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Repertory of Practice of United Nations Organs)

Volume II

ARTICLE 13(1)(a)

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Text of Article 13(1)(a)

Provisions 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) generally follows the format established in the *Repertory* and continued in *Supplements Nos. 1-9*. It is divided into two major Parts, namely Part I entitled "General Survey" and Part II entitled "Analytical Summary of Practice". Part II consists of three Sections: Section A "The initiation of studies", Section B "The making of recommendations" and Section C "The meaning of 'progressive development' and of 'codification' of international law".

2. Following the format adopted in *Supplements No. 9* of the *Repertory*¹, a review of the trends and developments in the General Survey serves as a background to the Analytical Summary of Practice.

¹ See *Repertory, Supplement No.9*, vol. II, under Article 13 (1)(a).

I. General Survey

3. In *Supplement Nos. 3-9*, two particular procedures for the codification and progressive development of international law were noted whereby topics were kept under review by the General Assembly, while substantive work on them was carried out either by bodies composed of Government representatives² or by independent international law experts appointed in their personal capacity.³ During the period under review, these procedures continued.

4. The interaction between government bodies and expert bodies noted in previous supplements⁴ continued during the period under review. The International Law Commission continued to present in its annual reports to the General Assembly draft articles on certain subjects under its consideration, thus enabling the representatives of Member States in the Sixth Committee to express their opinions on the drafts at successive stages of preparation.

5. The previous *Supplements Nos. 3-9* noted a procedure for the codification and progressive development of international law whereby the International Law Commission, established by the General Assembly specifically to give effect to Article 13 (1) (a), "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".⁵ This procedure was not strictly followed with respect to the draft articles on responsibility of States for internationally wrongful acts. The International Law Commission recommended to the General Assembly to consider the possibility of convening an international conference of plenipotentiaries to examine the draft articles with a view to concluding a convention on the topic.⁶ The General Assembly, by its resolutions 59/35 and 62/61, decided to first request the Secretary-General to prepare, and then to update, a compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in this regard and, further, decided to examine the question of a convention on the articles within the framework of a working group of the Sixth Committee.⁷ The General Assembly also departed from the procedure noted in *Supplements Nos. 3-9* with respect to the draft articles on

² *Repertory, Supplement No.3*, vol. I, under Article 13(1)(a), para. 17; *Supplement No.4*, vol. I, under Article 13(1)(a), para. 8; *Supplement No.5*, vol. I, under Article 13(1)(a), para. 3; *Supplement No.6*, vol. II, under Article 13(1)(a), para. 3; *Repertory, Supplement No.7*, vol. II, under Article 13 (1)(a), para. [3]; *Repertory, Supplement No.8*, vol. II, under Article 13 (1)(a), para. [3]; and *Repertory, Supplement No.9*, vol. II, under Article 13(1)(a), para. [3].

³ *Repertory, Supplement No.3*, vol. I, under Article 13(1)(a), para. 9; *Supplement No.4*, vol. I, under Article 13(1)(a), para. 5; *Supplement No.5*, vol. I, under Article 13(1)(a), para. 8; *Supplement No.6*, vol. II, under Article 13(1)(a), para. 3; *Repertory, Supplement No.7*, vol. II, under Article 13 (1)(a), para. [3]; *Repertory, Supplement No.8*, vol. II, under Article 13 (1)(a), para. [3]; and *Repertory, Supplement No.9*, vol. II, under article 13(1)(a), para. [3].

⁴ See *Repertory, Supplement No.3*, vol. I, under Article 13 (1)(a), para. 9; *Supplement No.4*, vol. I, under Article 13 (1)(a), para. 5; *Supplement No.5*, vol. I, under Article 13 (1)(a), para. 8; *Supplement No.6*, vol. II, under Article 13 (1)(a), para. 12; *Repertory, Supplement No.7*, vol. II, under Article 13 (1)(a), para. [4]; *Repertory, Supplement No.8*, vol. II, under Article 13 (1)(a), para. [4]; and *Repertory, Supplement No.9*, vol. II, under Article 13 (1)(a), para. [4].

⁵ *Repertory, Supplement No.3*, vol. I, under Article 13 (1)(a), para. 9; *Supplement No.4*, vol. I, under Article 13 (1)(a), para.5; *Supplement No.5*, vol. I, under Article 13 (1)(a), para.8; *Supplement No.6*, vol. II, under Article 13 (1)(a), para. 12; *Repertory, Supplement No.7*, vol. II, under Article 13 (1)(a), para. [6]; *Repertory, Supplement No.8*, vol. II, under Article 13 (1)(a), para. [5]; and *Repertory, Supplement No.9*, vol. II, under Article 13 (1)(a), para. [5].

⁶ See para. [21] of this Study.

⁷ See para. [41] of this Study.

jurisdictional immunities of States and their property.⁸ The draft articles were adopted by the Commission with a recommendation that an international conference of plenipotentiaries be convened to consider the articles and to conclude a convention on the subject, and, subsequently, the General Assembly referred the matter to a working group of the Sixth Committee.⁹ Further, the General Assembly decided to establish an Ad Hoc Committee, in the framework of which the United Nations Convention on Jurisdictional Immunities of States and Their Property was drafted before being adopted by the General Assembly.¹⁰

6. During the period under consideration, the Commission recommended the elaboration of a convention by the Assembly itself on the basis of draft articles on prevention of transboundary harm from hazardous activities¹¹, the draft articles on diplomatic protection¹², and the draft articles on the law of transboundary aquifers.¹³ Furthermore, the Commission recommended that the General Assembly endorse, by a resolution, the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.¹⁴ The guiding principles on unilateral acts of States and the conclusions of the Study group on the topic “Fragmentation of international law: difficulties arising from diversification and expansion of international law” were commended by the Commission to the attention of the General Assembly.

7. As regards the draft articles on the nationality of natural persons in relation to the succession of States adopted by the Commission, which the General Assembly had initially envisaged to adopt in the form of a declaration, as recommended by the Commission¹⁵, the General Assembly, by its resolution 2008, invited Governments to submit their comments concerning the advisability of elaborating a legal instrument on the question and decided to examine that subject at its sixty-sixth session, including the form that might be given to the draft articles.¹⁶

8. Concerning the current programme of work of the Commission, the General Assembly recommended that the Commission continue its consideration of all topics on which work had begun, which are noted in *Supplement No. 9*,¹⁷ i.e. “State responsibility”¹⁸, “International liability for injurious consequences arising out of acts not prohibited by international law”, “Diplomatic protection”, “Unilateral acts of States” and “Reservations to treaties”. The work of the International Law Commission with respect to these topics and others is discussed in more detail in the Analytical Summary of Practice.¹⁹

9. During the period under review, the United Nations Commission on International Trade Law continued its consideration of questions initiated previously,²⁰ commenced work on new subjects and completed its work on: the draft Convention on the Assignment of Receivables in International Trade; the draft

⁸ See *Repertory, Supplement No.9*, vol. II, under Article 13 (1)(a), para. [8].

⁹ *Ibid.*, [31-33].

¹⁰ See paras. [37-39] of this Study.

¹¹ See para. [22] of this Study.

¹² See para. [24] of this Study.

¹³ See para. [29] of this Study.

¹⁴ See para. [23] of this Study.

¹⁵ See *Repertory, Supplement No.9*, vol. II, under Article 13(1)(a), paras. [9, 23 and 99].

¹⁶ See para. [40] of this Study.

¹⁷ See *Repertory, Supplement No.9*, vol. II, under Article 13(1)(a), paras. [21-29].

¹⁸ The title was changed to read “Responsibility of States for internationally wrongful acts”.

¹⁹ See paras. [20-36] of this Study.

²⁰ See *Repertory, Supplement No. 9*, vol. II, under Article 13(1)(a), paras. 37, 39, 40 and 42.

Convention on the Use of Electronic Communications in International Contracts; the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea; the Model Law on Electronic Signatures; the Model Law on International Commercial Conciliation; the Model Legislative Provisions on Privately Financed Infrastructure Projects; the revised articles of the UNCITRAL Model Law on International Commercial Arbitration; the Legislative Guide on Privately Financed Infrastructure Projects; the Legislative Guide on Insolvency Law; the Legislative Guide on Secured Transactions; the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958²¹ (the 1958 New York Convention); and the Practice Guide on Cross-Border Insolvency Cooperation.²²

10. During the period under review, the General Assembly adopted the United Nations Convention on Jurisdictional Immunities of States and Their Property prepared by the Ad Hoc Committee established to consider the matter²³, the International Convention for the Suppression of Acts of Nuclear Terrorism finalized by the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996²⁴, and the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel²⁵, and approved the United Nations Declaration on Human Cloning.²⁶

11. During the same period under consideration, the Preparatory Commission for the International Criminal Court completed its mandate under resolution F of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court by finalizing the draft texts of the practical arrangements for the establishment and coming into operation of the Court.²⁷

12. The General Assembly in its resolution 64/115 took note of the document entitled “Introduction and implementation of sanctions imposed by the United Nations” as set out in the annex to the resolution.²⁸

13. In 2002 the Assembly adopted resolution 57/26, entitled “Prevention and peaceful settlement of disputes” reaffirming “the duty of all States, in accordance with the principles of the Charter, to use peaceful means to settle any dispute to which they are parties and the continuance of which is likely to endanger the maintenance of international peace and security”, and encouraging States “to settle their disputes as early as possible.”²⁹

14. The General Assembly, during the period under review, continued its consideration of the question of progressive development of the principles and norms

²¹ UNTS, vol. 330, p. 3.

²² For the actions taken by the General Assembly in connection with those texts, *see infra*, under Section II, Analytical Summary of Practice, B. The making of recommendations, para. [104]

²³ G A resolution 59/38, annex; See also paras. [37-39] of this Study.

²⁴ G A resolution 59/290, annex; See also paras. [67-69] of this Study.

²⁵ G A resolution 60/42, annex; See also paras. [70-71] of this Study.

²⁶ G A resolution 59/280, annex; See also para. [72] of this Study.

²⁷ See paras. [63-67] of this Study.

²⁸ See G A resolution 64/115, para. 2 and annex. See *Repertory, Supplement No.9*, vol. II, under Article 13 (1)(a), para. [74]; and paras. [77 and 110] of this study.

²⁹ G A resolution 57/26, para. 2. See *Repertory, Supplement No.9*, vol. II, under Article 13 (1)(a), para. [74]; and paras. [80 and 111] of this study.

of international law relating to the new international economic order, noted already in *Supplements Nos. 8-9*.³⁰

15. During the period under review, the General Assembly continued its efforts aimed at the codification and progressive development of the law of outer space through the Committee³¹ on the Peaceful Uses of Outer Space and its Scientific and Technical Subcommittee³² and Legal Subcommittee³³. The Committee and the Legal Subcommittee continued consideration of questions on topics noted in *Supplement No. 9*³⁴ and concluded their work on some aspects concerning the use of the geostationary orbit³⁵, concept of the “launching State”³⁶ and on practice of States and international organizations in registering space objects.³⁷

16. In 2001 the Subcommittee began consideration of a new agenda item entitled “Consideration of the draft convention of the International Institute for the Unification of Private Law (Unidroit) on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property.”³⁸ The Committee and the Scientific and Technical Subcommittee began and concluded their work on “Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space”³⁹ and “Safety Framework for Nuclear Power Source Applications in Outer Space.”⁴⁰

³⁰ See *Repertory, Supplement No.8*, vol. II, under Article 13 (1)(a), para. [10]; and *Supplement No.9*, vol. II, under Article 13 (1)(a), para. [15]; See para. [84] of this Study.

³¹ See G A (43), Suppl.No.20, A/43/20; G A (44), Suppl.No.20, A/44/20;; G A (46), Suppl.No.20, A/46/20; G A (47) Suppl.No.20, A/47/20; G A (48), Suppl.No.20, A/48/20; G A (49), Suppl.No.20, A/49/20; G A (50), Suppl.No.20, A/50/20; G A (51), Suppl.No.20, A/51/20; and G A (52), Suppl.No.20, A/52/20.

³² See reports of the Scientific and Technical Subcommittee A/AC.105/736, A/AC.105/761, A/AC.105/786, A/AC.105/804, A/AC.105/823, A/AC.105/848, A/AC.105/869, A/AC.105/890, A/AC.105/911 and A/AC.105/933.

³³ See reports of the Legal Subcommittee A/AC.105/738, A/AC.105/763, A/AC.105/787, A/AC.105/805, A/AC.105/826, A/AC.105/850, A/AC.105/871, A/AC.105/891, A/AC.105/917 and A/AC.105/935.

³⁴ See *Repertory, Supplement No. 9*, vol. II, under Article 13(1)(a), paras. 16,17.

³⁵ Paper adopted by the Legal Subcommittee (A/AC.105/738, Annex III).

³⁶ See conclusions of the Working Group of the Legal Subcommittee on agenda item entitled “Review of the concept of the ‘launching State’” (A/AC.105/787, Appendix).

³⁷ See report of the Working Group of the Legal Subcommittee on Practice of States and International Organizations in Registering Space Objects (A/AC.105/891, Annex III).

³⁸ As agreed in 2000 by the Committee (see G A (55), Suppl.No.20, A/55/20 paras. 166 and 167). The Working Group established under this agenda item conducted its work from 2003 to 2005 (see reports of the Working Group A/AC.105/805, Annex III, A/AC.105/826, Annex III and A/AC.105/850, Annex II and Appendix I). The agenda item was reformulated by the Legal Subcommittee in 2005 to “Examination and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment” (see A/AC.105/850, para. 115).

³⁹ The Space Debris Mitigation Guidelines were prepared by the Working Group on Space Debris of the Scientific and Technical Subcommittee and are contained in the Annex to G A (62), Suppl.No.20, A/62/20, and publication ST/SPACE/49. The Space Debris Mitigation Guidelines were adopted by the Scientific and Technical Subcommittee (see A/AC.105/890, para. 99), endorsed by the Committee (see G A (62), Suppl.No.20, A/62/20, paras. 117 and 118) and endorsed by the General Assembly (see G A resolution 62/217, para. 26).

⁴⁰ The Safety Framework was prepared by the Working Group on the Use of Nuclear Power Sources in Outer Space of the Scientific and Technical Subcommittee jointly with the International Atomic Energy Agency (IAEA). The text of the Safety Framework is contained in document A/AC.105/934. The Safety Framework was adopted by the Scientific and Technical Subcommittee (see A/AC.105/933, para. 130), endorsed by the Committee (see G A (64), Suppl.No.20, A/64/20, para. 138), agreed by the IAEA Commission on Safety Standards at its twenty-fifth meeting, held in Vienna from 22 to 24 April 2009, and welcomed by the General Assembly (see G A resolution 64/86, para. 11).

17. During the period under review, the General Assembly adopted a number of resolutions, which did not constitute an authoritative interpretation of or a proposed amendment to relevant conventions⁴¹ and were aimed at facilitating adherence to and the application of international treaties on outer space law, harmonizing practices of States in the field of implementation of relevant international legal norms and recommendations.⁴²

18. During the period under review, in the area of the law of the sea, the General Assembly encouraged States to initiate, as soon as possible, a process within the Food and Agriculture Organization of the United Nations to develop, as appropriate, a legally binding instrument on minimum standards for port State measures.⁴³

19. The practice noted in the previous Supplements of entrusting the Secretary-General with the preparation of studies continued through the period under review.⁴⁴ The General Assembly requested, in particular, the Secretary-General to prepare a compilation of decisions of international courts, tribunals and other bodies referring to the articles on responsibility of States for internationally wrongful acts⁴⁵ and to the articles on prevention of transboundary harm from hazardous activities and to the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.⁴⁶ In addition, the Secretary-General prepared studies at the request of the International Law Commission, in the view of assisting it in the consideration of certain topics, such as “Reservation to treaties”⁴⁷, “Expulsion of aliens”⁴⁸ or “obligation to extradite or prosecute (*aut dedere aut judicare*)”.⁴⁹

II. ANALYTICAL SUMMARY OF PRACTICE

A. The initiation of studies

1. INTERNATIONAL LAW COMMISSION

20. During the period under review, the International Law Commission made progress on the studies previously initiated.⁵⁰ The Commission also initiated eleven new studies on the following topics: international liability for injurious consequences arising out of acts not prohibited by international law, responsibility of international organizations, shared natural resources, fragmentation of international law: difficulties arising from the diversification and expansion of international law, expulsion of aliens, effects of armed conflicts on treaties, obligation to extradite or

⁴¹ See, in particular, G A resolutions: 59/115, preambular paras. 4 and 6, paras. 1 and 4; 62/101, preambular para. 6; 58/90 and 59/2.

⁴² See G A resolutions: 59/115, preambular para. 6, para. 4; 61/110, para. 8; 62/101, preambular paras. 7, 9 and 12, paras. 1, 2, 3 and 5; 58/90, preambular para. 2, paras. 1 and 2; 59/2, preambular paras. 1, 3 and 5, paras. 1, 5, 13 and 18.

⁴³ General Assembly resolution 63/112, paras. 43 and 51.

⁴⁴ See *Repertory, Supplement No.3*, vol. I, under Article 13 (1)(a), para.10; *Supplement No.4*, vol. I, under Article 13 (1) (a), para.16; *Supplement No.5*, vol. I, under Article 13 (1)(a), para.11; *Supplement No.6*, vol. II, under Article 13 (1)(a), para. 21; *Supplement No.7*, vol. II, under Article 13 (1)(a), para. [19]; *Supplement No.8*, vol. II, under Article 13 (1)(a), para. [15]; and *Supplement No.9*, vol. II, under Article 13 (1)(a), para. [20].

⁴⁵ G A resolution 59/35, para. 3; G A resolution 62/61, para. 3.

⁴⁶ G A resolution 65/28, para. 4.

⁴⁷ A/CN.4/616.

⁴⁸ A/CN.4/565.

⁴⁹ A/CN.4/630.

⁵⁰ See *Repertory, Supplement No.9*, vol. II, under Article 13(1)(a), paras. [21-29].

prosecute (*aut dedere aut judicare*), protection of persons in the event of disasters, immunity of State officials from foreign criminal jurisdiction, treaties over time, and the most favoured nation clause. The General Assembly endorsed several decisions of the Commission to include new topics in its agenda⁵¹ and requested in its various resolutions throughout this period that the Commission continue its work on all the topics in its agenda.⁵²

21. Regarding the draft articles on “Responsibility of States for internationally wrongful acts”, the Commission, during its fifty-second and fifty-third sessions, considered the third⁵³ and the fourth⁵⁴ reports of the Special Rapporteur⁵⁵, as well as the comments and observations received from Governments.⁵⁶ During its fifty-third session, on the basis of the report of the Drafting Committee⁵⁷, it adopted on second reading the entire draft articles with the commentaries thereto, and submitted these to the General Assembly.⁵⁸ The title of the topic had been changed from “State responsibility” to its present wording in order to distinguish it from the responsibility of the State under internal law. The Commission decided, in accordance with article 23 of its Statute, to recommend to the General Assembly that it take note of the draft articles in a resolution and that it annex the draft articles to the resolution.⁵⁹ The Commission decided further to recommend that the General Assembly consider, at a later stage, and in light of the importance of the topic, the possibility of convening an international conference of plenipotentiaries to examine the draft articles with a view to adopting a convention on the topic.⁶⁰ The Commission was of the view that the question of the settlement of disputes could be dealt with by the above-mentioned international conference, if it considered that a legal mechanism on the settlement of disputes should be provided in connection with the draft articles.⁶¹ By its resolution 56/83, the General Assembly welcomed the conclusion of the work of the Commission on responsibility of States for internationally wrongful acts, took note of the articles, the text of which was annexed to the resolution, and commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action.⁶²

22. With respect to the first part of the topic “International liability for injurious consequences arising out of acts not prohibited by international law”, concerning the prevention of transboundary damage from hazardous activities, the Commission, at its fifty-second and fifty-third sessions, considered the third report⁶³ of the Special

⁵¹ See G A resolution 59/41, para. 5; and G A resolution 60/22, para. 5.

⁵² See G A resolutions 55/152, paras. 2 and 7; 56/82, paras. 3 and 8; 57/21, para. 6; 58/77, para. 1; 59/41, para. 1; 60/22, para. 1; 61/34, para. 1; 62/66, para. 1; 63/123, para. 1.

⁵³ A/CN.4/507 and Add.1 and Add.1/Corr.1 and 2 (French only), Add. 2 and Add.2/Corr.1 and 2, Add. 3 and Add.3/Corr.1 and Add.4.

⁵⁴ A.CN.4/517 and Add.1.

⁵⁵ Mr. James Crawford.

⁵⁶ A/CN.4/515 and Corr.1 (Arabic only) and Add. 1, 2 and 3.

⁵⁷ A/CN.4/L.602 and Corr.1, and subsequently A/CN.4/L.602/Rev.1.

⁵⁸ *Yearbook of the International Law Commission, 2001, vol. II (Part two)*, paras. 69 -71.

⁵⁹ *Yearbook of the International Law Commission, 2001, vol. II (Part two)*, para. 72.

⁶⁰ *Ibid.*, para. 73.

⁶¹ *Ibid.*

⁶² G A resolution 56/83, paras. 1-4.

⁶³ A/CN.4/509.

Rapporteur⁶⁴ and the comments and observations of Governments.⁶⁵ At its fifty-third session, on the basis of the report of the Drafting Committee⁶⁶, it adopted on second reading the final text of a draft preamble and a set of 19 draft articles on prevention of transboundary harm from hazardous activities, as well as the commentaries thereto, and submitted these to the General Assembly.⁶⁷ The Commission decided, in accordance with article 23 of its Statute, to recommend to the General Assembly the elaboration of a convention by the Assembly on the basis of the draft articles.⁶⁸ By its resolution 56/82, the General Assembly expressed its appreciation for the work done by the Commission on the issue of prevention and requested the Commission to resume its consideration of the liability aspect of the topic, bearing in mind the interrelationship between prevention and liability, and taking into account the developments in international law and comments by Governments.⁶⁹ By its resolution 62/68, the General Assembly further commended the articles, the text of which was annexed to the resolution, to the attention of Governments and invited Governments to submit comments to any future action, bearing in mind the recommendations made by the Commission in that regard.⁷⁰

23. With respect to the second part of the topic “International liability for injurious consequences arising out of acts not prohibited by international law”, concerning international liability in case of loss from transboundary harm arising out of hazardous activities, the Commission decided, at its fifty-fourth session, to resume its study and established a Working Group to consider the conceptual outline of the topic.⁷¹ It further adopted the report of the Working Group, as amended, and appointed Mr. Pemmaraju Sreenivasa Rao as Special Rapporteur for the topic.⁷² At its fifty-fifth session, the Commission considered the first report of the Special Rapporteur and established an open-ended Working Group on the topic to assist the Special Rapporteur in considering the future orientation of the topic.⁷³ At its fifty-sixth session, it considered the second report of the Special Rapporteur and established a Working Group to examine the proposals submitted by the Special Rapporteur, while also continuing discussions on other issues.⁷⁴ On the basis of the report of the Drafting Committee⁷⁵, the Commission adopted, on first reading, a set of eight draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.⁷⁶ Further, it decided, in accordance with articles 16 and 21 of its Statute, to transmit the draft principles, through the Secretary-General, to Governments for comments and observations.⁷⁷ At its fifty-eighth session, the Commission considered the third report of the Special Rapporteur⁷⁸ and the

⁶⁴ Mr. Pemmaraju Sreenivasa Rao.

⁶⁵ A/CN.4/516.

⁶⁶ A/CN.4/L.601 and Corr. 1 and 2.

⁶⁷ *Yearbook of the International Law Commission, 2001, vol. II (Part two)*, paras. 91-93.

⁶⁸ *Ibid.*, para. 94.

⁶⁹ G A resolution 56/82, paras. 2 and 3.

⁷⁰ G A resolution 62/68, paras. 3 and 5.

⁷¹ *Yearbook of the International Law Commission, 2002, vol. II (Part two)*, para. 441.

⁷² *Ibid.*

⁷³ *Yearbook of the International Law Commission, 2003, vol. II (Part two)*, para. 165.

⁷⁴ *Yearbook of the International Law Commission, 2004, vol. II (Part two)*, paras. 169-170.

⁷⁵ A/CN.4/L.662.

⁷⁶ *Ibid.*, para. 172.

⁷⁷ *Ibid.*, para. 173.

⁷⁸ A/CN.4/566.

comments and observations received from Governments⁷⁹, and referred the draft principles adopted in 2004 to the Drafting Committee.⁸⁰ On the basis of the report of the Drafting Committee⁸¹, the Commission adopted on second reading the text of the preamble and a set of eight draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities and the commentaries thereto, and submitted these to the General Assembly.⁸² The Commission decided, in accordance with article 23 of its Statute, to recommend that the Assembly endorse the draft principles by a resolution and urge States to take national and international action to implement them.⁸³ By its resolution 61/34, the General Assembly expressed its appreciation to the Commission for the completion of the second reading on the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.⁸⁴ Further, by its resolution 61/36, the General Assembly took note of the principles, the text of which was annexed to the resolution, and commended them to the attention of Governments.⁸⁵ By its resolution 62/68, the General Assembly commended the principles once again and invited Governments to submit comments to any future action, bearing in mind the recommendations made by the Commission in that regard.⁸⁶

24. Concerning the topic “Diplomatic protection”, the Commission considered five reports of the Special Rapporteur⁸⁷ from its fifty-second session to its fifty-sixth session.⁸⁸ During this period, the Commission established three informal consultations.⁸⁹ At its fifty-fifth session, it established a Working Group to consider draft article 17, paragraph 2.⁹⁰ On the basis of the report of the Drafting Committee⁹¹, the Commission adopted on first reading a set of 19 articles on diplomatic protection and decided, in accordance with articles 16 and 21 of its Statute, to transmit the articles through the Secretary-General, to Governments for comments and observations.⁹² At its fifty-seventh session, the Commission considered the sixth report of the Special Rapporteur.⁹³ At its fifty-eighth session, it considered the comments and observations made by Governments on the draft articles adopted on first reading⁹⁴, as well as the seventh report of the Special Rapporteur.⁹⁵ On the basis

⁷⁹ A/CN.4/562 and Add.1.

⁸⁰ *Official Records of the General Assembly, Sixty-first session, Supplement No.10 (A/61/10)*, para. 59.

⁸¹ A.CN.4/L.686.

⁸² *Official Records of the General Assembly, Sixty-first session, Supplement No.10 (A/61/10)*, paras. 60-62.

⁸³ *Ibid.*, para. 63.

⁸⁴ G A resolution 61/34, para. 2.

⁸⁵ G A resolution 61/36, para. 2.

⁸⁶ G A resolution 62/68, paras. 4 and 5.

⁸⁷ Mr. John R. Dugard.

⁸⁸ A/CN.4/506 and Corr. 1 and Add.1, A/CN.4/514 and Corr. 1 and 2 (Spanish only), A/CN.4/523 and Add.1, A/CN.4/530 and Corr.1 (Spanish only) and Add.1, and A.CN.4/538.

⁸⁹ *Yearbook of the International Law Commission, 2000, vol. II (Part two)*, paras. 412-413 and 495; *Yearbook of the International Law Commission, 2001, vol. II (Part two)*, para. 166; *Yearbook of the International Law Commission, 2002, vol. II (Part two)*, para. 113.

⁹⁰ *Yearbook of the International Law Commission, 2003, vol. II (Part two)*, para. 66.

⁹¹ A/CN.4/L.647 and Add.1.

⁹² *Ibid.*, paras. 56-57.

⁹³ A/CN.4/546.

⁹⁴ A/CN.4/561 and Add. 1 and 2. A set of comments and observations were also submitted by Kuwait on 1 August 2006. The Commission did not have the opportunity to consider these comments and observations as they were received after the adoption of the draft articles on second reading. Those comments and observations are contained in A/CN.4/575.

⁹⁵ A.CN.4/567.

of the report of the Drafting Committee⁹⁶, the Commission adopted on second reading the entire set of draft articles on diplomatic protection and the commentaries thereto, and submitted these to the General Assembly.⁹⁷ The Commission decided, in accordance with article 23 of its Statute, to recommend to the General Assembly the elaboration of a convention on the basis of the draft articles on diplomatic protection.⁹⁸ By its resolution 61/35, the General Assembly took note of the draft articles presented by the Commission and invited Governments to submit comments concerning its recommendation to elaborate a convention on the basis of these articles.⁹⁹

25. Regarding the topic “Unilateral acts of States”, the Commission examined the third to eight reports of the Special Rapporteur¹⁰⁰ between its fifty-second to fifty-seventh sessions.¹⁰¹ Further to a recommendation of the Working Group on Unilateral Acts of States, the Commission requested that the Secretariat circulate a questionnaire to Governments, inviting them to provide further information regarding their practice of formulating and interpreting unilateral acts.¹⁰² The Commission reconvened the Working Group on Unilateral Acts of States from its fifty-fifth session to its fifty-seventh session. At its fifty-eighth session, the Commission considered the ninth report of the Special Rapporteur¹⁰³ and re-established the open-ended Working Group in order to prepare the conclusions of the Commission on the topic.¹⁰⁴ On the basis of the report of the Working Group¹⁰⁵, the Commission adopted a set of 10 “Guiding Principles”, together with commentaries, applicable to unilateral declarations of States capable of creating legal obligations, and commended the “Guiding Principles” to the attention of the General Assembly.¹⁰⁶ By its resolution 61/34, the General Assembly expressed its appreciation to the Commission for the completion of the work on the topic, took note of the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations contained in the report of the Commission and commended their dissemination.¹⁰⁷ By its resolution 62/67, the General Assembly further commended the articles on diplomatic protection, the text of which was annexed to the present resolution, to the attention of Governments, invited them to submit in writing to the Secretary-General any further comments concerning the recommendation by the Commission to elaborate a convention on the basis of the articles, and decided to further examine the matter within the framework of a working group of the Sixth Committee.¹⁰⁸

⁹⁶ A/CN.4/L.684 and Corr.1 and Corr.2.

⁹⁷ *Official Records of the General Assembly, Sixty-first session, Supplement No.10 (A/61/10)*, paras. 42-45.

⁹⁸ *Ibid.*, para. 46.

⁹⁹ G A resolution 61/35, paras. 2 and 3.

¹⁰⁰ Mr. Víctor Rodríguez Cerdeño.

¹⁰¹ A/CN.4/505 ; A/CN.4/519 ; A/CN.4/525 and Add.1 and Corr.1 and Corr.2 and Add.2; A/CN.4/534; A/CN.4/542 and Corr.1 (French only) and Corr.2 and Corr.3; and A/CN.4/557.

¹⁰² *Yearbook of the International Law Commission, 2001, vol. II (Part two)*, para. 254.

¹⁰³ A/CN.4/569 and Add.1.

¹⁰⁴ *Official Records of the General Assembly, Sixty-first session, Supplement No.10 (A/61/10)*, paras. 167-170.

¹⁰⁵ A/CN.4/L.703.

¹⁰⁶ *Official Records of the General Assembly, Sixty-first session, Supplement No.10 (A/61/10)*, para. 170.

¹⁰⁷ G A resolution 61/34, paras. 2 and 3.

¹⁰⁸ G A resolution 62/67, paras. 2-4.

26. With respect to the topic “Reservations to treaties”, the Commission, between its fifty-second and sixty-first sessions, examined the fifth to fourteenth reports¹⁰⁹ and a note¹¹⁰ by the Special Rapporteur¹¹¹, as well as a memorandum by the Secretariat on reservations to treaties in the context of succession of States submitted in response to a request made by the Commission.¹¹² The Commission also held informal meetings with the human rights treaty bodies at the fifty-fifth to fifty-seventh sessions, during which there was an exchange of views aiming at a deeper understanding of the position of those bodies.¹¹³ During the period under consideration, it was able to adopt 115 draft guidelines and the commentaries thereto.¹¹⁴ The General Assembly, by its resolution 63/123, drew the attention of Governments to the importance for the Commission of having their views on all the specific issues regarding reservations to treaties and invited them to provide information to the Commission regarding their relevant practice.¹¹⁵

27. Regarding the topic “Responsibility of international organizations”, the Commission, at its fifty-fourth session, decided to include the topic in its programme of work, to appoint Mr. Giorgio Gaja as Special Rapporteur and to establish a Working Group.¹¹⁶ The Working Group recommended that the Secretariat approach international organizations with a view to collecting relevant materials, especially on questions of attribution and the responsibility of Member States for conduct that is attributed to international organizations.¹¹⁷ By its resolution 58/77, the General Assembly requested the Secretary-General to invite States and international organizations to submit information regarding their practice that was relevant to the topic.¹¹⁸ From its fifty-fifth to sixty-first sessions, the Commission considered seven reports of the Special Rapporteur¹¹⁹, as well as comments and observations received from Governments and international organisations,¹²⁰ and provisionally adopted on

¹⁰⁹ A/CN.4/508 and Add.1, Add.2, Add.3, Add.3/Corr.1 (French only) and Add.4; A/CN.4/518 and Add.1, Add.2 and Add.3; A/CN.4/526 and Add.1, Add.2 and Add.3; A/CN.4/535 and Add.1; A/CN.4/544; A/CN.4/558 and Add.1 and Add.2; A/CN.4/574; A/CN.4/584; A/CN.4/600; A/CN.4/614 and Add.1.

¹¹⁰ A/CN.4/586.

¹¹¹ Mr. Alain Pellet.

¹¹² A/CN.4/616.

¹¹³ See *Yearbook of the International Law Commission, 2003, vol. II (Part two)*, para. 375; *Yearbook of the International Law Commission, 2004, vol. II (Part two)*, para. 375; *Official Records of the General Assembly, Sixtieth session, Supplement No. 10 (A/60/10)*, paras. 370 and 509.

¹¹⁴ *Yearbook of the International Law Commission, 2000, vol. II (Part two)*, paras. 637 and 662; *Yearbook of the International Law Commission, 2001, vol. II (Part two)*, paras. 114 and 156; *Yearbook of the International Law Commission, 2002, vol. II (Part two)*, paras. 50-51 and 102; *Yearbook of the International Law Commission, 2003, vol. II (Part two)*, paras. 329-330 and 367; *Yearbook of the International Law Commission, 2004, vol. II (Part two)*, paras. 272-273 and 294; *Official Records of the General Assembly, Sixtieth session, Supplement No.10 (A/60/10)*, paras. 346, 348 and 437; *Official Records of the General Assembly, Sixty-first session, Supplement No.10 (A/61/10)*, paras. 104, 106 and 158; *Official Records of the General Assembly, Sixty-second session, Supplement No.10 (A/62/10)*, paras. 47-48 and 153; *Official Records of the General Assembly, Sixty-third session, Supplement No.10 (A/63/10)*, paras. 75-76, 78 and 123; *Official Records of the General Assembly, Sixty-fourth session, Supplement No.10 (A/64/10)*, paras. 61-62 and 83.

¹¹⁵ G A resolution 63/123, paras. 3 and 4.

¹¹⁶ *Yearbook of the International Law Commission, 2002, vol. II (Part two)*, paras. 18, 461-463, 517 and 519.

¹¹⁷ *Ibid.*, para. 488.

¹¹⁸ G A 58/77, para. 5.

¹¹⁹ A/CN.4/532; A/CN.4/541; A/CN.4/533; A/CN.4/564 and Add.1 and Add.2; A/CN.4/583; A/CN.4/597 and A/CN.4/610.

¹²⁰ A/CN.4/545; A/CN.4/547; A/CN.4/556; A/CN.4/568 and Add.1; A/CN.4/582; A/CN.4/593 and Add.1; and A/CN.4/609.

first reading draft articles 1 to 66 with commentaries thereto.¹²¹ The Commission decided, in accordance with articles 16 to 21 of its Statute, to transmit the draft articles, through the Secretary-General, to Governments and international organisations for comments and observations.¹²² In resolution 64/114, the General Assembly expressed its appreciation to the Commission for the completion, on first reading, of the draft articles on the topic and drew the attention of Governments to the importance for the Commission of having their comments and observations on the draft articles.¹²³

28. With respect to the topic “Fragmentation of international law: difficulties arising from the diversification and expansion of international law”, the Commission established a Study Group¹²⁴, chaired successively by Mr. Bruno Simma and Mr. Martti Koskenniemi¹²⁵, which recommended notably to change the title of the topic to its present wording, and to prepare a series of studies on specific aspects of the topic for the consideration of the Commission and to assist international judges and practitioners in coping with the diversification of international law.¹²⁶ The Study Group submitted six reports to the Commission between its fifty-fourth and fifty-eighth sessions.¹²⁷ At its fifty-eighth session, the Commission finalized its work on fragmentation of international law and took note of the set of forty-two conclusions contained in the report of the Study Group, which had to be read in conclusion with the study finalized by the Chairman of the Study Group summarizing and analyzing the phenomenon of fragmentation on the basis of the studies prepared by the members of the Study Group and taking into account their comments.¹²⁸ The Commission commended the conclusions of the Study Group to the attention of the General Assembly.¹²⁹ In resolution 61/34, the General Assembly took note of the conclusion of the Study Group on the topic, together with the analytical study on which they were based.¹³⁰

29. Regarding the topic “Shared natural resources”, the Commission decided, at its fifty-fourth session, to include it in its programme of work, to appoint Mr. Chusei Yamada as Special Rapporteur and to establish a Working Group to assist him.¹³¹ At its fifty-fifth session, the Commission considered the first report of the Special Rapporteur, which proposed, *inter alia*, to limit the scope of the study to confined transboundary groundwaters, oil and gas, with work proceeding initially on the study of confined transboundary groundwaters.¹³² By its resolution 58/77, the General Assembly invited Governments to provide information to the Commission regarding national legislation, bilateral and other agreements and arrangements with regard to

¹²¹ *Official Records of the General Assembly, Sixty-fourth session, Supplement No.10 (A/64/10)*, paras. 46-47 and 50-51.

¹²² *Ibid.*, para. 48.

¹²³ G A resolution 64/114, paras. 2, 3 and 5.

¹²⁴ *Yearbook of the International Law Commission, 2002, vol. II (Part two)*, para. 493.

¹²⁵ *Yearbook of the International Law Commission, 2003, vol. II (Part two)*, para. 412.

¹²⁶ *Yearbook of the International Law Commission, 2002, vol. II (Part two)*, paras. 512-513.

¹²⁷ A/CN.4/L.628 and Corr.1; ACN.4/L.644; A/CN.4/L.663/Rev.1; A/CN.4/L.676; A/CN.4/L.682, Corr.1 and Add.1; A/CN.4/L.702.

¹²⁸ A/CN.4/L.682 and Corr.1.

¹²⁹ *Official Records of the General Assembly, Sixty-first session, Supplement No.10 (A/61/10)*, para. 239.

¹³⁰ G A resolution 61/34, para. 4.

¹³¹ *Yearbook of the International Law Commission, 2002, vol. II (Part two)*, paras. 20, 518 and 519.

¹³² *Yearbook of the International Law Commission, 2003, vol. II (Part two)*, paras. 373 and 404.

use and management of transboundary groundwaters.¹³³ At its fifty-sixth session, the Commission agreed that a questionnaire, prepared by the Special Rapporteur, be circulated to Governments and relevant intergovernmental organizations, asking for their views and information regarding groundwaters.¹³⁴ In its resolution 59/41, the General Assembly drew the attention of Governments to the importance for the Commission of having their views on the various aspects involved in that topic and invited them to provide information to the Commission regarding their practice, bilateral or regional, relating to the allocation of groundwaters from transboundary aquifer systems and the management of non-renewable transboundary aquifer systems.¹³⁵ From its fifty-sixth to its fifty-eighth sessions, the Commission considered the second¹³⁶ and the third¹³⁷ reports by the Special Rapporteur, two reports of the Working Group on Shared Natural Resources (Groundwaters)¹³⁸, as well as the comments and observations received from Governments and relevant intergovernmental organizations.¹³⁹ During the same period, the Commission received informal briefings by experts on groundwaters from the Economic Commission for Europe, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization and the International Association of Hydroecologists.¹⁴⁰ At its fifty-eighth session, the Commission adopted, on first reading, on the basis of the report of the Drafting Committee¹⁴¹, 19 draft articles on the law of transboundary aquifers as well as commentaries thereto, and decided, in accordance with articles 16 to 21 of its Statute, to transmit these, through the Secretary-General, to Governments for comments and observations.¹⁴² By its resolutions 61/34 and 62/66, the General Assembly drew the attention of Governments to the importance for the Commission of having their comments and observations on the draft articles adopted on first reading.¹⁴³ At its sixtieth session, after having considered the fourth¹⁴⁴ and fifth¹⁴⁵ reports of the Special Rapporteur and the report of the Working Group on Shared Natural Resources¹⁴⁶, the Commission, having considered the comments and observations received from Governments¹⁴⁷, adopted on second reading, on the basis of the report of the Drafting Committee¹⁴⁸, a preamble and a set of 19 draft articles on the law of transboundary aquifers, with commentaries thereto, and submitted these to the General Assembly.¹⁴⁹ The Commission decided, in accordance with article 23 of its Statute, to recommend to the General Assembly to take note of the draft articles and to annex them to the

¹³³ G A resolution 58/77, para. 4.

¹³⁴ *Yearbook of the International Law Commission, 2004, vol. II (Part two)*, para. 81.

¹³⁵ G A resolution 59/41, paras. 2-3.

¹³⁶ A/CN.4/539 and Add.1.

¹³⁷ A/CN.4/551 and Corr.1 and Add.1.

¹³⁸ A/CN.4/L.681 ; A/CN.4/L.683.

¹³⁹ A/CN.4/555 and Add.1.

¹⁴⁰ *Yearbook of the International Law Commission, 2003, vol. II (Part two)*, para. 373; *Yearbook of the International Law Commission, 2004, vol. II (Part two)*, para. 80; and *ibid.*, *Sixtieth session, Supplement No. 10 (A/60/10)*, para. 32.

¹⁴¹ A/CN.4/L.688, and Corr. 1 and 2.

¹⁴² *Official Records of the General Assembly, Sixty-first session, Supplement No.10 (A/61/10)*, paras 72 and 73.

¹⁴³ G A resolution 61/34, para. 5 ; G A resolution 62/66, para. 6.

¹⁴⁴ A/CN.4/580.

¹⁴⁵ A/CN.4/591.

¹⁴⁶ A/CN.4/L.717.

¹⁴⁷ A/CN.4/595 and Add.1.

¹⁴⁸ A/CN.4/L.724.

¹⁴⁹ *Official Records of the General Assembly, Sixty-third session, Supplement No.10 (A/63/10)*, paras. 46-48.

resolution, to recommend to States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers on the basis of the principles enunciated in these articles and to also consider, at a later stage, and in view of the importance of the topic, the elaboration of a convention on the basis of the draft articles.¹⁵⁰ By its resolution 63/124, the General Assembly took note of the draft articles on the law of transboundary aquifers, the text of which was annexed to the resolution, commended them to the attention of Governments, encouraged the States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of the draft articles; and decided to examine, *inter alia*, the question of the form that might be given to the draft articles at its sixty-sixth session.¹⁵¹

30. With respect to the topic “Effect of armed conflict on treaties”, the Commission, at its fifty-sixth session, decided to include it in its programme of work and appointed Mr. Ian Brownlie as Special Rapporteur.¹⁵² At its fifty-seventh and fifty eighth sessions, the Commission considered the first two reports of the Special Rapporteur¹⁵³, as well as a memorandum prepared by the Secretariat¹⁵⁴, and endorsed the Special Rapporteur’s suggestion that the Secretariat be requested to circulate a note to Governments requesting information about their practice with regard to the topic.¹⁵⁵ At its fifty-ninth and sixtieth sessions, the Commission considered the third and fourth reports of the Special Rapporteur¹⁵⁶, as well as two reports of the Working Group.¹⁵⁷ At its sixtieth session, it adopted on first reading, on the basis of the report of the Drafting Committee¹⁵⁸, a set of 18 draft articles on the effects of armed conflicts on treaties, together with an annex and a set of commentaries, and decided, in accordance with articles 16 to 21 of its Statute, to transmit those, through the Secretary-General, to Governments for comments and observations.¹⁵⁹ By its resolution 63/123, the General Assembly expressed its appreciation to the Commission for the completion of the first reading of the draft articles and drew the attention of Governments to the importance for the Commission of having their comments and observations on the aforementioned draft articles.¹⁶⁰ At its sixty-first session, following the resignation from the Commission of Mr. Brownlie, the Commission appointed Mr. Lucius Caflisch as Special Rapporteur for the topic.¹⁶¹

31. Regarding the topic “Expulsion of aliens”, the Commission, during its fifty-sixth session, appointed Mr. Maurice Kamto as Special Rapporteur, and considered, at its fifty-seventh to sixty-first sessions, five reports of the Special Rapporteur¹⁶², as

¹⁵⁰ *Ibid.*, para. 49.

¹⁵¹ G A resolution 63/124, paras. 4-6.

¹⁵² *Yearbook of the International Law Commission, 2004, vol. II (Part two)*, para. 364.

¹⁵³ A/CN.4/552; A/CN.4/570 and Corr.1.

¹⁵⁴ A/CN.4/550 and Corr.1 and 2.

¹⁵⁵ *Official Records of the General Assembly, Sixtieth session, Supplement No.10 (A/60/10)*, para. 112.

¹⁵⁶ A/CN.4/578 and Corr.1; A/CN.4/589 and Corr.1.

¹⁵⁷ A/CN.4/L.718 ; A/CN.4/L.726

¹⁵⁸ A/CN.4/L.727/Rev.1 and Add.1.

¹⁵⁹ *Official Records of the General Assembly, Sixty-third session, Supplement No.10 (A/63/10)*, paras. 62-63.

¹⁶⁰ G A resolution 63/123, paras. 2 and 5.

¹⁶¹ *Official Records of the General Assembly, Sixty-fourth session, Supplement No.10 (A/64/10)*, para. 229.

¹⁶² A/CN.4/554 ; A/CN.4/573 and Corr.1; A/CN.4/581; A/CN.4/594; A/CN.4/611 and Corr.1.

well as a study prepared by the Secretariat.¹⁶³ The General Assembly, in its resolution 60/22, having endorsed the decision of the Commission to include the topic in its agenda by its resolution 59/41¹⁶⁴, invited Governments to provide information to the Commission regarding their relevant practice¹⁶⁵, and subsequently reiterated its invitation in resolutions 62/66 and 64/114.¹⁶⁶

32. With respect to the topic “The obligation to extradite or prosecute (*‘aut dedere aut judicare’*)”, the Commission, during its fifty-seventh session, decided to appoint Mr. Zdzislaw Galicki as Special Rapporteur¹⁶⁷, and considered, at its fifty-eighth to sixtieth sessions, three reports of the Special Rapporteur.¹⁶⁸ The General Assembly, in its resolution 61/34, having endorsed the decision of the Commission to include the topic in its programme of work by its resolution 60/22¹⁶⁹, invited Governments to provide the Commission with information on their relevant legislation and practice¹⁷⁰, and reiterated its invitation in resolution 62/66.¹⁷¹ The Commission examined the comments and information received from Governments at its fifty-ninth to its sixty-first sessions.¹⁷²

33. As regards the topic “Protection of persons in the event of disasters”, the Commission, at its fifty-ninth session, appointed Mr. Eduardo Valencia-Ospina as Special Rapporteur.¹⁷³ At its sixtieth and sixty-first sessions, the Commission considered two reports of the Special Rapporteur¹⁷⁴ and a study by the Secretariat.¹⁷⁵ By its resolution 63/123, the General Assembly drew the attention of Governments to the importance for the Commission of having their views on the topic, invited them to provide information regarding their practice and encouraged the Commission to undertake consultations with key humanitarian actors, including the United Nations and the International Federation of Red Cross and Red Crescent Societies.¹⁷⁶

34. Concerning the topic “Immunity of States officials from foreign criminal jurisdiction”, the Commission, at its fifty-ninth session, decided to include the topic in its programme of work and appointed Mr. Roman A. Kolodkin as Special Rapporteur.¹⁷⁷ At its sixtieth session, the Commission considered the preliminary report of the Special Rapporteur¹⁷⁸, as well as a study by the Secretariat.¹⁷⁹

¹⁶³ A/CN.4/565 and Corr.1.

¹⁶⁴ G A resolution 59/41, para. 5.

¹⁶⁵ G A resolution 60/22, para. 4.

¹⁶⁶ G A resolution 62/66, para. 4; G A 64/114, para. 4.

¹⁶⁷ *Official Records of the General Assembly, Sixtieth session, Supplement No.10 (A/60/10)*, para. 500.

¹⁶⁸ A/CN.4/571, A/CN.4/585 and Corr.1 and A/63/10.

¹⁶⁹ G A resolution 60/22, para. 5.

¹⁷⁰ G A resolution 61/34, para. 6.

¹⁷¹ G A resolution 62/66, para. 4.

¹⁷² A/CN.4/579 and Add.1, Add.2 and Add.3; A/CN.4/599; A/CN.4/612.

¹⁷³ *Official Records of the General Assembly, Sixty-second session, Supplement No.10 (A/62/10)*, para. 375.

¹⁷⁴ A/CN.4/598; A/CN.4/615 and Corr.1.

¹⁷⁵ A/CN.4/590 and Add.1, 2 and 3.

¹⁷⁶ G A resolution 63/123, paras. 3, 5 and 17.

¹⁷⁷ *Official Records of the General Assembly, Sixty-first session, Supplement No.10 (A/61/10)*, para. 257.

¹⁷⁸ A/CN.4/601.

¹⁷⁹ A/CN.4/596.

35. With respect to the topic “The Most-Favoured-Nation Clause (second phase)”, the Commission, at its sixtieth session, decided to include the topic in its current programme of work¹⁸⁰ and, at its sixty-first session, established a Study Group co-chaired by Mr. Donald M. McRae and Mr. A. Rohan Perera.¹⁸¹

36. Regarding the topic “Treaties over time”, the Commission, at its sixtieth session, decided to include the topic in its current programme of work¹⁸² and, at its sixty-first session, established a Study Group chaired by Mr. Georg Nolte.¹⁸³

2. UNITED NATIONS CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

37. With regard to the draft articles on jurisdictional immunities of States and their property, adopted by the International Law Commission at its forty-third session, and pursuant to the General Assembly’s recommendations on this matter¹⁸⁴, the Working Group of the Sixth Committee on the topic suggested, during the fifty-fifth session of the General Assembly, a text as a possible basis for further discussions.¹⁸⁵ The General Assembly, by its resolution 55/150, took note with appreciation of the report of the Working Group on Jurisdictional Immunities of States and Their Property of the Sixth Committee, urged again States, if they had not yet done so, to submit their comments to the Secretary-General and decided to establish an Ad Hoc Committee on Jurisdictional Immunities of States and Their Property, open also to participation by States members of the specialized agencies, with a view to elaborating a generally acceptable instrument.¹⁸⁶ By its resolution 56/78, the General Assembly decided that the Ad Hoc Committee on the matter should meet from 4 to 15 February 2002.¹⁸⁷

38. The Ad Hoc Committee on Jurisdictional Immunities of States and Their Property, at its first session, which was held during the fifty-seventh session of the General Assembly, adopted a report containing the revised text of the draft articles on jurisdictional immunities of States and their property and recommended to the Sixth Committee to provide the opportunity to resolve the outstanding issues at the present session, including the possibility of convening an open-ended working group.¹⁸⁸ By its resolution 57/16, the General Assembly took note of the report of the Ad Hoc Committee and decided that it should be reconvened from 24 to 28 February 2003 in order to make a final attempt at consolidating areas of agreement and resolving outstanding issues, with a view to elaborating a generally acceptable instrument.¹⁸⁹ At its second session, the Ad Hoc Committee resolved all the outstanding issues and adopted a report containing the text of the draft articles on jurisdictional immunities of States and their property, together with an understanding with regard to some of the provisions of the draft articles, recommended that the General Assembly take a

¹⁸⁰ *Official Records of the General Assembly, Sixty-third session, Supplement No.10 (A/63/10)*, para. 354.

¹⁸¹ *Official Records of the General Assembly, Sixty-fourth session, Supplement No.10 (A/64/10)*, para. 208.

¹⁸² *Official Records of the General Assembly, Sixty-third session, Supplement No.10 (A/63/10)*, para. 353.

¹⁸³ *Official Records of the General Assembly, Sixty-fourth session, Supplement No.10 (A/64/10)*, para. 218.

¹⁸⁴ *See Repertory Supplement No.9, Vol.II*, under article 13(1)(a), paras. [31-33 and 97].

¹⁸⁵ A/C.6/55/L.12.

¹⁸⁶ G A resolution 55/150, paras. 1-3.

¹⁸⁷ G A resolution 56/78, paras. 1-3.

¹⁸⁸ A/57/22, paras. 12-13.

¹⁸⁹ G A resolution 57/16, paras. 1-3.

decision on the form of the draft articles and stressed the need of the elaboration of a preamble and final clauses.¹⁹⁰ In its resolution 58/74, the General Assembly took note of the report of the Ad Hoc Committee and decided that it should be reconvened with the mandate of formulating a preamble and final clauses.¹⁹¹ At its third session, the Ad Hoc Committee adopted its report containing the text of a draft United Nations Convention on Jurisdictional Immunities of States and Their Property and recommended its adoption to the General Assembly, as well as the inclusion in the resolution adopting the Convention of the general understanding that the Convention does not cover criminal proceedings.¹⁹²

39. By its resolution 59/38, the General Assembly expressed its deep appreciation to the Commission and the Ad Hoc Committee for their work, agreed with the general understanding reached in the Ad Hoc Committee and adopted the United Nations Convention on Jurisdictional Immunities of States and Their Property, the text of which was annexed to the resolution, requested the Secretary-General as depositary to open the Convention for signature, and invited States to become parties to it.¹⁹³

3. NATIONALITY OF NATURAL PERSONS IN RELATION TO THE SUCCESSION OF STATES

40. Concerning the draft articles on nationality of natural persons in relation to the succession of States adopted by the International Law Commission on second reading at its fifty-first session (1999)¹⁹⁴, the General Assembly, by its resolution 55/153, took note of the articles, which were annexed to the resolution, invited Governments to take into account, as appropriate, the provisions contained in the articles dealing with issues of nationality of natural persons in relation to the succession of States and recommended that all efforts be made for the wide dissemination of the texts of the articles.¹⁹⁵ At its fifty-ninth and sixty-third sessions, the General Assembly, in its resolutions 59/34 and 63/118, reiterated its invitation to Governments to take into account the provisions of the articles, encouraged States to consider, as appropriate at the regional or subregional levels, the elaboration of legal instruments regulating questions of nationality of natural persons in relation to the succession of States, with a view, in particular, to preventing the occurrence of statelessness as a result of a succession of States, invited Governments to submit their comments concerning the advisability of elaborating a legal instrument on the question of nationality of natural persons in relation to the succession of States, including the avoidance of statelessness as a result of a succession of States and decided to consider the subject at its sixty-sixth session, including the question of the form that might be given to the draft articles.¹⁹⁶

4. RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS

¹⁹⁰ A/58/22, paras 10-12.

¹⁹¹ G A resolution 58/74, paras. 1-3.

¹⁹² A/59/22, paras. 12-14.

¹⁹³ G A resolution 59/38, paras. 1-4.

¹⁹⁴ *See Repertory Supplement No.9, vol. II*, under Article 13(1)(a), para. [23].

¹⁹⁵ G A resolution 55/153, paras. 2-4.

¹⁹⁶ G A resolution 59/34, paras. 1-3; G A resolution 63/118, paras. 1-4.

41. As regards the draft articles on responsibility of States for internationally wrongful acts adopted by the Commission on its second reading and the General Assembly recommendation thereof¹⁹⁷, the General Assembly, by its resolution 59/35, commended once again the articles to the attention of Governments, requested the Secretary-General to invite Governments to submit their written comments on any future action regarding the articles and to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in this regard.¹⁹⁸ During the sixty-second session of the General Assembly, the report of the Secretary-General containing the compilation of relevant decisions of international courts, tribunals and other bodies was issued.¹⁹⁹ The General Assembly, by its resolution 62/61, commended once again the articles to the attention of Governments, requested the Secretary-General to invite Governments to submit their written comments on any future action regarding the articles, to update the compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in this regard, and further requested the Secretary-General to submit this material well in advance of its sixty-fifth session.²⁰⁰ The General Assembly decided to consider the question during its fifty-fifth session and to further examine, within the context of a working group of the Sixth Committee, the question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles.²⁰¹

5. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

42. From its thirty-third session in 2000 until its forty-second session in 2009, the priority subjects which the Commission²⁰² considered, in accordance with relevant General Assembly resolutions,²⁰³ were the following: privately financed infrastructure projects; international commercial arbitration and conciliation; international transport of goods; electronic commerce; assignment in receivables financing; insolvency; security interests; public procurement; and the role of UNCITRAL in promoting the rule of law at the national and international levels.

a. Privately financed infrastructure projects

43. As mentioned in *Supplement No. 9*,²⁰⁴ following the Commission's thirty-second session, the Secretariat produced a revised draft of a legislative guide on privately financed infrastructure projects for consideration by the Commission at its thirty-third

¹⁹⁷ See para. [21] of this Study.

¹⁹⁸ G A resolution 59/35, paras. 1-3.

¹⁹⁹ A 62/62 and Corr.1-2.

²⁰⁰ G A resolution 62/61, paras. 1-3.

²⁰¹ *Ibid.*, para. 4.

²⁰² For the mandate of UNCITRAL, see G A resolution 2205 (XXI), G A (21), annexes, a.i. 88 (A/6396). Yearbook of the United Nations Commission on International Trade Law, vol. I: 1968-1970, Part One, chap. II, E. The Commission's terms of reference and the work programme established to fulfill its mandate are described in Supplement No. 4 (see *Repertory, Supplement No. 4*, vol. I, under Article 13(1)(a), para. 24).

²⁰³ For the general mandate given to the Commission by the General Assembly with respect to the topics in the Commission's programme of work, see G A resolutions: 55/151, 56/79, 57/17, 58/75, 59/39, 60/20, 61/32, 62/64, 63/120 and 64/111.

²⁰⁴ See *Repertory, Supplement No. 9*, vol. II, under article 13 (1)(a), para. [42].

session. At its thirty-third session, the Commission adopted the Legislative Guide on Privately Financed Infrastructure Projects.²⁰⁵

44. At its thirty-fourth session, the Commission entrusted one of its working groups, Working Group I, with drafting model legislative provisions in the field of privately financed infrastructure projects.²⁰⁶ The Working Group worked on the project during its fourth and fifth sessions²⁰⁷ and completed it with the approval of draft model legislative provisions on privately financed infrastructure projects and submission of the draft to the Commission for its final review and adoption.²⁰⁸ At its thirty-sixth session, the Commission adopted the Model Legislative Provisions on Privately Financed Infrastructure Projects.²⁰⁹

b. International commercial arbitration and conciliation

45. At its thirty-second session, the Commission identified the priority topics for its future work in the area of international commercial arbitration and conciliation,²¹⁰ including conciliation, requirement of written form for the arbitration agreement, and enforceability of interim measures of protection.²¹¹ It entrusted the work on these topics to one of its working groups, the Working Group on Arbitration²¹² (subsequently renamed to Working Group II).²¹³

46. As regards the topic of conciliation, the Working Group was entrusted to consider whether, with a view to encouraging and facilitating conciliation, it would be useful to prepare harmonized legislative model provisions on conciliation.²¹⁴ The Working Group worked on the project during its thirty-second to thirty-fifth sessions²¹⁵ and completed it with the approval of a draft model law on international commercial conciliation and submission of the draft to the Commission for its final

²⁰⁵ G A (55) Suppl. No. 17 (A/55/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-third session, 12 June – 7 July 2000, chap. IV, para. 372.

²⁰⁶ G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. XI, para. 369.

²⁰⁷ For the reports of the Working Group on the work of its fourth and fifth sessions, see A/CN.9/505 and A/CN.9/521.

²⁰⁸ A/CN.9/521, para. 9.

²⁰⁹ G A (58) Suppl. No. 17 (A/58/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session, 30 June – 11 July 2003, chap. III, para. 171. For the consideration of the subject by the Commission at its thirty-fifth session, see G A (57) Suppl. No. 17 (A/57/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session, 17-28 June 2002, chap. IX, paras. 225-233. For the text of the Model Legislative Provisions, see G A (58) Suppl. No. 17 (A/58/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session, 30 June – 11 July 2003, annex I.

²¹⁰ G A (54) Suppl. No. 17 (A/54/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-second session, 17 May-4 June 1999, chap. VI, paras. 333-380.

²¹¹ *Ibid.*, para. 380.

²¹² *Ibid.*

²¹³ G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. XIII, paras. 376-383, and chap. XXI, para. 425 (b).

²¹⁴ G A (54) Suppl. No. 17 (A/54/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-second session, 17 May-4 June 1999, chap. VI, para. 343.

²¹⁵ For the reports of the Working Group on the work of its thirty-second to thirty-fifth sessions, see A/CN.9/468, A/CN.9/485, A/CN.9/487 and A/CN.9/506.

review and adoption.²¹⁶ At its thirty-fifth session, the Commission adopted the UNCITRAL Model Law on International Commercial Conciliation.²¹⁷

47. The Working Group worked on the subject of the form of an arbitration agreement and interim measures of protection at its thirty-second to thirty-fourth and thirty-sixth sessions.²¹⁸ It continued its work on the subject of the form of an arbitration agreement at its forty-third and forty-fourth sessions²¹⁹ and on the subject of interim measures of protection at its thirty-seventh to forty-fourth sessions.²²⁰ At its forty-fourth session, the Working Group completed its work on these subjects with the approval and submission to the Commission for its final review and adoption the revised legislative provisions on interim measures, preliminary orders and the form of arbitration agreement as well as a text of a draft declaration regarding the interpretation of article II, paragraph (2), and article VII, paragraph (1), of the New York Convention.²²¹ At its thirty-ninth session, the Commission adopted the revised articles of the UNCITRAL Model Law on International Commercial Arbitration and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958 (the Recommendation).²²²

48. At its thirty-ninth session, the Commission agreed that the Working Group should, as a matter of priority, undertake work on revising the UNCITRAL Arbitration Rules,²²³ and that it should place the topics of arbitrability and online dispute resolution on the agenda of its future work.²²⁴

49. The Working Group commenced its work on revision of the UNCITRAL Arbitration Rules at its forty-fifth session and continued it, during the period under review, through its fifty-first session.²²⁵ In the course of that work, the Working

²¹⁶ A/CN.9/506, para. 13.

²¹⁷ G A (57) Suppl. No. 17 (A/57/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session, 17-28 June 2002, chap. III, para. 141. For the consideration of the subject by the Commission at its thirty-third session, see G A (55) Suppl. No. 17 (A/55/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-third session, 12 June – 7 July 2000, chap. VI, paras. 394-399. For the consideration of the subject by the Commission at its thirty-fourth session, see G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. VII, para. 315. For the text of the Model Law, see G A (57) Suppl. No. 17 (A/57/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session, 17-28 June 2002, annex I.

²¹⁸ For the reports of the Working Group on the work of those sessions, see A/CN.9/468, A/CN.9/485, A/CN.9/487 and A/CN.9/508.

²¹⁹ For the reports of the Working Group on the work of those sessions, see A/CN.9/589 and A/CN.9/592.

²²⁰ For the reports of the Working Group on the work of those sessions, see A/CN.9/523, A/CN.9/524, A/CN.9/545, A/CN.9/547, A/CN.9/569, A/CN.9/573, A/CN.9/589 and A/CN.9/592.

²²¹ A/CN.9/592, para. 11 and annexes I, II and III.

²²² G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. IV, para. 181. For the text of the revised articles of the UNCITRAL Model Law on International Commercial Arbitration, see *ibid.*, annex I. For the text of the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, see *ibid.*, annex II.

²²³ See *Repertory, Supplement No. 5*, vol. I, under Article 13 (1)(a), para. 28.

²²⁴ G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. IV, paras. 182-187.

²²⁵ For the reports of the Working Group on the work of its forty-fifth to fifty-first sessions, see A/CN.9/614, A/CN.9/619, A/CN.9/641, A/CN.9/646, A/CN.9/665, A/CN.9/669 and A/CN.9/684.

Group discussed the extent to which the revised UNCITRAL Arbitration Rules should include more detailed provisions concerning treaty-based investor-State arbitration and referred that matter to the Commission for consideration.²²⁶ At its forty-first session, the Commission agreed that, while it would not be desirable to include specific provisions on treaty-based arbitration in the revised UNCITRAL Arbitration Rules, the issue of transparency in treaty-based investor-State arbitration should be dealt with as a matter of priority immediately after the completion of the work on the revision of the UNCITRAL Arbitration Rules.²²⁷

50. During the period under review, the Commission continued²²⁸ considering progress reports by the Secretariat on the monitoring the legislative implementation of the 1958 New York Convention²²⁹, making its appeals to States parties to the Convention to provide information requested by the Secretariat in connection with the project²³⁰, and requesting the Secretariat to prepare, for the consideration by the Commission at a future session, a note presenting the findings based on the analysis of the information gathered.²³¹ The Commission also requested the Secretariat to

²²⁶ A/CN.9/646, paras. 54-69.

²²⁷ G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. V, para. 314.

²²⁸ See *Repertory, Supplement No. 9*, vol. II, under Article 13 (1)(a), para. 39.

²²⁹ G A (55) Suppl. No. 17 (A/55/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-third session, 12 June -7 July 2000, chap. VIII, paras. 410-412; G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. VIII, paras. 316-318; G A (57) Suppl. No. 17 (A/57/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session, 17-28 June 2002, chap. X, paras. 234-236; G A (58) Suppl. No. 17 (A/58/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session, 30 June – 11 July 2003, chap. IX, paras. 223-224; G A (59) Suppl. No. 17 (A/59/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session, 14 – 25 June 2004, chap. IX, paras. 83-84; G A (60) Suppl. No. 17 (A/60/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session, 4 – 15 July 2005, chap. VIII, paras. 188-191; G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. X, paras. 218-220; G A (62) Suppl. No. 17 (A/62/17 (Part One)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 25 June-12 July 2007, chap. X, paras. 204-208; G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. XI, paras. 353-360; and G A (64) Suppl. No. 17 (A/64/17); Report of the United Nations Commission on International Trade Law on the work of its forty-second session, 29 June – 17 July 2009, chap. XII, paras. 358-361.

²³⁰ G A (55) Suppl. No. 17 (A/55/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-third session, 12 June -7 July 2000, chap. VIII, para. 412; G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. VIII, para. 318; G A (59) Suppl. No. 17 (A/59/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session, 14 – 25 June 2004, chap. IX, para. 84; G A (60) Suppl. No. 17 (A/60/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session, 4 – 15 July 2005, chap. VIII, para. 189; G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. XI, para. 356; and G A (64) Suppl. No. 17 (A/64/17); Report of the United Nations Commission on International Trade Law on the work of its forty-second session, 29 June – 17 July 2009, chap. XII, para. 360.

²³¹ G A (55) Suppl. No. 17 (A/55/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-third session, 12 June -7 July 2000, chap. VIII, para. 412; G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. VIII, para. 318; G A (57) Suppl. No. 17 (A/57/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session, 17-28 June 2002, chap. X, para. 235; and G A (59) Suppl. No. 17 (A/59/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session, 14 – 25 June 2004, chap. IX, para. 84.

obtain information from other sources, in particular intergovernmental and non-governmental organizations,²³² and circulate to States the Recommendation in order to seek comments as to the impact of the Recommendation in their jurisdictions.²³³ It was agreed that comments received by the Secretariat from States on the Recommendation should be made part of the project on the monitoring the implementation of the 1958 New York Convention.²³⁴ The Commission also agreed that the project should aim at the development of a guide to enactment of the 1958 New York Convention, with a view to promoting its uniform interpretation.²³⁵ At its thirty-eighth and forty-first sessions, the Commission considered the reports by the Secretariat on the project.²³⁶ At its forty-first session, the Commission requested the Secretariat to publish on the UNCITRAL website the information collected during the project and urged States to provide the Secretariat with accurate information to ensure that the data published on the website remained up to date.²³⁷

51. During the period under review, the Commission also requested the Secretariat to prepare a digest of case law related to the UNCITRAL Model Law on International Commercial Arbitration²³⁸ and a guide to enactment and use of that Model Law as revised at the thirty-ninth session of the Commission.²³⁹

c. International transport of goods

52. At its thirty-fourth session, the Commission entrusted one of its working groups, Working Group III, with the consideration of issues on possible future work on transport law.²⁴⁰ The Working Group worked on the project during its ninth to

²³² G A (57) Suppl. No. 17 (A/57/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session, 17-28 June 2002, chap. X, para. 235; and G A (58) Suppl. No. 17 (A/58/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session, 30 June – 11 July 2003, chap. IX, para. 224.

²³³ G A (62) Suppl. No. 17 (A/62/17 (Part One)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 25 June-12 July 2007, chap. X, para. 208.

²³⁴ G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. XI, para. 359.

²³⁵ G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. X, para. 220; and G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. XI, para. 355.

²³⁶ G A (60) Suppl. No. 17 (A/60/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session, 4 – 15 July 2005, chap. VIII, paras. 189-191; and G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. XI, paras. 354-360.

²³⁷ G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. XI, para. 356.

²³⁸ G A (57) Suppl. No. 17 (A/57/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session, 17-28 June 2002, chap. XII, para. 243; and G A (59) Suppl. No. 17 (A/59/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session, 14 – 25 June 2004, chap. X, para. 91.

²³⁹ G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. IV, para. 176; and G A (64) Suppl. No. 17 (A/64/17); Report of the United Nations Commission on International Trade Law on the work of its forty-second session, 29 June – 17 July 2009, chap. V, para. 300.

²⁴⁰ G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. IX, para. 345.

twenty-first sessions²⁴¹ and completed it with the approval of a draft convention on contracts for the international carriage of goods wholly or partly by sea and submission of the draft to the Commission for its final review and approval.²⁴² At its forty-first session, the Commission approved the draft convention on contracts for the international carriage of goods wholly or partly by sea as revised at that session²⁴³ and submitted the draft to the General Assembly with the recommendation for the adoption, on the basis of that draft, a United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.²⁴⁴ The General Assembly, by its resolution 63/122, adopted the Convention.²⁴⁵

d. Electronic commerce

53. As mentioned in *Supplement No. 9*,²⁴⁶ at its thirtieth session, the Commission entrusted its Working Group on Electronic Commerce with the preparation of uniform rules on the legal issues of digital signatures and certification authorities. During the period under review, the Working Group (subsequently renamed to Working Group IV²⁴⁷) continued its work on uniform rules²⁴⁸ and completed it at its thirty-seventh session with the approval of a draft model law on electronic signatures.²⁴⁹ At its thirty-eighth session, the Working Group completed its work on a draft guide to enactment of the Model Law and transmitted the draft model law together with the draft guide to the Commission for its final review and adoption.²⁵⁰ At its thirty-fourth session, the Commission adopted the Model Law on Electronic Signatures together with the Guide to Enactment of the Model Law.²⁵¹

²⁴¹ For the reports of the Working Group on the work of its ninth to twenty-first sessions, see A/CN.9/510, A/CN.9/525, A/CN.9/526, A/CN.9/544, A/CN.9/552, A/CN.9/572, A/CN.9/576, A/CN.9/591 and Corr.1, A/CN.9/594, A/CN.9/616, A/CN.9/621, A/CN.9/642 and A/CN.9/645.

²⁴² A/CN.9/645, para. 10.

²⁴³ G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. III, paras. 12-297, and annex I.

²⁴⁴ *Ibid.*, chap. III, para. 298. For the consideration of the subject at the thirty-fifth to fortieth sessions of the Commission, see G A (57) Suppl. No. 17 (A/57/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session, 17-28 June 2002, chap. VIII, paras. 210-224; G A (58) Suppl. No. 17 (A/58/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session, 30 June – 11 July 2003, chap. VI, paras. 205-208; G A (59) Suppl. No. 17 (A/59/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session, 14 – 25 June 2004, chap. V, paras. 62-66; G A (60) Suppl. No. 17 (A/60/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session, 4 – 15 July 2005, chap. VI, paras. 180-184; G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. VI, paras. 193-200; and G A (62) Suppl. No. 17 (A/62/17 (Part One)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 25 June-12 July 2007, chap. VI, paras. 179-184.

²⁴⁵ For the text of the Convention, see G A resolution 63/122, annex. See also *infra*, under Section II, Analytical Summary of Practice, B. The making of recommendations, para. [104]

²⁴⁶ See *Repertory, Supplement No. 9*, vol. II, under Article 13 (1)(a), para. [37].

²⁴⁷ G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. XIII, paras. 376-383, and chap. XXI, para. 425.

²⁴⁸ For the reports of the Working Group on the work of its thirty-fifth to thirty-seventh sessions, see A/CN.9/465, A/CN.9/467 and A/CN.9/483.

²⁴⁹ See A/CN.9/483, para. 22.

²⁵⁰ See A/CN.9/484, para. 19.

²⁵¹ G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. IV, para. 284. For the text of the Model Law, see *ibid.*, annex II. For the consideration of the subject at the thirty-third session of the Commission, see G A (55) Suppl. No. 17 (A/55/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-third session, 12 June -7 July 2000, chap. V, paras. 380-383.

54. At its thirty-fourth session, the Commission endorsed a set of recommendations for future work in the field of electronic commerce²⁵² made by the Working Group at its thirty-eighth session²⁵³, including the preparation of an international instrument dealing with selected issues of electronic contracting and obstacles to electronic commerce in existing uniform law conventions and trade agreements.²⁵⁴ The Working Group worked on the preparation of such an instrument during its thirty-ninth to forty-fourth sessions²⁵⁵ and completed it with the approval of a draft convention on the use of electronic communications in international contracts and submission of the draft to the Commission for its final review and approval.²⁵⁶ At its thirty-eighth session, the Commission approved the draft convention on the use of electronic communications in international contracts²⁵⁷, and submitted the draft to the General Assembly with the recommendation for the adoption, on the basis of that draft, a United Nations Convention on the Use of Electronic Communications in International Contracts.²⁵⁸ The General Assembly, by its resolution 60/21, adopted the Convention.²⁵⁹

e. Insolvency

55. At its thirty-third session, the Commission entrusted one of its working groups, the Working Group on Insolvency Law (subsequently renamed to Working Group V²⁶⁰) with the preparation of a legislative guide on insolvency law.²⁶¹ The Working Group worked on the project during its twenty-fourth to thirtieth sessions²⁶² and completed it with the approval of a draft legislative guide on insolvency law and submission of the draft to the Commission for its final review and adoption.²⁶³ The Commission adopted the UNCITRAL Legislative Guide on Insolvency Law at its thirty-seventh session.²⁶⁴

²⁵² G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. V, paras. 285-295.

²⁵³ See A/CN.9/484, paras. 79-135.

²⁵⁴ G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. V, paras. 290-295.

²⁵⁵ For the reports of the Working Group on the work of its thirty-ninth to forty-fourth sessions, see A/CN.9/509, A/CN.9/527, A/CN.9/528, A/CN.9/546, A/CN.9/548 and A/CN.9/571.

²⁵⁶ See A/CN.9/571, para. 10.

²⁵⁷ G A (60) Suppl. No. 17 (A/60/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session, 4 July – 15 July 2005, chap. III, paras. 12-167.

²⁵⁸ *Ibid.*, para. 167.

²⁵⁹ For the text of the Convention, see G A resolution 60/21, annex. See also *infra*, under Section II, Analytical Summary of Practice, B. The making of recommendations, para. [104].

²⁶⁰ G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. XIII, paras. 376-383, and chap. XXI, para. 425 (e).

²⁶¹ G A (55) Suppl. No. 17 (A/55/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-third session, 12 June - 7 July 2000, chap. VII, para. 409.

²⁶² For the reports of the Working Group on the work of its twenty-fourth to thirtieth sessions, see A/CN.9/504, A/CN.9/507, A/CN.9/511, A/CN.9/529, A/CN.9/530, A/CN.9/542 and A/CN.9/551.

²⁶³ A/CN.9/551, para. 20.

²⁶⁴ G A (59) Suppl. No. 17 (A/59/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session, 14 – 25 June 2004, chap. III, para. 55. For the consideration of the subject at the thirty-fourth to thirty-sixth sessions of the Commission, see G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. VI, paras. 296-308; G A (57) Suppl. No. 17 (A/57/17); Report of the United Nations Commission on International Trade

56. At its thirty-ninth session, the Commission considered its future work in the area of insolvency law²⁶⁵ and agreed that the topic of treatment of corporate groups²⁶⁶ in insolvency was sufficiently developed to be referred to the Working Group for consideration, with post-commencement finance to be included as a component of that work.²⁶⁷ The Working Group was given the flexibility to determine the scope of the work on the topic and the form it should take.²⁶⁸ The Working Group commenced its work on the topic at its thirty-first session and, during the period under review, continued it through its thirty-seventh session.²⁶⁹ At its fortieth to forty-second sessions, the Commission considered the reports of the Working Group on the progress of its work on the topic.²⁷⁰ At its forty-second session, the Commission noted that the Working Group had agreed that the text resulting from the work on enterprise groups should form part three of the UNCITRAL Legislative Guide on Insolvency Law²⁷¹ and adopt the same format of recommendations and commentary.²⁷²

57. At its thirty-ninth session, the Commission requested the Secretariat to compile information about practice experience with respect to negotiating and using cross-border insolvency protocols.²⁷³ At its forty-first session, the Commission decided that the compilation prepared by the Secretariat²⁷⁴ should be considered by the Working Group.²⁷⁵ The Working Group considered the compilation at its thirty-fifth and thirty-sixth sessions²⁷⁶ and referred the resulting notes on cooperation,

Law on the work of its thirty-fifth session, 17-28 June 2002, chap.V, paras. 185-197; and GA (58) Suppl. No. 17 (A/58/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session, 30 June – 11 July 2003, chap. IV, paras. 172-197.

²⁶⁵ G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. VIII, paras. 207-210.

²⁶⁶ The term “corporate groups” was subsequently replaced by the term “enterprise groups”. G A (64) Suppl. No. 17 (A/64/17); Report of the United Nations Commission on International Trade Law on the work of its forty-second session, 29 June – 17 July 2009, chap. VI, para. 301.

²⁶⁷ G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. VIII, para. 209 (a) and (b).

²⁶⁸ *Ibid.*, para. 209 (a).

²⁶⁹ For the reports of the Working Group on the work of its thirty-first to thirty-seventh sessions, see A/CN.9/618, A/CN.9/622, A/CN.9/643, A/CN.9/647, A/CN.9/666, A/CN.9/671 and A/CN.9/686.

²⁷⁰ G A (62) Suppl. No. 17 (A/62/17 (Part One)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 25 June-12 July 2007, chap. VIII, paras. 185-189; G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. VI, paras. 317-318; and G A (64) Suppl. No. 17 (A/64/17); Report of the United Nations Commission on International Trade Law on the work of its forty-second session, 29 June – 17 July 2009, chap. VI, para. 304.

²⁷¹ See *supra*, para. [55]

²⁷² G A (64) Suppl. No. 17 (A/64/17); Report of the United Nations Commission on International Trade Law on the work of its forty-second session, 29 June – 17 July 2009, chap. VI, paras. 301-305.

²⁷³ G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. VIII, para. 209 (c).

²⁷⁴ See A/CN.9/654. For the earlier note by the Secretariat on the same subject, see A/CN.9/629.

²⁷⁵ G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. VI, para. 321. For the consideration of the subject at the fortieth session of the Commission, see G A (62) Suppl. No. 17 (A/62/17 (Part One)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 25 June-12 July 2007, chap. VIII, paras. 190-191.

²⁷⁶ For the reports of the Working Group on the work of those sessions, see A/CN.9/666 and A/CN.9/671.

communication and coordination in cross-border insolvency proceedings to the Commission for final review and adoption.²⁷⁷ At its forty-second session, the Commission adopted, on the basis of those notes, the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation.²⁷⁸

f. Assignment in receivables financing

58. As mentioned in *Supplement No. 9*,²⁷⁹ the draft convention on assignment of receivables in international trade was submitted by the Working Group on International Contract Practices to the Commission for its final review and adoption at its thirty-third session. At its thirty-third session, the Commission considered the draft convention and referred it back for further consideration by the Working Group.²⁸⁰ Upon completion of the work by the Working Group on the draft convention,²⁸¹ the Commission, at its thirty-fourth session, approved the draft convention²⁸² and submitted the draft to the General Assembly with the recommendation for the adoption, on the basis of that draft, a United Nations Convention on the Assignment of Receivables in International Trade.²⁸³ The General Assembly, by its resolution 56/81, adopted the Convention.²⁸⁴

g. Security interests

59. At its thirty-fourth session, the Commission established Working Group VI and entrusted it with the task of developing an efficient legal regime for security rights in goods involved in a commercial activity, including inventory.²⁸⁵ At its thirty-fifth session, the Commission confirmed that a work product should take the form of a legislative guide.²⁸⁶ The Working Group worked on the task during twelve sessions.²⁸⁷ The Commission, at its thirty-fifth to fortieth sessions, considered the reports of the Working Group on the progress of its work.²⁸⁸ At its thirty-ninth

²⁷⁷ A/CN.9/671, paras. 14 and 15.

²⁷⁸ G A (64) Suppl. No. 17 (A/64/17); Report of the United Nations Commission on International Trade Law on the work of its forty-second session, 29 June – 17 July 2009, chap. III, para. 24.

²⁷⁹ See *Repertory, Supplement No. 9*, vol. II, under Article 13 (1)(a), para. [40].

²⁸⁰ G A (55) Suppl. No. 17 (A/55/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-third session, 12 June -7 July 2000, chap. III, paras. 12-192.

²⁸¹ A/CN.9/486, para. 11.

²⁸² G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. III, paras. 13-200.

²⁸³ *Ibid.*, para. 200.

²⁸⁴ For the text of the Convention, see G A resolution 56/81, annex. See also *infra*, under Section II, Analytical Summary of Practice, B. The making of recommendations, para. [104].

²⁸⁵ G A (56) Suppl. No. 17 (A/56/17 and Corr.3); Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session, 25 June – 13 July 2001, chap. X, para. 358.

²⁸⁶ G A (57) Suppl. No. 17 (A/57/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session, 17-28 June 2002, chap. VI, para. 204.

²⁸⁷ For the reports of the Working Group on the work of its first to twelfth sessions, see A/CN.9/512, A/CN.9/531, A/CN.9/532, A/CN.9/543, A/CN.9/549, A/CN.9/570, A/CN.9/574, A/CN.9/588, A/CN.9/593, A/CN.9/603, A/CN.9/617 and A/CN.9/620. In the course of the work on the draft UNCITRAL Legislative Guide on Secured Transactions, two joint sessions of UNCITRAL Working Group VI and UNCITRAL Working Group V were held. For the reports of the joint sessions, see A/CN.9/535 and A/CN.9/550.

²⁸⁸ G A (57) Suppl. No. 17 (A/57/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session, 17-28 June 2002, chap. VI, paras. 198-204; GA (58) Suppl. No. 17 (A/58/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session, 30 June – 11 July 2003, chap. VIII, paras. 215-222; G A (59) Suppl. No. 17 (A/59/17); Report of the United Nations Commission on International

session, the Commission approved the substance of the recommendations of the draft legislative guide on secured transactions.²⁸⁹ At its fortieth session, the Commission considered a complete set of recommendations and commentaries of the draft legislative guide on secured transactions²⁹⁰ and adopted the UNCITRAL Legislative Guide on Secured Transactions.²⁹¹

60. At its fortieth session, the Commission entrusted the Working Group with the preparation of a supplement to the UNCITRAL Legislative Guide on Secured Transactions dealing with security rights in intellectual property.²⁹² The Working Group commenced its work on the supplement at its thirteenth session and, during the period under review, continued it through its sixteenth session.²⁹³ The Commission considered the reports of the Working Group on those sessions at its forty-first and forty-second sessions.²⁹⁴

h. Public procurement

61. At its thirty-seventh session, the Commission agreed that the UNCITRAL Model Law on Procurement of Goods, Construction and Services²⁹⁵ would benefit from being updated to reflect new practices, in particular those resulting from the use of electronic communications in public procurement.²⁹⁶ The Commission decided to entrust the drafting of proposals for the revision of the Model Law to its Working Group I.²⁹⁷ The Working Group commenced its work at its sixth session and, during

Trade Law on the work of its thirty-seventh session, 14 – 25 June 2004, chap. VII, paras. 73-78; G A (60) Suppl. No. 17 (A/60/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session, 4 – 15 July 2005, chap. VII, paras. 185-187; G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. III, paras. 13-86; G A (62) Suppl. No. 17 (A/62/17 (Part One)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 25 June-12 July 2007, chap. III, paras. 14-162; and G A (62) Suppl. No. 17 (A/62/17 (Part Two)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 10 – 14 December 2007, chap. III, paras. 14-99.

²⁸⁹ G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. III, paras. 13-78.

²⁹⁰ G A (62) Suppl. No. 17 (A/62/17 (Part One)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 25 June-12 July 2007, chap. III, paras. 14-162; and G A (62) Suppl. No. 17 (A/62/17 (Part Two)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 10 – 14 December 2007, chap. III, paras. 14-99.

²⁹¹ G A (62) Suppl. No. 17 (A/62/17 (Part Two)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 10 – 14 December 2007, chap. III, para. 100.

²⁹² G A (62) Suppl. No. 17 (A/62/17 (Part One)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 25 June-12 July 2007, chap. III, para. 162.

²⁹³ For the report of the Working Group on the work of its thirteenth to sixteenth sessions, see A/CN.9/649, A/CN.9/667, A/CN.9/670 and A/CN.9/685.

²⁹⁴ G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. VII, paras. 322-326; and G A (64) Suppl. No. 17 (A/64/17); Report of the United Nations Commission on International Trade Law on the work of its forty-second session, 29 June – 17 July 2009, chap. VII, paras. 309-321.

²⁹⁵ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1)(a), paras. [33 and 34].

²⁹⁶ G A (59) Suppl. No. 17 (A/59/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session, 14 – 25 June 2004, chap. VIII, para. 81.

²⁹⁷ *Ibid.*, para. 82.

the period under review, continued it through its seventeenth session.²⁹⁸ The Commission considered the reports of the Working Group on the work of those sessions at its thirty-eighth to forty-second sessions.²⁹⁹ At its forty-second session, the Commission considered the draft revised model law,³⁰⁰ concluded that the revised Model Law was not ready for adoption at that session of the Commission and requested the Working Group to continue its work on the review of the Model Law.³⁰¹

i. Rule of law in commercial relations

62. During the period under review, in response to invitations by the General Assembly,³⁰² the Commission submitted to the General Assembly its comments on its role in promoting the rule of law at the national and international levels.³⁰³

6. PREPARATORY COMMISSION FOR THE INTERNATIONAL
CRIMINAL COURT

63. During the period under consideration, the Preparatory Commission for the International Criminal Court continued its efforts aiming notably at the preparation of practical arrangements for the establishment and coming into operation of the Court, as summarized in Supplement No. 9.³⁰⁴

64. In accordance with resolution 54/105 of the General Assembly, the Preparatory Commission held three sessions in 2000 in order to carry out the mandate contained in resolution F of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court. At the 23rd plenary meeting, on 30 June 2000, the Commission adopted its report containing the finalized draft text of the Rules of Procedure and Evidence³⁰⁵ and the

²⁹⁸ For the reports of the Working Group on the work of its sixth to seventeenth sessions, see A/CN.9/568, A/CN.9/575, A/CN.9/590, A/CN.9/595, A/CN.9/615, A/CN.9/623, A/CN.9/640, A/CN.9/648, A/CN.9/664, A/CN.9/668, A/CN.9/672 and A/CN.9/687.

²⁹⁹ G A (60) Suppl. No. 17 (A/60/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session, 4 – 15 July 2005, chap. IV, paras. 168-172; G A (61) Suppl. No. 17 (A/61/17); Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session, 19 June – 7 July 2006, chap. V, paras. 188-192; G A (62) Suppl. No. 17 (A/62/17 (Part One)); Report of the United Nations Commission on International Trade Law on the work of its fortieth session, 25 June-12 July 2007, chap. IV, paras. 163-170; G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. IV, paras. 299-307; and G A (64) Suppl. No. 17 (A/64/17); Report of the United Nations Commission on International Trade Law on the work of its forty-second session, 29 June – 17 July 2009, chap. IV, paras. 25-48.

³⁰⁰ G A (64) Suppl. No. 17 (A/64/17); Report of the United Nations Commission on International Trade Law on the work of its forty-second session, 29 June – 17 July 2009, chap. IV, paras. 49-285.

³⁰¹ *Ibid.*, paras. 283 and 284.

³⁰² G A resolution 62/70, para. 3; G A resolution 63/128, para. 7; and G A resolution 64/116, para. 9.

³⁰³ G A (63) Suppl. No. 17 (A/63/17 and Corr.1); Report of the United Nations Commission on International Trade Law on the work of its forty-first session, 16 June – 3 July 2008, chap. XVI, para. 386; and G A (64) Suppl. No. 17 (A/64/17); Report of the United Nations Commission on International Trade Law on the work of its forty-second session, 29 June – 17 July 2009, chap. XVII, paras. 412-420.

See also *infra*, under Section II, Analytical Summary of Practice, B. The making of recommendations, para. [104].

³⁰⁴ See *Repertory, Supplement No. 9, vol. II*, under Article 13(1)(a), paras. [59-62].

³⁰⁵ PCNICC/2000/1/Add.1.

finalized text of the Elements of Crimes.³⁰⁶ At its fifty-fifth session, the General Assembly, in its resolution 55/155, welcomed the important work accomplished by the Preparatory Commission in the completion of the part of the mandate relating to the draft texts of the rules of procedure and evidence and the elements of crimes and further requested the Secretary-General to reconvene the Preparatory Commission in 2001 to continue to carry out its mandate.³⁰⁷

65. The Preparatory Commission held two sessions in 2001 and adopted the report on its sixth to eighth sessions, containing the draft texts of the Relationship Agreement between the Court and the United Nations, the Financial Regulations, the Agreement on the Privileges and Immunities of the Court and the Rules of Procedure of the Assembly of States Parties.³⁰⁸ In its resolution 56/85 adopted at its fifty-sixth session, the General Assembly welcomed the important work accomplished by the Preparatory Commission in the completion of a great number of parts of its mandate and requested the Secretary-General to reconvene it in 2002.³⁰⁹

66. The Preparatory Commission held two sessions in 2002 and adopted the report on its ninth and tenth sessions, containing notably the draft text of the basic principles governing a headquarters agreement to be negotiated between the Court and the host country, the budget for the first financial year, as well as the proposals pursuant to resolution F of the Final Act for a provision on aggression, including the definition and Elements of Crimes of aggression and the conditions under which the International Criminal Court shall exercise its jurisdiction with regard to this crime.³¹⁰ By its resolution 57/23, the General Assembly welcomed the important work accomplished by the Preparatory Commission in completing its mandate.³¹¹ Further to the completion of the work of the Preparatory Commission, the adoption of normative texts pertaining to the International Criminal Court is of the competence of the Assembly of States Parties to the Rome Statute of the International Criminal Court, which held its first session from 3 to 10 September 2002.

7. AD HOC COMMITTEE ESTABLISHED BY GENERAL ASSEMBLY RESOLUTION 51/210 OF 17 DECEMBER 1996

67. During the period under consideration, the Ad Hoc Committee established by General Assembly's resolution 51/210 of 17 December 1996 continued its efforts aimed at the elaboration of an international convention for the suppression of acts of nuclear terrorism and of a comprehensive convention on international terrorism.³¹²

68. The Ad Hoc Committee met six times during the period under review to consider the elaboration of a draft international convention for the suppression of acts

³⁰⁶ PCNICC/2000/1/Add.2.

³⁰⁷ G A resolution 55/155, paras. 3-4.

³⁰⁸ PCNICC/2001/1 and Adds. 1-4.

³⁰⁹ G A resolution 56/85, paras. 3-4.

³¹⁰ PCNICC/2002/1 and Adds.1 and 2.

³¹¹ G A resolution 57/23, para. 3.

³¹² See *Repertory, Supplement No. 9, vol. II*, under Article 13(1)(a), paras. [66-70].

of nuclear terrorism.³¹³ At its ninth session, the Ad Hoc Committee, working in coordination with the Working Group of the Sixth Committee³¹⁴, finalized the draft international convention and decided to recommend to the General Assembly the adoption of a resolution containing in its annex the draft International Convention for the Suppression of Acts of Nuclear Terrorism.³¹⁵ At its fifty-ninth session, the General Assembly, by its resolution 59/290, adopted the International Convention for the Suppression of Acts of Nuclear Terrorism, annexed to the resolution, requested the Secretary-General to open the Convention for signature and called upon all States to become Parties to the Convention.³¹⁶

69. During the period under consideration the Ad Hoc Committee, working in coordination with the Sixth Committee of the General Assembly³¹⁷, continued its efforts aimed at the elaboration of a comprehensive convention on international terrorism and its discussion concerning the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.³¹⁸

8. AD HOC COMMITTEE ON THE SCOPE OF LEGAL PROTECTION UNDER THE CONVENTION ON THE SAFETY OF THE UNITED NATIONS AND ASSOCIATED PERSONNEL

70. At its fifty-fifth session, the General Assembly, by its resolution 55/175, took note of the report of the Secretary-General on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel³¹⁹, and decided that the Sixth Committee should consider that report.³²⁰ The Sixth Committee examined the question during the fifty-sixth session, and acknowledged that the regime established by the Convention on the Safety of the United Nations and Associated Personnel adopted in 1994 should be strengthened, with a view to providing greater protection, particularly to humanitarian workers not closely connected to an United Nations operation and to locally recruited personnel.³²¹ Further, at its fifty-sixth session, the General Assembly, by its resolution 56/594, decided to establish an Ad Hoc Committee open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy

³¹³ See the reports of the Ad Hoc Committee, GA (55), Suppl. No. 37, A/55/37; GA (56), Suppl. No. 37, A/56/37; GA (57), Suppl. No. 37, A/57/37; GA (58), Suppl. No. 37, A/58/37; GA (59) Suppl. No. 37, A/59/37; GA (60) Suppl. No. 37, A/60/37.

³¹⁴ See the reports of the Working Group of the Sixth Committee for the period under consideration: A/C.6/55/L.2; A/C.6/56/L.9; A/C.6/57/L.9; A/C.6/58/L.10; A/C.6/59/L.10.

³¹⁵ Report of the Ad Hoc Committee, Suppl. No. 37, A/60/37, para. 19.

³¹⁶ G A resolution 59/290, paras. 1-2 and annex.

³¹⁷ A/C.6/55/L.2; A/C.6/56/L.9; A/C.6/57/L.9; A/C.6/58/L.10; A/C.6/59/L.10; A/C.6/60/L.6; A/C.6/61/SR.21 – Oral; A/C.6/62/SR.16-Oral; A/C.6/63/SR.14-Oral; A/C.6/64/SR.14-Oral.

³¹⁸ See the reports of the Ad Hoc Committee, GA (55), Suppl. No. 37, A/55/37; GA (56), Suppl. No. 37, A/56/37; GA (57), Suppl. No. 37, A/57/37; GA (58), Suppl. No. 37, A/58/37; GA (59) Suppl. No. 37, A/59/37; GA (60) Suppl. No. 37, A/60/37; GA (61) Suppl. No. 37, A/61/37; GA (62) Suppl. No. 37, A/62/37; GA (63) Suppl. No. 37, A/63/37; GA (64) Suppl. No. 37, A/64/37.

³¹⁹ A/55/637.

³²⁰ G A resolution 55/175, para. 20.

³²¹ A/C.6/56/SR.4-6 and 27.

Agency to consider the recommendations made by the Secretary-General in his report on measures to strengthen and enhance the protective legal regime for the United Nations and associated personnel.³²²

71. The Ad Hoc Committee held its first session in 2002 and was later reconvened every year until 2005³²³ by the General Assembly.³²⁴ At the fifty-eighth session of the General Assembly, it was decided that the work of the Ad Hoc Committee should continue in the framework of a working group of the Sixth Committee.³²⁵ The Working Group met three times between 2003 and 2005.³²⁶ At its last session, convened between 4 and 10 October 2005, during the sixtieth session of the General Assembly, the Working Group made substantial progress towards finalization of a text of the Protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel. Further consultations were conducted by the Chairman of the Working Group which led to the finalization of the text in the Sixth Committee. By its resolution 60/42, the General Assembly adopted, on the basis of the report of the Sixth Committee³²⁷, the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, which was annexed to the resolution, and invited States to become parties to the Optional Protocol.³²⁸

9. AD HOC COMMITTEE ON AN INTERNATIONAL CONVENTION AGAINST THE REPRODUCTIVE CLONING OF HUMAN BEINGS

72. The General Assembly, by its resolution 56/93, decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the elaboration of an international convention against the reproductive cloning of human beings.³²⁹ The Ad Hoc Committee met once in 2002, and, pursuant to resolution 56/93³³⁰, the session opened with an exchange of information and technical assessments provided by experts on genetics and bioethics.³³¹ As recommended by the General Assembly³³², the work of the Ad Hoc Committee continued within the framework of a working group of the Sixth Committee, which met during the fifty-eighth session of the General Assembly.³³³ By its decision 59/547, the General Assembly decided to establish a Working Group to finalize the text of a United Nations declaration on human cloning.³³⁴ Having considered the report of the Working Group³³⁵, the Sixth Committee of the General Assembly

³²² G A resolution 56/89, para. 7.

³²³ See the reports of the Ad Hoc Committee : A/57/52 ; A/58/52 ; A/59/52 ; A/60/52 and Corr.1 (French only).

³²⁴ GA resolution 57/28, para. 8 ; G A resolution 58/82, para. 11 ; G A resolution 59/47, para. 11.

³²⁵ G A resolution 58/82, para. 11.

³²⁶ See reports of the Working Group: A/C.6/58/L.16 and Corr1 ; A/C.6/59/L.9 ; A/C.6/60/L.4.

³²⁷ A/60/518.

³²⁸ G A resolution 60/42, paras. 1-2 and annex. The Declaration was adopted by a recorded vote of 84 in favour to 34 against, with 37 abstentions.

³²⁹ G A resolution 56/93, para. 1.

³³⁰ *Ibid.*, para. 3.

³³¹ See report of the Ad Hoc Committee: A/57/51.

³³² G A resolution 56/93, para. 3.

³³³ See report of the Working Group: A/C.6/58/L.9.

³³⁴ G A decision 59/547.

³³⁵ A/C.6/59/L.26.

adopted its report containing in its annex the draft United Nations Declaration on Human Cloning.³³⁶ By its resolution 59/280, the General Assembly approved the United Nations Declaration on Human Cloning, the text of which was annexed to the resolution.³³⁷

10. AD HOC COMMITTEE ON CRIMINAL ACCOUNTABILITY OF UNITED NATIONS OFFICIALS AND EXPERTS ON MISSION

73. At its fifty-ninth session, further to a report of the Secretary-General concerning sexual exploitation and abuse by United Nations peacekeeping personnel, which recommended, in particular, “that the Secretary-General establish a group of experts to study the issue and make recommendations to the General Assembly on whether an international convention or other means could be used to ensure that United Nations staff and experts on mission who commit defined crimes in peacekeeping areas are held criminally accountable for their actions”,³³⁸ the General Assembly, by its resolution 59/300, endorsed the proposals, recommendations and conclusions of the Special Committee on Peacekeeping Operations that a group of legal experts be established to provide advice on the best way to proceed so as to ensure that United Nations staff and experts on mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized, in accordance with due process.³³⁹ By its resolution 61/29, the General Assembly decided to establish an Ad Hoc Committee for the purpose of considering the report of the Group of Legal Experts established by General Assembly resolution 59/300, in particular its legal aspects.³⁴⁰

74. The Ad Hoc Committee met in 2007³⁴¹, and further in 2008³⁴², having been reconvened by General Assembly resolution 62/63.³⁴³ The work of the Ad Hoc Committee continued within the framework of a working group of the Sixth Committee, which met at the sixty-second to sixty-fourth sessions of the General Assembly.³⁴⁴ During the sixty-second session, the Secretariat transmitted a note on the topic to the General Assembly.³⁴⁵ Having considered the report of the Group of Legal Experts, the report of the Ad Hoc Committee, the note of the Secretary-General, as well as a report of the Secretary-General on the topic³⁴⁶, the General Assembly, by its resolutions 63/119 and 64/110, urged States to take several measures, including with respect to the establishment of jurisdiction, particularly over crimes of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, and also requested the Secretary-General to take certain actions, with a view

³³⁶ A/59/516/Add.1.

³³⁷ G A resolution 59/280, annex.

³³⁸ See report of the Secretary-General, A/59/710, para. 93.

³³⁹ G A resolution 59/300, para. 2.

³⁴⁰ G A resolution 61/29, para. 1.

³⁴¹ See report of the Ad Hoc Committee : A/62/54.

³⁴² See report of the Ad Hoc Committee : A/63/54.

³⁴³ G A resolution 62/63, para. 7.

³⁴⁴ See reports of the Working Group of the General Assembly: A/C.6/62/SR.17 – oral; A/C.6/63/SR.14 – oral; A/C.6/64/SR.14 – oral.

³⁴⁵ Note by the Secretariat A/62/329.

³⁴⁶ A/63/260 and Add.1.

to ensuring that crimes by United Nations officials and experts on mission do not go unpunished and that the perpetrators of such crimes are brought to justice.³⁴⁷ In addition, the General Assembly decided to include the item in the provisional agenda of its sixty-fifth session.³⁴⁸

11. SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

75. During the period under review, the Special Committee, in accordance with relevant General Assembly resolutions³⁴⁹, continued, *inter alia*, its work on the questions of the maintenance of international peace and security and of the peaceful settlement of disputes between States³⁵⁰.

76. The Committee, pursuant to General Assembly resolutions 54/106, 55/156, 56/86, 57/24, 58/248 and 59/44, also continued to consider proposals concerning the status of the Trusteeship Council namely: to have it abolished, to retain it, or to assign to it new functions.³⁵¹ However, while General Assembly resolution 59/44 requested the Committee to continue to consider proposals concerning the status of the Trusteeship Council³⁵², its subsequent resolutions did not contain such a request. During the 2006 session of the Special Committee, references were made to paragraph 176 of the 2005 World Summit Outcome (General Assembly resolution 60/1), in which the General Assembly recommended that, considering that the Trusteeship Council “no longer meets and has no remaining functions”, Chapter XIII of the United Nations Charter and references to the Council in Chapter XII be deleted. While support was expressed for such a deletion, the point was also made that the amendments to the Charter should be considered in the overall context of the reform of the Organization and should be dealt with cautiously.³⁵³ The Committee, at its subsequent sessions, did not consider the status of the Trusteeship Council. However, General Assembly resolution 60/23 introduced a provision requesting the Committee to “consider, as appropriate, any proposal referred to it by the General Assembly in the implementation of the decisions of the High-level Plenary Meeting of the sixtieth session of the Assembly in September 2005 that concern the Charter and any amendments thereto”³⁵⁴. This request was contained in its subsequent resolutions 61/38, 62/69, 63/127 and 64/115.

³⁴⁷ G A resolution 63/119 ; GA resolution 64/110.

³⁴⁸ G A resolution 64/110, para. 18.

³⁴⁹ G A resolutions 49/58, 50/51, 50/52, 51/208, 51/209, 52/161, 52/162, 53/106, 53/107, 54/106, 54/107, 55/156, 55/157, 56/86, 56/87, 57/24, 57/25, 58/248, 58/80, 59/44, 59/45, 60/23, 61/38, 62/69, 63/127 and 64/115.

³⁵⁰ The issues on the agenda of the Special Committee and the results of its work also continued to be discussed in the framework of the Sixth Committee under agenda items entitled “Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization”.

³⁵¹ For previous work on the proposal see *Repertory, Supplement No.9*, vol. II, under Article 13(1)(a), para. [72]. See also G A (55), Suppl. No. 33, A/55/33, paras. 156-160; G A (56), Suppl. No. 33, A/56/33, paras. 252-260; G A (57), Suppl. No. 33, A/57/33, paras. 163-166; G A (58), Suppl. No. 33, A/58/33, para. 170; G A (59), Suppl. No. 33, A/59/33, paras. 99-100; G A (60), Suppl. No. 33, A/60/33, para. 61; and G A (61), Suppl. No. 33, A/61/33, para. 53.

³⁵² See G A resolution 59/44, para. 3(d).

³⁵³ See G A (61), Suppl. No. 33, A/61/33, para. 53.

³⁵⁴ See G A resolution 60/23, para. 3(d).

77. In the context of the *maintenance of international peace and security*, the Committee, at its 2009 session completed its consideration of the proposal on the introduction and implementation of sanctions imposed by the United Nations.³⁵⁵ The Assembly, at its sixty-fifth session in 2009, took note of the document entitled “Introduction and implementation of sanctions imposed by the United Nations” as set out in the annex to the resolution.³⁵⁶

78. In the context of the *maintenance of international peace and security*, the Committee, at its 2008 session completed its consideration of the proposal on the fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations.³⁵⁷ At the 2008 session of the Special Committee, the sponsor delegation, the Russian Federation, referred to the working paper entitled “Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations” and to paragraph 35 of the 2007 report of the Special Committee (A/62/33) containing a recommendation of the Committee inviting the Chair of the Sixth Committee to bring the sections of the reports of the Special Committee referring to peacekeeping operations to the attention of the Chairman of the Fourth Committee. The sponsor delegation pointed out that neither the Sixth Committee nor the Assembly had objected to that recommendation.³⁵⁸ The Assembly, at its sixty-first session in 2008, noted that the Special Committee decided not to keep on its agenda the topic relating to the consideration of the working paper submitted by the Russian Federation, entitled “Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations.”³⁵⁹

79. In 2000-2009 the Committee, as requested by the Assembly³⁶⁰, also continued to discuss, *inter alia*, proposals relating to the strengthening of the role of the United Nations in the maintenance of international peace and security,³⁶¹ the strengthening of the role of the Organization and enhancing its effectiveness, including a revised working paper submitted by the Libyan Arab Jamahiriya at the 2002 session on the strengthening of certain principles concerning the impact and application of sanctions,³⁶² a further revised working paper,³⁶³ introduced by Cuba during the 2nd

³⁵⁵ For previous work on the proposal see *Repertory, Supplement No.9*, vol. II, under Article 13 (1)(a), para. [74]. For the consideration of the proposal including the amendments to the text of the proposal, submitted at the 2000-2009 sessions of the Committee, see G A (55), Suppl. No. 33, A/55/33, paras. 50-97, G A (56), Suppl. No. 33, A/56/33, paras. 59-113, G A (57), Suppl. No. 33, A/57/33, paras. 51- 87, G A (58), Suppl. No. 33, A/58/33, paras. 37-126, G A (59), Suppl. No. 33, A/59/33, paras. 29-70, G A (60), Suppl. No. 33, A/60/33, paras. 26-37, G A (61), Suppl. No. 33, A/61/33, paras. 22-28, G A (62), Suppl. No. 33, A/62/33, paras. 20- 27, G A (63), Suppl. No. 33, A/63/33, paras. 14- 21.

³⁵⁶ See G A resolution 64/115, para. 2 and annex. See *Repertory, Supplement No.9*, vol. II, under Article 13(1)(a), para. [74]; and paras. [12 and 111] of this study.

³⁵⁷ For previous work on the proposal see *Repertory, Supplement No9*, vol. II, under Article 13 (1)(a), para. [74]. For the consideration of the proposal including the amendments to the text of the proposal, submitted at the 2000-2009 sessions of the Committee, see G A (55), Suppl. No. 33, A/55/33, paras. 98-111, G A (56), Suppl. No. 33, A/56/33, paras. 139-155, G A (57), Suppl. No. 33, A/57/33, paras. 115-126, G A (58), Suppl. No. 33, A/58/33, paras. 144-147, G A (59), Suppl. No. 33, A/59/33, paras. 76-80, G A (60), Suppl. No. 33, A/60/33, paras. 41-44, G A (61), Suppl. No. 33, A/61/33, paras. 31-33, G A (62), Suppl. No. 33, A/62/33, paras. 31-35, G A (63), Suppl. No. 33, A/63/33, paras. 31-33.

³⁵⁸ See G A (63), Suppl. No. 33, A/63/33, para. 32.

³⁵⁹ See G A resolution 63/127, para. 4.

³⁶⁰ See G A resolutions 54/106, 55/156, 56/86, 57/24, 58/248, 59/44, 60/23, 61/38, 62/69, 63/127 and 64/115.

³⁶¹ For previous work on the proposal see *Repertory, Supplement No. 9*, vol. II, under Article 13(1)(a), para. [73].

³⁶² A/AC.182/L.110/Rev.1; see A/57/33, para. 89. The working paper constituted a revision of the proposal submitted by the Libyan Arab Jamahiriya during the Committee’s 2001 session (A/AC.182/L.110 and Corr.1; see A/56/33, para. 116).

meeting of the Working Group of the Whole on 18 February 2009, on the proposal submitted by the same delegation at the 1997 session entitled “Strengthening of the role of the Organization and enhancing its effectiveness”;³⁶⁴ a revised proposal submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security;³⁶⁵ and a revised working paper submitted by Belarus and the Russian Federation at the 2005 session containing a revised version of a draft General Assembly resolution.³⁶⁶ In 2009 the Assembly requested the Committee to continue its consideration of the above proposals as well as relevant proposals which may be submitted to the Committee at its session in 2010 and to report on its work to the Assembly at its sixty-fifth session.³⁶⁷

80. In the context of the *peaceful settlement of disputes between States*, in 2000 and 2001 the Assembly requested the Committee to continue its consideration of the proposal on the establishment of a dispute settlement service offering or responding with its services early in disputes, draft resolution, entitled “Prevention and peaceful settlement of disputes,”³⁶⁸ and the proposals relating to the enhancement of the role of the International Court of Justice³⁶⁹. In 2002 the Assembly adopted resolution 57/26, entitled “Prevention and peaceful settlement of disputes” reaffirming the duty of all States, in accordance with the principles of the Charter, to use peaceful means to settle any dispute to which they are parties and the continuance of which is likely to endanger the maintenance of international peace and security, and encouraging States to settle their disputes as early as possible.³⁷⁰ Since 2002 the Assembly continued to request the Committee to keep the question of the peaceful settlement of disputes between States on its agenda.³⁷¹

81. In 2005 the Assembly recognized the important role of the International Court of Justice in adjudicating disputes among States and stressed the desirability of finding practical ways and means to strengthen the Court, taking into consideration, in particular, the needs resulting from its workload.³⁷² In 2006 the Assembly commemorated the sixtieth anniversary of the International Court of Justice and,

³⁶³ A/AC.182/L.93/Rev.1.

³⁶⁴ A/AC.182/L.93; see A/52/33 and Corr.1, para. 59. An addendum to the proposal was submitted at the 1998 session (A/AC.182/L.93/Add.1; see A/53/33, para. 84).

³⁶⁵ A/AC.182/L.99; see A/53/33, para. 98.

³⁶⁶ See A/60/33, para. 56. During the Committee’s 1999 session, Belarus and the Russian Federation submitted a working paper containing a draft General Assembly resolution (A/AC.182/L.104) in which it was recommended that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. At the same session, following discussions, the sponsors submitted a revised version of the draft resolution for future consideration (A/AC.182/L.104/Rev.1; see A/54/33, paras. 89-104). A further revised version was submitted at the 2001 session (A/AC.182/L.104/Rev.2; see A/56/33, para. 178).

³⁶⁷ G A resolution 64/115.

³⁶⁸ G A resolutions 55/156 and 56/86, para. 3(c). See also G A (55), Suppl. No. 33, A/55/33, paras. 126-155, G A (56), Suppl. No. 33, A/56/33, paras. 188-251 and G A (57), Suppl. No. 33, A/57/33, paras. 148-162. For previous work on the proposal see *Repertory, Supplement No.9*, vol. II, under Article 13 (1)(a), para. [76].

³⁶⁹ G A resolution 55/156, para. 3(c). For previous work on the proposal see *Repertory, Supplement No.9*, vol. II, under Article 13(1)(a), para. [76].

³⁷⁰ G A resolution 57/26, para. 2.

³⁷¹ G A resolutions 57/24, 58/248, 59/44, 60/23, para. 3(c) and 61/38, para. 4(c), 62/69, 63/127, para. 3(d), 64/115, para. 4(c).

³⁷² G A resolution 60/23, paras. 7 and 8.

recognizing the important role of the International Court of Justice, *inter alia*, stressed the desirability of finding practical ways and means to strengthen the Court, taking into consideration, in particular, the needs resulting from its workload; encouraged States to continue considering recourse to the Court by means available under its Statute, and called upon States that have not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute.³⁷³ In 2006- 2009 the Assembly continued to recognize the important role of the International Court of Justice in adjudicating disputes among States and taking note, consistent with Article 96 of the Charter, of the Court's advisory jurisdiction, to request the Secretary-General to distribute, in due course, the advisory opinions requested by the principal organs of the United Nations as official documents of the United Nations.³⁷⁴

82. In 1999 and 2000 the Assembly invited the Committee to continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations, to discuss how to offer its assistance to the working groups of the Assembly in this field and, in this regard, to consider ways and means of improving coordination between the Committee and other working groups dealing with the reform of the Organization, including the role of the Chairperson of the Committee for this purpose.³⁷⁵ In 2001-2003 the Assembly, in addition to inviting the Committee to continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the Organization, also took note of the readiness of the Committee, in the context of its consideration of the subject of assistance to working groups on the revitalization of the work of the United Nations and coordination between the Committee and other working groups dealing with the reform of the Organization, to provide, within its mandate, such assistance as may be sought at the request of other subsidiary bodies of the Assembly in relation to any issues before them.³⁷⁶ In 2004-2009 the Assembly continued to note the readiness of the Committee to provide such assistance at the request of other subsidiary bodies of the Assembly.³⁷⁷ In 2005-2009 the Assembly also requested the Committee to consider, as appropriate, any proposal referred to it by the Assembly in the implementation of the decisions of the High-level Plenary Meeting of the sixtieth session of the Assembly in September 2005 that concern the Charter and any amendments thereto.³⁷⁸

83. At the 2008 session of the Committee the representative of the Dominican Republic, on behalf of the Rio Group, introduced a proposal entitled "Consideration of the legal aspects of the reform of the United Nations", contained in document A/AC.182/L.126, dated 14 February 2008.³⁷⁹ While at its 2008 session the Committee

³⁷³ G A resolution 61/37.

³⁷⁴ G A resolutions 61/38, 63/127 and 64/115, para. 8, and 62/69, para.7.

³⁷⁵ G A resolutions 54/106 and 55/156, para. 5. See also G A (55), Suppl. No. 33, A/55/33, paras. 196-197.

³⁷⁶ G A resolutions 56/86, 57/24, paras. 5 and 6; 58/248, paras. 4 and 5. See also G A (56), Suppl. No. 33, A/56/33, paras. 294-307, G A (57), Suppl. No. 33, A/57/33, paras. 194-198; G A (58), Suppl. No. 33, A/58/33, paras. 206-209.

³⁷⁷ G A resolutions 59/44, 60/23, 62/69, paras. 4 and 5; 61/38, 63/127, 64/115, paras. 5 and 6. See also G A (59), Suppl. No. 33, A/59/33, para. 116; G A (60), Suppl. No. 33, A/60/33, paras.75-77; G A (61), Suppl. No. 33, A/61/33, paras. 74 and 75.

³⁷⁸ G A resolutions 60/23, para. 3(d); 61/38, para. 4 (d), 62/69, 63/127, para. 3(e); 64/115, para.4(d). See also G A (61), Suppl. No. 33, A/61/33, paras. 74 and 75, G A (62), Suppl. No. 33, A/62/33, paras. 60 and 61, G A (63), Suppl. No. 33, A/63/33, paras. 56-63.

³⁷⁹ G A (63), Suppl. No. 33, A/63/33, paras. 56-63.

decided to keep the above-mentioned proposal on its agenda,³⁸⁰ at its 2009 session the Committee decided not to keep it on its agenda³⁸¹.

12. PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER

84. The General Assembly, in its decision 58/522, took note of the consideration of the item entitled “Progressive development of the principles and norms of international law relating to the new international economic order”, and noted that this question could be considered in the future.³⁸²

13. COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

85. During the period under review, the General Assembly, in its resolutions 55/122, 56/51, 57/116, 58/89, 59/116, 60/99, 61/111, 62/217, 63/90 and 64/86, continued to encourage the work on topics relating to the development and codification of the law of outer space on the basis of proposals by States and the reports submitted by the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee on topics noted in *Supplement No. 9*³⁸³. In the same resolutions, the General Assembly continued to reaffirm the importance of international cooperation in developing the rule of law, including the relevant norms of space law and their important role in international cooperation for the exploration and use of outer space for peaceful purposes, and of the widest possible adherence to international treaties that promote the peaceful uses of outer space in order to meet emerging new challenges, especially for developing countries³⁸⁴. Also in these resolutions the General Assembly noted the progress achieved in the further development of peaceful space exploration and applications as well as in various national and cooperative space projects, which contributes to international cooperation, and the importance of further developing the legal framework to strengthen international cooperation in this field.³⁸⁵

86. In its resolutions 55/122³⁸⁶ and 56/51³⁸⁷ the General Assembly noted with satisfaction the agreement reached by the Legal Subcommittee on the question of the character and utilization of the geostationary orbit³⁸⁸ and the subsequent endorsement of that agreement by the Committee.³⁸⁹

³⁸⁰ *Ibid.*

³⁸¹ G A (64), Suppl. No. 33, A/64/33, paras. 55-59.

³⁸² For previous work on this issue see Repertory, *Supplement No.8*, vol. II., under Article 13 (1)(a), paras. [10 and 47] and Repertory, *Supplement No.9*, vol. II., under Article 13 (1)(a), paras. [15 and 77]; For the discussions in the Sixth Committee during the fifty-eighth session of the General Assembly see A/C.6/58/L.24.

³⁸³ See Repertory, *Supplement No. 9*, vol. II. Under Article 13(1)(a), paras. 16, 17.

³⁸⁴ See preambular paras. of these resolutions.

³⁸⁵ See preambular paras. of these resolutions.

³⁸⁶ G A resolution 55/122, para. 4.

³⁸⁷ G A resolution 56/51, para. 4.

³⁸⁸ See G A (55), Suppl.No.20, A/55/20, paras. 129 and 130.

³⁸⁹ See A/AC.105/738, paras. 45-47 and Annex III. In accordance with para. 8 (c) of Annex III, the Working Group under this agenda item suspended consideration of the issue of equitable access to the geostationary orbit and it has been convened only to consider matters relating to the definition and delimitation of outer space.

87. During the period under review, the General Assembly, in its resolutions 55/122, 56/51, 57/116, 58/89, 59/116, 60/99, 61/111, 62/217, 63/90 and 64/86 continued to urge States that have not yet become parties to the international treaties governing the uses of outer space to give consideration to ratifying or acceding to those treaties as well as incorporating them in their national legislation. In 2004, the General Assembly requested³⁹⁰ the Secretary-General to send to the Ministers for Foreign Affairs of States that had not yet become parties to the United Nations treaties on outer space the letter and document³⁹¹, as endorsed by the Legal Subcommittee, encouraging their States to participate in those treaties, and to send a similar letter to intergovernmental organizations that have not yet declared their acceptance of the rights and obligations under those treaties³⁹². The above letter and document, *inter alia*, stressed that “the development of...a corresponding international legal regime should be considered by States as a matter of priority”³⁹³ and that “States parties can participate in further law-making to develop the existing regime.”³⁹⁴

88. During the period under review the General Assembly reiterated that space debris is an issue of concern to all nations³⁹⁵. In this regard, by its resolution 62/217, the General Assembly endorsed “Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space”³⁹⁶, prepared by the Working Group on Space Debris of the Scientific and Technical Subcommittee, adopted by the Subcommittee³⁹⁷ and endorsed by the Committee.³⁹⁸ Though the Guidelines have been elaborated “taking into consideration the United Nations treaties and principles on outer space”³⁹⁹, they “are not legally binding under international law”⁴⁰⁰ and exceptions to their implementation “may be justified...by the provisions of the United Nations treaties and principles on outer space.”⁴⁰¹ Since the adoption of the Space Debris Mitigation Guidelines, in 2007, the General Assembly continues to invite Member States to implement them, through relevant national mechanisms.⁴⁰²

89. In the context of protection of outer space and Earth’s environment, the General Assembly welcomed⁴⁰³ the endorsement by the Committee⁴⁰⁴ of “Safety Framework for Nuclear Power Source Applications in Outer Space.”⁴⁰⁵ The Safety Framework was prepared by the Working Group on the Use of Nuclear Power Sources in Outer Space of the Scientific and Technical Subcommittee jointly with the International Atomic Energy Agency (IAEA). The Safety Framework “provides

³⁹⁰ See G A resolution 59/116, para. 4.

³⁹¹ A/AC.105/826, annex I, appendix I.

³⁹² The Secretariat retransmitted the letter in 2009, upon request made by the Working Group of the Legal Subcommittee on the Status and Application of the Five United Nations Treaties on Outer Space (see A/AC.105/935, Annex I, para. 7).

³⁹³ A/AC.105/826, appendix I, p.27.

³⁹⁴ *Ibid.*, p.29, para. 4.

³⁹⁵ See G A resolutions 55/122, 56/51, 57/116, 58/89, 59/116, 60/99, 61/111, 62/217, 63/90 and 64/86, preambular paras.

³⁹⁶ See G A (62), Suppl.No.20, (A/62/20), Annex and publication ST/SPACE/49.

³⁹⁷ See A/AC.105/890, para. 99.

³⁹⁸ See G A (62), Suppl.No.20, A/62/20, paras. 117 and 118.

³⁹⁹ See A/62/20, annex, para. 2.

⁴⁰⁰ *Ibid.*, para.3.

⁴⁰¹ *Ibid.*

⁴⁰² See G A resolution 63/90, para. 26 and 64/86, para. 14.

⁴⁰³ See G A resolution 64/86, para. 11.

⁴⁰⁴ See G A (64), Suppl.No.20, A/64/20, para. 138

⁴⁰⁵ See A/AC.105/934.

voluntary guidance and is not legally binding under international law.”⁴⁰⁶ Though the Framework has been “developed with due consideration of relevant principles and treaties,” it “does not supplement, alter or interpret any of those principles or treaties.”⁴⁰⁷

90. During the period under review, the General Assembly adopted a number of resolutions, which were aimed at facilitating adherence to and the application of international treaties on outer space law, harmonizing practices of States in the field of implementation of relevant international legal norms and recommendations.⁴⁰⁸ Such resolutions did not constitute an authoritative interpretation of or a proposed amendment to relevant conventions.⁴⁰⁹

14. LAW OF THE SEA

a. United Nations Convention on the Law of the Sea of 10 December 1982

91. During the period under review, the General Assembly, in the context of the item “oceans and the law of the sea”, repeatedly noted the strategic importance of the United Nations Convention on the Law of the Sea of 10 December 1982 (the Convention) as a framework for national, regional and global action in the marine sector.⁴¹⁰

⁴⁰⁶ See A/AC.105/934, Preface, page 2.

⁴⁰⁷ *Ibid.*

⁴⁰⁸ See G A resolutions: 59/115, preambular para. 4; 61/110, para. 8; 62/101, preambular paras. 7, 9 and 11, paras. 1, 2, 3 and 5; 58/90, preambular para. 2, paras. 1 and 2; 59/2, preambular paras. 1, 3 and 5, paras. 1, 5, 13 and 18.

⁴⁰⁹ See, in particular, G A resolutions: 59/115, preambular paras. 4 and 7, paras. 1 and 4; 62/101, preambular para. 6. In its resolution 59/115 the General Assembly elaborated on application of the concept of the “launching State”. By its resolution 61/110 the General Assembly established the United Nations Platform for Space-based Information for Disaster Management and Emergency Response. In its resolution 62/101, para. 6, the General Assembly provided recommendations on enhancing the practice of States and international intergovernmental organizations in registering space objects. Finally, the General Assembly continued to consider matters relating to the implementation of the recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III) and adopted two resolutions in this regard: 58/90 and 59/2.

⁴¹⁰ General Assembly resolution 55/7 of 30 October 2000, preambular para. 4. The General Assembly, as the body with sole responsibility, has considered the item “oceans and the law of the sea” in plenary without referring it to any of its main committees and, since 2003, has adopted annually two resolutions on the item. (see General Assembly resolution 49/28 of 6 December 1994, para. 12, in which the General Assembly decided “to undertake an annual review and evaluation of the implementation of the Convention and other developments relating to ocean affairs and the law of the sea”; General Assembly resolution 51/35 of 9 December 1996, para. 8, in which the General Assembly requested the Secretary-General to report biennially “on further developments relating to the conservation and management of straddling fish stocks and highly migratory fish stocks”. However, from 2001 the General Assembly has adopted an annual resolution on the agenda items “Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks”, until 2002, and thereafter on “Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments”) Reaffirming its decision to undertake an annual review and evaluation of the implementation of the Convention and other developments relating to ocean affairs and law of the sea (see General Assembly resolution 50/23 of 5 December 1995, preambular para. 8; General Assembly resolution 51/34 of 9 December 1996, para.14; General Assembly resolution 52/26 of 26 November 1997, para. 17; General Assembly resolution 53/32 of 24 November 1998, para 25; General Assembly resolution 54/31 of 24 November 1999, para. 32; General Assembly resolution 55/7 of 30 October 2000, para. 40; 56/12 of 28 November 2001, para. 47), the General Assembly decided to establish the United Nations Open-ended Informal Consultative on Oceans and Law of the Sea (the Consultative Process) in order to facilitate the annual review by the General Assembly, in an

92. The General Assembly in 2008 expressed its support for the efforts to address the problem of piracy and armed robbery at sea, taken at the global and regional levels. It also took note of the adoption by the Security Council of a number of resolutions dealing with the situation off the coast of Somalia. However, the General Assembly noted that those resolutions apply only to the situation in Somalia and do not affect the rights, obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscored in particular the fact that they are not to be considered as establishing customary international law.⁴¹¹

b. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001)

93. In 2004, the General Assembly requested the Secretary-General to convene, pursuant to article 36 of the Agreement, a one-week review conference in the first part of 2006, with a view to assessing the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks.⁴¹² It encouraged States, individually and collectively, to implement the recommendations of the Review Conference on the Agreement, held in New York from 22 to 26 May 2006,⁴¹³ and to identify emerging priorities.⁴¹⁴

94. The General Assembly in 2006 encouraged States to initiate, as soon as possible, a process within the Food and Agriculture Organization of the United Nations to develop, as appropriate, a legally binding instrument on minimum standards for port State measures.⁴¹⁵ The General assembly also encouraged States to consider signing and ratifying, accepting, approving or acceding to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the Food and Agriculture Organization of the United Nations with a view to its early entry into force.⁴¹⁶

95. While various views supporting further progressive development and codification of the law of the sea in certain areas were expressed during the reporting period (in particular within the framework of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea), this did not result in any recommendations, decisions or resolutions of the General Assembly relating to

effective and constructive manner, of developments in ocean affairs and the law of the sea by considering the report of the Secretary-General on oceans and law of the sea and by suggesting particular issues to be considered by it, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and interagency levels should be enhanced (*see* General Assembly resolution 54/33).

⁴¹¹ General Assembly resolution 63/111, para. 66; General Assembly resolution 64/71, para. 77.

⁴¹² General Assembly resolution 59/25, para. 16.

⁴¹³ General Assembly resolution 62/177, para. 28.

⁴¹⁴ General Assembly resolution 63/112, para. 30.

⁴¹⁵ General Assembly resolution 61/105, paras. 43 and 51.

⁴¹⁶ General Assembly resolution 64/72, para. 55.

its functions in the field of the progressive development and codification of international law in the suggested areas⁴¹⁷.

15. COMMISSION ON HUMAN RIGHTS

96. The codification and progressive development in this area is discussed in more detail in the study on Article 55.

B. The making of recommendations

97. As observed in *Supplements Nos. 3-9*⁴¹⁸, many actions by the General Assembly and recorded above in Part II A “The initiation of studies”, can be said to be recommendations for the purpose of encouraging the codification of international law and its development. The initiation of studies and making of recommendations are not necessarily activities, which are mutually exclusive. However, the stage of initiation is clearly passed when the preparatory work on a topic results in a final draft submitted by a subsidiary body to the General Assembly, and the action taken by the Assembly on a draft comes exclusively within the scope of “making a recommendation”.

98. With respect to the draft articles on nationality of natural persons in relation to the succession of States, the General Assembly, by its resolution 63/118, decided to include in the provisional agenda of its sixty-sixth session the item entitled “Nationality of natural persons in relation to the succession of States”, with the aim of examining the subject, including the question of the form that might be given to the draft articles.⁴¹⁹

⁴¹⁷ Thus, for instance, the view was expressed “that a new agreement should be negotiated under the auspices of UNCLOS to regulate the impact of exploration and exploitation of deep sea marine biodiversity for scientific and commercial purposes in areas beyond national jurisdiction. Such an instrument should promote an integrated, precautionary and ecosystem-based approach to high seas biodiversity protection.” (see Official Records of the General Assembly, Sixty-second Session, Supplement No. 169 (A/62/169), para.77); with reference to UNCLOS it was proposed “that the United Nations consider the possibility of developing an implementing agreement to ensure that flag States effectively discharged their obligations under the Convention, including with respect to the preservation and protection of the marine environment” (see Official Records of the General Assembly, Sixty-second Session, Supplement No. 169 (A/62/169), para.89). However, differing views were also expressed, such as: “Some delegations stated that they were not convinced of either the need for or desirability of a new international regime to protect marine genetic resources in areas beyond national jurisdiction, and highlighted the risks posed in inhibiting research. They stated that they would oppose a regime that might interfere with high seas freedoms. They noted that the existing legal framework provided by the Convention and other relevant instruments offered the necessary flexibility for the conservation and sustainable use of marine genetic resources and that those instruments should be implemented at national and international levels” (see Official Records of the General Assembly, Sixty-second Session, Supplement No. 169 (A/62/169), para.79); “It was also stressed by some delegations that the Consultative Process was not an authoritative forum for the progressive development of the law of the sea...” (See Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 131 (A/64/131), para.68).

⁴¹⁸ See *Repertory, Supplement No.3*, vol. I, under Article 13 (1)(a), paras.48-49; *Supplement No.4*, vol. I, under Article 13 (1)(a), para. 69; *Supplement No.5*, vol. I, under Article 13 (1)(a), para.54; *Supplement No.6*, vol. II, under Article 13 (1)(a), para. 111; *Supplement No.7*, vol. II, under Article 13 (1)(a), para. [67]; *Supplement No.8*, vol. II, under Article 13 (1)(a), para. [71]; and *Supplement No.9*, vol. II, under Article 13 (1)(a), para. [94].

⁴¹⁹ G A resolution 63/118, para. 4.

99. Concerning the draft articles on responsibility of States for internationally wrongful acts, the General Assembly, by its resolution 62/62, entitled “Responsibility of States for internationally wrongful acts”, decided to examine, within the framework of a working group of the Sixth Committee, the question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles.⁴²⁰

100. The General Assembly, by its resolution 62/68 on “Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm”, decided to include the item in the provisional agenda of its sixty-fifth session.⁴²¹

101. With respect to the draft articles on diplomatic protection, the General Assembly, by its resolution 62/67, decided to include in the provisional agenda of its sixty-fifth session an item entitled “Diplomatic protection” and to further examine, within the framework of a working group of the Sixth Committee, in light of the written comments of Governments, as well as views expressed in the debates held at the sixty-second session of the General Assembly, the question of a convention on diplomatic protection, or any other appropriate action, on the basis of the above-mentioned articles.⁴²²

102. The General Assembly, by its resolution 63/124, decided to include in the provisional agenda of its sixty-sixth session an item entitled “The law of transboundary aquifers” with a view to examining, *inter alia*, the question of the form that might be given to the draft articles.⁴²³

103. During the period under consideration, the General Assembly adopted the United Nations Convention on Jurisdictional Immunities of States and Their Property and requested the Secretary-General, as depositary, to open it for signature.⁴²⁴

104. During the period under review, the General Assembly adopted the United Nations Convention on the Assignment of Receivables in International Trade,⁴²⁵ the United Nations Convention on the Use of Electronic Communications in International Contracts⁴²⁶ and the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.⁴²⁷ During the period under review, the General Assembly recommended that all States, when revising or adopting their legislation in the relevant fields, give due consideration to: the UNCITRAL Model Law on Electronic Signatures together with UNCITRAL Model Law on Electronic Commerce;⁴²⁸ the UNCITRAL Model Law on International Commercial Conciliation;⁴²⁹ the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects and the UNCITRAL Legislative Guide on Privately Financed

⁴²⁰ G A resolution 62/61, para. 4.

⁴²¹ G A resolution 62/68, para. 6.

⁴²² G A resolution 62/67, para. 4.

⁴²³ G A resolution 63/124, para. 6.

⁴²⁴ G A resolution 59/38, para. 3.

⁴²⁵ G A resolution 56/81, para. 2.

⁴²⁶ G A resolution 60/21, para. 2.

⁴²⁷ G A resolution 63/122, para. 2.

⁴²⁸ G A resolution 56/80, para. 2.

⁴²⁹ G A resolution 57/18, para. 1.

Infrastructure Projects;⁴³⁰ the UNCITRAL Legislative Guide on Insolvency Law;⁴³¹ the revised articles of the UNCITRAL Model Law on International Commercial Arbitration or the revised UNCITRAL Model Law on International Commercial Arbitration;⁴³² and the UNCITRAL Legislative Guide on Secured Transactions.⁴³³ The General Assembly also recommended that all States continue to consider implementation of the UNCITRAL Model Law on Cross-Border Insolvency⁴³⁴ and becoming party to the United Nations Convention on the Assignment of Receivables in International Trade.⁴³⁵ The General Assembly also recommended that the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation be given due consideration by judges, insolvency practitioners and other stakeholders involved in cross-border proceedings.⁴³⁶ The General Assembly expressed appreciation to the Commission for formulating and adopting the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958.⁴³⁷ During the period under review, the General Assembly invited the Commission to comment in its reports to the General Assembly, on its current role in promoting the rule of law⁴³⁸ and welcomed the discussions in the Commission on this subject and comments submitted to the General Assembly in response to its invitations.⁴³⁹

105. Further to the completion by the Preparatory Commission for the International Criminal Court of its mandate under resolution F of the Rome Conference, the General Assembly, by its resolution 57/23, decided to include in the provisional agenda of its fifty-eighth session an item entitled “International Criminal Court”.⁴⁴⁰

106. By its resolution 59/290, the General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism, requested the Secretary-General to open the Convention for signature at United Nations Headquarters in New York from 14 September 2005 to 31 December 2006 and called upon all States to sign and ratify, accept, approve or accede to the Convention.⁴⁴¹

107. By its resolution 60/42, the General Assembly adopted the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, requested the Secretary-General as depositary to open it for signature and invited States to become parties to that Optional Protocol.⁴⁴²

108. By its resolution 59/280, the General Assembly, recalling its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human

⁴³⁰ G A resolution 58/76, para. 4.

⁴³¹ G A resolution 59/40, para. 3.

⁴³² G A resolution 61/33, para. 1.

⁴³³ G A resolution 63/121, para. 3.

⁴³⁴ G A resolution 59/40, para. 4; and G A resolution 64/112, para. 4.

⁴³⁵ G A resolution 63/121, para. 4.

⁴³⁶ G A resolution 64/112, para. 3.

⁴³⁷ G A resolution 61/33, para. 2.

⁴³⁸ G A resolution 62/70, para. 3; G A resolution 63/128, para. 7; and G A resolution 64/116, para. 9.

⁴³⁹ G A resolution 63/120, para. 11; and G A resolution 64/111, para. 14.

⁴⁴⁰ G A resolution 57/23, para. 13.

⁴⁴¹ G A resolution 59/290, paras. 1-2.

⁴⁴² G A resolution 60/42, paras. 1-2.

Genome and Human Rights, approved the United Nations Declaration on Human Cloning.⁴⁴³

109. Concerning the item “Criminal accountability of United Nations officials and experts on mission”, the General Assembly, by its resolution 64/110, decided bearing in mind its resolutions 62/63 and 63/119, that the consideration of the report of the Group of Legal Experts, in particular its legal aspects, taking into account the views of Member States and the information contained in the note by the Secretariat, shall be continued during its sixty-seventh session in the framework of a working group of the Sixth Committee and decided to include the item in the provisional agenda of its sixty-fifth session.⁴⁴⁴

110. At its sixty-fifth session in 2009, in its resolution 64/115, the General Assembly took note of the document entitled “Introduction and implementation of sanctions imposed by the United Nations” as set out in the annex to the resolution⁴⁴⁵, in which it was pointed out, *inter alia*:

“... ”

“Sanctions should be carefully targeted in support of clear and legitimate objectives under the Charter and be implemented in ways that balance effectiveness to achieve the desired results against possible adverse consequences, including socio-economic and humanitarian consequences, for populations and third States.”⁴⁴⁶

111. At its fifty-seventh session in 2002, in its resolution 57/26, the General Assembly:

“... ”

“*Recalling* the various procedures and methods available to States for the prevention and the peaceful settlement of their disputes, including those provided for in Article 33 of the Charter, as well as monitoring, fact-finding missions, goodwill missions, special envoys, observers and good offices,”⁴⁴⁷

“... ”

“*Reaffirms* the duty of all States, in accordance with the principles of the Charter, to use peaceful means to settle any dispute to which they are parties and the continuance of which is likely to endanger the maintenance of international peace and security, and encourages States to settle their disputes as early as possible.”⁴⁴⁸

112. By its decision 58/522, the General Assembly, while taking note of the consideration of the item entitled “Progressive development of the principles and

⁴⁴³ G A resolution 59/280.

⁴⁴⁴ G A resolution 64/110, paras. 8 and 18.

⁴⁴⁵ See G A resolution 64/115, para. 2 and annex. See *Repertory, Supplement No.9*, vol. II, under Article 13(1)(a), para. [74]; and paras. [12 and 77] of this study.

⁴⁴⁶ G A resolution 64/115, annex, para. 1.

⁴⁴⁷ G A resolution 57/26, preambular para.7.

⁴⁴⁸ *Ibid.*, para. 2. See also paras. [13 and 78] of this study.

norms of international law relating to the new international economic order”, noted that this question could be considered in the future.⁴⁴⁹

113. The General Assembly in 2006 encouraged States to initiate, as soon as possible, a process within the Food and Agriculture Organization of the United Nations to develop, as appropriate, a legally binding instrument on minimum standards for port State measures.⁴⁵⁰ In 2009, it also encouraged States to consider signing and ratifying, accepting, approving or acceding to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the Food and Agriculture Organization of the United Nations with a view to its early entry into force.⁴⁵¹

114. The Assembly also kept on its agenda from 1995 to 2001, under the item on oceans and law of the sea, the sub-item entitled “Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks”.⁴⁵² In 2002, the agenda item was changed⁴⁵³ and since 2003 an annual resolution has been adopted under the item “Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments”.⁴⁵⁴

C. The meaning of “progressive development” and of “codification of international law”

1 AS SET FORTH IN THE STATUTE OF THE INTERNATIONAL LAW COMMISSION

115. The provisions of the Statute of the Commission explaining the meaning of the expressions “progressive development of international law” and “codification of international law” and providing the procedure for each of these two functions remained unchanged.

2. IN THE LIGHT OF THE PRACTICE OF THE INTERNATIONAL LAW COMMISSION

⁴⁴⁹ For previous work on this issue see Repertory, *Supplement No.8*, vol. II., under Article 13 (1)(a), paras. [10 and 47] and Repertory, *Supplement No.9*, vol. II., under Article 13 (1)(a), paras. [15 and 77]; for the discussions in the Sixth Committee during the fifty-eighth session of the General Assembly see A/C.6/58/L.24.

⁴⁵⁰ General Assembly resolution 63/112, paras. 43 and 51.

⁴⁵¹ General Assembly resolution 64/72, para. 55.

⁴⁵² General Assembly resolution 50/24, para. 7; General Assembly resolution 51/35, para. 10; General Assembly resolution 52/28, para. 11; General Assembly resolution 54/32, para. 15; General Assembly resolution 56/13, para. 20.

⁴⁵³ General Assembly resolution 57/143, para. 21.

⁴⁵⁴ General Assembly resolution 58/14; General Assembly resolution 59/25; General Assembly resolution 60/31; General Assembly resolution 61/105; General Assembly resolution 62/177; General Assembly resolution 63/112; General Assembly resolution 64/72; General Assembly resolution 65/38.

116. During the period under consideration, the Commission, at its fifty-second session, reaffirmed the criteria that should guide its decisions concerning the selection of the topics to be included in its long-term programme of work, i.e.:

- “(a) The topic should reflect the needs of States in respect of the progressive development and codification of international law;
- (b) The topic should be sufficiently advanced in stage in terms of State practice to permit progressive development and codification;
- (c) The topic is concrete and feasible for progressive development and codification

And

. . . the Commission should not restrict itself to traditional topics, but could also consider those that reflect new developments in international law and pressing concerns of the international community.”⁴⁵⁵

117. With respect to the decision to include the topic “Risks ensuing from fragmentation of international law” in its long-term programme of work, the Commission took note that this topic was different from other topics it considered so far.⁴⁵⁶ It was of the view that this topic involved nevertheless increasingly important issues relating to international law and that the Commission could make a contribution to the better understanding of the issues in this area.⁴⁵⁷ The Commission also took note that the method and the outcome of its work on this topic, while not falling directly within the normal form of codification, was well within the competence of the Commission and in accordance with its Statute.⁴⁵⁸

118. The General Assembly, by its resolution 62/70 on “The rule of law at the national and international level”, “convinced that the promotion of and respect for the rule of law at the national and international levels, as well as justice and good governance, should guide the activities of the United Nations and of its Member States”, invited the Commission to comment, in its report to the General Assembly, on its current role in promoting the rule of law.⁴⁵⁹

119. The Commission made the requested comment in its report of the sixtieth session.⁴⁶⁰ In its comments, the Commission presented its mission, the progressive development of international law and its codification, from the perspective of the concept of rule of law. In particular, it stressed that:

“In keeping with the mandate set out in Article 13 (1) (a) of the Charter of the United Nations, the Commission continues to promote the progressive development and codification of international law. In its current work, the Commission has sought to comply with requests from the General Assembly and is preparing draft treaty texts, guidelines and other instruments on a significant range of legal issues. For each of the topics on the current work programme, the Commission has adopted a systematic approach to the

⁴⁵⁵ *Yearbook of the International Law Commission, 2000, vol. II (Part two)*, para. 728.

⁴⁵⁶ *Ibid.*, para. 731.

⁴⁵⁷ *Ibid.*

⁴⁵⁸ *Ibid.*

⁴⁵⁹ G A resolution 62/70, para. 3.

⁴⁶⁰ *Official Records of the General Assembly, Sixty-third session, Supplement No.10 (A/63/10)*, paras. 341-346.

identification of the sources of law, paying particular attention to treaties, State practice, *opinion juris*, general principles, and judicial decisions of both national and international tribunals. Thus, in its current work, the Commission promotes the rule of law in international relations by applying generally accepted methods for the identification of the law: these methods give prominence to State actions and perceptions, while taking into account the practice of international organizations and, in appropriate instances, the increasing role of non-governmental organizations and individuals in world affairs.”⁴⁶¹

120. The Commission further noted that although reference can be made, in its work, to policy considerations on the part of international actors and the international community, it presupposes that the rule of law requires States, international organizations and other international entities to conduct their affairs with full deference to the law.⁴⁶² The Commission further pointed out that, for matters on its current agenda, it has been especially careful to ensure that the proposed rules reflect a balanced reconciliation of divergent State and non-State interests, having regard to established precedents.⁴⁶³ The Commission stressed that, for some matters on its agenda, sensitivity to the content of rules may also provide the Commission with the opportunity to take directly into account human rights considerations, such as the dignity and security of the individuals and fairness to individuals, in its formulation of draft rules.⁴⁶⁴ The Commission concluded by stating that the rule of law constitutes the essence of the Commission mission to guide the development and formulation of law.⁴⁶⁵

⁴⁶¹ *Ibid.*, para. 342.

⁴⁶² *Ibid.*, para. 343.

⁴⁶³ *Ibid.*, para. 344.

⁴⁶⁴ *Ibid.*

⁴⁶⁵ *Ibid.*, para. 346.