

2019

Introduction

Charles C. Jalloh

Professor of Law and Member, International Law Commission and Chairman of the Drafting Committee, 70th Session; 70th anniversary symposium co-convener, charles.jalloh@fiu.edu

Follow this and additional works at: <https://ecollections.law.fiu.edu/lawreview>



Part of the [Other Law Commons](#)

Online ISSN: 2643-7759

Recommended Citation

Charles C. Jalloh, *Introduction*, 13 FIU L. Rev. 975 (2019).

Available at: <https://ecollections.law.fiu.edu/lawreview/vol13/iss6/4>

This Introduction is brought to you for free and open access by eCollections. It has been accepted for inclusion in FIU Law Review by an authorized editor of eCollections. For more information, please contact lisdavis@fiu.edu.

**INTRODUCTION: THE ROLE AND CONTRIBUTIONS OF THE
INTERNATIONAL LAW COMMISSION TO THE
DEVELOPMENT OF INTERNATIONAL LAW, A SYMPOSIUM
CELEBRATING THE 70TH ANNIVERSARY OF THE ILC**

Charles C. Jalloh*

With the view of promoting international cooperation among States in the political field, the United Nations General Assembly, under Article 13(1) (a) of the *Charter of the United Nations*, was tasked with initiating studies and making recommendations for the purpose of “promoting international co-operation in the political field and encouraging the progressive development of international law and its codification.”¹ This had been a compromise aimed at filling the gap in the Dumbarton Oaks Proposal during the lead up to the San Francisco Conference in relation to the place of international law in the new organization. In seeking to discharge that important responsibility, and based on the initiative of the United States and a subsequent joint proposal with China, Argentina and Saudi Arabia, the General Assembly adopted Resolution 94(I)² during the second part of its first session on December 11, 1946, by which it established the Committee on the Progressive Development of International Law and its Codification based on the realization of the need for “a careful and thorough study”³ of the issue.⁴

The Committee, comprised of seventeen members⁵ under the chairmanship of Sir Dalip Singh (India),⁶ was asked to make

* Professor of Law and Member, International Law Commission and Chairman of the Drafting Committee, 70th Session; 70th anniversary symposium co-convener. Views are personal. Email: jallohc@gmail.com.

¹ U.N. Charter art. 13, ¶ 1(a).

² G.A. Res. 94 (I) (Dec. 11, 1946).

³ *Id.* at 187.

⁴ *Id.*

⁵ The other members of the Committee were: Vladimir M. Koretsky (Soviet Union), Vice-Chairman; Antonio Rocha (Colombia); James L. Brierly (United Kingdom of Great Britain and Northern Ireland); Enrique F. Vieyra (Argentina); W.A. Wynes (Australia); Gilberto Amado (Brazil); Shushi Hsu (China); Osman Ebeid (Egypt); Henri Donnedieu de Vabres (France); J.G. de Beus (Netherlands); Roberto de la Guardia (Panama); Alexander Rudzinski (Poland); Erik Sjöborg (Sweden); Philip C. Jessup (United States of America); Carols Eduardo Stolk (Venezuela); and Milan Bartos (Yugoslavia). Yuen-li Liang (UN Secretariat) served as the Secretary of the Commission, assisted by Ivan Kerno. *See THE INTERNATIONAL LAW COMMISSION 12–21* (Herbert W. Briggs ed., 1965); *see also* 1 UNITED NATIONS, *THE WORK OF THE INTERNATIONAL LAW COMMISSION 17* (9th ed. 2017).

⁶ Int’l Law Comm’n, Rep. on the Work of Its First Session, U.N. Doc. A/CN.4/13 (1949); U.N. G.A.O.R., Rep. of the Sixth Committee, 1st Sess., Supp. No. 12, A/236 (1946).

recommendations on the most effective method by which the General Assembly could (1) encourage the progressive development of international law and its eventual codification; (2) secure cooperation of various UN organs; and (3) enlist national or international bodies to assist with reaching those objectives.

Following their study, the experts recommended the establishment of a *full-time* “International Law Commission”⁷ comprised of persons with recognized competence in the field, sitting possibly in their personal capacity, and reflecting the principal legal systems of the world. The General Assembly endorsed the recommendation through the adoption of Resolution 174⁸ (II) on November 21, 1947, to which was annexed the Statute of the International Law Commission. In an interesting, but important twist, the General Assembly opted for the establishment of a part-time, rather than a full-time body.⁹ The experts were to be independent and to serve in their private capacity, rather than as representatives of States.

The Commission’s mandate was set out in Article 1 of its Statute, which had been drafted by a subcommittee of States in the Sixth Committee and adopted by a large majority of the Sixth Committee on November 20, 1947 (with a vote of 34-4-1) and, ultimately, the General Assembly itself on November 21, 1947 (by a vote of 44-0-6).¹⁰ The new body was to have as its “object the *promotion* of the *progressive development* of international law and its *codification*.”¹¹

Article 15 of the Statute then developed these two ideas further. The former expression was defined to mean “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” (emphasis added).¹² This language essentially contemplated two prongs. First, areas of international law that had not been regulated could be the subject of the Commission’s work in the preparation of draft conventions

⁷ An interesting debate of alternative names included Committee for the Progressive Development of International Law and Its Codification; Commission of Experts in International Law; and Commission of Jurists. Each of these were rejected for different reasons: the first was deemed lengthy/unwieldy; second, though short, used the word ‘experts’ which, in UN practice, implied a lesser status; and the word ‘jurist’ was not acceptable to English lawyers. The compromise, which obtained unanimous support, was advanced by Prof. Brierly.

⁸ G.A. Res. 174 (II) (Nov. 21, 1947).

⁹ Comm. on the Progressive Development of International Law and Its Codification, Rep., ¶ 6, A/331 (1947). The Committee was established pursuant to G.A. Res. 94 (I) (Dec. 11, 1946).

¹⁰ All are discussed in note 5, *supra* at 18–21.

¹¹ G.A. Res. 174 (II) (Nov. 21, 1947), as amended by G.A. Res. 485 (V) (Dec. 12, 1950), G.A. Res. 984 (X) (Dec. 3, 1955), G.A. Res. 985 (X) (Dec. 3, 1955), G.A. Res. 36/39 (Nov. 18, 1981), Statute of the International Law Commission, art. 1(1).

¹² U.N., *About the Commission*, International Law Commission, <http://legal.un.org/ilc/work.shtml> (last updated July 31, 2017).

for consideration by States. Similarly, where there was *some* but not *sufficient* State practice, the Commission could address itself in that regard as well. Only the General Assembly could formally move for such work.

The phrase “codification of international law”¹³ was understood to be a specific reference to “the *more precise formulation* and *systematization* of rules of international law in fields where there already has been extensive State practice, precedent and doctrine.”¹⁴ By its plain language, “for convenience of reference,”¹⁵ the formulation of rules of international law could take place under this part of the Commission’s mandate. This, however, did not mean that the Commission was limited, even under its codification mandate, to the law as it existed as manifested in State practice, precedent, and doctrine. Allowance for some change was implied in the use of the terms “more precise” to qualify the word “formulation.” That is to say, formulation of the law as it existed in codification recognized the possibility of tweaking that law to more completely frame or systematize rules of international law. Indeed, in some of the initial draft State proposals for what would eventually become the statutory mandate of the Commission, the language of “development,” “modifications,” and “revisions” of rules of international law and international morality had been included and affirmatively supported.¹⁶

The report of the committee of experts was even clearer. As they put it, after adopting the essence of paragraph seven, which had inspired the text of Article 15 defining codification, it was explained that

[f]or the codification of international law, the Committee recognized that no clear-cut distinction between the formulation of the law as it is and the law as it ought to be could be rigidly maintained in practice. It was pointed out that in any work of codification, the codifier inevitably has to fill in gaps and amend the law in the light of new developments.¹⁷

The sole dissent, of the Swedish member, Mr. Erik Sjöborg, is also instructive. He argued that it was not advisable to draw a distinction between “matters that have already been regulated in substance by international law and matters which have not yet been so regulated,” since in the end, codification in the form of a draft convention was the only method by which

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See, in this regard, the Liberia and Australia proposals, but also, the proposals of Belgium, Egypt and Lebanon. All are discussed *supra* note 5.

¹⁷ Comm. on the Progressive Development of International Law and Its Codification, Rep. on Its Second Session, U.N. Doc. A/AC.10/SR.24, at 14 (1947). The Committee was established pursuant to G.A. Res. 94 (I) (1946).

to render rules binding upon States.¹⁸ He found such a distinction purely theoretical, pointing out that, in practice, it had not been borne out by, for instance, the 1930 Hague Conference. Indeed, “this distinction cannot be maintained without meeting difficulties which are both unnecessary and insurmountable.”¹⁹ Thus, to him, the same method of work should be adopted in respect of “both kinds of matters, as was done in the past.”²⁰

Yet, with Mr. Sjöborg having lost the argument, the views of the majority of the Committee experts also eventually prevailed at the subcommittee, committee, and General Assembly levels. So that the statutory text reflecting the majority view emphasized the apparently distinctive character of the two concepts. In this vein, in relation to the notion of “progressive development” and “codification,” additional statutory provisions (Articles 16 and 17, and Articles 18–23, respectively) were inserted and fleshed out the general procedures that the Commission shall follow in carrying out each of its statutory responsibilities.²¹ Those clauses contemplated different initiative for the relevant work, with progressive development proposals to emanate from the General Assembly on the one hand, and on the other hand, codification projects contemplated as originating from the Commission. States and UN organs could also send proposals or draft conventions to the Commission subject, of course, to its own further decision on what to do with those proposals.

In its practice, the Commission initially sought to adhere to the distinction between the progressive development of international law and the codification of international law found in the Statute. There had already been an earlier disagreement, even before it was established, whether as a general matter, the ILC was competent to initiate studies or engage in progressive development projects without prior General Assembly requests to that effect. A minority view of three out of fifteen members took the position that, with the responsibility being one entrusted to the General Assembly, the ILC was “constitutionally precluded from making recommendations to the General Assembly”²² other than those referred to it by the latter itself.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ G.A. Res. 174 (II) (Nov. 21, 1947), amended by G.A. Res. 485 (V) (Dec. 12, 1950), G.A. Res. 984 (X) (Dec. 3, 1955), G.A. Res. 985 (X) (Dec. 3, 1955), G.A. Res. 36/39 (Nov. 18, 1981), Statute of the International Law Commission, arts. 16, 17, 18–23.

²² United Nations, *Report of the Commission on the Progressive Development of International Law and its Codification on the Methods for Encouraging the Progressive Development of International Law and Its Eventual Codification*, 41 AM. J. INT’L L. 18, 22 (1947).

But as it began to delve deeper into its work program, it became increasingly apparent that there could not be as clear-cut a distinction between “progressive development” and “codification” as a simple textual reading of the Statute implied. The Commission soon moved towards a more nuanced understanding that despite the apparent distinction advanced by its founding Statute, the two concepts of codification and progressive development overlapped to such an extent that it was hard to draw a neat line separating them. Practice had confirmed that the more precise formulation and systematization of an existing rule could easily lead to the conclusion that another new and complementary rule should be suggested for consideration by States. Thus, far from the two forms being mutually exclusive, as was apparently formally envisaged by the founding instrument, they were intertwined, interdependent, and indivisible.

Consequently, by the end of its first decade, the Commission had begun to develop and ultimately settled on a so-called “composite idea”²³ of its mandate. It, thus, drew freely on aspects of both progressive development and codification to elaborate international legal rules, guided only by the specific needs of the project under consideration. By 1996 when it celebrated its 50th anniversary, and upon the special invitation of the General Assembly to engage in self-reflection, the Commission’s review of its mandate and working methods concluded that the “distinction between codification and progressive development in its statute is difficult, if not impossible, to draw in practice.”²⁴ The General Assembly has not taken this recommendation. The experience of the Commission had proven, after about 50 years, part of the impressions of the Swedish expert committee member. In what would have been a sort of victory for his position, which fell short because the General Assembly did not adopt it, the Commission even suggested that the formal distinction between codification and progressive development could, in its view, be eliminated in any future review of its constitutive document.²⁵

The Commission has gone on to play a vital role in the development of international law. The Commission, which compared to the time of writing was set up at a time of great optimism in the promise of multilateralism and international law in promoting the peaceful conduct of inter-State relations, has made some seminal contributions—as several States have noted during

²³ Int’l Law Comm’n, Rep. on the Work of Its Forty-Eighth Session, ¶ 157, U.N. Doc. A/51/10 (1996).

²⁴ *Id.* at ¶¶ 147(a), 156–59.

²⁵ *Id.*

the 2018 commemoration events²⁶ and in the October 2018 debate.²⁷ The Commission's work has formed the basis for many international law instruments, and in some cases, its draft conventions have set the benchmark for interstate regulation of particular areas of the field. These include the law of the sea,²⁸ the law of treaties,²⁹ diplomatic and consular relations,³⁰ international criminal law,³¹ and international environmental law.³²

But the Commission's influence does not end with the formal adoption of treaties as such. In fact, some of the Commission's most important contributions, for instance its nearly 50-year effort on the law of state responsibility, has not yet been transformed into a multilateral convention. The work still stands as the most widely accepted legal statement of the general rules of responsibility of States for internationally wrongful acts. Even if, admittedly, there maybe one or two areas that have been contested. In some respects, though the matter is still before the Sixth Committee, the existing work of the Commission has arguably had equal or perhaps even

²⁶ Int'l Law Comm'n, Rep. on the Work of Its Seventieth Session, ¶¶ 334–62, U.N. Doc. A/73/10 (2018); see also U.N. G.A., Rep. of the Int'l Law Comm'n on the Work of Its Seventieth Session (2018), Topical Summary of the Discussion Held in the Sixth Committee of the G.A. During Its Seventy-Third Session, Prepared by the Secretariat, ¶ 87, U.N. Doc. A/CN.4/724 (2019).

²⁷ See U.N. Sixth Comm., 72nd Sess., 18th mtg., U.N. Doc. A/C.6/72/SR.18 (Oct. 23, 2017); U.N. Sixth Comm., 72nd Sess., 19th mtg., U.N. Doc. A/C.6/72/SR.19 (Oct. 24, 2017); U.N. Sixth Comm., 72nd Sess., 20th mtg., U.N. Doc. A/C.6/72/SR.20 (Oct. 25, 2017); U.N. Sixth Comm., 72nd Sess., 21st mtg., U.N. Doc. A/C.6/72/SR.21 (Oct. 25, 2017); U.N. Sixth Comm., 72nd Sess., 22nd mtg., U.N. Doc. A/C.6/72/SR.22 (Oct. 26, 2017); U.N. Sixth Comm., 72nd Sess., 23rd mtg., U.N. Doc. A/C.6/72/SR.23 (Oct. 27, 2017); U.N. Sixth Comm., 72nd Sess., 24th mtg., U.N. Doc. A/C.6/72/SR.24 (Oct. 27, 2017); U.N. Sixth Comm., 72nd Sess., 25th mtg., U.N. Doc. A/C.6/72/SR.25 (Oct. 31, 2017); U.N. Sixth Comm., 72nd Sess., 26th mtg., U.N. Doc. A/C.6/72/SR.26 (Nov. 1, 2017).

²⁸ The Commission produced four treaties that led to the completion of several treaties in the area of law of the sea. They were the Convention on the Territorial Sea and the Continuous Zone, Apr. 29, 1958, 516 U.N.T.S. 205; Convention on the High Seas, Apr. 29, 1958, 450 U.N.T.S. 82; Convention on Fishing and Conservation of the Living Resources of the High Seas, Apr. 29, 1958, 559 U.N.T.S. 285; Convention on the Continental Shelf, Apr. 29, 1958, 499 U.N.T.S. 311. An optional protocol concerning the compulsory settlement of disputes was also concluded. These addressed many key issues and would later inform the negotiation of the single United Nations Convention on the Law of the Sea, Nov. 16, 1994, 1833 U.N.T.S. 3.

²⁹ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

³⁰ Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95; Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261.

³¹ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3; *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*, [1950] 2 Y.B. Int'l L. Comm'n, ¶ 97; see also *Draft Code of Crimes against the Peace and Security of Mankind*, [1996] 2 Y.B. Int'l L. Comm'n 30; *Draft Statute for an International Criminal Court*, [1994] 2 Y.B. Int'l L. Comm'n 20.

³² See, e.g., *Draft Articles on the Law of Transboundary Aquifers*, [2008] 2 Y.B. Int'l L. Comm'n ¶ 97; G.A. Res. 51/229, Convention on the Law of the Non-navigational Use of Watercourses (May 21, 1997). The Commission has also done work on other environmental issues, for example, on shared natural resources and the prevention of transboundary damage from hazardous activities and related questions of liability, protection of the atmosphere, and protection of the environment in relation to armed conflicts.

greater influence than if it had been transformed into a treaty.³³ In addition, it has made contributions to the development of the rule of law in international relations. Further, the Commission's work has also played an influential role in enhancing greater understanding and appreciation of the place of international law as an instrument of stability and predictability to guide inter-State relations, and ultimately, contributes to enhancing the prospects for peace in international affairs.

Today, the work of the Commission continues to be an authoritative reference for legal advisers to States and international and regional organizations, judges in national and international courts and tribunals, advocates, practitioners, and students of international law. Indeed, as former UN Secretary-General Kofi Annan observed twenty years ago during the fiftieth anniversary, the Commission has been "instrumental in fostering aspects of law which subtly but undeniably pervade many different areas of international life."³⁴

* * *

Two thousand eighteen marked 70 years of the ILC. The Commission held official commemorative events in Geneva, and twenty years after it last did so, it also sat in New York for a half session to celebrate with the United Nations Member States. Florida International University, a public university based in Miami, Florida, USA, seems to have convened the only international symposium sponsored by an academic institution to commemorate the occasion. We felt that a 70th birthday, especially for an important institution like the Commission, was a crucial juncture that marked an opportunity for collective reflection. On the accomplishments of the past. The challenges of the present. And the prospects for the future. I am therefore grateful for the collaboration with the FIU Law Review to convene this symposium highlighting the work of the Commission based on the theme: *The Role and*

³³ See generally References found in the decisions of the International Court of Justice, the International Tribunal for the Law of the Sea; the International Criminal Court; panels of the World Trade Organization; International Arbitral Tribunals; the African Court on Human and Peoples' Rights; the African Commission on Human and Peoples' Rights, the European Court of Human Rights; the Inter-American Court of Human Rights; the Caribbean Court of Justice; the Economic Community of West African States Court of Justice; and the General Court of the European Union. For the specific references in the context of specific cases, see the Rep. of the S.C., UN Doc. A/74/83 (2019). Together, this and four earlier reports compiled by the Secretary-General at the request of the General Assembly in 2007, 2010, 2013, and 2016 suggest considerable reliance on the draft articles.

³⁴ UNITED NATIONS, THE INTERNATIONAL LAW COMMISSION FIFTY YEARS AFTER: AN EVALUATION viii (2000); see also JAMES CRAWFORD, THE INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT AND COMMENTARIES (2002).

*Contributions of the International Law Commission in the Past/Next 70 Years: Codification, Progressive Development, or Both?*³⁵

We mainly sought to achieve three main goals with this symposium, which took place on October 26 and 27, 2018, on the Modesto Maidique Campus in Miami, Florida. First, to offer a platform for leading scholars and practitioners of international law from the United States and around the world, including members of the Commission and legal academics, to visit the cosmopolitan and outward looking city of Miami to discuss how the foundational pillars of “progressive development” and “codification” of international law took concrete expression in the mandate *and* practice of the Commission. How have these two statutory pillars influenced or shaped the ILC’s work over the past decades? In this regard, we aimed to review at least some of the key accomplishments of the past 70 years, to identify their distinctive features, as well as celebrate the resulting contributions to the establishment of a rule-based international legal order.

Second, and focusing more on the present, we sought to initiate a debate of the Commission’s role in the context of a contemporary international law environment characterized by a wide variety of ad hoc and permanent law-making processes. In this regard, keeping in mind its unique role as a general Commission, we invited a discussion on its inner workings since the outcomes of work are a result of those processes. This included topic selection, working methods, and other issues, and asked questions whether there might be ways those could be improved. Big picture issues, which we invited the experts to ponder, included whether the ILC could strike a better balance between “traditional” and “newer” topics, between “progressive development” and “codification,” between maintaining stability and

³⁵ Articles contributed by symposium guests include the following: Danae Azaria, *The International Law Commission’s Return to the Law of Sources of International Law*, 13 FIU L. REV. 989 (2019); Elena Baylis, *The International Law Commission’s Soft Law Influence*, 13 FIU L. REV. 1007 (2019); Patrícia Galvão Teles, *The ILC’s Past Practice on Progressive Development and Codification of International Law—An Empirical Analysis Focusing on the Law of the Sea, Law of Treaties and State Responsibility*, 13 FIU L. REV. 1027 (2019); Michael Imran Kanu, *70 Years of the International Law Commission, Its Future Role in the Changing Landscape of International Law and the Small-Developing States Nexus*, 13 FIU L. REV. 1043 (2019); Jeffrey S. Morton, *Reflections on the International Law Commission and Its Role in World Affairs*, 13 FIU L. REV. 1065 (2019); Nilüfer Oral, *The International Law Commission and the Progressive Development and Codification of Principles of International Environmental Law*, 13 FIU L. REV. 1075 (2019); Arnold N. Pronto, *Codification and Progressive Development of International Law: A Legislative History of Article 13(1)(A) of the Charter of the United Nations*, 13 FIU L. REV. 1101 (2019); Pavel Šturma, *The International Law Commission Between Codification, Progressive Development, or a Search for a New Role*, 13 FIU L. REV. 1125 (2019); Dire Tladi, *Codification, Progressive Development, New Law, Doctrine, and the Work of the International Law Commission on Peremptory Norms of General International Law (Jus Cogens): Personal Reflections of the Special Rapporteur*, 13 FIU L. REV. 1137 (2019); Siegfried Wiessner & Christian Lee González, *The ILC at Its 70th Anniversary: Its Role in International Law and Its Impact on U.S. Jurisprudence*, 13 FIU L. REV. 1151 (2019).

innovating change, and if so, how far it can realistically be expected to go as a subsidiary body of independent legal experts serving the General Assembly. After all, the latter holds the primary function of fostering international cooperation in the political field and initiating studies and making recommendations for the purpose of progressively developing international law.

Third, and looking forward especially at this historic moment of seeming pushback at international law and international institutions, the symposium participants were asked to imagine how international law could develop in the next 70 years and the role that the Commission could play in that regard. Can the Commission enhance its relevance by being flexible and creative in the interpretation of its statute? Since proposals for amendments of its statute have met with only limited success to date, could it adjust its practices to better meet the current needs of states and the international community? What types of pressing international legal issues are confronting the world today that the Commission could examine? Could there be ways to strengthen its contributions to the international community and to the advancement of the rule of international law, by for instance, enhancing its cooperation with the Sixth Committee, the specialized UN agencies, or regional or intergovernmental bodies?

To at least begin to take up some of these overarching themes, we were fortunate to have an “A list” of international lawyers at the symposium.

The symposium opened with words of welcome from Dean Antony Page, the third dean of FIU’s public law school, as well as from the present author in his capacity as co-convenor of the symposium.

Turning to the substance, the first speaker on the theme of the conference, was Judge Abdul G. Koroma. Judge Koroma served on the bench of the International Court of Justice in The Hague for 18 years.³⁶ He participated in many of the Court’s leading cases, at a time when The Hague Court’s docket expanded significantly. He was a fitting speaker, as Dr. Olufemi Elias, current Registrar of the International Mechanism for International Criminal Tribunals noted in his introduction of Judge Koroma. Not only for his service and contributions to international law at the ICJ and in other capacities, including as permanent representative to the United Nations, but especially so because also of his role as a former member and one-time Chair of the Commission. Judge Koroma, who was the first Sierra Leonean jurist to serve on the Commission, gave an inspiring opening address on the role of the ILC in shaping international law over the past seven decades.

³⁶ See, in this regard, *SHIELDING HUMANITY: ESSAYS IN INTERNATIONAL LAW IN HONOUR OF JUDGE ABDUL G. KOROMA X–XV* (Charles C. Jalloh & Olufemi Elias eds., 2015).

After the opening speech, we then turned to the first panel. This session, whose speakers were Professor Jeffrey Morton (Florida Atlantic University), Professor Phoebe Okowa (Queen Mary, University of London), and Mr. Arnold Pronto (United Nations, Codification Division), discussed the original mandate of the Commission, as envisaged by the Committee of Seventeen, which prepared recommendations for the UN General Assembly setting forth options for the establishment, composition, and functioning of the Commission. The panel, which was chaired by Professor Kristen Boon (Seton Hall University) examined the original meaning(s) of “progressive development of international law” and its “codification,” as envisaged by the legal experts, and by States, and as ultimately manifested in the Statute of the Commission adopted in 1947.

The second panel, chaired by Professor Dapo Akande (Oxford University), examined the Commission’s past practice to determine whether it tended to distinguish between the criteria of its mandate and if so, whether the practice has been reflected in the Commission’s contributions on key topics. The panel, composed of Professor Patricia Galvão Teles (Autonomous University of Lisbon and ILC), Professor Donald McRae (University of Ottawa and formerly ILC), and Professor Bernard Oxman (University of Miami), also reflected on the lessons that can be learned from the ILC’s past work on *general international law* including in relation to the law of treaties, the law of the sea, and the law of State responsibility.

The first day’s third panel consisted of Professor Claudio Grossman Guiloff (American University and ILC), Professor Nilüfer Oral (Istanbul Bilgi University and ILC), and Professor Ki Gab Park (Korea University Seoul and ILC). Chaired by Professor Larissa van den Herik (Leiden University), the panel examined the ILC’s past practice on progressive development of international law and its codification in *specialized* areas of international law. Several examples of the contributions of the Commission in the areas such as international criminal law, international environmental law, and immunity of State officials from foreign criminal jurisdiction were discussed.

The final panel of the first day, chaired by Professor Noah Weisbord (Queen’s University, Canada), was composed of Associate Professor Danae Azaria (University College London), Professor Charles Jalloh (FIU and ILC), and Professor Siegfried Wiessner (St. Thomas University). The panelists reflected on the key contributions of the Commission that led to widely known global treaties, such as the law of the sea, and more recent work of the Commission and how those appear to have been received and used in national and international courts.

The next day, the panelists reconvened to focus on the present and the future of the Commission. The pace for the substantive discussion was set by

Professor Pavel Sturma. Mr. Sturma, as I noted in my introduction of him, was not only a member of the Commission and its special rapporteur for the topic succession of States in respect of State responsibility but was also first vice-chair of the Commission for the Seventieth session. He gave a thoughtful conference keynote speech under the theme “The Contributions of the International Law Commission to the Development of International Law: Codification, Progressive Development, or Both?”

The first panel of the second day was chaired by Emeritus Professor Linda Carter (Pacific McGeorge University), and consisted of Professor Concepción Escobar Hernandez (Special Rapporteur, ILC topic “immunity of State officials from foreign criminal jurisdiction”), Ambassador Marja Lehto (Special Rapporteur, ILC topic “protection of the environment in relation to armed conflicts”), and Professor Dire Tladi (Special Rapporteur, ILC topic “peremptory norms of general international law—*jus cogens*”). The three current Special Rapporteurs of the Commission addressed the current topics that the Commission had entrusted to them. They were invited to discuss whether the symposium theme of progressive development and codification arises in their topics, and if so, their own individual approaches to them. They also examined whether it could be said that there was a single approach to the mandate of the Commission considering the specific draft articles, guidelines, conclusions, and principles proposed on topics such as immunity of State officials from foreign criminal jurisdiction, protection of the environment in relation to armed conflicts, and peremptory norms of general international law (*jus cogens*).

The speakers in the sixth panel, which was chaired by Judge Abdul Koroma (formerly International Court of Justice), were asked to address the question how well equipped the Commission was to perform its task. That question seemed best addressed from the perspective of States, for which reason, current and former Sixth Committee delegates were invited to discuss the issue. Ms. Catherine Boucher (Permanent Mission of Canada to the UN), Ambassador Osman Kamara (formerly Sierra Leone Permanent Mission to the UN and the AU), and Mr. Patrick Luna (Permanent Mission of Brazil to the UN). All these speakers spoke in their personal capacities. The panel also considered working methods and how the professional background and the lack of adequate gender composition of the ILC membership could have implications for its work. Other questions included the role of special rapporteurs, the drafting committee, working groups and study groups. Could those be improved? Additional issues that came up included structural, budgetary, and other constraints that affected the working methods and efficiency of the Commission including the role of the Secretariat.

The next panel, chaired by Professor Charles Jalloh (FIU and ILC), consisted of the following speakers: Professor Elena Baylis (University of

Pittsburgh), Professor Eirik Bjorge (University of Bristol Law School), and Professor Juan Jose Ruda Santolaria (Ministry of Foreign Affairs of Peru and ILC). This panel, comprised of academics and members of the Commission, looked to the future and discussed issues such as possible types of topics that the ILC ought to continue working on in the next 70 years. The panel also discussed the role that States and international organizations could play in identifying topics for the Commission, and the possible influence that may be derived from forms of output (“soft law”) that do not constitute classic codification in the form of articles such as principles and guidelines. Consideration was also given to how the Commission could potentially improve its relationship with States, especially the Sixth Committee of the General Assembly. The participants considered whether the Commission could strategically develop closer relationships of cooperation with regional and other UN or other legal expert bodies and suggestions were made on what form, if pursued, such collaborations could take.

The final panel brought together the two days of stimulating discussion by reflecting on the contributions of the ILC to the Development of International Law. While all presenters and participants at the conference were invited to participate, and did participate, the panelists were Professor Dapo Akande (University of Oxford), Professor Charles Jalloh (FIU and ILC), and Professor Dire Tladi (University of Pretoria and ILC). The high-level discussion was then followed by closing remarks and the customary courtesies.

In terms of the content of the rich discussions, during the highly stimulating two days of the symposium, we are pleased to present a collection of articles covering a wide range of substantive issues. I will not attempt to summarize them here. What can be said is simple enough. That is, that they are all united by consideration of the common theme of the symposium. These papers were primarily the basis of the symposium discussions. But are also intended to contribute to the literature on the accomplishments, and challenges, of the Commission in its seventieth anniversary year. They hopefully will give a flavor for the rich debate we had in Miami. We are also optimistic that the papers might serve to provoke readers, including academics and members of the Commission, to further reflect on its important mandate and contributions to the promotion of the progressive development of international law and its codification.

* * *

Before closing, allow me to take a moment to thank all the academic colleagues, as well as friends and colleagues from the Commission, who agreed to serve as panelists, chairs, and moderators, for all their efforts that

2019]

Introduction

987

helped make this symposium, not only possible, but also a big success. We are grateful to each of them for taking time out of their busy schedules to participate in our symposium. They were a diverse group, from both within and from outside the Commission, including the representatives of States, legal academia, and civil society. They were all united by a common bond of an interest in international law generally and the role of the Commission in particular—whether in the past, the present, or the future. Regrettably, due to funding constraints, as much as we wanted to, we were not able to invite each member of the Commission though we were pleased that all four current female members could participate. I hope those colleagues we could not invite would understand, and certainly look forward to other opportunities to engage with them on the theme of the symposium in the future. The views, as can be expected of an anniversary symposium, were celebratory but also constructively critical where that was felt to be deserved. It goes without saying all perspectives were expressed in the personal capacity of all the participants.

I also wish to acknowledge and thank the Dean of the College of Law, Antony Page, who provided the generous funding that made the symposium possible in the first place as well as his predecessor, Acting Dean Tay Ansah, who gave the initial approval. Associate Professor Eric Carpenter, the faculty advisor to the law review, supported the idea as soon as it was proposed. A number of excellent staff and administrators at FIU Law helped with the organizing, marketing, and logistics. My deep gratitude to each of them. Though this was not an official Commission or UN event, and they were not involved in planning the conference, the Secretariat of the Commission, under the leadership of Dr. Huw Llewellyn, helped to disseminate information and increase awareness of this symposium through the Sixth Committee website of the General Assembly. Mr. Arnold Pronto ably represented the Secretariat on the first panel. I am grateful to them all.

But the biggest thank you goes to all the *FIU Law Review* student editors and assistant editors for their dedication and hard work in hosting the symposium. In this regard, though in many ways the success was a result of collective efforts of many, I hope they will forgive me if I single out for special mention Mr. Adrian Karborani, Editor-in-Chief of the Law Review, and Federica Vergani, Symposium Editor, both from the J.D. class of May 2019. They worked very hard and executed their tasks with impressive professionalism and dedication. For that, we are all very grateful. Finally, I thank Ms. Cecilia Ruiz Lujan, Ms. Jennifer Triana, and Ms. Ashira Vantrees, all J.D. candidates at FIU Law and my current research assistants, for their excellent help with the footnotes.