



UNITED NATIONS OFFICE OF LEGAL AFFAIRS

International Law Commission Seventieth anniversary

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Excellencies,
Distinguished delegates,
Mr. Chairman,
Distinguished members of the International Law Commission,
Ladies and gentlemen,

On behalf of the Secretary-General, I am delighted to welcome you to New York today as we have come together to mark the 70th anniversary of the International Law Commission.

Established in 1947, the Commission held its first session at the temporary headquarters of the United Nations at Lake Success in 1949, and it is only appropriate to celebrate its 70th session close to where it all began.

It has been said that “[a]nniversaries are like birthdays: Occasions to celebrate and to think ahead, usually among friends with whom one shares not only the past but also the future.” However, anniversaries are better than birthdays: Anniversaries do not come with the regret of increasing age but are associated with the joys of achievement.

When I look around this room today, I see friends and companions of the International Law Commission. Like myself, as the former Legal Adviser of Portugal and now United Nations Legal Counsel, many of you have worked with the Commission in different capacities. Being among friends of the Commission, I would like to use this opportunity to look at its past achievements, current work and future challenges.

To recognize the great achievements of the International Law Commission, it is important to see it as part of the broader movement towards the codification of international law. As early as 1873, international lawyers founded two private associations: the *Institut de droit international* and the Association for the Reform and Codification of the Law of Nations (now known as the International Law Association (ILA)). Both continue to promote the progress of international law in their own way.



In fact, I am delighted that we have the President of the *Institut de droit international*, Professor Nico Schrijver, with us today.

Those private codification efforts were followed by the establishment of a major Codification Conference under the auspices of the League of Nations in The Hague in 1930. At the time, however, delegates found that they had too little time to cover the many complex issues on the agenda.

As it turned out, 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 – a political as much as a legal exercise.

Although the Conference produced only a few notable results, it did make general recommendations to improve the codification process, which informed the drafting of the Statute of the International Law Commission.

The impetus for the creation of an International Law Commission arose out of the horrors of the Second World War. At the San Francisco Conference in 1945, the fifty States negotiating the Charter of the United Nations were anxious to revitalize and strengthen international law.

Accordingly, Article 13, paragraph 1(a), of the Charter instructs the General Assembly to “initiate studies and make recommendations for the purpose of [...] encouraging the progressive development of international law and its codification.” To make more precise recommendations on how to discharge this mandate, the first session of the General Assembly established a “Committee on the Progressive Development of International Law and its Codification”, consisting of seventeen government representatives, who recommended the creation of an International Law Commission.

The General Assembly endorsed that recommendation and approved the Statute of the International Law Commission in 1947.

Today and during the commemorative events in Geneva in July, we will contemplate the many accomplishments of the Commission in progressively developing and codifying international law over the past seven decades. It is hard to imagine contemporary international relations without the 1961 Convention on Diplomatic Relations, the 1969 Vienna Convention on the Law of Treaties, the Rome Statute of the International Criminal Court or the articles on the responsibility of States for internationally wrongful acts. But what is the secret of the Commission’s success? The answer to this question is manifold.

First, unlike private codification bodies such as the International Law Association or the *Institut de droit international*, the Commission has an intergovernmental mandate. Members serve as independent legal experts, but the Commission consults with governments throughout the drafting process and submits the



outcome of its work to the General Assembly, a political body.

This afternoon, we will discuss the relationship between the Commission and the Sixth Committee, which prepares the draft resolutions on the Commission's work for adoption by the General Assembly. The Sixth Committee called its first session to order in 1946. In this and many other ways, the Commission and the Committee thus share a common journey and a common fate.

Related to its intergovernmental nature is a second reason for the Commission's success: its unique composition. As a subsidiary organ of the General Assembly, the membership of the Commission is based on the five regional groups of the United Nations. As such, it is a melting pot of legal traditions and regional perspectives.

Moreover, candidates for membership are drawn from the various segments of the international legal community, such as academia, the diplomatic corps, government ministries and international organizations.

As the members typically serve in other international law-related professions, the Commission remains in close touch with the realities of international relations.

Third, the Commission's sophisticated working methods have contributed to the success of its codification efforts. As a permanent entity, the Commission is not subject to time-constraints associated with diplomatic conferences such as that in The Hague in 1930.

It functions more like a legislative drafting body that develops draft provisions for international conventions in different readings. While typically appointing Special Rapporteurs to lead a drafting project, other Commission members participate actively in the drafting process in the Drafting Committee before the Commission as a whole adopts the draft provisions.

Last but not least, the Commission's success is contributed to by its Secretariat, the Codification Division of the Office of Legal Affairs. As I noted in my speech before the Commission earlier this month, the Codification Division has assisted the Commission from its very inception in progressively developing and codifying international law in important ways.

Through Secretariat studies, memoranda and *ad hoc* research tasks, it has provided substantive input to the work of the Commission.

The survey of international law that the Secretariat prepared in 1948 served as the basis for the 14 topics that the Commission selected for progressive development and codification at its first session in 1949. The Secretariat has continued to propose topics for codification, such as the recently adopted articles on protection of persons in the event of disasters. The most recent survey of international law carried out by the Codification Division in 2016 has made a notable contribution to the Commission's current consideration of possible topics for its programme of



work.

The Codification Division also served as the secretariat of numerous diplomatic conferences, transforming the texts so carefully crafted by the Commission into international conventions. As the Codification Division has serviced quite a number of United Nations bodies, most notably the Sixth Committee, its expertise and long-standing experience have made a significant contribution to the progressive development and codification of international law in its different stages. This leads me back to the first reason I gave for the Commission's success: the Commission's intergovernmental mandate. The Codification Division, as the Secretariat of the Commission, is part of the Office of Legal Affairs and the United Nations. As such, it has benefitted from the immense institutional support of the Organization.

After reflecting on the past successes of the Commission, allow me to briefly strike a balance for the future. After all, this is also what anniversaries are for. Times have changed since the International Law Commission was first established in 1947.

As evidenced by the changing outcomes of the Commission's work, the needs of the international community are different today. While the Commission still produces draft articles, it also adopts draft guidelines and draft conclusions.

The Commission has remained true to general international law topics such as the law of treaties and the law of international responsibility. But it has also taken up the challenge of addressing more specialized, technical topics such as the protection of the atmosphere or the protection of persons in the event of disasters.

The Commission also faces important challenges with regard to its composition. As I have observed on previous occasions, the Commission suffers from a lack of equitable gender representation. Over the past 70 years, the Commission has only had seven women among its members.

I am pleased that the number of women on the Commission was doubled to four in last year's election.

And I remain hopeful that Member States, the General Assembly and the Commission will work together in achieving gender parity in the foreseeable future.

In light of its achievements over the past 70 years, I am confident that the Commission will live up to these current and upcoming challenges.

In closing, I would like to reiterate that the progressive development and codification of international law are fundamental to maintaining peaceful



international relations. The International Law Commission has been a central contributor to making “peace through law” – to borrow a well-known phrase coined at the end of the Second World War.

I can assure you that my office will continue to assist the Commission in discharging its indispensable mandate with professionalism, substantive expertise and enthusiasm.

Thank you very much.
