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# Multilateral Treaty-Making

## The Current Status of Challenges to and Reforms Needed in the International Legislative Process

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Edited by

Vera Gowland-Debbas

With the Assistance of
Hassiba Hadj-Sahraoui and Nobuo Hayashi

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ALAIN PELLET

# Responding to New Needs through Codification and Progressive Development

## KEYNOTE ADDRESS

I have been assigned the formidable honour of presenting a "keynote address" on the general theme of this Forum, "Multilateral Treaty-Making". This is, indeed, formidable since this theme is not only extremely vast but already largely explored – if only by the two quite stimulating colloquiums organized on the occasion of the fiftieth anniversary of the International Law Commission in New York in October 1997[1] and in Geneva in April 1998.[2] The danger then is that I am afraid that I will not be able to escape the commonplace and platitudes – although this may be what is expected in a "keynote address".

Another danger is that in presenting a superficial overview I may be anticipating the various topics which will be dealt with later by infinitely more qualified speakers.

However, I must say, it is a great privilege: coming first leaves you freer to speak of whatever you have in mind, although there is the risk of breaking into the following speakers' topics. I have tried to avoid this and it has not proved too difficult since, being a specialist of nothing, I am definitely not a specialist in the various fields which will be explored later on by eminent experts in all the fields represented in our very substantial programme which will surely satisfy your intellectual appetite. I can, therefore, prudently avoid speaking about the topic which was assigned to me and, at the risk of simply repeating what is no secret to this distin-

[1] *Making Better International Law – The International Law Commission at 50 (Proceedings of the United Nations Colloquium on Progressive Development and Codification of International Law*, (United Nations, New York, 1998), Sales n° E/F.98.V.5, XI–451 pp.

[2] International Law Commission, Round-Table Discussions, April 22-28 1998, to be published by the United Nations, 2000. See also M. R. Anderson *et al.* (eds.), *The International Law Commission and the Future of International Law*, (British Institute of International and Comparative Law, Public International Law Series, London, 1998), XXI-239pp. and Société française pour le droit international, colloque d'Aix-en-Provence, *La codification du droit international*, (Pédone, Paris, 1999), 344pp.



*V. Gowland-Debbas (ed.), Multilateral Treaty-making*, 13–23.

guished audience, I will confine myself mainly to generalities and to what I am familiar with, that is, the codification process through the International Law Commission, a subject which, I am afraid, is marked by a distressing taste of banality ...

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The sub-title which has been given to this presentation is: "Responding to New Needs through Codification and Progressive Development". For the reasons I have just indicated, I will add a "sub-sub-title": "Can the ILC respond?".

Both the sub-title and the sub-sub question in turn suppose that there are new needs ... "New"? Compared to what? "Needs"? How do we evaluate them? And, by the way, is there a need for codification at all?

After all, the very idea of codification is relatively new in modern times. In domestic law, it was only experimented with – and not in all countries – from the French Revolution onward. At the international level, codification remained a purely doctrinal aspiration until 1930 and, if we are realistic, until the creation of the ILC fifty years ago. Yet the world had survived without a formalized codification process.

On the other hand, it can also be argued that, even though no formalized process existed, States did codify without being conscious of it, exactly as M. Jourdain, Molière's *Bourgeois gentilhomme*, was making prose without knowing it. It is not incongruous to consider that The Hague Conventions of 1899 and 1907 were, indeed, codification conventions, at least in the broad sense, since they involved an important, and probably a predominant, element of progressive development and indeed of development "*tout court*", not that much "progressive" but, better, "progressist" (even though I am not sure the word exists in English ... ; let's say that they involve important elements of purely revolutionary development as opposed to gradual development – and I will come back later to this point).

More generally speaking, one can wonder whether "*traités-lois*" as opposed to "*traités-contrats*" do not qualify as codification conventions in this broad meaning of the term. In my opinion, the general and non-synallagmatic character of the substantial norms included in an instrument is, no doubt, a criterion which allows one to differentiate a codification text from instruments which do not present such a character.

Is this enough? Probably not since the very idea of codification also implies an attempt to unite in a single instrument a complete *corpus juris*, a whole set of rules relevant to a given field of social relations. Just to take two examples, I would suggest that the 1928 Covenant, the so-called Briand-Kellogg Treaty, cannot be said to be a codification convention while, on the other hand, as I have said, The Hague Conventions can. Similarly, there is no doubt that the Conventions on the Law of the Sea of 1958 and 1982 belong to the codification sphere; that delimitation agreements do not; while there can be discussion regarding, say, treaties regulating fisheries in some portions of the Atlantic.

I have not yet finished with these problems of definition. Up to now, I have accepted that codification, in the broad acceptance of the term, supposes the gathering of general rules pertaining to a given topic in a single instrument. Is this enough? I would say yes; but this is not generally accepted. Two other conditions are sometimes added (and, in fact, they are more often than not):

– *first*, codification would imply the mere gathering of existing rules, as opposed to new rules forged in order to answer new or evolving needs;

– *second*, the instrument embodying the rules is sometimes seen as being necessarily binding; failing this one could only speak of tentative codification.

I am not convinced by these supposed additional requirements.

It is commonplace to recall that distinguishing between "pure" codification on the one hand and progressive development on the other hand, while intellectually attractive, has proved practically impossible. Indeed the Statute of the ILC is based on such a distinction, but it has never "worked" in practice: neither regarding the selection of topics, nor in respect of the procedure followed or the outcome of its work, has the Commission made (or been able to make) a difference between both aspects. All topics involve partial codification since no topic is entirely new when it is undertaken by the ILC (except, maybe, purely institutional matters – I refer here to the draft Statute of the International Criminal Court); in addition, all imply an element of progressive development since, almost as a matter of definition, customary rules always comprise some elements of uncertainty calling for clarification and this is precisely one of the main purposes of codification; and this is even true in very ancient fields of international relations largely regulated by well established rules, such as diplomatic or consular relations or the law of treaties.

This being said, in practice, this does not raise real difficulties; it only allows Members of the International Law Commission to make erudite speeches distinguishing between both aspects, but nothing can be inferred from this and it is usually of no consequence at all – except in those very rare cases where the Commission confers a distinct status to provisions which, in its opinion, belong to codification on the one hand, and those belonging to progressive development on the other hand. One of the rare occasions when the ILC made an attempt to make such a distinction was the draft articles on "Nationality in relation to the succession of States" adopted on first reading in 1997. In this precise case, the Commission divided its draft into two parts: Part I was devoted to "General Provisions", supposedly applicable to all categories of succession of States, while Part II consisted of "Provisions related to Specific Categories of Succession of States". However, although the Special Rapporteur, Dr. Vaclav Mikulka, had on several occasions indicated that Part I bore mainly on codification, while Part II was more "progressive development oriented", it appeared quite difficult to maintain the distinction (even if it surfaces here and there in the commentaries and in some provisions, mainly in Article 19, which introduce Part II).[3]

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[3] See ILC, Report on the Work of its Forty-Ninth Session, 12 May-18 July 1997, UN Doc. GAOR Fifty-Second Session, Supp. N° 10 (A/52/10), at 72.

This shows once again how artificial the distinction is: "pure" codification constantly interferes with progressive development; there is certainly no clear threshold. Therefore, even though this conclusion would probably disappoint some learned scholars, particularly those – and they are quite numerous in academic circles ... – who are obsessed with clear and straightforward classifications, the only sensible conclusion is that progressive development is indissociable from codification; it is indeed part of codification.

Now, this purely definitional problem is not the core of the question. The real question is: when is legal development "progressive"? when is it more than that? Here again, I have no doubt that there is no clear, indisputable threshold; and there is nothing strange in that: law in general, and international law in particular, is not a "hard" science; it is an "art", *ars juris* ... But the absence of threshold, certainly does not mean that any new rule of international law qualifies as a "progressive" development.

This is extremely important in respect of the work of the ILC: we are a group of thirty-four independent experts, without any political mandate or responsibility. It would be, from my point of view, absolutely disastrous and extremely arrogant that we assume the role of a legislator; "codifiers" (here again, I doubt that the word exists in English) we are; law-makers (even quasi-legislators) we are not, except in the very rare cases where we are expressly given such a role (here again, the draft Statute of the ICC is probably the only, at least the most striking example, of such an exceptional mandate). In my mind the difference is that we may complete the existing law with *progressive* developments; we cannot change the whole system of the law of nations. Our job is "lawyers' law", not "politicians' law". I mean that it is our duty to try to understand the logic of existing rules and to develop them in the framework of this logic, not to change the underlying logic. It is our duty to keep our ears and our eyes and our mind open to the changes in the law of nations and to take note of new trends, not to invent them and certainly even less to impose them.

I know that this might seem rather conservative – and, by the way, I have no doubt that law is conservative by its very nature –, but I also think that legal development is, globally, something much too serious to be entrusted to lawyers. And this is not specific to international law: inside the State, law is made by politicians, through (at least in democratic States) Parliaments or through Governments invested with political responsibilities, not by lawyers; as Sir Robert Jennings put it, "No developed nation would allow its legislative policy to be decided upon just by the lawyers. They would be employed to advise and to draft; but the legislative policy would be decided by those who understood the matter the subject of the legislation."[4] Progressive development is the extreme limit of what is tolerable and I think that the ILC would be well inspired not to abuse the confidence placed upon it by its Statute.

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[4] "International Law Reform and Progressive Development", in Liber Amicorum *Professor Ignaz Seidl-Hohenveldern in Honour of His 80th Birthday* (Kluwer, The Hague, 1998), p. 334.

Let me give an example: in 1994, Professor Arangio-Ruiz, the then Special Rapporteur on State Responsibility, presented an admirable report on the determination of crimes (in the meaning of Article 19 of the Draft Articles). Inspired by an eminently respectable moral ideal, he had elaborated an incredible system including recourse to the General Assembly, the Security Council and the ICJ.[5] This was admirable but, with respect, it was totally unrealistic and, to tell the truth, quite absurd: whether you like it or not, international society is not domestic society and it is of no use at all to try to transplant internal legal reasoning and institutions into the international sphere; the transplantation cannot take effect – except if it is very gradual and rooted in a political context which makes it acceptable for the community of States.

Moreover and in any case, the ILC is certainly not the appropriate forum to promote such a radical development; nor is it the right place to try to "judicialize" international society, as Part III of these same Draft Articles on State Responsibility tries to do.[6] Legal experts are not negotiators; they are not supposed to bargain or to compromise, but, once again, to codify and to develop *progressively* (that is gradually) existing law. Would the odd idea that the ILC could be the right forum to discuss the CTBT occur to the mind of any of us? Certainly not: this kind of treaty implies a huge technical expertise on an immensely complex range of problems outside the legal field, taking into account very diverse factors of a political, military and economic nature which are out of reach of a handful of lawyers, however eminent they may be.

It is good form, within international law circles, to deplore that the second "codification" of the law of the sea was realized outside the ILC. I would certainly not join the mourners choir! Indeed the Commission performed a respectable job in elaborating the 1958 Geneva Conventions; but, at the same time, the failure of the second Conference on the Law of the Sea in 1960 showed the limits of using a purely legal preparatory process and I am firmly convinced that the ILC would have been incapable of taking into account all the relevant data, including complex geo-political issues involved by the new developments which occurred in the rapidly changing political and economic context during the 1970s.

For the same kind of reasons, I am among those who are quite opposed to burdening the Commission with new topics such as "The General Principles of the Law of the Environment": too politically sensitive, too economically delicate, too wide, not ripe ... And the precedent of the "Liability" topic is far from encouraging in this respect.

This, however, certainly does not mean that multilateral treaty-making should be confined to codification (including progressive development) in the pure sense. It simply means that not all topics are fit for the ILC or comparable forums (even

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[5] See ILC, *Yearbook* 1994, vol. II, Part II, paras. 261-266, pp.141-42; Sixth Report on State Responsibility by Mr. Gaetano Arangio-Ruiz, Special Rapporteur, A/CN.4/461/Add.1, paras.6-8, at 4.

[6] See ILC, Report on the Work of its Forty-Eighth Session, 6 May-26 July 1996, UN Doc. GAOR Fifty-First Session, Supp. N° 10 (A/51/10), pp. 147-151.

though I feel that the ILC is rather unique and I will come back to it in a minute). If they are highly sensitive politically speaking, they must be tackled in purely political (that is, since we are in the international sphere, diplomatic) forums (with the possibility of having some preparatory work done in the ILC as shown here again, by the precedent of the Criminal Court; but it also shows that it is unavoidable that, in such a case, this work be carried on at the diplomatic level). If the issues at stake are highly technical (besides legal technicalities), the topic must be dealt with in places where this expertise is available. And, if the topic involves a mixture of political, technical and legal issues, then, something like the Third Conference on the Law of the Sea is probably unavoidable.

For the reasons I have developed, the inadequacy of the ILC in all these cases is averred even though one of the reasons for its uniqueness is the irreplaceable constant backward and forward motion between the "scientific" and the political part of the process. We, in room XXI of the Palace of Nations are, or at least should be, concerned with collecting and analyzing precedents (whether judicial or practical) and doctrinal views, assembling them with a view to ascertaining evidence of practice generally accepted as being the law and to deduce the existence of new trends, and elaborating drafts with a concern for reasonableness, consistency and acceptability – a word on which I intend to come back. They, in the Sixth Committee in New York, are (or, again, should be) concerned with determining topics which meet the needs of States and deserve attention from the Commission, with making sure that our drafts meet these needs, and with giving clear guidance to the Commission in this respect.

In practice, this does not work very satisfactorily and, in my view, the States bear the main responsibility for this unsatisfactory situation. I was in the position, in 1997, to represent the Commission that I chaired, to the Sixth Committee and I must confess that I have been rather dismayed at the stereotyped reactions of States delegates' speeches on the ILC drafts: most of the time they had not been read and, in the best cases, the speakers had contented themselves with reading the Chapter of our Report entitled "Summary of the Work of the Commission" (a new initiative we had taken in the hope that, at least, they would read something ...) or, for others (with the exceptions of representatives of some powerful States, always the same ones ... ), to repeat what the first speakers had said some days ago.

Not only is this rather discouraging for the ILC, but also it is highly telling about the actual state of international relations: you have a handful of Western Powers, efficiently organized, where the job is done and whose representatives present astute and well prepared speeches which are followed by the rest of the planet acting as a flock of sheep – a flock usually including some black sheep – except when their immediate national interests are directly threatened. We complain, in France, of the "*pensée unique*" (that is this "soft consensus" about the main social aims and the means to realize them). Never have I had a stronger feeling of such a "*pensée unique*" than last year at the General Assembly and I began to get a little nostalgia for the good old days of the Cold War. I had never had great sympathy for the Soviet Empire before it collapsed; but at least, the Cold War

made possible a real expression of will by non-western States. All this has disappeared; the "*pensée unique*" prevails, and the delegates from the Third World do not seem to realize that they are manipulated by the West, whose positions are clearly highly ideological ...

This has disastrous effects. Whatever France may think, one of the most positive achievements of the Vienna Convention has certainly been the consolidation of the concept of *jus cogens*, a model of progressive development. Indeed such an achievement would be totally unthinkable today: the intellectual terrorism exercised by the West would categorically exclude this, just as it prepares to kill the notion of crimes, here again one of the most impressive conceptual advances made in the past quarter of the century.

My guess is that, on the occasion of its second reading of the draft on responsibility, the Commission will not dare recant the formidable intuition of Ago which has resulted in the redefinition of the very concept of international responsibility by evacuating damage from its definition.[7] But, while keeping Article 1 (only challenged by a few conservative States, like France or Japan, or scholars, like my master Prosper Weil), the ILC under the adroit guidance of its unfortunately very able new Special Rapporteur on the topic, my friend James Crawford, will abandon Article 19, most of its Members not understanding that, in so doing, first they commit a crime against spirit (the very spirit of the whole of Ago's draft which stands on the assumption that international responsibility is not a pure quasi-contractual matter), and, second, that they are purely and simply endorsing the reactionary fight of a very limited number of industrialized powers which, rightly or not, fear that the legal concept of crime could be used as a legal weapon against their supremacy or leadership.

Well, could you say, and then? Have I not admitted, just a few minutes ago, that one of the main concerns of the ILC should be the acceptability of its drafts? And since States have turned round and, in their majority, seem to have repudiated the notion of crime, why would the ILC maintain it against the whole world? First, very happily, this is not the whole world and there probably exists a majority which, in fact, still endorse the notion of crime; but, with noticeable exceptions, like Italy, for example, if this is a majority, it is a silent majority. In any case, I think that there must be no confusion: acceptability does not mean servility. As legal experts, our role is to explain why a concept is logically and legally necessary and I cannot accept that consistency be sacrificed for reason of a supposed non-acceptability. Yes indeed, we are but the servants of the interests of international

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[7] On this intellectual "revolution", see Alain Pellet, "Remarques sur une révolution inachevée: le projet d'articles de la CDI sur la responsabilité internationale des États" (1996) AFDI, pp. 7-32. Soon after this paper was delivered, the ILC decided to keep Article 1 of the draft as it had been adopted in first reading; see ILC, Report on the Work of its Fiftieth Session, 20 April-12 June 1998 and 27 July-14 August 1998, UN Doc. GAOR Fifty-Third Session, Supp. N° 10 (A/51/10), paras. 350-354, pp. 151-152. Concerning the notion of crimes, after a very animated debate it has been decided to leave several options open until 1999 (*id.*, paras. 260-321, pp. 123-143).

society and these interests must be defined not by us but by the representatives of States; but, up to now, we have not received any instructions from our political masters to abandon what was, until recently, a widely accepted concept, and which is, it must be repeated again and again, in the line of the whole project and is not for us to presuppose what is the will of States.

As explained above, the most precious aspect of the codification process through the ILC is the constant co-operation of the "expert level" with the "political level"; but, in this process each level must play its own part: the politicians – the States if you prefer – must fix the aims, but they must let us be free to propose; political orientations are their responsibility; conceptual elaboration is our business ... And I suggest that we would be well inspired not to invert roles.

This might be easier if States, in nominating and electing Members of the Commission, were more faithful to the letter and, certainly, to the spirit, of our Statute. More and more, they nominate and elect candidates who, in reality, are more acquainted with the United Nations and/or the world of diplomacy than with "academic international law"; this, indeed presents some advantages (it might reinforce support for the Commission and avoids purely metaphysical discussions) but it also has many inconveniences, all the more that, generally speaking, the "professors" come from the West while the "diplomats" are from the Third World. I wish to be understood on this point: I do not suggest that my colleagues are not independent from their Governments; globally they are while they act as ILC Members. What I say is that this creates an imbalance inside the Commission and that its composition erases the *raison d'être* of the whole system, that is the complementarity (the complementarity, not the identification) between the ILC on the one hand and the Sixth Committee on the other hand and, personally, I strongly disapprove the "double cap system", that is the fact that many Members also represent their countries at the Sixth Committee.

Well, all this might not sound very encouraging and you might feel that the ILC is, indeed, definitely not the proper forum to respond to new needs through codification and progressive development, to go back to the sub-title of this presentation. If this is the general feeling, then I have painted too dark a picture. The ILC is far from perfect. It is certainly not ideally composed; it is, nevertheless, made up of (globally) independent lawyers, and the system of regional "quotas", rigid as it may seem, at least guarantees a diversified regional composition and avoids the weaknesses noticeable, for example, in the composition of the Human Rights Committee. Its co-operation with the Sixth Committee is far from ideal; both levels have, nevertheless a constant dialogue. Its process might seem desperately slow; its methods of work have, nevertheless, been improved during the last few years, and they guarantee a serene and in-depth examination of all the facets of a problem; moreover the Commission has shown that, when necessary (or, simply, when it could benefit from the leadership of a dynamic Rapporteur, as Vaclav Mikulka in the case of nationality in relation to the succession of States or James Crawford for the Criminal Court), it can be quick and efficient.

Now, efficient for what? How can the efficiency of a body like the ILC be measured? Expeditiousness? If this is the test, the average is very bad indeed, not far from zero out of twenty (with, once again, bright but very rare exceptions)! But this is not the only criterion. If we take the quality of the output, things rather improve, although I must concede that it is a perfectly subjective judgement.

We could, however, try to make it less subjective by asking the question: what has happened to the ILC drafts? This leads us to statistics. They can be made rather short: up to now the Commission has submitted 26 final reports (if one includes both the Code of Crimes and the Statute of the Criminal Court), plus two first reading drafts (if we include last year's draft on nationality in relation to State succession); these 26 reports have resulted in 15 Conventions (plus a number of optional protocols) but this figure includes the Geneva Conventions of 1958 which were four for the sole topic of the law of the sea and are now *de facto* replaced by the "non-ILC" Montego Bay Convention. Well, let's be generous: 15 Conventions in 50 years ... Not a wonderful achievement apparently ...

I would, however, not be as severe as that: first, several of these treaties, beginning with the Vienna Convention on the Law of Treaties, are among the most important ever concluded; second and above all, it is far from certain that the influence of the work of the ILC can be properly measured through these treaty statistics. As Professor Boyle will cover the topic in the next presentation, I will not enter into any detail concerning the comparative values of "hard treaties" on the one hand and of soft law, of which I am a strong defender, on the other. Suffice it to recall that ILC drafts may exert a considerable influence even before they are completed; just think, in this respect, of the remarkable impact of the Articles on State responsibility and, to take a recent example, of the use the ICJ made of it in its 1997 Judgment in the *Gabc"âkovo/Nagymaros* case[8] ... I also wish to draw your attention to the Introduction to the book published last year by the Commission entitled *International Law on the Eve of the Twenty-First Century* carefully drafted by Members of the Codification Division of the UN, in which "The Achievement of the International Law Commission" is remarkably presented[9].

In view of this and other factors that I have no time to detail, my considered opinion is that the ILC is not an intrinsically bad treaty-maker (or "pre-maker") or, more generally speaking, a bad "codifier"; it is rather

– first, a misused forum; and

– second, one forum among others and not *the* forum, appropriate in all circumstances and for all and every possible topics.

Let me say a word about these *caveats*.

First then, it is a misused forum in the sense that this costly mechanism (it would be worthwhile to calculate the real yearly cost of the ILC . . . ) is not provided with topics. This might sound as an odd declaration: don't we have six topics

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[8] *Judgment of 25 September 1997*, 1997 ICJ Rep. p. 7.

[9] "Introduction – The Achievement of the International Law Commission", in ILC, *International Law on the Eve of the Twenty-First Century* (United Nations, New York, Sales N° E/F 97.V.4), pp. 1-18.

on our agenda, more than the Commission has ever had? Yes indeed we have six. But only two, inherited from a remote past, have been assigned to the Commission by the General Assembly. The four others are pure "inventions" of the Commission! And I would not dare to explain publicly how one of them at least was selected, but, believe me, it was really in desperation and because we absolutely and urgently needed new topics ... Of course, all these topics have, finally been endorsed by the Sixth Committee, but they have certainly not been chosen by it and, in one case at least, the enthusiasm has been limited, to say the least ...

This being said, with the important exception of "Liability", I think that all these topics are appropriate, and fit for the Commission, as the Commission fits them: they bear on "lawyers' law"; they do not involve too strong short-term political debates; they do not primarily imply expertise in non-legal fields; they do not overlap with similar topics dealt with elsewhere. But the problem remains: do they answer real needs?

My personal answer would be yes, in that, in spite of the lack of enthusiasm of the Sixth Committee for some of them, they give rise to *ex post facto* interest including from non-governmental circles. Indeed, these are not "new needs" in the sense that I presume that most of this distinguished audience, as far as I can understand both from the list of participants and from the titles of the next panels, probably mean by "new needs": more fashionable and "sexy" topics like human rights, disarmament, the law of the environment, or international economic and social law. Well, I would certainly not deny that these too respond to social needs (whether new or not). However, I maintain that the ILC topics too respond, in their own manner, to real needs of the international society.

I would even go so far as to say that they are part of the "constitutional law" of the international society; not in the formal acceptance of the word "constitution" (this would correspond more to the UN Charter or the very rare existing peremptory norms of general international law), but in the substantive sense: they are part of the legal basis in which international society is rooted. This is the case of the law of State responsibility (and of "liability", if only we were able to deal correctly with it!), including diplomatic protection, and of the law of the sources of law as in the case of treaties (through the topic of reservations) or unilateral acts of States. What we do in fact is to consolidate (through progressive development and codification) these legal roots of international society as and when required by its slow process of consolidation.

And, as in all societies, this slowly consolidating international society needs uniform legal rules which transversally cut through all fields covered by international law. I insist: uniform rules. I do not challenge that rules must adapt to their object and that special fields, in some cases, might need special rules. But I strongly regret the new mania in the Commission of advocating "diversity" in all and everything, and in particular, human rights and environment. This way of thinking certainly attracts much sympathy and approval. But I strongly feel that there are limits to this "girondinist" approach – this might be a special joke for the French; let's call it the decentralized or "exploded" approach to international law:

what would one think of a constitution which systematically adopts special rules concerning the adoption or the application of parliamentary acts depending on whether they bear on military or economic or human rights issues? The same holds true concerning treaties: whether human rights activists like it or not, the same general basic rules apply and must apply to all of them. This does not rule out exceptions when exceptions are indispensable, but these exceptions must be included in the *general* codification; and when they are not, they must be provided for in the treaties themselves, not decreed by specialists without paying regard to the need for clear, general, uniform, well established and well respected rules. And this is not that much constraining: after all codified rules are only applicable when the special treaties themselves do not provide otherwise! There is nothing "democratic" or "humanist" in the opposite approach: it only tries to justify the dictatorship of the "specialists" or of the "activists"; it is no more acceptable at the international level than that of the dictatorship of bureaucrats inside the States or in the European Union.

In this respect, I strongly feel that if the ILC did not exist, we should invent it or some kind of similar mechanism. Indeed, one of its main functions is to facilitate and encourage a uniform international law, responding to the needs of international society as a whole. Not its "new needs" maybe; but its constant needs; its "everlasting" needs and its renewed and developing need for uniform transversal rules. This certainly is less exciting, less fashionable, less "sexy" than forging new rules for new needs; but this is a necessary and respectable task which could, certainly, be performed in a better and more efficient way. But, for the time being, let the ILC live ... *faute de mieux*! and for the "new needs", let other forums, better equipped for that, and unavoidably more political, deal with them. This is, for me, a perfectly acceptable sharing of the tasks.