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International Law Commission
Seventieth session (second part)

Provisional summary record of the 3424th meeting
Held at the Palais des Nations, Geneva, on Friday, 6 July 2018, at 10 a.m.

Contents

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Present:

Chair:	Mr. Valencia-Ospina
Members:	Mr. Aurescu
	Mr. Cissé
	Ms. Escobar Hernández
	Ms. Galvão Teles
	Mr. Gómez-Robledo
	Mr. Grossman Guiloff
	Mr. Hassouna
	Mr. Hmoud
	Mr. Huang
	Mr. Jalloh
	Mr. Laraba
	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

Secretariat:

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 10.05 a.m.

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

Panel 4: The changing landscape of international law

The Chair invited Ms. Hammarskjöld to introduce and moderate the panel discussion on the changing landscape of international law.

Ms. Hammarskjöld (Ministry of Foreign Affairs, Sweden), moderator, said that over the previous seven decades the Commission had accomplished much in carrying out its mandate to promote the progressive development of international law and its codification. Faced increasingly with new challenges, the Commission had taken the view that it should not restrict itself to traditional topics but could also consider issues that reflected new developments in international law; the interaction between the Commission and Governments had been important in that respect. The panel discussion would cover not only changes in the field of international law, but also the role of the Commission in responding to or even driving those changes.

Ms. Gueldich (University of Carthage, Tunis), panellist, said that the International Law Commission had played an instrumental role in the codification and progressive development of international law. Since its establishment 70 years previously, a number of global trends had shaped the international order and brought about a new set of challenges, including global inequalities, changes in the economic and geopolitical landscape, climate change and environmental degradation, rapid technological developments and new forms of terrorism and of conflict. While the idea of comprehensive codification had been abandoned, there was virtually no limit to the topics of international law available for study by the Commission.

She recalled that the Commission, in selecting topics for codification, was required, under article 18 of its statute, to submit its recommendations to the General Assembly and also to give priority to requests of the General Assembly to deal with any question. It had been guided in its selection by several criteria: (a) the topic should reflect the needs of States in respect of the progressive development and codification of international law; (b) the topic should be at a sufficiently advanced stage in terms of State practice to permit progressive development and codification; (c) the topic should be concrete and feasible for progressive development and codification; and (d) the Commission should not restrict 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 the light of those criteria, she suggested that the Commission should consider such new topics as international security law and the prohibition of the use of force, the humanitarian response to conflicts and disasters, the international responsibility of non-State actors, and new technologies and cybercrime.

The rules governing the use of force, as set out in the Charter of the United Nations, were outdated; more needed to be done to protect people, and new requirements should be established for exceptions, such as the legitimate use of self-defence. The Commission had a role to play in redefining the exceptions permitted in respect of the principle of non-use of force, in order to narrow the interpretation of Chapter VII of the Charter. It must be resolute in addressing the veto power of the five permanent members of the Security Council and its use for political means that resulted in the application of a double standard to rich, powerful States, on the one hand, and poor, weak States, on the other.

International law was sparsely developed in the area of humanitarian response to conflicts and disasters. Specifically with regard to internally displaced persons, no legislation providing for their protection existed aside from the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). The Commission might consider initiating a draft universal convention with a view to protecting internally displaced persons worldwide, especially in light of the trend of intra-State wars and of natural disasters that led to growing numbers of displaced persons.

It was increasingly necessary to highlight the international responsibility of non-State actors, including private military and security companies, a topic that was not covered by any international legislation. A convention that set out international legal obligations and specific recommendations related to the services offered by private military and security companies and that clarified States' obligations when hiring such entities during and after conflicts would be a welcome addition to international law.

The proliferation of information technology had led to a new category of threats known as "cyberthreats". The development of a legal framework for dealing with cybercrime, cyberwar and cyberterrorism was of the utmost importance to tackle such threats. The Commission would have a crucial role in that regard.

Referring to articles 16 to 18 of the Commission's statute, she noted that States, whether individually or collectively, played an important role in each phase of the Commission's work on the progressive development and codification of international law. It was time, however, to increase the participation of developing countries and thus achieve a better balance in the field of international law. Non-governmental organizations (NGOs), which most often were driven by noble values and had no political agenda, should also be more involved.

Throughout its 70 years of existence, the Commission had provided valuable clarification of the rules regarding a number of topics and had contributed to the ever-evolving landscape of international law. Just as the field of international law continued to change, so too should the Commission and its methods of work. She suggested that it should help to disseminate international law more widely, including through research, publications and the translation of ratified instruments. It was also important to provide protection for fragile countries through more equitable and realistic legal mechanisms; to promote a forward-looking, consensual and holistic approach to international law; and to strengthen cooperation between the Commission and, *inter alia*, universities, companies and regional codification mechanisms through joint meetings and workshops. The biggest challenge facing the Commission today was striking the right balance between legal and political imperatives, in order to contribute to a safer and more peaceful and just world.

Mr. Lee (Seoul National University), panellist, said that the world of international law was heavily indebted to the International Law Commission for its work over the past 70 years. While its relevance as an institution for the progressive development of international law and its codification had recently been called into question, it seemed that the Commission had regained its vibrancy and was now dealing with major topics in an efficient manner.

Even at the Commission's inaugural session, there had been differing conceptions of the codification of international law. While some members had expressed the overly ambitious hope that it would be possible to rapidly codify the entirety of international law, others had warned against such attempts, preferring the Commission to focus on just a few topics that would have practical results. According to yet others, who had been highly critical of the traditional concept of codification of international law, a radical transformation had taken place in international relations since the first efforts of the League of Nations to codify international law; that profound change meant that codification of international law should be geared towards questions of primary, contemporary importance and involve the articulation of progressive principles of international law that would contribute to the peaceful coexistence of nations.

According to Shabtai Rosenne, the success of the Commission in the first 25 years of its codification efforts was paradoxically attributable to the international tension brought on by the cold war. According to him, the instruments adopted by the Commission during that period supplied a basic agreed code for their mutual contacts in periods of high tension and suspicion. Whether one agreed with such an assessment or not, the fact remained that the reality — or at least the perception — of heterogeneity in international society affected the conception of codification and, more importantly, the topics to be chosen for codification and the extent and depth of codification.

In that connection, the rise of China and its impact on the international legal order and, by extension, on the Commission's future codification efforts was of especial

importance. Given the relative autonomy of international law *vis-à vis* power constellations during a given period, it could not be said that change in power relations translated automatically into change in the normative arena. The rise of China was nevertheless expected to have a strong impact on the current international legal order as a whole. More significantly, it was clearly not content with the current international legal order and had a strong will to effect a change in at least some aspects of that order.

Introducing the various types of codification efforts of the Commission thus far, he recalled that, because of its impracticability, the conception of codification as the articulation of a complete code of international law, termed "mega-codification", had ultimately not been pursued by the Commission. The Commission, forced to choose a limited number of topics for codification, had taken up a number of subjects that fell within the "general part" of international law, such as the law of treaties, State responsibility and the law of the sea. The Commission's impact had been felt most strongly through its codification efforts in those areas. The 1969 Vienna Convention on the Law of Treaties was a prime example of the Commission engaging in the codification of rules that constituted the very foundation or architecture of international law as a system of law.

The Commission had also chosen some topics that fell under the "special part" of international law. Such "thematic codification" applied to diplomatic relations, consular relations and most-favoured-nation clauses. In addition, the Commission had devoted some work to what could be termed "complementary codification", for instance, when it had expanded the scope of application of the 1969 Vienna Convention on the Law of Treaties by producing the draft articles that had led to the adoption of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Finally, the Commission had also engaged from time to time in "exegetical codification", when it had expanded on or further clarified some of the provisions or issues that had already been regulated by foundational or thematic codification. While there was no hierarchy implied in the taxonomy of codification, it was important that the Commission, in carrying out its main function, namely the promotion of the progressive development of international law and its codification, should strike a balance between the various types of the latter; the Commission's institutional authority and legitimacy depended on it. Moreover, as a subsidiary organ of the United Nations General Assembly, the Commission's clients were mainly Governments; however, it might be time to further expand its horizons beyond inter-State issues to global and transnational issues in order to further strengthen its legitimacy and authority.

Mr. Grossman Guiloff (International Law Commission), panellist, said that international law was constantly undergoing transformation. While some questioned the Commission's ability to continue effectively contributing to the development of international law in the current challenging political landscape, the Commission's role as an independent body was not vulnerable to changing political environments. Over the years, the Commission had successfully represented the overall legal interests of the larger international community, regardless of the political environment. Both previous panellists had highlighted the need for the Commission to reform its approach to the topics it chose to study and to the choice of topics themselves. To maintain its relevance, the Commission should not shy away from topics, such as internally displaced persons, that would have a tremendous impact on States and the international community as a whole. There was value in preserving and developing a space for legal reasoning and discussion based on the language of international law, which sometimes required a long view to measure its impact.

Both of the other panellists had made the valid suggestion that the Commission should modernize the way it approached its work, including by working more closely with civil society, NGOs, academic and technical bodies and experts, and there was certainly benefit to be had from considering the thinking of others. In his view, considering the full spectrum of international actors should not be seen as questioning the relevance of States, but rather as a valuable process, whereby the taking into account of current political realities would enrich decision-making procedures for the benefit of all.

He would have been interested to hear the opinions of his co-panellists on the issue of gender and the Commission's composition and on the current political environment amid the rise of populism and nationalism, and trends towards the decline in the primacy of the

rule of law in international relations. The fact that only seven women members had been elected in the past 70 years was a matter of serious concern, as the Commission had not kept pace with the advancements in gender equality achieved in other areas of international law. As almost every speaker at the commemorative event in New York had stated, it was important to consider the impact of the lack of gender equality on the work of the Commission.

As the President of the International Court of Justice had noted in his address the previous day, the Commission must play a role in responding to threats to the integrity of the multilateral system and continue to promote multilateralism and inclusivity. It had previously seemed that the trends of globalization would strengthen international law, but that optimism now needed to be revised. In recent years, some States, including States that had been instrumental in the construction of international law, had begun to question the current core institutions and norms and the importance of a rule-based order of international relations and had instead returned to different forms of populism and nationalism, seeking to free themselves as much as possible from the normal constraints on the use of power in international relations. At the same time, however, local and city governments, businesses and citizens had adopted innovative new solutions to local and global issues on the basis of the rich international law tradition. While those developments should not be exaggerated, they could not be ignored, as they had the potential to affect international relations. The Italian expression "*chiaroscuro*" — light and dark at the same time — seemed particularly apt to describe the current complex, contradictory times.

It was not possible to solve the problems facing humankind simply through the actions of individual States. As Judge Alvarez had stated in his 1954 dissenting opinion appended to the advisory opinion of the International Court of Justice on the *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, "the social character of the international law of today is a result of the new regime of interdependence which has emerged and which tends to replace the traditional individualistic regime. Having regard to this social character, what may be called the new international law is particularly concerned with the maintenance of peace and the development of confidence and cooperation between States; it assigns an important place to the general interest and condemns *abus du droit*; it also has a new aim: the well-being of the individual and of society."

In his view, greater attention should be paid to the fact that much of what happened in the world depended on human behaviour, on leadership, on how individuals and institutions, like the Commission, shaped conditions. Referring to a quotation by the writer Gabriel García Marquéz, he said that, in order to promote the change they wished to see, all actors in the field of international law must imagine their contribution to the development of the law and translate it into action.

Ms. Galvão Teles (International Law Commission) said that the selection of new topics was one of the biggest challenges facing the Commission. Of the four criteria used by the Commission to select new topics identified earlier by Ms. Gueldich, she was especially interested in the first — that new topics should reflect the needs of States — and the last — that the Commission should not restrict itself to traditional topics but should also consider those that reflected new developments in international law and the pressing needs of the international community. She would be interested to hear the Panel's views on the role that States could play in the identification of new topics and the possibility of joint reflection between the Commission and States on that subject.

Mr. Mikami (Ministry of Foreign Affairs, Japan) said that it seemed to him that the process by which topics were selected was as important as the topic itself. If the process was conducted properly, it would have a positive impact on the broad debate about the development of international law as a whole. He would be interested to hear Mr. Grossman Guiloff's views, as a member of the Commission, on the process of selecting topics and the proposal that the Commission should enhance the transparency of the selection process. It was often suggested that there should be stronger interaction between the Commission and Governments, and that States should show greater support for the work of the Commission, in the context of the Sixth Committee. Recalling that the late Japanese Ambassador and former Commission member Mr. Yamada had mooted the idea of a joint committee of the

Commission and the Sixth Committee, he said he would welcome the panellists' opinions on the matter.

Mr. Loko (Director of Legal Affairs (retired), Ministry of Foreign Affairs, Benin) said that the Commission might wish to consider holding a seminar on legal strategy together with permanent actors with a view to shaping the future landscape of international law and objectively taking stock of the current situation, keeping in mind that the law must first and foremost be at the service of humankind. Such a move would help avoid the selection of arbitrary topics, facilitate the Commission's work and enhance its legitimacy.

Mr. Grossman Guiloff (International Law Commission) said that the Commission could certainly consider what additional steps could be taken to make the process of selecting new topics more transparent. In his short time as a member of the Commission, he had seen that proposals by States for potential new topics were taken very seriously. However, the Commission was concerned at the lack of response on the part of many States to its presentations and requests, and wondered whether it was simply a question of capacity-building or whether something else was at play. The Commission also attached great importance to its relationship with the Sixth Committee; he agreed that it should consider what institutional mechanisms might be put in place to allow for further interactive dialogue. One of the benefits of the first part of the Commission's session having been held in New York that year was that it had provided the opportunity for side events and informal connections. However, there was a value to having the Commission's meetings in Geneva, where it was able to think and work on topics without being involved in political processes.

Mr. Peter (International Law Commission) said that he agreed with those who had raised the issue of transparency in the selection of topics, but to his mind it was also important to ensure that there was justification for selecting topics. Of late there had been a tendency to select very abstract topics that did not address humanity and were difficult to grasp for the average layperson. The Commission should select more concrete topics that touched on humanity, like protection of persons in the event of disasters and protection of the atmosphere. Referring to the list of topics mentioned by Ms. Gueldich for consideration by the Commission, such as cybercrime, he said that if the intention was to deal with those topics as a matter of urgency, it was important to take into account the many years it took for the Commission to complete its work on any given topic.

Mr. Alabrune (Ministry of Foreign Affairs, France) said that, in his opinion, one of the most important criterion in selecting topics was the capacity of the Commission to address the topic and of States to contribute usefully to the Commission's work. Some topics, such as protection of the atmosphere, were extremely technical and required technical expertise, which could be problematic for States. The Commission should also endeavour in future to reduce the number of topics being dealt with simultaneously because it was extremely difficult for States to provide information, respond to questions and prepare statements for the Sixth Committee on so many topics. Of course, the General Assembly also had a role to play in reducing the number of topics. By prioritizing topics in that way, it would also be possible to complete work on them more quickly.

Mr. Huang (International Law Commission) said that Mr. Lee had mentioned the issue of the rise of China, but of course there were other emerging countries, such as Brazil, Russia, India and South Africa. The issue was how to ensure that when such countries rose they did so peacefully. To that end, in March 2018 the National People's Congress of China had amended the Constitution to include provisions on following a path of peaceful development and working to build a community with a shared future for mankind. The Chinese and Russian Presidents had later issued a joint statement to the effect that their two countries would promote the construction of a community of shared future for humankind. A new legal concept was thus emerging. He would be interested to hear the panellists' views as to whether the Commission might be able to study an emerging concept like the community of shared future for humankind.

Mr. Sharma (Ministry of External Affairs, India) said that the emergence of the notions of State and sovereignty had necessitated the rules for regulating inter-State relations. Combined with conceptual understandings and scholarly contributions, those rules, which had obviously been influenced by practices between and within States, had laid

the foundations of the international legal regime. Of course, the development of a legal regime could never be a one-time affair, as international law was an ever-evolving process, which required regular studies and reviews of existing laws and the formulation of new laws to meet contemporary requirements. For that reason, world leaders had seen the need to create a permanent body to help the United Nations to formulate international legislation to regulate world affairs and ensure the settlement of international disputes through legal means. One of the founding members of the Commission had been from India, Sir Benegal N. Rau, and since then several Indian members had made important contributions to the Commission's work, including Mr. Sreenivasa Rao and current member Mr. Rajput.

Since its establishment, the Commission had successfully fulfilled its mandate, and international law had expanded in a variety of fields, including treaty law, diplomatic and consular relations, the environment and international crimes. However, international law must continue to evolve to meet emerging contemporary challenges. In closing, he wished the Commission a successful future.

Ms. Gueldich, panellist, said that most of the questions raised centred on one main issue, namely how to orient the Commission's work on the basis of diplomatic, political and legal priorities. To her mind, the Commission should be at the forefront of international legal developments, and its work should be guided by changes in the international context and follow a methodical, strategic approach. An objective stocktaking exercise would be very useful and, as had been suggested, the process must be transparent and inclusive but, above all, realistic. It was important to have a community of principles and values and to refocus the debate on humankind. All the actors in the field of international law — States, international organizations, non-State actors and individuals — would have to make a contribution to the work that lay ahead.

Mr. Lee, panellist, said that Mr. Huang had raised an important point. One of the main tasks of international lawyers and international society as a whole was to adapt international normativity to the changing reality in international relations so it was imperative to develop international law in a peaceful manner. The rise of China and other countries posed a challenge and provided an opportunity. It was important to take advantage of that opportunity to enhance the authority of international law by reaching a more diversified, but at the same time harmonious, conception of international law. The Commission could play a very constructive and instrumental role in that respect, in line with article 8 of its statute.

Mr. Grossman Guiloff, panellist, said that, in his opinion, the relevance of so-called "technical" topics should not be dismissed. The Commission's work on the identification of customary international law or the succession of States, for example, might not seem particularly relevant to a layperson, but it certainly was relevant for legal advisers, law professors and legal practitioners and had major practical implications. Of course, it was also important for the Commission to strike a balance in the topics it considered. Priorities were established by the Working Group on the Long-Term Programme of Work, which to his mind worked well, but of course the Commission was open to new ideas and improvements and concrete proposals concerning new principles for the development of international law. Not to downplay the importance of States, he believed that connections with other institutions were essential. It was also important to learn from the past and to tread carefully, particularly given the new rise in nationalism and the rejection of the rule of law.

Ms. Hammarskjöld, moderator, said that two threads could perhaps be carried over into the next panel discussion: the role of States in relation to the Commission and the issue of gender balance. There was also food for thought on how to continue the discussion on future challenges and the role of the Commission.

Panel 5: The authority and the membership of the Commission in the future

Mr. Momtaz (former member of the International Law Commission), moderator, said that the discussion would focus on the composition of the Commission and its methods of work. Concerning the composition of the Commission, it went without saying that the criteria set out in its statute, namely that the members should be persons of recognized competence in international law and that they should represent the main forms of

civilization and of the principal legal systems of the world, remained as relevant as ever. However, other criteria should also be taken into account, including the representation of different generations of jurists, a balance between practitioners and specialists in international law and, of course, the appropriate representation of women. It was the responsibility of States to ensure that those criteria were met when nominating and electing candidates.

The Commission could play an active role in improving its methods of work, as the statute was sufficiently flexible to allow for initiatives to be taken. Concerning the issue of the selection of topics raised in the previous panel, the criteria established at the end of the 1990s remained perfectly valid. Nevertheless, the Commission should exercise caution when it came to the selection of topics and, to the extent possible and for the sake of its own credibility, should avoid abandoning topics part way through. Regarding enhanced cooperation between the Commission and other bodies, specifically the Sixth Committee, it was important to avoid a monologue and to strive for dialogue. Cooperation between the Commission and the International Court of Justice was also particularly important, as evidenced by the fact that the 2001 articles on responsibility of States for internationally wrongful acts had been taken into account by the Court in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. He hoped that the panellists would touch on those and other issues.

Ms. Trávníčková (University of Economics, Prague), panellist, said that, borrowing from economics terminology, the codification of international law could be described as a service, the provision of which required in-depth specialist knowledge. While the market was not highly competitive, the Commission was one of the main suppliers, and demand came from specialized clients. It was difficult to imagine what the codification of international law might look like without the existence of the Commission: while States had ample negotiating capacity, it was unclear whether they would have chosen to use it to consider topics such as the law of treaties and the succession of States.

After the First World War, States had expressed a desire for international treaties that the League of Nations had not been fully able to satisfy. The Commission, in its role as a supplier of international law codification services, had drafted several international treaties that had met with great success in terms of the number of States that had ratified them. In later years, relations in the international community had become more constructive, but the need for a specialized professional codification body had remained, albeit in a market that had begun to change as the demand for international treaties weakened. As a result, the Commission had developed its methods of work and adopted a new approach to international law topics which, while of great importance, were not suitable for systematization in an international convention, such as *jus cogens* and customary law. States could not address such topics themselves, since they were bound by the foreign policies of their own Governments and were unable to dedicate time to the study of the historical and theoretical aspects of a given problem.

The Commission's position in the marketplace for the codification of international law was unique for three reasons: its authority, its composition and its capacity. First, the Commission enjoyed both formal authority — as a result of the way in which it had been created and its position in the United Nations system — and professional authority, which it had earned rather than been accorded. Second, in accordance with its statute, the Commission's members represented the main civilizations and principal legal systems of the world, with a specified number of seats allocated to each of the regional groups. Although there was a noticeable lack of women among the Commission's members, amending the statute to include a quota for women would not be helpful, given that candidates were nominated by States and elected by the General Assembly. Ultimately, knowledge of international law and experience, rather than gender, should be the foremost criteria for membership. Lastly, the Commission was unique in its capacity to deal with international affairs and in its wide-ranging freedom to take up any topic pertaining to public or private international law.

As to the possibilities and pitfalls for the future of the Commission, it was likely that the codification market would evolve in terms of both demand and supply and the market environment itself. On the demand side, it was likely that the aggregate demand for

codification would weaken. States, as clients, examined each of the Commission's products carefully before accepting or rejecting them; they could also choose to meet their needs themselves by concluding treaties through summits or other meetings. On the supply side, the Commission continued to hold a unique position: other suppliers could offer only highly specialized products in spheres such as human rights law, humanitarian law and international trade law. New actors, such as regional and national courts, were emerging onto the market; however, their role was ambiguous: neither buyers nor sellers, they used the Commission's final outcomes, while at the same time influencing the shape of the Commission's future products.

Ms. Pinto (University of Buenos Aires), panellist, said that the main ideas that had existed at the time when the need for an international law commission had been identified remained in force at the current time. The legal and political world order created in the aftermath of the Second World War, which had envisaged an increase in the number of States and a growth in the number of issues of common concern to States, had led to the establishment of a multilateral arena where such issues could be addressed. Such a system required clear and universal rules. It had been the role of the Commission in its early years to create, in the words of Thomas Franck and Mohamed ElBaradei, the "essential building blocks in the development of the post-war international legal system", thereby laying the foundation stone of international law which continued to exist in the twenty-first century.

Comments regarding the composition of the Commission could be applied to the United Nations as a whole, since outcomes in that forum were shaped by the instructions delegates received from their Governments. The majority of the Commission's members had served in the diplomatic service or in the legal system of their own States and were therefore accustomed to approaching issues from a semi-official or government perspective. Some members had an academic background, but few legal practitioners were elected to the Commission. It would perhaps be important to consider what proportion of the Commission's membership should be made up of practitioners.

Most members of the Commission had been and continued to be men. When the first two women, Paula Escarameia and Xue Hanqin, had been elected to the Commission, they had constituted less than 6 per cent of the membership. In 2018, the Commission had four female members, raising the proportion of women to less than 12 per cent. Women brought new and different perspectives to the Commission's work; moreover, they now comprised 60 per cent of law graduates globally and tended to achieve higher grades than their male counterparts.

Turning to generational diversity, while it was true that younger people inevitably had less experience in the field of international law, they could also bring a different focus to the Commission. Having been born into a more technological world, they were more likely to be at ease with harnessing online resources.

The representation of regional groups in the Commission mirrored that seen in the United Nations system as a whole, with the African Group and the Group of Western European and other States having eight members each, the Asia-Pacific Group and the Group of Countries of Latin America and the Caribbean having seven each, and the Eastern European Group having four members. However, the list of special rapporteurs appointed by the Commission since its inception told a different story: 31 of the 60 had been from the Group of Western European and other States, with 9 from the Eastern European Group, 8 from the Group of Countries of Latin America and the Caribbean, 7 from the African Group and 5 from the Asia-Pacific Group. It was perhaps time for the Commission to consider a more balanced distribution of the role of special rapporteur, since the major topics that it had taken up in the past had been dealt with mostly by white men from the common law tradition of the North. The Commission could establish a policy of explaining to States that it would be helpful for them to put forward candidates with experience of other legal systems, since those systems were accustomed to coexisting with larger systems and adapting to contextual changes. In that way, the Commission could enhance its legitimacy without diminishing the quality of its output.

In addition to treaties and draft articles, the Commission had also at times produced hybrid texts, such as the Guide to Practice on Reservations to Treaties. Two further treaties

would soon be forthcoming, on the protection of persons in the event of disasters and on crimes against humanity. Its soft and hard outputs had been replicated throughout the legal and political worlds and had been invoked by the International Court of Justice and national courts. According to one legal expert, the output of the Commission was a useful resource with which to fill a vacuum in decisions in arbitration proceedings.

The Commission could perhaps look at finding ways to enhance collaboration with States to ensure sustainable dialogue. While much of the Commission's legitimacy came from its technical competence, which did not necessarily lend itself to participatory working methods, efforts could perhaps be made to expand access for stakeholders, particularly in environmental topics, where non-governmental organizations could provide essential resources.

The Commission was a seal of quality in the global law market. Throughout its first 70 years, it had adapted to changing contexts; it was vital that the high level of its work should be maintained in order for the Commission to stay relevant going forward.

Mr. Tladi (International Law Commission), panellist, said that the two rich and well researched papers that had been presented had addressed the interrelationship between the authority and the membership of the Commission in very different ways.

Ms. Trávníčková's paper had adopted a pedagogical approach, showing how the Commission could be used as a lens through which to view the past and future evolution of international law. Using the metaphor of international law as a marketplace, the paper had presented a mostly positive picture, identifying the selection of topics as the key challenge for the future. The paper had endorsed the formal and professional authority and the representativity of the Commission, while noting that responsibility for the small number of female members lay primarily with States and their delegates in the General Assembly. In his own experience, diversity was valuable in itself and had a positive effect on the work of the Commission.

Ms. Pinto's paper, which had adopted a statistical analytical approach to assessing the relationship between the Commission's authority and its membership, had taken a less sympathetic view and arrived at a different conclusion. It had lamented, or had appeared to lament, the lack of practitioners within the Commission and made strong criticism of the absence of gender and generational representation, as well as offering a stark picture of the historical distribution of special rapporteurs. While the numbers did not look good at first glance, it should be taken as a positive sign that much of the progress that had been made had occurred in the last two decades.

The two very different approaches adopted in the papers were a reminder that diverse perspectives and views should be embraced.

Mr. Momtaz (former member of the International Law Commission), moderator, invited comments and questions from the floor.

Mr. Hassouna (International Law Commission) said that it was unfortunate that members were elected to the Commission as a result of political considerations rather than solely on the basis of their qualifications and knowledge of international law. The General Assembly was a political body in which vote trading was sometimes known to occur.

While it was important to maintain the close relationship between the Commission and the Sixth Committee, it could be helpful for the Committee to play a more active role in shaping the final form of the Commission's output, whether as a resolution, a convention or in another form. Given that the Commission sometimes hesitated to put forward certain topics that could prove controversial, it could be useful for the Committee itself to propose topics.

In the area of representation, there was room for the African and Asia-Pacific Groups to play a larger role within the Sixth Committee. There was an important role to play in that regard for the Asian-African Legal Consultative Organization, which could seek to coordinate the positions of States belonging to those groups, with a view to ensuring that international law was perceived as being more universal in nature rather than simply a European product.

Mr. Reinisch (International Law Commission) said that he was intrigued by the idea of the codification services market as an oligopoly dominated by the Commission. It would be interesting to consider which entities were the Commission's main competitors.

The Chair said that, while the commemorative events marking the seventieth anniversary of the International Law Commission were drawing to a close, the Commission's work for 2018 had not yet ended. Its members would surely be inspired and reinvigorated by what they had heard during the commemorative events, and would continue their dialogue with the Sixth Committee later in the year when it considered the Commission's annual report.

The panel members at the commemorative events had brought a richness and diversity to the debates that had taken place. On the basis of the events held in New York and Geneva, the Commission and its Secretariat intended to produce a publication taking stock of the 70 years of the Commission's existence and looking towards the future of the Commission and of the international legal order. It was hoped that the publication would become a reference point for future discussions.

The Commission was grateful to all those who had taken the floor during the events. The participants had underscored the continued relevance of international law and the crucial role of the Commission in the progressive development of international law and its codification, while also urging the Commission to make the necessary structural changes that would ensure that international law was fairer and more inclusive. The Commission appreciated the support of its own Secretariat, as well as that provided by the Secretariat of the United Nations and the Codification Division of the Office of Legal Affairs.

The meeting rose at 1 p.m.