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THE INTERNATIONAL LAW COMMISSION AND THE PERSPECTIVES OF ITS CODIFICATION ACTIVITIES

1. Introduction

International law is the legal order based on two main sources having equal legal force, i.e. international conventions and international customs. Therefore, international law has remained partially unwritten, notwithstanding the extraordinary development of conventional rule-making or derived rule-making based on the acts of international organizations. Thus, it cannot be disputed that *codification* of international law plays an important role in the achievement of legal certainty. Codification is being carried out in various places (codification forums) and by various methods; nevertheless, the key role is performed by the International Law Commission as the main body of the United Nations for the codification and promotion of the progressive development of international law.

At present, when the crisis of codification is under discussion, the phenomenon of fragmentation of international law (an issue which was on the agenda of the Commission) is being researched,¹⁾ the topic of constitutionalisation of international law has emerged,²⁾ etc., it is important to ponder the current as well as future assignments of International Law Commission in the area of codification of international law.

2. Comments on terminology and history

Both the concepts of codification and development of international law appear in Article 13, paragraph 1 of the UN Charter which states that “the General Assembly shall initiate studies and make recommendations for the purpose of: ... encouraging the progressive development of international law and its codification.” This translation of the Charter is based on the French original (*développement progressif*) which means “progressive development”. Conversely, an equally authentic English translation of the Charter (*progressive*

¹⁾ See e.g. ŠTURMA, P. (ed.), *Od kodifikace mezinárodního práva k jeho fragmentaci* [From Codification of International Law to its Fragmentation], Prague: Czech Society of International Law, 2009.

²⁾ See e.g. KLABBERS, J., PETERS, A., ULFSTEIN, G., *The Constitutionalization of International Law*. Oxford University Press, 2009.

development) allows for two translations: both gradual and progressive. This distinction in meaning was debated in Czech (or Czechoslovak) international law theory; however, the debates were not very productive. Apparently, the development of international law (as well as its codification) is a process which cannot be but gradual. On the other hand, the states would hardly be prepared to adopt a text which would endeavour to fix obsolete rules or even a regressive change under the label of “codification” or “development”. Consequently, it is possible to have reservations about the development which is not progressive. In recent decades, there has been a trend in Czech literature towards “bridging” this dispute by implementing the phrase “progressive development”.

A more detailed explanation of concepts used in Article 13, paragraph 1 of the UN Charter is provided in the Statute of the International Law Commission.³⁾ According to Article 1 the Commission shall have for its object the promotion of the progressive development of international law and its codification. Article 15 of the Statute then specifies that the expression “codification of international law” is used for the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine. Conversely, “progressive development of international law” is used as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States.⁴⁾

The idea of codification of international law is older than real life efforts and results achieved at intergovernmental level. Codification movement stems from the assumption that written international law would remove uncertainty from international custom, fulfil the gaps or “blank areas” in law and give more precise content to general principles. It is clear that only concrete texts adopted by states can create sources of written international law directly. Yet the oldest codification efforts originated from various private institutions, learned societies as well as individual authors. While these efforts could not ensure the codification of international law, they impacted to some degree on its progressive development. We should mention here various draft codes and other texts prepared by the *Institut de Droit International* and the *International Law Association*; both these scientific societies were established in 1873 and have been active up to now. Also the role of *Harvard Research in International Law* (since 1927) is being cited. In their studies and proposals these private institutions

³⁾ General Assembly Resolution 174 (II) of 21 November 1947; the text see *The Work of the International Law Commission*, Sixth edition, vol. I, United Nations, New York, 2004, p. 245.

⁴⁾ *Ibid.*, p. 247.

initiated and facilitated the work of diplomatic conferences convened for the adoption of codification treaties.⁵⁾

As the first intergovernmental endeavour at codification of international law in history is cited the Vienna Congress (1814 – 1815) which adopted the rules on navigation of international rivers, condemnation of slave trade and on ranks of diplomatic representatives (the so called Vienna Règlement). Since then, states tried to regulate numerous subject matters of international law at various conferences and congresses. Among the most frequently cited are the Hague Peace Conferences (1899 and 1907). As we have already suggested, a great part of the adopted conventions represented a contribution to the development of international law (the creation of new rules) rather than its codification. The then general international customary law was very poor from the point of view of its content. This, however, does not denigrate the contribution of the mentioned conferences to the codification and progressive development of international law.

Another important factor in codification efforts and development of international law were the activities of the *League of Nations*. It began by the LON Assembly Resolution of 22 September 1924 which led to the creation of a permanent body, the Committee of Experts for the Progressive Codification of International Law. The Committee consisting of seventeen experts was to prepare a list of topics whose regulation seemed to be most desirable and practicable and, on the basis of comments of governments, to submit a report on issues which were sufficiently mature. After further consultations the LON Assembly decided to convene in 1927 a diplomatic conference on the codification of three out of five topics which were considered to be sufficiently mature, namely: (1) nationality, (2) territorial waters, and (3) responsibility of states for damage caused in their territory to foreigners. The only result of the conference of 1930, however, was the adoption of the Convention on certain questions relating to the conflict of nationality laws⁶⁾ and three protocols to it.⁷⁾

Besides this Convention and only partial codification of the law of war (1929), i.e. the law applied during armed conflicts among states, other codifications of the period – after World War I – were in essence unsuccessful. Conversely, the codification of international law after 1945 which was connected with the activity of the UNO appears to be much more successful.

The direct predecessor of the International Law Commission was the Committee for the Progressive Development of International Law and its Codification created by the UN General Assembly Resolution 94 (I) of 11 December

⁵⁾ Cf. *The Work of the International Law Commission*, 6th edition, vol. I (2004), p. 1.

⁶⁾ See Convention on certain questions relating to the conflict of nationality laws, *League of Nations, Treaty Series*, vol. 179, p. 89.

⁷⁾ Cf. *The Work of the International Law Commission*, op. cit., pp. 3-4.

1946. This Committee, also known as the “Committee of Seventeen”, was meeting in 1947 and it adopted a report recommending the creation of an International Law Commission composed of independent experts. During the second session of the General Assembly the creation of the International Law Commission was supported by the vast majority of the Sixth (legal) Committee members. Thus it was created by the UN General Assembly Resolution 174 (II) of 21 November 1947. After the first election of members at the end of 1948, the International Law Commission assembled at its first session on 12 April 1949.⁸⁾

As the main UN body for codification, the International Law Commission (ILC) is composed of persons of recognized competence in international law – originally fifteen, since 1981 thirty four – who are elected *ad personam* by this major UN body for a quinquennium and may be re-elected. Members of the Commission are recruited mainly from among persons working in academic and diplomatic fields. No two members of the ILC may be nationals of the same state. The Commission prepares only the drafts of future codification conventions, provides them to the General Assembly through its Sixth Committee, which is the first place where the states encounter the draft.⁹⁾ The General Assembly then adopts the final text of the draft codification convention, or some other conclusion (see *infra*), and decides (if it decides at all) on convening the appropriate diplomatic conference to adopt the respective codification convention.

The International Law Commission has created its bodies and work methods. At the beginning of each annual session, the Commission elects from among its members the Chairman, the First and Second Vice-chairmen, the Chairman of the Drafting Committee and the General Rapporteur for that session. Special Rapporteurs on individual codification issues perform a key role. The term of office of Special Rapporteurs lasts while they are still members of the ILC until the Commission completes its work on the given issue. Special Rapporteurs submit reports (including draft Articles and comments) which are then considered at the plenary session of the Commission. The Commission also creates other supportive bodies, such as work groups and a Drafting Committee. The Drafting Committee plays an important role in unifying varying opinions and comments as well as elaborating generally acceptable solutions.

The Commission is a subsidiary body of the General Assembly of the UN from which it receives assignments. The Working Group on Long-Term Pro-

⁸⁾ Cf. *The Work of the International Law Commission*, op. cit., pp. 5-6.

⁹⁾ In the course of preparing the draft, the Commission addresses – through the General Secretary – a questionnaire to the states and requests their comments and observation on the given codification issue.

gramme recommends convenient topics for codification which are then presented by the Commission to the General Assembly for approval. The Commission submits an annual report to the UN GA and the report is debated by the representatives of member states in the Sixth (legal) Committee. Comments on individual drafts impact further work of the ILC and its Special Rapporteurs. Firstly, the Commission adopts draft Articles on individual topics in a so-called first reading which is not final. Then, the governments can consider the draft and formulate their comments within a given period of time, which the Special Rapporteur then includes in the draft approved in the second reading.

The Commission is not a permanent body; its sessions are held annually in the European office of the UN in Geneva for two months in spring and summer. Since 1998, sessions have been divided into two parts with a month break which should make the work of the Commission more efficient.

3. The present results of codification activities of the International Law Commission

As regards the beginnings of codification activities of the Commission, while the General Assembly accepted only a few of its drafts as recommendations or took note of them,¹⁰⁾ only one draft from 1954 resulted in a treaty. It concerned the *UN Convention on the Reduction of Statelessness* (30 August 1961) which entered into force in 1975 having acquired the six requisite ratifications (Art. 18).

An actual codification endeavour of the Commission was not started until 1951, when it commenced its work on the written expression of customary law of the seas. This effort led to adoption of four codification conventions at the diplomatic convention held in Geneva in 1958. They were (1) the *Geneva Convention on the Territorial Sea and Contiguous Zone*, 29 April 1958; (2) the *Geneva Convention on the High Seas*, 29 April 1958; (3) the *Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas*, 29 April 1958; and finally (4) the *Geneva Convention on the Continental Shelf*, 29 April 1958. The conventions entered into force in the years 1962 to 1966; however, in 1973 attempts at their “amendments” started which resulted in the adoption of the *United Nations Convention on the Law of the Sea* (Montego Bay, 10 December 1982). This convention entered into force on 16

¹⁰⁾ E.g., Principles of International Law Recognized in the Charter of Nurnberg Tribunal and in the Judgment of the Tribunal (1950). Texts see the *Work of the International Law Commission*, 4th edition, U.N., New York, 1988, p. 138; cf. also the *Work of the International Law Commission*, 6th edition, (2004).

November 1994 and applied to 150 states until 2006.¹¹⁾ It is the only document which effectively took over the contents of the 1958 regulation; moreover, it covers all aspects of the legal regime of seas including those that are not interconnected with the codification of generally applicable law of the sea. Namely, it is the status of the international organization (*International Seabed Authority*) which is active in this field as well as various forms of possible dispute resolution. The preparation of its text was not assigned to the Commission, but it was elaborated by the diplomatic conference (its experts, the *Third UN Conference on the Law of the Sea*, UNCLOS III). Therefore, neither its merits nor its drawbacks can be attributed to the International Law Commission.

The 1960ies represented a very successful period in codification efforts of the Commission. In the form of codification drafts the Commission adopted a complex written formulation of at that time only customary generally applicable regulation concerning foreign activities of state bodies. Those drafts were subsequently adopted as codification conventions. They were (1) the *Vienna Convention on Diplomatic Relations*, 18 April 1961, ratified by 185 states by 2006;¹²⁾ (2) the *Vienna Convention on Consular Relations*, 24 April 1963, 171 ratifications by 2006;¹³⁾ (3) and finally – slightly less successful – the *Convention on Special Missions*, 8 December 1969, effective as of 21 June 1985, only 38 states participated by 2006.¹⁴⁾

Finally, this successful period (the so-called miraculous decade) of codification activities of the Commission also comprises the adoption of the draft of the

¹¹⁾ There are twenty seven states which signed but have not yet ratified the Convention, including, among others, the USA. About eighteen states have not signed the Convention, including, among others, Israel, Turkey and Venezuela.

¹²⁾ There are two optional protocols to the Convention, namely the *Optional Protocol concerning Acquisition of Nationality* and the *Optional Protocol concerning the Compulsory Settlement of Disputes* (18 April 1961).

¹³⁾ The supporting documents and the text of the Convention were prepared by the ILC Special Rapporteur, the Czech international law expert JAROSLAV ŽOUREK (from the Institute of State and Law of the former Czechoslovak Academy of Sciences). There are two optional protocols to the mentioned convention, namely the *Optional Protocol concerning Acquisition of Nationality* and the *Optional Protocol Concerning the Compulsory Settlement of Disputes* (24 April 1963).

¹⁴⁾ There is one protocol to the Convention, namely the *Optional Protocol Concerning the Compulsory Settlement of Disputes* (8 December 1969). Legal science attributes the relative lack of interest in participation in the Convention to the fact that its content amounts rather to a contribution to the development of international law; it maybe represents codification (incorporation) only in the field of privileges and immunities of heads of states. For instance, the mentioned Convention (1969) accords the same privileges to the mission of frontier commissioner who negotiates the delineation of borders with a neighbouring state as are accorded to the mission of the head of state. Cf. SALMON, J.: *Manuel de droit diplomatique*, ULB, Bruylant, Bruxelles, 1994, p. 546 where the author explicitly states: „ (...) on mesure ici toutes les missions spéciales sur le même pied.“

Vienna Convention on the Law of Treaties (23 May 1969) which has been probably the most important convention codifying a substantial part of international conventional law.

The following periods of 1970ies and 1980ies have not been so successful, although the Commission completed a number of drafts which were sooner or later transformed into international treaties. However, as a result of few ratifications, many of the treaties became effective after many years, or have not come into effect yet.

Such is the case of the *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations* (21 March 1986). There is no doubt that treaties concluded between international organizations represent a significant part among current international treaties. Strictly speaking, they are treaties between states and international organizations or between international organizations. *Formally*, the Vienna Convention (1986) applies to them, but – as we all know – it has not come into force yet. With regard to *contents*, the rules which were thus laid down coincide with the rules of the law of international treaties between states codified in the Vienna Convention (1969).

Another important work of the ILC in the 1970ies and at the beginning of the 1980ies consisted in the codification of rules on the succession of states. Although a reputable piece of work, the *Vienna Convention on Succession of States in Respect of State Property, Archives and Debts* (8 April 1983) has not come into effect yet. Its pendant, produced also by the Commission, the *Vienna Convention on Succession of States in Respect of Treaties* (23 August 1978) is a little more successful as it has been in force since 6 November 1996. By 2006, it was ratified by twenty one states including those who had undergone the process of succession according to the codified rules in the first half of the 1990ies (such as the Czech Republic and the Slovak Republic); however, none of the important states, such as superpowers including China or Russia, ratified it. It was the *latest* codification convention produced by the Commission which entered into force. For instance, the very important Rome Statute governing the International Criminal Court (1998), in force as of 1 July 2002, was prepared in the Commission only in the early stages (1990 – 1994)¹⁵⁾, but the final wording resulted mostly from the efforts of the Preparatory Committee set up by the General Assembly and the diplomatic conference in Rome.

Unfortunately, as much cannot be said about some other instruments, such as the *Convention on the Law of the Non-navigational Uses of International Watercourses* (21 May 1997). The Commission worked on its formulation since the beginning of the 1970ies and although fourteen years have already passed since its adoption by the General Assembly it has not come into force yet.

Similarly, the *United Nations Convention on Jurisdictional Immunities of*

¹⁵⁾ See *Work of the International Law Commission*, 6th edition (2004), pp. 95-101, 321-364.

States and Their Property (New York, 2 December 2004) was opened to signatures to January 2007; it was signed by twenty eight states (by 16 May 2007). According to Article 30, the deposit of the thirtieth ratification instrument is required for its entering into force, by 16 May 2007 it was ratified by four states.¹⁶⁾

4. New problems and new forms of codification work of the Commission

Besides the above mentioned successful, as well as less successful, codification conventions, there were many other outcomes resulting from the work of the Commission which, however, took another form. Leaving apart some results of the early stages of the ILC, these other forms of codification production are typical of the period of the recent twenty years. They are mainly article drafts adopted by the Commission which the General Assembly takes note of. Other products are General Assembly resolutions, draft codes, guides for the practice or theoretical studies. It is, however, necessary to distinguish among these new forms as not all of them should be perceived negatively.

Among the oldest topics can be found the issue of State responsibility, which had been on the agenda as early as in 1954, 1956 – 1961, 1963, 1967, 1969 as well as in the following years. Only in 1996 though, that is after more than forty years (including some periods), the Commission prepared a document called the *Draft Articles on State Responsibility (adopted on First Reading)*. The final wording of the *Draft Articles on Responsibility of States for Internationally Wrongful Acts*¹⁷⁾ was then adopted by the ILC on 9 August 2001. Being aware of the deficiencies of the presented text, the Commission only requested that the General Assembly take note of the draft articles and decide on its application at a later stage. And so it happened (*Resolution 56/83, 2001*); then the session considering it in 2004 (*Resolution 59/35, 2004*) postponed the debate of the issue to its sixty-second session in autumn 2007. It was decided there to postpone the material consideration again to the sixty-fifth session. The importance of this codification effort, although not binding, is not diminished by the fact that most UN member states are unlikely to decide on adoption of the codification convention in the near future. It consists mainly in written expression of customary rules of general international law and so the draft articles are commonly referred to by both state and judicial bodies, including the International Court of Justice.

The situation of another traditional topic, namely the codification of *diplomatic protection*, whose documentation was prepared almost from the begin-

¹⁶⁾ On the contents of the Convention see also CABAN, P. *Jurisdikční imunity států* [Jurisdictional Immunities of States], Praha: CU Faculty of Law, 2007.

¹⁷⁾ Both the texts on draft articles on state responsibility see ČEPELKA, Č., JÍLEK, D., ŠTURMA, P. *Mezinárodní odpovědnost* [International Responsibility], Brno: MU Press, 2003, appendix.

ning by Special Rapporteur John R. Dugard (South Africa), is similar. It is a very old institute which was created in the end of the 18th century. Thus, in the course of two centuries, the *elements of exercise* of diplomatic protection, such as the requirement of exhaustion of local remedies and the question of duration of citizenship status of a natural person or the duration of corporate citizenship of an artificial person whose harm suffered abroad gave rise to the exercise of diplomatic protection, have fully settled and reflected in customary, generally applicable law. The fact of long-term stabilization allows for an assumption that written expression of unwritten, generally applicable *elements* of exercise of diplomatic immunity – possibly contained in the codification convention – will become successful. Consequently it is understandable that in 2006, having incorporated the comments provided by states, the Commission proposed to the General Assembly the elaboration of a convention on the basis of the draft articles on diplomatic protection. There is, on the other hand, a close connection to the codification of State responsibility, so there is a chance that both draft articles will share the same fate.

While in the previous cases we spoke of the codification of generally applicable customary law, the following case is rather different. It is the issue of international liability for injurious consequences arising out of acts not prohibited by international law which had been (although more specified) permanently on the agenda of the Commission from 1978 to 2006. Only in 1997, after the years of “sitting on the fence”, the topic was divided into the situation of preventing the so-called transboundary damage from hazardous activities on the one hand and on the international liability in case of loss from transboundary harm arising out of hazardous activities (Resolution 52/156, 1997). Practical impacts of this conception can be seen mainly in the area of environment and it was promoted by the latest Special Rapporteur P. S. Rao (India). The Commission finished its work on the prevention of transboundary damage from hazardous activities in 2001, but the connected General Assembly Resolution 56/82, 2001 requested that the Commission address another topic, namely international liability in case of loss from transboundary harm arising out of hazardous activities since there was interrelationship between the prevention and liability aspects. The Commission finished its consideration of the given topic in 2006 by formal adoption of a draft text of eight principles of loss distribution with a preamble. There is a little chance that these two drafts will be adopted in conventional form; they are not customary by nature, but the elements of progressive development of law prevail in them.

The issue of nationality of natural persons in relation to the succession of states¹⁸⁾ was the case where the primary aim was not to create a draft conven-

¹⁸⁾ See the *Work of the International Law Commission*, 6th edition (2004), pp. 192-193, 364-372. The Special Rapporteur was the Czech member of the Commission Dr. VÁCLAV MIKULKA.

tion but rather a formally non-binding instrument, which would positively influence the practice of states. The Commission dealt with it from 1997 to 1999 when draft articles were completed and recommended to the General Assembly for adoption in the form of a declaration. The General Assembly then adopted Resolution 55/153 (12 December 2000) with appended articles and called on states to take them into account when resolving the questions of nationality in the context of succession of states.

The issue of reservations to treaties¹⁹⁾ plays a specific role in the activities of the Commission from 1995. Elaboration of this topic, directed by the Special Rapporteur Alain Pellet (France), should result just in a Guide to Practice consisting of guidelines without making any changes (as mere interpretation) to the relevant provisions of the Vienna Convention on the Law of Treaties (1969), namely the formulation of Articles 19 to 23 regulating reservations. This draft has been adopted in the final, second reading at the session of the Commission in 2011.

Another type of result of codification efforts of the Commission is the Draft Code of Crimes against Peace and Security of Mankind, on which the Commission worked for the first time from 1949 to 1954 and then on the new version from 1982 to 1996. The final draft Code was adopted by the Commission in 1996 when the work on the draft Statute of the International Criminal Court (ICC) had already been under way. The General Assembly appreciated the work of the Commission in its Resolution 51/160 (16 December 1996) and recommended the draft Code to the states who participated in the work of the Preparatory Committee for the establishment of the ICC, whose Statute finally became an international treaty (1998) while the Code retained the form of a draft.²⁰⁾

Fragmentation of international law differs significantly from most topics which the Commission has considered over the years.²¹⁾ It does not focus on a specific legal issue or an area of regulation, but it encounters problems which consist in theoretical and ideological sources of the system of international law. That is why the Commission approached this topic in a slightly unusual manner and the product resulting from its efforts was different, too: instead of a draft international convention or at least draft articles, which could over time develop into a new convention, the Commission had from the very beginning intended

¹⁹⁾ Originally called “*The law and practice relating to reservations to treaties*”. The ILC decided to amend the title at its forty-seventh session in 1995.

²⁰⁾ See the *Work of the International Law Commission*, 6th edition. (2004), pp. 88-95.

²¹⁾ The Commission itself declared in its 2000 report that the topic of fragmentation is „*different from other topics, which the Commission has so far considered*“. UN Doc. A/55/10, *Official Records of the General Assembly*, Fifty-fifth session, Supplement No. 10, par. 731.

to produce, and finally produced, just a theoretical study. This study has shown that the Commission has an enormous potential to fulfil itself outside the scope of classic codification. It is a matter for the international community, if it can make full use of the potential.

5. Current trends in the International Law Commission

It shows now that the traditional function of the Commission as a body preparing drafts of codification conventions has been largely exhausted. On the one hand, most areas of general international law, which were convenient for codification, have been covered. On the other hand, the Commission, either upon request of states or on own initiative, has been addressing more and more topics which represent progressive development of international law, sometimes even without any clear connection to the codification of a tiny core of customary rules. This can obviously create a degree of disconcertment.

At present, the Commission has the following topics on the agenda: (1) reservations to treaties (completed in 2011); (2) responsibility of international organizations (probably the most complex topic, completed in 2011); (3) expulsion of aliens; (4) effects of armed conflicts on treaties (completed in 2011); (5) protection of persons in the event of disasters; (6) *aut dedere aut judicare* obligation (7) immunity of state officials from foreign criminal jurisdiction; (8) shared natural resources; (9) treaties over time; and possibly (10) the most-favoured-nation clause.

The look at the number and variety of topics calls for a comment. Firstly, the Commission should not be so autonomous when choosing topics, it should rather respond to the pressing needs of the international community. After all, codification is a demanding legal activity, which should serve the practice. Secondly, regardless of the need to respond to practical tasks, the Commission should not waste its unique quality as a body having general competence, which should be in charge of codification and development of *general international law*. Thirdly, the forms of work and results of the Commission should be adjusted to the topics considered.

Having these points in mind, it is possible to suggest several crucial topics for codification, among them responsibility of international organizations and the effects of armed conflicts on treaties. It is possible to express some doubt (based on previous experience), whether the Commission represents the most convenient forum for the development of international law in the area of human rights and the environment (such as topics 5 and 8). The expertise of the Commission could concentrate on some questions on the borderline between general international law and international criminal law (see topics 6 and 7). The Commission could possibly take over from the General Assembly the much discussed issue of universal jurisdiction.

There are also topics, which – similarly to the fragmentation of international law – deserve to be elaborated in the form of studies, such as treaties over time.

In the future, a research study should focus on the topic of competing jurisdictions of international courts and tribunals. The topic of the most-favoured-nation clause (MFNC) could have the form of a study or recommendation for practice.

In any case, it is inappropriate to talk about the crisis of codification of international law or of the International Law Commission. The Commission needs to look for and find its place under the changed circumstances, when on the one hand the number of classic codification topics diminishes and on the other the amount of intergovernmental and non-governmental bodies participating in the preparation of international instruments increases. The Commission can maintain its identity of a body focused on general international law and at the same time try not to avoid new forms of work. In such case it will maintain its position of the main UN body for the progressive development of international law and its codification.