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**THE ILC'S CHALLENGES OF CODIFICATION IN THE CONTEXT OF THE CHANGING LANDSCAPE OF INTERNATIONAL LAW**

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**I. INTRODUCTION**

1. International law can be considered as the law of the International community, the law which governs relations between States. But it also relates to what International organizations do and increasingly, it concerns individuals, corporations, NGO's and other non-state actors<sup>1</sup>.

International law defines the legal responsibilities of States in their conduct with each other, and the treatment of individuals within State boundaries. Its domain encompasses a wide range of issues of International concern, such as human rights, disarmament, International crime, refugees, migration, problems of nationality, the

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<sup>1</sup> International law is the set of rules generally regarded and accepted as binding in relations between states and between nations. The term was first used by Jeremy Bentham in his "Introduction to the Principles of Morals and Legislation" in 1780. See Bentham Jeremy, *An Introduction to the Principles of Morals and Legislation*, London: T. Payne, 1789, p.6.

International Law serves as a framework for the practice of stable and organized international relations. See Slomanson William, *Fundamental Perspectives on International La*, Boston, USA: Wadsworth, 2011, pp. 4-5.

treatment of prisoners, the use of force and the conduct of war, among others. It also regulates the global commons, such as the environment and sustainable development, International waters, outer space, global communications and world trade<sup>2</sup>.

2. As the world becomes more and more interdependent and complex in the era of globalization and as new institutions are put in place to make international law more effective, international law has become an exciting and expanding field. Never before has it been so relied upon, used and developed. Furthermore, new international law sub-fields, like International human rights, International humanitarian law, International environmental law and International investment law, etc. have become more and more important.
3. Established in 1947 by the United Nations General Assembly, the International Law Commission (ILC) has played an instrumental role in the codification and progressive development of international law over the last seven decades. What progress has been made after 70 years of existence<sup>3</sup>? What will be the new domains in which the Commission has to codify? How to select these new areas and new domains of codification of International law ? And what should be the role of the States in the identification of these new subjects and new topics?
4. First of all, it is essential to give a definition of what is codification of international law? As a matter of fact, "*codification is the process through which rules of law are committed to written form*"<sup>4</sup>. It is usually mentioned in one breath with progressive development. Within the broader topic of the sources of international law, codification holds a peculiar place. The process of codification tends to change the law, because transforming unwritten rules into written rules requires precision, systematization and definition of the relevant terms and rules.

Codification is often seen as beneficial, increasing certainty through the rule of law and the development, coherence and sophistication of international law.

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<sup>2</sup> <http://www.un.org/en/sections/what-we-do/uphold-international-law/>

<sup>3</sup> In accordance with General Assembly resolution 72/116 of 7 December 2017, the International Law Commission held its seventieth session at United Nations Headquarter in New York from 30 April to 1 June 2018 and at the United Nations Office at Geneva from 2 July to 10 August 2018.

The commemoration of the 70th anniversary of the International Law Commission took place on 5 and 6 July at the Palais des Nations in Geneva, Switzerland. The events in Geneva consisted of a solemn meeting and a conference reflecting on the past and future role of the International Law Commission in the progressive development of International law and its codification.

<sup>4</sup> See Bruno Oppetit, *Essai sur la codification*, Paris, PUF 1998.

5. When we scrutinize the Pact of the League of Nations which was signed on June 28th, 1919 and which came into effect on January 10th, 1920, nothing was said on the subject of codification.

It is only the article 13 paragraph 1 of the Charter of the United Nations that provides:  
" 1. *The General Assembly shall initiate studies and make recommendations for the purpose of:*

*(a) promoting international cooperation in the political field and encouraging the progressive development of international law and its codification".*

Codification and development of International Law are two ideas linked to each other.  
" *The codification is an operation of conversion of customary rules in a body of written rules, systematically grouped. The development of the Law is an operation of assertion or consecration of new rules on the basis of the existing law*"<sup>5</sup>.

We can say that the codification regarding international law consists in "*preparing common projects on subjects which are not yet regulated by the international law, or for which international law is not still enough developed in the state practice*"<sup>6</sup>.

In other words, the development of the international law is "*a progressive operation of the law for new requirements and new situations*"<sup>7</sup>.

In 1924, the League of Nations appointed a Committee of Jurists to report to the Council subjects which are ripe for codification<sup>8</sup>. The Assembly decided that a Conference should be held at the Hague for the purpose of codifying the topics of nationality, territorial waters, responsibility of states for the damage done to foreigners in their territories.

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<sup>5</sup> "*La codification est une opération de conversion de règles coutumières en un corps de règles écrites, systématiquement groupées. Le développement du droit est une opération d'affirmation ou de consécration de règles nouvelles sur la base du droit existant*", Nguyen Quoc Dinh Patrick Daillier et Alain Pellet, *Droit international public*, LGDJ, Paris, 1999, p. 332.

<sup>6</sup> Mahiou, Ahmed (1999), « Le paradigme de la codification », in *La codification en droit international*, Société française pour le droit international, Paris, Pedone, p.13

<sup>7</sup> According to Charles de Visscher, codification is « *une opération progressive et plus régulière du droit à des exigences et des situations nouvelles* », Charles De Visscher, "La codification du droit international », in *Recueil des cours de la Haye*, 1925, volume 6, pp. 325-345

<sup>8</sup> Resolution of the Assembly of League of Nations of 22 September 1924 which permitted the creation of a permanent organ of 17 experts called " Committee of the experts " for the codification of international law.

6. After the end of World War II, the General Assembly of the United Nations took the task of encouraging the progressive development of international Law and its codification with absolute seriousness. On 11 December 1946, a Committee for the progressive development of international law and its codification was appointed by the General Assembly. In 1947, the International Law Commission succeeded to it<sup>9</sup>. The purposes of the Commission are the following: promoting the codification of international law and solving problems within both public and private international law. The Commission consists of 34 members elected by the General Assembly. Members act as individuals and not as officials representing their respective states.

Since its creation, the International Law Commission had accomplished huge efforts in order to develop international law within innovative issues through adapting the law to a new and evaluating context<sup>10</sup>.

## II. THE CONTEXT: NEW CHALLENGES FACING INTERNATIONAL LAW

7. The operation of codification is an apparently technical operation but in reality, it is intimately bound to important theoretical debates and to the contradictions of interest, characterizing the international community itself.

Decisive events of political, economic and technical order having upset the fields of concern of the internationalists, added to a context of globalization and extraordinary technological progress had always incited to think about their implications with regard to the codification of the rules of the international law.

It is about a progressive process aimed to realize the balance between the continuity, the amendment and the innovation of international law.

According to Roberto Ago: "*codify the law always means modifying it partially and sometimes even profoundly*"<sup>11</sup>.

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<sup>9</sup> Resolution A/RES/174(II) of the UN/GA of 21 November 1947. The first annual session of the ILC was held on 12 April 1949.

<sup>10</sup> See *The Work of the International Law Commission*, 9th ed., vol.1 and 2 (2017); *The International Law Commission, Fifty Years After: an Evaluation* (2000); *Analytical Guide to the Work of the International Law Commission, 1949–1997* (1998); *Making Better International Law: the International Law Commission at 50* (1998); *International Law Commission on the Eve of the Twenty-first Century* (1997).

This process also tends to adapt the international law to the needs for the International society, to coordinate and harmonize the relations between States, to identify new domains to be codified, to consolidate some rules by adapting them to the new needs of the International society and at the same time to facilitate the knowledge of all these rules.

8. At its first session in 1949, the Commission reviewed 25 topics for possible inclusion in a list of topics for study, on the basis of the Survey of international law prepared by the Secretariat, on the basis of a Secretariat memorandum entitled “*Survey of international law in relation to the work of codification of the International Law Commission*”<sup>12</sup>.

Apart from the surveys, the Commission has held a periodic review of its program of work with a view to bringing it up to date, taking into account General Assembly recommendations and the international community’s current needs and discarding those topics which are no longer suitable for treatment<sup>13</sup>. Such a review has sometimes taken place at the request of the General Assembly<sup>14</sup>.

9. At its first session, in 1949, the Commission reviewed, on the basis of the survey of international law prepared by the Secretariat, twenty five topics for possible inclusion in a list of topics for study. Following its consideration of the matter, the Commission drew up a provisional list of fourteen topics selected for codification, as follows: (1) Recognition of States and Governments; (2) Succession of States and Governments; (3) Jurisdictional immunities of States and their property; (4) Jurisdiction with regard to crimes committed outside national territory; (5) Regime of the high seas; (6) Regime of territorial waters; (7) Nationality, including statelessness; (8) Treatment of aliens; (9) Right of asylum; (10) Law of treaties; (11) Diplomatic

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<sup>11</sup> See Ago, Roberto(1968), “La codification du droit international et les problèmes de sa réalisation”, in *Recueil d’études de droit international en hommage à Paul Guggenheim*. Edited by Maurice Battelli, et al., 93-131. Geneva, Switzerland, Imprimerie de la Tribune de Genève, 1968.

<sup>12</sup> Document A/CN.4/1 (United Nations publication, Sales No. 48.V.1) reissued under the symbol A/CN.4/1/Rev.1 (United Nations publication, Sales No. 48.V.1(1))

<sup>13</sup> See Yearbook of the International Law Commission, Annex 1962, vol. II, document A/5209, paras. 24–62.

<sup>14</sup> For example, in resolution 54/111 of 9 December 1999, the General Assembly encouraged the Commission to proceed with the selection of new topics for its next quinquennium corresponding to the wishes and preoccupations of States and to present possible outlines and related information for new topics to facilitate decision thereon by the Assembly, See *The Work of the international Law Commission*, 9th edition, vol. 1, UN, New York, 2017, p. 35.

intercourse and immunities; (12) Consular intercourse and immunities; (13) State responsibility; and (14) Arbitral procedure.

The Commission has directly or indirectly considered all of these topics, and has done a lot to codify and develop international law<sup>15</sup>.

10. The 1949 list of topics constituted the Commission's basic long-term program of work for more than fifty years. The list was supplemented by the following topics: (15) Draft declaration on rights and duties of States; (16) Formulation of the Nürnberg principles; (17) Question of international criminal jurisdiction; (18) Ways and means for making the evidence of customary international law more readily available; (19) Draft code of crimes against the peace and security of mankind; (20) Reservations to multilateral conventions; (21) Question of defining aggression; (22) Relations between States and international organizations (first and second parts of the topic, the first dealing with the status, privileges and immunities of representatives of States to international organizations, and the second dealing with the status, privileges and immunities of international organizations and their personnel); (23) Juridical regime of historic waters, including historic bays; (24) Special missions; (25) Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations; (26) The Most-favoured-nation clause; (27) Question of treaties concluded between States and international organizations or between two or more international organizations; (28) Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law; (29) The law of the non-navigational uses of international watercourses; (30) Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic

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<sup>15</sup> The Commission has submitted a final report on all of the topics included in the 1949 list, except for the following: Recognition of States and Governments; Jurisdiction with regard to crimes committed outside national territory; Treatment of aliens; and Right of asylum. The first two topics have never been the subject of substantive consideration by the Commission, *per se*. However, the second topic may be viewed as being encompassed within the scope of the topics of "The obligation to extradite or prosecute (*aut dedere aut judicare*)" and "Extraterritorial jurisdiction". The remaining two topics were the subject of partial consideration by the Commission. The topic "Treatment of aliens" was considered by the Commission in the course of its work on the topic "State responsibility," but this work was discontinued. It was also considered, to some extent, by the Commission in connection with its work on the topic "Diplomatic protection," and is being considered as an aspect of the topic "Expulsion of aliens." With respect to the topic "Right of asylum," at the Commission's first session, in 1949, during the discussion of the draft Declaration on Rights and Duties of States, a proposal was submitted to include in the draft Declaration an article relating to the right of asylum. It was finally decided not to include such an article. At a later stage, the topic was specifically referred to the Commission by the General Assembly. At its twelfth session, in 1960, the Commission took note of the General Assembly resolution and decided to defer further consideration of the question to a future session. At its twenty-ninth session, in 1977, the Commission concluded that the topic did not appear at that time to require active consideration by the Commission in the near future, *Ibid*, op. cit, p. 36.

courier; (31) Review of the multilateral treaty-making process; (32) International liability for injurious consequences arising out of acts not prohibited by international law (first and second parts of the topic, the first dealing with prevention of transboundary damage from hazardous activities and the second dealing with international liability in case of loss from transboundary harm arising out of such activities); (33) Reservations to treaties; (34) Nationality in relation to the succession of States; (35) Diplomatic protection; (36) Unilateral acts of States; (37) Responsibility of international organizations; (38) Shared natural resources; (39) Fragmentation of international law: difficulties arising from the diversification and expansion of international law; (40) Effects of armed conflicts on treaties; (41) Expulsion of aliens; (42) The obligation to extradite or prosecute (*aut dedere aut judicare*); (43) Protection of persons in the event of disasters; (44) Immunity of State officials from foreign criminal jurisdiction; and (45) Treaties over time.

11. If we take a look at this long list of domains, we can say, at once, that the International Law Commission did not leave a single area without codification. However, the contemporary World seems to be different nowadays. Lawyers, Academics, Diplomats, judges, (etc.) are facing rapid changes in International relations and in technological capabilities, which often require new and innovative approaches.
12. As a matter of fact, new domains and new actors seem to challenge more and more the International Law Commission to constantly rethink its priorities. Moreover, international law grew to maturity in a century characterized by the two World Wars, the Cold War, colonization and decolonization, the increasing dominance of the West, the advancement of human rights, the imposition of free-market capitalism as the dominant economic model, the consequences of the events of 11 September 2001 and the Arab spring in 2011, the new forms of terrorism and a strong belief in the capacity of humans to domesticate forces of nature through scientific and technological developments.
13. International Law is a byproduct of the environment in which it has evolved. As the world is becoming increasingly globalized and interconnected, different global trends are shaping the international order and raising a new set of challenges that nations can not address in isolation. Some of these challenges are outlined below:

- Increase of stress on the world population due to climate change and environmental degradation ;
- Rising of global inequalities;
- Changing nature of conflicts and violence;
- Appearance of new war forms;
- Multiplication of the subjects and the actors of the international law;
- Changing the world's economic and geopolitical landscape;
- Unprecedented pace of technological development, etc.

This is why the Commission of International Law has to consider how the changing landscape of international law affects its substantive work going forward.

### **III. THE SUBSTANCE: CURRENT TRENDS AND NEW TOPICS TO CODIFY**

14. Even if the International Law Commission takes care primarily of the Public international law, however the Commission codified also in the field of the Private international law according to the paragraph 2 of the first article of the Statute of the International Law Committee<sup>16</sup>. Besides, it is useful to call back that the idea of realizing a Code of International law including all the questions of international law in a systematic way was abandoned for a long time.

But in the vast field of the international law, what are domains to codify and what could be the new domains on which the Commission should put the stress? What are the fields which the ILC has to cover by its codification? What are the priorities and the urgent matter to be considered, because codifying everything is systematically impossible? To answer that, we are going to be inspired by the works of codification of ILC, by the vision of League of Nations and that of the United Nations within the material field of this codification.

15. Under the Statute, the Commission shall consider proposals for the progressive development of international law referred by the General Assembly<sup>17</sup> or submitted by

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<sup>16</sup> According to Article 1 paragraph 2 of the Statute of the ILC: "*The Commission shall concern itself primarily with public international law, but is not precluded from entering the field of private international law*".

<sup>17</sup> According to Article 16 of the Statute of the ILC: "*When the General Assembly refers to the Commission a proposal for the progressive development of international law, the Commission shall follow in general a procedure on the following lines...*".



Members of the United Nations, the principal organs of the United Nations other than the General Assembly, specialized agencies or official bodies established by intergovernmental agreements to encourage the progressive development and codification of international law<sup>18</sup>. With respect to codification, the Commission is required to survey the whole field of international law with a view to selecting appropriate topic<sup>19</sup>. In addition, the Commission may recommend to the General Assembly the codification of a particular topic which is considered necessary and desirable<sup>20</sup>. The General Assembly may also request the Commission to deal with any question of codification which receives priority<sup>21</sup>.

16. Since 1992, the selection of topics by the Commission for its future work has been carried out in accordance with the procedure under which designated members of the Commission, or its Secretariat, write a short outline or explanatory summary on one of the topics included in a pre-selected list, indicating: (i) the major issues raised by the topic; (ii) any applicable treaties, general principles or relevant national legislation or judicial decisions; (iii) existing doctrine; and (iv) the advantages and disadvantages of preparing a report, a study or a draft convention, if a decision is taken to proceed with the topic. A bibliography of relevant and authoritative writings on each topic is usually also included<sup>22</sup>.

It is important to add that in the selection of topics, the Commission has been guided by the following criteria: (i) the topic should reflect the needs of States in respect of the progressive development and codification of international law; (ii) the topic should be at a sufficiently advanced stage in terms of State practice to permit progressive development and codification; (iii) the topic should be concrete and feasible for progressive development and codification; and (iv) the Commission should not restrict itself to traditional topics, but should also consider those that reflect new

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<sup>18</sup> According to Article 17 of the Statute of the ILC: "*The Commission shall also consider proposals and draft multilateral conventions submitted by Members of the United Nations, the principal organs of the United Nations other than the General Assembly, specialized agencies, or official bodies established by intergovernmental agreement 5 to encourage the progressive development of international law and its codification, and transmitted to it for that purpose by the Secretary-General*".

<sup>19</sup> According to Article 18 of the Statute of the ILC: " *1. The Commission shall survey the whole field of international law with a view to selecting topics for codification, having in mind existing drafts, whether governmental or not. 2. When the Commission considers that the codification of a particular topic is necessary and desirable, it shall submit its recommendations to the General Assembly. 3. The Commission shall give priority to requests of the General Assembly to deal with any question*".

<sup>20</sup> According to Article 18 paragraph 2 of the Statute of the ILC.

<sup>21</sup> According to Article 18 paragraph 3 of the Statute of the ILC.

<sup>22</sup> See *The Work of the International Law Commission*, 9th ed., 2017, vol.1, p. 44.

developments in international law and pressing concerns of the International community as a whole<sup>23</sup>.

17. In seventy years, the International Law Commission has faced several challenges, but its results are remarkable<sup>24</sup>. The 1969 Vienna Convention on the Law of Treaties<sup>25</sup> and the 2001 articles on State responsibility for internationally wrongful acts<sup>26</sup>, *inter alias*, are well-known outcomes of its work. The Commission also laid the foundation of the current regime on the law of the sea. Its 1956 articles concerning the law of the sea formed the basis of the first Conference on the Law of the Sea in Geneva in 1958, a process that set the stage for the subsequent negotiation and adoption of the 1982 United Nations Convention on the Law of the Sea. Moreover, without the Commission there may not have been an International Criminal Court. Having worked on International criminal justice since its first session in 1949, the Commission provided the first draft of the Statute that was negotiated during the 1998 Rome Conference<sup>27</sup>.

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<sup>23</sup> *Idem. op. cit.* p. 45.

<sup>24</sup> " *The Commission is foremost among the existing international agencies or organs of an international organization, entrusted with the task of progressive development and codification of international law (...). A number of topics belonging to the main core of substantive international law have been thus progressively developed and codified with initial preparation undertaken by the Commission*", See Sucharitkul S., "The role of the ILC in the decade of International Law", in *Journal of International law*, 15, Special issue 3, 1990, pp. 15-42.

<sup>25</sup> See *Introductory note by Karl Zemanek, Procedural history note and audiovisual material on the Vienna Convention on the Law of Treaties* in the Historic Archives of the United Nations Audiovisual Library of International Law.

Lectures by Annebeth Rosenboom entitled *Practical Aspects of Treaty Law: The Depositary Functions of the Secretary-General and Practical Aspects of Treaty Law: Treaty Registration under Article 102 of the Charter of the United Nations* in the Lecture Series of the United Nations Audiovisual Library of International Law

<sup>26</sup> James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge University Press, 2002).

*Procedural history note and audiovisual material on the Articles on Responsibility of States for Internationally Wrongful Acts* in the Historic Archives of the United Nations Audiovisual Library of International Law;

Lecture by James Crawford entitled *The International Law Commission's Articles on State Responsibility: Past and Future* in the Lecture Series of the United Nations Audiovisual Library of International Law;

Lecture by Giorgio Gaja entitled *The Impact of Security Council Resolutions on State Responsibility* in the Lecture Series of the United Nations Audiovisual Library of International Law;

Lecture by Vera Gowlland-Debbas entitled *The Relationship between Collective Security and State Responsibility* in the Lecture Series of the United Nations Audiovisual Library of International Law;

Lecture by Kenneth Keith entitled *The Rainbow Warrior Case* in the Lecture Series of the United Nations Audiovisual Library of International Law;

Lecture by Alain Pellet entitled *Responsibility in International Law - An Introduction*, in the Lecture Series of the United Nations Audiovisual Library of International Law.

<sup>27</sup> See Crawford James, "The ILC's Draft Statute for an International Criminal Tribunal", in *American Journal of International Law*, 1994, 88(1), 140-152.

Report of the Working Group on the draft statute for an International Criminal Court, Annex to Report of the International Law Commission on the work of its forty-fifth session, UN GAOR, 48th Sess., Supp. No. 10, at 255, UN Doc. A/48/10, 1993.

See especially *Report of the International Law Commission on the work of its forty-second session*, UN GAOR, 45th Sess., Supp. No. 10, at 36-54, paras. 93-157, UN Doc. A/45/10 (1990), for an account of the issues and the history of the ILC's consideration of them. This was in response to an earlier request from the General Assembly

The Commission remains the main standard-setter in many technical areas, from trans-boundary aquifers to state succession. Through these activities, the Commission has laid a solid legal foundation for peaceful international relations.

18. We, however, argue that the ILC should examine more and new topics as the World is facing new challenges and new problems in the field of international law that still remain without any answers. How to proceed?

The valid question has been asked as to what new topics the Commission can undertake in view of the fact that the main core of international law has been more or less exhaustively treated by the Commission in the past seven decades? This question must be answered in the light of the need of the community as expressed through the General Assembly. What should be the priorities?

Are there greater challenges to effectiveness in some areas of international law practice than in others? If so, what are they, and how can they be addressed?

Do the challenges facing international law vary in different parts of the world? And, if so, how might those challenges be met?

The answer is very difficult and the mythology to do so is so hard<sup>28</sup>, however, we suggest some lines of thought, as follow:

#### **A- International security law and prohibition of the use of force:**

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that the Commission consider, in the context of the Draft Code of Crimes, “*the question of establishing an international criminal court or other international criminal trial mechanism with jurisdiction over ... crimes which may be covered under such a code, including ... illicit trafficking in narcotic drugs across national frontiers.*” GA Res. 44/39, para. 1, UN GAOR, 44th Sess., Supp. No. 49, at 311, UN Doc. A/44/49 (1989).

See also *Report of the International Law Commission on the work of its forty-fourth session*, UN GAOR, 47th Sess., Supp. No. 10, UN Doc. A/47/10 (1992). See especially *Report of the Working Group on the question of an international criminal jurisdiction*. This report was made in response to General Assembly Resolution 46/54 (1991), paragraph 3, which asked the Commission to consider further and analyze the issues raised in its report on the work of its forty-second session concerning the question of an international criminal jurisdiction, including proposals for the establishment of an international criminal court or other international criminal trial mechanism in order to enable the General Assembly to provide guidance on the matter; UN GAOR, 46th Sess., Supp. No. 49, at 286, UN Doc. A/46/49 (1991).

<sup>28</sup> According to Sompong Sucharituk, “*The valid question has been asked as to what new topics the Commission can undertake in view of the fact that the main core of international law has been more or less exhaustively treated by the Commission in the past four decades? This question must be answered in the light of the need of the community as expressed through the General Assembly*”, See Sucharitkul S., “The role of the ILC in the decade of International law”, in *Journal of International law*, 15, Special issue 3, 1990, p. 40.

19. First of all, considering the International security law, despite the prohibition on the use of force by the UN Charter, one may wonder why States still resort to this means of addressing international disputes? The explanations vary. Legal experts offer various technical explanations for this development. The first one being that the rules governing the use of force are outdated and do not offer enough protection for States; others blame the "double-standard" of international law which allows rich and powerful States to act with impunity, while weak and poor States are held accountable for their conducts; and some others blame the special status accorded to the five permanent members of the Security Council by the veto vote. Regardless of the divergent viewpoints, all agree that the prohibition of the use of force is less effective than other areas of international law. This is due principally to lack of compliance by some States and lack of enforcement against rich and powerful States. It is also difficult for States not to defend themselves against threatening States when they are attacked<sup>29</sup>. The presence of nuclear weapons makes it difficult for most States to sit and wait for an attack before they respond<sup>30</sup>.
20. Overcoming these new challenges requires making the Security Council work more evenly and responsibly ensuring greater transparency and consistency in the administration of collective security by the United Nations. More importantly, it requires the interpretation of the law prohibiting the use of force in accordance with the reality of the twenty first century. For instance, the ICL has a role in the definition of the exact exceptions of the non use of force principle, their boundaries and their

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<sup>29</sup> According to Mohamed Helal, " *The future of the UN security regime is unlikely to differ from its past and present. American unipolarity and western preeminence are giving way to a non-polar world in which power is dispersed among a few great powers and many major players. As rising powers gain influence, they will reshape the norms of international politics to reflect their values and interests. Whether these emerging powers are liberal democracies or one-party autocracies, they are united by skepticism regarding the humanization of international law and rejection of the attenuation of sovereignty. It is, therefore, probable that state-centric understandings of security will continue to dominate thinking about security affairs, and upholding the security of states, as opposed to individuals, will remain the principle policy purpose of the UN security regime*", Helal Mohamed, "Am I My Brother's Keeper? The Reality, Tragedy, and Future of Collective Security", in *Harvard National Security Journal*, Volume 6, Issue II, 2015, p. 471.

<sup>30</sup> See Helal Mohamed, "Am I My Brother's Keeper? The Reality, Tragedy, and Future of Collective Security", in *Harvard National Security Journal*, Volume 6, Issue II, 2015, pp. 383-473.

Helal Mohamed, "Justifying War and the Limits of Humanitarianism", in *Fordham International Law Journal*, Volume 37, Issue 3, 2014, pp. 551-642.

Jared Genser and Bruno Stagno Ugarte, *The United Nations Security Council in the Age of Human Rights*, 544 pages, Cambridge University Press, 2014.

Jochen Frowein and Nico Krisch, "Introduction to Chapter VII", in *The Charter of the United Nations: a commentary*, (Bruno Simma et al.), 2nd edition, 2002.

Jochen Frowein and Nico Krisch, "Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression", in *The Charter of the United Nations: a commentary*, (Bruno Simma et al.), 2nd edition, 2002.

limits, in order to narrow down the interpretation of Chapter 7 of the UN Charter and in order to have a more peaceful world. The Commission also has to suggest instances where the veto right of the Permanent member states of UN Security council will disappear, especially in the case of mass atrocities.

**B- Humanitarian response to conflicts and disasters:**

21. Nowadays, the nature of the environment in which crises occur and the nature of crises themselves are changing. Moreover, the lines between war and peace or between criminal violence and political violence are increasingly blurred.
22. This is why the development of Human rights and Humanitarian law during the twentieth century has progressively transformed the Westphalian understanding of absolute sovereignty by imposing obligations on states toward individuals under their jurisdiction, culminating with the creation of the International Criminal Court and the coining of the “Responsibility to protect” (R2P) concept. We suggest that the ILC should be inspired by the Evans/Sahnoun Commission of 2001 to establish a Draft Convention on Responsibility to protect, as a new norm of International law that is legally bounding<sup>31</sup>. This Draft Convention should take into account the political considerations, in order to fight the instrumentalism of the concept of Responsibility to protect and its practice<sup>32</sup>.
23. Also the question of Internally displaced Persons' protection seems to be of highest interest nowadays, regarding the acuity and importance of internal armed conflicts and other disasters. Millions of persons are displaced but there is still no universal text to provide this category with protection.

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<sup>31</sup> *The Responsibility to protect, Report of the International Commission on Intervention and State Sovereignty*, December 2001, <http://responsibilitytoprotect.org/ICISS%20Report.pdf>

<sup>32</sup> See Ben Achour Rafâa (sous dir.), *Responsabilité de protéger et révoltes populaires*, éditions de Toulouse, 2013.

De Chazournes Laurence et Condorelli Luigi, « De la responsabilité de protéger ou d’une nouvelle parure pour une notion déjà bien établie », in *Revue générale de Droit international public*, 2006/1, pp. 10-18

Gareth Evans, "The Responsibility to Protect: From an Idea to an International Norm", in *Responsibility to protect: the Global moral compact of the 21st century*, Richard Cooper & Juliette Kohler eds., 2008.

Genser Jared and Cotlir Irwin, *The responsibility to protect: the promise of stopping mass atrocities in our time*, Oxford University Press, 2011.

Stahn C., « Responsibility to protect : political rhetoric or emerging legal norm ? », in *AJIL*, January 2007, vol. 101, n° 1, pp. 99 - 129.

*La Responsabilité de protéger*, Colloque de Nanterre, des 7, 8 et 9 juin 2007, Société française pour le droit international, Université Paris X - Nanterre, Pedone, 2008.

Apart from the Kampala Convention on IDP's of 2009<sup>33</sup> on the African level, there is a lack within the international law on that field<sup>34</sup>. So we think that the ILC can make some efforts to initiate such a universal Draft Convention.

### C- International Responsibility of NGO and Non-state actors:

24. It will not be too long before a third generation of the law of treaties involving non-governmental organizations (NGOs) catches the imagination of the International community<sup>35</sup>. The fourth generation would soon also be in sight covering treaty relations or international agreements where international or multinational enterprises are contracting parties. Also, the international responsibility of non-state actors should be definitely clarified. Between now and then, the Commission would have had several other topics to complete working on.
25. On another hand, the ILC has to emphasis on the international responsibility of the private military companies (PMC) in the time of war and post-conflict time<sup>36</sup>. This

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<sup>33</sup> The Kampala Convention (the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa) is a treaty of the African Union that addresses internal displacement caused by armed conflict, natural disasters and large-scale development projects in Africa. The Convention was adopted in October 2009. The Convention entered into force on 6 December 2012, 30 days after its ratification by the 15th state.

<sup>34</sup> Apart from the UN directives of 1998, there is not a legal bounding text at the international level to protect the internally displaced persons, see <http://www.unhcr.org/fr/protection/idps/4b163f436/principes-directeurs-relatifs-deplacement-personnes-linterieur-propre-pays.html>

<sup>35</sup> See Cedric Ryngaert, "Non-State Actors in International Law: A Rejoinder to Professor Thirlway", in *Netherland International Law Review*, (2017) 64, pp. 155.

Kristjansdottir, Nollkaemper and Ryngaert, *International Law in Domestic Courts: Rule of Law Reform in Post-Conflict States*, Antwerp, 2012.

Nicolas Carrillo Santarelli, "Non-State Actors Human Rights Obligations and Responsibilities under International Law", in *Revista Electronica De Estudios Internacionales*, 2008, pp. 1-10.

Nijman, J. E., *Non-State Actors and the International Rule of Law: Revisiting the "Realist Theory" of International Legal Personality: Non-State Actors in International Law, Politics and Governance Series*. 5, 2010.

Reinisch, Ryngaert and Noortman, *Non-State Actors in International Law*, pp. 406, Oxford, 2015.

Ryngaert, Noortman, and Gal-Or, *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place*, pp. 381, Leiden, 2015.

<sup>36</sup> See Benicsák Peter, *Advantages and disadvantages of private military companies*, Univerzita Obrany V Brně, Economics and Management, 2012/1.

Calazans Erika, *Private military and security companies : The implications under international law of doing business in war*, Cambridge Scholars Publishing, 2016.

Cameron Lindsey, Chetail Vincent, *Privatizing War : Private Military and Security Companies under Public International Law*, Cambridge University Press, 2013.

Cameron Lindsey, *The privatization of peacekeeping : Exploring limits and responsibility under international law*, Cambridge University Press, 2017.

Feldmann William, *Privatizing war : A moral theory (war, conflict and ethics)*, Routledge Publishing, 2016.

Garcia Thierry, *Les entreprises militaires et de sécurité privées appréhendées par le droit*, éd. Mare & Martin, coll. Droit de la sécurité et de la défense, 2017.

Mandel Robert, *Armies without States : The privatization of security*, Lynne Rienner Publishers, London, 2002.

Tokin Hannah, *State control over private military and security companies in armed conflict*, Cambridge University Press, August 2011, 338 p.

kind of companies provides armed combat or security services. They are a type of private security companies. PMCs refer to their staff as "security contractors" or "private military contractors". Private military companies refer to their business generally as the "private military industry" . The services and expertise offered by PMCs are typically similar to those of governmental security, military or police forces, most often on a smaller scale. While PMCs often provide services to train or supplement official armed forces in service of governments, they can also be employed by private companies to provide bodyguards for key staff or protection of company premises, especially in hostile territories. However, contractors who use offensive force in a war zone could be considered unlawful combatants.

A new convention in this field is needed in order to detail international legal obligations and list specific recommendations related to PMC services procurement practices and operational oversight and to clarify the obligations of States pertaining to the hiring of such entities during armed conflicts and in post-conflicts time.

#### **D- The new technologies, Cyber war and Cyber criminality:**

26. The continuing evolution and proliferation of computer technology has created a new class of threats (called "cyber threats") that our societies must confront nowadays. The role of computers in cybercrime is divided into three groups (computer as targets, computers as tools and computers as incidental to offense).

These new cyber threats can be generically defined as using computer technology to engage in activity that can undermine a society's ability to maintain internal or external order.

In the twenty-first century, those bent on undermining a society's ability to maintain order can use the Internet to launch virtual attacks from almost anywhere in the world. These same technologies also brought along high tech criminal activities like Internet fraud, cyber-stalking etc. They also brought along another dimension in the art of war. Moreover, hacktivism is a new term that describes instances where a hack is done for a

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Tzifakis Nikolaos, *Contracting out to private military and security companies*, Centre for European Studies, 2012, 71 p.

Venter Al, *War Dog : Fighting Other People's Wars : The Modern Mercenary in Combat*, CASEMATE Publisher, United States of America, 2008.

Warren Singer, Peter, *Corporate Warriors : The Rise of the Private Military Industry. The Privatization of War*, Ithaca, Cornell University Press, 2003, 330 p.

social or political purpose. Using newer technologies, techniques and tricks, cyber criminals have already taken hacktivism to an advanced level. Hackers are busy trying to access organizations that store critical and confidential data belonging to other organizations, businesses, government agencies, and important individuals. Thus, computer-mediated communication erodes the validity of this assumption because it makes territory increasingly irrelevant. New challenges of international law may arise (questions of applicability of International Humanitarian law, the applicability of IHL to terrorism and counterterrorism, humanitarian access and assistance, etc.) and new solutions should be found to answer these new challenges<sup>37</sup>.

27. That is why, developing precise and adequate cybercrime, cyber war and cyber terrorism Draft Convention should be a very important step in dealing effectively with these three classes of cyber threats<sup>38</sup>. The ILC can initiate such a challenge.

#### **IV. THE METHODS: NEW PARADIGMS FOR SELECTION OF THE TOPICS**

28. Under the Statute, the Commission shall consider proposals for the progressive development of international law referred by the General Assembly (article 16) or

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<sup>37</sup> *International humanitarian law and the challenges of contemporary armed conflicts*, 32nd International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 8-10 December 2015. Document prepared by the International Committee of the Red Cross, 2015.

It is the fourth report on international humanitarian law (IHL) and the challenges of contemporary armed conflicts prepared by the International Committee of the Red Cross (ICRC) for the International Conference of the Red Cross and Red Crescent (International Conference). The first three reports were submitted to the International Conferences held in 2003, 2007 and 2011. These reports aim to provide an overview of some of the challenges posed by contemporary armed conflicts for IHL, to generate broader reflection on those challenges and to outline ongoing or prospective ICRC action, positions and interest.

<https://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts>

<sup>38</sup> See Alberto R. Gonzales et al, *Investigations Involving the Internet and Computer Networks*, US Department of Justice, Washington, DC, 2007

Amber Corrin, "Some key events in the history of cyber warfare", 2009 Available at <http://fcw.com/articles/2009/10/19/feat-dod-cyber-timeline.aspx>

Clint P. Garrison, *Digital Forensic for Network, Internet and Cloud Computing: A Forensic Evidence Guide for Moving Targets and Data*, Elsevier Inc., Burlington, MA, 2010.

Frank E.Hagen, *Introduction to Criminology: Theories, Methods and Criminal Behavior*, Nelson-Hall Publishers, Chicago, 1998

Gerald R. Ferrera et al, *Cyber law: Text and Cases*, Thomson Learning Cincinnati, OH, 2001

Halder, D. & Jaishankar, K, *Cyber crime and the Victimization of Women: Laws, Rights, and Regulations*, Hershey, PA, 2011

Harry D. Raduege, "Succeeding in a cyber world", 14th Annual New York State, *Cyber Security Conference*, Deloitte Center of Cyber Innovation, 2011

Jeffrey Carr, *Inside Cyber Warfare*, 2nd edition, O'Reilly Media, Inc, Sebastopol, CA, 2011



submitted by Members of the United Nations, the principal organs of the United Nations other than the General Assembly, specialized agencies or official bodies established by intergovernmental agreements to encourage the progressive development and codification of international law (article 17 of the ILC statute).

29. With respect to codification, the Commission is required to survey the whole field of international law with a view of selecting appropriate topics. In addition, the Commission may recommend to the General Assembly the codification of a particular topic which is considered necessary and desirable (article 18 of the ILC statute).

In the early years, the Commission received a number of proposals and special assignments from the General Assembly as well as proposals from the Economic and Social Council.

Furthermore, the Commission has held a periodic review of its program of work with a view of bringing it up to date, taking into account General Assembly recommendations and the international community's current needs and discarding those topics which are no longer suitable for treatment.

30. Since 1992, the selection of topics by the Commission for its future work has been carried out in accordance with the procedure under which designated members of the Commission, or its Secretariat, write a short outline or explanatory summary on one of the topics included in a pre-selected list, indicating: (i) the major issues raised by the topic; (ii) any applicable treaties, general principles or relevant national legislation or judicial decisions; (iii) existing doctrines; and (iv) the advantages and disadvantages of preparing a report, a study or a draft convention, if a decision is taken to proceed with the topic.
31. The list of topics is intended to facilitate the selection of topics for inclusion in the Commission's program of work, taking into account views expressed by Governments in the Sixth Committee. The list of topics performs a function similar to the 1949 list which guided the Commission in the selection of topics for more than fifty years. The Commission has recommended that the work on the identification of possible future topics continue to follow this procedure which it considers to be an improvement.

32. In the selection of topics, the Commission has been guided by the following criteria: (i) the topic should reflect the needs of States in respect of the progressive development and codification of international law; (ii) the topic should be at a sufficiently advanced stage in terms of State practice to permit progressive development and codification; (iii) the topic should be concrete and feasible for progressive development and codification; and (iv) the Commission should not restrict itself to traditional topics, but should also consider those that reflect new developments in international law and pressing concerns of the international community as a whole.
33. As a matter of fact, Governments play an important role in every stage of the Commission's work on the progressive development of international law and its codification. Individually, they may refer a proposal or draft convention to the Commission for consideration, furnish information at the outset of the Commission's work and comment upon its drafts as the work proceeds. Collectively, they sometimes decide upon the initiation or priority of the work and always upon its outcome.
34. According to us, these methods of work are very efficient and should be carried on. We suggest that they allow the NGO's (especially the ones specializing in the field of Human rights and Humanitarian Law) to make proposals that can be endorsed by the states, by the 6th Committee and by the ILC. These NGO's differ from the states as they are driven by noble principles and values and have no political agenda. Hence, we think that their proposals are more neutral, objective and useful for humanity and human welfare.

## **V. CONCLUSION AND RECOMMENDATIONS**

35. We can conclude that the current state of international law has to do a self-examination, starting with a series of the following difficult questions:
- How can we adapt international law to a changing international landscape and open it up to actors who did not participate in its development and might have different values and practices?

- Are the international law principles always relevant? Is the systematic reference to these principles undermining them, given a recurrent lack of respect? Could a sparser but more faithful use of principles, adapted to the context, be envisaged?
- Is the request for ever-greater coherence of International Law always good? Could the fragmentation of International Law be valued as strength, given the comparative advantages of its various components?

36. As a matter of fact and since its creation, the International Law Commission has contributed to this marked improvement in contemporary international law, both conventional and customary. In fact and throughout the 70 last years, the Commission had proven its serviceability to the global community, taking into account its resounding achievements in the various fields it has ventured into<sup>39</sup>. It was, it is and it will be always a reference for Lawyers from all over the world, in the field of international law.

The Commission has done much to identify and clarify the rules of international law on so many important topics. Meanwhile, codification and progressive development of international law appear to involve an endless process. "*As long as the international community continues to prosper, as long as mankind persists in its survival, the services of the Commission will continue to be useful and helpful to the international community and to mankind as a whole*"<sup>40</sup>.

37. This does not, in any way, imply that the Commission is beyond reproach, or that it is perfect in every respect. Like most other things associated with human imperfections, the work of the Commission is not infallible, nor beyond improvement. On the contrary, the law itself is not static. It is changing with a dynamic force and so must be the Commission, which each year is reviewing its own methods of work.

Besides, the Commission can fare better once it has mastered the art of balancing the various political interests and the trends that follow the gravitational pull of short-term

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<sup>39</sup> See Aslan Kh. Abashidze and Alexander M. Solntsev, "International Law Commission of the United Nations: Question of Efficiency", in *World Applied Sciences Journal* , 31 (9) pp.1565-1568, 2014.

<sup>40</sup> See Sucharitkul S., "The role of the ILC in the decade of International Law", op. cit, p. 42.

political or material interests of some members to the exclusion of the general interests of the International community<sup>41</sup>.

The ILC has also to be realistic in facing the political will of states. Making a balance between international law and politics is quite difficult. It is the main challenge facing the ILC and the effectiveness of international law. This is should be the way to reach a better world with more peace and security.

39. As recommendations, we can finish with the following ideas:

- ✓ It is important to increase dissemination of international Law including through research, publications and translation of ratified instruments;
- ✓ It is necessary to make International law more visible to developing countries and to make their contributions to International law more visible to the world. On their own, developing countries must do more to popularize international law in their academic curricula, expose their judges more greatly to international law and afford international Lawyers from the developing countries more opportunities in the dissemination and practice of international law.
- ✓ There is need for regular national, regional, and international workshops on the implementation of international law, in order to pursue legal developments in the general interest and for the common benefit of mankind;
- ✓ It is urgent to promote a culture of prevention and a climate of compliance with internal obligations, since the causes of international mass atrocities are complex. We insist on the question of the protection of poor, weak and fragile states through more fair and more realistic legal mechanisms when implementing the international law;
- ✓ We also suggest that the ILC adopt a policy of strategic diversification and serve as the guider of general international law aiming at preserving the legal unity and coherence of international law. Moreover, it is important to integrate a forward-looking vision of the international, both consensual and all-embracing<sup>42</sup>;
- ✓ Several articles of the statute of the ILC envisage the relationship which may be established between the Commission and various other bodies concerned with

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<sup>41</sup> According to Sompong Sucharrituk, " *Time is of essence. A new Commission has to undergo the same process of walking before racing to reach its targets. It could learn from its past experience and mistakes*", See Sucharitkul S., "The role of the ILC in the decade of International Law", op. cit, p. 40.

<sup>42</sup> " *Two elements must coexist to ensure the success of the Commission: legal expertise which is indispensable and the political will to cooperate which should not be found lacking. A balance must be struck between the opposing trends, between diversity and uniformity, between law and justice, and once struck it should be maintained throughout the norm-formulating process of the Commission*", *Ibid.* op. cit. p. 41.

international law<sup>43</sup>. In this sense, the ILC can think of deepening the relation inter-organs by thinking of joint sessions with the commissions of codification of the International law in the continental and regional scale, especially the African Union Commission of International Law (AUCIL) and the Inter-American Juridical Committee, the Asian-African Legal Consultative Committee and the European Committee on Legal Cooperation. They can work together and can inspire each other. Some technical, procedural and material problems within the studies can be raised and such joint sessions can be very helpful to overtake the challenges and find the best solutions;

- ✓ Finally, a more fruitful relationship and cooperation between both the ILC and the Lawyers from all over the world<sup>44</sup> (Academics from Universities, Faculties of Law, Institutes of legal studies, Centers of research on international law, Societies of International Law, Civil society, International Courts and jurisdictions, etc.) is needed in order to have new ideas, innovative topics and up-to date fields of codification of international law.

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<sup>43</sup> Throughout the years, the Commission has maintained a close relationship with the International Court of Justice. The Commission usually invites the President of the Court to give a presentation on the recent activities of the Court. The members of the Commission are given the opportunity to have an exchange of views with the President.

The Commission has also established and maintained cooperative relationships with the African Union Commission on International Law, the Asian-African Legal Consultative Committee, the European Committee on Legal Cooperation and the Committee of Legal Advisers on Public International Law, the Inter-American Juridical Committee. The Commission is informed by representatives of these Committees of their recent activities and the members of the Commission have the opportunity to exchange views with them. For its part, the Commission is often represented by one of its members at the sessions and meetings of those bodies.

The Commission has recommended that relations with other bodies, such as the regional legal bodies, should be further encouraged and developed.

Besides, and for a number of years, the Commission has also held consultations with the International Committee of the Red Cross on topics under consideration by the Commission as well as issues of International humanitarian law.

<sup>44</sup> According to article 25 of the Statute of the ILC, "*1. The Commission may consult, if it considers it necessary, with any of the organs of the United Nations on any subject which is within the competence of that organ*".

Also, the article 26 provides that:

" *1. The Commission may consult with any international or national organizations, official or non-official, on any subject entrusted to it if it believes that such a procedure might aid it in the performance of its functions.*

*2. For the purpose of distribution of documents of the Commission, the Secretary-general, after consultation with the Commission, shall draw up a list of national and international organizations concerned with questions of international law. The Secretary-General shall endeavour to include on this list at least one national organization of each Member of the United Nations.*

*3. In the application of the provisions of this article, the Commission and the Secretary General shall comply with the resolutions of the General Assembly and the other principal organs of the United Nations concerning relations with Franco Spain and shall exclude both from consultations and from the list, organizations which have collaborated with the nazis and fascists.*

*4. The advisability of consultation by the Commission with intergovernmental organizations whose task is the codification of international law, such as those of the Pan American Union, is recognized"*.

Moreover and as the International Law Commission is involved in an ongoing process of consultations, exchange of views and mutual information with scientific institutions and professors of international law, this may keep the Commission abreast of new developments and trends in scholarly research on international law.

## **SELECTIVE BIBLIOGRAPHIE:**

- « Les travaux de la Commission du droit international de l'O.N.U », in *Revue internationale de droit comparé*, 1950, vol. 2, n° 2, pp. 334-338.
- Abashidze (A.) and Solntsev (M.), "International Law Commission of the United Nations: Question of Efficiency", in *World Applied Sciences Journal* , 31 (9), pp. 1565-1568, 2014.
- Ago (R.), "La codification du droit international et les problèmes de sa réalisation." In *Receuil d'études de droit international en hommage à Paul Guggenheim*. Edited by Maurice Battelli, et al., 93–131. Geneva, Switzerland: Imprimerie de la Tribune de Genève, 1968.
- Ago (R.), "Nouvelles réflexions sur la codification du droit international", in *Revue générale de droit international public*, 1988/3, p. 539- 576.
- Alvarez (A.), « Méthodes de la codification du droit international public », in *Annuaire de l'IDI*, 1947, pp. 46 et ss.
- *Analytical Guide to the Work of the International Law Commission*, 1949–1997 (1998).
- Aspremont (J. d'), ""Effectivity" in international law: self-empowerment against epistemological claustrophobia", in *AJIL UNBOUND*, Vol. 108, 2014, pp. 103-105.
- Bierman (N.), "Codification of International Law: A Basis of World Government", *Washington University Law Review*, 1930, volume 15, pp. 151-167.
- Bos (M.), « Aspects phénoménologiques de la codification du droit international public », in *Mélanges Roberto Ago*, 1987, pp.142 et ss.
- Boyle (A.) and Chinkin (C.), *The Making of International Law*. Foundations of Public International Law. Oxford: Oxford University Press, 2007.
- Briggs (H-W), *The International Law Commission*, Ithaca, New York, Cornell University Press, 1965.
- *Commission du droit international et son œuvre*, par United Nations, New York : Nations Unies, 9<sup>e</sup> édition, 2017, tomes 1 et 2.
- *Commission du droit international : Cinquante ans après*, par United Nations, International Law Commission, 2000.
- Cot (J-P), « La codification et la simplification du droit communautaire », in *Mélanges offerts à H. Thierry*, Pedone, 1998, pp.135 et ss.
- Crawford (J.), *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentary*, Cambridge, Cambridge University Press, 2002.
- Daudet (Y.), « Les techniques de codification », in *L'élaboration du droit international public*, Pedone, 1975, pp. 149 et ss.

- De Visscher (Ch.), "La codification du droit international », in *Recueil des cours de la Haye*, 1925, volume 6, pp. 325-456.
- Dehaussy (J.), « La Commission du Droit international des Nations Unies », in *Annuaire français de droit international*, volume 13, 196, pp. 434-445.
- Dhokalia (R- P), *The Codification of Public International Law*, Manchester, UK: Manchester University Press, 1970.
- Document:-A/CN.4/1/Rev.1, *Examen d'ensemble du droit international en vue des travaux de codification de la Commission du droit international* (mémoire du Secrétaire général), Programme de travail, Extrait de *l'Annuaire de la Commission du droit international*, 1949.
- Dupuis (R-J), « La codification du droit international a-t-elle encore un intérêt à l'aube du troisième millénaire ? », in *Mélanges Roberto Ago*, 1987, tome 1, page 270.
- Hafner (G.), « Pros and Cons Ensuing From Fragmentation of International Law », in *Michigan Journal of International Law*, vol. 25, n° 4, 2004, pp. 849-863
- *International Law Commission on the Eve of the Twenty-first Century*, 1997.
- Klein (P.), « La soixante-septième session de l'Institut de droit international », in *Revue belge de droit international*, 1996/1, pp. 266, 292.
- Koskeniemi (M.), "Rapport préliminaire sur la fragmentation du droit international : difficultés découlant de la diversification et de l'expansion du droit international, Groupe d'étude sur la fragmentation", *Commission du droit international*, ILC(CVI)/SG/FIL/CRD.1, 2004, pp. 1-4
- Koskeniemi (M.), *Global Legal Pluralism: Multiple Regimes and Multiple Modes of Thought*, Harvard, Mars 2005.
- *La codification en droit international*, Société française pour le droit international, Paris, Pedone, 1999.
- Lauterpacht (H.), "Codification and Development of International Law", in *American Society of International Law*, 1955, Volume 49, Issue 1 January 1955 , pp. 16-43.
- *Le droit international à l'heure de sa codification. Études en l'honneur de Roberto Ago*, A. Giuffrè, Milan, 1987, 4 volumes.
- *Making Better International Law: the International Law Commission at 50*, 1998.
- Maresh (C.), *La codification du droit international*, Paris, Pedone, 1932.
- Nolte (N.), (Ed.), *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary*; Berlin, 2009.
- Oraisio (A.), " Justifications et enjeux de la codification du droit international public", in *RJOI* Numéro 4 - Année 2003-2004, pp. 25 et ss.
- Padmanabhan (V.), "The Idea of Effective International Law: Continuing the Discussion", in *AJIL UNBOUND* 91, 2014.
- Rama-Montald (M.), "La codification du droit international comme instrument de la justice internationale", in *Revue Les Cahiers de droit*, 2001, 42(3), pp. 711-723.

- Ramcharan (B.), *The International law Commission- Its approach to the codification and the progressive development of international law*, 1977.
- Shabtai (R.), "The International Law Commission 1940-59", in *British Yearbook of International Law*, vol. 36, 1960.
- Shaw (G.-J), "The Idea of Effective International Law", in *ASIL CABLES* (Apr. 11, 2014).
- Slaughter (A-M) and Burke-White (W.), "The future of International Law is domestic (or the European way of Law)", in *Harvard International Law Journal*, vol. 47, number 2, summer 2006, pp.327-352.
- Sucharitkul (S.), "The role of the ILC in the decade of International Law", in *Journal of International law*, 15, Special issue 3, 1990, pp. 15-42.
- Tarun (J.), "Codification and Progressive Development of International Law", in *SSRN Electronic Journal*, January 2006.
- *The International Law Commission, Fifty Years After: an Evaluation*, 2000.
- *The Work of the International Law Commission*, 9th ed., vol.1 and 2, 2017.
- Thirlway (H.), *International Customary Law and Codification*. Leiden, The Netherlands: Sijthoff, 1972.
- Tladi (D.), "Progressive development and codification of International law : the work of the International Law Commission during its sixty-sixth session", in *South African Yearbook of International Law*, vol. 38, pp. 124-143.
- Tomuschat (Ch.), "The International Law Commission: An outdated institution?", in *German Yearbook of International Law*, 2006, pp. 77-105.
- Urrutia (F-J.), « La codification du droit international en Amérique », in *RCADI*, 1929, II, pp.170 et ss.
- Villiger (M.), "The Factual Framework: Codification in Past and Present." In *Customary International Law and Treaties*, pp. 63–113. Dordrecht, The Netherlands: Martinus Nijhoff, 1985.
- Wittich (S.), "The International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts Adopted on Second Reading" *Leiden Journal of International Law* 15(2002), pp. 891–919.