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Contribution of U.N.O in the Codification of Modern International Law: An Analysis

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ABSTRACT

One of the defects of International Law is obscurity and uncertainty. Codification not only makes the rules clear and certain but also reconciles conflicting and divergent views. Codification means systematization of or reducing the whole body of rules into code in the form of enacted law. It enhances the efficacy of International Law by increasing its binding force. It will be easier and convenient to amend the codified International Law so as to keep it at pace with the tide of time. The history of codification of International Law dates back to the 18th century when idea for codification was conceived by Jeremy Bentham. Later on, several declarations and conferences held on warfare, neutrality etc. proved to be significant. Much impetus was given to the process of codification under League of Nations. But, such efforts faded away as they were not able to avoid World War II however, they provided incentives to set forth the stage for the codification of International Law. When United Nations was established and UN Charter was adopted, its article 13(1) (a) made it imperative on General Assembly to 'encourage the progressive development of International Law and its codification'. For this purpose the International Law Commission was established with the same objective at its core. Its task is to undertake survey, draft and recommend the topic for codification. The establishment of ILC proved a turning point in the 'codification movement' with number of feats under its head. This article seeks to analyze the role played by the United Nations in the codification of modern International Law and various achievements of International Law Commission established under its aegis.

Keywords: *United Nations, I.L.C, Codification, Progressive Development.*

I. INTRODUCTION

Codification makes the law certain, simple, intelligible and above all easily accessible to all. Codification ordinarily means the process of reducing the whole body of law into code in the

form of enacted law. It generally connotes a systematic arrangement of the rules of law which are already in existence, but, this is narrow interpretation of the term 'codification'. In wide sense it may also mean modification of existing rules of law; so as to keep them in tune with time

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and adapt them in accordance with the needs of circumstances.

In the International law by the term ‘codification’ it means a form of systematization of international legal norms, predominantly customary law norms, carried out through a process of comprehensive refinement, including through exclusion of elements which are outdated and are no longer applicable, to eliminate internal contradictions and obvious gaps.² This usually results in the creation of a new systemically interconnected and consolidated legal Act, which is more qualitative and progressive.

II. THE HISTORY OF CODIFICATION

The history of codification dates back to the end of 18th century, before that an unsuccessful attempt was made by the French Convention to frame a declaration of Rights of Nations in 1792. A product of French Revolution i.e. Declaration of the Rights of Man and Citizen (*Declaration des droits de l’homme et du citoyen de 1789*) was presented at the Convention of 1792 which sought to declare the fundamental rights for all men and could pass as an attempt to codify international law by its universality. This failed attempt set forth precedent to codify international law and followed by Jeremy Bentham who renewed the process of codification in order bring uniformity, better access, longevity, and preservation of laws. Some individual writers like Prof. Francis Liber also attempted to codify laws of war. The Hague Conventions of 1899 and

1907 dealt with the laws of war and neutrality. The work of codification received much impetus under League of Nations which appointed sixteen members committee in 1924 to report such subjects which were ripe for codification. The 1930 Codification Conference in The Hague under the League of Nations addressed the law of nationality, territorial waters, and state responsibility. But it was largely unsuccessful; agreement was possible only on the law of nationality.

III. CODIFICATION UNDER THE UNITED NATIONS

The UNO which was established primarily for maintaining peace and security has also been involved in law-making through its various organs and subsidiary bodies, which has had a substantial impact on numerous areas of international law. Article 13(1) (a) of the Charter calls on the General Assembly to initiate studies and make recommendations for the purpose of “*encouraging the progressive development of international law and its codification.*” That comes within the framework of the general purposes and objects for which United Nations exists.

The most important task of codification is the systematization and the progressive development of this amorphous and relatively unorganized body of law. It is surely evident that the implementation of Article 13 of the Charter is a task of urgency and importance of which yield

² Aslan Kh. Abashidze and Alexander M. Solntsev, “International Law Commission of the United

Nations: Question of Efficiency” 31 *World Applied Sciences Journal* 1565 (2014)

place to none of the other problems that face the international law today.³

In discharging Article 13(1) (a) of the Charter, the key consideration underlying the dual concepts of ‘progressive development’ and ‘codification’ of international law is the belief that written international law will remove the uncertainties of customary international law by filling existing gaps in the law, as well as by giving precision to abstract general principles whose practical application is not settled. The dual concept of progressive development and codification has proved catalytic in providing the intellectual framework for contemporary efforts at international law-making.⁴

The UN General Assembly took the task of codification in all seriousness. To that end, on December 11, 1946, the General Assembly appointed a committee for the progressive development of international law and its codification. On November 21, 1947, the General Assembly adopted statute of International Law Commission (ILC), as its principal standing instrument for carrying out the provision of Article 13.⁵ In accordance with the provisions of its Statute (Articles 3 to 10), the first Commission was elected on November 3, 1948, and commenced the first of its annual sessions on April 12, 1949.

The Commission was originally composed of 15 members, by stages this was increased to 21 members (1956), 25 members (1961) and 34 of

the members (since 1981). Members are experts in their individual capacity, who do not act as representatives of their governments. They are elected by the General Assembly for five-year terms and meet for a period of 10-12 weeks each year in Geneva.

In implementing Article 13(1) (a), the Assembly has essentially established a “conveyor belt” of international law-making. The manufacturing process begins with the International Law Commission, where issues are considered and instruments are drafted, and traverses back through the General Assembly, in particular its Sixth (Legal) Committee, where instruments are further considered and developed by member states before being adopted and opened for accession.

IV. OBJECT AND FUNCTIONS OF I.L.C

The prime object of the Commission (ILC), as indicated in Article 1(1) of Statute of the International Law Commission, is ‘the promotion of the progressive development of international law and its codification’. According to Article 15 of the said Statute, the expression “*progressive development of international law*” is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression “*codification of international law*” is used for

³ R. Y. Zennings, “The Progressive Development of International Law and its Codification” 24 *BYBIL* 329 (1947)

⁴ Miguel de Serpa Soares, “UN70: Contributions of the United Nations to the Development of

International Law” 40 *The Fletcher Forum of World Affairs* (2016)

⁵ UN General Assembly, *the Statute of International Law Commission*, GA Resolution A/RES/174 (II) (November 21, 1947).

convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine.⁶

One can see from these definitions that the terms "codification" and the "progressive development" are closely related in terms of their legal contents. Moreover, the codification of international law is inevitably accompanied by progressive development. Judge Nagendera Singh aptly remarked that "mere codification without the element of progressive development would defeat the very purpose of law-making by introducing static concept of law. Thus, it is now well recognized by all codifying institutions to consider equally the developmental aspect while engaged in the codification of the law. In fact progressive development is the very life and blood of codification..."⁷

The Commission "shall concern itself primarily with public international law, but is not precluded from entering the field of private international law."⁸ With very few exceptions, to date the Commission's work has been almost exclusively in the field of public international law.⁹

One of the functions of the commission in the codification of principles of international law is

when requested to do so by the General Assembly. In that case, the commission appoints one of its members as Special Rapporteur on that subject and prepares a plan of work regarding the issue in question. Governments are requested to submit to the commission their written opinions on the issue in question, as specified in the plan of work. The rapporteur then writes a report of his or her recommendations on the subject under discussion and the report must be approved by the rest of the commission as well as by the UN Secretary-General before it becomes an official commission document. The commission then reconsiders the report after receiving additional written opinions from governments, and the report is being submitted to the General Assembly for approval.¹⁰

The Commission also considers proposals and draft multilateral conventions submitted by the members of the UN, the principal organs of the UN other than the specialized agencies, or the official body established by inter-governmental agreement to encourage the progressive development of international law and its codification and is transmitted to it for that purpose by the Secretary-General.¹¹

It is provided that the Commission shall survey the whole field of International law with a view to select topics for codification having in mind

⁶ The Statute of International Law Commission, 1947, available at:

<https://legal.un.org/ilc/texts/instruments/english/statute/statute.pdf> (last visited on December 4, 2021)

⁷ Judge Nagendera Singh, "Codification and Progressive Development of International Law: The Role of the International Court of Justice" 18 *I.J.I.L.* (1978)

⁸ The Statute of International Law Commission, art. 1(2)

⁹ The Commission has only marginally touched the periphery of the field of private international law in such topic as 'Jurisdictional Immunities of States and their Property'; especially reference has been made on one occasion to the relevant rules of private international law regarding competent jurisdiction and the applicable law (draft Article 11).

¹⁰ The Statute of the International Law Commission, art. 16

¹¹ *Ibid*, art. 17(1)

existing drafts whether governmental or not. When the Commission considers that the codification of a particular topic is necessary or desirable, it shall submit its recommendations to the General Assembly. The Commission shall give top priority to requests to the General Assembly to deal with any question.¹²

Further, it is provided that the Commission shall consider ways and means for making the evidence of customary international law more readily available, such as, the collection and publication of documents concerning State practice and of the decisions of the national and international courts on questions of international law, and shall make a report to the General Assembly on this matter.¹³

V. ACHIEVEMENTS OF I.L.C

Achievements of the Commission stand out without much underscoring through the overwhelming acceptance and implementation by the international community. 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; the finished and nearly finished products of the Commission include the following:

Codification of diplomatic and consular laws:-

- Vienna Convention on Diplomatic Relations, 1961;
- Vienna Convention on Consular Relations, 1969;
- Convention on Special Missions, 1969;

- Convention on the Protection and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, 1973;
- Vienna Convention on Representation of States in their Relations with International Organizations of Universal Character, 1975;
- Draft Articles on the Status of the Diplomatic Courier and the Diplomatic Bag not accompanied by Courier, 1989.

The law of the sea:-

- Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958;
- Geneva Convention on the High Seas, 1958;
- Geneva Convention on fishing and Conservation of the Living Resources of the High Seas, 1958;
- Geneva Convention on the Continental Shelf, 1958.

The law of the treaties and its sequence:-

- Vienna Convention on the Law of Treaties, 1969;
- Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986;
- Vienna Convention on Succession of States in Respect of Treaties, 1978;
- The Most-Favoured-Nations Clause, 1978;

¹² *Ibid*, art. 18

¹³ *Ibid*, art. 24

- Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 1983.

The law of state responsibility and related questions:-

- Draft Articles on State Responsibility.
- Draft Statute for an International Criminal Court, 1994.
- Draft Code of Offences against the Peace and Security of Mankind, 1996.

Relations between states and international organizations:-

- Part I: Vienna Convention adopted in 1975;
- Part II (under active consideration).

State immunities:-

- Draft Articles on Jurisdictional Immunities of States and their Property, 1991.

VI. CONCLUSION

It is to be concluded that there is no law making body like legislature in international field as such in the municipal sphere and hence codification in inter-State context has not only the objective of determination of law but also its formulation to meet universal acceptance. It must embrace the need to change law and to induce States to accept the revision of old laws and the formation new ones. The role played by UN proved to be a breakthrough in process of codification of modern International Law.
