Document:-
A/CN.4/205/Rev.1

The final stage of the codification of international law - Memorandum by Mr. Roberto Ago

Topic:
Programme of work

Extract from the Yearbook of the International Law Commission:-
1968, vol. II

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REVIEW OF THE COMMISSION'S PROGRAMME AND METHODS OF WORK

[Agenda item 4]

DOCUMENT A/CN.4/205/REV.1

The final stage of the codification of international law: memorandum by Mr. Roberto Ago

[Original text: French]
[29 July 1968]

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I. Progress made in the preparatory stage of the codification of international law and in the adoption of codification conventions

1. It is generally recognized that, under the impulse of the urgent needs characteristic of our time, the work of preparing and concluding general conventions codifying international law has by now made considerable progress.

2. The International Law Commission of the United Nations, because of its composition, its procedure, the assistance given it by the Secretariat, and the experience it has acquired over the twenty years of its existence, is able to prepare drafts which are not only technically unexceptionable, but also represent carefully selected ground common to the different concepts and trends of the modern world.

3. Diplomatic conferences of representatives of States, which can be easily convened under present United Nations procedures, can have the altogether invaluable assistance of the United Nations legal services in their work and, above all, can base their discussions on the already highly polished drafts prepared by the International Law Commission, so that it is relatively easy for them to adopt, by the required majority, the texts of conventions concerning important sectors of international law.

II. Difficulties remaining at the stage of final acceptance of codification conventions by States

4. Unfortunately, the same satisfactory state of affairs cannot be said to obtain with regard to the final phase of the work of codifying international law: that in which States are required to ratify the conventions or to accede to them.

5. Once the text of a convention codifying a given sector of international law has been embodied in the final act of a conference of government representatives, it is entrusted to the Secretary-General of the United Nations, who becomes the depositary. In this capacity, he communicates the text to all States entitled to become parties to the convention, and his main task is to receive the signatures, ratifications, acceptances and accessions of these States. His role is an eminently passive one. He registers the instruments and communications he receives; he verifies their conformity with the general or special provisions applicable to them; he informs the other States of what has happened; when the required minimum number of ratifications or other equivalent instruments has been received, he establishes that the convention has entered into force and notifies States of the date on which it did so. But neither the depositary nor any other United Nations organ is empowered to take any action to bring about or even to hasten the initiation of the procedures which States must follow in order to manifest their will to become bound by a convention.

6. In other words, after the adoption of a convention, the work of codification ceases to be a collective action and splits up into a series of individual actions. Each individual State decides for itself whether or not it is advisable to give its final consent to the international instrument, even though, more often than not, it has itself helped to establish the text; it is also the sole judge of the moment when it should give its consent and of the time it needs to reach its decision, if it intends to take one. From this point on, the internal constitutional procedures of each State take precedence over international procedures, and one must wait patiently for the expressions of consent to come in one by one and be fitted together like the pieces of a puzzle. It is only when a sufficiently large proportion of them have come in, that the rules so laboriously prepared, drawn up and approved during the previous stages of the work of codification can officially take effect as rules of law accepted, if not by the whole of the international community, at least by the major part of it. Of course, even before this condition is fulfilled, what has been accomplished is not without importance. The value of a text adopted by a large majority, and sometimes unanimously, by a general conference of State representatives can hardly be called in question, even by a country which has not yet ratified or accepted it and even if it is not yet in force. International arbitral tribunals and courts will also probably tend to recognize this value, especially if, in the text in question, codification *stricto sensu* preponderates over the development of law. But all this is conditional on the final consent of a large and, in some way, representative part of the States which participated in the preparation and adoption of the convention being given within a reasonable time. On the other hand, if the years go by and only a small number of parties can be gathered round the convention, even the value originally attributed to the text will gradually diminish and the fruits of all these successive efforts may finally be lost.

7. The disadvantages of such a situation are easily understandable. Conventions codifying international law are written agreements by which States undertake to redefine, and if necessary to adapt to new circumstances, the unwritten law in force in some important sector of the international legal order. The necessity and urgency of such codification are due mainly to the conditions in which international society is living today and to the need to restore legal stability in spheres where there is a growing tendency to question certain traditionally established rules. But if, after the stages of drafting and adopting codification conventions have been successfully accomplished, there is a failure at the stage of final acceptance, the only practical effect of this lame result may be to make the situation in regard to the law in force still more vague and uncertain, whereas the intention was to re-establish certainty. This is a danger which must not be under-estimated.

III. Confirmation of the reality of the difficulties brought to light by an examination of the *de facto* situation

8. These reflections are based, not on more or less hypothetical speculations, but on consideration of the facts. To appreciate this, it will be sufficient to glance at the present state of ratifications, accessions and acceptances of the conventions codifying important branches of international law adopted during the last ten years. Of the four Conventions on the Law of the Sea, signed at Geneva on 23-29 April 1958, two, namely those on the High Seas and on the Continental Shelf, have at the present time received respectively forty-one and thirty-eight ratifications, accessions or notifications of succession; that is not very many, though fortunately they are fairly representative of the various groups of members of the international community.[1] The Convention on the Territorial Sea and the Contiguous Zone

[1] The Convention on the High Seas entered into force on 30 September 1962. By July 1968, the following States had deposited their instruments of ratification or accession or given notification of succession (in chronological order): Afghanistan,

has received thirty-four ratifications, accessions or notifications of succession,[2] and the Convention on Fishing and Conservation of the Living Resources of the High Seas only twenty-five.[3] Of the two Vienna Conventions, on Diplomatic Relations (1961) and Consular Relations (1963), the first has reached a very satisfactory stage with seventy-seven ratifications, accessions or notifications of succession.[4] The second, on the other hand, has so far received only thirty-three ratifications or accessions;[5] these are not at present representative of a large part of the community of States, in particular, because of the relatively short time which has elapsed since the Convention was adopted. Thus the position is not one that can be considered generally satisfactory. In particular, it is not reassuring as regards the fate of the more ambitious attempts at codification planned for the near future.

IV. Need for the earlier and wider final acceptance of codification conventions by States

9. The problem which thus remains to be solved, if the codification of international law is to be successfully carried out in favourable conditions, is that of securing the earlier and wider final acceptance by States of the rules they have jointly drawn up and adopted.

10. To form a clear idea of the difficulties to be overcome in this matter, it must be borne in mind that a State is seldom really hostile to the ratification of a convention, particularly if its representatives have voted in favour of that convention at a general diplomatic conference. Political reasons, or more often fears concerning the possible repercussions of certain rules on particular situations, may explain delay in ratification or accession, or even failure to ratify. But in most cases the reasons why a State delays transmission of the instrument formally establishing its consent have nothing to do with any real opposition, either on principle or on a particular point.

11. The reasons are mainly inherent in the inertia of the political and administrative machinery of the modern State. The procedure leading to the ratification of a convention is long and complicated.

12. The organs of government required to take the initiative in setting the procedure in motion are often overburdened with other tasks and dominated by the need to deal with questions they regard as being of more immediate urgency. The government departments whose prior opinion or consent is required are numerous and not always very familiar with problems of the international legal order. The zeal shown by some offices in seeking out and drawing attention to more or less real imperfections in the instrument being considered, or to alleged difficulties in application, is sometimes worthy of a better cause. Then, too, the democratic development of the State, which assigns to the legislature, and not to the executive, the power to authorize ratification or acceptance of an important convention, also has to be paid for in parliamentary delays. Both governments and parliaments, moreover, are often influenced

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United Kingdom of Great Britain and Northern Ireland, Cambodia, Haiti, Union of Soviet Socialist Republics, Malaysia, Ukrainian Soviet Socialist Republic, Byelorussian Soviet Socialist Republic, United States of America, Senegal, Nigeria, Venezuela, Indonesia, Czechoslovakia, Israel, Guatemala, Hungary, Romania, Sierra Leone, Poland, Malagasy Republic, Bulgaria, Central African Republic, Nepal, Portugal, South Africa, Australia, Dominican Republic, Uganda, Albania, Italy, Finland, Upper Volta, Malawi, Yugoslavia, Netherlands, Trinidad and Tobago, Switzerland, Mexico, Japan and Thailand.

The Convention on the Continental Shelf entered into force on 10 June 1964. By 1967, the following States had deposited instruments of ratification or accession or given notification of succession (in chronological order): Cambodia, Haiti, Union of Soviet Socialist Republics, Malaysia, Ukrainian Soviet Socialist Republic, Byelorussian Soviet Socialist Republic, United States of America, Senegal, Venezuela, Czechoslovakia, Israel, Guatemala, Romania, Colombia, Poland, Malagasy Republic, Bulgaria, Portugal, South Africa, Australia, Denmark, United Kingdom of Great Britain and Northern Ireland, Dominican Republic, Uganda, Albania, New Zealand, Finland, France, Jamaica, Malawi, Yugoslavia, Netherlands, Switzerland, Malta, Sweden, Mexico, Sierra Leone, and Trinidad and Tobago.

[2] The Convention on the Territorial Sea and the Continguous Zone entered into force on 10 September 1964. By 1967, the following States had deposited their instruments of ratification or accession or given notification of succession (in chronological order): United Kingdom of Great Britain and Northern Ireland, Cambodia, Haiti, Union of Soviet Socialist Republics, Malaysia, Ukrainian Soviet Socialist Republic, Byelorussian Soviet Socialist Republic, United States of America, Senegal, Nigeria, Venezuela, Czechoslovakia, Israel, Hungary, Romania, Sierra Leone, Malagasy Republic, Bulgaria, Portugal, South Africa, Australia, Dominican Republic, Uganda, Italy, Finland, Malawi, Yugoslavia, Netherlands, Trinidad and Tobago, Switzerland, Malta, Mexico, Japan and Thailand.

[3] Those of the following States (in chronological order): United Kingdom of Great Britain and Northern Ireland, Cambodia, Haiti, Malaysia, United States of America, Senegal, Nigeria, Sierra Leone, Malagasy Republic, Colombia, Portugal, South Africa, Australia, Venezuela, Dominican Republic, Uganda, Finland, Upper Volta, Malawi, Yugoslavia, Netherlands, Trinidad and Tobago, Switzerland, Mexico and Thailand. The Convention entered into force on 20 March 1966.

[4] The Convention, adopted on 18 April 1961, entered into force on 24 April 1964. By 1967, the following States had ratified the Convention, acceded to it or given notification of succession (in chronological order): Pakistan, Liberia, Ghana, Mauritania, Sierra Leone, Ivory Coast, Tanganyika, Laos, Nigeria, Congo (Brazzaville), Yugoslavia, Czechoslovakia, Jamaica, Malagasy Republic, Cuba, Guatemala, Argentina, Iraq, Switzerland, Panama, Dominican Republic, Union of Soviet Socialist Republics, Gabon, Algeria, Rwanda, Holy See, Liechtenstein, Byelorussian Soviet Socialist Republic, Japan, United Arab Republic, Ukrainian Soviet Socialist Republic, United Kingdom of Great Britain and Northern Ireland, Ecuador, Costa Rica, Federal Republic of Germany, Iran, Venezuela, Brazil, Poland, Malawi, Mexico, Kenya, Democratic Republic of the Congo, Cambodia, San Marino, Nepal, Hungary, Afghanistan, India, Trinidad and Tobago, Malaysia, Philippines, Salvador, Niger, Austria, Canada, Luxembourg, Mongolia, Malta, Sweden, Dahomey, Ireland, Nigeria, Norway, Spain, Chile, Guinea, Bulgaria, Tunisia, Australia, Honduras, Mali, Somalia, Burundi, Belgium, Barbados and Morocco.

[5] The Convention, adopted on 24 April 1963, entered into force on 19 March 1967. Up to the present, the following States have ratified the Convention or acceded to it (in chronological order): Ghana, Dominican Republic, Algeria, Tunisia, Upper Volta, Yugoslavia, Gabon, Ecuador, Switzerland, Mexico, United Arab Republic, Kenya, Nepal, Cuba, Trinidad and Tobago, Venezuela, Philippines, Niger, Senegal, Liechtenstein, Costa Rica, Madagascar, Argentina, Ireland, Cameroon, Brazil, Panama, Chile Nigeria, Honduras, Czechoslovakia, Mali, and Somalia.

by considerations of immediate political importance; they are therefore inclined to give priority to internal measures which, in their view, a substantial body of public opinion will naturally regard as being of greater importance. The result is that the ratification of an international convention may easily come to be regarded as a matter that can wait; and the adoption of the measures it necessitates is postponed from one session to the next, from one government to the next, from one legislature to the next, and so on.

13. Unfortunately, it also happens that delay in some countries is reflected in, or even provokes, delay in others. The authorities of one country sometimes wait to see what those of other countries will do before finally deciding to proceed with the acceptance of a convention; thus at a particular time the progress of ratifications and accessions reaches a state of stagnation from which it becomes increasingly difficult to free it.

14. Now there is no doubt that means could be devised, within the legal system of the countries where treaty approval procedures are particularly complicated, to simplify these procedures and speed up their completion. But it is clear that if substantial over-all results are to be achieved on the international plane, it is also on that plane that we must seek the most suitable means of applying the necessary pressure to the constitutional organs of States to ensure that their decisions on the ratification or acceptance of treaties are taken within a reasonable time.

15. In a resolution of 23 September 1926, adopted at its seventh session, the League of Nations Assembly had already given attention to the undue delay involved in the procedure for ratifying agreements and conventions concluded under the auspices of the League, and had invited the Council to call for a report from the Members, every six months, on the progress of ratification, and to consider methods of securing the more rapid bringing into force of those agreements and conventions.[6] Later, by a resolution adopted at its tenth session on 24 September 1929 [7]—thus on the eve of the meeting of the First Conference on the Progressive Codification of International Law at The Hague—the Assembly requested the Council "to set up a Committee to investigate, with the assistance of the Secretariat services, the reasons for the delays which still exist and the means by which the number of signatures, ratifications or accessions given to the conventions referred to above could be increased". In a later resolution, adopted on Mr. A. Giannini's report at the eleventh session, on 3 October 1930, and following the work of the Committee which had been set up in the meantime, the Assembly emphasized that it was "of the greatest importance that all steps should be taken to assure that conventions concluded under the auspices of the League of Nations should be accepted by the largest possible number of countries and that ratification of such conventions should be deposited with the least possible delay".[8] The Assembly recommended that effect should be given to three proposals contained in the report of the Committee.

16. The first of those proposals was that each year the Secretary-General should request any of the eighty-eight Members of the League or any non-member State "which has signed any general convention concluded under the auspices of the League of Nations, but has not ratified it before the expiry of one year from the date at which the protocol of signature is closed, to inform him what are its intentions with regard to the ratification of the convention". These requests were to be sent at such a date as to allow time for the replies of governments to be received before the date of the Assembly. The information thus collected was to be communicated to the Assembly.

17. The second proposal was that, "at such times and at such intervals as seem suitable in the circumstances, the Secretary-General should, in the case of each general convention concluded under the auspices of the League of Nations, request the Government of any Member of the League of Nations which has neither signed nor acceded to a convention within a period of five years from the date on which the convention became open for signature, to state its views with regard to the convention—in particular, whether such Government considers there is any possibility of its accession to the convention or whether it has objections to the substance of the convention which prevent it from accepting the convention". The information received was to be communicated to the Assembly.

18. The third proposal authorized the Council of the League of Nations to consider, in the light of the information thus collected and after consultation with any appropriate organ or committee, "whether it would be desirable and expedient that a second conference should be summoned for the purpose of determining whether amendments should be introduced into the convention, or other means adopted, to facilitate the acceptance of the convention by a greater number of countries".

19. Still in conformity with the Committee's suggestions, the Assembly resolution recommended that, "at future conferences ... at which general conventions are signed, protocols of signature shall, as far as possible, be drawn up on the general lines of the alternative drafts".[9]

20. The first draft protocol (Annex I) provided: I. That the Government of every Member of the League of Nations or non-Member State on whose behalf the said Convention has been signed undertakes, not later than... (date), either to submit the said Convention for parliamentary approval, or to inform the Secretary-General of the League of Nations of its attitude with regard to the Convention; and II. that "If on ... (date) the said Convention is not in force with regard to... Members of the League of Nations and non-Member States, the Secretary-General of the League shall bring

[6] League of Nations, *Official Journal, Special Supplement No. 43,* Geneva, October 1926, p. 27.

[7] *Ibid., Special Supplement No. 75,* Geneva, 1929, p. 17.

[8] *Ibid., Special Supplement No. 83,* Geneva, October 1930, pp. 12 *et seq.*

[9] *Ibid.,* pp. 14 and 15.

the situation to the attention of the Council of the League of Nations, which may either convene a new conference of all the Members of the League and non-Member States on whose behalf the Convention has been signed or accessions thereto deposited, to consider the situation, or take such other measures as it considers necessary". All signatory or acceding States would undertake to be represented at any conference so convened.

21. The alternative draft (Annex II) simply provided for the inclusion in the convention of a *final article,* indicating the number of ratifications or accessions required for the entry into force of the convention, and a *protocol of signature* comprising only provision II of the first draft.[10]

22. Unfortunately the general situation did not permit of the Assembly resolution's having any positive result at that time. But it certainly contained some useful suggestions, and any fresh action contemplated today for the purposes under consideration here might be guided by the same ideas.

V. Practical measures that could be taken to facilitate the attainment of the object in view

23. A practical measure of a general nature which might be recommended to facilitate the achievement of these aims would be to extend to all general conventions adopted by the United Nations, or by conferences convened by the United Nations, the system in force in some of the specialized agencies. These are, particularly, the International Labour Organisation and, to some extent, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO)—organizations whose work is reflected mainly or at least partly in the adoption of convention—which possess constitutions capable of furnishing the most suitable model for the provisions to be adopted.

24. The constitution of the International Labour Organisation contains, first of all, a rule aimed directly at promoting the ratification of international labour conventions, or at least at ensuring that the competent constitutional organs of Member States are obliged specifically and seriously to examine the possibility of ratifying them. Article 19, paragraph 5 (*b*), requires the Members of the Organisation to bring every convention adopted by the Conference before their competent national authorities (generally their parliaments) within one year, or in exceptional circumstances within not more than eighteen months, after its adoption. Sub-paragraphs (*c*) and (*d*) of the same paragraph require Members to inform the Director-General of the International Labour Office of the measures taken to give effect to the requirements of sub-paragraph (*b*), and a Member which has obtained the consent of the competent authorities to communicate the ratification of the convention to the Director-General.[11] Paragraph 7 (*a*) and (*b*) (i), (ii) and (iii) of article 19 lays down the special procedures for applying these provisions to a federal State. It should be noted that these are old rules, since before they were included in the present Constitution—which entered into force on 26 September 1946—they had already appeared in article 19 of the Constitution of 1919.

25. It is time that these provisions do not require governments to propose to the legislative assemblies that effect should be given to the conventions and that they should be ratified; but they are nevertheless under an obligation to submit the conventions promptly to parliament, so that they can be considered at the most representative and responsible level. This avoids the danger of conventions being buried or rejected without due consideration, or even being simply forgotten by governments.

26. It should also be noted that if conventions are thus put before the legislative power capable of authorizing the necessary measures to give effect to them, public attention is drawn to the matter, which may in turn as a spur to those required to take a decision. In any case, there is no denying that the application of this rule has resulted in a greater number of ratifications of certain international labour conventions by Member States in a shorter time.

27. A rule corresponding in part to the one just described appears in the last sentence of article IV, paragraph 4, of the Constitution of UNESCO, which provides that conventions adopted by the General Conference shall be submitted to the competent national authorities within one year after their adoption.[12]

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[10] The same resolution further provided that the Council would investigate to what extent, in the case of general conventions dealing with particular matters, it was possible "to adopt the procedure of signing instruments in the form of governmental agreements which are not subject to ratification"; and that general conventions made subject to ratification should not be left open for signature after the close of the conference for a longer period than six months.

[11] Constitution of the International Labour Organisation, 1963 edition, Geneva, p. 12. The sub-paragraphs referred to read as follows:

> "(*b*) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action;
>
> (*c*) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;
>
> (*d*) if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention".

[12] Constitution of UNESCO (16 November 1945), in *Conference Manual,* 1967, Paris, p. 14. The text of the passage in question reads as follows:

28. As to the Constitution of WHO, the first part of article 20 requires Members to take, within eighteen months after the adoption of a convention by the Health Assembly, action relative to the Convention's acceptance.[13]

29. A second rule in the ILO Constitution, article 19, paragraph 5 (*e*), requires States which have not ratified a convention to submit a report, at intervals fixed by the Governing Body, stating the difficulties preventing or delaying ratification or the extent to which their law or practice has nevertheless given effect to any provisions of the Convention.[14]

30. Through this rule the convention gains the benefit of some measure of *de facto* implementation by States which have not ratified it. In addition, the provision enables States to reconsider the situation periodically; and it sometimes happens that, faced with the choice between submitting a report specifying in writing the causes delaying or preventing ratification, and initiating the ratification procedure, even belatedly, a government will opt for the second alternative. Lastly, this rule has the advantage of enabling the International Labour Organisation's organs to consider the reasons given in the reports by States, to discuss them, and possibly either to eliminate the difficulties which some States encounter in accepting the convention, or to initiate action for revision of the text if those difficulties are sufficiently generalized and seem to have some justification.

31. These obligation to state in writing the reasons for non-acceptance of a convention is also laid down in article 20 of the WHO Constitution;[15] and a similar provision is to be found in article 22 of the European Social Charter adopted by the Council of Europe and signed at Turin on 18 October 1961.[16]

32. These constitutional rules, it will be observed, are based on the same criteria as were embodied in the draft of the Committee set up by the League of Nations Assembly and in the League Assembly's own resolution. They merely make the criteria more precise by laying down in positive terms the dual obligation to cause the convention to be considered within a specified time by the authorities responsible for the decision to ratify and, failing satisfaction, to report to the appropriate international body, specifying in writing the reasons for that situation.

33. The usefulness of such rules in prompting a decision on the acceptance of a general convention cannot fail to become clear when the causes which, in many cases, underlie inaction or delay on the part of organs of State are called to mind. These provisions may provide an effective means of overcoming hesitation and passive resistance, of preventing other questions from being successively given priority for consideration and decision, and of ensuring publicity for discussion of the reasons for or against accepting a convention. The application of such rules to the general conventions of the United Nations, and in particular to conventions adopted by conferences for the codification of international law, could not fail to contribute effectively to the improvement of the work of codification.

34. At the same time, the fact that the positive effects of these rules have been experienced in some international organizations in which international conventions are produced in particularly large numbers should be a decisive factor in favour of recommending States to extend the rules to other fields and to generalize them within the United Nations family.

VI. Means by which those measures could be put into effect

A. Amendment to the United Nations Charter

35. As to the means of bringing about this extension, the ideal method would obviously be that of an amendment to the United Nations Charter introducing into the

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"Each of the Member States shall submit recommendations or conventions to its competent authorities within a period of one year from the close of the session of the General Conference at which they were adopted."

This provision is supplemented by that of article VIII: "Each Member State shall report periodically to the Organization, in a manner to be determined by the General Conference, . . . on the action taken upon the recommendations and conventions referred to in Article IV, paragraph 4."

[13] Constitution of WHO (of 22 July 1946), in *WHO Basic Documents,* eighteenth edition, Geneva, 1967:

"*Article 20.* Each Member undertakes that it will, within eighteen months after the adoption by the Health Assembly of a convention or agreement, take action relative to the acceptance of such convention or agreement . . . In case of acceptance, each Member agrees to make an annual report to the Director-General in accordance with Chapter XIV."

[14] *Constitution of the International Labour Organisation.* "(*e*) If the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and *stating the difficulties which prevent or delay the ratification of such Convention.*" (Italics by the author of this memorandum). For the situation with regard to a federal State, see also article 19, para. 7 (*b*), (iv) and (v).

This rule did not appear in the 1919 Constitution of the International Labour Organisation.

[15] *Article 20, second sentence:* "Each Member shall notify the Director-General of the action taken, and if it does not accept such convention or agreement within the time limit, it will furnish a statement of the reasons for non-acceptance".

[16] See text of the European Social Charter in *United Kingdom Treaty Series, No. 38 (1965),* Cmnd. 2643. Article 22, on "Reports concerning provisions which are not accepted", states: "The Contracting Parties shall send to the Secretary-General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of Part II of the Charter which they do not accept at the time of their ratification or approval or in a subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided".

Charter rules on the lines of those which have long existed in the constitutions of certain specialized agencies. Member States would then all be subject to the same obligations. Care would, however, have to be taken to ensure that the obligations applied not only to general conventions adopted by the General Assembly itself, but also to general conventions adopted by a conference convened by the United Nations and, in the first instance, to conventions codifying international law.[17]

36. The difficulties involved in adopting an amendment of this kind should perhaps not be exaggerated. It is true that, since the establishment of the United Nations, the first amendments to the Charter to have come into force are those adopted by General Assembly resolutions 1991 A (XVIII) and 1991 B (XVIII) of 17 December 1963, to increase the number of non-permanent members of the Security Council from six to ten, the membership of the Council from eleven to fifteen, and the membership of the Economic and Social Council from eighteen to twenty-seven. But it is also true that those amendments attracted ninety-three ratifications and entered into force twenty months after their adoption. This means that over two-thirds of the Members (i.e. more than the required number) including the permanent members of the Security Council had, in compliance with the Assembly's recommendation managed to ratify the amendments before the date indicated in the recommendation. It is therefore probable that an amendment which is devoid of political implications, like the one proposed here, and which enjoys the same support, would not require an unduly long time to become applicable.

B. Recommendation by the General Assembly

37. It would also, however, be understandable if, before embarking on the procedure of constitutional amendment, the United Nations should prefer to test the proposed rules in practice, if that were possible, in order to ascertain whether they were effective. There are a number of different methods which may be considered.

38. One which springs immediately to mind is that the General Assembly should adopt a recommendation addressed to all Member and non-member States entitled to become parties to a general convention. There are a number of precedents for such a step, including some recent ones: operative paragraph 2 of the above-mentioned General Assembly resolutions of 17 December 1963 contains precisely an invitation to States Members to ratify the proposed amendments in accordance with their respective constitutional procedures by 1 September 1965. A resolution of a more general character was adopted on 20 December 1965 (resolution 2081 (XX)) inviting all Member States to ratify before 1968 a series of conventions dealing with human rights and adopted by the United Nations, by the International Labour Organisation or by UNESCO.

39. The proposed recommendation could be of a general character in the sense that it would apply comprehensively and indefinitely to all general conventions adopted in future. It might then invite the governments of States to which it was addressed: (*a*) to submit the text of any general convention adopted within or under the auspices of the United Nations to the appropriate authorities for a decision on ratification or accession within twelve, or in exceptional cases eighteen, months of the date of the adoption of the convention; and (*b*) to forward to the Secretary-General of the United Nations either the instrument of ratification or accession or a report indicating what had prevented or delayed ratification or accession. The recommendation could also invite States which had not yet accepted a particular convention to report periodically to the Secretary-General, either on the prospects of subsequent ratification or accession or on the state of their legislation and practice in the matter covered by the convention.[18]

40. Another possibility would be a recommendation referring specifically to a particular convention which had just been adopted, or to a group of conventions already adopted, such as, for example, conventions codifying a particular sector of international law. In that case, one might follow the example of the invitation addressed to member States in connexion with the human rights conventions, though the terms of the invitation would have to be adjusted.

41. Of course, a recommendation or an invitation contained in a resolution of the General Assembly has not the same value as a rule embodied in an Article of the Charter or in a separate agreement to the same effect. It does not impose on the governments to which it is addressed a legal obligation to conform to the course of conduct recommended. But the main concern for our purpose here is not whether States consider themselves bound or not bound by a recommendation, but whether in practice they carry it out and, if so, to what extent. New experience shows that recommendations having a general purpose, such as the purpose contemplated here, and emanating from the whole or a majority of the members of the General Assembly, are normally treated by States with the serious consideration they deserve. Their efficacy is proved by facts and that is what counts. And even if their only effect to add a small number of ratifications or accessions to the number which a general convention would have attracted in any event, their utility would still be beyond dispute. At all events, once an actual trial had been made, it would probably be easier to convert these mere exhortations into legal obligations by the appropriate procedures.

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[17] The introduction into the Charter of rules of this kind would not have automatic effect for the few non-member States that might be invited to participate in a conference. It would be easy to overcome this difficulty by setting out the obligations laid down in those rules in the letters of invitation addressed by the United Nations Secretary-General to the governments of those States, and requesting them in the case of an affirmative reply, to indicate expressly their acceptance of those obligations.

[18] The General Assembly could, in turn, examine such reports periodically or have them examined by a special committee, and decide, if need be, that measures should be taken, including, in exceptional cases, the revision of a convention if the majority refused to accept it.

C. Adoption of appropriate protocols of signature at codification conferences

42. A different procedure might be considered for conventions adopted by a general conference of representatives of States, such as conventions codifying international law. This procedure might, under certain conditions, induce States entitled to become parties to a convention to assume genuine legal obligations in respect of ratification or accession; it could also draw on the provisions considered for the same purpose by a League of Nations *ad hoc* Committee and endorsed by the League Assembly in a resolution of 3 October 1930.[19]

43. The United Nations General Assembly could adopt a resolution recommending that, at conferences held under the auspices of the United Nations at which general conventions were adopted, a protocol of signature should be drawn up similar to a model included in the resolution. States signing the convention would undertake by that protocol to take the measures mentioned therein, which would be either the submission of the convention, within a specified period, to the appropriate authorities for a decision on ratification or accession or the transmission of reports to the Secretary-General of the United Nations.

44. There is no doubt that the clauses of the protocol would acquire binding force by signature, despite the fact that the protocol be attached to a convention expressly providing for the requirement of ratification.[20]

45. The obligations laid down in the clauses of the protocol would, however, be binding only upon the signatory States and the time limits set for ratification or accession would only run from the date of signature. Consequently, this system would obviously be less general and less rapid in its effects than the adoption of a constitutional rule specifying that such obligations result from the adoption of a convention and are binding on all members of the General Assembly and all States participating in a conference convened by the United Nations. But there can be no doubt it would definitely help to secure a wider and speedier acceptance of general conventions.

46. To complete the list of possible courses of action, if the adoption of a protocol of signature, as described above, were not provided for in a United Nations General Assembly resolution as a uniform measure applying to all future conferences convened by the United Nations, then it could be decided on independently at the close of a diplomatic conference for application to the convention adopted by the conference. This solution, although more limited in scope, might nevertheless constitute a useful precedent and be adopted to advantage without having to wait for a decision of principle by the United Nations.[21]

VII. Possible action by the United Nations to gain the support of public opinion for codification

47. The review of these measures—the adoption of which would seem to be advisable in one way or another—cannot be completed without drawing attention once again to how essential it is in any event, for the purposes contemplated here, to be able to count on the support, in the different countries, of an active public opinion alive to the importance of the issues involved.

48. This support, which is valuable at any time during the process of the codification of international law, may become decisive in the final stage which, as has been stressed, takes place at the national level. The mobilization of the forces capable of exerting an influence on the administrative, governmental and parliamentary authorities and of spurring them on to take the necessary action, is a task to which the United Nations might usefully apply itself. If, when relaunching his idea of instituting an international law decade, the Secretary-General were to consider devoting it mainly to a campaign for promoting the generalized acceptance of conventions codifying international law and of the rules embodied in them; if, with that object mainly in view, it were decided to promote the establishment of national advisory committees for international law, on the lines of the national advisory committees for human rights, dedicated to the idea of the progress of this law and the strenghthening of its authority over the community of States; then an instrument would probably be forged which would be capable of giving significant support to the efforts to bring to a successful conclusion the task —so arduous and delicate, so set about with obstacles and dangers, and yet today so indispensable—of codifying international law.

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[19] League of Nations, *Official Journal, Special Supplement No. 83,* October 1930, pp. 12 *et seq.*

[20] The same would apply if the clauses, instead of forming a separate protocol, were included in the final clauses in the text of the convention itself.

[21] A measure that might perhaps be even easier to carry out would be to persuade the diplomatic conference to adopt a resolution containing a simple recommendation to the governments of the participating States. It should be noted that the practice of adopting recommendations side by side with conventions at diplomatic conferences is spreading. In this connexion see the commentaries by Antonio Malintoppi—"*Il valore delle raccomandazioni adottate da conference delle Nazioni Unite*" in *Rivista di Diritto Internazionale* (Milano, 1961), vol. 44, fasc. 4, pp. 604-623. However, an appeal of this kind made by the conference to the participant States could have no legal effect: it is also doubtful whether it could have the authority and efficacy of a recommendation of principle emanating from the General Assembly of the United Nations.