



## **The role of the international law commission in the codification and development of international environmental law**

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### **Abstract**

Nature is able to answer all the human beings' need truly, if it is used reasonably. When nature and its resources are used in an irregular manner, nature will be destroyed and its resources will be ended, then human face on difficulty for supplying their needs. In this regard, the principles of environment protection are based on two approaches: human-centered and environment-center. In the human-centered approach the environment will be tended due to its direct effect on survival and quality of human life, in contrary environment-center approach is based on environmental goals, on which there is social agreement and they are examined separately in this research. On the other hand, international law commission as an institution which is undertaken the development of international law, is one of the institutions that thinks about international environment law. So that the commission provided its first report on convention on fishing and conservation of the living resources of the high seas (1958) and its last report in 2013 on atmosphere and environment protection during armed conflicts. On the other hand, other commission measures and actions such as international treaties drafting and answering some questions raised by other international institution in this topic are remarkable. Therefore, in this study, the resources and general concept and principles of international law, international law commission's approach as an influential institution in development of this area of international law and commission's acts procedure are investigated; also, the question is answered that dose the international environment development have a growing and effective trend or dose not?.

**Keywords:** international environment law, codification, development, international law commission, international law

### **Introduction**

The codification of international law was begun since middle of 19<sup>th</sup> century. This measure was followed by different institutes and conferences and the process of codification and approval of regulations was changed day by day and the most famous one was begun since the time of the first Hague Peace Conference on 1899 after the League of Nations selecting some issues for codification, which could gain no significant achievement. In this regard, the relationship between establishment of UN and then the establishment of International Law Commission is a focus point, since they have been the introduction of entering a new age in codification and development of International Law Commission. The necessity of codifying and developing International Law in the process of summit of states in San Francisco (1945) is emphasized and also, in the charter of UN (contrary to covenant of League of Nations), explicit regulations are available about codification and development of different domains of international law as it is reflected in article 13 of the Charter: the general assembly shall initiate studies and make recommendation for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law and its codification. As a result, the general assembly has documented same articles at the first commission whereby the resolution No.94/1 dated in Jan of 1946 in a committee called Committee 17 for progressive development of international law and established it. The committee was responsible for

taking careful investigations and specifying the approach of general assembly in this framework. The committee held more than 30 meetings from May 12 to Jan 17 and advised at last the general assembly to found a commission called International law Commission due to the project it had predicted for its Statute. At last, the general assembly accepted establishment of the commission with issuance of Resolution 174 and approved its Statute. Hence, the purpose of the commission due to the article 1 of the Commission Statute is progressive development of some texts in fields ignored by International Law, in which performance of governments is not developed desirably in them. On the contrary, cases are observed that the performance of states is explicit and various judicial decisions could be found and the elite scholars of International Law have expressed their opinions several times. Taking measure for careful presentation of regulations in written form could be considered as codification of International Law.

### **Problem Statement**

International Law, which was at the first a supervisor on countries, has emphasized various dimensions of human life today. The main issues in this field could be issues of the Environmental Law. Hence, over the years, the branch of International Law has been considered as a part of public order of international community and with the presentation of access to healthy natural environment as a human right has given high importance to this issue. Moreover, the relevant

issues of environmental pollution, commitments and obligations of countries, considering environment as a common heritage and issues like this have made countries take effective steps in field of systemization of behavior of countries and other international actors in field of the environment as the main creators of International Law. Hence, from the heart of International Law, an orientation is created called International Environment Law. On the other hand, it should be accepted that the environment has been developed about the international law and has not considered just the issue of pollution. Although the international law was at the first limited to contractual or non-contractual field between parties, the issue of environment is today being considered mostly in view of public order of international general assembly. Therefore, today, protection of the natural environment, regardless of this issue that what part of the earth may be at risk, has a public and international dimension, which should be protected as common heritage of humans and be developed or its management is guaranteed in framework of novel approach with more comprehensive development and codification. On the other hand, analysis of the procedure of International law Commission indicates that the role played by the commission in field of International Environment Law has been developed over the years. In this regard, codification and progressive development of International Law as one of the most important missions of general assembly of the UN is very important in sustainability of peace and deployment of law in the International Society. According to article 13 of the Charter of the UN, the general assembly shall initiate studies and make recommendations for the purpose of:

- a. Promoting international cooperation in the political field and encouraging the progressive development of international law and its codification
- b. Promoting international cooperation in the economic, social, cultural, educational and health fields and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion

Accordingly, without change into international legislation, the general assembly has conducted continuous studies and has provided the text of resolutions or draft of international treaties and has provided them for the governments to issue them. During the 65 years passed from the life of United Nations, the General Assembly has relied on its secondary organs and with International Law Commission in peak of them and has been successful to codify different chapters of international environment law and take measure to develop it. In this regard, in session 65 of the International Law Commission in 2014 in Geneva, the place of UN, along with other 8 issues like expulsion of aliens provisional application of treaties and other issues, the issue of protection of natural environment during the armed hostilities and protection of atmosphere have been considered in the agenda of the primary studies of International Law Commission, hoping that useful measures are taken to codify and develop the regulations of International Environment Law (Iranian Association for UN Studies, 2010).

### Research Significance

One of the main concerns of the recent century is prevention

of destruction of the environment and amendment and approval of domestic laws of countries and in international level and the common and binding treaties. This is because; right to healthy environment could reflect high and basic values such as right to life and right to health with standards, which is exposed to irreparable risks from the concern of water to the nuclear pollution to the global warming and risk for the life of next generation. In fact, proper management of natural resources is depended on existence of binding and applied legal provisions needing international cooperation of all countries. In this way, the International Law Commission due to its responsibilities could take appropriate measures to begin expertize studies to pave the way for formation of comprehensive treaties. Hence, it has been tried to analyze the role and position of International Law Commission in codification and development of International Environment Law as one of the most important orientations of international law and right to health environment as one of the rights of human third generation and possible measures to protect it.

### Research Objectives

1. To determine the existing gap in legal provisions as an issue in formation of binding international documents
2. Recognition of applied and possible and also practical solutions of the international law commission in codification and development of this branch of international law
3. Identification of measures taken by international law commission and other international authorities in this field to the date

### Definition of the environment

Lexically, natural environment (Mohit Zist) is formed of two words of natural and environment. Environment (Mohit) is an Arabic word and is derived from the root "Hot" meaning surrounding and something that has surrounded something else. Natural (zist) is also a Persian word and synonym of life. In other words, natural environment encompasses all natural and manmade elements surrounded the humans and animals and plants and the species or all tangible and intangible factors forming the framework of life. In other words, it refers to something that interferes in the process of living; meaning all conditions and external factors affecting living, growth and health of humans and other living things and plants (Mashhadi, 2010, 211).

Although there are various definitions for the natural environment, one of the best and comprehensive definitions is the definition presented by the Council of Europe in paragraph 13 of article 2 of the Convention on Civil Liability for Damage resulting from Activities (1933): "living and non-living natural resources like air, water, soil, animals, plants and the interactions between similar factors and assets as cultural heritage and as special features of the environment" (Poorhashemi and Arghand, 2013, 21).

### Definition of international environment law

International Environment Law is a branch of International Law. Other sub-branches of General International Law include International treaty law, human rights, humanitarian law, law of international responsibility of States, Law of the

Sea and so on. Before presenting any kind of definition of International Environment Law, it is necessary to point out that some of the lawyers disagree with using the term "International Environment Law" and believe that this branch of international law has not special references and method to codify regulations. Therefore it could not be considered as an independent branch of law. However, majority of law scholars have used similar terms such as human rights and law of the sea and have authorized use of international environment law. Philip Sand: "international environment law includes principles, procedures and international regulations with main objective of protection of the environment". In this definition, the scholar has referred to two basic elements in international law: first, the references of international environment law are same references of international law; second, the aim by creating this branch of international law is introduced as protection of the environment. Alexandre Kiss and Dinah Shelton believe that international environment law is the newest branch of international law with the aim of protecting the environment. Some scholars have also defined international environment law as follows: "a series of international law provisions with the subject of preventing environment pollution and with the aim of protecting the environment".

The above mentioned definitions have emphasized 2 points:

Firstly: the common point of references of international environment law with general international law

Secondly: the main purpose is in fact preventing the environment pollution and protecting the natural environment for the present and future generations and achievement to sustainable development. However, today with the development of international environment law, new legal references have been created in this legal branch, which are different from the general international law.

In general, in definition of international environment law, it could be mentioned that international environment law is one of the newest and expanded branches of general international law and could regulate the relations of followers of international law in field of protection of the environment. In other words, international environment law is the set of regulations of international law dominated on the relations between followers and actors of international law, whether governmental or non-governmental, to protect the environment (Poorhashemi and Arghand, 2013, 22).

### **Definition of codification and development**

Codification and development play key role in development and evolution of international law. In international law, like other legal fields, codification refers to academic conversion of common law to a series of written regulations classified regularly and development of law is an action confirming new regulations based on existing regulations.

Article 15 of the Statute of International Law Commission has tried to separate codification from progressive development of international law explicitly. The term "progressive development of international law" means preparing draft or plan of treaties in field of subjects, which have not been systemized in international law yet or the procedure of countries has not been developed sufficiently. The terms codification of international law refers to systemizing

regulations of international law regularly and explicitly in fields that a rational procedure has been always existed in the procedures. Although the separation is considerable in theoretical terms, it is not so advantageous practically. Codification of law could naturally lead to development of international law and a part of development of law is depended on codification of law. Codification and development of international law follow technical goal of ending ambiguity of legal regulations and creation of new legal provisions (Rezaei Bigdeli, 2008, 27).

### **International law commission**

In the Charter of UN, contrary to the UN Treaty, explicit regulations are existed about codification and development of international law reflected in article 13: the general assembly shall initiate studies and make recommendations for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law and its codification.

In enforcement of the said regulations, the general assembly issued the resolution on formation of permanent commission of lawyers called "International Law Commission" in Nov 21, 1947. According to the latest revision of commission statute, 34 international lawyers are appointed for 5 years and they could be appointed again and there is no limitation. The appointment is done in such way that the commission can be representative of the original civilizations and legal systems of main geographical regions of the world. The commission members are appointed from the scholars in international law. The way of appointment is in such way that the UN Member States could introduce each qualified member among their nationals to the Secretary General before termination of mission of each member. The Secretary General offers qualified entities to the general Assembly from the said individuals. Absolute and final appointment of members is among responsibilities of the General Assembly. Although the commission members are appointed by their respective countries, they would never be representative of that country if they are accepted, but also they have absolute freedom of action. Moreover, in the commission, only one member could attend from nationals of each country. The first conference of international law commission was hold in 1949 and after that, the conferences are being held every year for 2-3 months in Geneva and different issues are studied for codification and development of international law and the results are announced to the General Assembly in form of a report.

### **The origin and evolution of international environment law**

International environment law as one of the most important branches of general international law is being developed. Although protection of some animal and plant species was also observed in the years before 70s decade, the basis of formation of international environment law in its current meaning dates back to United Nations Conference on the Man & Environment (Stockholm Declaration) (1972) (Poorhashemi and Arghandi, 2013, 23). In general, international environment law is separated to 4 ages in terms of history:

1. Bilateral environmental contracts before Stockholm Conference
2. The evolution of environment and development from

Stockholm Conference to Rio

3. Environment and development in Rio Conference
4. Rio conference to rio+20 conference

### References of international environment law

Although paragraph 1 of article 28 of the statute of International Court of Justice (ICJ) (1945) has mentioned certain references for general international law, the evolutions after approval of charter of UN and the statute of ICJ have created new references in international law, which could compensate past gaps to high extent. Hence, at the first, a review is conducted on general international law and then, references of international environment law are investigated.

Necessity of determining references and sources for international law in the International Relations was felt when the states tended to meet their disputes without use of force and political threats and through legal ways and based on international law. Hence, necessity of determining legal regulations and sources of the regulations was felt practically (Zolain, 1998, 631).

Today, the main part of international law sources is reflected in paragraph 1 of article 38 of ICJ statute. According to this article, the court is responsible for:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
  - a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
  - b. international custom, as evidence of a general practice accepted as law;
  - c. the general principles of law recognized by civilized nations;
  - d. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a (case *ex aequo et bono*) <sup>[1]</sup>, if the parties agree thereto <sup>[2]</sup> (Ziaei Bigdeli, 2008, 93 and 94).

Therefore, according to the said regulations, the main references of international law include treaties, common law, general legal principles and secondary references of international law and the international judicial decisions and legal doctrines. Today, article 38 of the statute traces no perfect image of internal law references, but also unilateral legal measures of countries and binding resolutions of international organizations and common laws could also affect regulation of international law and could play role as references of international law. Moreover, mentioning the references due to the order mentioned doesn't mean that according to hierarchy, every regulation has gained its reliability from higher regulation, but also the treaties, laws and general legal principles are in same degree of importance in terms of validity and legal effects. However, in regard with documentation of said regulations, the international court of

justice has firstly considered general or particular treaties on solving dispute of parties and if they are not complete, the ICJ refers to common law and if it fails to find the suitable sentence based on treaties and common law, it refers to general legal principles. Moreover, the statute has perfect authority while considering the said references in documentation of past judicial decisions. In general, common laws are above the hierarchy of international law and after them, general treaties and laws and then particular treaties and laws and finally, general principles are placed (Ziaei Bigdeli, 2008, 93 and 94).

Despite to general international law that is mainly based on mutual interests and behavior of states, international environment law is on basis of universal laws. The states are not too interested in the environment for different reasons as they would be discussed. Hence, the international environment law should use other references in addition to what is available in international law. Hence, in international environment law, two references include *erga omnes* (non-binding or soft) and binding (hard) references.

The measures taken by International Law Commission in codification and development of International Environment Law

### Concept of codification

Generally, codification means regular recognition of reliable legal rules in certain time. Hence, common laws or legal rules with other basis could be codified (Ganji, 1984, 17).

Sir Cecil Hurst has defined codification as follows: ascertaining and declaring the existing rule of international law irrespective of any question as to whether the rule is satisfactory or unsatisfactory, obsolete or still adequate to modern conditions, just or unjust in the eyes of those who formulate it (Safavi, 1963, 120). Therefore, codification refers to conversion of existing regulation in the international law in form of statute or conversion of common laws to written provisions. If the issue is defined in a negative attitude, codification by itself could be an official and not binding reference and hence, it could have no documentation. According to paragraph "a" of article 38 of the ICJ Statute, the statute is the main reference for codification of common laws. Therefore, it could be defined as follows: codification means the outcome of changing regulations in form of common laws to written form. In this field, the concept of codification is not limited to a simple issue and covers all fields of common laws.

The term "codification" even includes rewrite of created rules in basis of contractual texts or old versions. According to article 15 of statute of the International Law Commission, codification is defined as follows: "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". Hence, it should be noted that common laws are ambiguous and inexact in terms of nature. Therefore, the copy of versions of common laws is not enough. As a result, the codification process includes creativity element and makes regular changes and evolutions. The trend for codification is surely wider than trend for redetermination of common laws. Hence, it could be

<sup>1</sup> The votes of the statute are binding just for the countries and parties and in case that is subject to the sentence.

<sup>2</sup> This word means equity

mentioned that the aim by codification is necessarily explanation of existing regulations (statutes). However, today, the codification and innovation of existing provisions of international law are considered same; as Luther Pakht believes that codification of international law is development of existing provisions and meeting ambiguous and conflicting items in them. Hence, it could be observed that today, the concept of codification is developed and encompasses all steps of regulating provisions in treaties (Ziaei Bigdeli, 2008, 27).

### **Disadvantages of codifications**

The founders of historical school of law believe that law is created by the history and is being changed continuously. Codification of provisions, instead of this historical reality, maintains law static and fixes and prevents its development (Iranian Association for UN Studies, 32, 2010).

Savini, the pioneer of this school and as one of the main opponents of codification believes that codification is a preventive factor of dynamicity of laws. In view of some authors in international law, codification of international customs could weaken the international law. Among the opponent theories of codification of international law, following reasons could be derived:

- Before that an international custom is codified, it could be accepted by states implicitly and when the officials decide to approve it as a contract or treaty, the discussions and opposition of countries could decline its value with assumption of final agreements. Particularly, after codification as a contract, they binding nature should be approved by all countries.
- Preventing development of international law through eradicating its provisions in strict framework of contracts
- If the efforts to codify the international law is fruitless, the existing provisions are in fact destroyed and chaos and irregularity is replaced instead
- Codification could lead to destruction of flexibility of international rules and the flexibility is one of the main features of common law

### **Advantages of codification**

He proponents of international law have presented following reasons to prove their opinion:

- With the codification of international law, the ambiguity on desired fear and the disputes on its definition are declined and access to these rules would be facilitated for the states and the relevant experts. In other words, codification could in fact facilitate the measures of those involved in international law and declines the possibility of different definition and interpretation of international law in practice.
- Many international law and provisions are ambiguous and instead of creating fixed policy and improve international relations, they cause more disputes; although while codification of these provisions, the cases of dispute are omitted and what is accepted by majority of states gains higher enforcement value.
- Codification is in benefit of small and peace seeking countries and this could deprive large countries from this

opportunity to explain their will and desire in any cases based on general international law

- Codification is the encouraging and motivating factor of academic activities and promotion of international law in public opinions
- One of the most fundamental reasons preventing governments from referring to international courts to solve their disputes is lack of representativeness of codified provisions in international law

### **Concept of progressive development**

Investigation of the concept of progressive development especially encompasses exact meaning of codification. According to article 15 of the Commission statute, "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. Regardless of the concept of progressive development, it should be mentioned that if development includes subjects which have not yet been regulated, the progress and limit of the concept needs a kind of creativity and innovation. Therefore, in short, development could be defined as writing new rules. Moreover, if written law is not a function of previous common laws, there is no doubt that it could be a new law. Hence, progressive development encompasses complete amendment of laws or fundamental change of them. Hence, it could be accepted that if development is depended on writing reformed and changed provisions, there is no need to consider issues under the title of "new legislation" in international law anymore. Moreover, it is not logical to neglect the concept defined in article 15 of Commission Statute just because the scope of development is limited. The real concept of progressive development is wide in practice, since development also refers to determination of provisions in field of subjects which have not yet been regulated or have not yet been developed sufficiently. As a result, this issue brings the issue of creating new common laws, so that the interpretation and conversion of common laws in codified and written form could be described as codification. The common law and written provisions are in interaction in different steps during the process of offering the plan and after that. However, where codification is related to issues of providing proposed regulations like methods and provisions of the convention and the procedure of diplomatic conference, it seems practical to call those common laws proved before final acceptance of the text or during presentation of the text as statutes. A proposed text that is basically new or amended provision may face some difficulties in the step of diplomatic conference and the commission or any other offering institute may determine them as codified rules to ensure of their final acceptability. In fact, such opinion could lead to presentation of new concepts of codification and wide range criticisms of article 15 of the commission statute. At the end, progressive development could be defined as follows: providing concord about issues other than international provisions and international requirements and interest of countries makes it necessary to specify the rights and obligations of countries in a global

contract or as article 15 of commission statute has defined it, development means providing treaty about issues which there are no regulations on them in international law and the international needs make consider them in international law (Ganji, 1983, 17).

### **Characteristics of codification and development of international law in contemporary age**

In general, after World War II and establishment of the United Nations, the idea of development and codification of international law was accelerated. The main reasons for development and codification of international law in the contemporary age are as follows:

- a. The losses and damages caused by World War II, emergence of a kind of hatred of war and a kind of peace seeking spirits and justice seeking and respect to international regulations to prevent another war and dispute in international level in public opinions could lead to codification of charter of UN. Emergence of such spirit, along with this belief that codification of international law has cleared ambiguities and disputes on international law, could finally prevent the probable disputes and stresses among countries and could lead to consider the issue of codification and development of international law in the charter of UN and make required predictions in this field.
- b. Rapid advancement of science and technology, which reaches its peak at the end of World War II, makes it necessary to codify new international law which could meet needs of the contemporary age. Successful travel of man to the space and discovering atom energies are two cases that just old international law are not enough for them. Hence, along with new inventions and explorations, it seems necessary to codify new regulations and law.
- c. As a result of intensification of Decolonization wave and achievement to deduction of majority of African and Asian Countries, especially after 1950, the members of UN and participants in international conferences presented several specifications in field of codification and development of international law in international conferences, along with special attitudes.

The difference between codification and development of international law

The statute of International Law Commission (like article 13 of Charter) has mentioned in article 1 that the aim of founding this commission has been progressive development of international law and its codification. In paragraph 2 of same article, it has been mentioned that The Commission shall concern itself primarily with public international law, but is not precluded from entering the field of private international law. An important issue in the UN system is the difference that is explicitly existed between progressive development of international law and its codification. The difference is discussed in article 13 of the charter and has been appeared in the statute of the International Law Commission more explicitly. According to article 15 of the statute, the aim by progressive development of international law is composition of layout of the conventions on issues which have not yet been regulated by the international law or there are not enough

provisions about them in international level; although the aim by codification of international law is composition of international law more carefully and regularly and in fields that the actions of states and agreed doctrine are available.

Another issue here is that according to the previously mentioned, it could be said that codification of international law could lead to progressive development of international law willingly or unwillingly. This field of law is complete in no section that could be composed with no amendment and revision (Zolain, 2010).

Article 23 of the commission statute may be an evidence to differentiate the two issues. Hence, the articles offered by the commission to General Assembly in a report are along with following recommendations:

Firstly, the general assembly should just rely on reading the report

Secondly, the report should be encompassed in a resolution and be approved.

Thirdly, the proposed plan should be recommended to members to conclude a convention.

Fourthly, to conclude contracts based on the proposed plan on behalf of the states, they should be invited to hold conference.

Hence, it could be observed that when the commission proposes a plan related to codification of international law to the general assembly, as codification is just relied on existing provisions based on the articles in the statute, it may advise that it is enough to just read the report and no other action should be taken and hence, taking risk or lack of gaining required confirmations would be emerged. Regardless of legal discussions that in what item "codification of international law" or "progressive development of international law", the provisions are useful and preferred, there is long time that the discussion is the case of dispute. The western countries and other states with reliance on conservative origins prefer codification of international law; although the new states pay attention to progressive development of law, since the former international law is a colonial law from this perspective and could not be documented anymore.

### **Necessity and position of codification in framework of the UN**

The necessity and importance of progressive development and codification of international law was emphasized in the summit of states in San Francisco (1945) and also, the charter of UN mentioned that one of its main goals is providing conditions, in which the respect and justice and reliance on international commitments caused by treaties and other references of international law are preserved. To this end, the Charter allocated the mission in paragraph a of article 13 to the general assembly to begin some studies in field of codification and progressive development of international law and present some suggestions; although the article has not explained the terms of codification and development. At the same time, the general assembly has always emphasized importance and value of progressive development and codification of international law as means to realize the principles and goals presented in the charter and it has also emphasized the role of international law commission in field of codification and progressive development of international law. The resolution 1505 of General Assembly issued in

December of 1960 on the future plans of the commission in field of codification and progressive development of international law accepted interaction of the 2 components on one hand and the existing realities in international relations on the other hand. The content of resolution has accepted this issue that new trends in field of international relations could affect development of international law and necessity of determining future agenda of the commission with regard to the advancements in international law and need to empower the peaceful relations and cooperation of states and has claimed that progressive development of international law could also typically affect international relations and could also improve international cooperation.

### **International law commission**

#### **The foundation and goals of international law commission**

Attempting to provide peace as it is shown in peaceful dispute solving has gained attention of many politicians across the world for many years since the establishment of the first Hague Peace Conference in 1899 and was followed in second Hague Peace Conference in 1907. The decade known as international law decade begun since 1990 was the last step of international efforts to provide peace to pave the way for the third Hague Peace Conference in 1999. The current world has passed long way from 1899 to the date and now, it has possessed suitable facilities to achieve a thoughtful goal accepted by all people and this is something, which should be realized in the decade of international law (Iranian Association for UN Studies, 30, 2010).

#### **The objective of establishment of commission**

According to paragraph 1 of article 1 of the commission statute, The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification. The aim by progressive development is evolution of texts in fields that are not regulated by the international law or the performance of governments has not been developed in desired level and the aim by codification is academic and exact determination of regulations existing in common rules and doctrines of states and converting them to contractual provisions.

#### **Similar institutes to International Law Commission**

1. **Sixth legal committee:** This is one of the seven main committees affiliated to general assembly and a political institute formed of states. The committee has analyzed the legal use of attachments of the charter of UN, legal comments referred on behalf of other committees of general assembly and makes demand for consultative ideas of international court of justice. Moreover, the committee takes some measures to improve the process of codification and progressive development directly or indirectly and with the coordination of International law Committee.
2. United Nations Commission on International Trade Law (UNCITRAL)
3. U.N. General Assembly Resolutions On Reservation Of Sea-Bed And Ocean Floor For Peaceful Purposes
4. Shared natural resources (underground water, oil and gas) - Office of Legal Affairs - the United Nations

5. Environmental Protection in Armed Conflict
6. Protection of Atmosphere

#### **Deficiencies of the procedure of commission**

According to one of the studies conducted on commission lists, following deficiencies in procedure of commission could be mentioned:

1. Very slow procedure of commission
2. Very low working volume of commission compared to similar works
3. Low flexibility of commission approaches
4. The procedures of commission cause waste of costs and lack required efficiency
5. The commission has devoted all of its time and energy on providing draft for the conventions; although this is not necessary
6. The commission has consumed long times to analyze details of its proposed plans.

#### **Conclusion**

As a conclusion, it should be mentioned that the International Law Commission has taken some efforts during its lifecycle with the only mission for codification and progressive development of international law to overcome existing challenges. However, it seems that the outcome is not considerable, since the measures of commission couldn't create legal necessity or couldn't have legal validity; unless they are appeared in frame of an international convention. The requirement of conclusion of an international commission is also holding an international conference in presence of states. Conclusion of a few number of treaties that some of them are replaced by other treaties and some of them are not still binding; and some drafts that are not even changed into convention could show that the final expression of article 13 of the charter was lower than the expected level. However, the value of measures taken by the commission should not be neglected, even if they have not led to conclusion of international binding document. Hence, the results encourage and motivate the process of codification and development of international law; especially the elements are still activating and have not yet been destroyed. In fact, it should be mentioned that the commission should make some qualitative and quantitative changes in the process of codification and development of international law and try to select competent subjects of codification and development, pass the boundary between codification and development and lack of entering to insignificant issues in frame and regulation of conventions to provide conditions for public acceptance of the convention and encouraging the governments to sign and approve conventions or refund of applied reserves. On the other hand, development of international environment law faces basic barriers such as imbalance of states to allocate sovereignty or limiting it in benefit of environmental organizations in international level, costly process of protecting the environment and lack of financial resources, especially for the developing countries with the most populations and have not sufficient financial resources for protection of the environment. Moreover, expansion of dimensions of environmental issues such as weather, water and soil existed on the earth and beyond the atmosphere has made codification

of provisions be time-consuming for each environmental sector. Hence, it is the time to develop the international law conceptually and naturally to solve the limitations and barriers to international environment law and more importantly, it is the time to establish a world organization for protection of the environment with required powers and authorities. Clearly, the discussions related to establishment of the world organization are not also out of the disputes of developing and developed countries.

## References

1. Iranian Association for UN Studies. The role of the International Court of Justice in the codification and development of international law, Publication of Iranian Association for UN Studies, 2010.
2. Iranian Association for UN Studies. the role of the United Nations General Assembly in the codification and development of international law, the first edition, 2012.
3. Poor Hashemi SA, Arghandi B. international environment law, Dadgostar Press, 2014.
4. Poor Hashemi SA. New development in international environmental law, 2005.
5. Zolain P. the foundations of general international law, Tehran: Political and International Studies, 1998.
6. Ziaei Bigdeli MR. general international law, Tehran: Ganj-e Danesh, 2008.
7. Ziaei Bigdeli M. international treaties law, Tehran: Iran, Ganj-e Danesh, 2009.
8. Alexander K, *et al.* environment law, translated by Mohammad Hassan Habibi, Tehran: Tehran University, 2000, 1.
9. Ganji M. general international law, Dekhoda publications, 1983.
10. Mashhadi A. environmental law terminology, Tehran: Khorsandi, first edition, 2010.
11. Year Book of international law commission, 2013.
12. [www.civilica.com](http://www.civilica.com)
13. [www.doe.ir](http://www.doe.ir)
14. [www.international law comission.com](http://www.international law comission.com)
15. [www.international law pars.com](http://www.international law pars.com)
16. [www.irandoc.ac.ir](http://www.irandoc.ac.ir)
17. [www.magiran.com](http://www.magiran.com)
18. [www.noormags.com](http://www.noormags.com)
19. [www.sid.ir](http://www.sid.ir)
20. [www.uncsd2012.org/rio20](http://www.uncsd2012.org/rio20)