

REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS

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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, 2, 3, 4, 5 and 6. 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. During the period under review various subjects previously begun¹ continued to be discussed and some of them were brought to completion. New initiatives relevant to the codification and progressive development of international law were also taken. The present study includes, in particular, the subjects dealt with by the International Law Commission and the United Nations Commission on International Trade Law, as well as those dealt with by subsidiary bodies of the General Assembly such as the Ad Hoc Committee on the Drafting of an International Convention Against the Recruitment, Use, Financing and Training of Mercenaries. It also includes material relating to the developments within the framework of the Special Committee on Enhancing of Effectiveness of the Principle of Non-Use of Force in International Relations, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, the Committee on the Peaceful Uses of Outer Space and in the field of the Law of the Sea. Following the format set out in *Supplement No.6*, vol. II, under Article 13(1)(a) of the *Repertory*, a review of the trends and developments in the General Survey serves as a background to the Analytical Summary of Practice.

I. GENERAL SURVEY

3. In *Supplements Nos. 3, 4, 5 and 6*, 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 international law experts appointed in their personal capacity.³ During the period under review these procedures continued.

¹ See *Repertory, Supplement No.6*, vol. II, under Article 13(1)(a).

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].

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].

4. The interaction between bodies of government representatives noted in previous supplements⁴ and international law experts continued during the period under review. The International Law Commission continued to present in its yearly 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. The Commission underlined that “the general acceptability of its drafts largely depends on the extent to which they reflect the views and practice of all States and groups of States and take into account the various legal systems of the world, as well as the new requirements of international life.”⁵

5. Concerning the current work programme of the Commission, the General Assembly recommended that the Commission continue with its consideration of all topics previously begun⁶, e.g., State responsibility; jurisdictional immunities of States and their property; status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier; Draft Code of Crimes against the Peace and Security of Mankind; the law of the non-navigational uses of international watercourses; international liability for injurious consequences arising out of acts not prohibited by international law; and relations between States and international organizations (second part of the topic). The activities of the International Law Commission with respect to these topics and others will be discussed in more detail in the Analytical Summary of Practice⁷.

6. The previous *Supplements Nos. 3,4,5 and 6* 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”.⁸ This procedure was followed with respect to the issue of treaties concluded between States and international organizations or between international organizations⁹ and resulted in the adoption of the convention on the question by the United Nations conference during the period under consideration.

7. The United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations was held in Vienna, from 18 February to 21 March 1986, and adopted the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, based on draft articles adopted by the International Law Commission at its thirty-fourth session.¹⁰ Participants to the United Nations Conference included:¹¹ Ninety-seven States, including Namibia (represented by the United Nations

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].

⁵ G A (43), Suppl. No. 10, A/43/10, para.560, page 282.

⁶ See *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [16, 24-46].

⁷ See paras. 20-26. See also paras. 68, 75-78 of this study.

⁸ *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].

⁹ *Repertory, Supplement No. 6*, vol. II, under Article 13 (1)(a), paras. [14, 27, 28, 112 and 113]. See also paras. 7, 8 and 68 of this study.

¹⁰ *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras.[27 and 28].

¹¹ A/CONF.129/INF.2/Rev.2.

Council for Namibia);¹² 19 international intergovernmental organizations,¹³ including the United Nations;¹⁴ and three observers, including two from national liberation movements.¹⁵

8. The General Assembly in its decision 41/420 welcomed the adoption by the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, and considered that the Convention should be signed on behalf of the United Nations¹⁶.

9. During the period under review, the United Nations Commission on International Trade Law continued its consideration of questions initiated previously¹⁷ and adopted the following texts: the UNCITRAL Model Law on International Commercial Arbitration; the draft Convention on International Bills of Exchange and International Promissory Notes; the UNCITRAL Legal Guide on Electronic Funds Transfers; and the UNCITRAL Legal Guide on Drawing up International Contracts for the Construction of Industrial Works. The activities of UNCITRAL will be discussed in more detail in the Analytical Summary of Practice.¹⁸

10. During the period under review, the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries¹⁹ continued its work on the basis of the annually renewed mandates²⁰.

11. The General Assembly by its resolution 42/22 adopted the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations which was prepared by the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations.²¹

12. The General Assembly in its resolution 43/51 adopted the Declaration on the Prevention and Removal of Disputes and Situations which May Threaten International Peace and Security and on the Role of the United Nations in this Field, which was elaborated by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.²²

13. The General Assembly in its resolution 41/85 adopted the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, *inter alia*, taking note with appreciation of the work done on this question in the Third and Sixth Committees, as well as the efforts made by Member States.²³

¹² Invited pursuant to G A resolution 39/86, paras. 2 (a) and (b).

¹³ Invited pursuant to G A resolution 39/86, para. 2 (e).

¹⁴ Invited pursuant to G A resolution 40/76, para. 3.

¹⁵ Invited pursuant to G A resolution 39/86, paras. 2 (c) and (d).

¹⁶ See also para. 68 of this study.

¹⁷ See *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [47-59 and 121].

¹⁸ See paras. 27-36 and 69 of this study.

¹⁹ The Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries was established by GA resolution 35/48. See also *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [60, 61 and 126]; and paras. 37 and 38 of this study.

²⁰ G A resolutions 40/74, 41/80, 42/155, 43/168.

²¹ See *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [66-68 and 118]; and paras. 39, 40 and 70 of this study.

²² See *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [72 and 73]; and paras. 42 and 71 of this study.

²³ G A resolution 41/85, annex, and preambular para. 3. See also G A decision 40/422. For previous work on this issue see *Repertory, Supplement No. 6*, vol. II, under Article 13 (1)(a), para. [10].

14. During the period under consideration the General Assembly continued its consideration of several other questions aimed at progressive development of international law and its codification, such as development and strengthening of good-neighbourliness between States, measures to prevent international terrorism, and progressive development of the principles and norms of international law relating to the new international economic order²⁴.

15. During the period under review the General Assembly continued to consider the codification and progressive development of the law of outer space through the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee.²⁵ By resolution 40/162 the General Assembly endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee begin the elaboration of draft principles relevant to the use of nuclear power sources in outer space.

16. The following year, the General Assembly adopted, in its resolution 41/65, the Principles Relating to Remote Sensing of the Earth from Outer Space²⁶ and considered the question of the review of the Convention on Registration of Objects Launched into Outer Space as called for in Article X of the Convention on Registration of Objects Launched into Outer Space, adopted by the General Assembly on 12 November 1974 in resolution 3235 (XXIX), annex (resolution 41/66)²⁷.

17. By resolution 43/56 the General Assembly endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee begin its consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interest of all States, taking into particular account the needs of developing countries²⁸.

18. During the period under review, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea²⁹ continued to put in place the rules, regulations and procedures for the establishment of the Authority and the Tribunal. The Preparatory Commission also continued to promulgate the rules and regulations necessary for the implementation of the relevant resolutions of the Third United Nations Conference on the Law of the Sea³⁰, in particular the provisions and rules governing the registration of the so-called “pioneer investors” as set out in resolution II of the Third United Nations Conference on the Law of the Sea.

²⁴ See paras. 45, 47 and 48 of this study. See also *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [8, 9, 18, 19, 64, 65, 117, 120, 128 and 129].

²⁵ See also *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [11, 74-82]; and paras. 16, 17, 49-57 and 73 of this study.

²⁶ See also *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [77 and 80]; and paras. 50, 52, 53 and 73 of this study.

²⁷ See para. 55 of this study.

²⁸ See paras. 50 and 57 of this study.

²⁹ Established by resolution I of the Third United Nations Conference on the Law of the Sea for the purpose of preparing the draft rules, regulations and procedures, as necessary, in order to, *inter alia*, enable the Authority and the Tribunal to commence their functions. See also *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [83-109], and, in particular, paras. [85, 87-98, 102-105, 107 and 108]; and paras. 58, 59, 62 - 64 of this study.

³⁰ See *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [83-109]; and paras. 58, 59, 62 and 63 of this study.

19. The practice noted in the previous Supplements of entrusting the Secretary-General with the preparation of studies continued through the period under review.³¹ The General Assembly requested, in particular, the Secretary-General “to continue the preparation of a draft handbook on the peaceful settlement of disputes between States”³² and “to update in a timely manner the “Survey of International Law” of 1971”.³³ The Assembly also entrusted the Secretary-General with the task to seek the views of States on the texts and conclusions contained in the reports of the International Law Commission regarding the topics under its consideration³⁴ and draft instruments prepared by UNCITRAL³⁵.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The initiation of studies

1. INTERNATIONAL LAW COMMISSION

20. During the period under review 1985-1988, the International Law Commission made progress on the studies previously initiated,³⁶ and the General Assembly requested, in its various resolutions throughout this period, that the Commission continue its work on the topics in its agenda.³⁷

21. Regarding the draft Code of Offences against the Peace and Security of Mankind, the Commission, at its thirty-ninth session, recommended to the General Assembly that it amend the title of the topic in English, in order to achieve greater uniformity and equivalence between the different language versions, changing the English title to read: “draft Code of Crimes against the Peace and Security of Mankind”. By its resolution 42/151,³⁸ the General Assembly agreed with the Commission’s recommendation to change the title of the draft Code. Moreover, at its forty-third session, the General Assembly, in its resolution 43/164,³⁹ considering the debate in the Commission’s fortieth session, encouraged the Commission to explore further all possible alternatives on the question of the judicial authority to be assigned for the implementation of the provisions of the draft Code.

22. With respect to the topic of the “Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier”, during its fortieth session, the Commission considered the Special Rapporteur’s⁴⁰ eighth report⁴¹ and, at the end of the discussion, decided to refer the draft articles to the Drafting Committee for second reading. Furthermore, during the same session, the Commission considered the issue of whether the form the draft articles should take would be a convention as a distinct legal instrument which should retain an appropriate legal relationship with

³¹ 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].

³² G A resolutions 40/68, para.4; 40/78, para.10; 41/74, para.4; 41/83, para.9; 42/157, para.8 and 43/170, para.7. See also *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [72 and 73].

³³ G A resolution 42/156, para. 11. See also *Yearbook of the International Law Commission, 1971, vol.II (Part Two)*, document A/CN.4/245.

³⁴ See, for instance, GA resolutions 40/69, para.2; 41/75, para.2; 42/151, para.3 and 43/164, para.3.

³⁵ G A resolution 42/153, para. 2.

³⁶ See *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [24-46].

³⁷ See G A resolutions 40/69 para. 1, 40/75, para. 3, 41/75, para. 1, 41/81, para. 3, 42/151, para. 2, 42/156, para. 3, 43/164, para. 1 and 43/169, para. 3.

³⁸ G A resolution 42/151, para 1.

³⁹ G A resolution 43/164, para. 2.

⁴⁰ Mr. Alexander Yankov.

⁴¹ A/CN.4/417.

the four multilateral conventions in the field of diplomatic and consular law.⁴² The General Assembly, by its resolution 42/156,⁴³ concurred with the Commission that it should complete the second reading of the draft articles by 1988.

23. In connection with the topic “Jurisdictional immunities of States and their property”, upon the Commission’s adoption on first reading of the whole set of draft articles, at its thirty-eighth session, the Commission transmitted them, through the Secretary-General, to the Governments of Member States, requesting a response not later than 1 January 1988.⁴⁴ The General Assembly, by its resolution 41/81,⁴⁵ urged Governments to give full attention to this request, and, by its resolution 42/156,⁴⁶ recommended to the Commission that it complete, during the course of the five-year term, the second reading of the draft articles by 1989.

24. As regards the Commission’s study of the second part of the topic “Relations between States and international organizations”, covering the status, privileges and immunities of international organizations, their officials, experts and other persons engaged in their activities not being representatives of States, the Commission considered the Special Rapporteur’s⁴⁷ second report⁴⁸ at its thirty-seventh session, and his third report,⁴⁹ at its thirty-ninth session, which had been introduced at the Commission’s thirty-eighth session. Based upon the report and surrounding discussions thereon, the Commission decided to request the Special Rapporteur to continue his study of the topic, in accordance with the guidelines laid down in the outline contained in the third report, and in the light of the views expressed, in the hope that it would be possible for him to produce a set of draft articles in due course in the future. The General Assembly, during the period, recommended that the Commission continue its work on the topics in its current agenda, which included “Relations between States and international organizations (Second part of the topic)”.⁵⁰

25. Regarding the topic “The law of the non-navigational uses of international watercourses”, and following discussions on the question of the desirability of taking a framework-agreement approach to formulating draft articles on the topic, the Commission concluded, at its thirty-ninth session, that it would endeavour to complete by 1991 the first reading of the draft articles, a goal the General Assembly supported in its resolution 42/156.⁵¹

26. The Commission, having adopted the final text of a thirty-article draft on most-favoured-nation clauses at its thirtieth session, and having recommended to the General Assembly that the draft articles should be recommended to Member States with a view to the conclusion of a convention on the subject,⁵² the General Assembly, by its resolution 40/65, requested the Secretary-General to reiterate his invitation to Member States and others to submit, not later than 31 March 1988, any

⁴² The four conventions are: 1) 1961 Vienna Convention on Diplomatic Relations; 2) 1963 Vienna Convention on Consular Relations; 3) 1969 Convention on Special Missions; and 4) 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.

⁴³ G A resolution 42/156, para. 3.

⁴⁴ *Yearbook of the International Law Commission, 1986, vol. II (Part Two)*, para. 21.

⁴⁵ G A resolution 41/81, para. 9.

⁴⁶ G A resolution 42/156, para. 3.

⁴⁷ Mr. Leonardo Diaz Gonzalez.

⁴⁸ A/CN.4/391 and Add. 1. The Special Rapporteur’s preliminary (first) report (A/CN.4/370) was considered at the Commission’s thirty-fifth session, wherein the Special Rapporteur provided a concise history of the work accomplished so far by the Commission on the topic.

⁴⁹ A/CN.4/401.

⁵⁰ See G A resolutions 40/75, para. 3, 41/81, para. 3, 42/156 and 43/169, para. 3.

⁵¹ G A resolution 42/156, para. 3.

⁵² See *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [35-37].

written comments on the draft articles,⁵³ as well as to comment on the most appropriate procedure for completing work on most-favoured-nation clauses.⁵⁴ However, the General Assembly, during its forty-third session, by its decision 43/429,⁵⁵ took note of the complexity of codification or progressive development of the international law on most-favoured-nation clauses and considered that additional time should be given to Governments for thorough study of the draft articles, and included the topic in the provisional agenda of its forty-sixth session.

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

27. From its eighteenth session in 1985 until its twenty-first session in 1988, in accordance with relevant General Assembly resolutions⁵⁶, the Commission⁵⁷ dealt with such priority subjects as: international commercial arbitration; international payments; electronic funds transfers; new international economic order; transport law and legal value of computer records.

a. International commercial arbitration

28. At its eighteenth session, the Commission adopted the Model Law on International Commercial Arbitration.⁵⁸ At its nineteenth session, the Commission considered a report setting forth the activities of other international organizations on certain aspects of international commercial arbitration.⁵⁹ Apart from continuing to monitor developments on such activities, the Commission requested the Secretariat to prepare in-depth studies on the topics of multi-party arbitration and of the taking of evidence in arbitral proceedings.⁶⁰

b. International payments

29. At its eighteenth⁶¹ and nineteenth⁶² sessions, the Commission considered and reviewed the draft Convention on International Bills of Exchange and International Promissory Notes prepared by the Working Group on International Negotiable Instruments. At its nineteenth session, the Commission considered the various procedures that could be followed for the adoption of the draft Convention. At its twentieth session, the Commission completed the review of the draft Convention and submitted it to the General Assembly for consideration and adoption.⁶³

30. At its twenty-first session, the Commission also considered a report of the Secretary-General on stand-by letters of credit and guarantees,⁶⁴ and agreed that a greater degree of certainty and uniformity in the field was desirable. It also welcomed the suggestion made in that report that future work be envisaged in two stages, the first relating to contractual rules and the second pertaining to

⁵³ G A resolution 40/65, para. 2.

⁵⁴ *Ibid.*, para. 3.

⁵⁵ G A decision 43/429, paras. a, b and c.

⁵⁶ For the general mandate given to the Commission by the General Assembly to continue its work on the topics included on its programme of work, see G A resolutions: 39/82, 40/71, 41/77, and 42/152.

⁵⁷ For the mandate of UNCITRAL, see G A resolution 2205 (XXI), GA (21), annexes, a.i. 88 (A/6396). Yearbook of the United Nations Commission on International Trade Law, vol. I: 1968-70, Part I, chap. II, para. 33 E. The Commission's terms of reference and the work programme established to fulfil its mandate are described in Supplement No. 4 (see *Repertory, Supplement No. 4*, under Article 13 (a)(1), para. 24).

⁵⁸ G A (40), Suppl. No. 17, A/40/17, chap. II, para. 332-333. See also para. 69 of this study.

⁵⁹ A/CN.9/280.

⁶⁰ G A (41), Suppl. No. 17, A/41/17, chap. V, para. 254-258.

⁶¹ G A (40), Suppl. No. 17, A/40/17, chap. III, para. 334-338.

⁶² G A (41), Suppl. No. 17, A/41/17, chap. II, para. 11-224.

⁶³ G A (42), Suppl. No. 17, A/42/17, chap. II, para. 11-305. See also para. 69 of this study.

⁶⁴ A/CN.9/301.

statutory law.⁶⁵ Accordingly, the Commission decided to entrust the Working Group on International Contract Practices with a review of the Uniform Rules on Guarantees prepared by the International Chamber of Commerce, as well as with the task of exploring the desirability and feasibility of future work at the statutory level.⁶⁶

c. Electronic funds transfers

31. At its eighteenth session, the Commission completed consideration of the draft Legal Guide on Electronic Funds Transfers and requested the Secretary-General to send it to Governments and interested international organizations for comments, with a view to allowing consideration and possible adoption of the text by the Commission at its following session.⁶⁷ At its nineteenth session, the Commission welcomed the completion of the Legal Guide.⁶⁸ The Commission also decided to undertake work on the formulation of model legal rules on electronic funds transfers and to entrust this work to the Working Group on the International Negotiable Instruments, which would be renamed for the purpose of that work as the Working Group on International Payments.⁶⁹ At its twenty-first session, the Commission decided that the draft model rules on electronic funds transfers should concentrate on problems arising in connection with international transactions.⁷⁰

d. New international economic order

32. At its eighteenth session, the Commission considered the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works as prepared by the Working Group on the New International Economic Order. It was suggested that the value of the Guide might be enhanced by the preparation of annexes on areas closely related to the construction of industrial works, namely on procurement and tendering.

33. At its nineteenth session, the Commission requested the Secretariat to prepare preliminary studies on the subjects of counter-trade and joint ventures.⁷¹ At its twenty-first session, the Commission considered and discussed a report entitled “Preliminary study of legal issues in international countertrade”.⁷² It was decided that it would be desirable to prepare a legal guide on drawing up countertrade contracts, as a first step on the basis of which to decide whether further work in the field would be feasible or desirable.⁷³

34. At its nineteenth session, the Commission decided that priority should be given to its work on procurement and entrusted the subject to the Working Group on the New International Economic Order.⁷⁴ At its twentieth session, the Commission adopted the UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works.⁷⁵ At its twenty-first session, the Commission expressed its appreciation for the preparatory work undertaken by the Secretariat and encouraged the Working Group to proceed with its work expeditiously.⁷⁶

⁶⁵ G A (43), Suppl. No. 17, A/43/17, chap. II, para. 18-19.

⁶⁶ *Ibid.*, para. 21-23.

⁶⁷ G A (40), Suppl. No. 17, A/40/17, chap. III, para. 339-342.

⁶⁸ G A (41), Suppl. No. 17, A/41/17, chap. II, para. 229. See also para. 69 of this study.

⁶⁹ G A (41), Suppl. No. 17, A/41/17, chap. II, para. 230.

⁷⁰ G A (43), Suppl. No. 17, A/43/17, chap. II, para. 13.

⁷¹ G A (41), Suppl. No. 17, A/41/17, chap. III, para. 243.

⁷² A/CN.9/302.

⁷³ G A (43), Suppl. No. 17, A/43/17, chap. IV, para. 32-35.

⁷⁴ G A (41), Suppl. No. 17, A/41/17, chap. III, para. 243.

⁷⁵ G A (42), Suppl. No. 17, A/42/17, chap. III, para. 313-315. See also para. 69 of this study.

⁷⁶ G A (43), Suppl. No. 17, A/43/17, chap. V, para. 38.

e. Transport law

35. At its eighteenth session, the Commission considered the report of the Working Group on International Contract Practices on the work of its eighth session⁷⁷ setting forth possible methods for preparing uniform rules in the field of transport law.⁷⁸ At its nineteenth⁷⁹ and twentieth⁸⁰ sessions, the Commission considered and expressed appreciation for the reports of the Working Group on International Contract Practices on the work of its ninth and tenth sessions.⁸¹ At its twenty-first session, the Commission welcomed the preparation of a draft text of uniform rules on the liability of operators of transport terminals and decided to defer consideration and possible adoption thereof in the form of a convention to its twenty-second session.⁸²

f. Legal value of computer records

36. At its eighteenth session, the Commission considered a report on the legal value of computer records⁸³ and affirmed that the subject of legal problems arising in connection with the use of automatic data processing was to be considered as a priority item. At the same session, the Commission also adopted a recommendation for Governments to review their legislation as to the legal value of computer records.⁸⁴ At its nineteenth session, the Commission considered a report⁸⁵ on the legal aspects of automatic data processing, with suggestions for co-ordination of the work carried out by many international organizations in this field.⁸⁶ A further report on the legal implications of automatic data processing and on the results of the international meeting hosted by the Secretariat among international organizations involved in that field⁸⁷ was considered by the Commission at its twentieth session.⁸⁸

3. *AD HOC* COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES⁸⁹

37. At its fortieth to forty-third sessions, the Ad Hoc Committee continued its work on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries⁹⁰ on the basis of the annually renewed mandates contained in General Assembly resolutions 40/74, 41/80, 42/155 and 43/168.

⁷⁷ A/CN.9/260.

⁷⁸ G A (40), Suppl. No. 17, A/40/17, chap. V, para. 348.

⁷⁹ G A (41), Suppl. No. 17, A/41/17, chap. IV, para. 245.

⁸⁰ G A (42), Suppl. No. 17, A/42/17, chap. IV, para. 318.

⁸¹ A/CN.9/275 and A/CN.9/287.

⁸² G A (43), Suppl. No. 17, A/43/17, chap. III, para. 28-29.

⁸³ A/CN.9/265.

⁸⁴ G A (40), Suppl. No. 17, A/40/17, chap. VI, para. 354-360.

⁸⁵ A/CN.9/279.

⁸⁶ G A (41), Suppl. No. 17, A/41/17, chap. V, para. 259-261.

⁸⁷ A/CN.9/292.

⁸⁸ G A (42), Suppl. No. 17, A/42/17, chap. V, para. 325-328.

⁸⁹ The *Ad Hoc* Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries was established by G A resolution 35/48.

⁹⁰ For previous work see *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras.[60-61].

38. At its forty-third session the General Assembly requested the Ad Hoc Committee, to take as a basis for future negotiation the draft articles contained in Chapter III of its report.⁹¹ The General Assembly also invited the Ad Hoc Committee to take into account the suggestions and proposals of Member States submitted to the Secretary-General on the subject and views and comments expressed at the fortieth to forty-third sessions of the General Assembly during the debate in the Sixth Committee, and to make every effort to submit its final report containing a draft international convention against the recruitment, financing and training of mercenaries to the Assembly if possible at its forty-fourth session⁹².

4. SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS⁹³

39. At the 1985 and 1986 sessions of the Special Committee the discussion continued about the usefulness of elaboration of a new normative instrument on the principle of non-use of force in international relations.⁹⁴ Since there was no agreement on the drafting of a world treaty, the General Assembly, at its fortieth session, requested the Committee to draft, “as an intermediate stage, a declaration on the non-use of force in international relations” taking into consideration “the results of work done in the preparation of the working paper containing the main elements of the principle of non-use of force..., as well as the suggestions submitted to it and the efforts undertaken at its previous sessions.”⁹⁵ At its forty-first session, the Assembly, *inter alia*, requested the Special Committee to complete a draft declaration and to submit its final report containing a draft declaration at the next session of the Assembly.⁹⁶

40. In 1987, the Working Group of the Special Committee focused on an informal paper prepared by the Chairman taking into account the various proposals submitted by delegations.⁹⁷ The text of the draft declaration was finalized during informal consultations, which were based on a revised paper prepared by the Chairman, taking into consideration the discussion in the Working Group.⁹⁸ The Committee submitted to the Assembly its final report containing the draft Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, at its forty-second session. The Assembly adopted the Declaration in 1987.⁹⁹

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

⁹¹ See G A (43), Suppl. No. 43, A/43/43, Chapter III.

⁹² G A resolution 43/168.

⁹³ The Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations was established by G A resolution 32/150 in 1977. See also, *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras.[66-68].

⁹⁴ See e.g., G A (40), Suppl. No. 41, A/40/41, paras. 18-45, 122-156 and annex; G A (41), Suppl. No.41, A/41/41, paras.18-94. For the work of the Committee in 1984, see *Repertory, Supplement No. 6*, vol.II, under Article 13(1)(a), para.[68].

⁹⁵ G A resolution 40/70, paras. 2 and 3. See also, A/C.6/40/SR.8-12, 44 and 50.

⁹⁶ G A resolution 41/76, paras. 2 and 7. See also, A/C.6/41/SR.9-14 and 45.

⁹⁷ These proposals submitted by delegations at previous and 1987 sessions included two draft texts of a declaration – one by Belgium, Finland, France, the Federal Republic of Germany, Italy, Japan, Spain and the United Kingdom; and another by Benin, Cyprus, Ecuador, Egypt and Nepal – and additional paragraphs proposed separately by Cuba, Greece, Mexico and the USSR. See G A (42), Suppl. No. 41, A/42/41, paras.13, 16, 19, 22, 27, 30, 37, 44, 47, 49 and 53.

⁹⁸ *Ibid.*, paras.55 and 56.

⁹⁹ G A resolution 42/22 and annex. See also para. 70 of this study.

41. During the period under review, the Special Committee, in accordance with relevant General Assembly resolutions¹⁰⁰, continued, *inter alia*, its work on the questions of the maintenance of international peace and security and of the peaceful settlement of disputes between States.¹⁰¹

42. In the context of the *maintenance of international peace and security*, the Committee, with the assistance of its Working Group, continued its work on the question of the prevention and removal of threats to peace and of situations which may lead to international friction or give rise to a dispute. At the 1985 session the Committee discussed a revised version¹⁰² of the working paper on the topic submitted at the previous session by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain, thereby completing its second reading.¹⁰³ At the 1986 and 1987 sessions revised versions¹⁰⁴ of the working paper were discussed together with another working paper¹⁰⁵ submitted by Czechoslovakia, the German Democratic Republic and Poland.¹⁰⁶ Deliberations continued until 1988¹⁰⁷, when the Committee completed the draft declaration on the prevention and removal of disputes and situations which may threaten international peace and security and on the role of the United Nations in this field and submitted it to the General Assembly for consideration and adoption. The Assembly, at its forty-third session in 1988, adopted the Declaration.¹⁰⁸

43. In 1988 the Assembly also initiated a new topic, requesting the Special Committee to consider proposals concerning fact-finding activities by the United Nations and other proposals relating to the maintenance of international peace and security that might be submitted to the Committee at its session in 1989.¹⁰⁹

44. In the context of the *peaceful settlement of disputes between States*, the Committee, with the assistance of its Working Group, continued its consideration of the working papers on the resort to a commission on good offices, mediation and conciliation. The Assembly continued to annually stress, “the need to continue efforts to strengthen the process of the peaceful settlement of disputes through progressive development and codification of international law and through enhancing the effectiveness of the United Nations in this field.”¹¹⁰ At its 1985 session, the Committee held a full and in-depth discussion¹¹¹ of the working paper¹¹² submitted by Nigeria, the Philippines and Romania. At the 1986 session of the Committee, its Working Group considered¹¹³ the working paper¹¹⁴ on the issue submitted by Romania. The revised versions, which took into account suggestions made during the

¹⁰⁰ G A resolutions 39/88 A, 39/79, 40/68, 40/78, 41/74, 41/83, 42/150, 42/157, 43/51, 43/163 and 43/170.

¹⁰¹ The Committee also kept the question of the rationalization of the procedures of the United Nations under active review. 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” and “Peaceful settlement of disputes between States”.

¹⁰² A/AC.182/L.38/Rev.1.

¹⁰³ G A (40), Suppl. No. 33, A/40/33, annex. See also *ibid.*, paras. 59-222.

¹⁰⁴ A/AC.182/L.38/Rev.2 and Rev.3.

¹⁰⁵ A/AC.182/L.48.

¹⁰⁶ For the texts of the working papers and relevant discussions see G A (41), Suppl. No. 33, A/41/33, paras. 44-83; G A (42), Suppl. No. 33, A/42/33, paras. 36-117.

¹⁰⁷ G A (43), Suppl. No. 33, A/43/33, paras. 12-14.

¹⁰⁸ G A resolution 43/51, annex. See also para. 71 of this study.

¹⁰⁹ G A resolution 43/170, para.3 (a): (i) and (ii). In connection with suggestions regarding the consideration of the topic of fact-finding see, for instance: A/C.6/43/SR.14, paras.21 and 86; A/C.6/43/SR.15, paras.44-49 and 64-66.

¹¹⁰ G A resolutions: 40/68, 41/74, 42/150 and 43/163, para. 2.

¹¹¹ G A (40), Suppl. No.33, A/40/33, paras. 13 – 49. See also annex.

¹¹² A/C.6/39/L.2.

¹¹³ G A (41), Suppl. No.33, A/41/33, paras. 14 –29.

¹¹⁴ A/AC.182/L.47.

discussions, were considered at the 1987 and 1988 sessions of the Committee,¹¹⁵ leading to the formulation of general guidelines. According to the sponsor, “The guidelines constituted a practical way to help States to resort to already existing means of peaceful settlement in accordance with the provisions of the Charter of the United Nations and with the principle of the free choice of means.”¹¹⁶ At its 1988 session the General Assembly, *inter alia*, requested the Special Committee, “To complete its consideration of the proposal...and to submit conclusions thereon, in an appropriate form, to the General Assembly at its forty-fourth session”.¹¹⁷

6. SUB-COMMITTEE ON GOOD-NEIGHBOURLINESS

45. The General Assembly in its decision 40/419, *inter alia*, decided to take note of the report of the Sub-Committee on Good-Neighbourliness¹¹⁸, set up by the Sixth Committee during the fortieth session and to continue the task of identifying and clarifying the elements of good-neighbourliness between States within the framework of the Sub-Committee. During its forty-first to forty-third sessions, the Assembly, taking into account various working papers on the issue, the views expressed by States and international organizations on this subject and the reports of the Sub-Committee, decided to continue and complete the above task and to begin the elaboration of a suitable international document on the development and strengthening of good-neighbourliness.¹¹⁹

7. DECLARATION ON SOCIAL AND LEGAL PRINCIPLES RELATING TO THE PROTECTION AND WELFARE OF CHILDREN

46. The period under consideration also provided an example of interaction between the principal organs of the United Nations and the Main Committees of the General Assembly. The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally was adopted by the General Assembly in its resolution 41/85 on the basis of the draft submitted by the Economic and Social Council by its resolution 1979/28 and benefited from the efforts of the Third and Sixth Committees.¹²⁰ The draft Declaration was completed following the informal consultations held by the Sixth Committee in 1986 which were aimed at achieving agreement on the remaining questions of the revised version of the draft¹²¹ resulting from the 1985 consultations held with a view to finding out the extent to which Member States “would join the common endeavour of completing the work” on the draft¹²².

8. MEASURES TO PREVENT INTERNATIONAL TERRORISM

47. During the period under review the Sixth Committee continued to consider on a biannual basis the item related to measures to prevent international terrorism,¹²³ including implementation of

¹¹⁵ A/AC.182/L.52 and Rev.1; an informal revised version of the proposal subsequently introduced by the sponsor at the 1988 session and a revised version of the proposal (A/AC.182/L.52/Rev.2) formally submitted by the sponsor at that session: see G A (42), Suppl. No. 33, A/42/33, paras. 15-19; G A (43), Suppl. No. 33, A/43/33, paras.15-59.

¹¹⁶ G A (43), Suppl. No. 33, A/43/33, para.54.

¹¹⁷ G A resolution 43/170, para. 3(b) (i).

¹¹⁸ A/C.6/40/L.28 and Corr.1. For previous work on this issue see *Repertory, Supplement No. 6*, vol. II, under Article 13 (1)(a), para. [9].

¹¹⁹ See G A resolutions 41/84, 42/158 and 43/171.

¹²⁰ See *Repertory, Supplement No. 6*, vol. II, under Article 13 (1)(a), para.[10] and para. 72 of this study.

¹²¹ *Official Records of the General Assembly, Fortieth Session, annexes*, agenda item 148, document A/40/244, annex and appendix I. See also A/C.6/41/SR.55, paras.1- 4, and G A decision 40/422.

¹²² G A resolutions 39/89, para.1, and 41/85, preambular para.3. See also A/40/244, annex and appendix I, and A/C.6/40/SR.48-50, agenda item 148.

¹²³ See also *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [8, 64, 65 and 120].

the recommendations of the Ad Hoc Committee on International Terrorism finalized during its last session held in 1979, contained in its report to the Assembly at its thirty-fourth session.¹²⁴ The General Assembly repeatedly requested the Secretary-General to follow up, as appropriate, the implementation of the above recommendations and to submit a report to the Assembly¹²⁵, as well as to seek the views of Member States on international terrorism in all its aspects and on ways and means of combating it, including the convening, under the auspices of the United Nations, of an international conference to deal with international terrorism.¹²⁶

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

48. The General Assembly continued to recognize the need for the codification and progressive development of the principles and norms of international law relating to the new international economic order¹²⁷ and by its resolutions 40/67 and 41/73, *inter alia*, recommended that the consideration of the most appropriate procedure for completing the elaboration of the process of such codification and progressive development, and of the forum which would be entrusted with the task, be undertaken by the Assembly, after taking into account the proposals and suggestions made by Member States on the matter. In its resolutions 42/149 and 43/162, respectively, the Assembly recommended that this task be undertaken in an appropriate forum within the framework of the Sixth Committee and that the Committee consider making a final decision at the forty-fourth session on the question of such a forum within its framework.

10. COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

49. The General Assembly continued to make recommendations concerning the development and codification of the law of outer space during the period under review 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.

50. Those recommendations related to the finalization of the Principles Relating to Remote Sensing of the Earth from Outer Space; the consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union; the elaboration of draft principles relevant to the use of nuclear power sources in outer space; and the consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interest of all States, taking into particular account the needs of developing countries.

51. During the period under review the General Assembly annually reaffirmed the importance of international cooperation in developing the rule of law, including the relevant norms of space law, for the advancement and preservation of the exploration and peaceful uses of outer space.

52. In its resolution 40/162, the General Assembly noted that the Legal Sub-Committee had continued, through its working groups, its detailed consideration of the legal implications of remote

¹²⁴ See G A (34), Suppl. No. 37, A/34/37, Part IV, para. 118.

¹²⁵ G A resolutions 40/61 and 42/159.

¹²⁶ G A resolution 42/159, para. 12.

¹²⁷ The Assembly also continued to seek the views of Member States on the analytical study on the issue submitted to it in 1984 by the United Nations Institute for Training and Research (A/39/504/Add.1, annex III). In this connection see G A resolutions 40/67, 41/73, 42/149, 43/162, as well as *Repertory, Supplement No. 6*, vol. II, under Article 13(1)(a), paras. [18], [19], [117], [128 and 129].

sensing of the Earth from space, with the aim of formulating draft principles relating to remote sensing; its consideration of the possibility of supplementing the norms of international law relevant to the use of nuclear power sources in outer space and its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit, without prejudice to the role of the International Telecommunication Union. As result of the agreement reached by the Legal Sub-Committee in its consideration of the possibility of supplementing the norms of international law relevant to the use of nuclear power sources, the General Assembly, endorsed the Committee's recommendation that the Legal Sub-Committee begin the elaboration of draft principles relevant to the use of nuclear power sources in outer space.

53. The following year, the Legal Sub-Committee concluded its consideration of the legal implications of remote sensing of the Earth from space, with the aim of formulating draft principles relating to remote sensing by reaching agreement on the draft text. On the recommendation of the Committee on the Peaceful Uses of Outer Space, the General Assembly, in its resolution 41/65, adopted the Principles Relating to Remote Sensing of the Earth from Outer Space¹²⁸.

54. In its resolution 41/64, the General Assembly endorsed the recommendation of the Committee that the Legal Sub-Committee continue its consideration of the two remaining items on its agenda and consider the choice of a new agenda item, including the proposals made by the Group of 77 and others, with a view to making a recommendation to the Committee.

55. In addition to reviewing the work of the Committee and its Sub-Committees, the forty-first session of the General Assembly also considered the question of the review of the Convention on Registration of Objects Launched into Outer Space, as called for by Article X of the Convention. Accordingly, in its resolution 41/66, the General Assembly recognized the need for effective international rules and procedures concerning the registration of objects launched into outer space and reaffirmed the importance of the Convention on Registration of Objects Launched into Outer Space.

56. At its forty-second session, in resolution 42/68, the General Assembly noted that the Legal Sub-Committee had continued, through its working groups, to elaborate draft principles relevant to the use of nuclear power sources in outer space and to consider matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit, without prejudice to the role of the International Telecommunication Union. The General Assembly also requested the Legal Sub-Committee to finalize its choice of a new item for its agenda, taking into account the proposal made by the Group of 77 and other proposals in order to begin its consideration of the item at its twenty-seventh session.

57. The following year, in its resolution 43/56, the General Assembly endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Sub-Committee continue, through its working groups, its consideration of the two existing items on its agenda and endorsed the Committee's recommendation that a new item, namely, the consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interest of all States, taking into particular account the needs of developing countries, be added to its agenda. The General Assembly also urged the Legal Sub-Committee to pursue, with a view of finalizing its consideration of the question of the

¹²⁸ See para. 73 of this study.

establishment of a working group under this agenda item in order to ensure a satisfactory outcome of the substantive deliberations under the item.

11. LAW OF THE SEA

58. The Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea held its third session at Kingston, Jamaica, from 11 March to 4 April 1985. It also held its resumed third session in Geneva from 12 August to 4 September. In addition to the necessary preparatory work for the establishment of the International Seabed Authority and the International Tribunal for the Law of the Sea, the Commission was mandated with administering the regime for registration of pioneer investors under the terms of resolution II of the Third United Nations Conference on the Law of the Sea.

59. The Preparatory Commission adopted a declaration by which it asserted that the United Nations Convention on the Law of the Sea (hereinafter “the Convention”) and related resolutions adopted by the Third United Nations Conference on the Law of the Sea established the only regime for exploring and exploiting the international seabed Area. The Commission declared that any claim, agreement or action regarding the Area which was incompatible with them was illegal and should not be recognized. A number of communications were addressed to the Commission’s Chairman on the subjects of the seabed mining regime and registration of pioneer investors. Several States declared that overlapping claims among applicants for registration as pioneer investors could be satisfactorily resolved only by agreements encompassing all potential claimants.

60. In response to a 1984 General Assembly resolution¹²⁹ the Secretary-General reported¹³⁰ on developments relating to the Convention. He observed that even before its entry into force, the Convention was exerting considerable influence on all aspects of the law of the sea, as well as on marine affairs in general. He noted that a number of States had adopted national legislation dealing with a variety of marine issues, particularly on determining baselines, breadth and status of the territorial sea, establishing exclusive economic zones, defining the continental shelf and delimiting maritime boundaries between States with opposite or adjacent coasts. The Secretary-General also noted that in keeping with the spirit of the Convention several problems with respect to maritime delimitation had been resolved either by delimitation agreements or by international adjudication or other forms of peaceful settlement.¹³¹

61. The General Assembly, in resolution 40/63, called upon all States to safeguard the unified character of the Convention and related resolutions of the Third United Nations Conference on the Law of the Sea, and to desist from taking actions which undermine the Convention or defeat its object and purpose.

62. In order to further implement its mandate with respect to the registration of pioneer investors in deep seabed mining, the Preparatory Commission, on 5 September 1986, adopted a comprehensive understanding, known as the New York Understanding, which provided, *inter alia*, a basis for resolving the overlapping claims of three applicants, a guarantee of a mine site for the Enterprise, and

¹²⁹ G A resolution 39/73.

¹³⁰ A/40/923.

¹³¹ Recent cases included the resolution of the dispute between Argentina and Chile in the Beagle Channel, the delimitation of maritime boundaries between Guinea and Guinea-Bissau and the delimitation of the continental shelf between the Libyan Arab Jamahiriya and Malta.

an extension of the time limit, from January 1985 as specified in resolution II to the date of the entry into force of the Convention, for investments to be made in deep seabed mining by developing countries which would qualify them to apply as pioneer investors. The understanding also entitled potential applicants to treatment similar to that given to the first group of applicants, if the former assumed similar obligations and submitted their applications before the Convention entered into force.

63. By resolution 41/34, the General Assembly noted the progress made by the Preparatory Commission in its work and called on States to desist from actions that undermined or defeated the purpose of the Convention.

64. In 1987, final agreement was reached settling overlapping claims between France, Japan and the USSR. France, India, Japan and the USSR in a letter of the same date¹³² stated that the revised applications of France, Japan and the USSR should be considered immediately after the submission of the revised USSR applications. On 17 August,¹³³ the General Committee, acting on behalf of the Preparatory Commission, decided, on the basis of a report by a Group of Technical Experts, to register India as the first pioneer investor in the international seabed Area, allocating 150,000 square kilometres in the south-central Indian Ocean basin in which it received the exclusive right to carry out activities leading to the exploitation of deep seabed minerals. On 17 December 1987,¹³⁴ the General Committee, again on the basis of a report by the Group of Technical Experts, registered France, Japan and the USSR as pioneer investors for areas in the north-east Pacific Ocean with the same rights and obligations as those conferred on India.

65. At the international level, the Convention continued to receive broad support. In 1988, the Fourth Special Antarctic Treaty Consultative Meeting on Antarctic Mineral Resources stated that the geographic extent of the continental shelf as referred to in the 1988 Convention on the Regulation of the Antarctic Mineral Resource Activities would be determined by reference to the relevant provisions of article 76 of the Convention.

12. COMMISSION ON HUMAN RIGHTS

66. The studies on human rights are listed in the Annex to the study on Article 13(1)(b) in the present Supplement. The codification and progressive development in this area is discussed in more detail in the study on Article 55.

B. The making of recommendations

67. As observed in *Supplements Nos. 3-6*,¹³⁵ 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 development of international law and its codification. The initiation of studies and making of recommendations are not necessarily activities which are mutually exclusive. On the other hand, the stage of initiation is clearly passed when the preparatory work on a topic

¹³² LOS/PCN/91.

¹³³ LOS/PCN/94 and Corr. 1.

¹³⁴ LOS/PCN/99.

¹³⁵ 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; and *Supplement No. 6*, vol. II, under Article 13 (1)(a), para.[111].

results in a final draft submitted by the International Law Commission to the General Assembly, and the action taken by the Assembly on a draft comes exclusively within the scope of “making of recommendations”.

68. During the period under review, the General Assembly took two actions on the final draft prepared by the International Law Commission on the topic “Question of treaties concluded between States and international organizations or between two or more international organizations”.¹³⁶ Firstly, by its resolution 40/76, the General Assembly considered that the informal consultations, held in 1985 among potential conference participants, proved useful in enabling thorough preparation for the successful conduct of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations.¹³⁷ The Assembly, in the same resolution, decided that, in addition to the organizations referred to in paragraph 2(e) of resolution 39/86, the United Nations should participate in the Conference,¹³⁸ and further decided to transmit to the Conference, and to recommend that it adopt, the draft rules of procedure for the Conference, worked out during the informal consultations,¹³⁹ to transmit to the Conference for its consideration and action, as appropriate, a list of draft articles of the basic proposal,¹⁴⁰ and referred to the Conference for its consideration the draft final clauses presented by the co-Chairmen of the informal consultations.¹⁴¹ Subsequently, the General Assembly, by its decision of 41/420,¹⁴² welcomed the adoption, on 20 March 1986, by the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations,¹⁴³ and considered that the 1986 Convention should be signed on behalf of the United Nations.

69. During the period under review, the General Assembly recommended the adoption of the UNCITRAL Convention on International Bills of Exchange and International Promissory Notes and opened it for signature or accession.¹⁴⁴ The General Assembly also noted with particular satisfaction the completion and adoption by the Commission of the Model Law on International Commercial Arbitration¹⁴⁵ and recommended that all States give due consideration thereto¹⁴⁶. The General Assembly also noted with particular satisfaction the completion and adoption of the Legal Guide on Electronic Funds Transfers¹⁴⁷ and of the Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works and recommended that all efforts should be made so that those Legal Guides became generally known and available.¹⁴⁸ Furthermore, the General Assembly reaffirmed the importance, in particular for developing countries, of the work of the Commission concerned with training and assistance and the desirability for it to sponsor seminars and symposia, in particular those organized on a regional basis.¹⁴⁹

70. At its forty-second session in 1987, the General Assembly:

¹³⁶ See *Supplement No. 6*, vol. II, under Article 13(1)(a), paras.[27 and 28], for background information on the draft.

¹³⁷ G A resolution 40/76, para. 1.

¹³⁸ *Ibid.*, para. 3.

¹³⁹ *Ibid.*, para. 4.

¹⁴⁰ *Ibid.*, para. 5.

¹⁴¹ *Ibid.*, para. 6.

¹⁴² G A decision 41/420, paras. a and b.

¹⁴³ A/CONF.129/15.

¹⁴⁴ G A resolution 43/165.

¹⁴⁵ G A resolution 40/71.

¹⁴⁶ G A resolution 40/72.

¹⁴⁷ G A resolution 41/77.

¹⁴⁸ G A resolution 42/152.

¹⁴⁹ G A resolutions 40/71, 42/152 and 43/166.

“
...
“*Convinced* of the need for the effective universal application of the principle of refraining from the threat or use of force in international relations and of the importance of the role of the United Nations in this regard,”
“*Convinced also* that the adoption of the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations should contribute to the improvement of international relations,”¹⁵⁰

approved the Declaration¹⁵¹ and recommended that every effort should be made so that the Declaration becomes generally known.¹⁵² In the Declaration itself, the General Assembly:

“
...
“*Recalling* that this principle is enshrined in Article 2, paragraph 4, of the Charter of the United Nations and has been reaffirmed in a number of international instruments,”¹⁵³

“
...
“*Declares* that nothing in the present Declaration shall be construed as:
“(a) Enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful;
“(b) Prejudicing in any manner the relevant provisions of the Charter or the rights and duties of Member States or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the threat or use of force”.¹⁵⁴

71. At its forty-third session in 1988, the General Assembly:

“
...
“*Convinced* that the adoption of the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field will contribute towards strengthening the role and enhancing the effectiveness of the United Nations in maintaining international peace and security,”¹⁵⁵

approved the Declaration¹⁵⁶ and requested the Secretary-General to inform the Governments of the States Members of the United Nations or members of specialized agencies, and the Security Council, of the adoption of the Declaration and urged that every effort be made to ensure that the Declaration becomes generally known and fully implemented.¹⁵⁷ In the Declaration itself, the General Assembly:

“
...
“*Recognizing* the important role that the United Nations and its organs can play in the prevention and removal of international disputes and situations which may lead to

¹⁵⁰ G A resolution 42/22, preambular paras. 4 and 5.

¹⁵¹ *Ibid.*, para.1 and annex.

¹⁵² G A resolution 42/22, para.3.

¹⁵³ G A resolution 42/22, annex, preambular para. 2.

¹⁵⁴ G A resolution 42/22, annex, para.2.

¹⁵⁵ G A resolution 43/51, preambular para. 3.

¹⁵⁶ *Ibid.*, para.1 and annex.

¹⁵⁷ G A resolution 43/51, paras.3 and 4.

international friction or give rise to an international dispute, the continuance of which may threaten the maintenance of international peace and security...,”¹⁵⁸

“ ...

“*Recognizing* the fundamental responsibility of States for the prevention and removal of disputes and situations,”¹⁵⁹

“ ...

“*Declares* that nothing in the present Declaration shall be construed as prejudicing in any manner the provisions of the Charter, including those contained in Article 2, paragraph 7, thereof, or the rights and duties of States, or the scope of the functions and the powers of United Nations organs under the Charter, in particular those relating to the maintenance of international peace and security,”¹⁶⁰

“*Also declares* that nothing in the present Declaration could in any way prejudice the right to self-determination, freedom and independence of peoples forcibly deprived of that right...”¹⁶¹

72. At its forty-first session in 1986, the General Assembly, in its resolution 41/85, adopted the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally.¹⁶² In the Declaration itself, the General Assembly:

“ ...

“*Conscious* of the need to proclaim universal principles to be taken into account in cases where procedures are instituted relating to foster placement or adoption of a child, either nationally or internationally,”

“*Bearing in mind*, however, that the principles set forth ... do not impose on States such legal institutions as foster placement or adoption,”

proclaimed the principles relating to the foster placement or adoption of a child.¹⁶³

73. At its forty-first session in 1986, the General Assembly:

“ ...

“*Believing* that the adoption of the principles relating to remote sensing of the Earth from space will contribute to the strengthening of international co-operation in this field”,¹⁶⁴

adopted the Principles Relating to Remote Sensing of the Earth from Outer Space.¹⁶⁵

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

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

¹⁵⁸ G A resolution 43/51, annex, preambular para. 1.

¹⁵⁹ *Ibid.*, preambular para. 3.

¹⁶⁰ *Ibid.*, para.2.

¹⁶¹ *Ibid.*, para.3.

¹⁶² G A resolution 41/85, annex.

¹⁶³ *Ibid.*, preambular paras. 8-10.

¹⁶⁴ G A resolution 41/65, preambular para. 4.

¹⁶⁵ *Ibid.*, preambular para. 5 and annex.

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

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

75. During the period under review, at its thirty-eighth session, the Commission reaffirmed the fundamental importance of the continuance of the present system of summary records, which constituted an essential element of its procedures and methods of work and of the process of codification and progressive development of international law.¹⁶⁶ The Commission explained that the work it performed consisted essentially in elaborating drafts of international legal norms on various topics of international law, which often served as the basis for the preparation of international conventions at international conferences of plenipotentiaries convened by the General Assembly. The Commission further stated that the formulation of such drafts was, in most cases, the result of detailed, thorough and analytical discussions in the Commission, and it was often only after studying the discussions in the Commission, which as a whole represented the principal legal systems of the world, that a particular formulation could be properly understood or interpreted, its origin traced and its interrelationship with other rules of international law ascertained.

76. The difference between the two terms was brought into the discussion by Commission members, at its fortieth session, in connection with the topic of “International liability for injurious consequences arising out of acts not prohibited by international law”.¹⁶⁷ Some members were of the view that the apparent characterization of the topic by the Special Rapporteur¹⁶⁸ as progressive development of international law precluded any argument as to whether or not the rules and principles drafted by the Commission on the topic already formed part of the existing law, something which many States might not be able to accept. The Special Rapporteur, on the other hand, stated that he believed that a discussion on whether the topic involved progressive development or codification of international law was unnecessary and would serve no useful purpose, and that any meaningful development of the topic had to rely on sound judgement, common sense, cooperation and concerted efforts on the part of the Commission to reduce the gap between policy preferences.¹⁶⁹

77. During the debates in the Sixth Committee on the International Law Commission, during the period under review, reference was made to a link between the development of international law and the security of mankind. In order that international law could be developed and thereby ensure the security of mankind, the Commission should consider more carefully the questions of the direction of its work and give priority, when setting its agenda, to the most timely topics.¹⁷⁰ The view also was expressed that there was an increased need for the codification of international law, particularly in areas where legal standards were not yet manifest, and by organizing its work so as to optimize its interaction with the Commission on major contemporary legal challenges, the Sixth Committee could hope to contribute more productively to that end.¹⁷¹

78. The General Assembly in its resolutions on the Commission’s reports, during the period, consistently emphasized.¹⁷²

¹⁶⁶ *Yearbook of the International Law Commission, 1986, vol. II (Part Two)*, para. 253.

¹⁶⁷ *Ibid.*, 1988, vol. II (Part Two), para. 29.

¹⁶⁸ Mr. Julio Barboza.

¹⁶⁹ *Yearbook of the International Law Commission, 1988, vol. II (Part Two)*, para. 37.

¹⁷⁰ A/C.6/42/SR.43, para. 20.

¹⁷¹ A/C.6/43/SR.39, para. 14.

¹⁷² See G A resolutions 40/75, 41/81, 42/156 and 43/169, preambular para.2.

“the need for the progressive development of international law and its codification in order to make it a more effective means of implementing the purposes and principles set forth in the Charter of the United Nations and in 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 to give increasing importance to its role in relations among States.”