
Article 13 (1) (a)

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

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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 format established in the *Repertory* and continued in *Supplements Nos. 1-7*. 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 (UNCITRAL), 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 and the Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel. It also includes material relating to the developments within the framework of 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. 7*, vol. II, under Article 13 (1) (a), a review of the trends and developments in the general survey serves as a background to the analytical summary of practice.

¹ See *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a).

I. General survey

3. In *Supplements Nos. 3-7*, 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.

4. The interaction between bodies of Government representatives noted in previous *Supplements*⁴ 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 comment on the drafts at successive stages of preparation. Furthermore, on several occasions the Commission took steps to enable special rapporteurs to attend the meetings of the Sixth Committee on the report of the Commission so as to give them the opportunity to acquire a more comprehensive view of existing positions, to take note of observations made and to begin preparing their reports at an earlier stage to facilitate useful informal contacts, exchanges of views and consultations between them and representatives of Governments.⁵

5. *Supplements Nos. 3-7* 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.⁶ During the period under review this procedure was followed, with some modifications, with respect to the issue of jurisdictional immunities of States and their property, in which case the General Assembly, prior to giving full consideration to the recommendation of the Commission that an international conference of plenipotentiaries be convened to examine the draft articles and to conclude a convention of the subject, decided, by its resolution [46/55](#), to establish, at its forty-seventh session, an open-ended working group of the Sixth Committee to examine (a) issues of substance arising out of the draft articles and (b) the question of the convening of an international conference, to be held in 1994 or subsequently. While by its resolution [49/61](#) the General Assembly ultimately accepted the above recommendation of the Commission to convene a conference, it did not decide, during the period under consideration, on the date of such a conference. The procedure noted in *Supplements Nos. 3-7* was applied still with other modifications with respect to the draft statute of an international criminal court prepared by the Commission. In its resolution [49/53](#), the General Assembly decided to establish an ad hoc committee open to all States Members of the United Nations or members of specialized agencies, to review the major substantive and administrative issues arising out of the draft statute and, in the light of that review, to consider arrangements for the convening of an international conference of plenipotentiaries. Yet there was a deviation from the procedure noted in

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; and *Supplement No. 7*, 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; and *Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 3.

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

⁵ GA (45), Suppl. No. 10, para. 551.

⁶ *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; and *Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 6.

Supplements Nos. 3-7 in the case of the topic of non-navigational uses of international watercourses, where the Commission, when submitting the set of draft articles on the subject and a resolution on confined transboundary groundwater to the General Assembly, recommended to the Assembly the elaboration of the convention on the subject by the Assembly itself or by an international conference of plenipotentiaries. In its resolution 49/52, the General Assembly opted for the first approach.⁷

6. Concerning the work programme of the Commission, the General Assembly recommended that the Commission continue with its consideration of all topics previously begun, which are noted in *Supplement No. 7*,⁸ for example, jurisdictional immunities of States and their property, status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, non-navigational uses of international watercourses, draft Code of Crimes against the Peace and Security of Mankind, as well as State responsibility, 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 General Assembly also decided to bring the draft articles on most-favoured-nation clauses to the attention of Member States and interested intergovernmental organizations for their consideration.⁹ Three new studies were initiated by the General Assembly, namely: the question of an international criminal court, the law and practice relating to reservations to treaties and the question of State succession and its impact on the nationality of natural and legal persons. 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 practice.¹⁰

7. During the period under review the United Nations Commission on International Trade Law continued its consideration of questions initiated previously¹¹ and completed its work on the draft Convention on the Liability of Operators of Transport

Terminals in International Trade; the UNCITRAL Model Law on International Credit Transfers; the UNCITRAL Legal Guide on International Countertrade Transactions; and the UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment.¹²

8. During the period under review the General Assembly adopted two conventions, which were elaborated by two ad hoc committees: the Convention against the Recruitment, Use, Financing and Training of Mercenaries¹³ and the Convention on the Safety of the United Nations and Associated Personnel.¹⁴

9. On the basis of the drafts elaborated by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, the General Assembly adopted two declarations: the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security¹⁵ and the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security.¹⁶ The Assembly also adopted decision 44/415 and annexed to it the document entitled "Resort to a commission of good offices, mediation or conciliation within the United Nations".¹⁷

10. During the period under review the General Assembly continued its consideration of several other

¹² For the actions taken by the General Assembly in connection with those texts, see para. 76 of the present study.

¹³ GA resolution 44/34, annex. See also paras. 36, 77 and 94 of the present study. 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.

¹⁴ GA resolution 49/59, annex. See also paras. 37, 78 and 95 of the present study. The Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel was established by GA resolution 48/37.

¹⁵ GA resolution 46/59. See also *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 43; and paras. 39 and 79 of the present study.

¹⁶ GA resolution 49/57. See also paras. 40 and 80 of the present study.

¹⁷ See *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 44; and paras. 42 and 81 of the present study.

⁷ See para. 73 of the present study.

⁸ See *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), paras. 5 and 20-26.

⁹ *Ibid.*, para. 26. See also paras. 25 and 72 of the present study.

¹⁰ See paras. 17-25, 72-75 and 86-89 of the present study.

¹¹ See *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), paras. 27-36.

questions aimed at the progressive development of international law and its codification noted in *Supplement No. 7*. Concerning the development and strengthening of good-neighbourliness between States,¹⁸ the Assembly, having considered this issue at its forty-sixth session,¹⁹ decided, in its resolution 46/62, that the question could be considered in the future, thus closing its current study. In the field of measures to eliminate international terrorism²⁰ the Assembly, after consideration of this item at its forty-fourth, forty-eighth and forty-ninth sessions,²¹ adopted the Declaration on Measures to Eliminate International Terrorism annexed to its resolution 49/60. The question of the progressive development of the principles and norms of international law relating to the new international economic order²² was considered at the forty-fourth, forty-sixth and forty-eighth sessions of the General Assembly²³ and, as a result, the Assembly adopted decision 48/412 deferring this matter to its fifty-first session.

11. The year 1990 was the first year of the United Nations Decade of International Law²⁴ declared by the Assembly, which listed the encouragement of the progressive development of international law and its codification among the Decade's main purposes.

12. During the period under review the General Assembly continued its efforts aimed at the codification and progressive development of the law of outer space through the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee.

13. The Committee and the Subcommittee continued consideration of questions noted in *Supplement No. 7*²⁵ and concluded their work on the draft principles relevant to the use of nuclear power sources in outer space. In 1992, the General Assembly adopted, in its resolution 47/68, the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.²⁶ The Legal

Subcommittee also established a new working group and began consideration of the question of early review and possible revision of the principles relevant to the use of nuclear power sources in outer space.²⁷

14. During the period under review, the General Assembly continued its efforts aimed at the codification and progressive development of the law of the sea.²⁸ Following a series of informal consultations on the issues of deep seabed mining undertaken by the Secretary-General, the Assembly adopted the Agreement relating to the implementation of Part XI of the United Nations Convention of the Law of the Sea of 10 December 1982.²⁹ The General Assembly also convened the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, 1993 and 1994),³⁰ following the deliberations of the United Nations Conference on Environment and Development, to promote effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks.³¹

15. The practice noted in the previous *Supplements* of entrusting the Secretary-General with the preparation of studies continued through the period under review.³² In particular, the General Assembly requested the Secretary-General to update the survey of State practice relevant to international liability for injurious consequences arising out of acts not prohibited by international law, prepared by the Secretariat in 1984;³³ to prepare an analytical review of existing international legal instruments relating to international

¹⁸ See *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), paras. 14 and 45.

¹⁹ See paras. 44 and 82 of the present study.

²⁰ See *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), paras. 14 and 47.

²¹ See paras. 45, 46 and 83 of the present study.

²² See *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), paras. 14 and 48.

²³ See para. 47 of the present study.

²⁴ See paras. 48-57 of the present study.

²⁵ See *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), paras. 15-17.

²⁶ See paras. 59, 60 and 84 of the present study.

²⁷ See GA resolutions 44/46, para. 5; 45/72, para. 3 and 4 (c); 47/67, para. 4(a); 48/39, para. 3; and 49/34, para. 4 (a).

²⁸ See paras. 63-69 and 85 of the present study. For previous work in this field see *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), paras. 18 and 58-65.

²⁹ GA resolution 48/263. See also paras. 63-65 and 85 of the present study.

³⁰ GA resolution 47/192, para. 1. See also paras. 66-69 of the present study.

³¹ GA resolution 47/192, para. 2.

³² 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; and *Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 19.

³³ GA resolution 49/51, para. 5. See also *Yearbook of the International Law Commission, 1985*, vol. II, part I (addendum).

terrorism, in order to assist States in identifying aspects of this matter that have not been covered by such instruments and could be addressed to develop further a comprehensive legal framework of conventions dealing with international terrorism;³⁴ and to prepare reports on the activities of the United Nations relevant to the progressive development of international law and its codification.³⁵ The Secretary-General, following the Assembly's requests,³⁶ prepared the *Handbook on the Peaceful Settlement of Disputes between States*.³⁷

³⁴ GA resolution 49/60, annex, para. 10(c).

³⁵ GA resolutions 45/40, annex, III, para. 1; 46/53, para. 5; 47/32, para. 6 and annex, III, para. 1; 48/30, para. 6; and 49/50, para. 5 and annex, III, para. 1.

³⁶ GA resolutions 44/37, para. 7; 45/44, para. 6; and 46/58, para. 2. See also *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 19.

³⁷ GA (46), Suppl. No. 33 and Corr.1, annex. See also GA resolution 46/58, para. 2, and *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 19.

16. The Assembly also entrusted the Secretary-General with the task of seeking the views of States on the texts and conclusions contained in the reports of the International Law Commission regarding the topics under its consideration,³⁸ on the proposal concerning the elaboration of an additional protocol on consular functions to the 1963 Vienna Convention on Consular Relations,³⁹ and on the document relating to the draft conciliation rules of the United Nations.⁴⁰

³⁸ See, for instance, GA resolutions 44/32, para. 3; 44/39, para. 2; and 49/53, para. 4.

³⁹ GA resolutions 45/47, para. 3; and 46/61, paras. 2 and 3.

⁴⁰ GA decision 45/413.

II. Analytical summary of practice

A. The initiation of studies

1. International Law Commission

17. During the period under review, the International Law Commission made progress on the studies previously initiated.⁴¹ The Commission also initiated three new studies, on the establishment of an international criminal court;⁴² the law and practice relating to reservations to treaties; and State succession and its impact on the nationality of natural and legal persons. The General Assembly, in various resolutions adopted throughout this period, requested the Commission to continue its work on the topics in its agenda⁴³ and to address the question of establishing an

international criminal court or other international criminal trial mechanism,⁴⁴ as well as endorsing its decision to include in its agenda the topics of the law and practice relating to reservations to treaties and State succession and its impact on the nationality of natural and legal persons.⁴⁵

18. Regarding the draft articles on jurisdictional immunities of States and their property, the Commission at its forty-third session completed its work on the draft articles and adopted the final text of a set of 22 draft articles,⁴⁶ and recommended to the General Assembly that it convene an international conference of plenipotentiaries to examine the draft articles on the jurisdictional immunities of States and their property and to conclude a convention on the subject.⁴⁷ By its resolution 46/55,⁴⁸ the General Assembly decided to establish at its forty-seventh session an open-ended working group of the Sixth Committee to examine (a) issues of substance arising out of the draft articles

⁴¹ See *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), paras. 20-26.

⁴² Although discussions in the Commission concerning an international criminal jurisdiction had taken place as early as 1949, it was in the Special Rapporteur's eighth report on the draft Code of Crimes against the Peace and Security of Mankind (A/CN.4/430 and Add.1) that a part III, entitled "Statute of an international criminal court", was included (see *Yearbook of the International Law Commission 1990*, vol. II (Part Two), paras. 93-157).

⁴³ See GA resolutions 44/32, para. 1; 45/41, para. 2; 46/54, para. 4; 47/33, para. 3; 48/31, para. 3; and 49/51, para. 4.

⁴⁴ GA resolution 44/39, para. 1.

⁴⁵ GA resolution 48/31, para. 7.

⁴⁶ *Yearbook of the International Law Commission 1991*, vol. II (Part Two), para. 23.

⁴⁷ *Ibid.*, para. 25.

⁴⁸ GA resolution 46/55, para. 4.

and (b) the question of the convening of an international conference, to be held in 1994 or subsequently, to conclude a convention on jurisdictional immunities of States and their property. By its decision 48/413,⁴⁹ the General Assembly took note of the report of the Working Group,⁵⁰ established by resolution 46/55 and reconvened pursuant to decision 47/414, and decided that consultations should be held in the framework of the Sixth Committee at the forty-ninth session to continue consideration of the issues of substance arising out of the draft articles. By the same decision,⁵¹ the Assembly also decided that, at its forty-ninth session, it would give full consideration to the recommendation of the International Law Commission that an international conference of plenipotentiaries be convened to examine the draft articles on the jurisdictional immunities and to conclude a convention on the subject. By its resolution 49/61,⁵² the General Assembly (a) accepted the recommendation of the International Law Commission that an international conference of plenipotentiaries be convened to consider the articles on jurisdictional immunities of States and their property and to conclude a convention on the subject, and (b) invited States to submit to the Secretary-General their comments on the conclusions of the chairman of the informal consultations held pursuant to its decision 48/413 and on the reports of the Working Group established under its resolution 46/55 and reconvened pursuant to its decision 47/414.

19. With respect to the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and of the draft optional protocols thereto, during its forty-first session the Commission adopted the final text of a set of 32 draft articles, as well as draft Optional Protocol One on the status of the courier and the bag of special missions and draft Optional Protocol Two on the status of the courier and the bag of international organizations of a universal character, and submitted them to the General Assembly,⁵³ with the recommendation that the Assembly convene an international conference of plenipotentiaries to consider the draft articles and the draft optional protocols thereto, and to conclude a

convention on the subject.⁵⁴ The General Assembly began informal consultations on the topic, as well as on the question of how to deal further with these draft instruments, at its forty-fifth session.⁵⁵ By its decision 47/415,⁵⁶ the General Assembly took note of the report of the Vice-Chairman of the Sixth Committee who presided over the consultations on the draft articles on the status of the diplomatic courier and the draft optional protocols thereto, held in accordance with its resolution 46/57 of 9 December 1991, and decided to include this item in the provisional agenda of its fiftieth session.

20. As regards the draft articles on the law of the non-navigational uses of international watercourses, during its forty-sixth session the Commission adopted, on the basis of the report of the Drafting Committee,⁵⁷ the final text of a set of 33 draft articles on the law of the non-navigational uses of international watercourses and a resolution on confined transboundary groundwater and submitted them to the General Assembly.⁵⁸ The Commission recommended the draft articles and the resolution to the Assembly, and further recommended to the Assembly the elaboration of a convention by the Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.⁵⁹ The General Assembly took action on this recommendation in its resolution 49/52.⁶⁰

21. Concerning the draft Code of Crimes against the Peace and Security of Mankind, the Commission during its forty-third session adopted the draft as a whole on first reading, at the same time mindful that the draft Code was still open to some improvements, which could be made on second reading, with the benefit of further points made in the comments and observations by Governments.⁶¹ In this connection, the Commission decided to transmit the draft articles through the Secretary-General to Governments for their comments and observations.⁶² During its forty-sixth session, the Commission considered the Special

⁴⁹ GA decision 48/413, paras. (a) and (b).

⁵⁰ A/C.6/48/L.4 and Corr.2.

⁵¹ GA decision 48/413, para. (c).

⁵² GA resolution 49/61, paras. 1 and 2.

⁵³ *Yearbook of the International Law Commission* 1989, vol. II (Part Two), para. 30.

⁵⁴ *Ibid.*, para. 66.

⁵⁵ See General Assembly resolutions 44/36, para. 2; 45/43, para. 1; and 46/57, para. 1.

⁵⁶ GA decision 47/415, paras. (a) and (b).

⁵⁷ A/CN.4/L.492 and Add.1.

⁵⁸ *Yearbook of the International Law Commission* 1994, vol. II (Part Two), para. 218.

⁵⁹ *Ibid.*, para. 219.

⁶⁰ GA resolution 49/52, paras. 2 and 3.

⁶¹ *Yearbook of the International Law Commission* 1991, vol. II (Part Two), para. 173.

⁶² *Ibid.*, para. 174.

Rapporteur's twelfth report on the topic,⁶³ wherein the Special Rapporteur⁶⁴ had reproduced, article by article, the general part of the draft adopted on first reading, each article being followed by comments from Governments and then by the Special Rapporteur's opinion and conclusions and recommendations on each article.⁶⁵ The Commission decided to refer draft articles 1 to 15 to the Drafting Committee, it being understood that the work on the draft Code and on the draft statute for an international criminal court should be coordinated by the Special Rapporteur on the draft Code and by the Chairman and members of the Drafting Committee and of the Working Group on a Draft Statute for an International Criminal Court.⁶⁶ The General Assembly, by its resolution 49/51,⁶⁷ urged the Commission to resume, at its forty-seventh session, the work on the draft Code of Crimes against the Peace and Security of Mankind in such a manner that the second reading of the draft articles might be completed before the end of the present term of office of the members of the Commission.

22. Concerning the establishment of an international criminal court, the Commission, during its forty-fourth session, considered the Special Rapporteur's tenth report,⁶⁸ on the topic of the draft Code of Crimes, which was devoted entirely to the question of the possible establishment of an international criminal jurisdiction.⁶⁹ At the end of the discussion of the Special Rapporteur's report, the Commission established a Working Group with the mandate to consider further and analyse the main issues concerning the question of an international criminal jurisdiction,⁷⁰ and the Working Group subsequently submitted its report.⁷¹ The Commission also decided that further work on the issue required a renewed mandate from the General Assembly, and that it was then a matter for the General Assembly to decide whether the Commission should undertake the project for an international criminal jurisdiction.⁷² During its

forty-fifth session, the Commission considered the Special Rapporteur's eleventh report,⁷³ which was devoted entirely to the question of a draft statute of an international criminal court.⁷⁴ The Commission reconvened its Working Group,⁷⁵ and its subsequent report⁷⁶ placed the emphasis on the elaboration of a comprehensive set of draft articles with brief commentaries thereto.⁷⁷ The Commission further decided that the draft articles should be transmitted, through the Secretary-General, to Governments for their comments.⁷⁸ During its forty-sixth session, the Commission considered the final report of the Working Group on a Draft Statute for an International Criminal Court, which contained the complete text of a draft statute, consisting of 60 articles with commentaries thereto, and adopted the draft statute and commentaries.⁷⁹ The Commission further recommended to the General Assembly that it convene an international conference of plenipotentiaries to study the draft statute and to conclude a convention on the establishment of an international criminal court.⁸⁰ The Assembly, by its resolution 46/54,⁸¹ invited the International Law Commission, within the framework of the draft Code of Crimes, to consider further and analyse the issues raised in its report on the work of its forty-second session⁸² concerning the question of an international criminal jurisdiction, including proposals for the establishment of an international criminal court or other international criminal trial mechanism in order to enable the General Assembly to provide guidance on the matter. By its resolution 48/31,⁸³ the General Assembly requested the Sixth Committee to continue its work as a matter of priority on this question with a view to elaborating a draft statute. The General Assembly, in its resolution 49/53,⁸⁴ decided to establish an ad hoc committee, open to all States Members of the United Nations or members of specialized agencies, to review the major substantive

⁶³ A/CN.4/460 and Corr.1.

⁶⁴ Mr. Doudou Thiam.

⁶⁵ *Yearbook of the International Law Commission 1994*, vol. II (Part Two), para. 95.

⁶⁶ *Ibid.*, para. 96.

⁶⁷ GA resolution 49/51, para. 4.

⁶⁸ A/CN.4/442.

⁶⁹ *Yearbook of the International Law Commission 1992*, vol. II (Part Two), paras. 24 and 25.

⁷⁰ *Ibid.*, para. 98.

⁷¹ *Ibid.*, annex.

⁷² *Ibid.*, paras. 104 (c) and (d).

⁷³ A/CN.4/449 and Corr.1.

⁷⁴ *Yearbook of the International Law Commission 1993*, vol. II (Part Two), para. 35.

⁷⁵ *Ibid.*, para. 96.

⁷⁶ *Ibid.*, annex.

⁷⁷ *Ibid.*, para. 99.

⁷⁸ *Ibid.*

⁷⁹ *Yearbook of the International Law Commission 1994*, vol. II (Part Two), paras. 87 and 88.

⁸⁰ *Ibid.*, para. 90.

⁸¹ GA resolution 46/54, para. 3.

⁸² GA (45), Suppl. No. 10, chap. II, sect. C.

⁸³ GA resolution 48/31, para. 6.

⁸⁴ GA resolution 49/53, para. 2.

and administrative issues arising out of the draft statute prepared by the Commission and, in the light of that review, to consider arrangements for the convening of an international conference of plenipotentiaries.

23. Regarding the topic “The law and practice relating to reservations to treaties”, the Commission, during its forty-fifth session, decided, subject to the approval of the General Assembly, to include the topic in its agenda.⁸⁵ During its forty-sixth session, the Commission appointed Mr. Alain Pellet Special Rapporteur for the topic.⁸⁶ The General Assembly, by its resolution 48/31,⁸⁷ endorsed the decision of the International Law Commission to include the topic in the Commission’s agenda.

24. Also during its forty-fifth session, the Commission decided, subject to the approval of the General Assembly, to include in its agenda the topic “State succession and its impact on the nationality of natural and legal persons”.⁸⁸ During its forty-sixth session, the Commission appointed Mr. Vaclav Mikulka Special Rapporteur for the topic.⁸⁹ The General Assembly, by its resolution 48/31,⁹⁰ endorsed the decision of the International Law Commission to include the topic in the Commission’s agenda.

25. With regard to the draft articles on the most-favoured-nation clauses, as contained in the report of the Commission on the work of its thirtieth session,⁹¹ the Sixth Committee, at the forty-sixth session of the General Assembly, considered the topic and recommended to the Assembly that it bring the draft articles to the attention of Member States and interested intergovernmental organizations for their consideration in such cases and to the extent they deemed appropriate.⁹² The General Assembly, at the same session, followed the Sixth Committee’s recommendation.⁹³

⁸⁵ *Yearbook of the International Law Commission 1993*, vol. II (Part Two), para. 440.

⁸⁶ *Ibid.*, 1994, vol. II (Part Two), para. 382.

⁸⁷ GA resolution 48/31, para. 7.

⁸⁸ *Yearbook of the International Law Commission 1993*, vol. II (Part Two), para. 440.

⁸⁹ *Yearbook of the International Law Commission 1994*, vol. II (Part Two), para. 383.

⁹⁰ GA resolution 48/31, para. 7.

⁹¹ GA (33), Suppl. No. 10.

⁹² GA (46), Annexes, a.i. 134 (A/46/655). See also *Repertory, Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 26.

⁹³ GA decision 46/416. See also paras. 6 and 72 of the

2. United Nations Commission on International Trade Law

26. From its twenty-second session in 1989 until its twenty-seventh session in 1994, the priority subjects which the Commission⁹⁴ considered, in accordance with relevant General Assembly resolutions,⁹⁵ were the following: transport law; international payments; new international economic order; independent guarantees and stand-by letters of credit; international countertrade; the procurement of goods, construction and services; and electronic data interchange.

(a) Transport law

27. At its twenty-second session, the Commission completed its consideration of the draft Convention on the Liability of Operators of Transport Terminals in International Trade, and decided to submit the draft Convention to the General Assembly with a recommendation to convene an international conference of plenipotentiaries to conclude, on the basis of the draft Convention approved by the Commission, a Convention on the Liability of Operators of Transport Terminals in International Trade.⁹⁶ The Convention was adopted by the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade⁹⁷ on 17 April 1991 and was opened for signature on 19 April 1991.⁹⁸

present study.

⁹⁴ For the mandate of UNCITRAL, see GA resolution 2205 (XXI), GA (21), Annexes, a.i. 88 (A/6396) and *Yearbook of the United Nations Commission on International Trade Law*, vol. I: 1968-70, Part I, chap. II, para. 33 E. For the Commission’s terms of reference and the work programme established to fulfil its mandate, see *Repertory, Supplement No. 4*, vol. I, under Article 13 (a) (1), para. 24).

⁹⁵ For the general mandate given to the Commission by the General Assembly to continue its work in the topics included on its programme of work, see GA resolutions 43/166, 44/33, 45/29, 46/56, 47/34, 48/32 and 49/55.

⁹⁶ GA (44), Suppl. No. 17, chap. II, para. 225.

⁹⁷ Texts adopted by the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade and the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 2-19 April 1991) (A/CONF.152/13), paras. 1 and 2. See also para. 76 of the present study.

⁹⁸ Texts adopted by the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade and the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 2-19 April 1991)

(b) International payments: Model Law on International Credit Transfers

28. At its twenty-second session,⁹⁹ the Commission considered the reports on the seventeenth and eighteenth sessions of the Working Group on International Payments¹⁰⁰ setting forth draft provisions on international credit transfers, and called upon the Working Group to prepare a text of a draft Model Law on International Credit Transfers for consideration at its twenty-fourth session, in 1991. At its twenty-fifth session, the Commission, following its consideration at its twenty-third¹⁰¹ and twenty-fourth sessions¹⁰² of the draft Model Law prepared by the Working Group, adopted the Model Law on International Credit Transfers.¹⁰³

(c) International payments: independent guarantees and stand-by letters of credit

29. At its twenty-second session, the Commission considered the report of the Working Group on International Contract Practices on the work of its twelfth session, which reviewed the International Chamber of Commerce draft Uniform Rules on Guarantees.¹⁰⁴ The Commission decided to begin work on a uniform law on guarantees and stand-by letters of credit, and entrusted the work to the Working Group on International Contract Practices.¹⁰⁵ At its twenty-third to twenty-sixth sessions,¹⁰⁶ the Commission considered the reports of the Working Group of its thirteenth to nineteenth sessions¹⁰⁷ and requested the Working Group to proceed with its work so as to complete it before the twenty-eighth session of the Commission.¹⁰⁸

(A/CONF.152/13), para. 12.

⁹⁹ GA (44), Suppl. No. 17, chap. III, paras. 226-229.

¹⁰⁰ See A/CN.9/317 and A/CN.9/318.

¹⁰¹ GA (45), Suppl. No. 17, chap. III, paras. 22-25.

¹⁰² GA (46), Suppl. No. 17, chap. II, paras. 11-14, 290.

¹⁰³ GA (47), Suppl. No. 17, chap. II, paras. 11, 82. See also para. 76 of the present study.

¹⁰⁴ GA (44), Suppl. No. 17, chap. V, para. 239.

¹⁰⁵ Ibid., paras. 242 and 244.

¹⁰⁶ GA (45), Suppl. No. 17, chap. V, para. 31; GA (46), Suppl. No. 17, chap. IV, paras. 297 and 298; GA (47), Suppl. No. 17, chap. VI, para. 157; and GA (48), Suppl. No. 17, chap. IV, para. 272.

¹⁰⁷ See A/CN.9/330, A/CN.9/342, A/CN.9/345, A/CN.9/358, A/CN.9/361, A/CN.9/372 and A/CN.9/374, respectively.

¹⁰⁸ GA (48), Suppl. No. 17, chap. IV, para. 273.

(d) New international economic order: Legal Guide on International Countertrade Transactions

30. At its twenty-second session, the Commission considered a report by the Secretariat entitled "Draft outline of the possible content and structure of a legal guide on drawing up international countertrade contracts".¹⁰⁹ The Commission decided to begin work on the topic and requested the Secretariat to prepare draft chapters of a legal guide for consideration at its twenty-third session.¹¹⁰

31. At its twenty-third session, the Commission had before it the report of the Working Group on International Payments and a Report of the Secretary-General entitled "Draft legal guide on drawing up contracts in international countertrade transactions: sample chapters".¹¹¹ The Commission noted that generally there had been agreement with the approach taken by the Secretariat as to the structure of the legal guide and advice provided therein and decided that the Secretariat should complete the preparation of the remaining draft chapters and submit them to the Working Group on International Payments.¹¹²

32. At its twenty-fifth session, the Commission, following its consideration, at its twenty-fourth session, of the report on the preparation of the legal guide,¹¹³ adopted the UNCITRAL Legal Guide on International Countertrade Transactions and invited the General Assembly to recommend the use of the Legal Guide.¹¹⁴

(e) Model Law on Procurement of Goods, Construction and Services

33. Following its consideration, at its twenty-second to twenty-fifth sessions, of the reports of the Working Group on the New International Economic order, the Commission, at its twenty-sixth session, considered and adopted the Model Law on Procurement of Goods

¹⁰⁹ See A/CN.9/322.

¹¹⁰ GA (44), Suppl. No. 17, chap. VI, paras. 245-246 and 249.

¹¹¹ See, respectively, A/CN.9/357 and A/CN.9/332 and Add.1-7.

¹¹² GA (45), Suppl. No. 17, chap. II, paras. 14, 16 and 17.

¹¹³ GA (46), Suppl. No. 17, chap. V, para. 304.

¹¹⁴ GA (47), Suppl. No. 17, chap. III, para. 137. See also para. 76 of the present study.

and Construction, and the Guide to Enactment.¹¹⁵ At that session the Commission also decided, on the basis of a note by the Secretariat exploring the issue, to assign to the Working Group the elaboration of draft model provisions for the procurement of services.¹¹⁶

34. At its twenty-seventh session, the Commission considered the reports of the Working Group and adopted the UNCITRAL Model Law on Procurement of Goods, Construction and Services.¹¹⁷

(f) Electronic data interchange

35. At its twenty-third session, the Commission considered a study prepared by the Secretariat summarizing legal issues related to the formation of contracts by electronic means, and requested that the Secretariat prepare a further study to be presented at its twenty-fourth session.¹¹⁸ At its twenty-fourth session, the Commission considered the report entitled “Electronic data interchange”, which identified the need for a general legal framework and set of basic rules concerning the legal aspects of electronic data interchange and decided to devote a session of the Working Group on International Payments to the preliminary consideration of this topic.¹¹⁹ At its twenty-fifth session, the Commission entrusted the preparation of legal rules on electronic data interchange to the Working Group on International Payments, which it renamed the Working Group on International Data Interchange.¹²⁰ At its twenty-sixth¹²¹ and twenty-seventh sessions,¹²² the

Commission expressed its appreciation for the work accomplished by the Working Group and requested that a draft set of core provisions on electronic data interchange be presented by the Working Group to the Commission at its twenty-eighth or twenty-ninth session.¹²³

3. Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries

36. In 1989, the Ad Hoc Committee on the drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries completed its work on the Draft Convention,¹²⁴ thus fulfilling its mandate. During its forty-fourth session, the General Assembly, with the assistance of a working group of the Sixth Committee established during that session, finalized the draft Convention against the Recruitment, Use, Financing and Training of Mercenaries,¹²⁵ which it then adopted, by its resolution 44/34.¹²⁶

4. Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel

37. At its forty-eighth session, the General Assembly decided to establish an Ad Hoc Committee open to all Member States to elaborate an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel.¹²⁷ The Ad Hoc Committee held two sessions, from 28 March

¹¹⁵ GA (44), Suppl. No. 17, chap. IV, paras. 230-232; GA (45), Suppl. No. 17, chap. IV, para. 27; GA (46), Suppl. No. 17, chap. III, paras. 292 and 293; GA (47), Suppl. No. 17, chap. V, paras. 150-153; GA (48), Suppl. No. 17, chap. II, paras. 13 and 14; and the reports of the Working Group: A/CN.9/315, A/CN.9/331, A/CN.9/343, A/CN.9/356 and A/CN.9/359. See also para. 76 of the present study.

¹¹⁶ GA (48), Suppl. No. 17, chap. II, paras. 261 and 262. For the note by the Secretariat, see A/CN.9/378/Add.1.

¹¹⁷ GA (49), Suppl. No. 17, chap. II, para. 97. For the reports of the Working Group on the work at its sixteenth and seventeenth sessions see, respectively, A/CN.9/389 and A/CN.9/392. See also para. 76 of the present study.

¹¹⁸ GA (45), Suppl. No. 17, chap. VI, para. 40.

¹¹⁹ GA (46), Suppl. No. 17, chap. VI, paras. 311-317. For the report entitled “Electronic data interchange”, see A/CN.9/350.

¹²⁰ GA (47), Suppl. No. 17, chap. IV, paras. 143-147.

¹²¹ GA (48), Suppl. No. 17, chap. III, paras. 265-267.

¹²² GA (49), Suppl. No. 17, chap. V, paras. 198-200.

¹²³ Ibid.

¹²⁴ For discussions in the Ad Hoc Committee, see GA (44), Suppl. No. 43 and Corr.1. For previous work on the draft Convention see *Repertory, Supplement No. 6*, vol. II, under Article 13 (1) (a), paras. 60 and 61; and *Supplement No. 7*, vol. II, under Article 13 (1) (a), paras. 10, 37 and 38.

¹²⁵ The Working Group was established by the Sixth Committee during its 3rd meeting, on 25 September 1989. For discussions in the Working Group, see A/C.6/44/L.9. For discussions in the Sixth Committee, see A/C.6/44/SR.41, 42 and 44.

¹²⁶ See paras. 77 and 94 of the present study.

¹²⁷ GA resolution 48/37, para. 1.

to 8 April 1994, and from 1 to 12 August 1994.¹²⁸ During the forty-ninth session, the Ad Hoc Committee, with the assistance of the Working Group of the Sixth Committee,¹²⁹ finalized the text of a draft Convention on the Safety of the United Nations and Associated Personnel.¹³⁰ The General Assembly adopted the above Convention by its resolution 49/59.¹³¹

5. Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

38. During the period under review, the Special Committee, in accordance with relevant General Assembly resolutions and decisions,¹³² 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.¹³³ The General Assembly, in its resolution 49/58, also requested the Committee to consider the question of the deletion of the “enemy-State” clauses of the Charter and to recommend to the Assembly at its fiftieth session the most appropriate legal action to be taken on this question.

39. 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 fact-finding activities by the United Nations. At the 1989 session, the Committee discussed

two working papers on the topic.¹³⁴ The 1990 joint discussion of the revised versions of those working papers¹³⁵ and of the unified document¹³⁶ presented by the co-sponsors at the 1990 session¹³⁷ was followed by the 1991 discussion of the two revised versions of the unified document,¹³⁸ which resulted in the elaboration by the Committee of the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security and its submission to the General Assembly for consideration and adoption.¹³⁹ The Assembly, at its forty-sixth session in 1991, adopted the Declaration.¹⁴⁰

40. In 1991, the Assembly also initiated a new topic, requesting the Special Committee to consider the proposal on the enhancement of cooperation between the United Nations and regional organizations.¹⁴¹ The proposal, presented at the 1991 session of the Committee¹⁴² and discussed at its 1992-1994 sessions,¹⁴³ originated from the working paper suggesting new issues for consideration in the Committee, initially submitted at the 1990 session of

¹²⁸ For discussions, see GA (49), Suppl. No. 22; A/AC.242/1994/CRP.14 and addenda; A/AC.242/2; and A/AC.242/L.13 and Add.1.

¹²⁹ The Working Group was first established by the Sixth Committee, on 21 October 1993 (forty-eighth session of the General Assembly), and was re-established on 26 September 1994 (forty-ninth session of the General Assembly).

¹³⁰ For relevant discussions, see A/C.6/49/SR.29-32 and 34-35.

¹³¹ See paras. 78 and 95 of the present study.

¹³² GA resolutions 43/170, 44/31, 44/37, 45/44, 46/58, 47/38, 48/36 and 49/58 and GA decisions 45/412 and 45/413.

¹³³ The Committee also kept the question of the rationalization of the procedures of the United Nations under active review, which resulted in the decision to reproduce the conclusions of the Committee on the issue as an annex to the rules of procedure of the General Assembly (see GA resolution 45/45 and annex). 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”.

¹³⁴ See A/AC.182/L.60, submitted by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain (for the amended text of the working paper and relevant discussions, see GA (44), Suppl. No. 33, paras. 13-17, 20-50 and 83); and A/AC.182/L.62, submitted by Czechoslovakia and the German Democratic Republic (see GA (44), Suppl. No. 33, paras. 13, 51-83).

¹³⁵ A/AC.182/L.60/Rev.1 and A/AC.182/L.62/Rev.1.

¹³⁶ A/AC.182/1990/CRP.2, later produced as document A/AC.182/L.66.

¹³⁷ For the text of relevant 1990 documents and discussions see GA (45), Suppl. No. 33, paras. 12, 13, and 18-69.

¹³⁸ A/AC.182/L.66/Rev.1 and, subsequently, A/AC.182/L.70.

¹³⁹ For the text of relevant 1991 documents and discussions, see GA (46), Suppl. No. 33 and Corr.1, paras. 12 and 17-21.

¹⁴⁰ GA resolution 46/59, annex. See also para. 79 of the present study.

¹⁴¹ GA resolution 46/58, para. 4 (a).

¹⁴² For the text of the proposal presented by the Union of Soviet Socialist Republics and relevant comments by the sponsor, see GA (46), Suppl. No. 33, and Corr.1, paras. 46 and 47.

¹⁴³ For the text of relevant documents subsequently submitted by the Russian Federation and discussions, see A/AC.182/L.72 and GA (47), Suppl. No. 33, paras. 33 and 39-94; A/AC.182/L.72/Rev.1 and the amendment thereto proposed by Mexico (A/AC.182/1993/CRP.4); GA (48), Suppl. No. 33, and Corr.1, paras. 13 and 25-89; A/AC.182/L.72/Rev.2; and GA (49), Suppl. No. 33, paras. 14-24 and 83-89.

the Committee¹⁴⁴ and discussed in 1991-1994.¹⁴⁵ In 1994 the Committee completed the draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security and submitted it to the General Assembly for consideration and adoption.¹⁴⁶ The Assembly, at its forty-ninth session in 1994, adopted the Declaration.¹⁴⁷

41. From 1991 to 1994 the Committee, as requested by the Assembly,¹⁴⁸ also discussed new proposals relating to: the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions,¹⁴⁹ with a view to

enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security,¹⁵⁰ and to the strengthening of the role of the United Nations in the maintenance of international peace and security.¹⁵¹ In 1994 the Assembly requested the Committee to continue its consideration of the above-mentioned proposals and to report on its work to the Assembly at its fiftieth session.¹⁵²

42. In the context of the peaceful settlement of disputes between States, the Committee, with the assistance of its Working Group, at its 1989 session completed its consideration of the proposal on the resort to a commission on good offices, mediation or conciliation within the United Nations and recommended that the General Assembly bring the proposal, as useful guidance, to the attention of States by annexing it to a decision.¹⁵³ The Assembly, at its forty-fourth session in 1989, adopted the decision.¹⁵⁴

43. During the period under review, the Assembly requested the Committee to begin the study of three new issues, namely: proposed United Nations rules for

¹⁴⁴ A/AC.182/L.65, submitted by the Union of Soviet Socialist Republics. For the text of the working paper and relevant comments, see GA (45), Suppl. No. 33, paras. 14-16.

¹⁴⁵ In 1991, the Committee continued its consideration of working paper A/AC.182/L.65, submitted by the Union of Soviet Socialist Republics (see GA (46), Suppl. No. 33 and Corr.1, paras. 22-47). For the text of relevant documents subsequently submitted by the Russian Federation and 1992-1994 discussions, see A/AC.182/L.65 and Corr.1 and GA (47), Suppl. No. 33, paras. 95-108; A/AC.182/L.65/Rev.1 and GA (48), Suppl. No. 33 and Corr.1, paras. 95 and 96; and GA (49), Suppl. No. 33, paras. 83-89.

¹⁴⁶ See GA (49), Suppl. No. 33, paras. 83-89.

¹⁴⁷ GA resolution 49/57, annex. See also para. 80 of the present study. See also GA resolution 49/58, para. 4 (d).

¹⁴⁸ See GA resolutions 45/44, para. 3 (a) (ii); 46/58, para. 4 (a) and (c); 47/38, para. 3 (a) (ii) and (iii) and (c); 48/36, para. 3 (a) (i) and (iii); and 49/58, para. 4 (a) (i) and (ii).

¹⁴⁹ For the proposal (A/AC.182/L.73 and Rev.1) submitted at the 1992 session of the Committee by Bangladesh, Bulgaria, Lebanon, the Philippines, Romania, Seychelles, Uruguay and Viet Nam, later joined by Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Cyprus, Ecuador, Egypt, El Salvador, Guatemala, Honduras, India, Indonesia, Iran (Islamic Republic of), Malta, Mauritania, Mexico, Mozambique, Nepal, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Spain, Sri Lanka, the Sudan, the United Republic of Tanzania, Vanuatu, Venezuela and Yugoslavia, and relevant discussion, see GA (47), Suppl. No. 33, paras. 34 and 109-122. For the proposals under the same title submitted at the 1993 session by Bolivia, Bulgaria, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Malta, Mauritania, Mongolia, Mozambique, Nicaragua, Panama, Paraguay, the Republic of Moldova, Romania, Ukraine and Uruguay (A/AC.182/L.76/Rev.1) and by India and Nepal (A/AC.182/L.77) and relevant discussions see GA (48), Suppl. No. 33 and Corr.1, paras. 97-121. For the consolidated proposal (A/AC.182/L.79) submitted at the 1994 session by Bulgaria, Costa Rica, Ecuador, El Salvador, Guatemala,

Honduras, Jordan, Mozambique, Nicaragua, Nigeria, Panama, Paraguay, Poland, the Republic of Moldova, Romania, Uganda, Ukraine, Uruguay and Zambia, later joined by India and Tunisia, relevant discussions and the recommendation of the Committee, see GA (49), Suppl. No. 33, paras. 25-37 and 51-82.

¹⁵⁰ For the proposal submitted by the Socialist People's Libyan Arab Jamahiriya at the 1991 session of the Committee and its 1993 revised version (A/AC.182/1993/CRP.1) and relevant comments see, respectively, GA (46), Suppl. No. 33, and Corr.1, paras. 14 and 15; and GA (48), Suppl. No. 33, and Corr.1, paras. 93 and 94.

¹⁵¹ For the proposal (A/AC.182/1992/CRP.2) submitted by Cuba at the 1992 session of the Committee and its 1993 (A/AC.182/1993/CRP.2) and 1994 revised versions and relevant discussions see, respectively, GA (47), Suppl. No. 33, paras. 123-131; GA (48), Suppl. No. 33 and Corr.1, paras. 90-92; and GA (49), Suppl. No. 33, paras. 41-43 and 90-97.

¹⁵² GA resolution 49/58, paras. 4 (a) and 8.

¹⁵³ For the text of the proposal (A/AC.182/L.52/Rev.2) submitted by Romania in 1988, relevant 1989 discussions, the statement of the Chairman and the Committee's recommendation, see, respectively, GA (43), Suppl. No. 33 para. 48, and GA (44), Suppl. No. 33, paras. 14, 17 and 119-123.

¹⁵⁴ GA decision 44/415, annex. See also para. 81 of the present study. See also GA resolution 44/37, fourth preambular paragraph.

the conciliation of disputes between States,¹⁵⁵ the establishment of a dispute settlement service offering or responding with its services early in a dispute¹⁵⁶ and the question of the enhancement of the role of the International Court of Justice.¹⁵⁷ In 1994 the Assembly requested the Committee to continue its consideration of the above proposals and to report on its work to the Assembly at its fiftieth session.¹⁵⁸

6. Development and strengthening of good-neighbourliness between States

44. Pursuant to General Assembly decision 45/402, consideration of the item was deferred to the forty-sixth session of the Assembly.¹⁵⁹ After consideration of the item in the Sixth Committee,¹⁶⁰ the Assembly, at its forty-sixth session, adopted resolution 46/62 reaffirming the value of good-neighbourliness in the

modern world of interdependent nations and noting that the question of its development and strengthening could be considered in the future.¹⁶¹ This concluded the active consideration of the item.

7. Measures to eliminate international terrorism

45. At its forty-fourth to forty-eighth sessions, the General Assembly adopted two resolutions and one decision under this item.¹⁶² The Assembly, in its resolutions, among other things, repeatedly invited States to express their views on a proposal for the holding of an international conference on international terrorism¹⁶³ made at its forty-second session. During the forty-ninth session of the Assembly, the Sixth Committee decided to hold informal consultations for the elaboration of a draft declaration on the item¹⁶⁴ and also considered the item during its formal meetings.¹⁶⁵ At the same session, the Assembly approved the Declaration on Measures to Eliminate International Terrorism.¹⁶⁶

46. In relation to the Declaration, the Assembly placed the emphasis on the need to pursue efforts aiming at eliminating definitively all acts of terrorism by the strengthening of international cooperation and progressive development of international law and its codification, as well as by enhancement of coordination between, and increase of the efficiency of, the United Nations and the relevant specialized agencies, organizations and bodies.¹⁶⁷

8. Principles and norms of international law relating to the new economic order

47. The General Assembly, in its resolution 46/52, inter alia, decided to establish a working group of the Sixth Committee to develop the principles and norms of international law relating to the new international economic order¹⁶⁸ and requested the Secretary-General to seek the views of Member States and competent

¹⁵⁵ See GA decision 45/413 and GA resolutions 46/58, para. 4 (b) (i), 47/38, para. 3 (b) (i), 48/36, para. 3 (b) (i), and 49/58, para. 4 (b) (i). For the text of the proposal originally submitted by Guatemala to the General Assembly at its forty-fifth session in document A/45/742, its revised versions (A/AC.182/L.75 and A/AC.182/L.75/Rev.1) (under a modified title "United Nations Model Rules for the Conciliation of Disputes between States") and relevant discussions in the Committee, see GA (47), Suppl. No. 33, paras. 35, and 132-182; GA (48), Suppl. No. 33 and Corr.1, paras. 122-159; and GA (49), Suppl. No. 33, paras. 44, 45 and 102-108.

¹⁵⁶ See GA resolution 49/58, para. 4 (b) (ii). For the text of the proposal originally submitted by Sierra Leone in document A/48/398, annex, and relevant discussion in the Committee in 1994, see GA (49), Suppl. No. 33, paras. 109-111.

¹⁵⁷ See GA resolutions 48/36, para. 3 (b) (ii), and 49/58, para. 4 (b) (ii). For views expressed in connection with suggestions made, on various occasions, by the Secretary-General relating to the enhancement of the role of the International Court of Justice, in particular, to authorize the Secretary-General to request advisory opinions of the Court, see GA (45), Suppl. No. 33, paras. 73 and 74; GA (46), Suppl. No. 33 and Corr.1, paras. 37 and 38; GA (47), Suppl. No. 33, paras. 26, 31 and 32; GA (48), Suppl. No. 33, and Corr.1, para. 20; and GA (49), Suppl. No. 33, para. 46. See also the report of the Secretary-General entitled "An Agenda for Peace" (A/47/277-S/24111, paras. 38 and 39).

¹⁵⁸ GA resolution 49/58, paras. 4 (b) and 8.

¹⁵⁹ See also *Repertory, Supplement No. 7*, vol. II, under Article 13(1)(a), paras. 14 and 45, and A/45/511.

¹⁶⁰ See A/C.6/46/SR.21, paras. 23 and 24, SR.22, paras. 1-3, and SR.28, paras. 75-85.

¹⁶¹ See also para. 82 of the present study.

¹⁶² GA resolutions 44/29 and 46/51 and decision 48/411.

¹⁶³ GA resolutions 44/29 and 46/51.

¹⁶⁴ See A/49/743, para. 5.

¹⁶⁵ For discussions, see A/C.6/49/SR.12-15 and 39.

¹⁶⁶ See GA resolution 49/60, annex. See also paras. 46 and 83 of the present study.

¹⁶⁷ GA resolution 49/60, annex, para. 12.

¹⁶⁸ For previous work on this issue see *Repertory, Supplement No. 7*, vol. II, under Article 13(1)(a), paras. 14 and 48. See also GA resolution 44/30, paras. 3 and 4.

international organizations on the principles which might be given priority attention by the group and to include their comments in a report to be submitted to the Assembly at its forty-eighth session. In its decision 48/412, the Assembly, taking note of the oral report of the Chairman of the Working Group on the item,¹⁶⁹ decided to resume consideration of the item at its fifty-first session.

9. United Nations Decade of International Law

48. The General Assembly, in its resolution 44/23, declared the period 1990-1999 as the United Nations Decade of International Law, listing the encouragement of the progressive development of international law and its codification among the Decade's main purposes.¹⁷⁰

49. During the period under review the Assembly considered the item annually, reconfirming the above-mentioned purpose in its resolutions¹⁷¹ as well as in the programmes of activities for the first (1990-1992), second (1993-1994) and third (1995-1996) terms of the Decade.¹⁷² The Assembly, *inter alia*, repeatedly requested the Secretary-General to submit a report,¹⁷³ on the basis of information received from States, international organizations (including the United Nations) and institutions referred to in the programmes on their relevant activities and suggestions, for consideration by the Sixth Committee assisted by its Working Group on the Decade.¹⁷⁴ While the *raison d'être* of the United Nations Decade of International Law and its main objective was to promote the respect for international law and enhance the implementation of existing law,¹⁷⁵ the progressive development of

international law and its codification were considered, in the context of the strengthening of the rule of law in international relations,¹⁷⁶ to be an integral part of the Decade and were spelled out as one of its four principal goals.¹⁷⁷

50. In this connection, the discussions in the Sixth Committee provided both a unique assessment of achievements and a new vision of the potential of the progressive development of international law and its codification at the end of the twentieth century.

51. The debate focused on the achievements in the field of progressive development of international law and its codification. It was generally accepted that much of the relevant substance of universal international law was already codified, and progressive development was already under way in many specialized organizations.¹⁷⁸ It was also pointed out that, at the time, increasing the accession of States to multilateral treaties was in itself a means of encouraging the progressive development of international law and its codification.¹⁷⁹

52. Support was expressed for identification of those areas of international law, including areas already codified, which needed to be developed further.¹⁸⁰ However, a divergence of views existed on the question as to which part of the substantive law should be highlighted or developed further.¹⁸¹

53. Various suggestions in the field of codification and progressive development of international law were formulated in the comprehensive list of suggestions with respect to the programme for the United Nations Decade of International Law proposed by States and international organizations contained in annex II to the 1990 report of the Working Group on the United Nations Decade of International Law.¹⁸²

54. Some delegations suggested a cautious approach when undertaking new efforts in the field of codification. The point was made that the codification of the rules of international law should not be

¹⁶⁹ See A/C.6/48/SR.35, paras. 21 and 22.

¹⁷⁰ See GA resolution 44/23, para. 2 (c).

¹⁷¹ See GA resolution 44/23, para. 2 (c), and second preambular paragraph, sub-para. 2 (c), of resolutions 45/40, 46/53, 47/32, 48/30 and 49/50.

¹⁷² See annex, sect. III, to GA resolutions 45/40, 47/32 and 49/50.

¹⁷³ See GA resolutions 44/23, para. 3; 45/40, paras. 4 and 5 and annex, sect. III, para. 1; 46/53, paras. 3-5; 47/32, paras. 4-6 and annex, sect. III, para. 1; 47/37, para. 4; 48/30, paras. 3, 5 and 6; 49/50, paras. 4 and 5 and annex, sect. III, para. 1.

¹⁷⁴ The Working Group on the Decade was originally established pursuant to para. 4 of GA resolution 44/23.

¹⁷⁵ A/C.6/45/SR.40, para. 23. See also *ibid.*, paras. 54 and 95. See also A/C.6/45/SR.41, paras. 59 and 93; A/C.6/46/SR.37, paras. 62 and 70; A/C.6/46/SR.38, para. 73; A/C.6/48/SR.31, para. 19; A/C.6/48/SR.32, paras. 16, 66 and 91; and A/C.6/48/L.9, paras. 8 and 21.

¹⁷⁶ A/C.6/46/SR.43, para. 8.

¹⁷⁷ See para. 48 above of the present study.

¹⁷⁸ A/C.6/45/SR.40, para. 11.

¹⁷⁹ A/C.6/45/SR.41, para. 76. See also A/C.6/49/SR.35, para. 7.

¹⁸⁰ A/C.6/45/SR.40, para. 21. See also A/C.6/47/SR.34, para. 63.

¹⁸¹ A/C.6/45/SR.40, para. 8.

¹⁸² A/C.6/45/L.5.

undertaken without a fair expectation that the result could be a success.¹⁸³ The opinion was also expressed that in view of the large number and diversity of international agreements, it would be prudent to inventory and assess those which already existed before undertaking any new efforts at codification or progressive development.¹⁸⁴ It was also felt that the relevant information regarding the reasons for the lack of acceptance of a particular treaty could lead to its revision.¹⁸⁵ It was suggested that the International Law Commission should carry out a review of conventions which had not entered into force despite a great deal of time having elapsed since their adoption.¹⁸⁶

55. The future role of the United Nations in the process of progressive development of international law and its codification was also discussed. It was affirmed that the United Nations remained the best framework for the progressive development of international law and its codification.¹⁸⁷ However, it was recognized that in many cases a regional or functionally limited approach would be easier to manage and would lead to more effective standards than a global approach.¹⁸⁸ Some recalled that the process of formulating multilateral conventions must be truly universal and that developing countries must participate fully in that process so that their interests would be reflected in international instruments.¹⁸⁹

56. The debate focused also on the procedures, methods and forms to be used in the process of progressive development of international law and its codification. It was argued that, because of the fundamental importance of the consent of sovereign States in the development of international law, consensus provided the purest basis for actions intended to strengthen the role of international law in international relations.¹⁹⁰ The point was also made, however, that the Decade should not be reduced to a mere search for consensus but should instead provide an opportunity for an exchange of opposing points of

view from which solutions would emerge.¹⁹¹ It was stated that the search for broadly acceptable agreements should not be the pretext for subordinating law to the requirement of unanimity.¹⁹² It was suggested that more emphasis be placed on the use of non-binding instruments, given their increasing importance.¹⁹³

57. The contribution of academia to the process of progressive development of international law and its codification was generally welcomed. It was suggested that scholarly institutions should contribute to the study of, inter alia, such matters as the existing procedures for the progressive development of international law and its codification, as well as areas of international law that might be ripe for progressive development or codification.¹⁹⁴ It was argued that the proposed United Nations congress on public international law would provide an opportunity to assess the prospects for the progressive development and codification of international law.¹⁹⁵

10. Committee on the Peaceful Uses of Outer Space

58. During the period under review the General Assembly, in its resolutions 44/46, 45/72, 46/45, 47/67, 48/39 and 49/34, continued to encourage the work on topics relating to the development and codification of the law of outer space on the basis of proposals by States and the reports submitted by the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee¹⁹⁶ on topics noted in *Supplement No. 7*.¹⁹⁷

59. In its resolutions 44/46, 45/72 and 46/45, the General Assembly endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee continue, through its working

¹⁸³ A/C.6/45/SR.40, para. 12.

¹⁸⁴ Ibid, para. 98.

¹⁸⁵ A/C.6/49/SR.35, para. 8.

¹⁸⁶ Ibid, para. 7.

¹⁸⁷ A/C.6/47/SR.35, para. 56.

¹⁸⁸ A/C.6/45/SR.40, para. 11.

¹⁸⁹ A/C.6/47/SR.35, para. 53. See also A/C.6/48/SR.31, paras. 46 and 47.

¹⁹⁰ A/C.6/45/SR.40, para. 100. See also A/C.6/45/SR.41, paras. 4 and 58; and A/C.6/48/SR.31, para. 46.

¹⁹¹ A/C.6/45/SR.41, para. 83.

¹⁹² Ibid, para. 87.

¹⁹³ A/C.6/49/SR.35, para. 27.

¹⁹⁴ A/C.6/45/SR.39, para. 55. See also A/C.6/45/SR.42, para. 35.

¹⁹⁵ A/C.6/47/SR.34, paras. 7 and 31. See also A/C.6/48/L.9, paras. 29 and 30; and A/C.6/48/SR. 32, para. 4.

¹⁹⁶ See GA (44), Suppl. No. 20, GA (45), Suppl. No. 20, GA (46), Suppl. No. 20, GA (47), Suppl. No. 20, GA (48), Suppl. No. 20, GA (49), Suppl. No. 20, A/AC.105/430, A/AC.105/457, A/AC.105/484, A/AC.105/514, and A/AC.105/573.

¹⁹⁷ See *Repertory, Supplement No. 7*, vol. II. under Article 13(1)(a), paras. 49-57.

group, the elaboration of the draft principles relevant to the use of nuclear power sources in outer space.¹⁹⁸ In 1992, the Legal Subcommittee and the Committee on the Peaceful Uses of Outer Space finalized the draft text of the principles.

60. At its forty-seventh session, by its resolution 47/68, the General Assembly adopted the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.¹⁹⁹ In the same resolution, the Assembly recognized that the set of Principles would require future revision in view of emerging nuclear power applications and evolving international recommendations on radiological protection²⁰⁰ and, in its resolution 47/67, it recommended that the Legal Subcommittee begin consideration of the question of early review and possible revision of the Principles.²⁰¹ In 1993, the Legal Subcommittee began its consideration of this question. In its resolution 49/34, the Assembly endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the work of the working group on this question be suspended.²⁰²

61. The General Assembly also endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee continue, through its working group, 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.²⁰³ At its forty-eighth session, in its resolution 48/39, the Assembly also noted that the deliberations on the question of the geostationary orbit had been undertaken by the Legal Subcommittee on the basis of recent proposals that might provide a new and enhanced basis for the future work of the Subcommittee.²⁰⁴

62. During the period under review the General Assembly also endorsed the recommendation of the Committee that the Legal Subcommittee continue 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 interests of all States, taking into particular account the needs of developing countries, and noted that a working group would be established in 1990 under this item.²⁰⁵ With a view to facilitating the work of the working group, the Assembly called upon Member States to submit their views on specific issues identified under this item by the Legal Subcommittee in advance of the session in 1990.²⁰⁶ The working group was established in 1990.²⁰⁷

11. Law of the Sea

(a) *Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982*

63. From 1990 to 1994, the Secretary-General undertook a series of informal consultations on the issues of deep seabed mining²⁰⁸ aimed at achieving universal participation in the United Nations Convention on the Law of the Sea.²⁰⁹ The consultations identified a number of difficult issues. These included costs to States parties to the Convention; decision-making; transfer of technology; production limitations that may be imposed by the International Seabed Authority; a compensation fund for developing countries adversely affected by deep seabed mining, and financial terms of contracts for deep seabed mining. The consultations also examined the various methods by which any agreed-upon solutions might be adopted. As a result, the General Assembly adopted the Agreement relating to the implementation of Part XI of the United Nations

¹⁹⁸ See GA resolutions 44/46, para. 4 (a), 45/72, para. 4 (a) and 46/45, para. 4 (a).

¹⁹⁹ See GA resolution 47/68, eighth preambular paragraph.

²⁰⁰ Ibid., seventh preambular paragraph.

²⁰¹ See GA resolution 47/67, para. 4 (a).

²⁰² See para. 84 of the present study.

²⁰³ See GA resolutions 44/46, para. 4 (b), 45/72, para. 4 (b), 46/45, para. 4 (b), 47/67, para. 4 (b) and 48/39, para. 4 (b), 49/34, para. 4 (b).

²⁰⁴ See GA resolution 48/39, para. 5.

²⁰⁵ See GA resolutions 44/46, paras. 4 (c) and 5, 45/72, para. 4 (c), 46/45, para. 4 (c), 47/67, para. 4 (c) and 48/39, para. 4 (c) and 49/34, para. 4 (c).

²⁰⁶ See GA resolution 44/46, para. 6.

²⁰⁷ See A/AC.105/457, para. 11 (d).

²⁰⁸ See A/48/950, for the dates of the informal meetings.

²⁰⁹ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

Convention of the Law of the Sea of 10 December 1982.²¹⁰

64. The main features of the Agreement are the following:

(a) The International Seabed Authority shall, inter alia, elaborate and adopt rules, regulations and procedures necessary to facilitate the approval of plans of work for the exploration or exploitation of deep seabed minerals in accordance with a number of procedures, including at the request of a State whose national intends to apply for approval of a plan of work for exploitation;²¹¹

(b) The Enterprise shall conduct its initial deep seabed mining operations through joint ventures, and not by itself, as the Convention provided before the adoption of the Agreement;²¹²

(c) As a general rule, decision-making in the organs of the Authority should be by consensus.²¹³

65. The States parties to the Agreement also agreed that “The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.”²¹⁴

(b) United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks

66. During the period under review, the General Assembly convened the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, 1993 and 1994),²¹⁵ following the deliberations of the United Nations Conference on Environment and Development. The mandate of the Conference was to promote effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks,²¹⁶ identify and assess existing problems related to the conservation and management

of such fish stocks,²¹⁷ consider means of improving fisheries cooperation among States²¹⁸ and formulate appropriate recommendations.²¹⁹ The General Assembly also affirmed that the work and results of the Conference should be fully consistent with the provisions of the Convention, in particular with the rights and obligations of coastal States and States fishing on the high seas.²²⁰

67. In its resolutions 48/194 and 49/121, the General Assembly renewed the mandate of the Conference. During the period under review, the Conference held four sessions.²²¹

68. In a guide to the issues before the Conference prepared by the Chairman,²²² a number of key issues were elaborated, including: the nature of conservation and management measures to be established through cooperation; the mechanisms for cooperation, including the establishment of regional or subregional organizations or arrangements for the conservation and management of the fish stocks; the responsibilities of existing regional fisheries organizations or arrangements; and compliance with conservation and management measures. The Conference also faced the key issue of enforcement, including the responsibilities of the flag State. Another central question dealt with by the Conference was the application of the so-called “precautionary” approach to conservation and management procedures.

69. By the end of the fourth session of the Conference in August 1994, the Chairman had prepared a revised negotiating text in the form of a binding instrument, entitled “Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks”.²²³

²¹⁰ GA resolution 48/263, annex. See also para. 85 of the present study.

²¹¹ GA resolution 48/263, annex, section 1, para. 15.

²¹² Ibid., section 2, para. 2.

²¹³ Ibid., section 3, para. 2.

²¹⁴ Ibid., annex, article 2, para. 1.

²¹⁵ GA resolution 47/192, para. 1.

²¹⁶ Ibid., para. 2.

²¹⁷ Ibid., para. 2 (a).

²¹⁸ Ibid., para. 2 (b).

²¹⁹ Ibid., para. 2 (c).

²²⁰ Ibid., para. 3.

²²¹ See A/50/550, para. 7, for sessions and dates of the Conference.

²²² Document A/CONF.164/10.

²²³ Document A/CONF.164/22.

12. Commission on Human Rights

70. 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

71. As observed in *Supplements Nos. 3-7*,²²⁴ many actions by the General Assembly, as recorded above in section II.A, “The initiation of studies”, can be said to be recommendations for the purpose of encouraging the development of international law and its codification. The initiation of studies and the making of recommendations are not necessarily activities which are mutually exclusive. On the other hand, the initiation stage is clearly over 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 by the Assembly on a draft comes exclusively within the scope of “the making of recommendations”.

72. During the period under review, the General Assembly, by its decision 46/416, decided to bring the draft articles on most-favoured-nation clauses, as contained in the report of the Commission on the work of its thirtieth session,²²⁵ to the attention of Member States and interested intergovernmental organizations for their consideration in such cases and to the extent as they deem appropriate.

73. The General Assembly, by its resolution 49/52 on non-navigational uses of international watercourses,²²⁶ invited States to submit written comments and observations on the draft articles adopted by the Commission, and further decided that, at the beginning of its fifty-first session, the Sixth Committee should convene as a working group of the whole, open to States Members of the United Nations or members of specialized agencies, to elaborate a framework

convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the Commission, in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session.

74. In its resolution 44/39,²²⁷ the General Assembly requested the Commission, when considering at its forty-second session the item entitled “Draft Code of Crimes against the Peace and Security of Mankind”, to address the question of establishing an international criminal court or other international criminal trial mechanism with jurisdiction over persons alleged to have committed crimes which may be covered under such a code, including persons engaged in illicit trafficking in narcotic drugs across national frontiers, and to devote particular attention to that question in its report on that session. By its resolution 49/53,²²⁸ the General Assembly decided to establish an ad hoc committee, open to all States Members of the United Nations or members of specialized agencies, to review the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, in the light of that review, to consider arrangements for the convening of an international conference of plenipotentiaries.

75. The General Assembly, in its resolutions on the reports of the Commission during the period, consistently recognized the importance of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission, and of enabling the Sixth Committee and the Commission further to enhance their contributions to the progressive development of international law and its codification,²²⁹ and consistently recalled the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the

²²⁴ See *Repertory, Supplement No. 3*, vol. I, under Article 13 (1) (a), paras. 48 and 49; *Supplement No. 4*, vol. I, under Article 13 (1) (a), para. 69; *Supplement No. 5*, vol. I, under Article 13 (1) (a), para. 54; *Supplement No. 6*, vol. II, under Article 13 (1) (a), para. 111; and *Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 67.

²²⁵ GA (33), *Suppl. No. 10*.

²²⁶ GA resolution 49/52, paras. 2 and 3.

²²⁷ GA resolution 44/39, para. 1.

²²⁸ GA resolution 49/53, para. 2.

²²⁹ See GA resolutions 44/35, 45/41, 46/54, 47/33, 48/31 and 49/51.

future programme of work of the International Law Commission.²³⁰

76. During the period under review, the General Assembly decided that an international conference of plenipotentiaries should be convened to conclude a convention on the liability of operators of transport terminals in international trade, which the General Assembly noted resulted in the adoption of the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade.²³¹ The General Assembly also noted with particular satisfaction the completion and adoption by the Commission of the Model Law on International Credit Transfers, the Model Law on Procurement of Goods, Construction and Services, and the Legal Guide on International Countertrade Transactions.²³² The General Assembly welcomed the decision of the Commission to commence work in the preparation of guidelines for pre-hearing conferences in arbitral proceedings.²³³

77. At its forty-fourth session in 1989, the General Assembly, mindful of the need to conclude, under the auspices of the United Nations, an international convention against the recruitment, use, financing and training of mercenaries,²³⁴ adopted and opened for signature and ratification, or for accession, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.²³⁵ In the Convention itself, the States parties to the Convention expressed their conviction that the adoption of a convention against the recruitment, use, financing and training of mercenaries would contribute to the eradication of these nefarious activities and thereby to the observance of the purposes and principles enshrined in the Charter”.²³⁶

²³⁰ A similarly worded paragraph was also included in GA resolution 44/39, entitled “International criminal responsibility of individuals and entities engaged in illicit trafficking in narcotic drugs across national frontiers and other transnational criminal activities: establishment of an international criminal court with jurisdiction over such crimes”.

²³¹ GA resolutions 44/33 and 46/56.

²³² GA resolutions 47/34, 49/54 and 47/34.

²³³ GA resolution 48/32.

²³⁴ GA resolution 44/34, second preambular paragraph.

²³⁵ *Ibid.*, para. 5.

²³⁶ *Ibid.*, annex, sixth preambular paragraph.

78. At its forty-ninth session in 1994, the General Assembly, gravely concerned at the increasing number of attacks on United Nations and associated personnel that have caused death or serious injury,²³⁷ adopted and opened for signature and ratification, acceptance or approval, or for accession, the International Convention on the Safety of United Nations and Associated Personnel.²³⁸ It also underlined the importance it attached to the speedy conclusion of a comprehensive review of arrangements for compensation for death, disability, injury or illness attributable to peacekeeping service, with a view to developing equitable and appropriate arrangements and to ensuring expeditious reimbursement.²³⁹

79. At its forty-sixth session, in 1991, the General Assembly approved the Declaration²⁴⁰ on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. Convinced that its adoption would contribute to strengthening the role of the United Nations and enhancing its effectiveness in maintaining international peace and security,²⁴¹ it requested the Secretary-General to make all efforts so that the Declaration became generally known and fully implemented.²⁴² In the Declaration itself, the General Assembly recognized that the full use and further improvement of the means for fact-finding of the United Nations could contribute to the strengthening of the role of the United Nations in the maintenance of international peace and security and promote the peaceful settlement of disputes, as well as the prevention and removal of threats to peace.²⁴³ It also declared:

“Nothing in the present Declaration is to be construed as prejudicing in any manner the provisions of the Charter”.²⁴⁴

80. At its forty-ninth session in 1994, the General Assembly approved the Declaration²⁴⁵ on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the

²³⁷ GA resolution 49/59, first preambular paragraph.

²³⁸ *Ibid.*, para. 1.

²³⁹ *Ibid.*, para. 4.

²⁴⁰ GA resolution 46/59, para. 1 and annex.

²⁴¹ *Ibid.*, third preambular paragraph.

²⁴² *Ibid.*, paras. 3 and 4.

²⁴³ *Ibid.*, annex, third preambular paragraph.

²⁴⁴ *Ibid.*, para. 31.

²⁴⁵ GA resolution 49/57, para. 1 and annex.

Maintenance of International Peace and Security.²⁴⁶ Convinced that its adoption would contribute towards strengthening the role and enhancing the effectiveness of the United Nations and of the regional arrangements or agencies in the maintenance of international peace and security,²⁴⁷ it requested the Secretary-General to make every effort to ensure that the Declaration became generally known and fully implemented.²⁴⁸ In the Declaration itself, the General Assembly, recalling the provisions of the Charter of the United Nations concerning the role of regional arrangements or agencies in the maintenance of international peace and security,²⁴⁹ and stressing the need to enhance cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security,²⁵⁰ declared, *inter alia*:

“... ”

“Cooperation between regional arrangements or agencies and the United Nations should be in accordance with their respective mandates, scope and composition and should take place in forms that are suited to each specific situation, in accordance with the Charter.”²⁵¹

“... ”

“Nothing in the present Declaration is to be construed as prejudicing in any manner the provisions of the Charter.”²⁵²

81. At its forty-fourth session, in 1989, the General Assembly annexed to its decision 44/415 the document on resort to a commission of good offices, mediation or conciliation within the United Nations and decided that the decision should be brought to the attention of States so that it might become generally known.²⁵³ As stated in the document itself:

“... ”

²⁴⁶ The draft Declaration was completed by the Special Committee on the Charter at its 1994 session (see GA (49), Suppl. No. 33, paras. 85 and 89).

²⁴⁷ GA resolution 49/57, third preambular paragraph.

²⁴⁸ Ibid., paras. 3 and 4.

²⁴⁹ Ibid., annex, first preambular paragraph.

²⁵⁰ Ibid., annex, twelfth preambular paragraph.

²⁵¹ Ibid., para. 4.

²⁵² Ibid., para. 12.

²⁵³ The draft document was completed by the Special Committee on the Charter at its 1989 session (see GA (44), Suppl. No. 33, paras. 14, 17 and 119-123).

“Resort to a commission ... may be considered by States as a procedure at their disposal for the peaceful settlement of international disputes in accordance with the provisions of the Charter of the United Nations;”²⁵⁴

“... ”

“Nothing in the present document shall be construed as prejudicing in any manner the provisions of the Charter, in particular those relating to the peaceful settlement of disputes.”²⁵⁵

82. At its forty-sixth session, in 1991, the General Assembly, recalling that, in the Preamble to the Charter of the United Nations, living together in peace with one another as good neighbours is one of the means by which the ends of the United Nations are to be achieved,²⁵⁶ decided that the question of development and strengthening of good-neighbourliness between States should continue to guide States as a goal to be pursued in their consideration of the issues before the United Nations, and noted that it could be considered in the future.²⁵⁷

83. At its forty-ninth session, in 1994, the General Assembly adopted the Declaration on Measures to Eliminate International Terrorism.²⁵⁸ Convinced that its adoption “should contribute to the enhancement of the struggle against international terrorism;”²⁵⁹ it urged that every effort be made to ensure that the Declaration became generally known and was observed and implemented in full.²⁶⁰ In the Declaration itself, the General Assembly, guided by the purposes and principles of the Charter of the United Nations²⁶¹ and deeply disturbed by the worldwide persistence of acts of terrorism in all its forms and manifestations,²⁶² encouraged States to, among other things, “review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations with the aim of ensuring that there is a

²⁵⁴ GA decision 44/415, annex, para. 1.

²⁵⁵ Ibid., para. 15.

²⁵⁶ GA resolution 46/62, first preambular paragraph.

²⁵⁷ Ibid., para. 5.

²⁵⁸ GA resolution 49/60, para. 1.

²⁵⁹ Ibid., fourth preambular paragraph.

²⁶⁰ Ibid., paras. 2 and 3.

²⁶¹ Ibid., first preambular paragraph.

²⁶² Ibid., annex, third preambular paragraph.

comprehensive legal framework covering all aspects of the matter”.²⁶³ It further called for the assistance of the Secretary-General in the implementation of the Declaration by means of:

(a) A collection of data on the status and implementation of existing multilateral, regional and bilateral agreements relating to international terrorism;

(b) A compendium of national laws and regulations regarding the prevention and suppression of international terrorism in all its forms and manifestations, based on information received from Member States;

(c) An analytical review of existing international legal instruments relating to international terrorism, in order to assist States in identifying aspects of that matter that had not been covered by such instruments and could be addressed to develop further a comprehensive legal framework of conventions dealing with international terrorism;

(d) A review of existing possibilities within the United Nations system for assisting States in organizing workshops and training courses on combating crimes connected with international terrorism.²⁶⁴

84. In its resolution 49/34, the General Assembly endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the work of the working group on the question of early review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space be suspended pending the results of the work in the Scientific and Technical Subcommittee and without prejudice to the possibility of reconvening it, if, in the opinion of the Legal Subcommittee, sufficient progress was made in the Scientific and Technical Subcommittee at its session in 1995 to warrant reconvening the working group.

85. At its forty-eighth session, in 1994, the General Assembly, prompted by the desire to achieve universal participation in the United Nations Convention on the Law of the Sea of 10 December 1982,²⁶⁵ and considering that the objective of universal participation in the Convention might best be achieved by the

adoption of an agreement relating to the implementation of Part XI,²⁶⁶ adopted the Agreement relating to the implementation of Part XI of the United Nations Convention of the Law of the Sea of 10 December 1982²⁶⁷ and requested the Secretary-General to open the Agreement for signature.²⁶⁸

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

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

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

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

87. During the period under review, at its forty-first session, the International Law Commission, in addressing the issue of the relationship of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier with the conventions and agreements in the field of diplomatic and consular relations, indicated that in the process of progressive development and codification of the law governing the status of the diplomatic courier and the diplomatic bag, the rules on that status contained in the four codification conventions²⁶⁹ needed to be further elaborated, as each convention contained only one article on the matter²⁷⁰ and that, although the draft articles were not intended to amend the codification conventions, they did develop in greater detail the pertinent rules governing the legal

²⁶³ Ibid., para. 7.

²⁶⁴ Ibid., para. 10.

²⁶⁵ GA resolution 48/263, first preambular paragraph.

²⁶⁶ Ibid., ninth preambular paragraph.

²⁶⁷ Ibid., para. 3 and annex.

²⁶⁸ Ibid., para. 10.

²⁶⁹ The four conventions are: (a) the 1961 Vienna Convention on Diplomatic Relations, (b) the 1963 Vienna Convention on Consular Relations, (c) the 1969 Convention on Special Missions and (d) the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.

²⁷⁰ *Yearbook of the International Law Commission 1989*, vol. II (Part Two), para. 58.

regime of the functioning of official communications through diplomatic couriers and diplomatic bags.²⁷¹

88. Under the topic “Relations between States and international organizations (second part of the topic)”, the Commission noted that international organizations had international personality, and that such personality had many practical consequences. For example, international organizations contributed to the development of international law by observing customary rules, drawing up international agreements and adopting international norms.²⁷²

89. During its forty-second session, recalling that one of the main purposes of the United Nations Decade of International Law, 1990-1999, was to encourage the progressive development and codification of international law, the Commission considered that it would be an essential contribution to the Decade if it could finalize work on the topics currently on its agenda, particularly the preparation of a draft statute for an international criminal court, if the General Assembly so decided.²⁷³

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

90. During the period under review the General Assembly did not embark on evaluating the relations between the two notions as interpreted in the statute of the Commission.

91. The General Assembly, in its resolutions on the reports of the Commission, during the period, consistently emphasized 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 Cooperation among States in accordance with the Charter of the United Nations and to give increasing importance to its role in relations among States.²⁷⁴

92. In its resolutions 46/55²⁷⁵ on the draft articles on jurisdictional immunities of States and their property and 49/52²⁷⁶ on the draft articles on the law of the non-navigational uses of international watercourses, the General Assembly expressed the belief that the successful codification and progressive development of the rules of international law governing these matters would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations.

93. On other occasions, the General Assembly gave consideration to the notions of the progressive development and codification of international law, in focusing on the linkage between these notions and the principles and purposes of the Charter.

94. When adopting the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the General Assembly considered that the progressive development of international law and its codification contributed to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations.²⁷⁷

95. Similarly, when adopting the Convention on the Safety of United Nations and Associated Personnel, the General Assembly considered that the codification and progressive development of international law contributed to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations.²⁷⁸

²⁷⁴ See GA resolutions 44/35, 45/41, 46/54, 47/33, 48/ 31 and 49/51.

²⁷⁵ GA resolution 46/55, fourth preambular paragraph.

²⁷⁶ GA resolution 49/52, fourth preambular paragraph.

²⁷⁷ GA resolution 44/34, first preambular paragraph.

²⁷⁸ GA resolution 49/59, first preambular paragraph.

²⁷¹ Ibid., para. 59.

²⁷² Ibid., para. 716.

²⁷³ *Yearbook of the International Law Commission 1990*, vol. II (Part Two), para. 549.