

INTRODUCTION TO THE INTERNATIONAL LAW COMMISSION

Spring 2025

HISTORY

ORIGIN AND BACKGROUND

- Origins are rooted in the “codification movement” (e.g., the belief that written international law would remove the uncertainties of customary international law by filling existing gaps in the law, as well as by giving precision to abstract general principles whose practical application is not settled).
 - Before the 19th century, codification was not a concept. After, the “point of departure” was codifying international law.
- Other similar private bodies:
 - Institute de Droit International (founded in 1873).
 - International Law Association (founded in 1873).
 - Harvard Research in International Law (founded in 1927).

INTERNATIONAL CONFERENCES

1899 and 1907

1st and 2nd Hague Peace Conferences

- Arrangements for the 3rd Peace Conference were postponed by WWI.

1930 Codification Conference

Topics addressed:

- nationality.
- territorial waters.
- the responsibility of States for damage done in their territory to persons or property of foreigners.

But: the international instrument adopted by the Conference only related to nationality.

Assembly of the League of Nations Resolution

- First worldwide attempt to codify and develop whole fields of international law, rather than only regulating individual legal issues.
- Established the *Committee of Experts for the Progressive Codification of International Law* to create a list of the most “desirable and realizable” topics that were “sufficiently ripe” for regulation by international agreement.

22 September 1924

SAN FRANCISCO CONFERENCE

- Occurred between 25 April and 26 June 1945.
- Fifty nations met in San Francisco, California at the United Nations Conference on International Organization (commonly known as the San Francisco Conference).
 - The nations in attendance were those that declared war on Germany and Japan and had subscribed to the United Nations Declaration.
- Working off the Dumbarton Oaks proposals, the Yalta Agreement, and amendments proposed by various governments, attendees agreed upon the Charter of the United Nations and the Statute of the new International Court of Justice.



UN CHARTER

ARTICLE 13(I)

- Governments involved in drafting the UN Charter overwhelmingly disagreed with granting the UN legislative power to enact binding rules of international law, or impose general conventions by some form of majority vote in the General Assembly.
- **But:** they agreed with granting the General Assembly the powers of study and recommendation.

1. The General Assembly shall initiate studies and make recommendations for the purpose of:
 - a. promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;
 - b. promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

GENERAL ASSEMBLY RESOLUTION 94 (I) (1946)



During its first session, the General Assembly established the Committee on the Progressive Development of International Law and its Codification (commonly known as the Committee of Seventeen).



The Committee was tasked with studying the methods by which the General Assembly could fulfill its responsibilities under UN Charter, Article 13(1).



The Committee adopted a report recommending the establishment of an international law commission and setting forth provisions that could form the basis of its Statute.

GENERAL ASSEMBLY RESOLUTION 174 (II) (1947)



During the second session of the General Assembly, a large majority of the Sixth (Legal) Committee agreed with the Committee of Seventeen regarding setting up an international law commission.



A subcommittee of the Sixth Committee created a draft Statute for the Commission, which was approved in GA/RES/174(II) in 1947.



The resolution resulted in the establishment of the International Law Commission based on the recommendations of the Committee of Seventeen, which convened its first session on 12 April 1949.

STATUTE OF THE
INTERNATIONAL LAW
COMMISSION

1947

STATUTE AMENDMENTS

- Since its adoption, the Commission's Statute has been amended six times.
 - Amendments were conducted partly on the initiative of the Commission and partly on that of Governments.
- The amendments related to the:
 - Expenses to be paid to the members of the Commission.
 - Location of the Commission's meetings.
 - Extension of the term of office of Commission members.
 - Size of the Commission.
 - Regional distribution of its membership.





1947 TO TODAY

- Since its inception, the Commission has addressed the most pressing issues of international law and facilitated the development of international law through creating authoritative legal instruments.
- The Commission has been instrumental in codifying international norms through the adoption of some of the most important treaties in modern international law.
 - Even when the Commission's work does not result in a treaty, the Commission still acts to clarify the status of international norms for States and practitioners.
- **Examples:**
 - Nuremberg Principles
 - United Nations Convention on the Law of the Sea
 - Vienna Convention on the Law of Treaties
 - International Covenant on Civil and Political Rights
 - Rome Statute
 - Articles on State Responsibility ("ARSIWA")

DISCUSSION QUESTIONS

- (1) What does it mean that the Commission “develops international law”?**
- (2) Why does codification matter?**
- (3) Given the recent violations of international law and problems in the global legal system, does international law still matter? Explain.**