Chapter XXVII  Codification and Progressive Development of a Universal International Law

I. Introduction

In the course of the present book, reiterated references were made to codification and progressive development of International Law, in the assessment of the evolution of distinct chapters of the discipline. I purport now to dedicate some reflections to the codification and progressive development of International Law as such, no longer tangentially, as an illustration of the historical projection of each of the chapters surveyed, but rather as a central point of attention, aiming at drawing lessons from past endeavours to foster the gradual ongoing construction of the new jus gentium of our days. In the present chapter attention will at first be turned to the exercise of codification and progressive development of the discipline in historical perspective.

In this respect, I have already referred to the acknowledgement, along the past decades, that the systematization of the discipline, through the exercises of its codification and progressive development, has attributed great importance to general principles of International Law, in pursuance of an essentially humanist outlook, endowing International Law with an objective basis, and contributing to its universalization; the normative content to that end flowed from the conscience of the members of the international community, giving expression to the opinio juris communis, in response to their common needs and aspirations (infra). In this chapter, attention will at last be turned to the lessons and projections of the codification and progressive development of International Law, moved, as they have been, ultimately by the universal juridical conscience.

II. Codification and Progressive Development in Historical Perspective

In fact, already in the first half of the XXth century, in an epoch when the raw materials of the practice of International Law were not yet systematized as they

---

1 Cf. chapters V, VI, XVIII, XIX, XX, XXII and XXIV, supra.
2 Cf. chapters VIII, XVIII and XXII, supra.
3 Cf. chapter XXII, supra.
are in our days, there was awareness of the relevance of the identification and systematization of the principles of International Law. This task appeared as a considerable challenge, in face of the great number of problems awaiting solution, many of which generated by two world wars, added to diverging doctrines on certain issues of International Law, to the pessimism manifested in juridical circles after the failure of the Hague Codification Conference of 1930, and, in sum, to a state of uncertainty wherein International Law was found, in an epoch regarded as one of transition.

Subsequently, with the vast normative production undertaken by distinct international organs, the endeavours of codification and progressive development of international law obtained a new impulse – mainly in the ambit of the United Nations, – which, in a way, corresponded to the expectations not only of the academic circles but also of the international community as a whole. The work of codification and progressive development became even more necessary with the occurrence of important transformations in the international scenario, as illustrated, e.g., by the Law of the Sea (the four Geneva Conventions of 1958, succeeded by the Convention of Montego Bay of 1982). The work of the U.N. Inter-


5 Such as, inter alia, the different approaches, among countries of the European and American continents, of the whole chapter on the international responsibility of States.

