Provisional

For participants only

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International Law Commission

Seventieth session (first part)

Provisional summary record of the 3407th meeting
Held at Headquarters, New York, on Monday, 21 May 2018, at 11 a.m.

Contents

18-08127 (E)

Present:

Chair:	Mr. Valencia-Ospina
Members:	Mr. Argüello Gómez
	Mr. Aurescu
	Mr. Cissé
	Ms. Escobar Hernández
	Ms. Galvão Teles
	Mr. Gómez-Robledo
	Mr. Grossman Guiloff
	Mr. Hassouna
	Mr. Hmoud
	Mr. Huang
	Mr. Jalloh
	Ms. Lehto
	Mr. Murase
	Mr. Murphy
	Mr. Nguyen
	Mr. Nolte
	Ms. Oral
	Mr. Ouazzani Chahdi
	Mr. Park
	Mr. Peter
	Mr. Petrič
	Mr. Rajput
	Mr. Reinisch
	Mr. Ruda Santolaria
	Mr. Saboia
	Mr. Šturma
	Mr. Tladi
	Mr. Vázquez-Bermúdez
	Mr. Wako
	Sir Michael Wood
	Mr. Zagaynov

Secretariat:

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 11.10 a.m.

Commemoration of the seventieth anniversary of the Commission (agenda item 11) (*continued*)

The Chair said that the current solemn meeting marked the start of the Commission's commemoration of its seventieth anniversary. In accordance with General Assembly resolution 71/140, the Commission was holding the first part of its seventieth session at United Nations Headquarters in New York, not far from Lake Success, where it had held its first session in 1949. The Commission's presence in New York would further strengthen its close relationship with the Sixth Committee, which considered the Commission's annual report each year and recommended the draft resolutions on that report for adoption by the General Assembly. The Commission's 70 annual reports reflected its contribution to the progressive development and codification of international law in fulfilment of the functions entrusted to it by the General Assembly under Article 13 (1) (a) of the Charter of the United Nations. The inclusion of that provision in the Charter at the United Nations Conference on International Organization should be understood in the context of the codification movement that had started in the late eighteenth century and had gathered impetus with the establishment, in 1873, of the *Institut de Droit international*, whose current President would be giving the keynote address, and the International Law Association.

Over the course of its existence, the Commission's work had focused, among other important topics, on the three main sources of international law mentioned in article 38 (1) of the Statute of the International Court of Justice. The Commission's draft articles on the law of treaties had served as the basis for the 1969 Vienna Convention on the Law of Treaties, a foundational instrument that had the near-universal endorsement of Member States and had served as a springboard for the Commission's study of a dozen related topics. The draft conclusions on the identification of customary international law, to be adopted at the current session, dealt with the second main source of international law, while the topic "General principles of law", which addressed the third source of international law, had been added to the Commission's long-term programme of work in 2017.

The Commission's initial programme of work had comprised 14 topics which had been selected from a list of 25 topics proposed by Sir Hersch Lauterpacht. Over the years, the Commission had added 38 more topics, submitting final reports on all but three of them, not counting those on its current agenda. During its seventieth session, it would adopt final reports on two of the topics on its agenda and complete drafts adopted on first reading in relation to another two topics. The Commission was expected to be close to completing work on all items on its current agenda by the end of the 2017–2021 quinquennium. As the Commission selected topics for future study, it should not limit itself to traditional topics but should also consider those that reflected new developments in international law and pressing concerns of the international community as a whole, in line with the selection criteria agreed in 1998. The Commission had also received, in line with article 17 of its statute, a formal request from a Member State to add a new topic to its programme of work, relating to a particularly pressing issue that affected a significant number of States, including the requesting State.

Accordingly, the Commission had fulfilled the mission entrusted to it by the community of nations, duly represented by the General Assembly. Its contribution had been fundamental in terms of strengthening the rule of law in international relations, enabling them to evolve after the Second World War from a framework of confrontation to one of cooperation. That painstaking yet constructive process towards the achievement of multilateralism was currently threatened by the unilateral actions of some major players on the world stage and the outsized role that national interest played in their exercise of sovereignty.

The duty to cooperate, which lay at the heart of the Commission's work, was a well-established principle of international law enshrined in the Charter of the United Nations and the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States and reflected in a multitude of other international instruments. That duty was the practical expression of the principle of solidarity that had its roots in the ethical principles of the Charter. Solidarity, as an international ethical and legal principle, gave rise to a system of cooperation in furtherance of the notion that justice and the common good were best served by policies that benefited all nations.

Cooperation should not be interpreted as diminishing the prerogatives of a sovereign State within the limits of international law. On the contrary, the principle underlined respect for the sovereignty of States and its corollary, non-intervention and the primary role of State authorities in taking all kinds of measures that were expressions of the "right of every sovereign State to conduct its affairs without outside interference", as stated by the International Court of Justice in its judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua*

(*Nicaragua v. United States of America*). The correlating principles of sovereignty and non-intervention presupposed a given domestic sphere, or a *domaine réservé*, over which a State might exercise its exclusive authority. Such sovereign authority was an essential attribute of the State, but was not in any way absolute. As Judge Alvarez had stressed in his individual opinion in the *Corfu Channel case, Judgment of April 9th, 1949*, sovereignty conferred rights upon States and imposed obligations on them. As Mr. Koskenniemi, another former member of the International Law Commission, had emphasized, a State was most sovereign when it was most intensively engaged with the international world.

The Commission, as a subsidiary body of the General Assembly, was an example of a global institution that embodied international cooperation, given its mandate covering a broad range of topics of international law, its diverse membership and the manner in which its members were elected by the General Assembly, which ensured, within the framework of equitable regional representation, compliance with the criteria set out in article 8 of its statute. Although the Commission was far from achieving gender parity within its ranks, more women were members of the Commission than ever before in its history. The Commission also set an example of cooperation through its working methods, which were designed to facilitate the search for common legal ground on which to build its drafts.

The Commission had played a crucial role in helping to lay the foundations for the proper functioning of the international community in the post-war era. Today, when that community was being challenged by the pernicious isolationist policies that had recently made their appearance on the world stage, it was indispensable for the Commission to persevere in its quest to strengthen international law, which remained the bulwark that would ensure the survival of an international society that all nations had helped to build and from which all had benefited.

Mr. Lajčák (Slovakia), President of the General Assembly, said that over the course of the Commission's existence, 229 legal experts of the highest calibre, representing different legal systems and geographic regions, had worked together despite their differences to contribute to the codification and progressive development of international law. The Commission's contributions to monumental achievements on many legal topics had helped to make the body of international law more robust, benefiting the people of the world. He noted with concern, however, the small number of women elected to the Commission and urged Member States to rectify that deficiency.

Interaction between the legal and political points of view was essential for the progressive development and codification of international law, in fulfilment of the Commission's mandate under the Charter of the United Nations. It was through that interaction, fostered through debate in the Sixth Committee, that the United Nations had made significant progress in international law. In that connection, he welcomed efforts to streamline the dialogue between the Commission and the Committee. He also encouraged all States, from all regions, groups and legal traditions, to take an active role in the Commission's work by providing substantive input in the form of written comments.

International law should benefit both States and people. The Commission had contributed to the development of international criminal law and the establishment of the Rome Statute and the International Criminal Court, enabling the prevention, prosecution and punishment of the most serious crimes. On a recent visit to the genocide memorial in Rwanda, he had been struck by the lasting impact of that horrific period and by the failure of the law to protect the victims. The international community needed to ensure that such a tragedy could never happen again. Noting that the Commission was turning its attention to crimes against humanity, he encouraged it to focus on the prevention of such crimes and to maintain its momentum in that area. Atrocity crimes shocked the collective conscience. Accountability and a strong rule of law were vital for preventing them.

Lastly, the Commission played an indispensable role in multilateralism, which was currently under pressure. Developing international law was crucial to strengthening multilateralism, as Member States depended on a rules-based international order. The numerous legal instruments that had been elaborated over the preceding decades had brought order and accountability, prevented conflict and supported development. As new and emerging challenges were identified, it was the duty of the international community to develop an appropriate legal response.

The Commission had furthered the codification and the progressive development of law by adopting final texts on a large number of topics and contributing to multilateral conventions and protocols. He encouraged the Commission, as it forged ahead into uncharted territory, to continue to promote multilateralism.

Mr. de Serpa Soares (Under-Secretary-General for Legal Affairs, the Legal Counsel) welcomed the

Commission to New York on behalf of the Secretary-General and said that the body's seventieth anniversary was an occasion to celebrate its achievements in the company of friends, many of whom had worked with the Commission in different capacities over the years.

The Commission's achievements were part of a broader movement towards the codification of international law. Private codification initiatives by international lawyers, who had founded the *Institut de Droit international* and the International Law Association as early as 1873 to promote the development of international law, had preceded the major Codification Conference held under the auspices of the League of Nations in The Hague in 1930. The delegates had discovered that codification involved more than mechanically transcribing customary law into written agreements: it also required the progressive development of new rules to fill gaps and resolve conflicts. Their general recommendations for improving the codification process had informed the drafting of the statute of the Commission, which had been established in the wake of the Second World War. The States negotiating the Charter of the United Nations in 1945, anxious to revitalize and strengthen international law, had instructed the General Assembly, in Article 13 (1) (a) of the Charter, to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification. Accordingly, at its first session, the General Assembly had established the Committee on the Progressive Development of International Law and its Codification, which had recommended the creation of the International Law Commission. The General Assembly had endorsed that recommendation and approved the Commission's statute in 1947.

Contemporary international relations were unimaginable without the 1961 Vienna Convention on Diplomatic Relations, the 1969 Vienna Convention on the Law of Treaties, the Rome Statute of the International Criminal Court and the articles on responsibility of States for internationally wrongful acts, which were among the Commission's many accomplishments. One reason for the Commission's success was its intergovernmental mandate, in accordance with which it consulted with Governments throughout the drafting process and submitted the outcome of its work to the General Assembly, a political body. Another reason was its unique composition, which was based on the five regional groups of the United Nations and was a melting pot of legal traditions and regional perspectives. The Commission's members represented the various segments of the international legal community and typically served in other international law-related professions, keeping the Commission in touch with the realities of international relations.

The Commission's sophisticated working methods had contributed to the success of its codification efforts. The Commission functioned somewhat like a legislative drafting body, developing draft provisions for international conventions over the course of several readings. In addition to special rapporteurs, who were typically appointed to lead particular drafting projects, other members participated in the drafting process through the Drafting Committee, before the Commission as a whole adopted the draft provisions.

The Commission's secretariat, the Codification Division of the Office of Legal Affairs, had also contributed to its success. The Codification Division had provided substantive input to the work of the Commission from its very inception by preparing studies and memorandums and conducting *ad hoc* research. The survey of international law that the secretariat had prepared in 1948 had served as the basis for the 14 topics that the Commission had selected for progressive development and codification at its first session the following year. The Codification Division had continued to propose topics for codification, such as the recently adopted articles on protection of persons in the event of disasters, and had carried out a survey of international law in 2016, thereby contributing to the Commission's current consideration of topics for inclusion in its long-term programme of work. It had also served as the secretariat of numerous diplomatic conferences, which transformed the Commission's carefully crafted texts into international conventions, and had serviced numerous United Nations bodies, most notably the Sixth Committee. Its expertise and long-standing experience had thus made a significant contribution to the progressive development and codification of international law at various stages. As part of the United Nations Secretariat, it benefited from the Organization's extensive institutional support.

The needs of the international community had changed since the Commission's establishment, as was evidenced by the changing outcomes of the Commission's work, which included draft guidelines and draft conclusions, in addition to draft articles. The Commission had taken up specialized topics, such as the protection of the atmosphere or the protection of persons in the event of disasters, while also remaining true to general international law topics such as the law of treaties and the law of international responsibility. Noting that just seven women had been members of the Commission over the course of its existence, he expressed the hope that Member States, the General

Assembly and the Commission would work together to achieve gender parity in the foreseeable future.

The Commission had been a key contributor to the progressive development and codification of international law, which were fundamental to maintaining peaceful international relations. The Commission could count on the Office of Legal Affairs to assist it in discharging its indispensable mandate with professionalism, substantive expertise and enthusiasm.

Mr. Gafoor (Singapore), Chair of the Sixth Committee, said that it was not often that an international body celebrated 70 years of continued existence. The commemoration of the Commission's work was also a commemoration of the work of the Sixth Committee, since the two bodies were close partners in the promotion of international law, as envisaged in General Assembly resolutions and the Commission's statute. Each year, the Sixth Committee considered the Commission's annual report to the General Assembly, and its members provided guidance and substantive input to the Commission, helping to move the work of the Commission forward. Informal interactions between the Committee and the Commission during that time helped to foster a deeper understanding between the two bodies. In that connection, he was pleased that many opportunities for interaction had been made possible during the first part of the Commission's session.

The Sixth Committee had recommended the establishment of the Commission at the second session of the General Assembly in 1947. The Commission helped the General Assembly to discharge its responsibility under the Charter to initiate studies and make recommendations to encourage the progressive development of international law and its codification. Over the years, the Commission's work and annual meetings had led to the adoption of many substantive texts covering a wide range of topics and culminating in the conclusion of 17 multilateral conventions under the auspices of the United Nations. Those outcomes were informed by the equally impressive intellectual rigour and scholarship of the Commission's members.

Over the course of its existence, the Commission had made an indispensable contribution to the progressive development and codification of international law, and its work had become critical for reinforcing the multilateral rules-based system, especially at a time when multilateralism was being challenged. Member States had a responsibility to defend that system and the principles of international law, to continue to develop new norms and rules and to codify State practice in the field of international law. The Commission's status as an independent body of experts who represented the principal legal systems of the world enabled the Commission to build understanding, bridge differences and lay the groundwork for political decisions to be made by the Member States.

Only seven women jurists had ever served on the Commission. At the current rate of improvement, it would take a century for the Commission to reach gender parity. All Member States had a responsibility to nominate women candidates to serve as Commission members and it was to be hoped that gender parity could be achieved by the Commission's eightieth anniversary.

The Sixth Committee, which attempted to build political consensus on legal issues so that legal instruments could be adopted by the United Nations, and the Commission, which looked at issues from an independent, technical and intellectual perspective, had an organic and symbiotic relationship based on a common objective, namely, to support the progressive development and codification of international law and strengthen the multilateral rules-based system. The members of the Sixth Committee were proud of the Commission's work and looked forward to continuing the Committee's partnership with the Commission in the service of international law and the work of the United Nations.

Mr. Lauber (Switzerland), speaking as the representative of the host State for the Commission's annual sessions, said that the event marking the body's seventieth anniversary derived its importance from the vital role that public international law played in international relations and as the basis of a stable, just and peaceful world order. For that reason, strengthening international law was a key element of the Charter of the United Nations, and of his country's foreign policy, and remained as pertinent as ever in a changing world.

Over the course of its existence, the Commission had studied a broad range of topical subjects, enabling it to contribute actively to the progressive development and the codification of international law. The outcomes of the Commission's work on the topics of peremptory norms of general international law, crimes against humanity, protection of the environment in relation to armed conflicts, and immunity of State officials from foreign criminal jurisdiction were eagerly awaited.

By selecting topics for its long-term programme of work in accordance with such criteria as the needs of States in respect of the codification of international law, new developments in international law and pressing concerns of the international community, the Commission ensured the utility and relevance of its

work. Switzerland was proud to support the Commission's work by hosting its meetings in Geneva.

Although efforts to strengthen the dialogue between the Sixth Committee and the Commission were to be welcomed, holding the Commission's meetings in Geneva ensured its complete independence from the Sixth Committee, which met in New York. The differing legal cultures of the two bodies benefited international law, while the Commission's presence in Geneva encouraged synergies with numerous Geneva-based international organizations that dealt with issues affecting the daily lives of ordinary people. For those reasons, and also to enhance the status of the French language, it was critical for international law to be promoted and its development encouraged not only from United Nations Headquarters in New York, but also from Geneva. In that connection, he drew attention to the International Law Seminar held in Geneva each year, which enabled students, professors and officials to learn about the Commission's work.

Ms. Newstead (United States of America) said that her Government was delighted to host the first part of the Commission's seventieth session, held at United Nations Headquarters. The event was a reminder of the vital role that international law played in collective efforts by the international community to address current global challenges.

Since the inception of the Commission, her Government had closely followed its valuable work. The Commission had addressed a broad range of issues in international law and had provided valuable insights to government lawyers, private practitioners, judges and academics. Its work had formed the basis for several multilateral treaties that had become foundational elements of international law. It also served as a valuable resource for navigating the increasingly complex world of international law.

Although her Government had not always agreed with the topics proposed for the Commission's consideration or with particular conclusions, it recognized the Commission's unique role in advancing the rule of law and would continue to support the Commission's work by engaging in the full range of topics on the Commission's agenda, commenting on the Commission's work in the Sixth Committee and nominating highly-qualified candidates for election to the Commission. Mr. Murphy, a current member of the Commission and the eleventh national of her country to serve on the Commission, was a distinguished international lawyer with experience as a government practitioner and a professor of law.

In accordance with the Commission's statute, its diverse membership represented the main forms of civilization and the principal legal systems of the world; its members also represented all the world's major regions and had professional experience in government service, academia and private practice. She was pleased that, with the election of three women to the Commission in 2016, the number of female Commission members was higher than ever before. She hoped that that number would continue to grow.

Mr. Schrijver (Professor of Public International Law, Grotius Centre, Leiden University, and President of the *Institut de Droit international*), delivering the keynote address, said that the meeting provided a welcome opportunity for reflection on the role of the Commission and its important work to promote the progressive development of international law and its codification.

The *Institut de Droit international* had been established in 1873, shortly after the Franco-Prussian War of 1870–1871, in the hope of reducing the number of wars and diminishing their horrors through the progressive development of international law. In 1873, one of the future founders of the *Institut*, Mr. Rolin-Jaequemyns, had written an article affirming that, while diplomatic action and individual scientific efforts to progressively develop the law of nations (*jus gentium*) had achieved some results, progress had been insufficient. He had identified the apparent conflict between the political interests of particular peoples and the collective interests of nations as one of the main obstacles to diplomacy and had proposed that collective scientific action should be taken to address that situation. Similar views had also been expressed by other eminent lawyers. As a result, the *Institut de Droit international* and the International Law Association had been established as non-political private associations to promote progress in international law.

Over the course of its existence, the *Institut* had prepared several codes and proposals to facilitate the work of a number of diplomatic conferences. The 1875 Draft Regulations for International Arbitral Procedures and the 1880 *Manual of the Laws and Customs of War at Oxford* had served as inspiration for the International Peace Conferences held at The Hague in 1899 and 1907. In the Final Act of the 1907 Conference, it had been proposed that Governments should charge a committee with the task of preparing for a third conference, including by identifying topics that would be fit for regulation. That request had marked a shift towards codification by intergovernmental bodies as opposed to individual scientific associations. However, the outbreak of the First World War had prevented the

convening of the third conference and had, moreover, resulted in a certain loss of faith in the ability of international law to maintain peace and ensure the observance of the laws of war. Following the war, the desire to establish permanent peace, restore confidence among peoples and develop close cooperation between nations had led to the establishment of the League of Nations, the Permanent Court of International Justice and the International Labour Organization, and also to the decision to undertake the codification of international law.

There had been significant interaction between the League of Nations and the *Institut*. In 1924, the League of Nations had adopted a resolution on the creation of a standing organ, known as the Committee of Experts for the Progressive Codification of International Law, to prepare for a codification conference by drafting a provisional list of topics of international law on which international agreement would be most desirable and achievable. The Committee had been composed of 17 members, 6 of them also members of the *Institut*. Beginning in 1925, the *Institut* had assisted the Committee in the identification of the three questions of international law — nationality, territorial waters and responsibility of States — to be discussed at the League of Nations Codification Conference held in The Hague in 1930. The preparatory work for the Conference had largely been inspired by the resolutions on those three topics adopted by the *Institut* in 1927 and 1928. Furthermore, in 1929 the *Institut* had adopted a declaration on the codification of international law, in which it had set out certain modalities for codification and emphasized the need for codification efforts to be carried out by independent scientific organizations. The Codification Conference had taken place in 1930, but it had managed to adopt a treaty on only one of the topics.

No further codification efforts had been undertaken until after the Second World War, when the *Institut* had reconvened in 1947 to consider crucial issues of the time, including fundamental human rights and the codification of public international law. At that 1947 session, it had considered a report by Mr. Alejandro Alvarez on methods for the codification of public international law. Taking as his point of departure the immense crisis in which international law had found itself following the Second World War, and the idea that public opinion, as expressed in the Charter of the United Nations, supported restoring the importance and prestige of international law through its progressive development and codification, Mr. Alvarez had stated that public international lawyers were divided on whether the best approach would be to reaffirm the fundamental principles of international law that were still in force or to proceed rapidly to codification as the only means of restoring prestige to international law.

In its resolution on codification adopted at the 1947 session, the *Institut* had underlined that the method used at the Codification Conference in 1930, whereby the binding force of the codified rules depended on the express acceptance of States, could lead to Governments questioning or refusing to accept rules of law that, in teachings and jurisprudence, were considered as established. It had indicated that such an approach could weaken the rules in question rather than consolidate them, and it had affirmed that gaps in international law should be filled on the basis of scientific research carried out to ascertain the existing state of international law.

During the deliberations at the 1947 session, one member of the *Institut*, Mr. Donnedieu de Vabres, who was also a member of the United Nations Committee on the Progressive Development of International Law and its Codification, had stated that the proposal by Mr. Alvarez to first have scientific societies prepare a draft before submitting it to States risked creating such divergence between universal conscience and the harsh international reality that no agreement would be reached at all. He had informed the *Institut* that the Committee therefore intended that the work of the International Law Commission should involve the constant collaboration of all interested parties, including Governments, in order to reconcile theory and practice. The Committee had examined the distinction between codification and progressive development as part of its work. As a result of the influence of Government representatives, the Committee had decided that the outcome of the Commission's work should take the form of draft conventions rather than scholarly writings, and that the Commission would receive proposals not only from the General Assembly but also from other United Nations organs and specialized agencies.

In resolution 174 (II), adopted later in 1947, the General Assembly had established the International Law Commission and approved its Statute, which had indeed accorded a considerable role to States and had provided for the possibility of consultations with scientific institutions and individual experts. The Commission had held its first session in 1949. Of its 15 initial members, 10 had also been members of the *Institut*.

There were interesting similarities and differences between the Commission and the *Institut*. They shared the common goal of promoting the progressive development of international law and its codification. The *Institut* aimed to achieve that by formulating general principles, seeking official endorsement of

those principles, working for the gradual and progressive codification of international law, contributing to the maintenance of peace or the observance of the laws of war, studying the difficulties that might arise in the interpretation or application of the law and providing cooperation in the teaching and dissemination of international law. The Commission's approach, which was eloquently described in article 15 of its Statute, was based on the preparation of draft conventions on subjects that had not yet been regulated by international law or in regard to which the law had not yet been sufficiently developed in the practice of States, and the precise formulation and systematization of rules of international law in fields where there already had been extensive State practice, precedent and doctrine. With regard to the scope of work, the Commission was concerned primarily with public international law, although it was not precluded from entering the field of private international law, while the work of the *Institut* covered both fields of international law equally. The *Institut* was a learned society and did not have an official nature, whereas the Commission was a subsidiary organ of the United Nations General Assembly, to which it reported.

The *Institut* could have up to 132 members under the age of 80, and multiple members could share a nationality and even form national groups, whereas the Commission had only 34 members, and no two could be nationals of the same State. The plenary Assembly of the *Institut* elected associates, who could later become members, from a list of candidates proposed by national groups and the Bureau. In principle, membership could be for life. In contrast, members of the Commission were elected by the General Assembly from a list of candidates nominated by States members of the United Nations for a five-year term with the possibility of re-election. Fifteen judges of the International Court of Justice were members of the *Institut*, but members of the Commission could not simultaneously be judges of the Court. However, members of the Commission could be members of the *Institut* as well. Of the 229 individuals that had been members of the Commission over the course of its existence, 83 were or had been members of the *Institut*. Both bodies aimed to ensure representation of the principal legal systems of the world and required candidates to have certain qualifications. Regrettably, women were still underrepresented in both.

The *Institut* met every two years for a session that typically lasted seven or eight days, while the Commission met annually for 11 or 12 weeks. The working methods of the *Institut* were quite similar to those of the Commission. The *Institut* had commissions, each headed by a rapporteur, that were tasked with working on a topic of international law placed on the agenda by the plenary Assembly. The plenary Assembly examined the reports and draft resolutions of the commissions and, if appropriate, adopted resolutions of a normative character. Through those resolutions, the *Institut* sought to highlight the characteristics of the prevailing law, *lex lata*, in order to promote respect and full observance thereof. The *Institut* also made determinations *de lege ferenda* to contribute to the development of international law. However, unlike the Commission, the *Institut* did not engage in consultations with States or other bodies, or require them to take action on its work, although Governments and international organizations were informed of its resolutions.

The *Institut* and the Commission had informed, developed and reinforced each other's work on many occasions over the past 70 years. The two bodies had examined, sometimes concurrently, many of the same topics, such as diplomatic immunities, diplomatic protection, State responsibility, extradition, the law of treaties, the expulsion of aliens, the most-favoured-nation clause and arbitral procedure. It would be no exaggeration to state that the progressive development and codification of international law could to some extent be measured by the work of the *Institut* and the Commission.

An early example of common efforts concerned the topic of nationality, including statelessness. The *Institut* had adopted a number of resolutions on the matter, and the Commission had considered the topic in the early 1950s, which had led to the adoption of the United Nations Convention on the Reduction of Statelessness in 1961. Moreover, the Convention on the Law of the Non-Navigational Uses of International Watercourses, adopted in 1997, was the culmination of work begun by the *Institut* as early as 1911, when it had adopted its first resolution on the matter, and the Commission's efforts from 1971 onwards.

The two bodies had also both worked on the regime of the territorial sea. The *Institut* had adopted its first resolution on the matter in 1894, at which time the breadth of the territorial sea had generally been considered to be 3 nautical miles, although in practice States had tended to extend its breadth beyond that limit in order to protect their coastal fishery interests. In adopting the resolution, the *Institut* had attempted to align theory with practice by proposing a limit of 6 nautical miles. However, members had remained divided on the matter, and participants at the League of Nations Codification Conference held in 1930 had also failed to come to an agreement. In the 1950s, the matter of the breadth of the territorial sea had been revisited by

the *Institut* and taken up by the International Law Commission. Both had ultimately refrained from establishing an exact limit but had indicated that it could not extend beyond 12 nautical miles. In 1982, at the third United Nations Conference on the Law of the Sea, the international community of States had accepted the limit of 12 nautical miles.

The most well-known and successful topic taken up by the Commission was probably "Law of treaties". The Commission had made the topic a priority at its first session, and the work had ultimately resulted in the adoption of the Vienna Convention on the Law of Treaties in 1969, with the full participation of developing countries. Among the notable elements of the Convention were the recognition of the concept of *jus cogens* and the inclusion of article 62 (Fundamental change of circumstances). It was also extremely significant that, in the view of the International Court of Justice, most of its provisions reflected prevailing customary international law. The *Institut* had discussed the question of interpretation of treaties earlier, in 1956, under the leadership of Sir Hersch Lauterpacht, who had also served as the International Law Commission's Special Rapporteur for the topic of the law of treaties in the early 1950s. In 1967, the *Institut* had adopted a resolution on the termination on treaties, in which it had recognized the value of the work accomplished by the International Law Commission. The termination of treaties was a challenging area and, unfortunately, remained topical in the context of the withdrawal of the United Kingdom from the European Union and the withdrawal of the United States from the Paris Agreement on Climate Change and the Joint Comprehensive Plan of Action.

A topic that had been expressly excluded from the scope of the 1969 Vienna Convention, by means of article 73 thereof, was the effects of armed conflict on treaties. The *Institut* had adopted a resolution on the effects of war on treaties in 1912, which had been progressive in its rejection of the theory that war ended all relations between belligerents. Under the resolution, most bilateral and multilateral treaties would remain in force even after the outbreak of hostilities. The *Institut* had resumed its examination of the topic in 1973, following the adoption of the Vienna Convention, and in 1985 it had adopted a resolution on the effects of armed conflicts on treaties. The Commission had taken up the topic in 2004 and had adopted a set of draft articles in 2011. A more recent example of interaction between the Commission and the *Institut* concerned their respective work on the question of succession of States in respect of State responsibility. The *Institut* had adopted a resolution on the matter in 2015 and the Commission had included the topic in its programme of work in 2017.

When looking to the future, it must be determined whether further standard-setting work remained to be done and, if so, what roles the Commission and the *Institut* should play in that process. Both bodies had been created out of a deep desire to bring about peace, and the importance of the progressive development and codification of international law had been reaffirmed after each new war, although the effectiveness of international law in preventing or reducing the horrors of war had at times been seriously called into question. In a dangerous world facing the threat of terrorism, the multiplication of armed conflicts, climate change, dramatically increased inequalities, a refugee crisis and difficult migration and human security situations, it was essential to preserve the rule of law in international relations. He did not subscribe to the view held by some academics that international law was merely a belief. Rather, he viewed contemporary international law as the embodiment of shared global values such as peace, justice, humanity, freedom and sustainability. As the common language of a deeply divided world, it was something to be cherished. International law also functioned as a valuable regulatory framework for concrete action.

The current body of international law was the result of a prolonged period of gestation. It remained fragile and in need of constant maintenance or reform in order to remain relevant. The Commission had made a magnificent contribution in that regard through its work on the progressive development and codification of international law. However, it had much more to do, as had the *Institut*. He concluded by wishing the Commission a great future, in the interest of all.

The meeting rose at 12.50 p.m.