

The forms of codification in the works of the ILC: towards an enhanced interaction between the ILC and the Sixth Committee

28 October 2022, CR11, 1.15 – 2.45 PM EDT

Opening remarks:

- Amb. Gianluca Greco, Deputy Permanent Representative of Italy
- Amb. Holger Martinsen, Legal Counsel at Argentina's Ministry of Foreign Affairs
- Prof. Juan Jose' Ruda Santolaria, Legal Counsel at Peru's Ministry of Foreign Affairs and ILC Member

Panel chaired by Ms Daphne Hong, Solicitor-General, Director-General of the International Affairs Division of the Attorney-General's Chambers of Singapore:

- Prof. Patricia Galvao Teles, ILC member
- Amb. Mario Oyarzabal, ILC member-elect
- Prof. Giuseppe Nesi, ILC member-elect
- Prof. Charles Jalloh, ILC member
- Prof. Martins Papparinskis, ILC member-elect



Concept note

When new topics are proposed in the ILC for the long-term program of work, the following criteria have to be met:

- a) the topic should reflect the needs of States in respect of the progressive development and codification of international law;
- b) the topic should be at a sufficiently advanced stage in terms of State practice to permit progressive development and codification;
- c) the topic should be concrete and feasible for progressive development and codification;
- d) the Commission should consider topics that reflect new developments in international law and pressing concerns of the international community as a whole.

While these criteria have guided the ILC in the identification of new topics, less clear, especially to governmental advisers and outside observers, are the criteria that lead the Commission to consider one of the different forms of “codification”, whether through draft articles, draft guidelines, draft conclusions, draft principles or a study. This aspect is especially important as the choice of product is often strictly intertwined with the type of recommendation that the ILC issues at the end of its work and to the type of follow-up that is requested to the Sixth Committee (typically the adoption of draft articles has entailed a recommendation to elaborate a convention on the basis of those draft articles).

A distinguished panel of current and incoming members will address some of the most important questions arising out of the choices made by the ILC in regard to the forms of codification, including:

- Is the practice of the ILC concerning the forms of codification inspired by non-written, informal criteria?
- Is there a need to elaborate and formalize certain criteria that should guide the Commission in its choices, similar to what the ILC did with the inclusion of new topics in the long-term program of work?
- Are the expectations and views of States factored in in the choices made, including in the possible modification of form while the work of the ILC on a certain subject matter is ongoing?
- Does the anticipated reaction of the Sixth Committee to certain Commission recommendations, such as to elaborate a convention based on draft articles, influence the choice of output?
- Is “soft codification” sufficiently addressed by the adoption of a certain output or should such “soft codification” be endorsed by Governments through soft law instruments, such as GA resolutions?
- Should the follow-up to ILC products be rendered more predictable and efficient through the elaboration of certain criteria in the Sixth Committee, for example through the annual ILC resolution?

The main purpose of the side-event is to inspire further reflection on this important topic, in order to enhance the interaction and mutual understanding between the ILC and Governments, especially in the Sixth Committee, and to stimulate effective working practices with regard to the implementation of Art. 13 of the UN Charter.