ARTICLE 13 (1) (a)

With regard to the encouragement of the progressive development of international law and its codification

CONTENTS

TEXT OF ARTICLE 13 (1) (a)

Provision relating to the progressive development and codification of international law

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

(a) . . . encouraging the progressive development of international law and its codification.

INTRODUCTORY NOTE

1. The study of Article 13 (1) (a)[1] in the *Repertory* included a General Survey which dealt with the establishment of the International Law Commission by the General Assembly for the promotion of the progressive development of international law and its codification. The section also contained a brief account of some of the provisions of the Commission's Statute. In *Repertory Supplement No. 1* no further information was included under the General Survey and in *Supplement No. 2* that section was omitted, the reason being that although certain articles of the Commission's Statute were amended during the periods covered by the two *Supplements*, those amendments did not bear on the interpretation or application of the provisions of Article 13 (1) (a) in regard to the progressive development of international law and its codification.

2. To some extent the situation is similar with respect to the period under review in the present *Supplement*. The Statute of the International Law Commission was amended[2] by the General Assembly to increase its membership from twenty-one to twenty-five but that decision obviously had no bearing on the interpretation or application of the Charter provisions. Nonetheless, it is considered desirable to reinstate the General Survey in this study. During the period under consideration projects previously begun were brought forward, some of them to completion, and new initiatives were taken aiming at the codification and development of international law. A brief review of those developments in the General Survey would seem to be useful as a background to the Analytical Summary of Practice in regard to the three questions raised in the *Repertory* and followed up in the *Supplements*, namely (a) the initiation of studies, (b) the making of recommendations for the purpose of encouraging the progressive development of international law and its codification and (c) the meaning of "progressive development" and "codification" in this context. Questions (a) and (b) overlap to some extent, but are nonetheless dealt with separately in order to follow, as far as possible, the pattern set in the *Repertory*. The subheadings have, however, been omitted. In section II. C., a subheading has been added to cover material relating to the meaning of the terms "progressive development" and "codification" in the light of decisions and discussions in the General Assembly.

[1] Where a reference is made to Article 13 (1) (a) in this study, it indicates the second part of that subparagraph relating to the encouragement of the progressive development of international law and its codification.

[2] G A resolution 1647 (XVI).

I. GENERAL SURVEY

3. In *Supplement No. 2*[3] it was noted that the Conference on the Law of the Sea, convened at Geneva in February 1958, adopted, on the basis of draft articles prepared by the International Law Commission, the four following conventions: (a) Convention on the Territorial Sea and the Contiguous Zone; (b) Convention on the High Seas; (c) Convention on Fishing and Conservation of the Living Resources of the High Seas and (d) Convention on the Continental Shelf, as well as an Optional Protocol of Signature concerning the Compulsory Settlement of Disputes arising out of the interpretation or application of any of those conventions. It was also noted that no proposal concerning the breadth of the territorial sea or fishery limits had received the two-thirds majority required for adoption by the Conference and that the General Assembly had therefore decided, by resolution 1307 (XIII), that a second Conference should be called for the purpose of considering those questions. The Second United Nations Conference on the Law of the Sea met at Geneva from 17 March to 26 April 1960. No proposal on the breadth of the territorial sea or fishery limits obtained the required majority. Two draft resolutions were adopted. In one, the General Assembly recom-

[3] See *Repertory Supplement No. 2*, vol. II, under Article 13 (1) (a), paras. 6, 8 and 9.

mended the publication of a complete verbatim record of the discussions at the Conference, in the other, it stated, *inter alia,* that technical and other assistance should be available to help States in making adjustments to their coastal and distant-watersfishing in the light of new developments in international law and practices.[4]

4. It was also noted in *Supplement No. 2*[5] that by decision of the General Assembly a United Nations Conference on the Elimination or Reduction of Future Statelessness had been convened on 24 March 1959 at Geneva. The basis of its work was a draft Convention on the Reduction of Future Statelessness prepared by the International Law Commission; it adopted seventeen articles but was unable to complete its work. In concluding, the Conference proposed "to the competent organ of the United Nations to reconvene the Conference at the earliest possible time in order to complete its work". After having consulted the States participating in the Conference, the Secretary-General reconvened the Conference.[6] It met from 15 to 28 August 1961 at Headquarters in New York and adopted a Convention on the Reduction of Statelessness, together with a Final Act, to which four resolutions were annexed.[7]

5. On a further matter, "Diplomatic intercourse and immunities", it was reported in *Supplement No. 2*[8] that the General Assembly, having received a final draft on the topic from the International Law Commission, had decided, by resolution 1288 (XIII), to include that question in the provisional agenda of its fourteenth session with a view to the early conclusion of a convention. In pursuance of that decision, the General Assembly by resolution 1450 (XIV) requested the Secretary-General to convoke an international conference of plenipotentiaries at Vienna to consider the question of diplomatic intercourse and immunities and to embody the results of its work in an international convention, together with such ancillary instruments as might be necessary. The General Assembly at the same time referred to the conference, as the basis for its deliberations, chapter III of the report of the International Law Commission on its tenth session, containing draft articles on diplomatic intercourse and immunities with a commentary, as adopted by the Commission.[9] The United Nations Conference on Diplomatic Intercourse and Immunities met in Vienna from 2 March to 14 April 1961 and adopted a convention entitled the "Vienna Convention on Diplomatic Relations", together with two optional protocols, one dealing with the immunity of members of a diplomatic mission and their families from the nationality legislation of the receiving State, and the other concerning the compulsory settlement of disputes arising from the interpretation or application of the Convention and of the Protocol on Nationality. The Conference also adopted several resolutions, among others one recommending that the sending State should waive the immunity of members of its diplomatic mission in respect of civil claims in the receiving State when this could be done without impeding the performance of the functions of the mission.[10]

6. During the period under review two more major projects of codification and development of international law, undertaken by the International Law Commission, were brought forward to the point of submission of final drafts, namely, "Draft articles on consular relations" and "Draft articles on the law of treaties".

7. The "Draft articles on consular relations" were transmitted to the General Assembly in the Commission's report on its thirteenth session[11] with the recommendation that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft and conclude one or more conventions on the subject. The General Assembly, by resolution 1685 (XVI), decided, *inter alia,* to convene at Vienna an international conference of plenipotentiaries to consider, on the basis of the Commission's draft and the Assembly's discussions thereof, the question of consulate relations and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. The United Nations Conference on Consular Relations met in Vienna from 4 March to 22 April 1963 and adopted a convention entitled the "Vienna Convention on Consular Relations", as well as two optional protocols, one dealing with the immunity of members of a consular post and their families from the nationality legislation of the receiving State, and the other concerning the compulsory settlement of disputes arising from the interpretation or application of the Convention and the Protocol on Nationality. The Conference also adopted a number of resolutions, one of which concerned the refugee question which had been raised in a memorandum submitted by the United Nations High Commissioner for Refugees.[12]

8. The International Law Commission completed the "Draft articles on the law of treaties" at its eighteenth session and submitted them in its report to the General Assembly[13] with the recommendation that an international conference of plenipotentiaries should be convened to study the draft and conclude a convention on the subject. Although the General

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[4] G A (XV), Suppl. No. 1 (A/4390) p. 92; Official Records of the Second United Nations Conference on the Law of the Sea (A/Conf. 19/8 and A/Conf. 19/9).

[5] See *Repertory Supplement No. 2,* Vol. II, under Article 13 (1) (a), para. 7.

[6] G A (XV), Suppl. No. 1 (A/4390), p. 92; G A (XVI), Suppl. No. 1 (A/4800), p. 168.

[7] G A (XVII), Suppl. No. 1 (A/5201), p. 170.

[8] See *Repertory Supplement No. 2,* Vol. II, under Article 13 (1) (a), paras. 24—31.

[9] G A (XV), Suppl. No. 1 (A/4390), p. 92. The Commission's report is included in *the Yearbook of the International Law Commission, 1958,* vol. II, pp. 89—105.

[10] G A (XVI), Suppl. No. 1 (A/4800), p. 168; Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities, vol. II (A/Conf. 20/14/Add.1).

[11] *Yearbook of the International Law Commission 1961,* vol. II, p. 89 *et seq.*

[12] G A (XVII), Suppl. No. 1 (A/5201), p. 169; G A (XVIII), Suppl. No. 1 (A/5501), p. 128; Official Records of the United Nations Conference on Consular Relations, vol. II (A/Conf. 25/16/Add.1).

[13] G A (XXI), Suppl. No. 9 (A/6309/Rev.1) pp. 7—100.

Assembly's action was not taken within the period under review, it may be noted here that it followed the advice of the Commission: by resolution 2166 (XXI) the General Assembly decided, *inter alia*, that such a conference would be convened to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it might deem appropriate.

9. The above-mentioned actions taken by the International Law Commission, the General Assembly and a number of international conferences indicate the development of a pattern for the codification and progressive development of international law: the Commission prepared a set of articles on a certain subject and submitted them with its recommendations to the General Assembly; the Assembly, after consideration, referred the draft to an international conference and the conference, after deliberations on the basis of the draft, adopted one or more conventions, protocols and resolutions. The effectiveness of the instruments resulting from that process would naturally depend on the acceptance accorded to them by the Member States and other States invited to become parties. Care was therefore taken in the preparation of the drafts to request legal material and written comments from Governments, as prescribed in the Statute of the International Law Commission. Furthermore, as preliminary drafts were usually presented in the yearly reports of the Commission to the General Assembly, representatives of the Member States had the opportunity in the Sixth Committee to express their opinions on the drafts at successive stages of preparation. It may be noted that at the end of the period under review, 31 August 1966, that is the status of the conventions and other instruments mentioned above with respect to entry into force and number of signatures, ratifications, accessions and notifications of succession was as follows:

10. That procedure for the codification and progressive development of international law was not the only one adopted during the period under review. While the International Law Commission was established by the General Assembly specifically to give effect to Article 13 (1) (a), the Assembly from the outset also had recourse to other means. It was noted in the *Repertory* in that connexion that, in order to supplement or continue work done by the International Law Commission, studies were entrusted to the Secretary-General[14] and some matters were referred to *ad hoc* committees.[15] It was also pointed out[16] that action by the General Assembly could have the effect of encouraging the progressive development of international law and its codification without specifically being taken for that purpose. The action of the Assembly for the promotion of universal respect for, and observance of, human rights was mentioned as an example. Others might be added, such as the study initiated by the Assembly on permanent sovereignty over natural resources and the work for a declaration on the prohibition of the use of nuclear and thermo-nuclear weapons. However, given the organization of the present article in the *Repertory*, those matters are dealt with elsewhere.[17] On the other hand, three additional subjects initiated by the General Assembly may be pertinently referred to here, as they were linked by the General Assembly to its functions under Article 13 (1) (a). They related to the General Assembly's steps to further (a) the codification and progressive development of the principles of international law concerning friendly relations and co-

[14] See *Repertory*, under Article 13 (1) (a), paras. 17 and 18.

[15] *Ibid.*, paras. 14—16.

[16] *Ibid.*, para. 1.

[17] For human rights and for permanent sovereignty over natural resources, see this *Supplement* under Article 55, and for the prohibition of the use of nuclear and thermo-nuclear weapons, see this *Supplement* under Article 11.

	Entry into force	*Signatures*	*Ratifications, accessions, notifications of succession*
Convention on the Territorial Sea and the Contiguous Zone	10 Sept. 1964	44	33
Convention on the High Seas	30 Sept. 1962	49	40
Convention on Fishing and Conservation of the Living Resources of the High Seas	20 March 1966	37	25
Convention on the Continental Shelf	10 June 1964	46	36
Optional Protocol of Signature concerning the Compulsory Settlement of Disputes	30 Sept. 1962	37	8
Convention on the Reduction of Statelessness	Not in force	5	1
Vienna Convention on Diplomatic Relations	24 April 1964	63	57
Optional Protocol to the Vienna Convention on Diplomatic Relations concerning Acquisition of Nationality	24 April 1964	20	19
Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes	24 April 1964	31	26
Vienna Convention on Consular Relations	Not in force*	51	20
Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition on Nationality	Not in force*	18	8
Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes	Not in force*	38	9

* Entered into force on 19 March 1967.

operation among States, (b) the study of legal problems arising from the exploration and use of outer space and (c) the progressive development in the field of private international law with a particular view to promoting international trade. In those cases the General Assembly did not have recourse to the International Law Commission but employed other methods which it considered appropriate in each particular case.

11. The first of the three subjects emerged from the discussion in the General Assembly regarding the planning of future work to be undertaken in the field of international law. During the period under review new emphasis was laid on the need to expedite the codification and progressive development of international law and, in so doing, to bear in mind the present requirements of the international community and to take into consideration the views of newly-elected Member States of the Organization. While increased attention was paid to the programme and methods of work of the International Law Commission and to its approach to some of the topics on its agenda, thought was also given to finding additional ways and means to accomplish the task.

12. The new emphasis referred to above became apparent at the fifteenth session of the General Assembly. While at the previous session the Assembly had, as a matter of routine, merely taken note of the report of the International Law Commission and expressed its appreciation of the work done by the Commission,[18] the corresponding report submitted at the fifteenth session gave rise to a full-scale debate in the Sixth Committee on the future work to be undertaken in the field of codification and progressive development of international law. That discussion continued at the sixteenth and seventeenth sessions. At the latter session the General Assembly recommended[19] that the Commission should continue its work on the codification and progressive development of the law of treaties, State responsibility and succession of States and Governments, taking into account the views expressed in the General Assembly and in comments submitted by Governments. The Secretary-General was directed to transmit to the Commission the records of the relevant debates in the Sixth Committee. The same recommendations and instructions were, in substance, repeated by the General Assembly at its eighteenth and twentieth sessions.[20]

13. In this manner the General Assembly developed a practice of following the work of the International Law Commission closely, drawing the Commission's attention to the relevant comments made in the Sixth Committee on preliminary drafts and to such observations on those as might have been submitted by Governments and, in general, making recommendations as to what should be the Commission's programme of work for the immediate future.

14. During most of the debates on the programme of work one subject in particular evoked interest and controversy, namely, the question of the elaboration of legal principles on peaceful coexistence, a topic of codification suggested by some of the Members who had submitted written views on future work in the field of the codification and progressive development of international law.[21] The discussions concerned both the definition of the subject and the methods for its codification. Doubts were expressed regarding the expression "peaceful coexistence" and, in the end, it was agreed to rename the subject "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations".[22] Attention could then be directed towards the problem of the method to be used for the codification of those principles and the work of codification itself.

15. At its seventeenth session the General Assembly decided,[23] after a lengthy discussion, to undertake at its eighteenth session a study of the following four principles: "(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; (b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; (c) The duty not to intervence in matters within the domestic jurisdiction of any State, in accordance with the Charter; (d) The principle of sovereign equality of States". The Assembly would also decide what other principles were to be given further consideration at subsequent sessions and the order of their priority. At the eighteenth session, it became clear that the necessary preparatory work would have to be accomplished by a group smaller than the Sixth Committee. In view of the fact that the principles selected for study were principles of the Charter and that their codification and progressive development had political implications, the General Assembly felt it appropriate to entrust the task to a committee composed of government representatives, rather than to the International Law Commission which is composed of individual experts. Many Members also considered that the programme of work of the Commission was overburdened for several years to come and that the study and formulation of the principles should therefore be entrusted to another organ. The Assembly accordingly decided[24] to establish a special committee composed of Member States to study the four principles for the purpose of bringing about their progressive development and codification.

16. The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States met, studied the

[18] G A resolution 1399 (XIV).

[19] G A resolution 1765 (XVIII). See also G A resolutions 1505 (XV) and 1686 (XVI) on the same subject.

[20] G A resolutions 1902 (XVIII) and 2045 (XX).

[21] G A (XVI), Annexes, a.i. 70, A/4796 and Add.1–8.

[22] G A resolution 1686 (XVI).

[23] G A resolution 1815 (XVII).

[24] G A resolution 1966 (XVIII).

matter in depth and submitted a report to the General Assembly which was discussed at its twentieth session. The Assembly considered the results sufficiently encouraging to decide that the work should be continued by the Special Committee, reconstituted and with an enlarged membership.[25]

17. In an important field a separate procedure for the codification and progressive development of international law was thus set in motion by the General Assembly. The codification and development of the principles of international law concerning friendly relations and co-operation among States was kept under review by the General Assembly itself and the Sixth Committee, with the assistance of *ad hoc* committees composed not of experts but of Government representatives. What ultimate results might be attained through those efforts was not yet clear at the end of the period under review.

18. During the discussions regarding the future programme for the progressive development and codification of international law some Members proposed that the International Law Commission should undertake a study of the legal aspects of the use of outer space. Other Members considered that the question was too technical to be dealt with by the Commission.[26] By resolution 1427 A (SIV), the General Assembly had already established a Committee on the Peaceful Uses of Outer Space and had requested that Committee "To study the nature of legal problems which may arise from the exploration of outer space". The General Assembly repeated that request in resolution 1721 A (XVI) in which it also commended to States certain principles for their guidance in the exploration and use of outer space. In resolution 1802 (XVII), the General Assembly stressed "the necessity of the progressive development of international law pertaining to the further elaboration of basic legal principles governing the activities of States in the exploration and use of outer space and to liability for space vehicle accidents and to assistance to and return of astronauts and space vehicles and to other legal problems", and it requested the Committee on the Peaceful Uses of Outer Space to continue urgently its work on that subject. At its eighteenth session, the General Assembly adopted by resolution 1962 (XVIII) a Declaration of Legal Principles Govering the Activities of States in the Exploration and Use of Outer Space submitted by the Committee on the Peaceful Uses of Outer Space after discussion in that Committee's Legal Sub-Committee. By resolution 1963 (XVIII), the General Assembly recommended that consideration should be given to incorporating such principles in international agreement form and requested the Committee on the Peaceful Uses of Outer Space to continue to study and report on legal problems which might arise in the exploration and use of outer space, and in particular to arrange for the prompt preparation of draft international agreements on liability for damage caused by objects launched into outer space and on assistance to an return of astronauts and space vehicles. By resolution 2130 (XX), the General Assembly urged the Committee, "in developing law for outer space", to carry out that programme.

19. The law of outer space consequently became another important topic for which a separate procedure for legal development was instituted by the General Assembly.

20. The question of establishing rules governing international trade, and more especially trade among States with different economic and social systems, was also one of the subjects proposed for inclusion in the future programme of work of the International Law Commission during the sixteenth session of the General Assembly.[27] It was observed in the debate that the task seemed more appropriate for an economic body than for the Commission and the proposal was not acted upon by the General Assembly. At its twentieth session, the General Assembly was seized of a proposal to consider steps to be taken for progressive development in the field of private international law with a particular view to promoting international trade.[28] The Assembly, by resolution 2102 (XX), "Mindful of its responsibilities under Article 13 of the Charter of the United Nations" decided to request the Secretary-General to submit at its next session a comprehensive report on the matter. It was agreed that the Secretary-General should informally consult with, among others, the International Law Commission. Although the following developments do not come within the period under review, it may be noted that the Secretary-General, having been advised that, owing to its heavy agenda, the International Law Commission did not wish to assume responsibilities in that field, suggested that the General Assembly might wish to establish a new commission for the work, to be called the United Nations Commission on International Trade Law (UNCITRAL).[29] By resolution 2205 (XXI), the General Assembly decided to act in accordance with that proposal. Thus, in the field of international trade law, the General Assembly set up a new commission comparable to the International Law Commission. One notable difference between these two organs, however, is that UNCITRAL is composed of government representatives, while the members of the International Law Commission are individual experts.

21. Some of the developments outlined above will be further studied in the Analytical Summary of Practice from the point of view of the three Charter issues mentioned in the Introductory Note.

22. To complete this General Survey an indication should be made of a number of additional actions which were taken by the General Assembly

[25] G A resolution 2103 A (XX).

[26] See *Yearbook of the International Law Commission 1962*, vol. II, pp. 96 and 97.

[27] G A (XVI), Annexes, a.i. 70, A/4796, p. 9; 6th Com., 714th mtg., para. 21.

[28] The proposal was originally submitted at the nineteenth session; in view of the particular circumstances prevailing at that session, it was not considered and was therefore submitted again at the following session.

[29] G A (XXII), Suppl. No. 1, p. 181. See also G A (XXI), Annexes, a.i. 88, A/6396. It may be of interest that article 1 (2) of the Statute of the International Law Commission provides that "The Commission shall concern itself primarily with public international law, but is not precluded from entering the field of private international law".

during the period covered by the present *Supplement* in connexion with its efforts to encourage the progressive development of international law and its codification.

23. At its fourteenth session, that is, before the general question of future codification work was taken up at the fifteenth session, the General Assembly requested the International Law Commission, by resolution 1400 (XIV), to codify the principles and rules of international law relating to the right of asylum and, by resolution 1453 (XIV), to undertake the study of the juridical régime of historic waters. Also, after the general planning of future codification had been considered the General Assembly continued to refer to the International Law Commission particular subjects such as the question of special missions by resolution 1687 (XVI) and that of extended participation in general multilateral treaties concluded under the auspices of the League of Nations by resolution 1766 (XVII).

24. The General Assembly further asked the Secretary-General to undertake several tasks, for example, by resolution 1401 (XIV), he was requested to prepare certain preliminary studies on the legal problems relating to the utilization and use of international rivers; by resolution 1903 (XVIII), to take certain actions in order to facilitate extended participation in general multilateral treaties concluded under the auspices of the League of Nations and, by resolutions 1967 (XVIII) and 2104 (XX), to study the question of methods of fact-finding as a means of furthering the peaceful settlement of disputes between States.

25. By resolution 1451 (XIV), the General Assembly decided that a United Nations juridical yearbook should be published; the final decision regarding its content and its publication by the Secretary-General was taken by the Assembly in resolution 1814 (XVII).

26. During the period under review, the General Assembly reactivated an idea which it had already expressed when assuming, at its second session, its functions under Article 13 (1) (a), namely, that "one of the most effective means of furthering the development of international law consists in promoting public interest in this subject and using the media of education and publicity to familiarize the peoples with the principles and rules that govern international relations".[30] At its seventeenth, eighteenth and twentieth sessions the Assembly adopted resolutions[31] aimed at encouraging States to promote the teaching, study, dissemination and wider appreciation of international law and at providing them with technical assistance in that respect.

[30] G A resolution 176 (II). See also *Repertory*, under Article 13 (1) (a), para. 40.

[31] G A resolutions 1816 (XVII), 1968 (XVIII) and 2099 (XX). A programme of assistance became operative in 1967. See further below, para. 71.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The initiation of studies

27. As indicated in the General Survey, during the period under review the General Assembly initiated several studies for the purpose of encouraging the progressive development of international law and its codification. In accordance with previous practice, the initiating resolution sometimes referred to Article 13,[32] sometimes not.[33] The relevant draft resolutions were adopted on the recommendation of the Sixth Committee except those referring to the study of legal aspects of the use of outer space which were adopted on the recommendation of the First Committee.[34] In two cases, the resolutions had their origin in a suggestion made by an international conference: (a) resolution 1453 (XIV), in which the General Assembly requested the International Law Commission to undertake the study of the juridical régime of historic waters, was adopted after the United Nations Conference on the Law of the Sea had asked the General Assembly to arrange for such a study; and (b) resolution 1687 (XVI), under which the International Law Commission was requested to study further the subject of special missions, was adopted pursuant to a recommendation of the United Nations Conference on Diplomatic Intercourse and Immunities.[35] The organs to which questions were referred for study have included the International Law Commission, UNCITRAL (established after the period under review), the Committee on the Peaceful Uses of Outer Space, the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, and the Secretary-General. As previously, the same question has been referred in some cases to different organs at successive stages.[36]

28. In the *Repertory*[37] it was pointed out that the General Assembly, by article 17 of the Statute of the International Law Commission, also gave the power of initiative to the other principal organs of the United Nations, to Members of the United Nations, to the specialized agencies or to official bodies established by intergovernmental agreement to encourage the progressive development of international law and its codification. During the period

[32] G A resolutions 1815 (XVII) and 1966 (XVIII) on the principles of international law concerning friendly relations and co-operation among States referred to Article 13 and Article 13 (1) (a), respectively; G A resolution 2102 (XX) on the law of international trade referred to Article 13.

[33] For example, G A resolution 1453 (XIV) referring the question of historic waters to the International Law Commission.

[34] Resolutions emanating from other Main Committees also undoubtedly contributed to the development of international law and its codification without coming within the purview of Article 13 (1) (a) for the purposes of the *Repertory*. See para. 10 above.

[35] A provisional draft on the subject prepared by the International Law Commission had previously been referred to the Conference by G A resolution 1504 (XV).

[36] For example, the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations.

[37] See *Repertory*, under Article 13 (1) (a), paras. 20—27.

under review this power of initiative was not exercised.

29. It was further observed in the *Repertory*[38] that the General Assembly, while exercising its power under Article 13 (1) (a), also authorized the International Law Commission, under article 18 of its Statute, to select topics for codification. To what extent the initiative in the field of the codification and development of international law should be left to the International Law Commission and, on the other hand, how actively the General Assembly itself should intervene, was a question often discussed in the Sixth Committee during the period under review. It arose on several occasions when it was proposed to refer specific topics to the International Law Commission. Much of the discussion outlined in the General Survey regarding the planning of future work in that field concerned the same problem. The matter was also debated in connexion with the consideration of methods for the study of the principles of international law regarding friendly relations and co-operations among States.

30. It should be emphasized that the controversy did not concern the right of the General Assembly to initiate studies or the competence of the International Law Commission to select topics for codification. Such right or competence was not in dispute.[39] Opinions in the Sixth Committee often differed as to whether the General Assembly should take the initative or leave it to the Commission, but the reasons given for the contrasting views were of a practical or political, rather than of a legal nature.

31. When, at the fourteenth session of the General Assembly, it was proposed that the International Law Commission should be requested, as soon as it considered it advisable, to undertake the codification of the principles and rules of international law relating to the right of asylum, the objection was made that the Assembly should normally avoid disrupting the Commission's programme of work or overburdening it with the study of new questions; while a long list might be made of the subjects which the Commission could profitably discuss, no new topics should be proposed for the Commission's consideration, unless they were of exceptional importance.[40] It was also said that the International Law Commission was competent to decide on its own programe of work and that the Sixth Committee should confine itself to assisting the International Law Commission in its work.[41] On the other hand, the sponsor of the proposal pointed out that the importance of the matter had been acknowledged by the Commission which, at its first session, had included the right of asylum in the list of topics selected for codification.[42] By resolution 1400 (XIV), the General Assembly adopted the proposal.

32. The result was different in the case of a proposal made at the same session under which the International Law Commission would be requested to take up the codification of current laws on the utilization and exploitation of international or inter-State waterways and navigation thereon. In view of various objections made on practical grounds, the sponsor amended his proposal and requested only that certain preliminary studies of the matter should be undertaken by the Secretary-General. Thus modified, the draft resolution was adopted by the Sixth Committee and ultimately approved by the General Assembly as resolution 1401 (XIV).[43]

33. No such objections against requesting the International Law Commission to undertake particular tasks were made when the following topics were referred to the Commission: the juridical régime of historic waters at the fourteenth session of the General Assembly[44] and the question of special missions at the sixteenth session.[45] One reason may have been that these subjects were closely connected with topics which the Commission, at the time of reference, had recently dealt with.

34. In its draft articles on the conclusion, entry into force and negotiation of treaties submitted at the seventeenth session of the General Assembly, the International Law Commission raised the question of the participation of new States in general multilateral treaties, concluded in the past, which limited participation to specific categories of States, in particular, treaties concluded under the auspices of the League of Nations. After discussion, the problem was referred back to the Commission, although some speakers considered that it would more appropriately come within the domain of the General Assembly itself.[46]

35. During the debates at the fifteenth and following sessions of the General Assembly regarding future work in the field of the codification and progressive development of international law, some speakers expressed the view that the Assembly, in fact the Sixth Committee should take the lead in the planning. It was proposed that the Assembly should establish a special committee of government representatives to prepare a new list of topics for codification and progressive development. In the debates it was stated that the preparation of a new list of codification raised political problems which it was preferable to entrust to government representatives rather than to experts such as the members of the International Law Commission. It was also said that the Commission already had a heavy agenda and that asking it to survey the field of international law in order to select new topics for codification might mean seriously delaying the study of other questions.[47] Others, however, argued that the Commission had both the qualifications and, by virtue of the provisions of its Statute, the competence to perform the task, and that a special committee would duplicate the Commission's work. To estabilish

[38] *Ibid.*, paras. 28—38.

[39] For exchange of views, see, for example, G A (XIV), 6th Com., 614th mtg., paras. 2 and 13.

[40] *Ibid.*, 609th mtg., para. 60 and Annexes, a.i. 55, A/4253, para. 24.

[41] G A (XIV), 6th Com., 608th mtg., para. 3.

[42] G A (XIV), Annexes, a.i. 55, A/4253, para. 21.

[43] G A (XIV), Annexes, a.i. 55, A/4253, para. 33 *et seq.*

[44] G A (XIV), Annexes, a.i. 58, A/4333.

[45] G A (XVI), Annexes, a.i. 71, A/5043.

[46] G A (XVII), Annexes, a.i. 76, A/5287, para. 39.

[47] G A (XV), Annexes, a.i. 65, A/4605, para. 47.

such a committee might, moreover, imply a lack of confidence in the Commission.[48] The idea of a special committee was later abandoned and a draft resolution containing a compromise solution was unanimously recommended by the Sixth Committee[49] and adopted by the General Assembly as resolution 1505 (XV). By that resolution, the General Assembly decided to "study and survey", at its next session, "the whole field of international law and make necessary suggestions with regard to the preparation of a new list of topics for codification and for the progressive development of international law". Members were invited to submit their views on the question but the International Law Commission was not asked to do so.

36. At the sixteenth session the matter was again discussed at length in the Sixth Committee. Several members had submitted observations[50] and the International Law Commission, on its own initiative, referred to the question in its annual report to the General Assembly.[51] In the Sixth Committee the speakers generally agreed that the initiative taken by the General Assembly to review the codification programme was of primary importance and would effect the future work in that field for many years to come. Many changes had taken place concerning international relations and international law over the past decade, including the disintegration of the colonial system and the entry into the United Nations of a large number of new States. There was still a difference of opinion in the Sixth Committee as to what organ was competent to review the International Law Commission's programme of work: some representatives considered that the Commission itself should take action while others thought that the Sixth Committee should undertake the task in view of the political aspects involved. A compromise solution was found which provided for co-operation between the Commission and the Committee.[52] The General Assembly by resolution 1686 (XVI), recommended to the International Law Commission "(*a*) To continue its work in the field of the law of treaties and of State responsibility and to include on its priority list the topic of succession of States and Governments; (*b*) To consider at its fourteenth session its future programme of work, on the basis of subparagraph (*a*) above and in the light of the discussion in the Sixth Committee at the fifteenth and sixteenth sessions of the General Assembly and of the observations of Member States submitted pursuant to resolution 1505 (XV), and to report to the Assembly at its seventeenth session on the conclusions it has reached."

37. Pursuant to General Assembly resolution 1686 (XVI), the International Law Commission, at its fourteenth session, undertook a review of its programme of work and reported to the General Assembly that (a) it had decided to include in the programme the three topics recommended by the Assembly, namely, the law of treaties, State responsibility and succession of States and Governments and (b) it had further decided to add four topics of more limited scope which had been referred to it by earlier General Assembly resolutions, namely, special missions, relations between States and intergovernmental organizations, the right of asylum and the juridical régime of historic waters, including historic bays. The Commission stated that many other topics proposed by Governments certainly deserved study with a view to codification but that it was obliged to take account of its limited resources: the three items recommended by the General Assembly were such broad topics that they alone were likely to occupy the Commission for several sessions.[53]

38. When the report of the International Law Commission was discussed in the Sixth Committee during the seventeenth session of the General Assembly all the speakers endorsed the Commission's programme of work and many expressed satisfaction that, in preparing it, the Commission had followed the directives and recommendations of the General Assembly, particularly those set forth in resolutions 1505 (XV) and 1686 (XVI). Several representatives declared that the Sixth Committee should continue to assist the Commission through its debates and recommendations. Others warned against pressing upon the Commission excessively rigid directives.[54] By resolution 1765 (XVII) which was adopted on the unanimous proposal of the Sixth Committee, the General Assembly recommended that the Commission should: "(*a*) Continue the work of codification and progressive development of the law of treaties, taking into account the views expressed at the seventeenth session of the General Assembly and the comments which may be submitted by Governments, in order that the law of treaties may be placed upon the widest and most secure foundations; (*b*) Continue its work on State responsibility, taking into account the views expressed at the seventeenth session of the General Assembly and the report [Commission's] Sub-Committes on State Responsibility[55] and giving due consideration to the purposes and principles enshrined in the Charter of the United Nations; (*c*) Continue its work on the succession of States and Governments, taking into account the views expressed at the seventeenth session of the General Assembly and the report of the [Commission's] Sub-Committee on the succession

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[48] *Ibid.*, para. 48. For details of the discussion, see G A (XV), 6th Com., 664th–672nd mtgs.

[49] G A (XV), Annexes, a.i. 65, A/4605, paras. 49–51.

[50] G A (XVI), Annexes, a.i. 70 A/4796 and Add.1–8.

[51] *Yearbook of the International Law Commission 1961*, vol. II, pp. 128–129, para. 41: Attention was invited to the summary records of the Commission "containing the full discussion on this question" [the future work of the Commission].

[52] G A (XVI), Annexes, a. i. 70 A/5036, paras. 14–18. For details of the discussion, see G A (XVI), 6th Com., 713 to 730th mtgs.

[53] *Yearbook of the International Law Commission 1962*, vol. II, p. 190, paras. 57–62.

[54] G A (XVII), Annexes, a.i. 76, A/5287, paras. 40–41. For details of discussion, see G A (XVI), 6th Com., 734th to 752nd mtgs.

[55] The International Law Commission set up sub-committees to prepare plans of work for the codification of State responsibility and State succession. These sub-committees paid considerable attention to the views expressed in the Sixth Committee on how these tasks should be approached.

of States and Governments, with appropriate reference to the views of States which have achieved independence since the Second World War;". The General Assembly in the same resolution requested the Secretary-General to transmit to the Commission the records of the relevant debates in the Sixth Committee.

39. During the discussion of the International Law Commission's annual report at the eighteenth session of the General Assembly there was general satisfaction in the Sixth Committee with the Commission's work. It was pointed out that, conforming to the recent resolutions adopted by the General Assembly, the Commission had succeeded in reconciling the requirements of the development of international law and its codification with the current interests and aspirations of the international community.[56] In its resolution 1902 (XVIII), the General Assembly repeated in substance its recommendations of the previous year with respect to the law of treaties, State responsibility and the succession of States and Governments and added a recommendation for the Commission to continue its work on two topics which it had meanwhile taken up, namely, special missions and relations between States and intergovernmental organizations, "taking into account the views expressed at the eighteenth session of the General Assembly". In that resolution, the Secretary-General was also requested to transmit to the Commission the relevant records of the Sixth Committee.

40. At the twentieth session of the General Assembly, the Sixth Committee emphasized that the study of the reports of the International Law Commission by the Committee made it possible to associate the General Assembly with the codification and progressive development of international law and, at the same time, constituted an assurance that the work of the International Law Commission was directed towards the latest developments in the international community and took into account the aspirations of all States Members of the United Nations.[57] Resolution 2045 (XX) adopted by the General Assembly on the item "Reports of the International Law Commission on the work of its sixteenth and seventeenth sessions" contained recommendations and instructions similar to these given in the corresponding resolutions adopted at the sixteenth to eighteenth sessions inclusive. It became the practice for the International law Commission to include in its annual report a section on its programme of work, listing both the topics originally chosen by it and those originally referred to it by the General Assembly. The Assembly then discussed that programme and specifically approved it by means of recommendations in its annual resolution relating to the report.

41. As stated in the General Survey, the General Assembly, in connexion with the debates on the future programme of work to be undertaken in the field of the codification and progressive development of international law, initiated the study of the principles of international law concerning friendly relations and co-operation among States. The work on those principles was taken up entirely on the intiative of the General Assembly and its Sixth Committee. It was pointed out during the debates that, in that case, the Sixth Committee had an opportunity to make an effective contribution to the codification and progressive development of international law in accordance with Article 13 of the Charter, without encroaching on the work of the International Law Commission or duplicating the activites of the Commission or other United Nations organs.[58]

42. There was in the beginning considerable doubt as to how the codification and development of the principles should be accomplished. One trend of thought in the Sixth Committee during the seventeenth session of the General Assembly was that the General Assembly should adopt as complete as possible a declaration on the principles of international law relevant to the matter. Another opinion was that the General Assembly should restrict itself for the moment to developing and defining a few essential principles, while at the same time leaving the way clear for the future consideration of other principles and their ultimate incorporation in a draft declaration open for acceptance by States in accordance with their constitutional procedures.[59] A compromise solution emerged during the discussion and was incorporated in resolution 1815 (XVII). That resolution listed seven principles; the General Assembly would study four of them at its next session and would then decide which other principles should be taken up and in what order. The operative part of the resolution reads:

"*The General Assembly,*

"...

"1. *Recognizes* the paramount importance, in the progressive development of international law and in the promotion of the rule of law among nations, of the principles of international law concerning friendly relations and co-operation among States and the duties deriving therefrom, embodied in the Charter of the United Nations which is the fundamental statement of those principles, notably:

"(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

"(*b*) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

"(*c*) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

"(*d*) The duty of States to co-operate with one another in accordance with the Charter;

"(*e*) The principle of equal rights and self-determination of peoples;

[56] G A (XVIII), Annexes, a.i. 69, A/5601, para. 9.

[57] G A (XX), Annexes, a.i. 87, A/6090, para. 13.

[58] G A (XVII), Annexes, a.i. 75, A/5356, para. 15.

[59] *Ibid.*, para. 29. For details of the discussions, see G A (XVII), 6th Com., 753rd—744th and 777th mtgs.

"(*f*) The principle of sovereign equality of States;

"(*g*) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter;

"2. *Resolves* to undertake, pursuant to Article 13 of the Charter, a study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter with a view to their progressive development and codification, so as to secure their more effective application;

"3. *Decides accordingly* to place the item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" on the provisional agenda of its eighteenth session in order to study:

"(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

"(*b*) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

"(*c*) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

"(*d*) The principle of sovereign equality of States; and to decide what other principles are to be given further consideration at subsequent sessions and the order of their priority;

"4. *Invites* Member States to submit in writing to the Secretary-General, before 1 July 1963, any views or suggestions that they may have on this item, and particularly on the subjects enumerated in paragraph 3 above, and requests the Secretary-General to communicate these comments to Member States before the beginning of the eighteenth session."

43. The question of methods again occupied the Sixth Committee at the eighteenth session of the General Assembly. There were long and inconclusive discussions regarding the form which the results of the work should take, in particular whether or not the aim should be a declaration by the General Assembly.[60] As to procedure the majority was of the opinion that the Sixth Committee, composed of representatives of States, was an organ better qualified than the International Law Commission, composed of experts, to apply Article 13 of the Charter because the matter in hand was the formulation of the four principles enunciated in resolution 1815 (XVII) and those principles possessed a political character which could not be disregarded. As the Sixth Committee was too large a body to undertake the work of codification and progressive development of those principles of international law, which, in the initial stage, would require extensive research, it was decided to entrust the preparatory work to a special committee.[61] By resolution 1966 (XVIII), the General Assembly, accordingly, established such a committee, made arrangements for its work and decided to consider its report at the following session. The operative part of the resolution stated:

"*The General Assembly,*

"...

"1. *Decides* to establish a Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States—composed of Member States to be appointed by the President of the General Assembly, taking into consideration the principle of equitable geographical representation and the necessity that the principal legal systems of the world should be represented—which would draw up a report containing, for the purpose of the progressive development and codification of the four principles so as to secure their more effective application, the conclusions of its study and its recommendations, taking into account in particular:

"(a) The practice of the United Nations and of States in the application of the principles established in the Charter of the United Nations;

"(b) The comments submitted by Governments on this subject in accordance with paragraph 4 of resolution 1815 (XVII);

"(c) The views and suggestions advanced by the representatives of Member States during the seventeenth and eighteenth sessions of the General Assembly;

"2. *Recommends* the Governments of the States designated members of the Special Committee, in view of the general importance and the technical aspect of the item, to appoint jurists as their representatives on the Special Committee;

"3. *Requests* the Special Committee to start its work as soon as possible and to submit its report to the General Assembly at its nineteenth session;

"4. *Requests* the Secretary-General to co-operate with the Special Committee in its work, and to provide all the services and facilities necessary for its meetings, including:

"(a) A systematic summary of the comments, statements, proposals and suggestions of Member States on this item;

"(b) A systematic summary of the practice of the United Nations and of views expressed in the United Nations by Member States in respect of the four principles;

"(c) Such other material as he deems relevant;

"5. *Decides* to place an item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" on the provisional agenda of its nineteenth session in order to consider the report of

[60] G A (XVIII), Annexes, a.i. 71, A/5671, paras. 37—48.

[61] *Ibid.*, paras. 110 and 111. For details of the discussions, see G A (XVIII), 6th Com., 802nd—825th, 829th and 831st to 834th mtgs.

the Special Committee and to study, in accordance with operative paragraphs 2 and 3 (d) of resolution 1815 (XVII), the following principles:

"(a) The duty of States to co-operate with one another in accordance with the Charter;

"(b) The principle of equal rights and self-determination of peoples;

"(c) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter;

"6. *Invites* Member States to submit in writing to the Secretary-General, before 1 July 1964, any views or suggestions they may have regarding the principles enumerated in paragraph 5 above, and further urges those Member States which have not already done so to submit by that date their views in accordance with paragraph 4 of resolution 1815 (XVII);

"7. *Requests* the Secretary-General to communicate to Member States, before the beginning of the nineteenth session, the comments requested in paragraph 6 above."

44. The Special Committee[62] met in Mexico City from 27 August to 1 October 1964 and adopted a report on its work.[63] It examined the four principles referred to it; after discussing each of them in the plenary committee, a drafting committee sought to prepare, without voting, (a) a draft text formulating the points of consensus and (b) a list itemizing the various proposals and views on which there was no consensus but for which there was support. Consensus was reached on some aspects of the principle of sovereign equality of States but not on the scope or content of the other three principles: non-use of force, peaceful settlement of disputes and non-intervention.[64]

45. When the report of the Special Committee was discussed at the twentieth session of the General Assembly[65] it was felt that, although the results might seem disappointing, the Committee's work had been valuable in throwing light on the points of agreement and the points of difference, and therefore offered a basis for future efforts.[66] There was general agreement that the work begun in Mexico City should be carried on by a special committee, although opinions differed as to whether it should be by the same committee or one with an enlarged membership to correct what some felt was a lack of geographical balance and an inadequate reflection of the trends in the General Assembly.[67] The latter opinion eventually prevailed. Resolution 2103 A (XX), which was finally adopted by the General Assembly read as follows:

"*The General Assembly,*

"...

1. *Takes note* of the report of the Special Committee on the Principles of International Law concerning Friendly Relations and Co-operation among States;

"2. *Expresses its appreciation* to the Special Committee for the valuable work it performed in Mexico City;

"3. *Decides* to reconstitute the Special Committee, which will be composed of the members of the Committee established under General Assembly resolution 1966 (XVIII) and of Algeria, Chile, Kenya and Syria, in order to complete the consideration and elaboration of the seven principles set forth in Assembly resolution 1815 (XVII);

"4. *Requests* the Special Committee:

"(a) To continue, in the light of the debates which took place in the Sixth Committee during the seventeenth, eighteenth and twentieth sessions of the General Assembly and of the report of the previous Special Committee, the consideration of the four principles set forth in paragraph 3 of Assembly resolution 1815 (XVII), having full regard to matters on which the previous Special Committee was unable to reach agreement and to the measure of progress achieved on particular matters;

"(b) To consider the three principles set forth in paragraph 5 of General Assembly resolution 1966 (XVIII), with particular regard to:

"(i) The practice of the United Nations and of States respecting the application of the principles laid down in the Charter of the United Nations;

"(ii) The comments submitted by Governments on this subject in accordance with paragraph 6 of resolution 1966 (XVIII);

"(iii) The views and suggestions advanced by the representatives of Member States during the seventeenth, eighteenth and twentieth sessions of the General Assembly;

"(c) To submit a comprehensive report on the results of its study of the seven principles set forth in resolution 1815 (XVII), including its conclusions and recommendations, with a view to enabling the General Assembly to adopt a declaration containing an enunciation of the principles;

"5. *Recommends* the Governments of the States designated members of the Special Committee, in view of the general importance and the technical aspect of the item, to appoint jurists as their representatives on the Special Committee;

"6. *Requests* the Special Committee to meet at United Nations Headquarters as soon as possible and to report to the General Assembly at its twenty-first session;

"7. *Requests* the Secretary-General to co-operate

[62] The Committee was composed of the following Member states: Afghanistan, Argentina, Australia, Cameroon, Canada, Czechoslovakia, Dahomey, France, Ghana, Guatemala, India, Italy, Japan, Lebanon, Madagascar, Mexico, Netherlands, Nigeria, Poland, Romania, Sweden, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia. Afghanistan withdrew before the convening of the Mexico session and was replaced by Burma.

[63] G A (XX), Annexes, a.i. 90 and 94, A/5746.

[64] See statement by the Committee's Rapporteur, G A (XX), 6th Com., 871st mtg., A/C. 6/L.574.

[65] The item to which the report pertained was not discussed at the nineteenth session.

[66] G A (XX), Annexes, a.i. 90 and 94, A/6165, para. 20.

[67] *Ibid.*, para. 66. For details of the discussions in the Sixth Committee, see G A (XX), 6th Com., 870th—872nd, 874th to 893rd and 898th mtgs.

with the Special Committee in its task and to provide all the services, documentation and other facilities necessary for its work;

"8. *Decides* to include an item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" in the provisional agenda of its twenty-first session."

46. At its twentieth session the General Assembly also considered, in connexion with the question of the principles concerning friendly relations, a draft resolution submitted by Madagascar and dealing with the principles relating to the sovereignty of States, their territorial integrity, non-interference in their domestic affairs, the peaceful settlement of disputes and the condemnation of submersive activities. By resolution 2103 B (XX), the General Assembly referred the matter to the Special Committee reconstituted under resolution 2103 A (XX).

47. The initiatives taken by the General Assembly to encourage the development and codification of the law of outer space and of international trade law have been described in the General Survey.

B. The making of recommendations

48. Many of the actions taken by the General Assembly and recorded above in II A. "The initiation of studies", can be said to be recommendations for the purpose of encouraging the development of international law and its codification. The initiation of studies and the making of recommendations are not necessarily activities which are mutually exclusive.

49. On the other hand, when the preparatory work on a topic resulted in a final draft submitted by the International Law Commission to the General Assembly, the stage of initiation was clearly passed, and the action taken thereafter by the General Assembly on a draft came exclusively within the "making of recommendations". During the period under review, the General Assembly took action on final drafts in a number of cases which are enumerated in the General Survey. As it was pointed out, the pattern which came to be established in practice for such action was that the General Assembly, after consideration of the draft, referred it to an international conference of plenipotentiaries with a view to adopting one or more conventions together with the necessary ancillary instruments. The term "recommends" was in that connexion rarely, if ever, used. The General Assembly usually "decides" that a conference will be convoked, "requests" the Secretary-General to convoke and make arrangements for the conference, "invites" the participants, "refers" the draft to the conference for consideration and "expresses the hope" that the conference will be well attended. A typical example is the operative part of resolution 1450 (XIV) convening the Vienna Conference on diplomatic intercourse and immunities:

"*The General Assembly,*

"...

"1. *Decides* that an international conference of plenipotentiaries shall be convoked to consider the question of diplomatic intercourse and immunities and to embody the results of its work in an international convention, together with such ancillary instruments as may be necessary;

"2. *Requests* the Secretary-General to convoke the conference at Vienna not later than the spring of 1961;

"3. *Invites* all States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice to participate in the conference and to include among their representatives experts competent in the field to be considered;

"4. *Invites* the specialized agencies and the interested intergovernmental organizations to send observers to the conference;

"5. *Requests* the Secretary-General to present to the conference all relevant documentation, and recommendations relating to its methods of work and procedures and to other questions of an administrative nature;

"6. *Requests* the Secretary-General to arrange also for the necessary staff and facilities which would be required for the conference;

"7. *Refers* to the conference chapter III of the report of the International Law Commission covering the work of its tenth session, as the basis for its consideration of the question of diplomatic intercourse and immunities;

"8. *Expresses the hope* that the conference will be fully attended."

50. Reference was made in the General Survey to the fact that, with respect to the principles of international law concerning friendly relations as well as in the case of the law of outer space, the General Assembly had recourse to procedures for the progressive development of international law and its codification, other than that of using the International Law Commission for the main preparatory work. While the final results of those endeavours were not yet discernible at the end of the period under review, it is interesting to note that, in both cases, the question arose to what extent the task could be accomplished by a General Assembly declaration rather than by a convention or similar formal agreement between States.

51. During the discussions in the Sixth Committee regarding the principles of friendly relations much attention was paid to the question whether those principles could be developed and codified by a declaration and what the powers of the General Assembly were in that respect. One of the views expressed was that under Article 13 (1) (a) of the Charter the General Assembly could make recommendations for the purpose of encouraging the progressive development of international law and its codification, but its recommendations would become new rules of international law only as and when they were adopted by the States Members of the United Nations. A resolution or a declaration did not become a rule of international law merely because it was adopted by the General Assembly, and was not binding even on its Members. Article 13 (1)

(a) was the only provision of the Charter endowing the Assembly with powers specifically related to the formulation of international law and the whole tenor of that provision indicated that it was not the General Assembly as such which was to codify and develop international law. The General Assembly had no legislative power, in fact, no world legislature existed. Neither had the General Assembly the power to state what the law was. United Nations resolutions which mis-stated the law could not change the law. International law was therefore not necessarily what the General Assembly said it was or should be. Before a General Assembly declaration could take its place in the development and codification of international law, there would have to be some international instrument for its acceptance by the States in accordance with their constitutional processes. In the case of the principles of friendly relations and co-operation among States there was a particular complication to take into consideration. Those principles were enshrined in the Charter and their codification and development by a General Assembly resolution might come in conflict with Article 108 concerning amendments to the Charter.

52. The proponents of this view conceded that the usefulness of declarations should not be underestimated, for they had played an important part in the history of international law. The General Assembly had, at certain times and in certain spheres, adopted declarations which had had a great impact. A General Assembly declaration of what the law was would never be unimportant because it might constitute evidence of the views of the majority of States. But whatever moral or persuasive effect a declaration by the General Assembly might possess and however emphatic and strongly supported it might be, a recommendation of the Assembly could in no sense create a legal obligation binding upon a Member State. Still less could it create a rule or code of law binding on all States. It was obvious from the very nature of the law of nations and from the limits of United Nations competence that, at the present stage of the development of international law, adoption by the General Assembly of a resolution was not enough to make its provisions legally binding.[68]

53. Another trend of opinion was strongly in favour of preparing a General Assembly declaration on the principles of international law concerning friendly relations and co-operation among States. One speaker holding this view stated that it was difficult to see why a General Assembly resolution approved by an overwhelming majority should not constitute a source of international law particularly as the Assembly, under Article 13 (1) (a), was required to initiate studies encourage the progressive development of international law and its codification. Another supporter of the idea said that he believed that it was Article 10 of the Charter rather than Article 13 (1) (a) which defined the relevant powers of the General Assembly and that, in his opinion, General Assembly resolutions of a declaratory nature, giving fresh vitality to the Charter, were a source of international law. Others giving these views conceded that, from a strictly formal point of view, General Assembly resolutions were not mandatory and that a declaration would not bind States as an agreement bound parties. However even if General Assembly resolutions did not constitute rules of international law, they were said to have an effect which was described in various ways. One speaker stated that a declaration adopted by a large number of States would to some extent be binding and would constitute a certain body of international law; it would be a measure preliminary to the creation of a world parliament. Another said that while it was not yet a formal source of international law, a declaration might become one if recognized by the States. Such recognition might be expressed by the practice of the international community, in which case the provisions of the declaration would become provisions of customary international law; alternatively, the declaration might create a specific practice leading to the acceptance of a definite binding rule. It was also said that a declaration on the principles in question would have a law-making character particularly since it would state a number of principles which already existed in international law. The systematization of those norms would give them a new significance, make many of them more categorical, raise some of them to the level of more universal requirements and promote their correct interpretation. The declaration would therefore undoubtedly enhance the progressive development of international law. The view that the principles were already binding on Member States under the Charter and therefore were a proper subject for a declaration was held by several speakers. Many also referred to past experience of General Assembly declarations. It was said that declarations of principles had become established practice in the United Nations and a declaration of the principles concerning friendly relations and co-operation among States would have equal status with the Universal Declaration of Human Rights, the Declaration on the Elimination of All Forms of Racial Discrimination, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration on the Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space.[69]

54. In the course of the discussion, the opposition against a declaration became less manifest. The Special Committee appointed by the General Assembly to do the preparatory work on the principles adopted a procedure by which it attempted to reach conclusions by consensus rather than by majority decisions. As this method appeared to hold out some hope that the Special Committee might be able to

[68] For that view, see G A (XVII), 6th Com., 758th mtg., paras. 14 and 15; 759th mtg., para. 18; 761st mtg., para. 10; 764th mtg.; para. 14; 766th mtg., paras. 19—22 and 49; 767th mtg., para. 34; G A (XVIII), 6th Com., 810th mtg., para. 3; 814th mtg., para. 9; 817th mtg., paras. 13 and 17.

[69] See G A (XVII), 6th Com., 757th mtg., paras. 14—16; 762nd mtg., para. 29; 763rd mtg., para. 4; 766th mtg., para 54; 767th mtg., para. 12; G A (XVIII), 6th Com., 806th mtg., para. 2; 809th mtg., paras. 3 and 21; 811th mtg., paras. 8 and 12; 822nd mtg., para. 4; G A (XX) 6th Com., 871st mtg., paras. 30 and 41; 883rd mtg., para. 4; 892nd mtg., para. 28.

draft a declaration acceptable to all its members, some opponents considered that they might postpone stating a definitive opinion on the form to be used for the codification of the principles until it was clear whether agreement on the substance could be obtained.[70] In operative paragraph 4 (c) of resolution 2103 A (XX), the General Assembly requested the Special Committee to submit a report "with a view to enabling the General Assembly to adopt a declaration containing an enunciation of these principles".

55. The question of the effect of a General Assembly declaration was also discussed by the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. By resolution 2131 (X) the General Assembly adopted a Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty and, as the principle of non-intervention was one of the principles referred to the Special Committee for study, the relevance of this Declaration for the Committee's work became a matter for consideration.

56. It was proposed that the Special Committee should state that the Declaration "by virtue of the number of States which voted in its favour, the scope and profundity of its contents and, in particular, the absence of opposition" reflected "a universal legal conviction which qualifies it to be regarded as an authentic and definite principle of international law", and further that the Committee should decide to "abide by" resolution 2131 (XX). An amendment to this proposal was submitted according to which the Committee would state that the Declaration reflected "a large area of agreement among States on the scope and content of the principle of non-intervention", and would decide to take resolution 2131 (XX) "as a basis for its discussion".

57. In the debate it was generally agreed that the Declaration must be taken fully into account by the Special Committee and that it constituted an important instrument for its work. Differences of opinion were, however, expressed on the extent to which resolution 2131 (XX) should be endorsed, clarified, or modified by the Committee for the purpose of its formulation of the principle of non-intervention as a rule of international law.

58. In the view of certain representatives, the Special Committee should recommend to the General Assembly that it incorporate the relevant provisions of resolution 2131 (XX) in its eventual declaration on the seven principles before the Committee. They argued that the General Assembly was acting under Article 13 of the Charter and had, in effect, already done work of codification in respect of the principle of non-intervention. All that the Committee could otherwise do would be to consider any proposal for addition to the elements formulated in resolution 2131 (XX).

59. Many representatives considered the Declaration as a standard of conduct for all States, based on the widest possible consensus as was indicated by the almost unanimous support it received when it was adopted. In the view of these representatives it was essential that the force of the Declaration should not be weakened. They considered the constituent elements of the Declaration as final and irrevocable and they were opposed to any change by amendment or deletion of some of those elements. One representative said that there could be no doubt that the Declaration embodied an authentic principle of international law, for it had been agreed upon in form and substance by 109 States, after exhaustive discussions. In such circumstances, it could be regarded as applicable under the provisions of Article 38 of the Statute of the International Court of Justice as a general principle of law.

60. Other representatives acknowledged that the Declaration represented a milestone in the development of the political attitudes of the General Assembly towards certain of the most present problems of the day. At the same time, they considered that it was not intended as a legal document and could therefore not be substituted for the formulation of the principle which the Special Committee had been instructed to draft. Some of them recalled statements made by their delegations in the General Assembly and in the First Committee at the time of the adopttion of the draft Declaration to the effect that it could not be regarded as an authentic and definite legal statement ready for incorporation as a definition of the law of the matter.[71]

61. The Special Committee, by 22 votes to 8, with one abstention, adopted the following draft resolution:

"*The Special Committee,*

"*Bearing in mind:*

"(a) That the General Assembly, by its resolution 1966 (XVIII) of 16 December 1963, established this Special Committee to study and report on the principles of international law enumerated in General Assembly resolution 1815 (XVII),

"(b) That the General Assembly, by its resolution 2103 (XX) of 20 December 1965, definitively fixed the structure of this Committee, granting it, *inter alia,* authority to consider the principle of non-intervention, and

"(c) That the General Assembly, by its resolution 2131 (XX) of 21 December 1965, adopted a Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty which, by virtue of the number of States which voted in its favour, the scope and profundity of its contents and, in particular the absence of opposition, reflects a universal legal conviction which qualifies it to be regarded as an authentic and definite principle of international law,

"1. *Decides* that with regard to the principle of non-intervention the Special Committee will abide by General Assembly resolution 2131 (XX) of 21 December 1965; and

[70] G A (XX), 6th Com., 881st mtg., para. 35; 884th mtg., para. 6; 886th mtg., para. 26; 888th mtg., paras. 28 and 29; 893rd mtg., paras. 7—9.

[71] See G A (XXI), Annexes, a.i. 87, A/6230, paras. 281—287, 292—300 and 334—352.

"2. *Instructs* the Drafting Committee, without prejudice to the provisions of the preceding paragraph, to direct its work on the duty not to intervene in matters within the domestic jurisdiction of any State towards the consideration of additional proposals, with the aim of widening the area of agreement of General Assembly resolution 2131 (XX).[72]

62. In regard to the law of outer space there was at the outset general agreement that, while it was of great importance that a legal régime should be established for outer space and the celestial bodies, such a régime must be established successively. In view of continuing scientific and technological development, a comprehensive code of law for outer space was not yet practicable and desirable. However, certain basic legal principles could be laid down, and legal solutions could also be sought for some particular problems of immediate practical interest. As mentioned in the General Survey, the General Assembly, by resolution 1721 (XVI), commended to States for their guidance certain principles and later, by resolution 1962 (XVIII) adopted a Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space.

63. The nature and effect of this Declaration became the subject of discussions both in the First Committee of the General Assembly and in the Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee.

64. The general opinion expressed in those discussions was that the Declaration was a significant contribution to the development of the law of outer space but, being merely a recommendation and therefore not legally binding, it could be considered only as a first step; the principles proclaimed in the Declaration should in due course be incorporated in an international agreement binding on the parties.[73] It was also said that the Declaration constituted a moral obligation and that it was important that its provisions should be converted into a legally binding set of standards for Governments by an international agreement.[74] The Declaration was further described as a statement of intention not giving rise to legal obligations *stricto sensu*.[75] Another view was that the Declaration was a set of guidelines to be taken into account in the drafting of rules on specific matters, but not having themselves the force of treaty provisions.[76]

65. On the other hand, it was emphasized that although the Declaration was not in the formal sense a legally binding document, it nevertheless represented a deliberate expression of the wishes of Member States.[77] Its adoption by a unanimous vote demonstrated that its principles were accepted by all Members.[78] It could be said that the Declaration reflected international law as accepted by the Members of the United Nations.[79]

66. It was also stated that a General Assembly resolution could contain elements which already constituted rules of international law and that that was in fact the case with respect to some of the principles included in the Declaration.[80]

67. At the session in which it adopted the draft Declaration (see paragraph 62, above), the General Assembly recommended by resolution 1963 (XVIII) "that consideration should be given to incorporating in international agreement form, in the future as appropriate, legal principles governing the activities of States in the exploration and use of outer space". Although that development did not take place within the period under review, it may be noted that the General Assembly's recommendation resulted in the drafting of a Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies which was commended by the Assembly and annexed to its resolution 2222 (XXI).

68. Besides making recommendations in connexion with specific projects for the development of international law and its codification and in connexion with the planning of future work in that field, during the period under review the General Assembly also made what in the *Repertory* are called recommendations of a general nature. The aim of that action was to promote the dissemination and knowledge of international law and thereby to further its development and wider appreciation. In that respect, the General Assembly took, in particular, two measures involving (a) the publication of a United Nations juridical yearbook and (b) the furnishing of technical assistance to promote the teaching and study of international law.

69. By resolution 1451 (XIV) the General Assembly decided to publish a United Nations juridical yearbook which would include documentary materials of a legal character relating to the United Nations. The precise contents of the yearbook were left for further consideration and the Secretary-General was requested to submit a report on that question. By resolution 1506 (XV), the Assembly later invited Member States to submit their comments or observations on the form and contents of the proposed yearbook. In the light of the opinions received and of the discussions in the Sixth Committee the General Assembly decided by resolution 1814 (XVII) that the yearbook would be published in the three working languages and would contain the documentary materials listed in the annex to the resolution:

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[72] *Ibid.*, para. 341. For the consideration at the twentieth session of the General Assembly of the item "The inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty", see, G A (XX), Annexes, a.i. 107; 1st Com., 1395th–1046th, 1420th, 1422nd and 1423rd mtgs; Plen., 1408th mtg.

[73] G A (XVIII), 1st Com., 1342nd mtg., paras. 37, 39; 1343rd mtg., para. 16; 1344th mtg., paras. 35, 37; G A (XX), 1st Com., 1421st mtg., paras. 7, 13, 17, 25 and 33; A/AC. 105/C. 2/SR. 29–37 (mimeographed), pp. 3, 10, 13, 14, 17–20, 22, 48, 55, 65 and 81.

[74] A/AC.105/PV.34 (mimeographed), p. 9.

[75] G A (XXIII), 1st Com., 1345th mtg., para. 17; A/AC. 105/C. 2/SR. 29–37 (mimeographed), p. 46; A/AC.105/C. 2/SR.42 (mimeographed), p. 8.

[76] A/AC.105/C.2/SR.47 (mimeographed), pp. 3 and 7.

[77] A/AC.105/C.2/SR.43 (mimeographed), p. 6.

[78] A/AC.105/C.2/SR.29–37 (mimeographed), p. 23.

[79] G A (XVIII), 1st Com., 1342mtg., para. 4.

[80] A/AC.105/C.2/SR.47 (mimeographed), p. 4.

Outline of the United Nations juridical yearbook

"Part I. *Legal activities of the United Nations and the specialized agencies;*

"(*a*) Documents concerning the status of the United Nations and the specialized agencies;

"(*b*) Comprehensive index to, and where necessary the text of, decisions, recommendations, discussions or reports of a legal character by the United Nations and the specialized agencies (judgements and advisory opinions of the International Court of Justice and reports of the International Law Commission will only be indexed);

"(*c*) Text of treaties concerning international law concluded in the United Nations, the specialized agencies and international conferences convened under the auspices of the United Nations and the specialized agencies;

"(*d*) Index with brief description of decisions of administrative tribunals of the United Nations and the specialized agencies;

"(*e*) Text of selected legal opinions of the Secretariat of the United Nations and the specialized agencies.

"Part II. *Index with brief description of decisions of international and national tribunals on questions relating to the United Nations and the specialized agencies.*

"Part III. *Bibliography of works and articles of a legal character relating to the United Nations and the specialized agencies.*"

70. The furthering of the teaching and study of international law was an early concern of the General Assembly.[81] At its seventeenth session, it took up the matter again and by resolution 1816 (XVII) urged Member States "to undertake broad programmes of training, including seminars, grants and exchanges of teachers, students and fellows, as well as exchanges of publications in the field of international law". The Assembly also requested the Secretary-General and the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) to study means of aiding Member States in establishing and developing such programmes and decided to include the question in the provisional agenda of the following session. At its eighteenth session, by resolution 1968 (XXVII) the General Assembly decided, *inter alia,* to establish a Special Committee on Technical Assistance to Promote the Teaching, Study, Dissemination and Wider Appreciation of International Law; the Assembly further invited, *inter alia,* Member States, the Secretary-General, UNESCO and the Technical Assistance Committee to take part in the endeavour in various ways.

71. On the basis of the work done in pursuance of the above-mentioned resolutions, the General Assembly by resolution 2099 (XX) decided, *inter alia,* to establish a programme of assistance and exchange in the field of international law consisting of: (a) steps to encourage and co-ordinate international law programmes caried out by States and by organizations and institutions, and (b) forms of direct assistance and exchange, such as seminars, training and refresher courses, fellowships, advisory services of experts, the provision of legal publications and libraries, and translations of major legal works. The Assembly invited UNESCO to participate in the implementation of the programme and requested the Board of Trustees of the United Nations Institute for Training and Research to consider the ways in which international law could be given its proper place among the activities of the Institute. Furthermore, it established an Advistory Committee on Technical Assistance to Promote the Teaching, Study, Dissemination and Wider Appreciation of International Law.[82] The programme became operative in 1967.

C. The meaning of "progressive development" and of "codification" of international law

1. As set forth in the Statute of the International Law Commission

72. The provisions of the Statute of the International Law Commission explaining the meaning of the expressions "progressive development of international law" and "codification of international law" and providing a procedure for each of these two functions, remained unchanged.

2. In the light of the practice of the International Law Commission

73. In the *Repertory*[83] and its *Supplement No 1*[84] it was shown that in practice the International Law Commission found it difficult to keep apart the two tasks of codification and progressive development, as defined in its Statute. In several instances the Commission indicated that a draft submitted by it to the General Assembly came both within the category of progressive development and that of codification.

74. During the period under review, that practice continued. Regarding the two main final drafts submitted, "Draft articles on consular relations" and "Draft articles on the law of treaties", the Commission stated that its work was both codification and progressive development of international law in the sense in which these activities were defined in article 15 of the Commission's Statute.

75. The Commission offered the following general considerations regarding its task with respect to consular relations:[85]

"29. The codification of the international law on consular intercourse and immunities involves

[81] See *Repertory*, vol. I, under Article 13 (1) (a), para. 40.

[82] The Advisory Committee was composed of the following Member States: Afghanistan, Belgium, Ecuador, France, Ghana, Hungary, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America.

[83] See *Repertory*, vol. I, under Article 13 (1) (a), paras. 47 to 59.

[84] See *Repertory Supplement No. 1*, vol. I, under Article 13 (1) (a), paras. 16—19. *Supplement No. 2* has no corresponding data.

[85] *Yearbook of the International Law Commission 1961*, vol. II, p. 91, paras. 29—33.

another special problem arising form the fact that the object is regulated partly by customary international law and partly by a great many international conventions which today constitute the principal source of consular law. A draft which codified only the international customary law would perforce remain incomplete and have little practical value. For this reason, the Commission agreed, in accordance with the Special Rapporteur's proposal, to base its draft articles not only on customary international law, but also on the material furnished by international conventions, especially consular conventions.

"30. An international convention admittedly establishes rules binding the contracting parties only, and based on reciprocity; but it must be remembered that these rules become generalized through the conclusion of other similar conventions containing identical or similar provisions, and also through the operation of the most-favoured-nation clause. The Special Rapporteur's analysis of these conventions revealed the existence of rules widely applied by States, which, if incorporated in a draft codification, may be expected to obtain the support of many States.

"31. If it should not prove possible, on the basis of the two sources mentioned—conventions and customary law—to settle all controversial and obscure points, or if there remain gaps, it will be necessary to have recourse to the practice of States as evidenced by internal regulations concerning the organization of the consular service and the status of foreign consuls, in so far, of course, as these are in conformity with the fundamental principles of international law.

"32. It follows from what has been said that the Commission's work on this subject is both codification and progressive development of international law in the sense in which these concepts are defined in article 15 of the Commission's statute. The draft to be prepared by the Commission is described by the Special Rapporteur in his report in these words:

> 'A draft set of articles prepared by that method will therefore entail codification of general customary law, of the concordant rules to be found in most international conventions, and of any provisions adopted under the world's main legal systems which may be proposed for inclusion in the regulations.'

"33. The choice of the form of the codification of the topic of consular intercourse and immunities is determined by the purpose and nature of the codification. The Commission had this fact in mind when (bearing in mind also its decision on the form of the Draft Articles on Diplomatic Intercourse and Immunities) it approved at its eleventh session, and again at the present session, the Special Rapporteur's proposal that the draft should be prepared on the assumption that it would form the basis of a convention."

76. Regarding the draft on the law of treaties, the Commission said:[86]

"35. The Commission's work on the law of treaties constitutes both codification and progressive development of international law in the sense in which those concepts are defined in article 15 of the Commission's Statute and, as was the case with several previous drafts, it is not practicable to determine into which category each provision falls. Some of the commentaries, however, indicate that certain new rules are being proposed for the consideration of the General Assembly and of Governments."

77. The Commission further explained that in the course of its work on the topic there had been some hesitation as to the scheme to be followed. The first two Special Rapporteurs had aimed at a draft convention, the third, on the other hand, drafted his reports in the form of an expository code. In appointing its fourth Special Rapporteur, the Commission decided that its aim would be to prepare draft articles on the law of treaties intended to serve as a basis for a convention. The reasons were, first, that an expository code could not be as effective as a convention for consolidating the law and, secondly, that the codification of the law of treaties through a multilateral convention would give all the new States the opportunity to participate directly in the formulation of the law, such participation being extremely desirable in order to place the law of treaties upon the widest and most secure foundations. Later, the Commission reaffirmed its decision, noting that it had been approved at the seventeenth session of the General Assembly by a great majority of the representatives on the Sixth Committee. Consequently, in submitting its final draft, the Commission recommended that it should be submited to a conference of plenipotentiaries as the basis for a convention.[87]

78. In distinguishing between codification and progressive development of international law the Statute of the International Law Commission defined two activities — rather than concepts — and provided a procedure for each of them. The purpose was presumably to open the possibility of codifying international law in certain cases by restatement of the law rather than by convention. It was considered at the time that the convention method had failed at the 1930 Hague Codification Conference and that new methods should be tried. The experience of the International Law Commission was, however, that cases where restatement could be used were rare, and the Commission's main activity became the preparation of draft conventions, using a procedure worked out in practice and not following strictly either of the procedures laid down in the Statute. As a consequence of this development it became of little practical importance to what extent a Commission draft could be said to be the result of codification or of progressive development as defined by the Statute, and the Commission was content to state, more or less as a routine matter, that its work was both.

[86] G A (XXI), Suppl. No. 9, p. 10, para. 35.

[87] *Ibid.*, pp. 8 and 9, paras. 23—26; and p. 10, para. 36.

3. In the light of decisions and discussions in the General Assembly

79. Considering that Article 13 (1)(a) combines in the same phrase progressive development of international law and its codification and that the International Law Commission, despite the separate definitions given in its Statute, found it difficult to keep the two functions apart, it was to be expected that, in the practice of the General Assembly also, progressive development and codification would not be clearly distinguished.

80. This seems to be borne out by the terminology used in some of the relevant resolutions adopted by the General Assembly during the period under review. In resolution 1450 (XIV) under which the Vienna Conference on diplomatic intercourse and immunities was convened, the General Assembly stated its belief that "the codification of the rules of international law in this field would assist in promoting the purposes and principles of the Charter". On the other hand, in resolution 1685 (XVI) regarding the Vienna Conference on consular relations, the General Assembly expressed its belief that "the successful codification and progressive development of the rules governing consular relations would contribute to the development of friendly relations among nations". Similarly, in resolution 1902 (XVIII) the General Assembly noted that in the International Law Commission "the work of codification of the topics of State responsibility, the succession of States and Governments, special missions and relations between States and intergovernmental organizations is proceeding satisfactorily", while in the same resolution it recommended that the Commission should continue "the work of codification and progressive development of the law of treaties". By resolution 2045 (XX), the General Assembly noted in the fourth preambular paragraph that "the work of codification of the topics of the law of treaties and of special missions has reached an advanced stage" while in operative paragraph 3 (*a*) it recommended that the Commission should continue "the work of codification and progressive development of the law of treaties and of special missions".

81. During the discussions in the General Assembly on the planning of future work in the field of the codification and progressive development of international law and on the part which the International Law Commission should have in that work, thought was also given to the relation between codification and progressive development. The relevant report of the Sixth Committee at the sixteenth session stated in that respect:

> "22. There was also discussion of the position which codification should occupy in the Commission's work as compared with progressive development of international law.
>
> "23. Some representatives thought that it was not desirable that the Commission should at the present time undertake progressive development as a separate activity. In any case, if new rules of law were to be established within the framework of international law, those rules would have to be generally accepted by States. On the other hand, it would be useful to codify the rules applied daily in international relations; and the Commission should, in the first place, confine itself to that task.
>
> "24. Other representatives thought that general acceptance by States of certain rules did not *a priori* constitute a necessary criterion for the codification and progressive development of international law. Recent examples, such as the questions of the continental shelf and of fishing and the conservation of the living resources of the sea, showed that positive results were possible in highly controversial fields.
>
> "25. Several representatives were of the opinion that these two views could be reconciled and that it would be difficult to separate codification from progressive development, as there was always an element of development in the process of codification. Nevertheless, the possibility that it would be necessary to apply one or the other of the two methods separately to a particular matter should not be entirely ruled out."[88]

82. In the course of its consideration of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations, the General Assembly, as mentioned above under II A. "The initiation of studies", adopted at its seventeenth session resolution 1815 (XVII) by which the Assembly resolved in operative paragraph 2 to undertake, pursuant to Article 13 of the Charter, a study of those principles "with a view to their progressive development and codification, so as to secure their more effective application". At the following session the passage quoted gave rise, in the Sixth Committee, to a discussion which, *inter alia*, referred to the meaning of progressive development and codification. That part of the discussion was summarized in the relevant report of the Sixth Committee as follows:

> "28. In the opinion of several representatives, the Committee's terms of reference under resolution 1815 (XVII) had their origin in Article 13 of the Charter, which stipulated that the General Assembly should initiate studies and make recommendations for the purpose of promoting international co-operation in the political field and encouraging the progressive development of international law and its codification. Operative paragraph 2 of resolution 1815 (XVII) is clear on this point.
>
> "29. In the view of some representatives, resolution 1815 (XVII) does not impose any obligation on the Committee other than to undertake a study of the four principles mentioned in operative paragraph 3—a study which in itself would contribute to the progressive development of the law. The Committee was therefore free to decide what effect should be given to this study. These representatives stressed the complexity of the question which called for thorough, careful and objective consideration both to the way in which Governments had interpreted and applied the Charter and to the meaning and evolution of the

[88] G A (XVI), Annexes, a.i. 70, A/5036, paras. 22—25. For details of the discussion in the Sixth Committee, see G A (XVI), 6th Com., 713th—730th mtgs.

political, economic and social events which had occurred since the adoption of the Charter. Moreover, each principle should be considered thoroughly from every angle; it should be studied separately, for a simultaneous discussion of the four principles could only lead to confusion.

"30. In the view of other representatives, the Committee's task was not only the study of the four principles enumerated in resolution 1815 (XVII) but their progressive development and codification, so as to secure their more effective application. The Committee was not a scientific association but a political organ, and it was expected to produce more than mere studies, however complete they might be. Moreover, although the principles of international law were expressed or implied in the Charter, that document did not provide for all details of the practical application of this doctrine. It could not anticipate the extent and shape of the changes which had taken place throughout the world during the last decade, and in particular the recovery of their independence by a very large number of countries. The need, in applying the essential principles of the Charter, to allow for the new and changed conditions had called for their creative elaboration. This process of creative elaboration had been going on all the time through resolutions, declarations, law-making treaties and bilateral and multilateral documents which sought to enunciate the principles of coexistence.

"31. Some representatives contended that the expression "progressive development of international law" employed in resolution 1815 (XVII) had a general meaning and not the technical sense which it had in article 15 of the statute of the International Law Commission, namely, 'the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States'. Similarly, 'codification' was not used 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', for the four principles were already to be found in the Charter.

"32. The question before the Committee concerned not the codification or development of the international law in force but the application of that law. The Committee should determine first how the principles of the Charter were applied in relations among States. It would then be possible to determine whether the conduct of States in their relations with one another was influenced by the inadequacy or obscurity of the existing rules and to decide whether such rules could usefully be supplemented or corrected.

"33. This point of view was rejected by several representatives who declared that operative paragraph 2 of resolution 1815 (XVII) was not at all ambigous and that by the terms of this paragraph the Committee should work for the progressive development and codification of the principles of international law, that is to say, according to the definition in article 15 of the statute of the International Law Commission, for the preparation of draft conventions on subjects which have not yet been regulated by international law and for the systematization of rules of international law in fields where there already has been extensive State practice. In the opinion of these representatives, this definition did not exclude the idea of a declaration."[89]

[89] G A (XVIII), Annexes, a.i. 71, A/5671, paras. 28—33. For details of the discussions on the item, see G A (XVIII), 6th Com., 802nd—825th, 829th and 831st—834th mtgs.