

Statement in the Sixth Committee
by Professor Maxwell Cohen, Delegation of Canada,
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...I should like this morning ... to deal with four matters, some of which have already been touched upon by other speakers. These questions are, firstly, some general problems arising out of the history and operations of the International Law Commission; secondly, the report of the Commission presently before this Committee covering the work of its eleventh session; thirdly, the draft resolution proposed by El Salvador on the question of asylum; and fourthly, some general comments on the work and significance of the Sixth Committee itself.

First, then, a word about the International Law Commission and the record of its activities. I think we are all in agreement that the establishment of the Commission by the General Assembly in 1949 was a happy event. It already has led to a fulfilment of some of the hopes of the draftsmen of the Charter, namely, that members should move together toward programmes of codification and the progressive development of international law. If there are any problems with respect to the work of the Commission, they tend to arise out of the belief by some Member States that the speed with which the Commission is able to accomplish its tasks is not as great as it perhaps should be and that its methods of operation might be improved upon. It is very difficult to judge by any objective criteria whether the work of the Commission has moved less rapidly than could have been expected. Plans for codification among Member States, or programmes involving restatements of the law, have in most cases shown a great resistance to speed. And this is only natural. It took the better part of half a century to develop the first Federal German Civil Code, while so profound a contribution to codification as the Code Napoleon of 1804 was only possible because of the readily available materials in the work of Domat, Pothier, the Customs of Paris and the demonic energy of a Napoleon driving his draftsmen to distraction and immortality. Hence we should not be too disappointed if the International Law Commission is unable to produce at a greater rate than that which we have had from it.

I am bound to say, however, that the delays in the case of the present study of Consular Intercourse and Immunities, and the discussions we have had on this matter during the past few days, do suggest that some remedies might be available to increase the rate at which the Commission is able to proceed. It would seem to me that there is nothing in the Commission's Statute to prevent the employment of outside rapporteurs not members of the Commission. Indeed, Part B, Articles 18 to 23 of the Statute, dealing with codification, make no reference whatever to the appointment of rapporteurs, or limiting their selection to the membership of the Commission itself. While it is true that Article 16, under Part A of the Statute, dealing with progressive development of international law refers, in clause (a), to the fact that the Commission shall appoint one of its members to be rapporteur, even this language -- which does not appear in Part B -- probably would not prevent the Commission from appointing persons to assist the rapporteur in his research or to provide interim associate rapporteurs whenever other duties make it impossible for the particular Commission member so appointed to carry on with his assignment.