

# INTRODUCTION TO THE INTERNATIONAL LAW COMMISSION

Spring 2025

# STRUCTURE OF THE COMMISSION

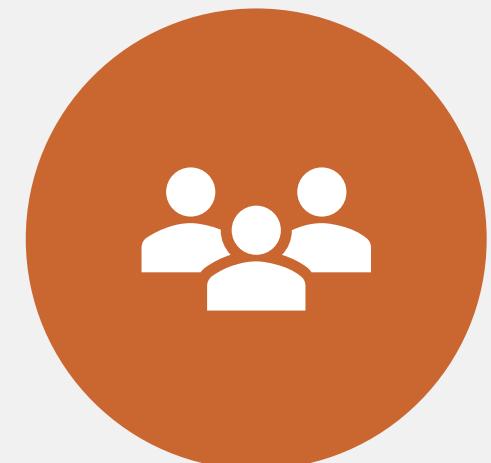
## GENERAL MEETING TYPES



PLENARY



DRAFTING  
COMMITTEES



WORKING  
GROUPS



- The Commission meets in plenary (meaning with all members present) to:
  - Consider the reports of Special Rapporteurs, working groups, study groups, the Drafting Committee, the Planning Group, and any other topic that requires the consideration of the Commission as a whole.
  - Decide whether to refer proposed draft provisions to the Drafting Committee.
  - Adopt provisional or final draft provisions and commentaries.
  - Consider and adopt its annual report to the General Assembly.
  - Decide substantive and procedural matters, or announce such decisions if they were reached in private or informal meetings (see Rule 61 of the Rules of Procedure of the General Assembly).
- **Primary role:** allow general debate to establish the Commission's overarching approach to a topic, which is then implemented by the subsidiary organs and Special Rapporteurs.
- **Held in public**, unless the Commission decides otherwise (see Rule 60 of the Rules of Procedure of the General Assembly).
- In 1997, the Commission introduced “**mini-debates**”: short, thematic debates or exchanges of views in plenary on particular issues or questions raised during the consideration of a topic to facilitate a more focused discussion.
- The annual report contains a summary of the debate on each topic held in plenary, except when the Commission adopts draft provisions and commentaries at the same session.

- For the first three sessions, the Commission set up separate committees to deal with specific topics or questions.
- Starting in 1952, during the Commission's fourth session, the Commission uses a standing Drafting Committee, acting under one Chair.
- Membership varies by session and topic, and the composition's size has progressively enlarged in line with the increase in the Commission's size.
  - Membership should also reflect equitable representation from the principle legal systems and the various languages of the Commission within limits compatible with its drafting responsibilities.
- The session's Rapporteur participates *ex officio* in the work for the Drafting Committee on all topics.
- There are no summary records of meetings of the Drafting Committee, and the meetings are not public.
  - However, the report of the Chair of the Drafting Committee to the Commission in plenary (which is public) provides a detailed summary of its work on each topic.



- The Drafting Committee is responsible for harmonizing the various viewpoints and finding generally acceptable solutions to difficult issues.
  - Issues that prove difficult to resolve may be transferred to a more informal setting, such as a working group.
- Normally, Drafting Committee proposals are adopted by consensus by the Commission without discussion.
  - **Exception:** in 2017, while considering draft article 7 from the topic 'Immunity of State officials from foreign criminal jurisdiction', the Commission the provisional adoption of the article was recorded by vote.
  - Even after adoption, the texts may be amended or referred back to the Commission for further consideration.
- **Importantly**, when discussing language, the drafting committee will practice 'multilingual drafting', meaning the members consider the meaning of the text in its main drafting language and the other UN working languages.
  - This practice often results in members uncovering questions of substance, adding additional responsibilities to the Drafting Committee's work.
- The Drafting Committee may also adopt provisions in two or more authoritative linguistic versions.
- When work is completed on a set of draft provisions, and where possible, Drafting Committee members from the various linguistic groups meet separately to ensure their respective linguistic versions align with the adopted text.





- Also called “subcommittees”, “study groups”, or “consultative groups”
- *Ad hoc* groups established by the Commission or by the Planning Group.
  - The relevant establishing organ issues the necessary mandate, defines the parameters of any study, reviews and (if necessary) modifies proposals, and makes any necessary decisions on their work product.
- May be of limited or open-ended membership.
- **Historically**, the Commission has established working groups:
  - For new topics, before appointing a Special Rapporteur, to (1) undertake preliminary work or (2) help define the scope and direction of the work.
  - After appointing a Special Rapporteur to (1) consider specific issues, (2) determine the direction of the future work on a particular topic, or (3) consider proposed commentaries and draft provisions.
  - To handle a topic as a whole, *inter alia*, due to the urgency of the issue or when the prior Special Rapporteur left the Commission.
- Beginning in 2002, the Commission has established “study groups” in exceptional circumstances to consider particularly unique topics.
  - **Purpose:** achieve concrete outcomes in accordance with the mandate of the Commission and within a reasonable time.
  - Thus far, Study Groups conduct their work under the guidance of their respective chairs, and do not involve Special Rapporteurs.



- If the Working Group undertakes careful drafting, the final product may be submitted directly to the Commission in plenary (not the Drafting Committee).
  - **Purpose:** avoid duplication or mistakes which may be made if members of the Drafting Committee were not also present for the detailed discussion on the Working Group's draft text.
  - **But:** a Drafting Committee may be involved in a final review of a text from the perspective of adequacy and consistency of language.
- Working groups may be established:
  - As an interim step to prepare revised versions of a draft article (or guidance regarding the formulation of a draft article) that is later referred to the Drafting Commission.
    - **In that case:** the text of the Working Group (*not* the Special Rapporteur's proposed text) is referred to the Drafting Committee.
    - To examine proposals for draft commentaries.
    - To consider the feasibility of work on a certain topic, or its way forward.
  - The final outcome of work is typically a report either (a) presented orally by the Working Group's Chair to the Commission in plenary or (b) issued in written form as a document that is annexed to the Commission's report.

	<b>Drafting Committee</b>	<b>Working Group</b>
<b>Timing</b>	Work on texts of draft provisions prepared by the Special Rapporteur.	Begin their work at an earlier stage, before draft provisions are created.
<b>Duration</b>		Conduct work over multiple sessions.
<b>Composition</b>	Changes from year to year.	Maintain substantial continuity of membership.
<b>Mandate</b>	Focus primarily on questions of drafting.	Enjoy broad flexibility to address issues of substance or procedure. <sup>1</sup>
<b>Procedure</b>	Follow more formal working methods in terms of procedure and documentation.	Adopt flexible working methods, depending on the nature of the task at hand.
<b>Reporting Requirements</b>	Submit a written report and a detailed oral statement by its Chair.	No requirement that a report be in writing, or that it provide extensive details about the group's decisions.

<sup>1</sup> In 1996, the Commission recommended working groups be established more extensively to address particular disagreements and, where appropriate, expeditiously address whole topics (acting in place of the Drafting Committee).



### Bureau:

- Consists of the five officers elected at that session.
- Considers the schedule of work and other organizational matters with respect to that session.

### Enlarged Bureau:

- Consists of the officers elected at that session + former Chairs of the Commission who are still members + the Special Rapporteurs.
- May be called upon to consider issues related to the organization, programme, and methods of the Commission's work.

### Planning Group:

- Considers the Commission's programme and methods of work.
- Establishes a "**Working Group on the Long-Term Programme of Work**" tasked with recommending topics to include in the long-term programme of work, which maintains with the same Chair and membership during each five-year term.
- May also establish a Working Group to review and consider ways of improving the Commission's methods of work based on a request by the General Assembly or on the Commission's own initiative.

# OFFICERS<sup>1</sup>

## **Chair:**

Presides over the meetings of the plenary, Bureau, and Enlarged Bureau

(see Rule 106 of the Rules of Procedure of the General Assembly).

## **First and Second Vice-Chair:**

Maintain the same powers and duties as the Chair when designated to take the place of the Chair

(see Rule 105 of the Rules of Procedure of the General Assembly).

## **Chair of the Drafting Committee:**

Presides over the meetings of the Drafting Committee. Recommends the membership for each topic's Drafting Committee.

Introduces the report of the Drafting Committee when it is considered in the plenary session.

## **Session's Rapporteur:**

Drafts the Commission's annual report to the General Assembly.

<sup>1</sup> Per Commission practice, the posts of Chair and the other four officers are rotated among nationals of the various regional groups.

# SPECIAL RAPPORTEURS

- Since 1949, there have been 69 Special Rapporteurs.
- In practice, Special Rapporteurs are distributed among members from the various regions.

## Current Special Rapporteurs:

<b>August Reinisch</b> Settlement of disputes to which international organizations are parties	<b>Mathias Forteau</b> Non-legally binding international agreements	<b>Claudio Grossman</b> Immunity of State officials from foreign criminal jurisdiction	<b>Charles Jalloh</b> Subsidiary means for the determination of rules of international law
<b>Mārtiņš Paparinskis</b> Compensation for the damage caused by internationally wrongful acts	<b>Penelope Ridings</b> Due diligence in international law	<b>Louis Savadogo</b> Prevention and repression of piracy and armed robbery at sea	<b>Marcelo Vázquez-Bermúdez</b> General principles of law

- **Article 16(a):** envisions the appointment of a Special Rapporteur in the case of “progressive development”.
  - **However, in practice,** the Commission generally appoints a Special Rapporteur at the beginning of its consideration for each topic, regardless of whether the topic could be classified as “progressive development” or “codification”.
- Special Rapporteurs perform key tasks, including:
  - Preparing reports on the topic—which are the basis of the Commission’s work—that explain the state of the law and make proposals for draft provisions.
  - Participating in the consideration of the topic in plenary.
  - Contributing to the work of the Drafting Committee on the topic.
  - Preparing the text of the commentaries to the draft provisions for consideration by the Commission.
  - Drafting other working documents for the Commission and/or Drafting Committee, as necessary.
  - Specifying the nature and scope of work planned for the next session.
- Once appointed, the Special Rapporteur retains their role until the topic is complete, or they leave the Commission.
  - If a Special Rapporteur needs to be replaced, the Commission generally suspends work on the topic for an appropriate period of time.
- The Special Rapporteurs send their reports to the Codification Division, who coordinate the review of the reports (for grammar), translation, and circulation of the reports to other Commission members.



## SPECIAL RAPPORTEURS RESPONSIBILITIES

### **In Plenary:**

- Introduce the report at the beginning of the Commission's consideration of the topic in plenary.
- Respond to questions raised during the debate.
- Make concluding remarks summarizing the main issues and trends at the end of the debate.
- Where appropriate, give a recommendation as to the referral of any draft provisions to the Drafting Committee or a Working Group.

### **In Drafting Committee:**

- Serve as a member of the Drafting Committee on their topic.
  - They may also serve as a member of the Drafting Committee on another topic.
- Produce clear and complete draft provisions.
- Explain the rationale behind the draft provisions currently before the Drafting Committee.
- Reflect the view of the Drafting Committee in revised draft provisions and/or commentary.

## DISCUSSION QUESTIONS

- (1) Does the Commission's institutional structure adequately balance expertise, geographic representation, and legal-system diversity? Explain.**
  
- (2) Does the Commission's lack of formal lawmaking power strengthen or weaken its authority? Explain.**
  
- (3) Are there risks when a Special Rapporteur remains in place for many years? Are there risks when they are replaced?**