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Codification of International Law Work of International Law Commission

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ABSTRACT

Since the end of World War II, states and peoples' attitudes regarding the body of law known as "International Law" have shifted dramatically."The purpose of this note is to track the activities of international law commision by referring to the codification process, which has led to the relative importance of most international law concepts. In recent years, the Commission has issued interpretive statements concerning a treaty in effect, the Vienna Convention on the Law of Treaties, and customary international law reflected therein and many more. Today, it is widely acknowledged that the codification and gradual development of international law is an essential duty for nations and a distinct legislative process in the modern international community.

Keywords: International law commission , codification , General assembly , Law and treaties

I. INTRODUCTION

Before we look at how the International Law Commission functions or how codification is carried out, we must first understand what codification is and why it is so vital for both international and domestic states. In legal terminology, codification refers to the creation of codes, which are collections of written legislation, rules, and regulations that teach the public on what is and is not acceptable behaviour. This activity does not imply that it generates a new law, it basically means that it arranges the existing law and turn them into the codified law with the help of the Judicial decisions or legislatives acts.

Prior statutes and court rulings are rearranged and displaced through codification. The entire source that is relied upon for a legal question in that field is normally the codification of that area of law. As a result, when a state codifies its criminal laws, the statutes in the new code replace the laws in effect previous to the codification. However, there are exceptions to this general norm. For example, despite the absence of a statute prohibiting such activity in Michigan's penal code, the Michigan Supreme Court determined in 1994 that Dr. Jack Kevorian

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might be prosecuted under Michigan common law for aiding a patient with suicide.[2]

(People v. Kevorkian, 447 Mich. 436, 527 N.W.2d 714). [3]

The International Law Commission shall have for its goal the promotion of the progressive development of international law and its codification," according to Article 1 of the International Law Commission Legislation, which is in conformity with Article 15 of the same statute, which states,- The expression codification of international law is used for convenience as meaning the more precise formulation and systematisation of international law. As a result, designating codification as a main objective of the International Law Commission indicates how important it is to codify the law in order to develop a code that will assist people and nations in understanding the law and distinguishing between what is acceptable and what is not. Furthermore, the International Law Commission's charter specifies in Article 18 (1), "The Commission must review the whole area of international law with a view to choosing themes for codification, keeping in mind current draughts, whether governmental or not" and that The Commission shall survey the entire field of international law with a view to selecting topics for codification, having in mind existing draughts, whether governmental or not and that The Commission shall survey the entire field of international law with a view to selecting topics for comission which in result says if The Commission shall present its proposals to the General Assembly when it thinks that the codification of a particular topic is essential and desirable.[4]

II. CODIFICATION AND INTERNATIONAL LAW

After defining what codification is, it is important to understand codification in respect to international law, and we may argue that understanding codification in respect to international law is not a black and white rule. Many jurists have different points of view on the meaning and nature of international law codification: some contend that the codification of international law has a very narrow value; others argue that the codification of international law has a very broad importance. [5] In a limited sense, jurists believe that codification of international law simply means putting the previously unwritten rules/principles of international law into writing. It does not allow for any type of prospective thinking or any type of modification or

[2] TheFreeDictionary.com. 2021. codification. [online] Available at: <https://legal-dictionary.thefreedictionary.com/codification> [Accessed 10 August 2021].
[3] Community. 2021. *People v. Kevorkian | Case Brief for Law School | LexisNexis*. [online] Available at: <https://www.lexisnexis.com/community/casebrief/p/casebrief-people-v-kevorkian> [Accessed 10 August 2021].
[4] UN. 2021. *Statute of the International Law Commission*. [online] Available at: <https://legal.un.org/ilc/texts/instruments/english/statute/statute.pdf> [Accessed 10 August 2021].
[5] Sir H. Lauterpacht holds, "the task of codifying international law, if it is to mean anything, must be primarily one of bringing about an agreed body of rules already covered by customary or conventional agreement of State. H. Lauterpacht, Codification and Development of International Law, 49 AJIL 16 (1955) at 22.

amendment to the existing rules. However, from a wider sense, jurists agree that it entails the revision of current rules of international law in order to keep up with changing times and to accommodate new principles. Furthermore, according to Article 15 of the Statute of the International Law Commission, "the expression "progressive development of international law" is used for convenience to mean "the preparation of draught conventions on subjects not yet regulated by international law or in regard to which the law has not yet been sufficient the very ends for which the machinery was established." As a result, the phrase "codification of international law" is frequently used to refer to the more detailed description and systematisation of international law norms in areas where state practise, precedent, and doctrine already exist.exist. [6]

After understanding what codification is and why it is considered a key part or core of international law, we will dig more into why there is a need to codify international law and how this idea has evolved through time.

(i)The history of international law codification can be traced back to the late 18th century, when Bentham came up with the concept of codification. Before him, in 1792, the French Convention attempted but failed to draught a Declaration of the Rights of Nations.

(ii) Following that, two big events occurred: the DECELRATION OF PARIS in 1856 and the CREMEAN WAR, which lasted from 1853 to 1856 and resulted in the banning of privateering.

(iii) The codification process began in 1873, when the Institute of International Law was created in Ghent, Belgium, with one of its goals being to codify existing international law concepts.

(iv) One of the major codification exercises was the First Hague Conference, convened by Russian Emperor Nicholas II in 1899, which led to two conventions in the form of code (namely, (a) Convention here on Pacific Settlement of International Disputes, and (b) Convention on the Laws of Customs of War on Land, and then the Second Hague Convention, which resulted in thirteen conventions.

(v) Under the supervision of the League of Nations, a large amount of codification work was carried out. Indeed, according to Oppenhiem, “this was reserved to the League of Nations to confront the matter of codification properly called in a methodical manner.” The League Council appointed a committee of sixteen jurists in 1924 to report to the Council on the situation, which included issues that were ready for codification.. The Committee reported on

[6] UN. 2021. *Statute of the International Law Commission*. [online] Available at: <https://legal.un.org/ilc/texts/instruments/english/statute/statute.pdf> [Accessed 10 August 2021].

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seven topics as a result of [7] codification In addition, in 1928, two new subjects for codification were recorded.[8]

(v) Following that, the codification was done under the United Nations, where we see that one of the functions of the UN General Assembly is to initiate studies and propose proposals aimed at "enhancing international cooperation in the economic, social, cultural, educational, and health spheres, as well as contributing in the realisation of human rights," as stated in Article 13 (1) an of the UN charter. As a result, on December 10, 1948, the United Nations General Assembly (UNGA) adopted the Universal Declaration of Human Rights (UDHR) and a number of other human rights treaties.[9].

(vi) In 1947, the General Assembly established the International Law Commission (ILC) in accordance with Article 13's mandate. On April 11th, 1949, the ILC held its inaugural meeting. Because of the magnitude of the ILC's contribution to the codification and progressive development of international law, it is best to analyse it separately.

III. ORAGANISATION, PROGRAMMES AND METHODS OF WORK OF THE INTERNATIONAL LAW COMMISSION

(A) Objectives of the International law commission

We can claim that the founding of the International Law Commission to make laws at the international level was not a new development; developing and amending laws at the international level takes a long time. Jeremy Bentham suggested a codification of all international law in the last part of the eighteenth century, however in a utopian vein. Attempts at codification have been made by private individuals, scholarly institutions, and governments since his time..[10]

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[7] Namely,
(1) Nationality,
(2) Territorial Waters,
(3) State Responsibility for damage done in their territory to the persons or property of foreigners,
(4) Diplomatic immunities and privileges,
(5) Procedure of International Conference and Procedure for the conclusion and drafting of treaties,
(6) Exploitation of the products of the sea, and
(7) Piracy.

[8]Namely,
(1) Law relating to functions and competence of Consuls, and
(2) The Competence of Courts regarding foreign states.

[9] Icelandic Human Rights Centre. 2021. *The United Nations | Icelandic Human Rights Centre*. [online] Available at: <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-fora/the-united-nations> [Accessed 10 August 2021].

[10] In his Principles of International Law (written in the period 1786–1789), Bentham envisaged that an international code, which should be based on a detailed application of his principle of utility to the relations between nations, would not fail to provide a scheme for an everlasting peace. However, he made little effort to base his plans for such a code upon the existing law of nations

According to Article 1 paragraph 1 of the International Law Commission's Statute, the Commission's goal is to "promote the progressive development of international law and its codification."

Progressive development is defined as "the preparation of draught conventions on subjects that have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practise of States" in Article 15 of the Statute, while codification is defined as "the more precise formulation and systematisation of rules of international law."[11]

In actuality, the Commission's work on a topic usually includes certain parts of both progressive development and international law codification, with the proportions of the two shifting depending on the issue. Despite the fact that the Statute's drafters anticipated that progressive development and codification would be handled in slightly different ways, they believed it was preferable to assign both tasks to a single commission.

Additionally, they were opposed to the idea of establishing distinct commissions for public, private, and penal international law. According to article 1, paragraph 2 of the Statute, the Commission "shall concern itself primarily with public international law, but is not precluded from entering the area of private international law."[12]

The Commission noted that it had not entered the field of private international law in recent years, except incidentally and in the course of work on subjects of public international law; moreover, given the work of bodies such as UNCITRAL and the Hague Conference on Private International Law, it seemed unlikely that the Commission would be called upon to do so. The Commission, on the other hand, has not always drawn a clear line between public and private international law, and has taken into account aspects of the latter category in some of its work..”[13]

The Commission has indeed worked specifically in the field of international criminal law, starting with the formulation of the Nürnberg principles and consideration of issue of international criminal jurisdiction at the very first session in 1949, and resulting in the completion of the draught Statute for an International Criminal Court and the draught Code of Criminal Procedure at its forty-sixth session in 1994. At its fifty-seventh session in 2005, the Commission added the topic "the obligation to extradite or prosecute (aut dedere aut judicare)"

[11] UN. 2021. *Statute of the International Law Commission*. [online] Available at: <https://legal.un.org/ilc/texts/instruments/english/statute/statute.pdf> [Accessed 10 August 2021].
[12] UN. 2021. *THE WORK OF THE INTERNATIONAL LAW COMMISSION*. [online] Available at: <https://legal.un.org/avl/ILC/8th_E/Vol_I.pdf> [Accessed 10 August 2021].
[13] See Yearbook of the International Law Commission, 1996, vol. II (Part Two), para. 155.

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to its work programme.. [14] [15]

IV. STRUCTURE OF THE INTERNATIONAL LAW COMMISSION

1. The members of the international law commission are qualified under Article 2, paragraph 1 of the Statute, which states that members of the Commission "must be people of recognised competence in international law." The Commission is made up of people who have demonstrated competence and expertise in both doctrinal and practical elements of international law. [16] The Commission's members have extensive knowledge and practical experience in international law, particularly international dispute settlement procedures. Even the judges of the International Court of Justice (ICJ) sit in their individual capacities, not as representatives of any government or state, because making laws under international law is a difficult task in and of itself, and when there is a game of favouritism, the organisation will be declinated.

2. The Committee of Seventeen, which advocated the Commission's formation argued that the International Court of Justice and the Commission's election procedures were identical.[17] The General Assembly, on the other hand, rejected the proposal for a joint election by the General Assembly and the Security Council because the Court was a unique case that should not be used as a precedent for the Commission's appointment, and the task of codifying international law was entrusted to the General Assembly under Article 13 of the UN Charter. Instead, it was determined that candidates would be nominated solely by the Governments of UN Member States, and that the election would be conducted only by the General Assembly article 3. A maximum of four candidates may be nominated by each Member State, two of whom must be nationals of the nominating State (article 4).[18] Article 8 of the Statute states that at the election, electors should keep in mind that the persons to be elected to the Commission should each have the qualifications required (that is, recognised competence in international

[14] Official Records of the General Assembly, Sixtieth Session, Supplement No. 10 (A/60/10), para. 500.
[15] UN. 2021. *THE WORK OF THE INTERNATIONAL LAW COMMISSION*. [online] Available at: <https://legal.un.org/avl/ILC/8th_E/Vol_I.pdf> [Accessed 10 August 2021].
[16] See Yearbook of the International Law Commission, 1974, vol. II (Part One), document A/9610/Rev.1, para. 207.
[17] See the report of the Committee on the Progressive Development of International Law and its Codification, Official Records of the General Assembly, Second Session, Sixth Committee, Annex 1, para. 5
[18] While "double" nominations (i.e. a Member State nominating two of its nationals) were common in the earlier elections of the Commission (in 1948, 1953, 1956, 1961, 1966, 1971 and 1976), this option has not been exercised since then. At the first election, in 1948, article 4 was interpreted as permitting the nomination of a maximum of two nationals and two non-nationals. However, more than two non-nationals were nominated by some States at the elections held in every election from 1953 to 1991 and in 2001

law, as stated in article 2), and that the Commission as a whole should be representative of the international community (article 8).[19]

3. The Commission's membership has been increased three times: from fifteen to twenty-one in 1956, pursuant to General Assembly resolution 1103 (XI) of December 18, 1956; to twenty-five in 1961, pursuant to Assembly resolution 1647 (XVI) of November 6, 1961; and to thirty-four in 1981, pursuant to Assembly resolution 36/39 of November 18, 1981.[20] The gradual expansion of the United Nations' membership from fifty-one to eighty member states in 1956, 104 member states in 1961, and 157 member states in 1981 generated proposals for enlargement. A substantial majority of the General Assembly agreed that raising the Commission's size would better ensure the requirement in article 8 of the Statute requiring "in the Commission as a whole representation of the main kinds of civilisation and of the leading legal systems."

4. In 1968, in its twentieth session, the Commission requested to the General Assembly that the Commission's members' terms of office be extended from five to six or seven years. According to the Commission, given the time-consuming nature of the codification process, a period of six or seven years was the bare least necessary for the completion of a programme of work.[21] The General Assembly's Sixth Committee has taken note of the proposal and has delayed a decision until a later session.

5. The basic structure of the international law comission consists of:-

- Officers: At the start of each session, the Commission elects the Chairman, First and Second Vice-Chairmen, Chairman of the Drafting Committee, and General Rapporteur for that session from among its members.

- Bureau, Enlarged Bureau, and Planning Group : The Bureau, which consists of the five officers chosen at that session, considers the work schedule and other organisational concerns for the current session at each session. The Bureau, which consists of the officials chosen at the session, past Chairmen of the Commission who are still members, and Special Rapporteurs, may be called upon to address problems pertaining to the Commission's organisation, programme, and methods of operation.

[19] UN. 2021. *THE WORK OF THE INTERNATIONAL LAW COMMISSION*. [online] Available at: <https://legal.un.org/avl/ILC/8th_E/Vol_I.pdf> [Accessed 10 August 2021].
[20] See article 2, paragraph 1, of the Statute
[21] See Official Records of the General Assembly, Twenty-fourth Session, Annexes, agenda items 86 and 94 (b), document A/7746, para. 117

- Plenary: In plenary, the Commission chooses whether or not to send suggested draught articles to the Drafting Committee and whether or not to approve provisional or final draught articles and commentary. The Commission reviews and adopts its annual report to the General Assembly in plenary at the end of each session.

- Special Rapporteurs : The role of the Special Rapporteur is central to the work of the Commission.

- Working groups: On specific themes, the Commission has used working groups, sometimes known as subcommittees, study groups, or consultative groups. These ad hoc subsidiary bodies were created by the Commission or the Planning Group for a variety of reasons and with varying missions. They might be open-ended or have a limited membership.

- Drafting Committee : Drafting Committee: Since its inaugural session, the Commission has used a Drafting Committee, whose membership has gradually grown to reflect the Commission's growing size. The membership of the Drafting Committee fluctuates from session to session and, since 1992, from subject to subject at any particular session, despite the fact that it remains a single body with one Chairman.

V. WORKS OF INTERNATIONAL LAW COMMISSION

The Commission shall consider proposals for the progressive development of international law referred by the General Assembly (article 16) or submitted by Members of the United Nations, United Nations principal organs other than the General Assembly, specialised agencies, or official bodies established by intergovernmental agreements to encourage the progressive development of international law (article 17). In terms of codification, the Commission must review the whole area of international law in order to choose relevant issues (article 18). Furthermore, the Commission may suggest to the General Assembly that a specific issue be codified if it is deemed essential and beneficial (article 18). The Commission concluded at its first session, in 1949, that it had the authority to continue with the codification of a topic that it had suggested to the General Assembly without waiting for the General Assembly to act on the suggestion.

The Commission received several recommendations and special assignments from the General Assembly, as well as suggestions from the Economic and Social Council, in its early years. The Commission fourteen themes for possible inclusion in a list of subjects for examination at its first session in 1949, based on a survey of international law provided by the Secretariat.

1. State and Government Recognition;

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2. State and Government Succession;
3. State and Property Jurisdictional Immunities
4. Jurisdiction over offences committed outside of a country's borders;
5. The high-seas regime;
6. Territorial water regime;
7. Nationality, includes the statelessness of a person;
8. Aliens' treatment;
9. Asylum rights;
10. Law of treaties;
11. Diplomatic immunity and intercourse;
12. Consular immunities and intercourse
13. Responsibility of the state; and
14. Dispute resolution process

And later in the year 1949 the few others topic were added in the list of the International law commission and these topics were on the basis of long term programme which takes around more than fifty years. The following topics are [22]

15. DRAFT DECLARATION ON RIGHTS AND DUITES OF STATES
16. Formulation of the Nürnberg principles;
17. International Criminal Jurisdiction;
18. Methods for making customary international law evidence more easily available;
19. Proposed code of crimes against humanity's peace and security;
20. Multilateral convention reservations;
21. Aggression is a difficult concept to define.
22. States' and international organisations' relations
23. Historic waterways, including historic bays, are subject to a legal framework.
24. Special missions

[22] UN. 2021. *THE WORK OF THE INTERNATIONAL LAW COMMISSION*. [online] Available at: <https://legal.un.org/avl/ILC/8th_E/Vol_I.pdf> [Accessed 10 August 2021].

25. Participation in general international accords signed under the supervision of the League of Nations;
26. The provision of the most-favoured-nation;
27. Question of treaties concluded between States and international organizations or between two or more international organizations;
28. the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law
29. the law of treaties concluded between States and international organisations or between two or more international organisations;
30. The diplomatic courier's status, as well as the diplomatic bag that is not accompanied by the diplomatic courier;
31. Examining the process of negotiating multinational treaties;
32. International liability for harmful consequences arising from acts not prohibited by international law
33. Reservations to treaties
34. Nationality in the context of state succession
35. Protection from diplomats;
36. States' unilateral actions;
37. International organisations' responsibilities;
38. Natural resources that are shared;
39. International law fragmentation: challenges posed by the variety and extension of international law;
40. The impact of armed wars on international treaties;
41. Removal of foreigners;
42. Extradition or prosecution (aut dedere aut judicare);
43. Persons' safety in the case of a tragedy;
44. Immunity of government officers from criminal prosecution in other countries; and
45. The evolution of treaties.

The topics listed above that were placed on the Commission’s programme of work in

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addition to those included in the 1949 list may be divided into four categories:

(i) subjects that were a direct result of the Commission's earlier work on one of the 1949 list's subjects;

(ii) themes that are not a direct follow-up to the Commission's prior work but are related to one of the 1949 subjects in some way;

(iii) subjects that are unrelated to any of the 1949 list's issues; and

(iv) specific duties delegated by the General Assembly to the Commission

Now let's discuss few of the major works of the International law commission:

1. Draft Declaration on Rights and Duties of States

The General Assembly, in resolution 178 (II) of November 21, 1947, directed the International Law Commission to develop a declarations on states' rights and obligations, based on a statement given by Panama and some other related papers.

The commission studied the Panamanian proposal at the first session, which was held in 1949, and accepted a final draught on the rights and obligations of states in the form of fourteen articles with comments in the same session, after reading the text three times.[23] The draft began with the following:

Rather than forming a community regulated by international law, the world's states constitute a community regulated by international law.

Whereas the proper organisation of the international community of States is required for the steady development of international law,

Whereas a large majority of the world's slates have built a new international system based on the United Nations Charter, and the majority of the world's other States have expressed their intention to live within this system,

Whereas one of the United Nations' key goals is to maintain international peace and security, and the rule of law and justice is critical to achieving this goal, and

Whereas, in view of current developments in international law and in accordance with the United Nations Charter, it is desirable to outline some basic rights and obligations of States Whereas, in view of current developments in international law and in accordance with the United Nations Charter, it is desirable to outline some basic rights and obligations of States,[24]

[23] See Yearbook of the International Law Commission, 1949, Report to the General Assembly, paras. 46–52.
[24] UN. 2021. *Draft Declaration on Rights and Duties of States with commentaries.* [online] Available at:

The United Nations General Assembly adopts and declares this Declaration of States' Rights and Duties.

With this, the document was presented to the General Assembly, which then took action on the document, and the commission noted that:- *"As befitting a statement of fundamental rights and responsibilities, the rights and obligations outlined in the draught Declaration are expressed in broad terms, without limitation or exception. The draught Declaration's articles lay forth broad principles of international law, whose scope and modalities of application would be specified by more specific laws. This issue is acknowledged in Article 14 of the proposed Declaration. It is, indeed, a worldwide provision that dominates the whole text and, in the Commission's opinion, it correctly serves as a key to other sections of the draught Declaration in establishing "international law's supremacy.".*[25]

Then the General Assembly then requested the nations and jurists to give their opinions on the draughts in resolution 375 (IV) of December 1949, but the suggestions that came via the states were few in number, and as a result, the General Assembly decided to postpone consideration of the matter in resolution 596 (VI) of December 7, 1951, "until a sufficient number of States have transmitted their replies.

2. Formulation of the Nürnberg principles

The Commission was ordered to define the principles of international law acknowledged in the Nürnberg Tribunal's Charter and in the Tribunal's verdict by General Assembly Resolution 177 (II) on November 21, 1947. The Commission conducted a preliminary look at the matter at its first session, in 1949.

During this discussion, the question of whether the Commission should determine whether the principles included in the Charter and the judgement constituted principles of international law emerged. The result was that, because the Nürnberg principles had been unanimously adopted by the General Assembly in Resolution 95 (I) on 11 December 1946, the Commission's role was to simply articulate them rather than express any appreciation for them as principles of international law.

On the basis of the Special Rapporteur's report, the Commission adopted a final formulation of the Principles of International Law Recognized in the Nürnberg Tribunal Charter and in the Tribunal's Judgment in 1950, and submitted it to the General Assembly, with commentaries, without making any recommendations on further action. The book contains seven fundamental

<https://legal.un.org/ilc/texts/instruments/english/commentaries/2_1_1949.pdf> [Accessed 10 August 2021].
[25]See Yearbook of the International Law Commission, 1949, Report to the General Assembly para. 53.

principles, which are as follows:

"Principle I

Anyone who does an act that is considered a criminal under international law is held accountable and subject to punishment

Principle II

The fact that an act that is a criminal under international law is not punishable under domestic law does not absolve the person who did the conduct of culpability under international law.

Principle III

The fact that a person who committed an international crime behaved as a Head of State or a responsible Government official does not absolve him of culpability under international law.

Principle IV

The fact that a person acted on the orders of his government or a superior does not absolve him of responsibility under international law, assuming that he had the ability to make a moral decision.

Principle V

Under international law, everybody accused of a crime has the right to a fair trial based on the facts and the law..

Principle VI

The crimes hereinafter set out are punishable as crimes under international law: (a) Crimes against peace: (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i). (b) War crimes: Violations of the laws or customs of war which include, but are not limited to, murder, illtreatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity. (c) Crimes against humanity: Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are 3 done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

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Principle VII

Under international law, complicity in the commission of a crime against peace, a war crime, or a crime against humanity, as defined in Principle VI, is a crime.. "[26]

The General Assembly decided to send the formulation to the governments of Member States for comment in resolution 488 (V) of December 12, 1950, and requested the Commission, in preparing the draught code of offences against the peace and security of mankind, to take into account the observations made on the formulation by delegations during the fifth session of the General Assembly, as well as any observations made by the Commission.[27]

Let's talk about what transpired at the Nürnberg trial. In this,some of individuals responsible for crimes committed during the Holocaust were brought to justice after the war. Nuremberg, Germany, was chosen as the location for the 1945 and 1946 trials. The proceedings of twenty-two top Nazi offenders were presided over by judges from the Allied powers—the United Kingdom, France, the Soviet Union, and the United States. The death penalty was imposed on twelve prominent Nazis. The majority of the defendants acknowledged to the offences for which they were charged, however several maintained that they were just following orders from higher up. Those who were directly engaged in the murder received the worst punishments. Others who played major roles in the Holocaust, such as high-ranking government officials and company leaders who pushed concentration camp prisoners to work, got light sentences or no punishment at all.

3. Laws of the high seas

The commission created legislation on two main aspects in the rules of the high seas, namely:

- High Seas Regime
- The territorial seas regime

J.P.A. François was appointed as a special rapporteur for the codification of the High Seas Regime during the first session in 1949. The second, third, fifth, seventh, and ninth sessions focused mostly on this regime.

The Commission's second session, held in 1950, examined a variety of issues related to the high seas regime, including ship nationality, safety of life at sea, slave trade, submarine telegraph cables, high seas resources, right of pursuit, right of approach, contiguous zones, sedentary fisheries, and the continental shelf. On the basis of the Special Rapporteur's second

[26] Legal.un.org. 2021. *United Nations - Office of Legal Affairs*. [online] Available at: <https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_1_1950> [Accessed 10 August 2021].
[27] See Yearbook of the International Law Commission, 1950, vol. II, document A/CN.4/22.

report, the Commission provisionally accepted draught articles on the continental shelf, marine resources, sedentary fisheries, and the contiguous zone in its third session in 1951.

The commission reexamined the draughts made in previous sessions and created a final document on three important topics: the contiguous zone, fisheries, and continental shelfs.

By resolution 798 (VIII) of December 7, 1953, the General Assembly agreed to postpone action until the Commission had investigated and reported to the Assembly on all issues relevant to the high seas and territorial waters regimes. The matter of the continental shelf was brought before the Assembly again during its ninth session in 1954, this time by eleven Member States who wanted the Assembly to resolve the issue without delay.

In 1955, in its seventh session, the Commission evaluated various high seas issues that had not been addressed in its previous report, and adopted, based on the Special Rapporteur's sixth report, a preliminary draught on the high seas regime, which was sent to governments for discussion.

The Commission studied responses from governments and the International Commission for the Northwest Atlantic Fisheries during its ninth session in 1956, and put up a final report on high-seas issues, which was integrated by the Commission in its consolidated draught on the law of the sea.

In response to the Commission's recommendation, the United Nations General Assembly decided to convene an international conference of plenipotentiaries "to examine the law of the sea, taking into account not only the legal but also the technical, biological, economic, and political aspects of the problem, and to embody the results of its work in one or more treaties," by resolution 1105 (XI) of February 21, 1957.

The Conference's Final Act was signed on April 29, 1958. All of the Conventions were open for signature until October 31, 1958, by all United Nations members and specialised agencies, as well as any additional states invited by the General Assembly to join; they have been available for accession by all such states since then. On September 30, 1962, the High Seas Convention and the Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes entered into force. The Continental Shelf Convention, the Territorial Sea and the Contiguous Zone Convention, and the Convention on Fishing and Conservation of the Living Resources of the High Seas Convention all entered into force on June 10, 1964, September 10, 1964, and March 20, 1966, respectively. By 3 October 2003, fifty-one states had ratified the Convention on the Territorial Sea and the Contiguous Zone, sixty-two states had ratified the Convention on the High Seas, thirty-seven states had ratified the Convention on High Seas

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Fishing and Conservation of Living Resources, fifty-seven states had ratified the Convention on the Continental Shelf, and thirty-seven states had ratified the Convention on the Continental Shelf.

From 1973 through 1982, the Conference had eleven sessions. It ratified the United Nations Convention on the Law of the Sea on December 10, 1982, which contains 320 articles and nine annexes. It also passed a Final Act, which includes resolutions and a declaration of agreement, among other things. The Convention was accessible for signing at the Jamaican Ministry of Foreign Affairs until 9 December 1984, as well as at the United Nations Headquarters in New York from 1 July 1983 to 9 December 1984. It went into effect on November 16, 1994, twelve months after the sixty-fifth document was deposited. One hundred forty-three states had lodged instruments of ratification as of October 3, 2003. It should be noted that a number of the 1982 Convention's articles are based on the 1958 Conventions. As between States Parties, the 1982 Convention shall prevail above the Geneva Conventions on the Law of the Sea, according to paragraph 1 of article 311 of the 1982 Convention.

4. Law of treaties

In 1949, during its inaugural session, the ILC chose the issue of treaty law and gave it high priority. In 1950, 1951, 1956, 1959, and 1961 to 1966, the ILC considered the matter in their 2nd, 3rd, 8th, 11th, 13th, and 18th sessions, respectively.

Rather than one or more international conventions, the Commission had envisioned its work on treaty law to take the shape of "a code of general nature." The Commission noted in its report to the General Assembly for its eleventh session, in 1959:

“To summarise, treaty law is a component of general customary international law and is not dependent on treaties. If the law of treaties was enshrined in a multilateral convention, but certain States refused to sign it or signed it but later repudiated it, they would be bound by the treaty's terms in the sense that they represented customary international law de lege lata. Whenever a convention contains standards of customary international law, this issue is unavoidable. In reality, though, this is rarely an issue. It could important in the case of treaty law, because treaty law provides the foundation for the force and effect of all treaties. As a result of all of this, if the Code, or any portion of it, were to be enacted as an international convention, significant drafting revisions, as well as the possible exclusion of certain elements, would almost definitely be necessary.’[28]

[28] See Yearbook of the International Law Commission, 1959, vol. II, document A/4169, para. 1

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The ILC decided to frame the draught for treaty law instead of exploring and working from ecpository declarations in its 13th session in 1961, as indicated in the 14th session report.

The General Assembly's resolution 1765 (XVII) of November 1962 directed the ILC to continue working on treaty law, and between the 14th and 17th sessions, the ILC began analysing proposed articles, which were then given to the governments for their comments. The Commission observed that the Sixth Committee had said in its report to the General Assembly's seventeenth session in 1962 that the large majority of delegates had endorsed the Commission's decision to give the codification of treaty law the form of a convention. It was determined during the 18th session not to deal with foreign agreements that were not in writing. In addition, the Commission decided that the draught articles should not include any provisions on the following topics: the effect of the outbreak of hostilities on treaties; succession of States in treaty matters; the question of a State's international responsibility for failing to perform a treaty obligation; the "most-favoured-nation clause"; and the application of the "most-favoured-nation clause."

On May 22, 1969, the Conference approved the Vienna Convention on the Law of Treaties. A preamble, eighty-five articles, and an annex make up the Convention. The Vienna Convention on the Law of Treaties applies to treaties between States, according to the Commission's draught articles, with the term "treaty" defined as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments. The Convention specifically states that it applies to any treaty that is the fundamental instrument of an international organisation, as well as any treaty adopted inside an international organisation, without regard to any applicable norms of the organisation concerned.. The fact that international agreements concluded between States and other subjects of international law, or between such other subjects of international law, or international agreements not in written form, are not covered by the Convention has no bearing on (a) their legal force, (b) the application of any of the rules set forth in Part I of the Convention to them.. Finally, the Convention only applies to treaties concluded by States after the Convention enters into force with respect to such States, without prejudice to the application of any of the rules set forth in the Convention to which treaties would be subject under international law without the Convention.

All States Members of the United Nations, members of any of the specialised agencies or the International Atomic Energy Agency, or parties to the Statute of the International Court of Justice, as well as any other State invited by the General Assembly to become a party to the Convention, are invited to sign and ratify or accession the Convention. On May 23, 1969, the

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Convention was opened for signatures. It was accessible for signing at the Federal Ministry of Foreign Affairs of Austria until 30 November 1969, and then at the United Nations Headquarters until 30 April 1970. Ratification is required for signatures. Any non-signatory state that is eligible to join the Convention is welcome to do so. It went into effect on January 27, 1980. Ninety-six countries have signed the Convention by October 20, 2003.

The Conference also adopted two declarations (the Declaration on the Prohibition of Military, Political, or Economic Coercion in the Conclusion of Treaties and the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties) and five resolutions..

The Assembly passed Resolution 3233 (XXIX) on November 12, 1974, in which it voted to invite all states to join the Vienna Convention on the Law of Treaties.

VI. CONCLUSION

We may conclude from the preceding study that the ILC's work does not necessarily apply to nations, but that the ILC tries to persuade governments to utilise international law as a means of regulating their activities.The Court's also playsavery vital role as thier efficient functioning will be aided by the steady development of codification, and the decisions of the Court of International Justice, as well as the interpretations it offers to those areas of law that are not yet resolved, will aid the job of codification. It will, of course, face obstacles and delays, but it will eventually become a reality. When different disciplines of international law become resolved, they will be codified one by one, and as specific elements of the codified law fall behind the advancement of the globe, they will be changed and amended to fit changing situations on a regular basis. In this way, by gradually but steadily codifying parts of international law through periodic meetings of nations, the task of codifying international law will no longer be a source of amusement for cynics and a pipe dream for idealists, but an actual step toward the peaceful governance of a world community founded on a firm legal foundation and governed by the rule of law.

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