGLETON	JESSE S. REEVES
JOHN A. FAIRLIE	JOHN B. WHITTON
RICHARD W. FLOURNOY, JR.	GEORGE W. WICKERSHAM
GREEN H. HACKWORTH	GEORGE G. WILSON
CHESNEY HILL	LESTER H. WOOLSEY
CHARLES C. HYDE	QUINCY WRIGHT

Meetings of the Reporter and advisers have been held as follows:

New York: November 18, 19, 20, 1932

⁷ *League of Nations Document C.47.M.24.1926.V*; 20 *American Journal of International Law* (Special Supplement, 1926), p. 264.

⁸ *Ibid.* For the comments of Governments, see Document C.196.M.70.1927.V.

⁹ *League of Nations Document C.196.M.70.1927.V.*, p. 7.

¹⁰ *Id.*, C.198.M.72.1927.V; 22 *American Journal of International Law* (Special Supplement, 1928), p. 43.

¹¹ *League of Nations Official Journal*, 1927, p. 754; Records of Eighth Assembly, Plenary, p. 203.

¹² 4 Hudson, *International Legislation* (1931), p. 2378.

Washington: April 24, 25, 1933

Urbana: June 11, 12, 13, 1933

Urbana: December 17, 18, 1933

Washington: April 24, 25, 26, 1934

Urbana: September 30, October 1, 1934

Urbana: December 15, 16, 1934

In the three draft conventions published in this volume, explanatory titles have been given to the various articles; it will of course be understood that these titles are simply labels of convenience, designed to assist the reader, and that they are not intended to serve as guides to the interpretation of the text.

Responsibility for the Drafts

The drafts which are now published as the results of the third phase of the work of the Research, have been made with the object of stating the collective views of a group of Americans specially interested in the development of international law, concerning the subjects which may be considered in connection with the codification of international law. The drafts represent the result of the work of American jurists and scholars after thorough consultation, and as such it is hoped that they may merit the attention of persons interested in the codification of international law. The proposals contained in the drafts, and the statements in the comments, are not to be taken to represent the individual views of any of the persons who have taken part in their preparation.

The preparation of the draft conventions and comments has been completed within the limits of a rigorous time-schedule, by men already burdened with exacting duties; and these facts should be borne in mind in any appraisal of the work done.

The Research is wholly unofficial, and the drafts must not be taken as in any way representing the views of the Government of the United States.

The Prospect for Codification

The first Conference for the Codification of International Law, which met at The Hague from March 13 to April 13, 1930, achieved a very limited success. On September 1, 1934, none of the instruments opened to signature at the conference had been brought into force, but they had been acted upon as follows:

- (1) *Convention on certain questions relating to Conflict of Nationality Laws.*
Ratifications or accessions deposited at Geneva by Brazil, Great Britain, Canada, Monaco, Norway, Poland and Sweden.
- (2) *Protocol relating to Military Obligations in Certain Cases of Double Nationality.*
Ratifications or accessions deposited at Geneva by United States of America, Brazil, Great Britain, India and Sweden.

(3) *Protocol relating to a Certain Case of Statelessness.*

Ratifications or accessions deposited at Geneva by Brazil, Great Britain, India and Poland.

(4) *Special Protocol concerning Statelessness.*

Ratifications or accessions deposited at Geneva by Brazil, Great Britain and India.

The 1930 Hague Conference adopted the following resolution concerning the continuation of the work of codification:¹³

The Conference

Calls the attention of the League of Nations to the necessity of preparing the work of the next conference for the codification of international law a sufficient time in advance to enable the discussion to be carried on with the necessary rapidity and in the light of the information which is essential.

For this purpose the Conference would consider it desirable that the preparatory work should be organised on the following basis:

1. The Committee entrusted with the task of selecting a certain number of subjects suitable for codification by convention might draw up a report indicating briefly and clearly the reasons why it appears possible and desirable to conclude international agreements on the subjects selected. This report should be sent to the Governments for their opinion. The Council of the League of Nations might then draw up the list of the subjects to be studied, having regard to the opinions expressed by the Governments.

2. An appropriate body might be given the task of drawing up, in the light of all the data furnished by legal science, and actual practice, a draft convention upon each question selected for study.

3. The draft conventions should be communicated to the Governments with a request for their observations upon the essential points. The Council would endeavour to obtain replies from as large a number of Governments as possible.

4. The replies so received should be communicated to all the Governments with a request both for their opinion as to the desirability of placing such draft conventions on the agenda of a conference and also for any fresh observations which might be suggested to them by the replies of the other Governments upon the drafts.

5. The Council might then place on the programme of the Conference such subjects as were formally approved by a very large majority of the Powers which would take part therein.

On September 26, 1931, the Twelfth Assembly of the League of Nations adopted the following resolution:¹⁴

The Assembly recalls that the resolution of September 22nd, 1924, emphasised the progressive character of the codification of international law which should be undertaken, and, in view of the recommendations of the First Conference for the Codification of International Law held at The Hague in 1930, it decides to continue the work of codification with the object of drawing up conventions which will place the relations of States on a legal and secure basis without jeopardising the customary

¹³ 26 *American Journal of International Law* (1932), p. 137.

¹⁴ *Id.*, p. 141.

international law which should result progressively from the practice of States and the development of international jurisprudence.

To this end, the Assembly decides to establish the following procedure for the future, except in so far as, in particular cases, special resolutions provide to the contrary:

1. Any State or group of States, whether Members of the League or not, may propose to the Assembly a subject or subjects with respect to which codification by international conventions should be undertaken. Such proposals, together with a memorandum containing the necessary explanatory matter, should be sent, before March 1st, to the Secretary-General, in order that he may communicate them to Governments and insert them in the agenda of the Assembly.

2. Any such proposals will be considered by the Assembly, which will decide whether the subjects proposed appear *prima facie* suitable for codification.

3. If the investigation of a proposed subject is approved by the Assembly and if no existing organ of the League is competent to deal with it, the Assembly will request the Council to set up a committee of experts, which will be asked with the assistance of the Secretary-General of the League of Nations to make the necessary enquiries and to prepare a draft convention on the subject, to be reported to the Council with an explanatory statement.

4. The Council will transmit such report to the Assembly, which will then decide whether the subject is provisionally to be retained as a subject for codification. If this is decided affirmatively, the Assembly will ask the Secretary-General to transmit the said report to the Governments of the Members of the League and non-member States for their comments.

5. The committee of experts, if it considers it desirable to do so, will revise the draft in the light of the comments made by the Governments.

If the committee of experts revises the draft, the revised draft will be submitted to the Governments for their comments and, together with the comments received, will be transmitted to the Assembly, which will then decide finally whether any further action should be taken in the matter and, if so, if the draft should be submitted to a codification conference.

If the committee does not see any reason to revise the draft, it will be transmitted, together with the comments of the Governments, to the Assembly, which will then decide finally whether any further action should be taken and, if so, if the draft should be submitted to a codification conference.

The Assembly recommends:

(1) That, in relation with the further work in connection with the codification of international law, the international and national scientific institutes should collaborate in the work undertaken by the League of Nations;

(2) That the work of codification undertaken by the League of Nations should be carried on in concert with the conferences of the American States.

This resolution has halted, for the time being, the formal efforts of the League of Nations directed toward codification. No government has since made any suggestion calling for the resumption of these efforts.

Meanwhile, however, the Seventh International Conference of American States, meeting at Montevideo, adopted the following resolution on December 26, 1933:¹⁵

The Seventh International Conference of American States:

CONSIDERING: That the codification of international law must be gradual and progressive, it being a vain illusion to think for a long time of the possibility of carrying it out completely;

That, without prejudice to the work already accomplished in the International Conferences of American States, the task of gradual and progressive codification must be done by jurists specialized in international law, who should be provided in the decisive meetings with plenipotentiary powers to sign treaties;

That it is indispensable, if it is desired to do practical work with actual results, to seek the conjunction of the juridical viewpoints, theoretical and universal in essence, with the political viewpoints, positive and localistic by nature;

That in this connection the necessity of coordinating this work with the work of codification being done by the League of Nations must be taken into account as far as possible, since international law tends to universalize its rules as the interdependence of the civilized community becomes more and more confirmed and consolidated;

That to this end it is necessary to create a special organization for the preparatory work with the purpose of fixing the basic elements for the gradual and progressive elaboration of international law;

RESOLVES:

1. There is maintained the International Commission of Jurisconsults, created by the Third International American Conference, with the mission of bringing about the gradual and progressive codification of international public law and international private law. This Commission will be composed of jurists named by each government.

2. Each government of the American republics will create respectively a national commission of codification of international law. This Conference considers that these commissions shall be made up of qualified officials or ex-officials from the respective Foreign Offices, and by professors or jurists who are specialists in international law. Each commission shall act through the channel of the respective Foreign Office.

3. There shall be created a Commission of Experts with the duty of organizing with a preparatory character, the work of codification. This Commission shall be composed of seven jurists chosen as follows:

Each of the twenty-one governments shall send to the Pan American Union a list of not to exceed five persons having the same qualifications as the members of the national commissions provided for in Article 2 hereof. The Pan American Union shall transmit all these different lists to the governments.

Once the definite lists are made up, each government shall designate from said lists seven persons, of whom only two shall be nationals, whom they desire to constitute the Commission of Experts, communicating its choice to the Pan American Union.

If, after three months a government has not submitted its list of

¹⁵ *Final Act of the Seventh International Conference of American States*, p. 108.

candidates, then after a month's delay the Pan American Union will proceed to form the final list with the names received to date. The seven persons who obtain the highest number of votes shall constitute the first Commission of Experts. In case of a tie the Governing Board shall decide it by lot. It is understood, however, that the Commission of Experts, however chosen or elected, must always contain at least one person representing each of the two great systems of jurisprudence of this hemisphere.

If the name of no such person is found among the first seven persons having the highest number of votes, then that person having the highest number of votes of any person listed by the government or governments having the particular system of jurisprudence not represented among those having the seven highest votes, shall be made a member of the commission in the place of that particular person of the seven who had the least number of votes.

4. The persons elected pursuant to the foregoing provisions shall hold office until the end of the first session of the International Commission of Jurisconsults.

The International Commission of Jurisconsults shall at its first meeting determine the organization, functions, duties, and terms of office of the Commission of Experts and of its members. Until such determination is made the Commission shall have such organization, functions, and duties as are hereinafter provided.

This Commission of Experts shall be a subcommittee of the International Commission of Jurisconsults. The members of this subcommittee shall be *ex officio* members of the International Commission of Jurisconsults. When that International Commission is in session, the members of the subcommittee shall be considered as members thereof and of the delegation named by the country of which they are nationals.

5. There shall be created in the Pan American Union a general secretariat charged with the files and correspondence of the codifying bodies. With this in view the Pan American Union will establish a juridical section of a purely administrative character.

6. Both the Commission of Experts as well as the separate local commissions of codification should take into account, in so far as it may be convenient, the suggestions and projects which other institutions may submit for its consideration.

7. The first meeting of the Commission of Experts will take place as soon as possible at the Pan American Union in Washington, where there shall have been organized a juridical section referred to in Article 5.

The subsequent meetings of the Commission of Experts shall be annual and will take place in the various cities of America which the Commission itself shall determine at the proper time.

8. The Commission of Experts will proceed 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. With respect to each point it will draw up a questionnaire which it will submit to the consideration of all the national commissions of codification.

Each commission will study thoroughly the topics contained in the questionnaire and within a reasonable time will give its views thereon, returning the reply through the respective Foreign Offices to the juridical section of the Pan American Union.

This procedure does not prevent an exchange of ideas on one or more

topics between the national commissions themselves, it being on the contrary even desirable that this method be adopted.

9. It shall be the special duty of the juridical section of the Pan American Union to expedite whenever necessary the prompt submission of the views solicited.

Once the replies and observations have been received from the Foreign Offices, the division shall notify the Governing Board of the Pan American Union in order that it may arrange a meeting of the Commission of Experts which shall be held at the place which may have been decided upon at its previous meeting.

10. The Commission of Experts so convoked shall undertake a thorough study of the replies and observations received and shall proceed to classify them according to topics or concrete points in two categories:

- (1) Those which are susceptible of codification because there is a harmony of opinions which permits the formulation of concrete bases of discussion;
- (2) Those which do not fulfill these conditions.

When the classification is made, the Commission of Experts shall coordinate the various points of view and shall form concrete bases of discussion for the International Commission of Jurisconsults. The antecedents thus prepared by the Commission of Experts and all the documents transmitted by the governments shall serve as a basis for the work of the International Commission of Jurisconsults.

The Commission of Experts, when it may have prepared a reasonable number of projects or declarations such as to justify a meeting of the International Commission of Jurisconsults, will so notify the Governing Board of the Pan American Union in order that the latter may call that Commission together.

11. The next meeting of the International Commission of Jurisconsults will be held in the city of Rio de Janeiro and the following meetings in the places arranged by the Commission itself.

12. The members of the International Commission of Jurisconsults shall have the character of plenipotentiary delegates.

13. The organs of codification shall not, in the work of juridical organization, alter the fundamental principles of positive International Law already established by Convention between the American States.

14. The expenses arising out of the attendance of the delegates or of experts at the meetings provided in the previous articles shall be for the account of the government whose national is concerned.

This resolution represents a decided departure from the methods heretofore followed by the International Conference of American States. On January 1, 1935, only 13 of the 21 Governments had sent in the lists of candidates as provided in sub-paragraph 1 of section 3 of the resolution, and the Pan American Union had not proceeded to form the final list as provided in sub-paragraph 3. Hence, the members of the Commission of Experts have not yet been elected.

MANLEY O. HUDSON
Director

April 1, 1935.

PART I
EXTRADITION

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CONTENTS

	PAGE
DRAFT CONVENTION ON EXTRADITION	21
Text with Comment	
INTRODUCTORY COMMENT	32
BIBLIOGRAPHY	51
PART I. USE OF TERMS	
ARTICLE 1. Use of Terms	66
PART II. ACTS	
ARTICLE 2. Extraditable Acts	72
ARTICLE 3. Place of Commission of Extraditable Acts	86
ARTICLE 4. Lapse of Time	99
ARTICLE 5. Political Offenses	107
ARTICLE 6. Military Offenses	119
PART III. PERSONS	
ARTICLE 7. Nationals of Requested State	123
ARTICLE 8. Conflicting Requisitions	137
ARTICLE 9. Non Bis in Idem	144
ARTICLE 10. Pending Prosecution for the Same Acts	148
ARTICLE 11. Postponed or Conditional Extradition	151
PART IV. EXTRADITION PROCEDURE	
ARTICLE 12. The Requisition and Supporting Documents	158
ARTICLE 13. Supplementary Documents	165
ARTICLE 14. Apprehension and Detention of Person Claimed	166
ARTICLE 15. Request for Provisional Arrest	171
ARTICLE 16. Provisional Arrest	179
ARTICLE 17. Hearing	182
ARTICLE 18. Effect of Judicial Determination	200
ARTICLE 19. Language to be Used and Translations	201
ARTICLE 20. Arrangement for Extradition	204
ARTICLE 21. Reimbursement of Requested State	206
ARTICLE 22. Transit Through Territory of Third State	208
PART V. LIMITATIONS UPON THE REQUESTING STATE	
ARTICLE 23. Trial, Punishment and Surrender of Extradited Person..	213

	PAGE
PART VI. PROPERTY	
ARTICLE 24. Delivery and Return of Property Requested	219
PART VII. GENERAL PROVISIONS	
ARTICLE 25. Reservations in Schedule A and Declaration in Schedule B	221
ARTICLE 26. Declaration as to Application of Convention to Certain Territories	222
ARTICLE 27. Other Extradition Agreements	222
ARTICLE 28. Settlement of Disputes	223
SCHEDULE A	
RESERVATION NUMBER ONE. Capital Punishment	228
RESERVATION NUMBER TWO. Fiscal Offenses	228
RESERVATION NUMBER THREE. Non-Extradition of Nationals with Duty of Prosecution	236
RESERVATION NUMBER FOUR. Non-Extradition of Nationals without Duty of Prosecution	238
RESERVATION NUMBER FIVE. Prima Facie Case	238
RESERVATION NUMBER SIX. Prima Facie Case in Extradition of Nationals	239
RESERVATION NUMBER SEVEN. Refusal of Transit for Political and Military Offenses	239
SCHEDULE B	
DECLARATION as to Political and Military Offenses	240
Appendices	
APPENDIX I. CHRONOLOGICAL LIST OF EXTRADITION TREATIES	241
APPENDIX II (A). EXTRADITABLE OFFENSES IN UNITED STATES TREATIES 1900-1930	
List of Treaties	243
List of Offenses	243
APPENDIX II (B). EXTRADITABLE OFFENSES IN TREATIES CONCLUDED BY STATES OTHER THAN THE UNITED STATES	
List of Treaties	258
List of Offenses	259
APPENDIX III. MULTIPARTITE EXTRADITION CONVENTIONS	
1. Treaty of Amiens, March 27, 1802	274
2. Treaty of International Penal Law. Montevideo, Jan. 23, 1889	275

	PAGE
3. Treaty for the Extradition of Criminals and for Protection against Anarchism. Mexico, Jan. 28, 1902	278
4. Agreement on Extradition. Caracas, July 18, 1911	282
5. Bustamante Code. Habana, Feb. 20, 1928	285
6. Convention on Extradition. Montevideo, Dec. 26, 1933	289
7. Central American Extradition Convention. Guatemala, April 12, 1934	293
 APPENDIX IV. DRAFTS AND PROJECTS	
1. Field's Outlines of an International Code, 1876	296
2. Resolution adopted by Institute of International Law, Oxford, 1880	300
3. Draft of International Commission of Jurists, Rio de Janeiro, 1912	301
4. Travers' Project for an Extradition Treaty, 1922	305
5. Draft approved by International Law Association, 1928	307
6. Model Draft of Sub-Commission of International Penal and Prison Commission, 1931	309
 APPENDIX V. TYPICAL BIPARTITE TREATIES OF RECENT DATE	
1. United States-Great Britain, 1931	316
2. United States-Austria, 1930	320
3. Germany-Turkey, 1930	323
4. Brazil-Italy, 1931	329
5. France-Czechoslovakia, 1928	333
6. Belgium-Poland, 1931	341
7. Colombia-Panama, 1927	348
8. Finland-Netherlands, 1933	351
 APPENDIX VI. SELECTED EXTRADITION STATUTES	
1. Argentina	356
2. Belgium	362
3. Brazil	367
4. Canada	369
5. Chile	377
6. France	380
7. Germany	385
8. Great Britain	392
9. Greece	406
10. Italy	407
11. Japan	411
12. Sweden	414
13. Switzerland	420
14. Turkey	427
15. United States	428