



What is the International Law Commission?

A description of the United Nations International Law Commission



Source: United Nations

The Origin of the Commission

The International Law Commission (ILC) is one of the subsidiary bodies of the General Assembly of the United Nations that serves to research, study and recommend changes in international law for its progressive development and codification. In drafting the charter of the United Nations in 1945,

governments participating strongly opposed conferring on the United Nations legislative power to enact binding rules of international law. However, they strongly supported conferring on them the more limited powers of study and recommendation. From there Article 13 Paragraph 1 in the Charter of the United

Nations was born “ 1. The General Assembly shall initiate studies and make recommendations for the purpose of: “a. ... encouraging the progressive development of international law and its codification.”

The ILC is composed of experts in international law, that serve in their individual capacities rather than representatives of any particular country. These experts hail from different sectors of the international legal community, including academia, diplomatic corps, government ministries and international organizations. Members possess both practical experience and doctrinal knowledge with international law.

Elections

Each member state of the UN can nominate a maximum of four candidates, only two of which can be nationals of that member state. There cannot be two members serving on the Commission who are nationals of the same state. There are also region-specific restrictions, i.e. there can only be x number of members from North America. While election to the commission is not restricted to nationals of member states of the UN, but no national of any state that is not a member of the UN has ever been elected to the commission.

In the case of dual nationality, a person is deemed to be a national of the state in which he or she ordinarily exercises civil and political rights (article 2, paragraph 3). The number of members has changed over the past few decades and is now at 34 members. Elections are conducted through a secret ballot, and a simple majority is needed. More than one ballot may be held if necessary until all members have been elected by the required majority. In the case of a tie for a remaining seat, the General Assembly holds a special restricted ballot limited to those candidates (from the regional group to which the seat is allocated) who have obtained the required majority and an equal number of votes. The Secretary-General sends a letter to the Governments of Member States informing them of the upcoming election, indicating the geographical distribution of seats at the upcoming election, noting the relevant provisions of the Statute, and drawing attention to the deadline for the nomination of candidates. The names of candidates must be submitted in writing to the Secretary-General by the first of June of the election year (article 5). A term of office is 5 years.



Current Members of the Commission

(serving until 2027)

Name	Nationality
Dapo Akande	GBR
Carlos J. Argüello Gómez	NCA
Masahiko Asada	JPN
Bogdan Aurescu	ROU
Yacouba Cissé	CIV
Ahmed Amin Fathalla	EGY
Rolf Einar Fife	NOR
Mathias Forteau	FRA
George Rodrigo Bandeira Galindo	BRA
Patrícia Galvão Teles	POR
Claudio Grossman Guiloff	CHI
Huikang Huang	CHN
Charles C. Jalloh	SLE
Ahmed Laraba	ALG
Keun-Gwan Lee	KOR
Vilawan Mangklatanakul	THA
Andreas D. Mavroyiannis	CYP
Ivon Mingashang	COD
Giuseppe Nesi	ITA
Hong Thao Nguyen	VIE
Phoebe Okowa	KEN
Nilüfer Oral	TUR
Hassan Ouazzani Chahdi	MAR
Mario Oyarzábal	ARG
Mārtiņš Paparinskis	LAT
Bimal N. Patel	IND
August Reinisch	AUT
Penelope Ridings	NZL
Juan José Ruda Santolaria	PER
Alioune Sall	SEN
Louis Savadogo	BFA
Munkh-Orgil Tsend	MGL
Marcelo Vázquez-Bermúdez	ECU
Evgeny Zagaynov	RUS

Their Work and Past Examples

In the selection of the topics on which to focus for the progressive development of international law, they consider proposals by the GA as well as member states of the UN, and any principal organs of the UN besides the General Assembly and any specialized agencies or official bodies. In selecting topics for codification the ILC must consider the entire field of international law. In practice the Commission typically seeks endorsement by the General Assembly before engaging in the substantive consideration of a topic. The ILC mainly focuses on public international law. Some examples of topics they have focused on in past plenary sessions include: protection of the environment in relation to armed conflicts, protection of personal data in transborder flow of information, and extraterritorial jurisdiction. On the right is the list of the current members of the Commission.

Source: United Nations



Roles within the Commission

At the beginning of each session, the Commission elects from among its members the Chairman, the First and Second Vice-Chairmen, the Chairman of the Drafting Committee, and the General Rapporteur for that session. The Chairman presides over the meetings of the plenary, the Bureau, and the Enlarged Bureau. A vice-chairman has the same powers and duties as the Chairman when designated to take the place of the Chairman. The Chairman of the Drafting Committee presides over the meetings of the Drafting Committee; recommends the membership of the Drafting Committee for each topic; and introduces the report of the Drafting Committee when it is considered in plenary. The Rapporteur is responsible for the drafting of the Commission's annual report to the Assembly. The Commission has emphasized that the Rapporteur should play an active part in the preparation of the report (which is undertaken by the Secretariat).

The Commission is a permanent and part-time subsidiary organ of the General Assembly. Members of the Commission are paid travel expenses and receive a special allowance in accordance with article 13 of the Commission's Statute. They meet annually, and as the role is

one of a part-time nature, members of the commission typically do not leave the careers they had before being elected.

The Structure of the Commission

- The Bureau, consisting of the five officers elected at the session, handles the session's schedule and organizational matters.
- The Enlarged Bureau includes the elected officers, former Chairmen who are still members, and Special Rapporteurs. It addresses broader organizational issues.
- The Planning Group, established at each session, focuses on the programme and methods of the Commission's work. It often forms Working Groups for specific tasks like recommending new topics or improving methods.
- Working groups are essential in the process of formulating and researching for draft articles. They are ad hoc subsidiary bodies, meaning they are created on an as needed basis. They are created by the Commission or its Planning Group for specific purposes and with different mandates. The mandate can include the initial research of a new topic or a more careful process of considering draft articles. An example of topics they could work on before include succession of states and international



liability or responsibility. Working groups can be either of limited membership or open-ended, depending on the nature of the task. The composition of these groups often remains consistent across sessions to ensure continuity, whereas the Drafting Committee's membership may change annually. Typically, the chair of a working group is a Special Rapporteur for the topic. The point of most involvement of working groups is at the beginning of crafting draft articles. They play a very important role in developing approaches and ideas for what the Commission should work on, ensuring a well-thought-out proposal for a draft article. If a working group undertakes substantial drafting, its final product might be submitted directly to the Commission in plenary sessions, bypassing the Drafting Committee to avoid duplication or errors. In other cases, the Drafting Committee may review the text for consistency and language adequacy. Working groups may also prepare revised versions of draft articles or provide guidance on their formulation, which are then referred to the Drafting Committee. This step ensures proposals are carefully crafted and critically reviewed before formal adoption.

Full Group(Plenary) Sessions are for –

1. Considering reports from Special Rapporteurs, working groups, and the Drafting Committee.
2. Deciding on the referral of draft articles to the Drafting Committee and adopting provisional or final drafts and commentaries.
3. General debates which help set the Commission's broad approach to topics, ensuring that subsidiary organs work in line with the Commission's overall direction.

Process of Draft Articles

Preliminary Stage:

1. Appointment of a Special Rapporteur: A Special Rapporteur is appointed to lead the study and drafting process for a particular topic.
2. Plan of Action and Data Collection: A plan of action is formulated, and requests for relevant data and information are sent to governments, international organizations, and the Secretariat to gather necessary research and precedents for the topic they are considering.

First Reading:

1. Drafting and Plenary Discussions: The Special Rapporteur prepares reports and



preliminary drafts of the articles, which are then considered in plenary sessions and referred to the Drafting Committee for further elaboration.

2. **Commentaries and Provisional Approval:** The draft articles are accompanied by detailed commentaries that include precedents, divergent views, and alternative solutions considered. These provisional drafts, with their commentaries, are approved by the Drafting Committee and the plenary.

Second Reading:

1. **Review and Revision:** After the provisional drafts are issued, governments are invited to submit their written observations. The Special Rapporteur studies these responses, along with any comments from the Sixth Committee debates, and prepares a further report with recommended changes.
2. **Finalization and Adoption:** The revised drafts are considered and approved by the Drafting Committee. The final draft articles, with commentaries, are then adopted by the Commission in plenary sessions. This stage also includes a recommendation on the next steps, such as convening an international conference to examine and potentially adopt the draft articles as a convention.

The 2 ILC Mandates

Progressive Development of International Law – preparing draft conventions on subjects that international law has yet to regulate or through which the law is not well developed.

Codification of International Law – creating a system of rules of international law in fields where there has already been extensive state practice, precedent and doctrine.

Impact of their Work

The ILC has been and continues to be of utmost relevance in the field of international law through a process of clarifying, defining, developing and codifying international law. It has directly played a role in global cooperation and development as well as promoting multilateralism between nations. Serving as a link between academic experts, state practice, and the process of treaty-making, the ILC has had a profound and lasting impact on the field of international law. They have drafted numerous foundational treaties and conventions including: the Vienna Convention on the Law of Treaties (1969) which governs treaties between states. Another example of their work is the Draft Articles on the



Responsibility of States for Internationally Wrongful Acts (2001): While not yet a binding treaty, these articles have been highly influential in shaping state practice and international jurisprudence. The ILC has shaped legal framework guiding state behavior and influenced international jurisprudence as their work is often cited by international courts and tribunals. In addition, ILC promotes the concordance between domestic and international laws and facilitates the resolution of

disputes by offering clear legal principles and tools such as treaty interpretation. The ILC continually adapts its work to address contemporary global challenges, such as cybercrime, climate change, and international humanitarian law, ensuring that international law evolves in response to modern crises. Lastly, the ILC helps advance legal scholarship through its work which is extensively studied by scholars worldwide.

Karla Perdomo Núñez
Global Affairs Student
Yale University

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