

# **Statute of the International Law Commission**

1947

Adopted by the General Assembly in resolution 174 (II) of 21 November 1947, as amended by resolutions 485 (V) of 12 December 1950, 984 (X) of 3 December 1955, 985 (X) of 3 December 1955 and 36/39 of 18 November 1981.



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## **Statute of the International Law Commission**

### *Article 1*

1. The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification.

2. The Commission shall concern itself primarily with public international law, but is not precluded from entering the field of private international law.

### CHAPTER I ORGANIZATION OF THE INTERNATIONAL LAW COMMISSION

### *Article 2<sup>a</sup>*

1. The Commission shall consist of thirty-four members who shall be persons of recognized competence in international law.

2. No two members of the Commission shall be nationals of the same State.

3. In case of dual nationality a candidate shall be deemed to be a national of the State in which he ordinarily exercises civil and political rights.

### *Article 3*

The members of the Commission shall be elected by the General Assembly from a list of candidates nominated by the Governments of States Members of the United Nations.

### *Article 4*

Each Member may nominate for election not more than four candidates, of whom two may be nationals of the nominating State and two nationals of other States.

### *Article 5*

The names of the candidates shall be submitted in writing by the Governments to the Secretary-General by 1 June of the year in which an election is held, provided that a Government may in exceptional circumstances substitute for a candidate whom it has nominated before 1 June another candidate whom it shall name not later than thirty days before the opening of the General Assembly.

### *Article 6*

The Secretary-General shall as soon as possible communicate to the Governments of States Members the names submitted, as well as any curricula vitae of candidates that may have been submitted by the nominating Governments.

### *Article 7*

The Secretary-General shall prepare the list referred to in article 3 above, comprising in alphabetical order the names of all the candidates duly nominated, and shall submit this list to the General Assembly for the purposes of the election.

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<sup>a</sup> Text amended by General Assembly resolution 36/39 of 18 November 1981.

*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 in the Commission as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured.

*Article 9<sup>b</sup>*

1. Those candidates, up to the maximum number prescribed for each regional group, who obtain the greatest number of votes and not less than a majority of the votes of the Members present and voting shall be elected.

2. In the event of more than one national of the same State obtaining a sufficient number of votes for election, the one who obtains the greatest number of votes shall be elected, and, if the votes are equally divided, the elder or eldest candidate shall be elected.

*Article 10<sup>c</sup>*

The members of the Commission shall be elected for five years. They shall be eligible for re-election.

*Article 11*

In the case of a vacancy, the Commission itself shall fill the vacancy having due regard to the provisions contained in articles 2 and 8 above.

*Article 12<sup>d</sup>*

The Commission shall sit at the European Office of the United Nations at Geneva. The Commission shall, however, have the right to hold meetings at other places after consultation with the Secretary-General.

*Article 13<sup>e</sup>*

Members of the Commission shall be paid travel expenses, and shall also receive a special allowance, the amount of which shall be determined by the General Assembly.

*Article 14*

The Secretary-General shall, so far as he is able, make available staff and facilities required by the Commission to fulfil its task.

CHAPTER II  
FUNCTIONS OF THE INTERNATIONAL LAW COMMISSION

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<sup>b</sup> Text amended by General Assembly resolution 36/39 of 18 November 1981.

<sup>c</sup> Text amended by General Assembly resolution 985 (X) of 3 December 1955.

<sup>d</sup> Text amended by General Assembly resolution 984 (X) of 3 December 1955.

<sup>e</sup> Text amended by General Assembly resolution 485 (V) of 12 December 1950.

### *Article 15*

In the following articles the expression “progressive development of international law” is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression “codification of international law” is used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine.

#### A. PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW

### *Article 16*

When the General Assembly refers to the Commission a proposal for the progressive development of international law, the Commission shall follow in general a procedure on the following lines:

- (a) It shall appoint one of its members to be Rapporteur;
- (b) It shall formulate a plan of work;
- (c) It shall circulate a questionnaire to the Governments, and shall invite them to supply, within a fixed period of time, data and information relevant to items included in the plan of work;
- (d) It may appoint some of its members to work with the Rapporteur on the preparation of drafts pending receipt of replies to this questionnaire;
- (e) It may consult with scientific institutions and individual experts; these experts need not necessarily be nationals of Members of the United Nations. The Secretary-General will provide, when necessary and within the limits of the budget, for the expenses of these consultations of experts;
- (f) It shall consider the drafts proposed by the Rapporteur;
- (g) When the Commission considers a draft to be satisfactory, it shall request the Secretary-General to issue it as a Commission document. The Secretariat shall give all necessary publicity to this document which shall be accompanied by such explanations and supporting material as the Commission considers appropriate. The publication shall include any information supplied to the Commission in reply to the questionnaire referred to in subparagraph (c) above;
- (h) The Commission shall invite the Governments to submit their comments on this document within a reasonable time;
- (i) The Rapporteur and the members appointed for that purpose shall reconsider the draft, taking into consideration these comments, and shall prepare a final draft and explanatory report which they shall submit for consideration and adoption by the Commission;
- (j) The Commission shall submit the draft so adopted with its recommendations through the Secretary-General to the General Assembly.

### *Article 17*

1. The Commission shall also consider proposals and draft multilateral conventions submitted by Members of the United Nations, the principal organs of the United Nations other than the General Assembly, specialized agencies, or official bodies established by intergovernmental agreement

to encourage the progressive development of international law and its codification, and transmitted to it for that purpose by the Secretary-General.

2. If in such cases the Commission deems it appropriate to proceed with the study of such proposals or drafts, it shall follow in general a procedure on the following lines:

(a) The Commission shall formulate a plan of work, and study such proposals or drafts, and compare them with any other proposals and drafts on the same subjects;

(b) The Commission shall circulate a questionnaire to all Members of the United Nations and to the organs, specialized agencies and official bodies mentioned above which are concerned with the question, and shall invite them to transmit their comments within a reasonable time;

(c) The Commission shall submit a report and its recommendations to the General Assembly. Before doing so, it may also, if it deems it desirable, make an interim report to the organ or agency which has submitted the proposal or draft;

(d) If the General Assembly should invite the Commission to proceed with its work in accordance with a suggested plan, the procedure outlined in article 16 above shall apply. The questionnaire referred to in paragraph (c) of that article may not, however, be necessary.

## B. CODIFICATION OF INTERNATIONAL LAW

### *Article 18*

1. The Commission shall survey the whole field of international law with a view to selecting topics for codification, having in mind existing drafts, whether governmental or not.

2. When the Commission considers that the codification of a particular topic is necessary and desirable, it shall submit its recommendations to the General Assembly.

3. The Commission shall give priority to requests of the General Assembly to deal with any question.

### *Article 19*

1. The Commission shall adopt a plan of work appropriate to each case.

2. The Commission shall, through the Secretary-General, address to Governments a detailed request to furnish the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other documents relevant to the topic being studied and which the Commission deems necessary.

### *Article 20*

The Commission shall prepare its drafts in the form of articles and shall submit them to the General Assembly together with a commentary containing:

(a) Adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine;

(b) Conclusions defining:

- (i) The extent of agreement on each point in the practice of States and in doctrine;
- (ii) Divergencies and disagreements which exist, as well as arguments invoked in favour of one or another solution.

*Article 21*

1. When the Commission considers a draft to be satisfactory, it shall request the Secretary-General to issue it as a Commission document. The Secretariat shall give all necessary publicity to the document, including such explanations and supporting material as the Commission may consider appropriate. The publication shall include any information supplied to the Commission by Governments in accordance with article 19. The Commission shall decide whether the opinions of any scientific institution or individual experts consulted by the Commission shall be included in the publication.

2. The Commission shall request Governments to submit comments on this document within a reasonable time.

*Article 22*

Taking such comments into consideration, the Commission shall prepare a final draft and explanatory report, which it shall submit with its recommendations through the Secretary-General to the General Assembly.

*Article 23*

1. The Commission may recommend to the General Assembly:

- (a) To take no action, the report having already been published;
- (b) To take note of or adopt the report by resolution;
- (c) To recommend the draft to Members with a view to the conclusion of a convention;
- (d) To convoke a conference to conclude a convention.

2. Whenever it deems it desirable, the General Assembly may refer drafts back to the Commission for reconsideration or redrafting.

*Article 24*

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

CHAPTER III  
COOPERATION WITH OTHER BODIES

*Article 25*

1. The Commission may consult, if it considers it necessary, with any of the organs of the United Nations on any subject which is within the competence of that organ.

2. All documents of the Commission which are circulated to Governments by the Secretary-General shall also be circulated to such organs of the United Nations as are concerned. Such organs may furnish any information or make any suggestions to the Commission.

*Article 26*

1. The Commission may consult with any international or national organizations, official or non-official, on any subject entrusted to it if it believes that such a procedure might aid it in the performance of its functions.

2. For the purpose of distribution of documents of the Commission, the Secretary-General, after consultation with the Commission, shall draw up a list of national and international organizations concerned with questions of international law. The Secretary-General shall endeavour to include on this list at least one national organization of each Member of the United Nations.

3. In the application of the provisions of this article, the Commission and the Secretary-General shall comply with the resolutions of the General Assembly and the other principal organs of the United Nations concerning relations with Franco Spain and shall exclude both from consultations and from the list, organizations which have collaborated with the nazis and fascists.

4. The advisability of consultation by the Commission with intergovernmental organizations whose task is the codification of international law, such as those of the Pan American Union, is recognized.

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