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THE INTERNATIONAL LAW COMMISSION

SINCE 1960

DAVID COLLINS

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Research Paper in International Law for the LL.M. Degree.

DAVID BRIAN COLLINS

Victoria University of Wellington,
Wellington, New Zealand.

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C O N T E N T S:

	Page:
Introduction	i
Chapter 1 Composition of the Commission since 1960	1
Chapter 2 Selection of Topics for Study	24
Chapter 3 Relationship with three regional legal Organisations	68
Conclusions	77

THE INTERNATIONAL LAW COMMISSION SINCE 1960.

INTRODUCTION:

This research paper examines three facets of the International Law Commission which affects its status in the international law community as a body capable of influencing aspects of international conduct. This study indicates to a certain extent the way in which the International Law Commission has recognised the importance of keeping an eye on the political and diplomatic significance of its operations. The three topics of study are, the composition of the Commission, the nature of selecting topics for study and the Commission's relations with three regional legal organisations. By considering the three factors mentioned above it will be possible to examine some of the ways in which the International Law Commission has attempted to build up a reputation both for itself and, of more significance, for international law as a means of regulating international conduct.

To try to make a full assessment of the success of these three factors would involve an examination of the substantive work of the International Law Commission, a task which could not possibly be adequately dealt with in a research paper of this nature. Accordingly, this paper is not concerned with an evaluation of the substantive work of the International Law Commission but with the position of the Commission as a body in the international community charged with the task of the progressive development and codification of international law.

The time span which this paper covers is restricted to the years since 1960. This is not an arbitary decision but is based on two related considerations. The first is the

brilliant exposition by Shabtai Rosenne entitled "The International Law Commission 1949-59"[1] which among other things considered these three factors in relation to the Commission's first ten years. To concentrate aspects of this research paper on the period covered by Rosenne would, it is suggested, prove to be almost disory for it would be almost impossible to improve upon this work. The second factor is that to date no single piece of published research has been conducted which examines all of the three factors which this paper concentrates upon. Hence, it is hoped that the pages which follow will fill a gap in research about the International Law Commission since 1960.

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1. British Yearbook of International Law 1960, p.104

CHAPTER 1:

COMPOSITION OF THE COMMISSION SINCE 1960:

Size:

The General Assembly by resolution 1647 (XVI) of 6 November 1961, increased the size of the International Law Commission from twenty-one to twenty-five members.

This resulted from a letter dated 18 July 1961[2] to the Secretary-General from the United States requesting that the question of the enlargement of the International Law Commission be included in the agenda of the sixteenth session of the General Assembly. By way of explanation the United States noted that since the previous enlargement of the Commission from 15 to 21 members in 1956, 18 new members had been admitted to the United Nations, 17 of which were African States. The United States suggested that the Commission should be enlarged so as to permit proper representation of the new African States.

The matter was referred to the Sixth Committee where a draft resolution was prepared suggesting that Article 2, para. 1 and Article 9, para. 1 of the Statute of the International Law Commission should be amended to increase the membership of the Commission from 21 to 23 members.

The view of the sponsors of the draft resolution and other representatives was that these two additional seats should be allocated to African countries south of the Sahara. Most of the representatives believed that no further arrangements should be made concerning the distribution of the other 21

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2 See Y.B. of U.N.1961, p.526

3 The resolution was submitted by Cameroon, Columbia, India, Japan, Liberia, Nigeria, Sweden and the United States.

seats. In their view the "gentlemen's agreement" arrived at in 1956 at the eleventh session of the General Assembly should remain in effect.[4]

An interesting question asked by Rosenne[5] is who is bound by the Gentlemen's Agreement? Some representatives, including those of Czechoslovakia, Libya, and the U.S.S.R., while not opposed to increasing the membership of the Commission, were of the view that the "Gentlemen's Agreement" of 1956 should not apply to the 1961 election, either because, owing to changed circumstances it had ceased to exist, or because it had been unsatisfactory and therefore should be revised. They thought that, in the course of redistribution, more seats should be allocated to African, Asian and Socialist countries.[6]

It was felt by many representatives that the Commission should be increased in size to 25 and that the few additional seats should be allotted to Africa and Asia. Although not opposing an increase in the Commission's membership some members were of the view that the creation of too large a body might tend to impede the Commission's work; others considered that, if the need arose, the Commission might establish sub-commissions.

In the course of discussion, it was generally agreed that

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4 In 1956, the General Assembly approved a proposal of the Sixth Committee whereby three of the six additional seats on the Commission should go to Asian-African States, one to an Eastern European Country, and one, on a rotating basis to Latin American and the British Commonwealth with the sixth going to a Western European country - See Rosenne, B.Y.B.I.L. 1960, p.104.

5 Ibid p.125

6. See Y.B. of U.N. 1961, p.526

four additional positions should be created in the Commission.

An Amendment to that effect[7] was accepted by the sponsors of the eight - power draft resolution.

The draft resolution, as modified by the Amendment, was unanimously adopted by the Sixth Committee on 18 October 1961. The General Assembly decided, by the same resolution, to request the Secretariat, "by way of exception"[8] to include in the list of candidates for the 1961 election to the Commission names communicated before 15 November 1961.

At the time this resolution was passed there were 101 member States in the United Nations.[9] By the end of 1975 the number had increased to 139. Of the thirty-eight new member states during this period eighteen were from Africa ,[10] seven from the Middle East, three Caribbean, three European, four Asian, one South American and two are difficult to classify.[11]

The increase in membership of the U.N. during the last decade from the so-called "lesser developed countries" has not gone unnoticed in countries such as the U.S.as the following extract from Time Magazine reveals - "More and more, the U.S. is outvoted in the U.N. on issues of moral and political importance to the American people. The reason is the General

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7 Originally proposed orally by Ghana, and submitted by Ethiopia, Ghana, Indonesia, Iran, Lebanon, Libya, Senegal and Thailand.

8 To Article 5 - which provides that nominations close on 1 June in the year of an election.

9. Excluding Mongolian Peoples' Republic admitted on 27 October 1961, Islamic Republic of Mauritania,admitted on 14 Dec. 1961 - for official list see 1961 Y.B. of U.N.1961, p.680-681.

10 Including the island States of Sao Tome Principe, Cape Verde and Mauritius.

11 Fiji and Bahamas.

Assembly's one-country, one-vote system. Thus the U.N's so called automatic majority of less developed nations can almost always carry the votes on issues that evoke bloc solidarity, as shown by the tally of last November's balloting on the resolution that condemned Zionism as a form of racism."[12] It is interesting to compare this comment, and other comments by former U.S. spokesmen at the U.N. P.Moynihan about some of the new members of the U.N. from Africa[13] with those of former U.S. Representative Francis Plimpton when advocating an increase in the size of the International Law Commission from 21 to 23 members. Mr. Plimpton pointed out that since the International Law Commission had increased from fifteen to twenty-one members in 1956, twenty-one new states had become members of the United Nations "including nineteen from the central and southern part of the African Continent," he urged not "a general enlargement of the Commission, but rather a specific enlargement, limited to one geographical area not presently represented on that body".[14] Since that time a further eighteen African States have joined the United Nations representing about half of the increase in the United Nations. Yet, there has of yet been no further increase in the size of the International Law Commission. The reasons for this will be looked at after examining the composition of the Commission over the period under examination.

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12 Time, Jan. 26, 1976, p.9

13 For example at an AFL-CIO convention in San Francisco in Oct. 1975 he approvingly cited a New York Times editorial that called Uganda's President Idi Amin a "racist murderer" and added that it was "no accident" that Amin was Chairman of the O.A.U. Moynihan thus in effect denounced moderate African leaders along with Amin - See Time, Ibid.

14 See Briggs "The International Law Commission", Cornell Press 1966, p.36

Composition of the Commission:

The composition of the Commission over the period under examination can perhaps best be studied by looking at the distribution of seats according to representation of Nationality, of principal legal systems and of broad geographical areas. The exact classification of the legal system into which representatives come is not easy but the distribution roughly speaking is as described in chart three.

CHART I.

Distribution of seats by Nationality from 1960 to 1976 (inclusive) The countries are arranged in regional groups. The regional classification is based on that used in the United Nations Handbook 1975 produced by the New Zealand Ministry of Foreign Affairs.

VUW Law Research Papers:

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CHART II.

Representation of Political-Geographical areas. The Chart indicates the number of countries represented from each area and the total number of years which representatives from each region have spent on the Commission.

Region	Number of Countries Represented	Total number of years
African States	8	63
Asian States	9	96
Eastern European - U.S.S.R.	5	46
Latin American States	9	63
Western European and other States	14	123

CHART III:

Representation of Principal Legal Systems.

Legal System	Number represented
Common Law	4
Roman Law (W.Europe)	5
Roman Law (S.America)	8
Roman Law (Balkans)	2
Germanic Law	3
Middle East Religious based Law	6
Communist Law	7
Asian Law	3
African Law	8

Although the alteration of the term of office from three to five years since 1957[15] affects the rate at which the composition has changed it is interesting to compare the composition of the

15 In its original form Article 10 provided that the term of office should be for three years (the first election taking place in 1948). The General Assembly, in 1950, decided to expand the term to five years, resolution 486(V) of 12 December 1950. In 1955 the Commission recommended a formal amendment to Article 10 to take effect from 1 January 1957. This was accepted by General Assembly Resolution 320(X) of 3 December 1955.

Commission up intil 1960 with the trends since that time. If one compares these statistics with those drawn up by Rosenne for the period prior to 1960[16] then the following conclusions can be drawn about the representation of countries:

(a) Since 1960, compared with the Commission's first twelve years, the number of representatives from Africe has increased as a total portion of the composition of the Commission. In the period 1948 to 1958 one of the thirty-five States represented on the Commission was from Africa. From the period 1960 to 1976 eight of the forty-five States represented were African.

(b) The proportional number of States from Asia has remained fairly constant. Eight of the thirty-five States represented prior to 1960 came from Asia. Since then nine of the forty-five States represented have come from Asia.

(c) Nine States from South America were represented on the Commission prior to 1960, since then the same number have continued to be represented even though the total number of countries represented on the Commission has increased by ten since 1960.

(d) The proportional representation of members of the Commission from Western Europe has decreased very slightly from thirteen out of thirty-five prior to 1960 to fourteen out of forty-five since then.

(e) There has been an increase in the proportion of Communist Countries represented on the Commission from three prior to 1960 to seven since then.

However, a more significant guide to the composition of the

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16 See Rosenne Ibid. p.128-129

Commission during the period under consideration is to look at the number of years countries have actually been represented on the Commission. To look only at the number of countries represented is not a very valuable indication of the composition of the Commission as the following example shows. Iran, which has had one representative on the Commission for only one year since 1960 is statistically treated as being equal to the United Kingdom which has been fully represented on the Commission during the past sixteen years. To give a country which has been represented for only one of the sixteen years under review the same statistical weight as countries which have been represented for all of the period under consideration must surely give a distorted view of the composition of the Commission. It is suggested that the most effective form of analysis is to look at the total number of years which countries have had representatives on the Commission in total. The other alternative is to look at the terms for which countries have been represented. The drawback with this approach however, is the difficulty in keeping any continuity during the periods of election because of changes in membership due to deaths and resignations. Deaths and resignations cause the composition of the Commission to change during each term significantly enough to make this type of analysis very difficult. For example, of the 25 members of the Commission who were elected at the General Assembly's twenty fifth session for a term of five years ending on 31 December 1976, five are no longer on the Commission.[17] This represents a

17 On 14 March 1973 Mr. Alcivar died and on 30 October 1972 Mr. Singh, Mr. Ruda and Sir Humphrey Waldock became Judges of the International Court of Justice and earlier this year Mr.Elias was also elected on to the International Court.

change of twenty percent in the composition of the Commission which is of sufficient significance to affect the validity of any conclusions which may be made on the basis of statistics compiled from a study of periods of election.

Chart II shown the total number of years which political-geographical areas have been represented on the Commission. A study of that chart reveals the following points:

(a) Although only eight of the forty five States represented on the Commission since 1960 come from Africa the total number of years which African countries have been represented on the Commission since 1960 is equal to the period of time for which the nine Latin American countries have been represented.

(b) An almost equal number of States from Asia and Latin America have been represented on the Commission since 1960 but the total period of time for which the Asian countries have been represented is considerably higher than is the case with the Latin American countries. In fact the difference in years favours the Asian countries by forty four percent.

(c) The period of time which the Eastern European countries and the U.S.S.R. have been represented is proportionally the same as the African and Latin American countries.

(d) On the other hand, the number of years which the Western European and Other States have been represented on the Commission is proportionally less than any of the other regions. The Western European and Other States have an average of six years representation per country as opposed to an average of nine years' representation per country for the African, Latin American and the Eastern European States and Russia, while the Asian States also have an

average representation of nine years per country.

(e) Of more significance is the comparison of the total number of years which each political-geographical area has been represented on the Commission. The figure of 123 years for the Western European and Other Countries constituted 31 percent of the total number of years spent by all countries on the Commission. The percentage of the total number of years spent on the Commission for the other political-geographical areas is 19 percent for the African States and fifteen percent for Latin American States; 23 percent for the Asian States while the Eastern European and U.S.S.R. have been represented on the Commission for only 11 percent of the total number of years under consideration. This reflects closely the "understanding" which exists as to the distribution of seats on the Commission. In relation to the original membership of fifteen there existed no disclosed understanding as to the distribution of seats.[18]

The distribution of seats however, prior to 1956 was as follows: Six of the fifteen seats were held by Western European and Other States, four seats were held by Eastern European Countries and the U.S.S.R. and the other three seats were held by countries from Asia including China.[19] A more firm understanding did exist in relation to the six additional seats created in 1956 (refer to footnote 4). It was agreed that three of the six additional seats

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18 See Rosenne, Supra, p.125

19 Of these three Asian seats, two were to be shared with representatives from Africa, the two seats to be shared did not include the one held by China.

on the Commission should go to the Asian-African countries, one to an Eastern European country, and one, on a rotating basis, to Latin America and the British Commonwealth with the sixth going to a Western European country. The understanding as to the four further seats created in 1961 was that they were to be alloted to African, Asian and Socialist countries. Hence eight of the twenty five seats at present are allocated to Western European and Other Countries (including the possibility of a seat being allocated to a British Commonwealth country which could be classed as Western European in political-geographical terms instead of to a Latin American country under the 1956 understanding). Four, possibly five seats are allocated to Latin American countries; four seats are allocated to the Eastern European countries, including the U.S.S.R., while nine are available between the African and Asian countries. A glance at the percentage figures given above in relation to the comparative number of years which the five geographical-political areas have been represented on the Commission reveals that there is a close co-relation between the "understanding" as to the allocation of seats and the period of time spent on the Commission by representatives from these areas.

The process of election of members to the Commission must comply with the potentially conflicting requirements of

Articles 2 and 8 of the Commission's Statute.[20] The problem was put in the following terms by Sir Herch Lauterpacht:

> "It may be possible to take account of these two sets of considerations without doing violence to the letter and spirit of the Statute, but this may not be possible in all cases. Apart from the undeniable necessity of making the codifying body as representative as possible, the nature of the task to be fulfilled by it is not without relevance in this connection. In an organ which is concerned not only with the restatement of existing law but also its change and development, qualities of statesmanship and experience may legitimately count

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20 Article 20(i), The Commission shall consist of twenty five members who shall be persons of recognised competence in international law.
Article 8: At the election the electors shall bear in mind that the persons to be elected to the Commission should individually possess the qualifications required and that the Commission as a whole be a representation of the main forms of civilisation and the principal legal systems of the World. This aim can be compared with the requirement of selecting Judges to the International Court of Justice.
Article 2 of the Statute of the International Court of Justice provides "The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are juriconsults of recognised competence in international law. The Statute also provides that judges shall be elected by an "absolute majority" of votes in the General Assembly and in the Security Council (Article 10) and no two members of the Court should come from the same country (Article 2). Those elected must first be nominated by the national groups in the permanent Court of Arbitration, in accordance with the provisions set out in the Statute (Article 4.).

no less than expert knowledge."[21]

The question on which attention must now be focussed is whether the change in composition over the past fifteen years perpetrates the trend identified by Rosenne who remarked that the composition of "the Commission reflects rather closely the political factors at the possible expense of professional factors."[22]

Dealing first with the question of whether the change in composition of the Commission reflects the change in composition of membership of the General Assembly it is of interest to note that the increase in representation of African countries on the Commission still does not correspond to the increase in membership of African countries in the General Assembly. Of the 139 nations currently in the United Nations, 44 are African, that is a little more than 35% while only approximately 17% of the international law Commission's composition at the moment comes from Africa. It is fair to say however, that the proportional increase of African representation from less than 3% prior to 1960 to 17% today is due to 18 new African States joining the United Nations since 1960 and to this end the increase in representation reflects political ends.

The reasonswhy no increase in membership of the International Law Commission have been considered necessary so far are numerous. The first is that Article 8 of the Statute required that the main forms of civilization should be represented - not all forms of civilization and all legal systems. The second reason is that in determining the representation of the main forms of

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21 Lauterpacht "Codification and Development of International Law", 49 A.J.I.L.16, p.40

22 Rosenne, Ibid. p.130

civilization and the principal legal systems of the World Governments should take into consideration the composition of the United Nations as a whole. It does not follow however that members of the Commission should be elected by some mathematical formula or that those elected should be regarded as the representatives of political or geographical blocks. A third reason is that an increase in size of the International Law Commission might make the body too unwieldy and incumber it in its tasks, although the validity of this argument can perhaps be questioned when one considers that it is very rare for all twenty five members of the Commission to be present at any one time. In fact a sample of attendances (taking the 1250th meeting to the 1301st meeting inclusive)[23] reveals that on average only sixteen members of the Commission attend each meeting.

At this point it is convenient to focus attention upon the second portion of Rosenne's observation that to increase the size of the International Law Commission to account for increases in the General Assembly from African countries allows political factors to outweigh professional considerations. The converse side to this question is whether the increase in representation from African countries on the Commission has in fact allowed political factors to prevail at the expense of professional matters.

It is certainly not the purpose of this research paper to engage in an assessment of the calibre of personalities. However, it is possible to compile a little statistical information which is of assistance when trying to objectively consider this issue.

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23 Monday 6 May 1974 to Friday 26 July 1974 during which time the Commission considered the topics of State Responsibility and succession of States in respect of treaties.

A study of two aspects of the International Law Commission reveals that the Commission is dominated in its operations by lawyers from Europe. These two aspects of the Commission are the Special Rapporteurs and the Commission's venue.

Special Rapporteurs:

This aspect of the Commission's machinery is very unique for no other organ of the United Nations makes provision for the appointment of a Special Rapporteur.[24] Article 16(a) of the Commission's Statute, dealing with the progressive development of international Law provides that the Commission "shall appoint one of its members to be Rapporteur." Although there is no comparable stipulation in the provisions relating to the codification of international law, the Commission has always appointed a Special Rapporteur for its projects,[25] whether of codification or of progressive development of international law, and the Rapporteur has always been a member of the Commission.

The selection of a Special Rapporteur is made by the Commission. There are no stipulated qualifications for a person to be selected as Special Rapporteur "...but it is obvious that the qualifications and experience of a member, as well as his willingness to serve, are primary considerations... A successful Rapporteur needs not only the mastery of his topic but sound judgment, drafting skills and persuasive ability."[26] The same noted authority has observed that "In the nature of things, the Special Rapporteur brings to the Commission in his reports a mastery of his topic which not all members of the Commission

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24 The Rapporteur of a substantive topic is customarily referred to in the Commission as the Special Raporteur in order to distinguish him from the Commission's General Rapporteur, elected each session to prepare the report on the work of the session.

25 One exception being the Commission's work in relation to Protection and in inviolability of diplomats and agents and other persons entitled to special protection under International law.

26 Briggs "The International Law Commission", p.240

have had the occasion to acquire."[27] Observations such as these reflect the status and influence which is attributed to the position of Special Rapporteur within the Commission. Since 1960 thirteen Special Rapporteurs have been elected by the Commission, their nationality and projects are described in the following chart.

CHART IV.

Special Rapporteurs since 1960.

Name	Country	Subject
Ago	Italy	State Responsibility
Amado	Cuba	State Responsibility (till 1961)
Bartos	Yugoslavia	Special Missions
Bedjaouri	Algeria	Succession in respect of rights and duties other than States.
El-Erian	Egypt	Relations between States and inter-Govt. Organisations.
Fitzmaurice	United Kingdon	Law of Treatics
Kearney[28]	U.S.A.	International Water Courses.
Reuter	France	Relations between States and Inter-Govt. Organisations
Sandstrom	Sweden	Ad hoc Diplomacy
Ustor	Hungary	Most favoured Nation Clause.
Vallet	United Kingdom	Succession in Respect of Treaties
Waldock	United Kingdom	Succession in Respect of Treaties
Zowek	Czechoslovakia	Consular Intercourse and Immunities.

Of the thirteen Special Rapporteurs elected since 1960 nine were nationals of Europe, while most of the others have strong ties with Europe. Take for example, Bedjaouri who lives in Paris, is his country's Ambassador to France and completed most of his higher education at the University of Grenoble. Kearney also

27 Briggs Ibid. p.246
28 Resigned during his work on this topic.

has close ties with Europe, he speaks French and at one time was his country's High Commissioner for Germany. Factors such as these lead one to conclude that the European influence so far as the position of Special Rapporteur within the Commission is concerned is very strong.

Place of Meeting:

Until 1955, Article 12 provided that the Commission was to sit at the Headquarters of the United Nations.[29] Apparently, the application of this provision of the original Article 12 proved to be a source of "considerable annoyance to the International Law Commission"[30] and so after holding its first session in New York in 1949 the Commission has met every year but one,[31] at Geneva. The convenience of the Commission meeting in Europe becomes very apparent when one considers the workload which influential European members of the Commission have in fields other than the Commission's activities. Admittedly the library facilities in Geneva are perhaps "unsurpassed in the field of International Law"[32] but when one considers the committments which people like Vallet, Reuter, Ago and Bedjauori[33] have to their Universities, clients and Governments it is essential for them to be able to commute very readily from Geneva to their offices in Paris, London or Rome. Such commuting would be impossible if the Commission did not convene in Europe, as a consequence it is possible that many of the leading European figures on the Commission would not be able to continue to serve on the Commission if the venue was

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29 Amended by General Assembly Resolution 984 (X) of 3 December 1955.

30 To quote Briggs, Ibid. p.88

31 In 1956 the Commission met at Paris

32 Briggs, Ibid. p.92

33 It has been said that Bedjaouri may arrive in Geneva with sufficient airline tickets to allow him to commute back to Paris each night (Professor Quinten-Baxter).

was shifted from Europe.

Although by comparison to the discussion undertaken above in relation to Special Rapporteurs the question of the Commission's venue is not of great importance, it is still a factor which shows that the European representatives on the Commission are probably the most influential geographic bloc on the Commission. Accordingly it cannot be said with any degree of certainty that the increased representation of African countries on the Commission since 1960 has lead the political considerations to predominate at the sacrifice of professional factors as far as the composition of the Commission as a whole is concerned because of the relatively greater degree of influence which the European countries tend to exert over the Commission.

The next question is whether an increase in the size of the Commission to cater for the increase in size of the United Nations, especially due to a greater number of African countries joining this world body, would lead to political factors being given undue priority at the expense of professional considerations.

From the outset it is worth mentioning that there has been very little sign of African countries being interested in seeking greater representation on the Commission. Even in 1961 when moves were made to cater for larger numbers of African countries being represented on the Commission the Chief Sponsor of the move was the U.S.A.

There would appear to be little reason to suggest that the influence exerted by the European representatives on the Commission is likely to decline in the foreseeable future. For this reason, it may be that an increase in representation from African countries would not lead to political factors

prevailing over professional matters as far as the composition of the Commission is concerned.

Background of Members of the International Law Commission:

It is difficult to make an accurate assessment of changing trends in the backgrounds of those elected to the International Law Commission during the period under consideration principally because of the variety of occupations enjoyed by those who do become members. Accordingly the chart which follows reflects the total number and type of occupations enjoyed by members of the Commission as a whole during the period under consideration rather than the background of each member of the Commission.

CHART V.

Year	Occupation						
	Academic	Govt. Service	Diplo-matic	Politi-cal	Judi-cial	Legal Practitioner	Other
1960	12	9	8	4	3	3	1
61	12	9	7	4	3	3	1
62	12	9	6	6	3	3	1
63	14	11	8	7	3	3	2
64	14	11	8	7	3	3	2
65	14	12	8	7	3	3	2
66	16	14	12	7	4	2	2
67	16	12	12	7	4	2	2
68	16	12	12	7	4	2	2
69	16	13	12	7	4	2	3
70	16	15	12	6	3	3	2
71	17	15	12	6	3	3	
72	18	13	13	6	3	3	
73	15	13	12	6	3	3	
74	15	13	13	6	3	3	
75	15	13	13	6	3	3	
76	15	13	14	6	2	3	

The figures shown on this chart were compiled after examining the background of each[34] member of the International Law Commission for the period under consideration. Most members had a very wide background in a number of fields before being elected to the International Law Commission. For example, Giberto Amado of Brazil was an academic, a politician, a judge, a poet and a

34 Unfortunately no information could be found about Lui Chieh, and Shushsi Hsu of China or Victor Kanga of Cameroon

novelist before his election to the Commission and Taslin O Elias of Nigeria was his country's Chief Justice as well as a politician and an academic prior to election to the Commission. Every principal occupation of those members of the Commission for each year they were on the Commission is recorded on the Chart. Hence, although there were only 25 members on the Commission at any one time the number of occupations in any year exceeds the number of personalities.

Although there are a number of reservations to be made about these statistics[35] it is suggested that the following conclusions may be deduced.

(a) An academic occupation is by far the most predominant background enjoyed by members of the Commission at any one time. This is not surprising when one considers the degree of knowledge and intellectual standing which is required of members of the Commission.

(b) The second conclusion to be drawn is the gradual increase during the period under consideration of members of the Commission who have had employment in their country's civil service and diplomatic corps. This steady increase over the past fifteen years of those who receive some sort of remuneration from their Governments, or have served their Governments in some way, leads one to suggest that it is possible that the degree to which individual members of the Commission are sensitive to political considerations has increased.

There are very practical reasons why more and more members of the Commission are in receipt of some sort of pay from their Governments. Not the least is the cost of living for three

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35 Not the least of which being that they are not entirely complete.

months in Geneva. At the moment all Commission members receive their air fares paid in full to and from Geneva, a $US1,000 honorarium which has not increased since 1949, plus a daily living allowance of close to 170 Swiss Francs, which apparently enables Commission members to stay in a second class hotel and eat moderately unless they use an additional source of income.[36]

Although it is a fact that members of the Commission over the past fifteen years have tended more and more to be in some way servants of their Governments it is not necessarily open to suggestion that the occasions on which a member is prepared to represent his government's view point has increased. Such a suggestion could not be founded on any statistical information because it is very rare for a vote to be taken in the Commission on any one issue. In fact, because most of the Commissioners' decisions are reached on a concilatory basis this would tend to indicate that members are rarely motivated by their particular government's view point.

One member of the Commission[37] has observed that "discussions in the Commission are progressive, each speaker tends to build on thoughts that have gone before him until at the end there is a pool of ideas which will help the rapporteur to re-frame his draft articles so as to reflect the views of the Commission as a whole. The ultimate aim is to produce so far as possible a consensus and votes are very rare. At the last session, in the work on succession of States in respect of treaties, there were as I recall, only two votes on particular proposals." In this type of procedural environment there would be little opportunity for a Commission member to allow political motivations to

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36 The writer's grateful thanks to Professor Quinten-Baxter for this information.

37 Sir Francis Vallet "The Work of the International Law Commission" (1976) Netherlands Yearbook of International Law p.327 pp.334

predominate at the expense of professional considerations. This does not however detract from the suggestion made earlier that members of the Commission are sensitive and aware of political considerations.

To conclude this Chapter it is suggested that the increased size of the Commission since 1960 reflects political and diplomatic considerations in terms of countries, legal systems and geographical as well as political blocs represented. In addition, the change in the background of members elected to the Commission since 1960 leads one to suggest that members of the Commission are now more likely to be sensitive to political considerations. It is further suggested that the change in composition of the Commission since 1960 has probably not lead to political and diplomatic factors taking precedence over professional considerations as far as the composition of the Commission as a whole is concerned. However, there are other factors which must be taken into account when determining this, including the process adopted by the Commission over the past fifteen years in selecting its topics for study. This is the subject matter of the Chapter which follows.

CHAPTER 2:

SELECTION OF TOPICS FOR STUDY:

Constitutional Provisions:

The Statute of the Commission[38] gives the Commission the right to initiate projects for the codification but not for the progressive development of international law[39]. Proposals for the progressive development of international law come, by Article 16 of the Statute, from the Assembly, or pursuant to Article 17, are transmitted to the Commission by the Secretary General of the United Nations on the submission of members of the United Nations, the principal organs of the United Nations other than the General Assembly; or, specialised agencies and certain official bodies established by inter-governmental agreement. Neither article explicitly recognises a right of initiative in the Commission, but, while Article 16 appears to require the Commission to proceed with the topic proposed by the General Assembly, Article 17 gives the Commission the discretion to decide whether it deems it appropriate to proceed with the study of proposals submitted to it by other bodies. Article 18 on the other hand authorises the Commission to initiate projects of codification, while requiring it to give priority to requests of the General Assembly. During the course of codification it is now accepted that the elements of progressive development may be introduced in

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38 Articles 16 and 17
39 See Briggs, Ibid, p.139, 144, 168, 171.

the course of codification.[40]

Articles 16 and 17 establish a four-fold relationship between the work of the Commission and the views of Governments with reference to the progressive development of International Law. These are:

(a) Governments may, via the General Assembly, refer a particular proposal to the International Law Commission.

(b) Governments have the opportunity of providing the Commission with data and information reflecting the national view as to relevant questions of international law by replying to the questionnaire provided for by Articles 16(c) and 17(b).

(c) Governments have the opportunity under Article 16(h) of submitting their observations on the drafts prepared by the International Law Commission, and the Commission is required by Article 16(1) to take into consideration these comments.

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40 See Rosenne Ibid. p.138. During the debates of sub-committee (2) of the 1947 Sixth Committee considering the proposed text of Article 18 Professor Koretsky (U.S.S.R.) expressed the view that the Commission "should have no right of initiative in matters of codification". He proposed that the right of initiative accorded by the proposal to the Commission be deleted, as had been done with reference to the Commission's freedom to initiate projects for the progressive development of international law. After further debate Professor Koretsky did not press for a vote on his proposal, but rather accepted the proposed article allowing for elements of progressive development in the process of codification. See Briggs, Ibid. p.162.

(d) Governments participate in the formulation of the decisions of the General Assembly with regard to the final reports of the Commission on a particular topic.

In practice the annual debates in the Sixth Committee on the report of the International Law Commission provides another opportunity to comment on work in progress.

The progressive development and codification of international law is therefore subject to governmental influence, not only in the way topics are referred to the Commission but also in the procedure followed by the Commission when undertaking work pursuant to Articles 16 and 17. As the pages which follow show, although the Commission has the authority to initiate topics for codification of International Law under Article 18 and may proceed with its work according to the procedure provided in Articles 19 to 23, without awaiting the General Assembly's decision on the recommendations submitted by the Commission under Article 18, para. 2[41] political factors are not absent from the Commission's considerations when determining what topics it should consider for codification.

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41 Y.B. I.L.C. 1949, p.32

ORIGIN OF THE TOPICS ON THE COMMISSION'S AGENDA SINCE 1960:

(a) Topics from the 1949 List:

At the Commission's first session, and on the basis of General Assembly Resolution 175 (II) of 21 November 1947 regarding the undertaking of certain preparatory work by the Secretary-General, the Commission examined a memorandum submitted by the Secretary-General (which had been prepared by Lauterpacht), entitled "Survey of International Law in relation to the work of codification of the International Law Commission."

As a result of that examination the Commission drew up a provisional list of fourteen topics selected for codification.[42] After 1960 the Commission succeeded with its work on four of these topics.

(i) Succession of States and Governments: In Resolution 1686 (XVI) of 18 Dec. 1961 the General Assembly recommended that the Commission should include the topic on its priority list.

(ii) Law of Treaties: This study was undertaken by the Commission on its own initiative.

(iii) Consular Intercourse and Immunities: This study was also undertaken by the Commission on its own initiative.

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42 (a) Recognition of States and Governments; (b) Succession of States and Governments; (c) Jurisdictional immunities of States and their property; (d) Jurisdiction with regard to crimes committed outside territorial territory; (e) Regime of the High Seas; (f) Regieme of Territorial Waters; (g) nationality, including statelessness; (h) Treatment of Aliens; (i) Right of Asylum; (j) Law of Treaties; (k) Diplomatic Interc ourse and Immunities; (l) State Responsibility; (m) Arbitral Procedure; (n) Consular intercourse and Immunities.

(iv) State Responsibility: Study of this topic was initially included in the Commission's programme on its own initiative. By Resolution 2501 (XXIV) of 12 November 1969 the General Assembly recommended that the Commission should continue its work on State Responsibility.

Hence of the four topics considered by the Commission since 1960 which were on the list of fourteen topics decided upon in 1949, only one was referred to the Commission by the General Assembly.

(b) Resolution 1505 (XV) of 12 December 1960:

At its fifteenth session in 1960, the General Assembly adopted the above mentioned resolution by which it decided to consider an item on the future work in the field of codification and progressive development of international law at its Sixteenth Session.

The origin of this resolution was the debate in the Sixth Committee which revolved around the question of whether a Special Committee or the International Law Commission itself should be charged with the preparation of a new list of topics for consideration. Those favouring reference of the task to the Commission feared that to set up a special committee would reflect lack of confidence in the Commission and duplicate its work. Representatives backing the proposal for the establishment of a special committee stressed the political nature of selecting topics for codification and wished that the decisions be made by representatives of States rather than by experts in International Law.[43] Although it had not been requested to submit its views on the matter the Commission considered it would be desirable for its

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43 Briggs, Ibid. p.331-330

members to place their opinion on record for the use of the Sixth Committee of the General Assembly. A general discussion of the matter was accordingly held at the 614th; 615th ad 616th Meetings of the Commission's Thirteenth Session.

It was emphasised by some members of the Commission[44] that the agenda of the Commission included three fundamental questions of international law which called for special priority.[45]

When the Sixth Committee considered the question of future work in the codification and progressive development of international law at the Assembly's Sixteenth Session later in 1961 it had before it observations from seventeen Governments. During the course of debate in the Sixth Committee a proposal was put forward by twelve countries [46] by which the Assembly would, among other things; recommend to the International Law Commission that it continue to work in the field of the Law of Treaties and of State Responsibility and include on its priority list the topic of Succession of States and Governments. It was also proposed that the Assembly should include in the provisional agenda of its Seventeeth Session the question of "consideration of principles of International law to friendly relations and co-operation among States in accordance with the Charter of the United Nations".[47] These proposals were unanimously adopted by the Sixth Committee on 13 December 1961 and on 18 December the General Assembly unanimously adopted the recommendations of the Sixth Committee in Resolution 1688 (XVI).

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44 Mr. Verdress, Y.B.I.L.C.1961, Vol.1, p.206; Mr. Amado p.207, Mr. Yassen p.210.

45 Namely, The Law of Treaties, the Rules of International Law Regarding State Responsibility, and the responsibility of States under international law for injuries to aliens (which at the time were treated as two subjects (See Verdross Idib.)

46 Afghanistan, Cambodia, Ceylon, Czechoslavakia, Ghana, Indonesia, Iraq, Libya, Mati, Romania, U.A.R. and Yugoslavia.

47 See Y.B.U.N. 1961, p.522

At its Fourteenth Session held in Geneva from 24 April to 29 June 1962 the Commission considered its future work in the field of codification and progressive development of International Law. The Commission considered the possibility of codifying the topics included in the list drawn up by the International Law Commission in 1949 which at that stage had not been dealt with by the Commission.[48] The Commission then considered the possibility of codifying the new topics suggested by the governments pursuant to Resolution 1505 (XV)[49]. The Commission decided to limit its future work programme to the three main topics under study, or to be studied pursuant to the General Assembly Resolution of 18 December 1961, namely: the Law of Treaties, State Responsibility and Succession of States and Governments.

In its report to the General Assembly's Seventeenth Session in 1962, the Commission stated that many of the topics proposed by the Governments deserved study with a view to codification. In drawing up its future programme of work, however, the Commission felt "obliged to take into account its resources. The Law of Treaties, State Responsibility and Succession of States and Governments" it said, "are such broad topics that they alone are likely to keep it occupied for several sessions." The Commission accordingly considered it inadvisable for the time being to add anything further to its agenda.[50]

In addition to the three topics referred to above, which all originated from the 1949 list, the Commission also included

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48 Y.B. I.L.C. 1962 Vol. II, p.87
49 Ibid. p.96
50 Ibid. p.190

in its programme four additional topics which had been referred to it by earlier General Assembly Resolutions. These were the question of Special Missions.[51] The question of relations between States and inter-governmental organisations[52], the Right of Asylum[53], and the juridical regime of historic waters including historic bays.[54]

The last two topics will be considered when dealing with items which are on the Commission's Agenda without action having been taken on them. At this point attention will centre upon the origin of those topics which were referred to the Commission which have been studied.

(c) Special Missions:

The Commission's activities in relation to special missions also originated from its work on diplomatic intercourse and immunities. When adopting a set of draft articles on diplomatic intercourse and immunities in 1958, the Commission observed that the draft dealt only with permanent diplomatic missions. The Commission realised that other forms of diplomatic relations between States, such as that covering itinerant envoys, diplomatic conferences and special missions sent to a State for limited purposes should also be studied. The Commission decided at its Eleventh Session (1959) to place the question of ad hoc diplomacy as a special topic on the agenda for its Twelth Session. On the basis of its discussion at the Twelfth Session the Commission drew up a brief draft on the rules concerning special missions[55]. The Commission prepared this draft with the aim of having it referred to the Conference on diplomatic intercourse and immunities covered at Vienna in the spring of 1961.

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51 Resolution 1687, XVI, 18 Dec. 196;
52 Resolution 1289 XIII, 5 Dec. 1958
53 Resolution 1400 XIV 21 November 1959
54 Resolution 1453 XIV 7 Dec, 1959
55 Y.B.I.L.C.1958 Vol.II p.179-180

By way of Resolution 1504 (XV) of 12 December 1960, the General Assembly decided, on the recommendation of the Sixth Committee, that these draft Articles should be referred to the Vienna Conference with the recommendation that the Conference should consider them. The Vienna Conference placed this question on its agenda and appointed a special sub-committee to study it[56]. The sub-committee took the view that the draft Articles were unsuitable for inclusion in the final convention without long and detailed study, which could take place only after a set of rules on permanent missions had been finally adopted. The sub-committee accordingly recommended that the Conference should refer this question back to the General Assembly so that the Assembly could recommend that the International Law Commission make a further study of the topic [57].

Consequently, the matter was again submitted to the General Assembly. On 18 December 1961, the General Assembly, on the recommendation of the Sixth Committee, adopted Resolution 1687 (XVI), in which it requested the International Law Commission to study the subject further and to report on it to the General Assembly. In pursuance of that resolution, the question was referred back to the International Law Commission, which decided, at its 669th Meeting on 27 June 1963, to place it on the agenda for its Fifteenth Session.[58]

It was not until 1967 that a final series of draft articles on special missions were adopted by the Commission. At its meetings on 7, 11, 12 November 1969 the Sixth Committee adopted the Commission's draft convention on special missions.

56 The sub-committee comprised of representatives from Equador, Iraq , Italy, Japan, Senegal; the U.S.S.R., the U.K., the U.S.A. and Yugoslavia.

57 Y.B.I.L.C., 1963, Vol.II, p.157

58 It was not until 1967 that a final series of draft articles on special missions were adopted by the Commission.

(d) Relations between States and International Organisations:

Resolution 1289 (XIII) relating to Relations between States and International Organisations originated from the Commission's work on diplomatic intercourse and immunities. In 1958 the Commission submitted to the General Assembly forty-five draft articles on diplomatic intercourse and immunities. The report covering the work of that session specified that the draft articles dealt only with permanent diplomatic missions[59]. It noted however, in para.52, that: "Apart from diplomatic relations between States, there are also relations between States and international organisations. There is likewise the question of privileges and immunities of the organisations themselves. However, these matters are, as regards most of the organisations, governed by special conventions." During the discussion of diplomatic intercourse and immunities in the Sixth Committee, the representative of France pointed out that the importance and development of international organisations had given rise to a number of legal questions which could usefully be studied by the International Law Commission. The suggestion, he stressed, was in no way designed to bring about a revision of the United Nations Charter or a re-consideration of special conventions on privileges and immunities, such as headquarter's agreements. His aim was to draw attention to the growing importance of the relations between States and International organisations and the need to work out general principles which could serve as a basis for the further development of law in this field.[60]

The General Assembly accordingly decided in resolution 1284(XIV) of 5 December 1958 to invite the Commission "to give further

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59 Y.B.I.L.C.1958, Vol.II, p.89

60 The French resolution, as orally amended by the sponsor, was adopted by the Sixth Committee on 12 November 1958, meeting 580, by 60 votes to 0 with 2 abstentions.

consideration to the question of relations between States and inter-governmental international organisations at the appropriate time, after study of diplomatic intercourse and immunities, consular intercourse and immunities and ad hoc diplomacy has been completed by the United Nations and in the light of the results of that study and of the discussion in the General Assembly."

The Commission's work on this topic culminated with the United Nations Conference on the Representation of States in their relations with International Organisations which was held in Vienna from 4 February to 14 March 1975. The Conference adopted 92 Articles dealing with the status, privileges and immunities of missions to international organisations and of delegations. as well as of observer delegations, to organs and conferences convened by such organisations.

(e) Extended participation in General Multilateral treaties concluded under the auspices of the League of Nations:

In 1963 the conclusions resulting from the Commission's study of extended participation in general multilateral treaties concluded under the auspices of the League of Nations were presented to the General Assembly. This study was requested[61] of the Commission in relation to a question raised in paragraph 10 of the commentary to Articles 8 and 9 of the Commission's draft Articles on the Law of Treaties. In that paragraph the Commission drew attention to the problem of the accession of new states to general multilateral treaties, concluded in the past, whose participation clauses were limited to specific categories of States. During the discussion of the Commission's report members of the Sixth Committee agreed that it would be desirable to study the question separately from the general Law of Treaties. During the debate it was pointed out that the matter affected almost half the present membership of the

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61 General Assembly Resolution 1766 (XVII) 20 Nov.1962

United Nations.[62] During the discussion of the report members[63] asked for particulars of the Treaties in question. The Secretariat accordingly submitted a working paper setting out the multilateral agreements concluded under the auspices of the League of Nations in respect of which the Secretary-General acts as depository and which were not open to new States. During the Sixth Committee deliberations, Ghana, India and Indonesia submitted a draft resolution whereby the Assembly would ask the International Law Commission to study the problem further - with special reference to the debate in the General Assembly, and to inform the Assembly of the results of the study in the report of its fifteenth Session (1963) session. On 2 November 1962 the Sixth Committee adopted the text of the resolution (as revised) unanimously. On 20 November it was unanimously approved at a plenary meeting of the Assembly.[64]

The conclusions resulting from the Commission's study of this topic were presented to the General Assembly in its report of its Fifteenth Session (1963).

(f) Most Favoured Nations Clause:

The Commission's work on the Most Favoured Nations Clause also arose out of its work in codifying the Law of Treaties. When considering additional topics for inclusion in its work programme, the Commission in 1967[65] recalled that, in dealing with the Law of Treaties[66] it had laid aside the "Most Favoured Nations

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62 Y.B.U.N.1962, p.482
63 Australia, Ghana and Israel
64 See Hardy "Re United Nations and General Multilateral Treaties concluded under the Auspices of the League of Nations", 1963 B.Y.B.I.L. p.435
65 Y.B.I.L.C. 1967 Vol.II p.369
66 Law of Treaties Articles 34-38

Clause" which it had decided not to deal with in its codification of the general Law of Treaties. The Commission noted that several representatives in the Sixth Committee at the Twenty-first Session of the General Assembly had urged that the Commission should deal with this topic. In view of the "manageable scope of the topic", of the interest expressed in it, and of the fact that a declaration of its legal aspects might be of assistance to the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.), which began its work in 1968, the Commission unanimously decided to place on its programme the topic of the Most Favoured Nations Clauses in the Law of Treaties. It also decided to appoint Mr. Endre Ustor as Special Rapporteur on that topic.[67]
Following discussion of the Commission's report on its Nineteenth Session (1967), the Sixth Committee adopted unanimously on 12 October 1967 a draft resolution which had been submitted by Bulgaria, Colombia, Ecuador, Guatemala and Nigeria which, among other things approved of the Commission's intention to study the topic of the Most Favoured Nations Clauses in the Law of Treaties.[68]
On 1 December 1967 the draft resolution was adopted unanimously by the General Assembly as Resolution 2272 XXII.
In 1976 the International Law Commission completed its first reading on this topic.

(g) Treaties concluded between States and International Organisations or between two or more International Organisations:

The origin of the Commission's work on Treaties concluded between States and international organisations or between two or more international organisations lies in its activities in relation

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67 Ibid. ft.nt. 47
68 Y.B.U.N. 1967, p.735

to codifying the Law of Treaties. The first report of the Special Rapporteur[69] on the topic under consideration noted that during the preparation of the draft Articles on the Law of Treaties from 1950 to 1960, the International Law Commission considered on several occasions the question whether the draft Articles should apply not only to treaties between States but also to treaties concluded by other entities, and in particular by international organisations.[70] The course finally adopted was to confine the study undertaken by the Commission to Treaties between States. Accordingly, Article 1 of the draft Articles prepared by the Commission[71], which eventually became Article 1 of the Vienna Convention on the Law of Treaties read, "The present Articles (convention) applies to treaties between States." The Conference, in addition, adopted a resolution in which it recommended to the General Assembly "that it refer to the International Law Commission the study, in consultation with the principal international organisations, of the question of treaties concluded between States and international organisations or between two or more international organisations."[72]

At the General Assembly's Twenty-fourth Session, later in 1969, this question, together with the report of the International Law Commission was considered in the Assembly's Sixth Committee. On 8 October 1969[73] the Sixth Committee unanimously approved a revised draft resolution concerning the International Law Commission's report and the resolution adopted by the Vienna Conference on the Law of Treaties. The text was sponsored in the Sixth Committee by a number of Countries[74] which among other

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69 Mr. Paul Reuter
70 Y.B.I.L.V. 1972, Vol. II, p.171
71 Y.B.I.L.C. 1966, Vol. II, p.177
72 Y.B.I.L.C. 1974, Vol. II, p.291
73 Y.B.U.N. 1969 p.728
74 Cameroon, Ceylon, Chile, Finland, India, Mexico, Morocco, Nigeria, Romania, Spain, Sweded, Syria, the U.S.S.R., the U.K. and later by Japan, Sudan and the Ukranian S.S.R.

things called upon the Assembly to recommend that the International Law Commission study, in consultation with the principal international organisations, as it might consider appropriate, the question of treaties concluded between two or more international organisations. On 12 November 1969, the draft resolution recommended by the Sixth Committee was adopted unanimously by the General Assembly as Resolution 2501 (XXIV). In 1970, at its Twenty-second Session, the Commission decided to include the question referred to in a resolution 2501 (XXIV) in its general programme of work, and it set up a sub-committee composed of thirteen members to make a preliminary study.[75] The International Law Commission began to work on this topic in 1971 and in 1975 prepared articles on treaties concluded between States and International Organisations or between two or more international organisations.

(h). Protection and inviolability of Diplomatic Agents and other persons entitled to Special Protection under International Law:

The Commission's activities on this topic originated in rather unusual circumstances. Early in 1970 the representative of the Netherlands wrote to the President of the Security Council of the United Nations concerning the need for action to ensure the protection and inviolability of diplomatic agents in view of the increasing number of attacks on them. The President of the Security Council in a letter dated 14 May 1970 transmitted a copy of the Dutch letter to the Chairman of the International Law Commission which pointed out its past work in this area.[76] At the Twenty-third Session of the Commission in 1971 the suggestion was made by Mr. Kearney that the Commission should consider whether it would be possible to produce draft articles

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75 Y.B.I.L.C. 1970 Vol.II, p.310
76 Y.B.I.L.C. 1970 Vol.II, p.273-274

regarding such crimes as murder, kidnapping and assaults upon diplomats and other persons entitled to special protection under international law.[77] The Commission recognised the importance and urgency of the matter, but deferred its decision in view of the priority that it had given other topics.[78] In considering its programme of work for 1972, however, the Commission reached the decision that if the General Assembly requested it to do so, it would prepare at its 1972 Session a set of draft articles on this subject with the view of submitting these articles to the Twenty-third Session of the General Assembly.[79]

The General Assembly, by Resolution 2780 (XXVI) of 3 December 1971, requested the Secretary General to invite comments from member states on the question of the protection of diplomats and to submit them to the Commission at its 1972 session.[80] At its Twenty-fourth Session, the Commission had before it written observations from twenty-six member States,[81] including a draft convention on the topic submitted by Denmark, a working paper and a draft convention prepared by the delegation of Uruguay, and a working paper prepared by Mr. Kearny,[82] Chairman of the Commission, containing draft articles concerning crimes against persons entitled to special protection under International Law. In view of the urgency and importance of the question, the Commission decided to set up a working group to prepare a set of draft articles. The working group submitted three reports containing draft articles, which the Commission provisionally approved in its 1972 Session and decided to submit to the General Assembly for consideration

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77 B.I.L.C. 1971 Vol.I, p.3
78 In particular the completion of the draft articles on the representation of States in their relations with international organisations.
79 Y.B.I.L.C. 1971 Vol.II p.352
80 Y.B.U.N. 1971, p.593
81 Y.B.I.L.C.1972 Vol.II, p.329
82 Ibid. p.201

and to Governments for comments.[83] It is of interest to note that there was only one reading of the draft articles on this subject rather than the usual two readings. The format and approach taken by the Committee was not greatly divergent from the draft prepared by Mr. Kearney who must take the credit for most of the content of the draft.[84]

The General Assembly on 28 November adopted Resolution 2926 (XXVII) whereby it invited States to submit their written comments and observations on the draft articles prepared by the International Law Commission and decided to include in the provisional agenda of its Twenty-eighth Session an item, "Draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons." Most of the Commission's work on this topic formed the basis of the 1973 Convention on the Protection and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents. The Convention is to enter into force 30 days after 22 States have become parties to it. By April 31, 1976 16 States had ratified the convention.

(i) Legal Problems relating to the non-navigational uses of International Watercourses:

By Resolution 2669 (XXV) of 8 December 1970, entitled "Progressive Development and codification of the rules of international law relating to international watercourses", the General Assembly requested the Secretary-General to prepare a supplementary report on the legal problems relating to the utilization and use of international watercourses, taking into account the recent application in a State practice and international adjudication of the Law of International Watercourses and also inter-govern-

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83 Ibid. p.312-323
84 See for example the comments of Mr. Nagendra Singh, Y.B.I.L.C.1972 Vol.I, p.18

mental and non-governmental studies on this matter.

This Resolution originated from a request of the Government of Finland, that the General Assembly include the topic in the agenda of its 1970 Session. During discussion in the Assembly's Sixth Committee, some representatives[85] held that the question should be referred to the International Law Commission. Other members of the Committee[86] preferred that the Secretary-General first seek the view of Governments on the question of codification in the field. During the course of debate, reference was made to the Helsinki rules on the uses of Waters of International Rivers, adopted by the International Law Association in 1966, and the resolution on "Utilization of non-maritime international waters (except for navigation)" adopted by the Institute of International Law in 1961. Some representatives[87] felt that any resolution adopted by the Assembly should contain a specific reference to one or more of these documents. On 8 December 1970, the draft resolution recommended by the Sixth Committee was adopted by the General Assembly, which in addition to the request to the Secretary-General referred to above, recommended that the International Law Commission should as a first step take up the study of the Law of the non-navigational uses of international watercourses with a view to its progressive development and codification, and consider the practicality of taking the necessary action as soon as it deemed appropriate.[88]

By Resolution 2926 (XXVII) of 28 November 1972 the General Assembly requested the Secretary-General to submit as soon as possible the study on the legal problems relating to the non-

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85 China, Iran, Iraq and Poland among others.
86 Bulgaria, Hungary, Rumania, the Ukranian S.S.R. and the USSR.
87 Including those of Argentina, China, Finland, Haiti, India, the Netherlands, Norway and Sweden.
88 Y.B.U.N. 1970, p.818.

navigational uses of international watercourses requested by the General Assembly in Resolution 2669 (XXV) of 8 December 1970, and to present to the International Law Commission at its Twenty-fifth Session an advance report on this study. This report was received by the Commission during its Twenty-fifth Session,[89] and a supplementary report on this topic was compiled for the Commission in 1973 at which time the Commission elected Mr. Kearny as Special Rapporteur for this topic.

To summarise the origin of the topics studied by the Commission during the period under consideration the following chart has been prepared which shows that of the eleven topics studied by the Commission since 1960 seven were the subject of a General Assembly resolution requesting the Commission to undertake the study. This does not mean to say that the Commission has undertaken a study of only three topics on its own initiative. In fact it could be misleading in the case of those subjects listed as topics five to nine on the chart to say that the initiative came from either the General Assembly or the Commission. It is very difficult to be precise as to the origin of these topics for "the chicken or the egg" syndrome appears to characterise their birth. Although all but one of the topics from five to nine inclusive were studied after formal resolution from the General Assembly they all originated from other work conducted by the Commission and to this extent the Commission itself played a cruical role in deciding to undertake a separate study of these topics. Of the eleven topics on the list it would appear that three were definitely studied by the Commission on its own initiative. These topics were all on the 1949 list. The

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89 Y.B.I.L.C.1973 Vol.II, p.95

Commission's study of the Most Favoured Nations Clause was not the result of a specific General Assembly resolution but was studied following a suggestion by the Sixth Committee that the Commission should give special attention to this subject.

CHART VI.

	TOPIC:	ORIGIN
1	Succession of States and Governments	1949 List. Resolution 1686 (XVI)
2	Law of Treaties	1949 List. Commissions own initiative
3	Consular Intercourse and Immunities	1949 List. Commission's own initiative
4	State Responsibility	1949 List. Commission's own initiative.
5	Extended Participation in General Multilateral Treaties concluded under the auspices of the League of Nations	Resolution 1766 (XVII) requested this study
6	Relations between States and International Organisations	Resolution 1289 (XIV) requested this study.
7	Special Missions	Requested by Resolution 1687 (XVI)
8	Most Favoured Nation Clause	Studied by Commission following suggestions by the Sixth Committee that it should be studied.
9	Treaties Concluded between States and International Organisations or between two or more International Organisations	Requested by Resolution 2501 (XXIV).
10	Protection and Inviolability of Diplomatic Agents and other Persons entitled to Special Protection under International Law	Requested by Resolution 2780 (XXVI)
11	Non-Navigational uses of International Watercourses	Requested by Resolution 2780 (XXVI)

Origin of Topics:

Before undertaking an examination of the reasons for the inclusion of topics on the Commission's agenda and for re-shaping some topics on the agenda (in particular State Responsibility and Relations between States and International Organisations) it may be of assistance to look at those topics which have been placed on the Commission's agenda, but not studied, and the reasons given for not undertaking a study of these subjects. In addition a brief look will be made at those topics suggested for study by the General Assembly member States and members of the International Law Commission, but which have not yet been placed on the Commission's agenda.

Topics on the Commission's Agenda which have not been studied:

(a) Right of Asylum:

This topic was included in the provisional list for codification drawn up by the Commission in 1949. The General Assembly at its Fourteenth Session adopted Resolution 1400 (XIV) of 21 November 1959 which requested the International Law Commission, as soon as it considered it advisable, to undertake the codification of the principles and rules of international law relating to the Right of Asylum. At its Fourteenth Session (1962) the International Law Commission decided to include the topic in its future programme of work, but it did not set any date for the start of its considerations.[90]

90 Y.B.I.L.C.1962 Vol.II p.190

Meanwhile, work on the Right of Asylum was proceeding in other organs of the United Nations. The Commission on Human Rights, which had been considering a draft declaration on the Right of Asylum since 1957, completed the draft in 1960, which was referred to the Third Committee in 1962, and 1963 and to the Sixth Committee in 1965 and 1966.

When considering dealing with the matter in 1967 most members doubted whether the time had come to proceed actively with this topic "because it was of considerable scope and raised some political problems, and to undertake (a study of it) at the present time might seriously delay the completion of work on the important topics already under study, on which several resolutions of the General Assembly had recommended that the Commission should continue its work."[91]

Later that year, the General Assembly adopted by resolution 2312 (XXII) of 14 December 1967 a Declaration on Territorial Asylum, culminating the work of the Commission on Human Rights and the Third and Sixth Committees. This, however, was not intended to be the end of the matter. As the Sixth Committee report notes "the adoption of a Declaration on Territorial Asylum would not bring to an end the work of the United Nations in codifying the rules and principles relating to the institution of asylum."[92]

The Sixth Committee report drew attention to the fact that asylum was on the programme of work of the International Law Commission pursuant to General Assembly Resolution 1400 (XIV) of 21st November 1959, and that the declaration adopted by the General Assembly on 14 December 1967 was one of the elements to be

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91 Y.B.I.L.C.1967 Vol.II p.369

92 Official Records of the General Assembly, Twenty-second Session, Annexes, item 89, para.64

considered by the Commission in its work.[93]

Hence, although the International Law Commission has expressed a reluctance to study this topic on its agenda the attitude of the Sixth Committee definitely seems to be that the Commission should not shirk the task of studying the laws relating to the Right of Asylum.

(b) Judicial Regime of Historic Waters including Historic Bays: The Commission's interest in the Judicial Regime of Historic Waters including Historic Bays originated from the First United Nations Conference on the Law of the Sea (1958). The Conference, adopted in paragraph 6 of Article 7 of the Convention on the Territorial Sea and Contiguous Zone, a provision to the effect that its rules on Bays shall not apply to so called "historic bays". The Conference on 27 April 1958, also adopted a resolution asking the General Assembly to arrange for the study of the juridical regime of historic waters, including historic bays. During the Assembly's Thirteenth Session in 1958 it was decided to postpone consideration of the question until the Fourteenth Session in 1959. At that Session the matter was referred to the Assembly's Sixth Committee which, on 4 December 1959, unanimously recommended that the International Law Commission be asked, as soon as it considered it advisable, to study the question and make such recommendations as it considered appropriate.[94] The General Assembly unanimously approved the Committee's recommendation on 7 December 1959 as Resolution 1453 (XIV). The Commission, at its Twelfth Session (1960), requested the Secretariat to undertake a study of the topic and deferred

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93 Ibid. para. 16
94 Y.B.U.N.1959, p.419

further consideration to a future session.[95] A study prepared by the Secretariat was published in 1962.[96] Also, in 1962 the Commission, at its Fifteenth Session, decided to include the topic in its programme, but it did not set any date for the start of consideration of the topic.[97]

The advisability of the Commission proceeding actively in the near future with the study of this topic was examined in 1967 at its nineteenth session. The Commission decided not to undertake a study of this topic at the time for the same reasons it rejected an immediate study of the Right of Asylum.[98]

During the General Assembly's Twenty-third Session (1968) the representatives of Australia[99], Canada[100] and Mexico[101] in the Sixth Committee referred to the topic in connection with the future work of the Commission, the Canadian representative in particular stressing the importance his delegation attached to the subject.

Thus it would seem that in spite of requests from representatives in the Sixth Committee to study the juridical regime of historic waters including historic bays, the International Law Commission is firm in its view that such a topic is not warranted because of its political implications; and, because the topic is not appropriate for a general set of rules because of several very specific local situations which could not be adequately dealt with by general rules; and because of the priority which the Commission has granted to other topics.

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95 Y.B.I.L.C.1960 Vol.II p.180
96 Y.B.I.L.C.1962 Vol.II p.1-25
97 Ibid. p.190
98 Y.B.I.L.C.1967, Vol.II p.369
99 Official Records of the General Assembly, Twenty third Session, Sixth Committee, 1036 meeting, para. 12.
100 Ibid. 1031st meeting, para.26
101 Ibid. 1033rd meeting, para.34

Topics suggested by Member States:

Perhaps the best opportunity given to States to make suggestions for topics for the International Law Commission to consider came with the adoption of Resolution 1505 (XV) on 12 December 1969. The following Chart shows the eleven topics suggested by governments and their origin.

CHART VII

	TOPIC	COUNTRY
1	Sources of International Law (in the 1949 report)[102]	Mexico
2	Recognition of Acts of Foreign States (1949 report)	Venezuela
3	Territorial Domain of States (1949 report)	Venezuela
4	Pacific Settlement of International Disputes (1949 report)	Israel, Argentina, Afghanistan, Czechoslavakia, Colombia
5	Law of War and Neutrality	Ceylon, Austria
6	Law of Space	(Not known)
7	Human Rights and Defence of Democracy	Venezuela, Colombia, Ceylon
8	Independence of Sovreignty of States	Ghana
9	Enforcement of International Law	Ghana
10	Utilization of International Rivers	Bolivia
11	Economic and Trade Relations	Yugoslavia

A number of these topics were at the time, or have since been included in the activities of other organs of the United Nations. The Law of Space, for example, is being studied by the General Assembly's Committee on the Peaceful Uses of Outer Space. The topic of Human Rights and Defence of Democracy was considered by the General Assembly by Resolution 2200A (XXI) of 19 December 1966 when it adopted the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Policital Rights and the Optional Protocol to the International Covenant on Civil and Political Rights. Economic and trade relations was removed from the

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102 Report prepared by the Secretariat, not the original 1949 List.

list of topics which the Commission might consider when the General Assembly by Resolution 2205 (XXI) of 17 December 1966, established the United Nations Commission on International Trade Law.

At its Fourteenth Session in 1962, the Commission considered the possibility of codifying the new topics suggested by the governments pursuant to Resolution 1505 (XV). At its 634th meeting held on 2 May 1962, the Commission set up a Committee of eight members to consider the Commission's future programme of work. The Committee which was composed of Mr. Amado (Chairman), Mr. Ago, Mr. Bartos, Mr. Cadieux, Mr. Castren, Mr. Jimeney de Arechaga, Mr. Pesson and Mr. Tunkin, met on 21 June when it considered the question on the basis of a working paper prepared by the Secretariat. The Committee formulated a number of suggestions which were submitted to the Plenary Commission at its 668th meeting on 26 June 1962. The Commission, on the recommendation of the Committee, agreed to limit its immediate programme of work to the three main topics to be studied pursuant to General Assembly Resolution 1686. The Commission considered that many of the topics proposed by the governments deserved study with a view to codification. However, the Commission believed that in drawing up its future programme of work, it was obliged to take account of its resources.

The Commission was of the view that the Law of Treaties, State Responsibility and Succession of States and Governments were such broad topics that they would keep the Commission occupied for several sessions. The Commission accordingly considered it inadvisable to add anything further for the time being to the already long list of topics on its agenda.[103]

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103 Y.B.I.L.C.1962 Vol.I p.190

Topics suggested by individual members of the International Law Commission:

(a) Unilateral Acts:

The possibility of the Commission examining this topic was suggested during the Commission's Nineteenth Session (1967) by Mr. Tammes who believed that "ample research and practice were available concerning the topic, which greatly needed clarification and systemization."[104]

(b) Status of International Organisations before the International Court of Justice:

This topic was also suggested by Mr. Tammes who, when referring to the South West Africa Case, said that the Commission might well take up the problem of enabling the United Nations and other international organisations to have the status of litigating parties before the International Court of Justice.[105]

(c) Statute of a new United Nations body for fact finding:

Mr. Tammes also expressed the view "that it would not be contrary to the Commission's terms of reference for it to draw up a Statute for a new auxiliary body of the United Nations to study, for instance, methods of fact finding."[106]

(d) International Economic Co-operation:

At the same session (1967) Mr. Castareda suggested that "Another matter which the Commission should consider in the future was the Law of International Economic Co-operation, which was continually developing within the United Nations, the Specialised Agencies and the regional and world wide economic organisations."[107]

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104 Y.B.I.L.C. 1967 Vol.1 p.179. This suggestion was also referred to by Mr. Ago, Ibid.p.182, Sir Humphrey Waldock, Ibid.p.248, Mr. Barbos, Ibid.p.248 and Mr. Castren,Ibid.p.250

105 Ibid. p.179

106 Ibid. p.179

107 Ibid.p.188

During the Commission's Twentieth Session (1968) a related proposal was made by Mr. Albonico, who suggested that the topic of the legal principles of reciprocal assistance between States was one which required urgent study.[108]

(e) Model Rules on Conciliation:

In 1967 Mr. Eustathiades suggested that the Commission might consider drawing up a set of Model Rules on Conciliation.[109]

(f) International Bays and International Straits:

During the same session Mr. Ago expressed the view that the Commission might be requested by an appropriate organ of the United Nations to give its opinion on the topic of international bays and international straits.[110]

During its Twenty-first Session in 1969 the International Law Commission stated that it intended to bring up to date in 1970 or 1971, its long-term programme of work.[111]

During its Twenty-second Session the Commission confirmed its intention of bringing up to date in 1971 its long term programme of work, taking into account the General Assembly's recommendations and the international Community's current needs, and discarding those topics on the Commission's 1949 List which were no longer suitable for treatment. The Commission asked the Secretary-General to submit to its Twenty-third Session a new working paper to serve as a basis for the Commission's selection of a list of topics to be included in its programme. The working paper, "Survey of International Law" was before the Commission at its 1971 Session. The Commission decided to place

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108 Y.B.I.L.C.1968 Vol.I, p.193 (no meaning given as to what the word 'reciprocal' meant in this context).
109 Y.B.I.L.C. 1967, Vol.I p.188
110 Ibid. p.182
111 Y.B.I.L.C. 1969 Vol. II, p.234

the question on the provisional agenda of its 1972 session and to invite members of the Commission to submit written statements on the review of its long-term programme of work.

Observations were received at the Twenty-fourth Session by Mr. Reuter and Mr. Kearney, the topics suggested by these two members were as follows:

(g) International Responsibility:[112]

Mr. Reuter believed that this topic should "be a priority subject for the conclusion of a convention over the next five years. First of all, the work that has already been accomplished will save time, secondly the subject matter is an extensive one, so that other undertakings may arise out of research done on it."[113]

(h) Immunities of foreign States and bodies corporate:

Mr. Reuter was of the view that "a study of this subject has the best prospects of being profitable."[114]

(i) Law relating to watercourses for uses other than navigation:

Mr. Reuter also suggested this topic during the course of his observations.[115]

(j) Territorial Competence of States:

This topic was also suggested by Mr. Reuter who believed that "some questions relating to the environment or State Responsibility might possibly also be dealt with under this heading."[116]

(k) Definitions in Relation to Unilateral Acts:

Mr. Reuter suggested this topic to the Commission by way of example of the type of activity which it might care to

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112 Including responsibility for Lawful Acts, International Penal Responsibility and Special Applications including Extradition.
113 Y.B.I.L.C.1972 Vol. II p.207
114 Ibid.
115 Ibid
116 Ibid.

engage in which differs from the nature of the topics it had concentrated on to date.[117]

(l) Model Treaties on Arbitration and Tax Matters:

These topics were also suggested by Mr. Reuter[118]

(m) Revision of Conventions prepared by the Commission:

Mr. Reuter believed that "when over twenty years have passed since a codification treaty was concluded, it should be brought up to date in the light of international practice and so the Commission should undertake a systematic revision of conventions it has prepared."[119]

(n) The Law Relating to the Environment:

In his observations Mr. Kearney adopted the same plan of organisation as contained in the table of contents of the Survey of International Law produced by the Secretary-General. The Law Relating to the Environment was one of the few topics suggested in the survey which Mr. Kearney thought the Commission should study. He believed that "the Commission should participate in this work and that taking up the problem of river pollution would be a substantial first step."[120]

(o) Privileges and Immunities of International Organisations, and of entities and officials under their Authority:

Mr. Kearney believed that this topic "should be taken up as the next subject in (the field of International Organisations) when the work on treaties is completed... This aspect might be broadened to include....contractual capacity, capacity to engage in legal proceedings and the like."[121]

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117 Ibid. p.208
118 Ibid.
119 Ibid.
120 Ibid. p.213
121 Ibid.

This subject was included within the scope of the topic Relations between States and International Organisations, as conceived by El Erian.

During the Commission's Twenty-fifth Session it considered a review of its long term programme of work. It was noted that, in accordance with previous decisions of the Commission endorsed by the General Assembly, the Commission will, for some years, have ample work to do to complete considerations of the five topics with which it was currently engaged.[122]

Having identified those topics studied by the Commission during the period under review and having also looked at those subjects which have been referred to the Commission, or which have been suggested that the Commission might study, it would be appropriate at this point to attempt to identify the factors which determine whether or not a topic will be studied by the Commission. This topic is very closely related to the relationship between the International Law Commission and the Sixth Committee of the General Assembly, the final topic of study under this Chapter.

What factors have been taken into account in determining what topics will be studied by the Commission and the nature of the Commission's approach to the topic?

Perhaps the most effective approach to this topic would be to identify those factors which have been paramount in the Commission's considerations when electing to reject studying a topic.

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122. Viz. 1. Succession of States in Respect of Treaties
2. State Responsibility
3. Succession of States in respect of matters other than Treaties
4. The Most Favoured Nation Clause
5. The question of Treaties concluded between States and International Organisations or between two or more International Organisations.

(a) Commission's Resources in terms of Time:

In 1967, when considering organisation of future work, "most members (of the Commission) doubted whether the time had yet come to proceed actively with either of these topics (Right of Asylum and Judical Regime of Historic Waters including Historic Bays) because both were of considerable scope...."[123] However, the size of the work involved did not deter the International Law Commission from engaging in wide and exhaustive studies concerning State Succession in respect of matters other than Treaties: the Law of Treaties with respect to international organisations and the more specific study relating to non-navigational uses of international watercourses, all of which the Commission commenced working on after 1967. Admittedly the close relationship between State Succession to treaties and relations between States and Inter-governmental Organisations which the Commission was already studying and two of the topics it later considered [124] more than justified an immediate study of the latter two topics. However, it should be noted that mere size of the subject matter in itself is not the most paramount reason for the Commission electing to study certain topics.

The size of the topics suggested in response to Resolution 1505 (XV) of 12 December 1960, and the lack of time in which to study them was a factor behind the Commission limiting its future programme of work in 1962. Mr. Amado, Chairman of the Committee to consider the Commission's Future Programme of Work said that the Committee was unanimous that the Commission's programme of

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123 Y.B.I.L.C.1967 Vol.II, p.369

124 Viz. State Succession in respect of matters other than Treaties, and the Law of Treaties with respect to international organisations. The topic of diplomatic and consular immunities was also closely related.

work should "consist of the following seven topics: The Law of Treaties; State Responsibility; The Succession of States and Governments; the question of Special Missions; the question of Relations between States and Inter-governmental organisations; the Privileges and Rules of International Law relating to the Right of Asylum; and the Juridical Regime of Historic Waters including Historic Bays. It had been the opinion of the Committee that the first three topics would take at least ten years to complete."[125]

Mr. Bartos added that the Committee had agreed that the Commission should state in its report that, although certain other topics put forward by governments were of great interest and might usefully be codified; "they could not be included in the programme of working owing to lack of time."[126]

Although the size of particular topics had excluded them from the Commission's considerations on occasions, the Commission has, as mentioned before, not been reluctant to engage in topics of considerable size and which have occupied the Commission's time for numerous sessions. Hence other factors have obviously incluenced the Commission in deciding its programme of work.

(b) Political and Diplomatic Factors:

When electing to reject a study of the Law of Asylum and the Law relating to Historic Waters including Historic Bays a dominant consideration was that "Both (topics) raised some political problems..."[127] These "political problems" were never explained by the Commission, although Mr. Kearney suggested some reasons when he said that the subject "Right of Asylum, appears too controversial to take up at this time (1972)." The difficulties

125 Y.B.I.L.C.1962 Vol.I p.266
126 Ibid.
127 Y.B.I.L.C.1967 Vol.II p.369

are implicit in Article 14, paragraph 2 of the Universal Declaration of Human Rights [128] which specifies that a Right of Asylum may not be invoked in cases of prosecutors for non-political crimes or for acts contrary to the purposes and principles of the United Nations. This formulation leaves a State substantially free to grant or not grant asylum as it sees fit and there is little likelihood that a more meaningful definition that might be proposed by the Commission would be widely accepted.[129]

Although the Commission has never explained its reasons for not wishing to engage in a study of the Law relating to Historic Waters, including Bays, it would seem that a major consideration is the difficulty of engaging in a multilateral study of what is basically a unique domestic situation. This is particularly so in relation to controversial historic straits such as the Gulf of Agaba and the N.W. Passage, although the problem may not be so accentuated in relation to historic bays.

The more difficult problem which arises however, is the problem of attempting to propose a method of regulating States' conduct in relation to very controversial waters in a way which will be mutually acceptable to all parties. This is the political and diplomatic factor which has steered the Commission's attention away from studying this topic.

It is apparent then that political and diplomatic factors have played a substantial role in determining what topics should not occupy the International Law Commission's time. Such considerations, it is suggested, have also been present when

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128 General Assembly Resolution 217A (III)
129 Y.B.I.L.C.1972 Vol.II p.213

determining what topics should be placed on the Commission's agenda. This was perhaps most extremely exemplified by the Commission's study of the Law relating to Protection and Inviolability of Diplomatic Agents and other persons entitled to Special Protection under international law. Although the Commission's involvement in this topic was under exceptional circumstances it does highlight the fact that the Commission is prepared to be influenced in a positive way by political and diplomatic factors when determining what subjects it should study.

The revulsion which characterised world opinion early in this decade over violent attacks against diplomats sponsored the Dutch to request the United Nations Security Council to take action. The Dutch requests were communicated to the International Law Commission where Mr. Kearney, who, as a State Department employee must have been acutely aware of the viobility of American and other diplomats abroad to terrorist activities, effectively persuaded the International Law Commission to adopt in substance a set of draft articles presented by Mr. Kearney.

Two interesting points about the Commission's activities in relation to this topic are the influence of Mr. Kearney, the President of the Commission, and perhaps indirectly the American State Department over the actual content of the draft presented to the General Assembly by the Commission. And, secondly, the speed with which the Commission was able to find time to deal with the topic, although a great deal of work had already been done by countries such as the U.S.A. and Denmark. In 1971 the Commission recognised the importance of the matter, but deferred its considerations of the topic because of the

priority it has given to other matters. By 1972, however, the Commission had decided to set up a working group to prepare a set of draft articles which were submitted to the General Assembly for consideration later in that year.

(c) General Resources:

In electing in 1962 not to place on its agenda those topics which were suggested by member States, the Commission explained that "In drawing up its future programme of work, it is obliged to take into account its own resources."[130] No explanation was given however as to what the Commission was referring to by the term "resources". In the context in which it was used it might connote a number of factors such as the facilities available to members for research, the individual preferences of members of the Commission to study certain topics and not others, and of course the time at the Commission's disposal to engage in a study of other topics. Because no explanation was given by the Commission as to what it meant by "resources" any assumption as to its meaning must by its nature be of limited value. Accordingly one is forced to be as vague as the Commission itself and say that lack of resources is a further factor which determines whether or not the Commission will engage in studying a particular topic.

(d) Relationship to other Topics:

A factor which has proved to be of major influence in determining what topics the Commission has studied during the period under consideration is the relationship between certain topics. Other factors which play a role is determining whether or not the Commission should study a particular topic and how the topic should be studied were considered at various points in the "Survey of International Law: Working Paper

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130 Y.B.I.L.V.1962 Vol.II p.190

prepared by the Secretary-General" printed in Vol.II Part 2 of the Commission's 1971 Report.

These factors can be classified as follows:

(e) Method of implementation of the Commission's work:

When in 1953, the Commission was considering dealing with the subject of the peaceful settlement of disputes it was faced with the question of whether it should aim at a convention or rather prepare a set of model rules which States and others might adopt in drawing up arbitration agreements. The Commission chose the latter alternative because a convention "would distort traditional arbitration practice, making it into a quasi-compulsory jurisdictional procedure, instead of preserving its classical diplomatic character in which it produced a legally binding, but final, solution, while leaving Governments considerable freedom as regards the conduct and even the outcome of the procedure, both wholly dependent on the form of the compromise."[131]

(f) Whether or not a series of draft articles on a topic could form the basis of a convention:

At paragraph 283 of the Working Paper cited above it is stated that "During recent years the Commission has chiefly concentrated on producing, in relation to the particular topic under consideration, at the time, a series of draft articles which could form the basis of a convention to be adopted by States. The reasons given for this in the case of the Commission's work on the Law of Treaties were contained in the report of its Fourteenth Session.[132] These were that a convention serves to consolidate the law on a given branch of the law, and its preparation gives an opportunity for the participation of the vast majority of States.

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131 Y.B.I.L.C.1957. Vol.II, Part 2, para. 134
132 Y.B.I.L.C.1962. Vol.II p.160

(g) Nature of the Subject Matter:

In relation to the question of the effect of armed conflicts on the legal relations of States (both as between combatant States and non-combatant States) it was observed in para.411 of the Survey mentioned above that "the practice so far adopted by the Commission of dealing with the question as it presents itself in particular contexts, and of not attempting to deal with the matter from the standpoint of its over-all codification and development would continue to represent the best way for the Commission to proceed at least for the present time." This was particularly true in the case of this topic because it related to the operation of international security.

Other factors, not directly referred to in the report which are taken into account by the Commission when deciding what topics it should study and how it should study them are as follows:

(h) Whether the topic is ripe for consideration:

This factor was indirectly referred to at para.338 of the report where mention was made of the possibility of studying the law relating to the Environment.

(i) Whether the subject is being considered by other bodies:

This consideration was referred to earlier when considering "topics suggested by Member States". It is unlikely for example, that the International Law Commission will study the topic of Economic Trade Relations as recommended by Yugoslavia in response to Resolution 1505 (XV) of 12 December 1969 because of the establishment of the United Nations Commission on International Trade Law in 1966 which is competent to consider this topic.

A study of the selection of topics considered by the International Law Commission since 1960 would not be complete without looking at the relationship between the Commission and the Sixth Committee of the General Assembly. This is of particular

relevance to the examination just completed of the factors which are taken into account when determining what topics the Commission should study.

RELATIONSHIP WITH THE SIXTH COMMITTEE:

During the Sixth Committee debates on future work on the codification and progressive development of international law in September 1961, debates arose concerning the process of selection of topics for study by the International Law Commission and on the nature of the topics which should be studied by the Commission.

(a) Process of Selection:

During the course of debate opinions differed as to what body was competent to review the International Law Commission's programme of work. Some members[133] favoured the system established in 1948, namely that the Commission itself should take action, remaining master of its procedure and methods of work.[134] Others preferred that the Assembly, and more particularly the Sixth Committee should undertake this task, "the political aspects of which could not be ignored."[135]

This disagreement as to the autonomy of the International Law Commission first emerged when the Sixth Committee was considering the report of the International Law Commission convening the Commission's first session. As was noted by Briggs,[136] Professor Koretsky of the U.S.S.R. regarded the International Law Commission as being "a subsidiary organ of the Assembly, from which it received its instructions." Sir Hartley Shawcross of the U.K. advocated a different point of view. He stated that "his Government regarded the International Law Commission as an organ whose authority and independence in international law were second only to the International Court of Justice; although the "distinguished and independent experts who did not necessarily represent the opinions of their Governments...were

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133 Including Australia, Italy and Pakistan
134 Among them Afghanistan, Ceylon and Greece
135 Y.B.U.N.1961 p.522
136 Ibid. p.317

responsible in the last analysis to the General Assembly," they "were free to carry out their work as they saw fit." In 1961 the debate continued. Mr. Perera of Ceylon commented that "The States which had taken the initiative in the adoption of Resolution 1505 (XV) had maintained from the outset that the progressive development of international law must be primarily the responsibility of the General Assembly... For that reason, the States, i.e. the General Assembly, must give guidance to the International Law Commission and allow it to decide, at a later stage, whether such and such a topic proposed by the Assembly lent or did not lend itself to codification or the Adoption of new regulations."[137] Similar comments were made by Mr. Tabibi of Afghanistan and Mr. Zepos of Greece.

The opposing point of view was championed by Mr. Capotonti of Italy who commented..."that under Article 18 of its Statute, it was for the International Law Commission itself to choose subjects for codification. Since the Statute had been adopted by the General Assembly, there was no doubt that such had been the will of the Assembly, which was perfectly justified since it was a matter of a choice which must rest on technical considerations and, above all, on a due appraisal as to whether or not a subject was ripe for codification.[138]

Similar views were expressed by Mr. Stirling of Australia and Mr. Mustafa of Pakistan.

The compromise solution which finally prevailed and which was embodied in the 12-Nation draft resolution which emerged from the Sixth Committee and which was eventually adopted by the General Assembly as Resolution 1686 (XVI) of 12 December 1960,

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137 Official Records General Assembly Sixteenth Session, Sixth Committee 716th meeting, p.131

138 Ibid. 722nd meeting, p.159

provided for co-operation between the Sixth Committee and the International Law Commission, the latter to review its programme of work in the light of Governments' comments and to submit its conclusions at the Seventeenth Assembly Session.

Such has been the procedure in selecting its topics. Although the Commission has never considered itself bound by the recommendations of the Sixth Committee and the General Assembly, it has given considerable weight to the recommendations of these bodies. Hence, of the eleven topics considered by the Commission during the period under review, seven were the subject of a resolution of the General Assembly, while three were definitely studied by the Commission at its own initiative. At the same time two subjects recommended for study by the General Assembly have not been looked at by the Commission even though these topics have been placed on the Commission's agenda.

(b) Nature of Topics selected:

Further debate arose in the Sixth Committee concerning the nature of those topics which the Commission should consider.

Some representatives[139] insisted that the Commission was essentially juridical and not political in nature and that it should not deal, therefore, with highly controversial questions, particularly if they were of a political character. Mr. Evens of the U.K. remarked that "In considering what tasks the Commission was best fitted to do, it should be borne in mind that its members were experts sitting in their personal capacity, and that the Commission was a legal, not a political body. If the

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139 Principally those from France, Pakistan and the U.K.

General Assembly had intended it to have a political function, it would have established a Committee composed of representatives of States or Governments. It had not done so!" [140] Mr. Mustafa of Pakistan and Mr. Theirry of France both were of the view that International Law must not be regarded as an instrument which could be adapted to allow certain governments to apply their policy. That consideration, however, in their view in no way meant that the Commission must confine itself to selecting topics which did not present any difficulties. The representatives of countries such as Iraq, Mexico and the Ukranian S.S.R. put forward an opposing point of view. They considered that, although law was a social phenomenon which should not become involved with politics, the latter nevertheless influenced the very principles upon which the law was based, and that there was no such thing as a purely juridical question. They believed that if the Commission was to serve any real purpose, it must not be afraid to tackle questions which, although juridicial, were the subject to political controversy.[141]

To conclude this Chapter it is suggested that, as indicated by the Commission's reasons for not dealing with the law of Asylum and Judicial Regime of Historic Waters, including Historic Bays, and by the Commission's readiness to deal with the law relating to the Protection and Inviolability of Diplomatic Agents and other Persons Entitled to Special Protection under international law, political and diplomatic factors do play an important role in deciding whether or not a particular topic is to receive attention from the Commission. However, although these are examples of situations where political and diplomatic

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140 Official Records United Nations 1961, Sixth Committee, 717th Meeting, p.135
141 Y.B.I.L.C.1961 p.523

considerations can be identified, it would be misleading to say that political and diplomatic factors are evident when the Commission is deciding to study each of the subjects on its agenda or what approach the Commission should take when making its study. As the contents of this chapter have shown there are a number of factors which determine whether or not the Commission should study a particular subject and what nature the study should take.

It is suggested, however, that one thread can be identified as running through all of these considerations. That is, that the Commission is unlikely to engage in the study of a topic unless it expects that the results of its activities will be accepted by a great proportion of the world community. As a consequence the Commission has succeeded in maintaining the confidence of the General Assembly by not embarking on projects which will inevitably cause deep dissension.

CHAPTER 3:

RELATIONSHIP WITH REGIONAL LEGAL BODIES:

A) The Inter-American Council of Jurists:

The statutory basis for co-operation between the International Law Commission and the Inter-American Council of Jurists is to be found in the provisions of Article 26, para.(4) of the Statute of the Commission.

The International Law Commission adopted an initial resolution on co-operation with the Inter-American Council of Jurists in 1954; and in 1955 it requested the Secretary-General of the United Nations to authorise its Secretary to attend, in the capacity of an observer, the Third Meeting of the Inter-American Council of Jurists, and expressed the hope that the latter would also sent its Secretary to attend the meetings of the Commission.

Co-operation between the two bodies was also one of the topics discussed by the Inter-American Council of Jurists at its Third meeting, at which a resolution was approved expressing the opinion that it would be desirable for the organisation of American States to study the possibility of having its juridical agencies represented as observers in the International Law Commission.[142]

The Secretary-General of the Organisation of American States sent as observer to the Eighth Session of the International Law Commission, held in 1956, Mr. M.Conzes, Deputy Director of the Department of Legal Affairs of the Pan American Union.[143]

The Secretary of the International Law Commission attended the Fourth Meeting of the Inter-American Council of Jurists in

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142 Y.B.I.L.C.1956 Vol.II p.102

143 Y.B.I.L.C.1960 Vol.II p.121

the capacity of Observer. His report of the meeting was given at the Commission's Twelfth Session.[144]

Mr. Edurado Jimeney de Arechaga represented the Commission at the Fifth Meeting of the Inter-American Council of Jurists held in San Salvador from 25 June to 5 February 1965. Items considered at the meeting included the contribution of the Americas to the principles of international law that govern the responsibility of the State.

This study was intended to assist the International Law Commission in the codification of its work on State Responsibility. The Commission's representative at the meeting expressed the appreciation of the Commission for the Committee undertaking the study and pointed out that it would undoubtedly help the Commission in its deliberations.

Mr. Jose Mara Ruda attended as observer for the Commission the next meeting of the Inter-American Juridical Committee which was held at Rio de Janero from mid-June to early September 1968.

The work carried out by this Committee at its meeting had very little relevance to the activities of the International Law Commission at the time as the following list of topics considered at Rio de Janero reveals.

(a) Harmonization of the legislation of the Latin American countries on Companies, including the problem of international companies.

(b) Uniform law for Latin America on commercial documents.

(c) Draft Statutes of the Inter-American Juridical Committee.

(d) International stand-still agreements.

These have been the only sessions to which a representative of

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144 Y.B.I.L.C.1960, Vol.II p.120

the International Law Commission has been sent to observe the deliberations of the Inter-American Juridical Committee. The sending of an observer appears to be nothing more than a gesture of friendship. However, even if no substantive benefit is derived there are advantages to the Commission sending observers to the Committee's sessions. The exchange of observers must surely foster relations between the two bodies and by explaining the Commission's activities to the Committee an important "public relations" exercise is performed. If organisations such as the Inter-American Juridical Committee are kept informed of progress made by the Commission in its tasks, and if the Committee is given opportunities to comment to the Commission on its work, then the Commission's status has every chance of being enhanced in the eyes of regional bodies. If the International Law Commission cannot win the confidence of international legal bodies which comprehend the Commission's objectives, what chance would the Commission have of winning the support of individual nations? The exchange of observers therefore fulfils the useful task of gaining support and confidence for the Commission.

(B) Asian-African Legal Consultative Committee:

This Committee's interest in the work of the International Law Commission is not adventitious, for it is called upon by Article 3(a) of its own Statute "to examining questions that are under consideration by the International Law Commission and to arrange for the views of the Committee to be placed before the said Commission; to consider the reports of the Commission and to make recommendations thereon to the Governments of the participating countries."

At its Twelfth Session, the International Law Commission decided unanimously to accept the invitation of the Asian-African Legal Consultative Committee to send an observer to the Committee's Fourth Session. Noting that the topic of State Responsibility was on the agenda of that session, a topic which was also to be studied by the Commission at its next session, the Commission decided to designate Mr. Gacia Amador, its Special Rapporteur for that subject, as observer at the Committee's Fourth Session. His report was presented to the Thirteenth Session of the Commission in 1961.

The Commission was represented at each of the succeeding sessions held by the Asian-African Legal Consultative Committee. The Seventh Session took place at Baghdad from 22 March to 1 April 1965. Mr. Roberto Ago was observer for the Commission. Among other things, the Committee considered a report of the work done by the International Law Commission at its Sixteenth Session on the Law of Treaties. Professor Ago commented that the Committee could be of considerable help to the Commission if it concentrated on the items which the Commission was studying and made constructive suggestions before the Commission finalised its drafts. When requested to give some instances of topics to which the Committee might give special attention, he mentioned as an example, the question of reservations and interpretation of treaties.[145] It was decided that the Committee should appoint Dr. Hassan Zakariga of Iraq as Special Rapporteur to prepare a special report in order to assist the Committee in its study of the matter. It was further decided to request Governments to send their comments on the Commission's draft articles to the Rapporteur by the end of April 1965; and that the subject would be taken up at the next session of the Committee

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145 Y.B.I.L.C.1965 Vol.II p.150

for consideration on the basis of the report of the Special Rapporteur.

Mr. Mustafa Yasseen represented the Commission at the Eighth Session of the Asian-African Legal Consultative Committee which was held at Bangkok from 8 to 17 August 1966. The Committee spent considerable time discussing the Law of Treaties and more particularly, the fate of the International Law Commission's draft on that topic. Mr. Yasseen made a statement on behalf of the International Law Commission in which he stressed the importance of co-operation between the two bodies in the progressive development and codification of international law and asked the Committee to make a thorough study of the draft on the Law of Treaties so that its member States could clearly define their positions on it. The Committee decided "to take up at its next session, for consideration, the draft articles on the subject adopted by the Commission with a view to formulating proposals and suggestions from the Asian-African view point for consideration by the Governments of the participating countries...to appoint Mr. Sompory Suchartkul as Special Rapporteur, with the request that he prepare on the specific points arising out of the International Law Commission's draft on the subject from the Asian-African view point.... And, to request the Governments of the participating countries to send their comments on the draft articles to the Rapporteur through the Secretariat of the Committee before the end of December 1966."[146]

At the Committee's Ninth Session, in 1967, attended again by Mr. Yasseen, the Committee had before it the report prepared by the Special Rapporteur, and a brief report prepared by the

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146 Y.B.I.L.C.1967 Vol.II p.331

Secretariat on the historical background to the articles. The Committee expressed appreciation for the Commission's work on the Law of Treaties and forwarded the Commission comments from member States.[147]

At the next session of the Committee held in Karachi during January 1969 Mr. Abdul Tabibi attended as Observer for the Commission. Special attention was again given to the Law of Treaties at the request of some Asian and African Governments for it gave an opportunity to discuss important issues in preparation for the Second Session of the U.N. Conference on the Law of Treaties. After two plenary meetings were devoted to a general consideration of the subject, two sub-committees were constituted for a discussion on specific provisions.[148] The reports adopted by these sub-committees were adopted by the Committee on 30 January 1969 and copies of the reports were then forwarded to the International Law Commission.[149]

It is difficult to determine the significance of this consideration of the Law of Treaties and the work undertaken by the European Committee on legal co-operation in 1968 on the same subject (referred to later) on the Vienna Conference. It is perhaps fair to say that preparation at the regional level for the Conference on the Law of the Treaties enabled individual States to become more aware of the substantive issues involved with the Law of Treaties. It also proved to be an effective "testing ground" as to the way in which a diverse group of States were likely to react to the provisions of the convention onthe Law of Treaties in Vienna.

Representatives of the International Law Commission attended the following meetings of the Committee. In 1972, when Mr. Elias

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147 See Y.B.I.L.C.1968 Vol.II p.183

148 Namely Articles 2, 5bis, 12 bis, 16, 17, 62 bis, and 76.

149 See Y.B.I.L.C.1969 Vol.II p.190

was elected President of the Committee and Mr. Vasseen vice-President the topics considered by the Committee related almost entirely to the Law of the Sea which were to be dealt with at the next Conference on the Law of the Sea. This subject was also considered at the next session of the Committee where the Committee also dealt with the topic of protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, which was, of course, of direct relevance to the International Law Commission.

It is suggested that the relationship which has been maintained by the International Law Commission with the Asian-African Legal Consultative Committee has been the most profitable of all its relations with regional bodies. Not only has the Committee provided an avenue for the Commission to seek support for its activities but it has also been able to utilize a source of viewpoint on topics it is considering. This was particularly so in relation to the Law of Treaties and the Protection and Invbolability of Diplomatic Agents and Other Persons entitled to Special Protection under international law.

(c) European Committee on Legal Co-operation:

In 1966 it was proposed in the International Law Commission to establish a co-operative relationship between the Commission and the EuropeanCommittee like those existing with the juridicial bodies of the Organisation of American States and with the Asian-African Legal Consultative Committee. The Commission decided at its 827th meeting to establish a relationship under Article 26 of its Statute with the European Committee on Legal Co-operation. The European Committee was represented at the Committion's meeting by Mr. H.Golsory, Director of Legal Affairs, Council of Europe, who addressed the Commission on 13 January 1966.

The Commission was invited, through the United Nations Legal Counsel, to send an observer to the European Committee's Seventh Session, held at Strasbourg from 10 to 14 April 1967. Mr. Mustafa Yasseen represented the Commission at this meeting where two items relating to the Commission's programme of work were considered:

(a) Privileges and Immunities of International Organisations. A sub-committee of experts proceeded with a comparative study of the privileges, immunities and facilities accorded to the United Nations, the Council of Europe, the European Development Organisation and the European Space Research Organisation.

(b) The Law of Treaties.

The Committee on legal co-operation concluded that it was desirable that the Council of Europe should organise an ad hoc meeting in January 1968 in preparation for the international conference of plenipotentiaries to study the Commission's draft articles on the Law of Treaties. To ensure the success of the ad hoc meeting, it was decided that Governments should, if possible, send to it the head, or at least one of the principal members of their delegations to the international Confere.ce.[150]

The following year, Sir Humphrey Waldock was elected to represent the Commission at the 1968 session of the European Committee on legal co-operation. Because of his committments as Judge of the European Court of Human Rights, Sir Humphrey was unable to personally attend the Committee's session. Instead Sir Humphrey sent a letter [151] giving a brief outline of the

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150 Y.B.I.L.C.1976 Vol.II p.335
151 Y.B.I.L.C. Vol.II p.187

of the Commission's activities in so far as they related to the work of the Committee, in particular the Commission's work on "Privileges and Immunities of International Organisations and the Law of Treaties."

The Committee, has, for every year since 1966, sent Mr. Golsory to the Commission's annual meetings to explain the Committee's annual achievements. It was not until 1974 however, that the Commission sent another observer when Mr. A.H. Tabibi attended the Committee's Twenty-first Session held at Strasburg from 24 June to 28 June 1974.

Like the Commission's relationship with the Inter-American Council of Jurists it would appear that no great substantial benefit has been derived from sending observers to the Committee's sessions. However, as emphasised earlier, the bond which has been developed between the Commission and the regional legal Committee serves the very valuable function of providing a way of explaining the Commission's activities. It is only by explaining its work that the Commission will gain support for its projects, and by gaining the support of regional legal bodies the Commission moves a long way towards securing the confidence and support of individual nations.

CONCLUSIONS:

In the introduction to this research paper a hope was expressed that this disertation will fill a gap in research about the International Law Commission since 1960. No startling revelations or unique theories about the role of the International Law Commission since 1960 have emerged from these pages. However, startling revelations and unique conclusions are not necessarily the hallmarks of successful research.

The conclusions reached from this research lead to the suggestion that the composition of the International Law Commission since 1960 has certainly altered to account for increased membership in the United Nations of the so-called lesser developed countries, particularly from Africa. This change however has not been significant as far as the composition of the Commission as a whole is concerned for the most influential group within the Commission has continued to be the European lawyers. The change to cater for increased membership still does not reflect the changes in composition of the General Assembly. However, the amount of time which each political-geographical area has been represented on the Commission over the last sixteen years has reflected closely the "understanding" which exists as to the distribution of seats.

When selecting its topics for study and its approach to subjects the Commission has been influenced by a number of factors which received consideration in the course of the second chapter. Having the time to consider a particular subject and the expectation of acceptance of its work by the international community would, it is suggested, be the two paramount factors which have lead the Commission to study the eleven topics it has dealt with since 1960.

The Commission's relations with the three regional bodies which were considered in Chapter Three have provided (particularly in the case of the Asian-African Consultative Committee) an opportunity for the Commission to explain its activities and at the same time test the reaction of a diverse range of countries to the Commission's work.

Although these conclusions are rather mundane they signify some of the problems which have faced the International Law Commission during the past sixteen years and which show no signs of being fully resolved.

Probably the biggest problem facing the International Law Commission at the moment is an inability to handle a big enough work load. This problem refers not only to the amount of time which is spent on each subject (on average seven to nine years), but also to the Secretariat facilities and the composition of the Commission. Expanding the size of the Commission to distribute the work load amongst more individuals is not necessarily the right answer to the problem; for, an increase in the size of the Commission would probably not result in a decline in the influence of the European lawyers who tend to dominate the Commission and bear a disproportionate amount of the burden of the Commission's work.

The second major problem facing the Commission is the task of selling its work. By fostering relations with organisation such as the three regional legal bodies considered in chapter three, the Commission is certainly attempting to secure support for its work. However, the problem goes a little deeper than this. The Commission has certainly kept an eye on political and diplomatic considerations when selecting its topics of study. As a result the Commission has not embarked upon projects which would invariably cause deep dissension. But, at the same time

although the Commission has not focussed its attention on subjects which might be classed as "lawyers' law" it is fair to say that it has probably not succeeded in capturing the enthusiasm of the world community which it might otherwise win if it were to engage in studying subjects of a more general and topical concern. Mr. Kearney's suggestion that the Commission study "the law relating to the environment" might certainly go a long way in solving the problem the Commission has in selling its work.

It is appropriate that the last few sentences of this paper should be directed to a theme which has been running throughout the preceding pages. At various points it has been emphasised that the International Law Commission, through aspects of its composition and process of selection of topics, is sensitive to diplomatic and political considerations. The growing trend of members having some tie with their governments and the reluctance of the Commission to engage in a study of two topics in particular which would invariably cause dissension suggest that the Commission is certainly likely to be sensitive to diplomatic and political considerations. As this paper has tried to emphasise, there is nothing wrong with the International Law Commission studying some topics because of their political and diplomatic content: nor is there a great deal wrong with the composition of the International Law Commission reflecting to a certain extent the composition of the United Nations. These political and diplomatic factors can be described as the salt in the porridge which is the total work of the International Law Commission. Without the salt the porridge may look good, but it is tasteless as far as the world community is concerned. It is

imperative that if the International Law Commission is to continue to win the respect of the International Community, then it must continue to reflect both in its composition and work, some political and diplomatic considerations.

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