

ARTICLE 13(1)(a)

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

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Notes

ARTICLE 13(1)(a)

TEXT OF ARTICLE 13(1)(a)

Provision relating to the progressive development and codification of international law

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

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

INTRODUCTORY NOTE

1. The study of Article 13(1)(a) generally follows the pattern established in the *Repertory* and continued in *Supplements Nos. 1, 2, 3 and 4*, namely: A. The initiation of studies; B. The making of recommendations for the purpose of encouraging the progressive development of international law and its codification; and C. The meaning of "progressive development" and of "codification" of international law.

2. The present study includes those subjects dealt with by the International Law Commission and the United Nations Commission on International Trade Law, as well as those initiated through special methods, namely the establishment of *ad hoc* subsidiary bodies of the Sixth Committee of the General Assembly such as the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the *Ad Hoc* Committee on the Drafting of an International Convention against the Taking of Hostages. The present study also includes those topics dealt with by the Committee on the Peaceful Uses of Outer Space, the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and the Commission on Human Rights.

GENERAL SURVEY

3. In *Supplements Nos. 3 and 4*¹ it was noted that, in an important field, a separate procedure for the codification and progressive development of international law had been set in motion by the General Assembly. The codification and progressive development of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations was kept under review by the General Assembly itself and the Sixth Committee, with the assistance of *ad hoc* committees composed, not of experts appointed in their personal capacity, as in the case of the International Law Commission, but of Government representatives. During the period under review the above-mentioned procedure was continued.

4. As indicated in *Supplements Nos. 3 and 4*,² the General Assembly, at its twentieth session, had requested the newly re-constituted Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations to meet as soon as possible and to report to the General Assembly at its twenty-first session.³ The Committee met in 1966 and continued to do so every year, on the basis of successive General Assembly resolutions renewing its mandate,⁴ until the Assembly, in its resolution 2625 (XXV), adopted the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

5. By resolution 31/103, the General Assembly established an *Ad Hoc* Committee on the Drafting of an International Convention against the Taking of Hostages. The *Ad Hoc* Committee met in 1977 and 1978 and submitted its reports⁵ to the Assembly, which took note of them and decided, by resolutions 32/148 and 33/19, that the *Ad Hoc* Committee should

continue to draft at the earliest possible date an international convention against the taking of hostages.

6. At its twenty-third session in 1971, the International Law Commission adopted its final draft articles on the representation of States in their relations with international organizations. By resolution 2780 (XXVI) of 3 December 1971, the General Assembly expressed its desire that an international convention be elaborated and concluded expeditiously on the basis of the Commission's draft articles; by resolution 2966 (XXVII) of 14 December 1972 it decided to convene the international conference as soon as practicable; and by resolution 3072 (XXVIII) of 30 November 1973, it decided that such a conference would be held early in 1975 in Vienna. The United Nations Conference on the Representation of States in Their Relations with International Organizations⁶ was accordingly held in Vienna from 4 February to 14 March 1975. The Conference adopted the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character consisting of ninety-two articles as well as two resolutions relating, respectively, to the status of national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States, and to the application of the Convention in future activities of international organizations. These resolutions are annexed to the Final Act of the Conference.⁷ In accordance with the provisions of those resolutions, an item was placed on the agenda of the thirtieth session of the General Assembly entitled "Resolutions adopted by the United Nations Conference on the Representation of States in Their Relations with International Organizations: (a) Resolution relating to the observer status of national liberation movements recognized by the Organization of African Unity and/

or by the League of Arab States; (b) Resolution relating to the application of the Convention in future activities of international organizations." On the recommendation of its Sixth Committee, however, the Assembly has deferred the consideration of that item from session to session. The item was to be included again in the provisional agenda of the thirty-sixth session of the General Assembly in 1981.

7. At its twenty-sixth session in 1974, the International Law Commission adopted its final draft articles on succession of States in respect of treaties.⁸ By resolution 3496 (XXX) of 15 December 1975, the General Assembly decided to convene a conference of plenipotentiaries in 1977 to consider those draft articles and "to embody the results of its work in an international convention and such other instruments as it may deem appropriate". Pursuant to General Assembly resolution 31/18 of 24 November 1976, the United Nations Conference on Succession of States in Respect of Treaties met in Vienna from 4 April to 6 May 1977. The Conference approved a report recommending that the General Assembly decide to reconvene the Conference in the first half of 1978.⁹ Upon its consideration of that report, the General Assembly, by its resolution 32/47 of 8 December 1977, approved the convening of the resumed session of the Conference which was held at Vienna from 31 July to 23 August 1978. The Conference concluded the consideration of the draft articles and adopted, on 23 August 1978, the text of the Vienna Convention on Succession of States in Respect of Treaties.¹⁰

8. Noting the development of a pattern for the codification and progressive development of international law, *Supplements No. 3 and No. 4* made the following comment:

"The International Law Commission prepared a set of articles on a certain subject and submitted them with its recommendations to the General Assembly; the Assembly, after consideration, referred the draft to an international conference and the conference, after deliberations on the basis of the draft, adopted one or more conventions, protocols and resolutions. The effectiveness of the instruments resulting from that process would naturally depend on the acceptance accorded to them by the Member States and other States invited to become parties. Care was therefore taken in the preparation of the drafts to request legal material and written comments from Governments, as prescribed in the Statute of the International Law Commission. Furthermore, as preliminary drafts were usually presented in the yearly reports of the Commission to the General Assembly, representatives of the Member States had the opportunity in the Sixth Committee to express their opinions on the drafts at successive stages of preparation."¹¹

This pattern was followed during the period under review with respect to the codification and progressive development of the law of treaties. There was, however, a deviation from it in the case of the topic of crimes against internationally protected persons, including diplomatic agents, where the draft produced by the Commission was referred to a subsequent session of the Assembly itself, rather than to an international conference, with a view to the adoption of a convention.

9. In 1971, the International Law Commission decided that, if the General Assembly requested it to do so, it would prepare at its 1972 session a set of draft articles regarding such crimes as the murder, kidnapping and assaults upon diplomats and other persons entitled to special protection under international law.¹² The Assembly, by resolution 2780 (XXVI) of 3 December 1971, requested the Commission to study as soon as possible the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law with a view to preparing a set of draft articles dealing with offences committed against such agents and persons for submission to the Assembly at the earliest date which the Commission would

consider appropriate. At its twenty-fourth session, in 1972, the Commission, after an initial general discussion, set up a Working Group to review the problem involved and prepare a set of draft articles for submission to the Commission.¹³ This step, in contrast with the traditional procedure of appointing a Special Rapporteur to make a study of the subject and prepare draft articles, was based on the view of most of the members who participated in the general discussion that the subject was one of sufficient urgency and importance to justify the Commission adopting a more expeditious method of producing a set of draft articles for submission to the General Assembly at its twenty-seventh session. On the basis of reports prepared by the Working Group, the Commission provisionally adopted the draft of 12 articles, which it submitted to the Assembly as well as to Governments for comments.¹⁴ At its twenty-seventh session the Assembly, on the recommendation of the Sixth Committee, adopted resolution 2926 (XXVII) of 28 November 1972, deciding to consider at its twenty-eighth session the draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons with a view to the final elaboration of such a convention by the Assembly. It also invited States and the specialized agencies and interested intergovernmental organizations to submit their written comments and observations on the draft articles prepared by the Commission. At the twenty-eighth session of the General Assembly, in 1973, the Sixth Committee considered the provisions of the draft convention in two stages. In the first stage, it considered all the draft articles and the new articles proposed as well as the preamble and the final clauses and, except for article 9 which it decided to delete, referred them to a drafting committee either in their original form or in amended form, together with amendments submitted, as appropriate. In a second stage, it considered and adopted, in their original form or in amended form, the texts recommended by the drafting committee. The drafting committee was then entrusted with the co-ordination and further review of the text as a whole, before the Sixth Committee adopted it finally for recommendation to the Assembly. On 14 December 1973, the Assembly adopted the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, consisting of twenty articles, annexed to resolution 3166 (XXVIII).¹⁵

10. It was noted in *Supplement No. 2*¹⁶ that, regarding the draft Code of Offences against the Peace and Security of Mankind, the General Assembly, at its twelfth session, had by resolution 1186 (XII) decided to defer consideration of the question "until such time as the General Assembly takes up again the question of defining aggression". At its twenty-ninth session, the General Assembly approved the Definition of Aggression.¹⁷ The International Law Commission, in its report on the work of its twenty-ninth session (1977) referred to the advisability of the General Assembly giving consideration to the draft Code, including the possibility of a review by the Commission of the draft Code if the General Assembly so wished, having regard to the fact that the Definition of Aggression had now been approved by the General Assembly.¹⁸ At the thirty-second session of the General Assembly, the representatives of Barbados, Fiji, Mexico, Nigeria, Panama, Philippines and Syrian Arab Republic requested the inclusion in the agenda of the Assembly of an item entitled "Draft Code of Offences against the Peace and Security of Mankind".¹⁹ By resolution 33/97 the Assembly decided to request the Secretary-General to invite Member States and relevant international intergovernmental organizations to submit their comments and observations on the draft Code, including comments on the procedure to be adopted, and to prepare a report to be submitted to the General Assembly at its thirty-fifth session. It also decided to include the item in the provisional agenda of the thirty-fifth session and to accord it priority and the fullest possible consideration.

11. The practice, noted in previous *Supplements*,²⁰ of entrusting the Secretary-General with studies to supplement the work of the International Law Commission continued. In 1971, a working paper, entitled "Survey of International Law",²¹ was prepared by the Secretary-General in response to a request made by the Commission at its twenty-second session in connection with the revision of its long-term programme of work.²² A successor to a similar study made in 1948,²³ the 1971 study covered:

"the various topics into which international law as a whole may be decided, so as to permit an approximate side-by-side comparison to be made of the degree of codification achieved in different branches and at the same time to indicate, if only in the broadest terms or by implication, the scope of the work which remains to be done with respect to the codification and progressive development of international topics".²⁴

It was also noted that the study did not attempt to categorize the topics dealt with into those suitable for codification and those suitable for progressive development since that distinction, as the methodological basis for the approach to be taken

by the Commission, had not been maintained in the practice of the Commission.²⁵

12. The General Assembly continued to refer to the International Law Commission the study of topics of succession of States in respect of matters other than treaties, State responsibility, most-favoured-nation clauses and the question of treaties concluded between States and international organizations or between two or more organizations.²⁶ Topics initiated during the period under review, on the recommendation of the General Assembly, are listed below.²⁷

13. During the period under review the General Assembly, in its resolutions 2698 (XXV), 2838 (XXVI), 3106 (XXVIII), 3502 (XXX) and 32/146, continued the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law as established by resolution 2099 (XX).

14. By resolution 32/151 the General Assembly endorsed the recommendation of the International Law Commission for the strengthening of the Codification Division of the Office of Legal Affairs of the Secretariat. The Assembly reiterated this recommendation by its resolution 33/139.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The initiation of studies

1. INTERNATIONAL LAW COMMISSION

15. During the period under review the General Assembly initiated a few new studies to be undertaken by the International Law Commission for the purpose of encouraging the progressive development of international law and its codification. One was the study of the topic of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, requested by the General Assembly in resolution 2780 (XXVI) and brought to a conclusion two years later.²⁸

16. Another study was initiated by the Assembly in its resolution 31/76 when it requested the International Law Commission to study proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, which would constitute development and concretization of the Vienna Convention on Diplomatic Relations of 1961. By resolution 32/151 the Assembly endorsed the conclusions reached by the Commission with regard to the study of this topic.

17. With regard to State responsibility, the Assembly, in its resolution 3071 (XXVIII), recommended that the Commission, in addition to preparing draft articles on the responsibility of States for internationally wrongful acts, undertake a separate study of the topic of international liability for injurious consequences arising out of the performance of other activities.

18. By resolution 32/151 the Assembly invited the Commission, in the light of progress made on the draft articles on State responsibility for internationally wrongful acts, to commence work on the topics of international liability for injurious consequences arising out of acts not prohibited by international law and jurisdictional immunities of States and their property.

19. Recalling its resolution 1401 (XIV), which indicated the desirability of initiating preliminary studies on the legal problems relating to the utilization and use of international rivers, the Assembly, in 1970, recommended in its resolution 2669 (XXV) that the Commission should take up the study of the law of the non-navigational uses of international watercourses with a view to its progressive development and codification. By resolution 2780 (XXVI) the Assembly recommended that the Commission decide the priority to be

given to the topics; by resolution 2926 (XXVII) the Assembly noted that the Commission intended to decide such priority; and by resolution 3071 (XXVIII) the Assembly recommended that the Commission commence its work on the topic. By subsequent resolutions on the report of the International Law Commission, the Assembly continued to refer the topic to the Commission.

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

20. The General Assembly, in response to a need for the United Nations to play an active role in the harmonization and unification of international trade law, created the United Nations Commission on International Trade Law by resolution 2205 (XXI) of 17 December 1966.²⁹

21. In establishing the Commission, the General Assembly noted that "such action would be properly within the scope and competence of the Organization under the terms of Article 1, paragraph 3 and Article 13, and of Chapters IX and X of the Charter of the United Nations."³⁰ The Commission's terms of reference and the work programme established to fulfil its mandate are described in *Supplement No. 4*.³¹

22. With regard to the direction of the work of the Commission, the General Assembly, at its thirtieth session, adopted resolution 3494 (XXX) of 15 December 1975 on the report of the Commission's work during its eighth session. The resolution called upon the Commission: "to take account of the relevant provisions of the resolutions³² of the sixth and seventh special sessions of the General Assembly that lay down the foundations of the new international economic order bearing in mind the need for United Nations organs to participate in the implementation of those resolutions".

23. From its third session in 1970 until the eleventh session in 1978 the Commission dealt with four priority subjects which it considered central to international commercial transactions and the resolution of disputes arising from such transactions: international sale of goods, international payments, international commercial arbitration and international legislation in shipping.

a. *International sale of goods*

24. On the basis of a draft convention approved by the Commission, an international conference of plenipotentiaries

ries, on 12 June 1974, adopted the Convention on the Limitation Period in the International Sale of Goods (New York, 1974).³³

25. At its eleventh session, in 1978, the Commission approved the text of a draft Convention on Contracts for International Sale of Goods and recommended that the Assembly convene a conference to conclude a convention on the basis of that draft.³⁴

b. *International payments*

26. At its fourth session the Commission decided to proceed with work directed towards the preparation of uniform rules applicable to a special negotiable instrument for optional use in international transactions.³⁵ The Commission also carried out projects in co-operation with the International Computer Centre (ICC) in the following areas: bankers' commercial credits and contract guarantees.

c. *International legislation on shipping*

27. At its ninth session, in 1976, the Commission approved the text of the draft Convention on the Carriage of Goods by Sea and recommended that the General Assembly convene a conference to conclude a convention on the basis of that draft.³⁶ The United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) was concluded on 31 March 1978.³⁷

d. *International commercial arbitration*

28. The Commission at its ninth session considered a draft of arbitration rules for optional use in *ad hoc* arbitration prepared by the Secretary-General and adopted the UNCITRAL Arbitration Rules.³⁸ In resolution 31/98 of 15 December 1976, the General Assembly, convinced that the rules would make a significant contribution to harmonious international relations, recommended the use of the UNCITRAL Arbitration Rules in the settlement of disputes arising in the context of international commercial relations.

e. *Co-ordination*

29. Measures taken by the Commission to ensure collaboration with interested international organizations and to achieve co-ordination of work include consultations on specific topics, the opportunity for interested organizations to submit suggestions to the Commission, arrangements whereby observers of international organizations may attend sessions of the Commission, and reports on the current activities of international organizations related to the harmonization and unification of international trade law.

3. SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

30. At its twenty-fifth session, on the basis of the Special Committee's report,³⁹ the General Assembly approved the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the text of which was annexed to its resolution 2625 (XXV) of 24 October 1970. By this resolution the Assembly reaffirmed "the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States".

4. SPECIAL COMMITTEE ON THE QUESTION OF DEFINING AGGRESSION⁴⁰

5. WORKING GROUP ON THE RIGHT OF ASYLUM

31. It was noted in *Supplement No. 4* that, in 1967, the General Assembly, upon the recommendation of the Sixth Committee, adopted by resolution 2312 (XXII) the Declaration on Territorial Asylum.⁴¹ By resolution 3272 (XXIX), the Assembly in 1974 established a Group of Experts on the Draft Convention on Territorial Asylum composed of representatives of not more than twenty-seven States designated by the President of the Assembly after consultation with the different regional groups and on the basis of equitable geographical distribution.

32. Upon the recommendation of the Group of Experts and the Third Committee, the Assembly, by resolution 3456 (XXX), requested the Secretary-General, in consultation with the United Nations High Commissioner for Refugees, to convene a conference of plenipotentiaries to consider and adopt a Convention on Territorial Asylum.

6. QUESTION OF DIPLOMATIC ASYLUM

33. In accordance with General Assembly resolution 3321 (XXIX) of 14 December 1974, the Secretary-General submitted to the Assembly at its thirtieth session a report on diplomatic asylum which contained the views expressed by Member States⁴² pursuant to that resolution and an analysis of the question of diplomatic asylum.⁴³

34. In resolution 3497 (XXX) of 15 December 1975, the General Assembly expressed its thanks to the Secretary-General for his report, invited Member States wishing to express their views or to supplement views already expressed on the question to communicate those views to the Secretary-General by 31 December 1976, and decided to give further consideration to the question at a future session of the Assembly.

7. COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

35. During the period under review the General Assembly continued to make recommendations with regard 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 subsidiary bodies. These recommendations pertained to elaboration of the Convention on International Liability for Damage Caused by Space Objects, the Convention on Registration of Objects Launched into Outer Space, the treaty relating to the Moon, as well as to the consideration of the legal aspects of direct television broadcasting by satellites, of remote sensing of the Earth from outer space and of the definition and/or delimitation of outer space, bearing in mind questions relating to the geostationary orbit.

36. In its resolution 2733 A (XXV) of 16 December 1970 the General Assembly, after noting the reports of the Working Group on Direct Broadcasting Satellites and recognizing that further consideration might have to be given to the legal principles applicable in this field, recommended that the Committee on the Peaceful Uses of Outer Space should study through its Legal Sub-Committee the work carried out by the Working Group on Direct Broadcasting Satellites, under the item on the implication of space communications. It endorsed the Working Group's conclusions on the applicability to such broadcasting of certain existing international legal instruments, including the Charter of the United Nations, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and the applicable provisions of the International Telecommunication Convention and Radio

Regulations. In resolution 2733 B (XXV) the General Assembly expressed its deep regret that the Committee on the Peaceful Uses of Outer Space had not yet completed the drafting of a Convention on Liability and urged the Committee to reach early agreement on this priority item. In resolution 2733 C (XXV) it requested the Committee to continue to study questions relating to the definition of outer space. It also recognized the importance of international co-operation in developing the rule of law in the exploration and peaceful uses of outer space and invited States to become parties to the existing outer space treaties. Similar provisions are found in all resolutions entitled "International co-operation in the peaceful uses of outer space", adopted by the General Assembly during the period under review.

37. The following year, by resolution 2777 (XXVI) of 29 November 1971, the General Assembly commended the Convention on International Liability for Damage caused by Space Objects and requested the depository governments to open the Convention for signature and ratification at the earliest possible date. In resolution 2779 (XXVI) of the same date, the General Assembly took note of a draft treaty concerning the Moon submitted to it by the Soviet Union and requested the Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee to consider the elaboration of such a treaty as a matter of priority.

38. At its twenty-seventh session, the General Assembly, in resolution 2915 (XXVII) of 9 November 1972, agreed that the Legal Sub-Committee should pursue, as a matter of priority, its work on the draft treaty relating to the Moon and the draft Convention on Registration of Objects Launched into Outer Space. In resolution 2916 (XXVII) of the same date, the General Assembly, after noting the draft convention on direct television broadcasting submitted to it by the Soviet Union and expressing desire to further the elaboration of specific rules of international law governing the activities of States in this field, considered it necessary that principles be elaborated governing the use by States of artificial earth satellites for direct television broadcasting with a view to concluding an international agreement or agreements and requested the Committee on the Peaceful Uses of Outer Space to undertake the elaboration of such principles as soon as possible.

39. In resolution 3182 (XXVIII) of 18 December 1973 the General Assembly recommended that the Legal Sub-Committee should, as a matter of the highest priority, make every effort to complete the draft treaty relating to the Moon and the draft Convention on Registration of Objects Launched into Outer Space. It further recommended that the question of elaborating principles governing direct television broadcasting by satellites be considered as a matter of high priority as well as that the Sub-Committee's views on the legal implications of the earth resources survey by remote sensing satellites be ascertained. Time permitting, the question of definition and/or delimitation of outer space and outer space activities should also be considered.

40. In resolution 3235 (XXIX) of 12 November 1974, the General Assembly commended the Convention on Registration of Objects Launched into Outer Space and requested the Secretary-General to open the Convention for signature and ratification at the earliest possible date. In resolution 3234 (XXIX) of the same date the General Assembly again recommended the Legal Sub-Committee to consider the remaining agenda items, namely the Moon treaty, direct television broadcasting, remote sensing and, as time permits, the definition and/or delimitation of outer space and outer space activities. It noted that the delegations of Argentina and Brazil had, during the current session of the General Assembly, introduced draft basic articles of a treaty on remote sensing of natural resources by means of space technology for the consideration of the Legal Sub-Committee.

41. The two following years, the General Assembly again commented on the above items, which continued to be discussed in the Legal Sub-Committee (resolutions 3388 (XXX) of 18 November 1975 and 31/8 of 8 November 1976).

42. At its thirty-second session, the General Assembly enlarged the tasks assigned to the Legal Sub-Committee. By its resolution 32/196 A of 20 December 1977, the Assembly recommended that the Legal Sub-Committee, in addition to continuing to work on "matters of high priority" as previously defined, should "continue to discuss questions relating to the definition and/or delimitation of outer space and outer space activities, and also bear in mind questions relating to the geostationary orbit".

43. On the same date the General Assembly adopted resolution 32/195 concerning the tenth anniversary of the entry into force of the Outer Space Treaty. By this resolution the Assembly confirmed the great importance of the Treaty for developing the rule of law in outer space and invited States to become parties to it.

44. At its thirty-third session, the General Assembly adopted resolution 33/16 of 10 November 1978 in which it endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Sub-Committee, while continuing to consider the above four items, should expand the scope of its agenda by including in it an item entitled "other matters".

8. COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

45. During the period under review, the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, which had been established by the General Assembly in its resolution 2340 (XXII),⁴⁴ went into intense activity following the adoption by the General Assembly on 17 December 1970 of resolution 2749 (XXV), entitled: "Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil thereof, beyond the Limits of National Jurisdiction". By this resolution, the Assembly solemnly declared that:

"The Sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area), as well as the resources of the area, are the common heritage of mankind."

On the same day, the General Assembly adopted resolutions 2750 (XXV) A, B and C, which assigned specific tasks to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. Resolution A called upon the Committee to submit a report on the exploration of the area and the exploitation of its resources to the Assembly at its twenty-sixth session. Resolution B assigned similar tasks to the Committee with particular respect to the interests and needs of developing countries, including those which were land-locked. Resolution C enlarged the Committee by forty-four members and instructed the enlarged Committee to prepare for a conference on the law of the sea that would convene in 1973, to draft treaty articles embodying the international régime—including an international machinery for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction. Resolution C also delineated the mandate of the 1973 conference as encompassing, in addition to the establishment of an international régime for the area, a broad range of related issues such as the régime of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and the contiguous zone; fishing and conservation resources of the high seas (including the ques-

tion of the preferential rights of coastal States), the preservation of the maritime environment and scientific research.

46. In resolution 2881 (XXVI) of 21 December 1971, the General Assembly noted with satisfaction the progress made by the Committee towards a conference on the law of the sea and decided to enlarge its membership by the addition of China and four other members. It also requested the Committee to hold two sessions in order to discharge its mandate in accordance with resolution 2750 C (XXV).

47. At the twenty-seventh session of the General Assembly, the Committee submitted⁴⁵ a report including an account of the questions dealt with in the general debate at both sessions in 1972 as well as of the work of the three Sub-Committees. Part I recounted comments relating to the rate of progress achieved; Part II dealt with subjects and functions allocated to Sub-Committee I (status, scope and basic provisions of the régime based on the Declaration of Principles set forth in General Assembly resolution 2749 (XXV)); Part III dealt with the work carried out by Sub-Committee II (preparation of a comprehensive list of subjects and issues relating to the law of the sea); Part IV dealt with the discussions in Sub-Committee III which covered the preservation of the marine environment, including the prevention of pollution and the issues of scientific research and the transfer of technology. In resolution 3029 A (XXVII), the General Assembly requested the Secretary-General to convene the first session of the Third United Nations Conference on the Law of the Sea in New York in November and December 1973 and decided to convene the second session of the Conference at Santiago, Chile, in April and May 1974.

48. In 1973 the Committee submitted to the General Assembly a six-volume report⁴⁶ which the Assembly, by resolution 3067 (XXVIII), decided to refer to the Third United Nations Conference on the Law of the Sea. In paragraph 13 of the same resolution, the Assembly dissolved the Committee as from the inauguration of the Conference and, in paragraph 3, defined the mandate of the Conference as:

"to adopt a convention dealing with all matters relating to the law of the sea, taking into account the subject-matter listed in paragraph 2 of General Assembly resolution 2750 C (XXV) and the list of subjects and issues relating to the law of the sea formally approved on 18 August 1972 by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole".

49. At its first, organizational, session, held in New York in December 1973, the Conference decided that it would adopt rules of procedure at its second session not later than 27 June 1974. During the period between the first and second sessions various informal consultations were held with regard to the adoption of the rules of procedure, in the course of which several new amendments and documents were submitted. At its 2169th plenary meeting, on 16 November 1973, the General Assembly approved the following text, contained in the report of the First Committee,⁴⁷ as representing a gentleman's agreement among the members of the Assembly:

"Recognizing that the Third United Nations Conference on the Law of the Sea at its inaugural session will adopt its procedures, including its rules regarding methods of voting, and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole and the desirability of adopting a Convention on the Law of the Sea which will secure the widest possible acceptance, the General Assembly expresses the view that the Conference should make every effort to reach agreement on substantive matters by way of consensus, that there should be no voting on such matters until all efforts at consensus have been exhausted, and, further, that the Con-

ference at its inaugural session will consider devising appropriate means to that end."

50. The second session of the Conference was held in Caracas, Venezuela, from 20 June to 29 August 1974. At its opening meeting, the Conference heard addresses by the President of Venezuela, by the President of the Conference and by the Secretary-General of the United Nations. Representatives of 138 States participated in the session. The first week of the session was devoted to consideration of the rules of procedure of the Conference⁴⁸ which were subsequently revised⁴⁹ to cover, among other things, participation by observers of national liberation movements which the Conference had decided to invite on 11 July. The rules of procedure were adopted on 27 June.⁵⁰ On 21 June, the Conference decided to allocate to the plenary and to the Main Committees the subjects and issues prepared in accordance with General Assembly resolution 2750 C (XXV) of 17 December 1970. From 28 June to 7 August, the Conference heard general statements by 115 delegations and by various intergovernmental organizations, specialized agencies and others. During the session in Caracas, the three Main Committees of the Conference discussed items referred to them and endeavoured to develop agreement on texts of draft treaty articles. After a general discussion, the First Committee considered the economic implications of mining in the deep sea-bed. The Committee established a working group to pursue negotiations on 21 draft articles relating to the principles of a seabed régime. The Second Committee decided to consider the items allocated to it through debates on each and then to identify the main trends. This stage produced various working papers which, in a second stage, were to be given a second reading in which connected items were to be considered in groups. Finally, the Committee decided to consolidate the various informal working papers into a single working document, which would form a basis for its future work. The Third Committee, after holding a general discussion, proceeded in its work mainly through informal meetings devoted to the drafting of articles. Since none of the Committees had completed its work at the close of the session, the Conference decided to request the General Assembly to schedule a further session at Geneva from 17 March to 10 May 1975. It also agreed to recommend that the formal final session of the Conference should be held at Caracas for the purpose of signature of the Final Act and other instruments of the Conference. Discussion of the work of the Conference at the twenty-ninth session of the General Assembly was limited essentially to arrangements related to the continuation of the work of the Conference. By resolution 3334 (XXIX) of 17 December 1974, the General Assembly approved the convening of the third session of the Third United Nations Conference on the Law of the Sea from 17 March to 10 May 1975 at Geneva.

51. At the first meeting of its third session, which was held from 17 March to 10 May 1975 at Geneva,⁵¹ the Conference heard a message from the Secretary-General of the United Nations as well as a statement by its President. On the proposal of the President, it agreed that it was desirable that the Main Committees should immediately initiate the process of negotiation, avoiding general debate and allowing ample time for consultations and negotiations. The work of the session was carried out mainly through informal meetings, both of an *ad hoc* nature and within the formal framework of the Conference. The General Committee met periodically to hear reports by the Chairmen of the Main Committees concerning the progress of the work. On 18 April 1975, the President of the Conference, in accordance with a commitment made at the first meeting of the session, presented an evaluation of the progress of work of the Conference. After discussion of this evaluation by the Conference and consideration of the proposal by the President that an informal single negotiating text should be prepared, the Conference requested the

Chairmen of the three Main Committees each to prepare, before the end of the session, a single negotiating text covering the subjects entrusted to his Committee, taking into account all the formal and informal discussions held so far. The text would not prejudice the position of any delegation and would not represent any negotiated text or accepted compromise. The Chairmen themselves would decide whom to consult and how. In the negotiations, any representative would be free to move amendments. The informal single negotiating text prepared by the Chairman of each Main Committee was circulated⁵² on 9 May 1975. Each part of the text was prefaced by an introductory note by the President, in which he stated that it should be quite clear that the single negotiated text would serve as a procedural device and only provide a basis for negotiation and should not in any way be regarded as affecting either the status of proposals already made by delegations or the right of delegations to submit amendments or new proposals. The Conference then recommended to the General Assembly that the fourth session of the United Nations Conference on the Law of the Sea should be held in New York from 9 March to 21 May 1976 and that a decision regarding a fifth session in 1976 should be left to its fourth session. In its resolution 3483 (XXX) the General Assembly adopted those recommendations.

52. Similar resolutions were passed in 1976, 1977 and 1978 (31/63 of 10 December 1976, 32/194 of 20 December 1977 and 33/17 of November 1978), approving the decision of the Conference to convene the following year to continue its work.

9. COMMISSION ON HUMAN RIGHTS

53. During the period under review, the Commission on Human Rights⁵³ was requested to initiate several studies which are listed in the annex to the study in the present *Supplement* on Article 13(1)(b).

B. The making of recommendations

54. As indicated in *Supplements Nos. 3 and 4*,⁵⁴ while the initiation of studies and the making of recommendations are not necessarily activities which are mutually exclusive, the stage of initiation is clearly passed when the preparatory work on a topic results in a final draft submitted by the International Law Commission to the General Assembly, and the action taken thereafter by the Assembly on a draft comes exclusively with the "making of recommendations". During the period under review, the General Assembly took action on the International Law Commission's final drafts on three topics. In two instances, as described above,⁵⁵ the Assembly decided that international conferences of plenipotentiaries be convened to consider the draft articles on the representation of States in their relations with international organizations and on succession of States in respect of treaties. The action taken on the other topic, namely, the draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons, deviated from the above-mentioned pattern:⁵⁶ having so decided at its twenty-seventh session, the General Assembly adopted a Convention at its twenty-eighth session.

55. As indicated in the General Survey,⁵⁷ the General Assembly, by resolution 2625 (XXV), adopted the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. In the preamble to that resolution, the Assembly expressed its deep conviction that the adoption of the Declaration "on the occasion of the twenty-fifth anniversary of the United Nations would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among

nations and particularly the universal application of the principles embodied in the Charter."

56. The following principles were affirmed in the preamble to the Declaration which was annexed to resolution 2625 (XXV):

"The General Assembly,

" . . .

"*Considering* that the progressive development and codification of the following principles:

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

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

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

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

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

"(f) The principle of sovereign equality of States,

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

so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations".

In the General Part of the Declaration, the General Assembly further declared that:

"The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles."

57. As previously indicated,⁵⁸ the General Assembly, by resolution 3314 (XXIX), approved the Definition of Aggression. In the preamble to the Definition which was annexed to that resolution, the Assembly reaffirmed the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and expressed its conviction that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim.

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

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

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

58. At its twenty-third session in 1971 the Commission reviewed its long-term programme of work⁵⁹ on the basis of a working paper prepared by the Secretary-General and entitled "Survey of International Law".⁶⁰ This document was to be regarded as a successor to the 1948 Survey,⁶¹ following

discussion of which the Commission's existing long-term programme had been established. However, whereas the 1948 Survey was written before the Commission had begun its activities, the 1971 Survey contained an account of the Commission's experience gained within the framework of the codification and progressive development of the law in general.

59. Regarding the distinction embodied in the Commission's Statute between "codification" and "progressive development", the 1971 Survey stated:⁶²

"The experience of the Commission has borne out the validity of this argument, and the distinction between "codification" and "progressive development", as the methodological basis for the approach to be taken by the Commission, has not been maintained in the practice of the Commission. The present survey therefore does not attempt to categorize the topics dealt with into those suitable for codification and those suitable for progressive development, but simply provides a conspectus of the whole field of substantive international law, on the basis of which the Commission may select the topics to be included in its future long-term programme. Attention may be drawn to the fact that the Commission's recommendations, even with respect to the codification of a topic, must in any case be submitted to the General Assembly. At such time therefore as the Commission may report to the General Assembly regarding the topics selected for its future programme, the Commission may point out (if such indeed is the case) that it will be difficult for it to distinguish whether its efforts with regard to these topics will pertain to their codification or to their progressive development."

****3. IN THE LIGHT OF THE ESTABLISHMENT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)**

****4. IN THE LIGHT OF DECISIONS AND DISCUSSIONS IN THE GENERAL ASSEMBLY**

NOTES

¹ *Repertory, Supplement No. 3*, vol. I, under Article 13(1)(a), para. 17, and *Supplement No. 4*, vol. I, under Article 13(1)(a), para. 8.

² *Ibid.*, paras. 45 and 9, respectively.

³ G A resolution 2103 (XX).

⁴ See G A resolutions 2181 (XXI), 2327 (XXII), 2463 (XXIII) and 2533 (XXIV).

⁵ G A (32), *Suppl. No. 37*; G A (33), *Suppl. No. 39*.

⁶ See United Nations Conference on the Representation of States in Their Relations with International Organizations, Vienna, 4 February-14 March 1975 (A/CONF.67/18 and Corr.1 and Add.1, vols. I and II: United Nations publication, Sales No. E.75.V.II and V.12).

⁷ A/CONF.67/15, reproduced *ibid.*, vol. II, p. 203.

⁸ *Yearbook of the International Law Commission 1974*, vol. II (Part I), pp. 174 *et seq.*; A/9610/Rev.1, chap. II, sect. D.

⁹ United Nations Conference on Succession of States in Respect of Treaties, vol. III (A/CONF.80/15, para. 26: United Nations publication, Sales No. E.79.V.10), p. 140. See also G A (32), *Suppl. No. 32*, p. 57).

¹⁰ For the text of the Convention, see *ibid.*, pp. 185 *et seq.*

¹¹ *Repertory, Supplement No. 3*, vol. I, under Article 13(1)(a), para. 9; and *Repertory, Supplement No. 4*, vol. I, under Article 13(1)(a), para. 5.

¹² *Yearbook of the International Law Commission 1971*, vol. II (Part I), p. 352, paras. 133-134 (United Nations publication, Sales No. E.72.V.6 (Part I)).

¹³ *Yearbook of the International Law Commission 1972*, vol. II, p. 310, para. 59 (United Nations publication, Sales No. E.73.V.5).

¹⁴ *Ibid.*, pp. 310-311, paras. 63-64.

¹⁵ G A resolution 3166 (XXVIII) requires, in its paragraph 6, that that resolution should always be published together with the Convention annexed thereto.

¹⁶ *Repertory, Supplement No. 2*, vol. I, under Article 13(1)(a), para. 4.

¹⁷ See this *Supplement*, under Article 13, para. 4.

¹⁸ G A (32), *Suppl. No. 10* (A/32/10), para. 111.

¹⁹ A/32/247 (mimeographed).

²⁰ *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.

²¹ *Yearbook of the International Law Commission 1971*, vol. II (Part II), pp. 1-99, document A/CN.4/245. See also *Repertory, Supplement No. 4*, vol. I, under Article 13(1)(a), para. 22.

²² *Yearbook of the International Law Commission 1970*, vol. II, p. 309, para. 87.

²³ Survey of International Law in relation to the work of Codification of the International Law Commission (A/CN.4/1: United Nations publication, Sales No. 48.V.1, reissued in 1949 under the symbol A/CN.4/1/Rev.1: United Nations publication, Sales No. 48.V.1 (1)).

²⁴ *Yearbook of the International Law Commission 1971*, vol. II (Part II), p. 5, para. 13 (United Nations publication, Sales No. E.72.V.6 (Part II)).

²⁵ *Ibid.*, p. 7, para. 18.

²⁶ G A resolutions 2634 (XXV), 2780 (XXVI), 2926 (XXVII), 3071 (XXVIII), 3315 (XXIX), 3495 (XXX), 31/97, 32/151 and 33/139.

²⁷ See paras. 15-19 below.

²⁸ See para. 8 above.

²⁹ G A (21), Annexes, a.i. 88 (A/6396). *Yearbook of the United Nations Commission on International Trade Law* (referred to as the *UNCITRAL Yearbook* in subsequent notes), vol. I: 1968-70, Part I, chap. II, para. 33 E.

³⁰ *Ibid.*

³¹ See *Repertory, Supplement No. 4*, under Article 13(a)(1), para. 24.

³² Relevant resolutions of the sixth and seventh special sessions of the General Assembly are: resolution 3201 (S-VI) on the Declaration on the Establishment of a New International Economic Order; resolution 3202 (S-VI) on the programme of action on the establishment of a new international economic order; resolution 3362 (S-VII) on development and international economic co-operation.

³³ United Nations Conference on Limitation (Prescription) in the International Sale of Goods (A/CONF.63/14 and Corr.1: *UNCITRAL Yearbook*, vol. V, 1974, Part III, annexes).

³⁴ G A (33), *Suppl. No. 17* (A/33/17): *UNCITRAL Yearbook*, vol. IX: 1978, Part I, chap. II, para. 27.

³⁵ G A (26), *Suppl. No. 17* (A/8417): *UNCITRAL Yearbook*, vol. II: 1971, Part I, chap. II, para. 35).

³⁶ G A (31), *Suppl. No. 17* (A/31/17): *UNCITRAL Yearbook*, vol. VII: 1976, Part I, chap. II-A, para. 44.

³⁷ G A (33), *Suppl. No. 17* (A/33/17): *UNCITRAL Yearbook*, vol. IX: 1978, Part I, para. 86.

³⁸ G A (31), *Suppl. No. 17* (A/31/17): *UNCITRAL Yearbook*, vol. VII: 1976, Part I, para. 57.

³⁹ G A (25), *Suppl. No. 18* (A/8018).

⁴⁰ See this *Supplement*, under Article 13(1), para. 4.

⁴¹ *Repertory, Supplement No. 4*, vol. I, under Article 13(1)(a), para. 14.

⁴² A/10139 (Part I) and Add.1 (mimeographed); G A (30), Annexes, a.i. 111.

⁴³ *Ibid.*, Part II.

⁴⁴ See *Repertory, Supplement 4*, under Art. 13(1)(a), para. 64.

⁴⁵ See G A (27), *Suppl. No. 21* (A/8721 and Corr.1) and *ibid.* (27), Annexes, a.i. 36.

⁴⁶ G A (28), *Supplement No. 21* (A/9021 and Corr.1 and 3), vols. I-VI and *ibid.*, Annexes, a.i. 40.

⁴⁷ G A (28), Annexes, a.i. 40, document A/9278, para. 16.

⁴⁸ A/CONF.62/30 (United Nations publication, Sales No. E.74.I.18).

⁴⁹ A/CONF.62/30/Rev.1 (United Nations publication, Sales No. E.74.I.18).

⁵⁰ *Ibid.*

⁵¹ For the proceedings of the third session of the Conference, see Third United Nations Conference on the Law of the Sea (A/CONF.62(01)R3, vol. IV: United Nations publication, Sales No. 4.75.V.10).

⁵² A/CONF.62/WP.8 (mimeographed).

⁵³ See also in this *Supplement*, under Article 55, section II.

⁵⁴ *Repertory, Supplement No. 3*, vol. I, under Article 13(1)(a), paras. 48-49; *Repertory, Supplement No. 4*, vol. I, under Article 13(1)(a), para. 69.

⁵⁵ See paras. 6 and 7 above.

⁵⁶ See paras. 8 and 9 above.

⁵⁷ See para. 3 above.

⁵⁸ See in this *Supplement*, under Article 13, para. 4.

⁵⁹ See *Yearbook of the International Law Commission 1971*, vol. II (2), pp. 1-100.

⁶⁰ A/CN.4/245 (mimeographed).

⁶¹ See *Yearbook of the International Law Commission 1949*, p. 280.

⁶² *Yearbook of the International Law Commission 1971*, vol. II (2), p. 7, para. 18.