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ABSTRACT:

“Codification means bringing together the existing laws and forming a systematic code. In more liberal terms, it means bringing together the existing law, making necessary changes as per the changing times and forming a law suitable for public welfare. International law has also gone through these various changes and it has evolved after various discussions to make it effective. International law has been there since time immemorial. However, codification of it has been done recently. It is still evolving as all laws are still need to be codified. This research paper deals with the chronology of codification. It aims to study the time line of events that resulted in the codification of international law and how it is still developing. It also offers to provide suggestions”.

Keywords: Codification, International law.

I. INTRODUCTION:

In general terms, codifications mean bringing together the existing laws and forming a systematic legal code. It makes the law simple and understandable. Similarly, codifications of international law aim at putting together the rules of law on a given subject in a systematic manner making its provisions clearer by removing the lacunas and also modifying the rules in accordance with the changed conditions. Such codification provides definite laws to the international courts. This gained momentum as it stipulated the willingness of states to submit to the international disputes. The earliest known surviving civil code is *Sumer’s Code of Ur-Nammu of c. 2050-1230 BC*.

Then a Code of Hammurabi, a Babylonian legal text, was composed c. 1755-1750 BC. It is one of the best organized texts from the ancient near east. Then many Roman laws were also codified. Much later developed the corpus Juris Civilis. The first permanent system of codified laws could be found in imperial China. All this shows that the codification of laws was not a new system. International rules were also there. However, proper codification of these international rules begins only after the First World War. Modern international law has its origin in the *Europe of 15th, 16th and 17th* century after the disintegration of the Holy Roman

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Empire. It governed the diplomatic, commercial, military and other relations of the states. It initially grew out of customs and usages and was then affected by the political theories prevalent in the Europe during that specific period. Then in the beginning of the 19th century, it extended to the states that succeeded the rebel European colonies of North and South America. Though it shows the outcome of only last few decades, still studies show that its presence existed in all ages to regulate the relations between independent nations existing since ancient times.¹

I.I PROBLEM PROFILE:

At initial stage, international codification is difficult because unlike municipal law there is no legislation and any judicial body. There is no sovereign state. Lack of authority makes codification even more difficult. Codification also becomes a difficult process in a way that a multiplicity of parties is involved, where assent is valued and required. Sometimes lack of assent makes it impossible to codify or even formulate a new law. Similarly changing or deleting an obsolete law also becomes difficult. It also becomes difficult as sometimes requirements of government are diversified than that of present-day requirements. There is another difficulty in compiling various international laws. On one subject, number of conferences is held with detailed discussions and sometimes members also change. So, it becomes difficult to come to a concluding point. It is complex to collect all data of meetings that held all over the world.

I.II RESEARCH METHODOLOGY:

The research methodology is based on doctrinal i.e., arm-chair method. The information and data are collected through secondary sources, critics review and various research articles, bare acts, international journals and online websites and has been closely analyzed thereof.

I.III OBJECTIVES:

- *To understand the desirability of codification at that time even if it was difficult.*
- *To understand the merits and demerits of codification.*
- *To understand the relation of codification with progressive development of international law.*

I.IV RESEARCH QUESTION:

What is the timeline of events that helped in the codification of international law?

II. MEANING OF CODIFICATION:

The term ‘*codification*’ ordinarily implies the process of reducing the generally existing principles of a branch of law into a code capable of enactment and reference. In a restricted sense, codification only means to give written form to the existing unwritten law and it doesn’t allow prospective thinking or invocation of any modification or amendment to the existing rules. However, in a wider perspective, codification allows modification or amendment of existing rules, as applying a strict definition would defeat the very ends for which the machinery is to be employed. As far as the codification of international law is concerned, it is significantly legal in character. Its role is not to be mistaken with seeking to replace the need for lawyers, policymakers and others who work in the legal field, but instead to allow for a reduced disparity between such persons and the common man. It seeks to create a system that is rarely exploitable due to its lack of ambiguity.ⁱⁱ As it promotes the law-making process itself in the community of nations, so it involves legislation as well as arrangement and coordination of rules.

The codification of international law involves 3 basic processesⁱⁱⁱ:

- 1. The grouping together of the rules dealing with a given subject of law in an orderly and logical manner.*
- 2. Correction and modification of rules to take into account changes in conditions and policies.*
- 3. The enactment of new set of rules into binding law by some agency having the power to do this act.*

III. HISTORY OF CODIFICATION:

Such attempts had been underway since the late 19th century at different levels. The declaration of rights of nations of 1792 of France was the first attempt. Abbe Gregoire drafted 21 articles for this; however, the convention was not a success. After this, *Jeremy Bentham*, a philosopher, jurist and social reformer was the first one to talk about codification of laws by

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the end of the 18th century. He suggested utopian approach so that peace would prevail among the civilized nations. He wanted codification to ensure uniformity, better access, longevity and preservation of laws. He wanted such a code that could be accessible and largely understandable.^{iv}

The Declaration of Paris 1856 was signed by countries such as Britain, France, Austria, Russia, Turkey, Prussia and Sardinia after the end of the Cremean War 1856 and laid down the principles relating to:

- *The abolition of privateering (private ships now can't be engaged in wars)*
- *Non-capture of neutral goods except illegal imports of war, under enemy flags*
- *Blockade to be obligatory must be effective*
- *Non-capture of enemy goods under neutral flag except smuggled goods of war*

IV. CODIFICATION BY INDIVIDUAL WRITERS:

- *The Austrian jurist, Alfons Von Domin Petruschevez attempted codification and indicated its possibility in 1861.*
- *Prof. Francis Lieber of Columbia law School attempted to codify war laws in 1861.*
- *The great Italian politician and jurist Mancini raised his voice in favor of codification of the law of nations in 1872.*
- *Italian jurist Pasquale Fiore published his code of international law in 1890.*
- *Subsequently, eminent jurists such as Oppenheim, Hall, Phillimore and Hyde attempted to bring out the rules of international law in system.*

V. THE TWO HAGUE CONFERENCES:

The most notable achievement was done in the Hague Conferences of 1899 and 1907 which was related to the laws of war and neutrality.^v

The first Hague Conference convened by Emperor Nicholas II of Russia in 1899 showed the possibility of codification. This conference codified inter-alia:

- (i) *Pacific settlement of international disputes*

(ii) *Laws of customs of war on land*

The second Hague Conference convened by the same emperor in 1907 was attended by 44 nations and passed 13 conventions related to maritime navigation, rules of war, neutrality and opening of hostilities, etc.

VI. THE LONDON DECLARATION:

It was held in 1909 and was signed by most of the great powers including, Austria, Hungary, France, Germany, Italy, Russia, the UK and the US. It reiterated present laws and also dealt with:

- Blockades
- Contraband and prize
- Rights of neutral entities

It is considered to be an important event of the codification of international law, even though no state ratified the declaration and it never came into force.

VII. THE LEAGUE OF NATIONS:

It was formulated in the year 1920 through the Treaty of Versailles “to promote international cooperation and to achieve peace and security”. It also led to a Codification Conference at The Hague, Netherlands. ***The League Council appointed a Committee of 16 jurists in 1924 to report the Council. The following subjects were included for consideration:***

- *Nationality*
- *Territorial waters*
- *State responsibility for damage done in their territory to the persons or property of foreigners*
- *Diplomatic immunities and privileges*
- *Procedure of international conference and procedure for the conclusion and drafting of treaties*
- *Exploitation of the products of the sea*

- Piracy

Subsequently in 1928, the Committee reported two more following subjects for codification:

- The law relating to functions and competence of consults
- The competence of Courts regarding foreign states

The Conference failed. Agreements were reached on only the Convention on certain questions relating to the conflict of Nationality laws,^{vi} and even those were ratified later by only few states. It declared the renunciation of war as an instrument of National Policy in 1929. On other matters, the Conference brought out sharp disagreements amongst the states, even on those matters which till then were generally regarded as established rules of international law. This failure served the members of the new commission as a reminder to proceed cautiously with the codification of international law through a longer and more gradual process.

VIII. THE HAGUE CODIFICATION CONFERENCE OF 1930:

It was the first conference on the codification of international law conducted in Mar, 1930. It was in continuation of the series of the international conferences begun at The Hague in 1899. The PCIJ was set up at Hague in 1922 which made the codification of international law more necessary. Three committees were set up for each of the topics decided in the League of the Nations. Here no general agreement could be reached in regard to territorial waters and state responsibility, etc. However, the Committee on nationality adopted several conventions on questions relating to the conflict of Nationality laws and statelessness.

IX. CODIFICATION UNDER THE UNITED NATIONS:

The attempts to codify international law boosted with the establishment of the United Nations in 1945 after the Second World War. The UN Charter delegated this task to the General Assembly. It said, *“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.”*^{vii} It conferred more limited powers of study and recommendation on the General Assembly. Thus, it shows that the

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UN Charter also aimed at codifying laws. Considering the urgency of the situation and its importance, the General Assembly acted quickly. During the second part of its first session, the General Assembly, on 31 Jan, 1947 adopted Resolution 94(I) establishing a Committee on the Progressive Development of International Law and its Codification, sometimes known as the “*Committee of Seventeen*”. The Committee held 30 meetings from 12 May to 17 Jun, 1947 and adopted a report recommending the establishment of an *International Law Commission (ILC)* and setting forth provisions designed to serve as the basis for its statute. Most states consider it necessary to conclude international conventions before the results were binding on states.^{viii} Finally, on 21 Nov, 1947, the General Assembly adopted Resolution 174 (II), establishing the ILC and approving its statute which was amended three times by the resolutions of the General Assembly.^{ix} Thus, it undertook the mandate of the assembly provided under Art 13(1)(a).

X. WORK OF INTERNATIONAL LAW COMMISSION:

The object of ILC is the promotion of the progressive development of international law and its codification. Its establishment led to the systematic presentation of international law in the form of written rules representing a restatement of existing rules of international customary law or the formulation of new ones. The ILC has initiated studies and prepared draft codes on diverse fields of international law which have led to the adoption of the multilateral law-making treaties between the states.^x **However regarding codification, it decided to give priority to broadly the three concepts:**

- *Law of treaties*
- *Arbitral procedure*
- *Law relating to high seas*

Procedure: ILC follows a procedure for the adoption of international rules through multilateral treaties or conventions. It first prepares a set of draft articles on the basis of reports prepared by its member appointed as special rapporteur. The draft is then sent to the states for their comments. Then a final draft is prepared to be sent to the General Assembly, which then decides to convene an international conference for the adoption of a convention, as per draft.

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The ILC first met on Apr 11, 1949 in US. The agenda of the session consisted of the following:

- *Making a general survey of topics of international law that required codification into treaties and conventions.*
- *The rights and duties of states*
- *The Nuremberg Principles and the definition of crimes against the peace of mankind*
- *Possibility of establishing a judicial body to prosecute leaders guilty of genocide*
- *Finding ways to make the rulers and documents of International law more available to the public and scholars*
- *Cooperation by the ILC with other UN agencies.*

During the session, disagreement arose between the members as to whether the commission was entitled to include a topic on its agenda without prior consent of the General Assembly. The issue decided that it was competent to do so by a vote of 10 to 3.^{xi} Subsequently, more sessions were held in Geneva, Switzerland.

The Commission has however dealt with a number of matters assigned to it by the General Assembly, which formed:

- *The 1949 Draft Declaration on Rights and Duties of States*
- *The 1950 Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal*
- *The 1952 Reservations to Multilateral Convention*
- *The 1954 Draft Code of Offences against the Peace and Security of Mankind*
- *The 1958 Model Rules on Arbitral Procedure*
- *The 1974 Definition of Aggression*

The Commission originally drew up a provisional list of 14 subjects for codification in 1949^{xii}; however, the above procedure helped in the adoption of a number of multilateral conventions, which are also in force. ***These are:***

- *The four Geneva Conventions of 1958 on the Law of the Sea*
- *The 1961 Convention on the Reduction of Statelessness*
- *The 1961 Vienna Convention on Diplomatic Relations*

- *The 1963 Vienna Convention on Consular Immunities*
- *The 1969 Vienna Convention on the Law of Treaties*
- *The 1978 Vienna Convention on Succession of States in respect of treaties*
- *The 1983 Vienna Convention on Succession of States in respect of State property, Archives and Debts*
- *The 1997 Convention on the law of the Non-Navigational uses of International Water Courses*
- *The Rome statute of the ICC 1998*
- *The 2004 UN Convention on Jurisdictional Immunities of States and their property*

The commission has also prepared the draft articles on various subjects like, internationally wrongful acts, trans-boundary harm from hazardous activities, diplomatic protection, jurisdictional immunities of states, shared natural resources (*oil and gas*), expulsion of aliens and responsibility of international organizations.

Latest Session: In accordance with resolution 76/111 of 9 Dec, 2021, the ILC held its 73rd session at the UN office at Geneva for 12 weeks. The Commission concluded the first part on 3rd Jun, 22 and the second part from 4th Jul to 5th Aug, 22. It aimed at strengthening the role of the organization.^{xiii}

About members: Its membership was raised from 25 to 34 in 1981. These members are competent in international law and represent the main forms of civilization and the principal legal systems of the world.^{xiv} These are professional diplomats from the respective states, sitting in individual capacity.

XI. WHY THE ILC IS IMPORTANT?

Lauterpacht described the importance of commission as, “*the texts prepared by the Commission are, in terms of the rules about sources of International Law in Art 38(1)(c) of statute of ICJ are at least in the category of writings of more qualified publicists.*” The codification division promotes the universal respect for international law, by providing the legislative of the General Assembly with assistance in enhancing compliance of states with

their obligations under the Charter or other legal instruments or under general international law. It also encourages and facilitates the teaching, study, dissemination and wider appreciation of international law, by planning and implementing the Programme of Assistance in the Teaching, Study and Dissemination and wider appreciation of International law. It also provides training course in international law.^{xv}

XII. WORK BY OTHERS:

There are a number of other UN bodies, apart from the ILC, whose work has led to the adoption of multilateral conventions on varied subjects.

- *The work of UN Commission of Human Rights led to the numerous treaties on human rights. From 2006, it has been replaced by the Human Rights Council.*
- *The Committee on Peaceful Uses of Outer Space is looking into the instruments on outer space*
- *UNCLOS worked on the 1982 Law of the Sea Convention*
- *The Sixth Committee (Legal) considers legal questions in the General Assembly. It conducted 77th session in 23rd Sep, 2022.*

As the codification task is enormous and the Commission is already saddled with too many subjects and is confining itself mainly to traditional subjects where there exists considerable amount of non-controversial State practice, the trend for the future seems to be the codification through special bodies to be set up by the General Assembly to look into the new and specific subjects.^{xvi}

XIII. PROGRESSIVE DEVELOPMENT OF INTERNATIONAL

LAW:

The development of international law has been mainly affected through usages, practices and writings of jurist such as Zouche, Moser, Vattel and more. International law is not static and is constantly developed and restructured in the very process of its application to new situations, sometimes undergoing qualitative changes. Significant developments took place after the

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Second World War like that of establishment of a large number of international institutions and organizations. These are regarded as “*International Legal Entities*” which has been also confirmed by the ICJ in Reparation for Injuries suffered in the service of the UN. In 1815, The Congress of Vienna, the first European Assembly adopted rules for navigation of international rivers. Various treaties were signed regarding this like, neutrality of Switzerland (1815) and Belgium (1831), Codified law of maritime warfare (Paris Declaration 1856), creating special regimes for the Suez Canal (1888) and Panama Canal (1901). In the second half of the 19th century, the international law developed largely because of the emergence of powerful states, the expansion of European civilization in other parts of the world mainly through colonization, new and faster means of transport and increasingly destructive nature of warfare. ***This resulted into development of such treaties having humanitarian approach, like that of:***

- *The Declaration of Paris (1856)*
- *The Geneva Convention (1864)*
- *The Declaration of St. Petersburg (1868)*
- *The Hague Conventions (1889 and 1907)*

Certain private international and national scientific institutions have facilitated certain diplomatic conferences concerned with the progressive development of international law, like Institute of International Law, International Law Association, International Maritime Committee, the Harvard Research in International law, etc.^{xvii} The developments of written international law are no more confined to just customs and usages, but are also developed through the formulation of new law. Thus, new international conventions are included on every important area which led to the overall growth, like environmental law is gaining importance at international level. These developments affect modern international law and are generally applicable.

XIV. RELATION WITH CODIFICATION:

‘*Codification*’ formulates rules of international law in fields where there already have been extensive state practice, precedent and doctrine.^{xviii} ‘*Progressive development*’ leads to preparation of draft conventions on the 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

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practice of states.^{xix} Their distinction has been adopted both by the UN Charter and the statute of the ILC (Art 15). This is all in theory, however, in practicality, their relationship is blurred and overlapped. Indeed, the statute of ILC is based on such a distinction, but it has never worked in practice: neither regarding the selection of topics nor in the respect of procedure followed nor the outcome, has the Commission made (*or been able to make*) a difference between both the aspects; all topics involve partial codification. Also, all customary rules have certain elements of uncertainty, which needs clarification. Thus, in the process of codification, a certain element of progressive development is there. This is even true in very ancient fields of international relations regulated by well-established rules, such as diplomatic relations or the law of treaties.^{xx}

XV. MERITS AND DEMERITS OF CODIFICATION:

Merits:

- *Helps to make clear and certain rules which settle conflicting and divergent views.*
- *Helpful in filling number of gaps existing in international law and also provides on such subjects where there is none.*
- *Bring uniformity in international legal system.*
- *Prevents confusion on any significant matter.*
- *Enhances the efficacy of international law by increasing its binding force.*
- *The ICJ and other tribunals will find it easier to apply and enforce codified international law.*
- *Easy and convenient to amend codified international law so as to keep it at pace with the changing modern times.*
- *It is not a forced law as parties has a choice. Through agreement they could decide to follow the rules of any one country rather than that of international conventions.*
- *It exposed the states to dangers of unanimity rule means it showed that certain states did not like to commit in writing what they were actually practicing.*

Demerits:

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- *Harmful for the natural growth and future development of the international law.*
- *Sometimes it makes the system too rigid and unadoptable to new situations.*
- *It makes the law too formal and conservative.*
- *It may lead to new controversies as some members may not find the codified law favorable. Codification becomes difficult because it requires agreement among the whole body of the States. All states are on a footing of legal equality and thus the law which governs their relations must be determined by them through common action. Lack of uniformity in opinion led to the lengthy discussions.*
- *There could be controversies in interpretation because of the selective tendency of judges to interpret the law.*
- *As international law is still in its infancy, only a partial codification is possible.*
- *Customary rules still form the bulk of international law and many of them are not yet fully settled covers the whole area of international rules.*

XVI. SUGGESTIONS:

Codification is important to avoid any chaos in understanding the meaning, nature and function of international law or any of its subjects. ***Though, it has also certain demerits as stated above, still we can overcome these through the following ways:***

- *Subjects of international law should be timely studied and revised as per the modern situation. Laws should be kept updated.*
- *There should be progressive interpretation of international law.*

Thus, we can say that merits outweigh the demerits which mean that codification becomes significant and even desirable.

XVII. CONCLUSION:

Thus, codification does not create new rules and principles but only consolidates and compiles to the existing rules of a particular branch of law or in general. The UN and ILC played a major role in codification. There are 195 countries in the world and we cannot imagine them to stay

aloof to each other. They can't survive without interacting. They have certain trade relations in terms of goods or services. They also have signed certain treaties be it for peace or business. So, in these complex situations, there arises confusion that law of which country would prevail. There is no concept of superior or inferior country. So, in order to bring a balance, certain international rules were framed to be applied universally. These rules need to be in written form so that it could be amended as and when necessary.

Also, though codification is a modern thing, but international relations and rules form part of customs. Thus, codification is necessary to avoid disputes. With it, the formulation of updates is also necessary. We cannot imagine a legal framework based on oral and unclear laws. Thus, we could say that codification is an indispensable tool in serving the interests of justice. Though theoretically, codification and progressive development are clear and distinguishable, however they tend to overlap and it is not possible to indicate precisely where codification ends and progressive development begins.^{xxi} Also codification is not a one night's job, it happens gradually after developing one subject over another on international law.

ⁱ SK Verma, *An Introduction to Public International Law*, Satyam Law International, 3rd ed, 2019.

ⁱⁱ Anomitra Debnath, *Concept of Codification of International law*, pp. 4, available at, https://www.legalpedia.co.in/article/1International%20Law_Anomitra%20Debnath.pdf

ⁱⁱⁱ Gurdip Singh, *International Law*, pp. 5-6, Eastern Book Company, Lucknow, 3rd ed, 2015

^{iv} Anomitra Debnath, *Concept of Codification of International law*, pp. 2, available at, https://www.legalpedia.co.in/article/1International%20Law_Anomitra%20Debnath.pdf

^v “*The Hague Peace Conferences of 1899 and 1907, a series of lectures delivered before the Johns Hopkins University in the year 1908*”, available at, avalon.law.yale.edu

^{vi} The original text, Convention on certain questions relating to the conflict of nationality laws, The Hague, Apr 12, 1930.

^{vii} Art 13(1)(a), Para 1 of the UN Charter

^{viii} Gurdip Singh, *International Law*, pp. 9, Eastern Book Company, Lucknow, 3rd ed, 2015

^{ix} The Statute of the International Law Commission, The Work of International Law Commission, 1980, 103.

^x Gurdip Singh, *International Law*, pp. 9, Eastern Book Company, Lucknow, 3rd ed, 2015

^{xi} Yearbook of International Law Commission 1949, p. 32.

^{xii} The ILC Rep., 1949, II, p.281

^{xiii} International Law Commission, available at, <https://legal.un.org/ilc/>

^{xiv} Articles 2, 3 and 8 Statute of the ILC

^{xv} International Law Commission, available at, <https://legal.un.org/ilc/>

^{xvi} SK Verma, *An Introduction to Public International Law*, pp. 22-24, Satyam Law International, Delhi (3rd ed, 2019)

^{xvii} *United Nations Documents on the development and codification of International law*, Supplement to American Journal of International law, pp. 35, Vol 41 No 4, Oct 1947, available at, https://legal.un.org/ilc/documentation/english/ASIL_1947_study.pdf

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^{xviii} Codification and Progressive Development of International Law, available at,
<https://legal.un.org/cod/#:~:text=In%20contrast%2C%20the%20codification%20of,State%20practice%2C%20p%20precedent%20and%20doctrine.>

^{xix} Id

^{xx} Alain Pellet, *Between Codification and Progressive Development of the law: Some reflections from the ILC*,
International Law Forum 2004, pp 15-24.

^{xxi} North Sea Continental Shelf Case, 2 KB 39 (1969)

