
Article 13 (1) (a)

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Text of Article 13 (1) (a)

Provisions relating to the progressive development and codification of international law

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

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

Introductory note

1. The study of Article 13 (1) (a) generally follows the format established in the *Repertory* and continued in *Supplements Nos. 1-8*. It is divided into two major parts, namely part I entitled “General survey” and part II entitled “Analytical summary of practice”. Part II consists of three sections: section A “The initiation of studies”, section B “The making of recommendations” and section C “The meaning of ‘progressive development’ and of ‘codification’ of international law”.

2. Following the format set out in *Supplement No. 8* of the *Repertory*,¹ a review of the trends and developments in the general survey serves as a background to the analytical summary of practice

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

I. General survey

3. In *Supplements Nos. 3-8*, 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 of international law experts appointed in their personal capacity.³ During the period under review these procedures continued.

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

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

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

5. The previous *Supplements Nos. 3-8* 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

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

and submitted them with its recommendations to the General Assembly; the Assembly, after consideration, referred the draft to an international conference and the conference, after deliberations on the basis of the draft, adopted one or more conventions, protocols and resolutions".⁵

6. During the period under consideration, this procedure was applied, with some adjustments, in the case of the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome from 15 June to 17 July 1998. The Conference was the major event in the field of codification and progressive development of international criminal law.⁶ The Rome Conference was the culmination of efforts aimed at the preparation of the Statute of the permanent Criminal Court, starting with the first draft prepared by the International Law Commission, and continuing with the work of the Ad Hoc Committee⁷ and the Preparatory Committee⁸ on the establishment of an International Criminal Court. The Conference adopted the Rome Statute for the International Criminal Court on 17 July 1998. Subsequently, the Preparatory Commission for the International Criminal Court was established.⁹ In accordance with its mandate,¹⁰ the Preparatory Commission continued to work towards practical arrangements for the establishment and coming into

operation of the Court, including drafting of a number of important legal instruments.

7. Regarding the draft code of crimes against the peace and security of mankind, the General Assembly, by its resolution 51/160,¹¹ requested the Secretary-General to invite Governments to submit their written comments and observations on the action which might be taken in relation to the draft code.¹² No further action was taken in relation to the draft code, in view of the fact that the Rome Statute incorporated also substantive law concerning crimes dealt with in the draft code.

8. The General Assembly did not use the procedure of referring the draft articles to an international conference in the case of two other topics, namely the law of non-navigational uses of international watercourses and jurisdictional immunities of States and their property.¹³ Instead it decided to convene a Working Group of the Sixth Committee to consider the draft articles adopted and recommended to the Assembly by the Commission.¹⁴

9. Still another course of action was followed regarding the draft articles on the nationality of natural persons in relation to the succession of States, adopted by the Commission. At its fifty-first session, the General Assembly decided to include the item in the provisional agenda of its fifty-fifth session, with a view to consideration of the draft articles as a declaration.¹⁵

10. Another departure from the procedure noted in *Supplements Nos. 3-8* is found in the case of 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, which had been adopted by the Commission and which recommended to the General Assembly that an international conference of plenipotentiaries be convened to consider the draft articles.¹⁶ However, the General Assembly, by its decision 50/416, decided to bring the draft articles to the attention of Member States, together with observations

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

⁶ The Conference was also considered as an opportunity to take a monumental step in the name of human rights and the rule of law. See Opening Statement of the United Nations Secretary-General, Kofi Annan, to the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June 1998. See also paras. 48-58 and 102, 103 and 105.

⁷ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 22; and para. 43 of the present study.

⁸ See paras. 44-47 of the present study.

⁹ See document A/CONF.183/13 (vol. I), (B) Final Act, annex, resolution F, para. 1. See also paras. 59-62 and 104 of the present study.

¹⁰ See document A/CONF.183/13 (vol. I), (B) Final Act, annex, resolution F, paras. 5-7.

¹¹ GA resolution 51/160, para. 3.

¹² See paras. 11, 22 and 98 of the present study.

¹³ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 5.

¹⁴ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 73 and 18, respectively.

¹⁵ See paras. 23 and 99 of the present study.

¹⁶ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 19.

by Member States and to remind Member States of the possibility that this field of international law and any further developments within it may be subject to codification at an appropriate time in the future.¹⁷

11. Concerning the current work programme of the Commission, the General Assembly recommended that the Commission continue its consideration of all topics previously begun, which are noted in *Supplement No. 8*,¹⁸ e.g., 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, 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), as well as the law and practice relating to reservations to treaties¹⁹ and State succession and its impact on the nationality of natural and legal persons. Two new studies were initiated by the General Assembly, namely diplomatic protection and unilateral acts of States. 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.²⁰

12. During the period under review, the United Nations Commission on International Trade Law (UNCITRAL) continued its consideration of questions initiated previously,²¹ commenced work on new subjects and completed its work on the draft convention on independent guarantees and standby letters of credit; the UNCITRAL Model Law on Electronic Commerce; the UNCITRAL Notes on Organizing Arbitral Proceedings; and the UNCITRAL Model Law on Cross-Border Insolvency.²²

13. During the period under consideration, the General Assembly adopted the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International

Terrorism²³ and two conventions, namely the International Convention for the Suppression of Terrorist Bombings²⁴ and the International Convention for the Suppression of the Financing of Terrorism²⁵ prepared by the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996.

14. The General Assembly in its resolution 50/50 adopted the United Nations Model Rules for the Conciliation of Disputes between States, which were elaborated by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.²⁶ In its resolution 50/52, taking note of the recommendation of the Committee, the Assembly also expressed its intention to initiate the procedure set out in Article 108 of the Charter of the United Nations to amend the Charter by the deletion of its “enemy State” clauses at its earliest appropriate future session.²⁷

15. During the period under review the General Assembly continued its consideration of other questions aimed at progressive development of international law and its codification noted already in *Supplement No. 8*. The question of the progressive development of the principles and norms of international law relating to the new international economic order²⁸ was considered by the Sixth Committee at the fifty-first session of the General Assembly²⁹ and, as a result, the Assembly adopted decision 51/441 deferring this matter to its fifty-fifth session. In the framework of the United Nations Decade of International Law,³⁰ the Assembly adopted resolution 53/101 on the principles and guidelines for

¹⁷ See also paras. 11 and 95 of the present study.

¹⁸ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 6 and 17.

¹⁹ The title was changed to read “Reservations to treaties”. See para. 26 of the present study.

²⁰ See paras. 21-33 and 95-99 of the present study.

²¹ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 29 and 35.

²² For the actions taken by the GA in connection with those texts, see para. 100 of the present study. See also paras. 34-42.

²³ GA resolution 51/210, annex. See also paras. 65 and 106 of the present study.

²⁴ GA resolution 52/164, annex I. See also paras. 66-68 and 107 of the present study.

²⁵ GA resolution 54/109, annex. See also paras. 67, 69 and 108 of the present study.

²⁶ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 43; and paras. 75 and 109 of the present study.

²⁷ See GA resolution 50/52, para. 3 and twelfth to fifteenth preambular paragraphs. See also paras. 71 and 110 of the present study.

²⁸ For previous work on this issue see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 10 and 47.

²⁹ See para. 77 of the present study.

³⁰ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 11 and 48-57. See also paras. 78-84 of the present study.

international negotiations, which was elaborated by the Sixth Committee, with the assistance of its Working Group on the Decade, as well as resolutions 54/27 and 54/28 respectively, on the outcome of the action dedicated to the 1999 centennial of the first International Peace Conference and on the outcome of the United Nations Decade of International Law.³¹

16. 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.³² The Committee and the Subcommittee continued consideration of questions on topics noted in *Supplement No. 8*³³ and concluded their work on 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. By its resolution 51/122, the General Assembly adopted the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries.³⁴ By its resolution 54/68, the General Assembly endorsed a resolution entitled “The Space Millennium: Vienna Declaration on Space and Human Development” adopted by the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III), held in July 1999.³⁵

17. In 1998 the Legal Subcommittee began consideration of a new agenda item entitled “Review of the status of the five international legal instruments governing outer space”.³⁶ In 2000, the Legal

Subcommittee started to consider through a working group the new agenda item entitled “Review of the concept of the ‘launching State’”.³⁷

18. During the period under review, progressive development and codification in the area of the Law of the Sea led to the adoption in 1995 by a conference convened under the auspices of the General Assembly of the “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”.³⁸

19. The practice noted in the previous supplements of entrusting the Secretary-General with the preparation of studies continued through the period under review.³⁹ The General Assembly requested, in particular, the Secretary-General to prepare reports on the activities of the United Nations relevant to the progressive development of international law and its codification.⁴⁰ The Secretary-General, following the Assembly’s request,⁴¹ updated 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 1984.⁴²

20. The Assembly also entrusted the Secretary-General with the task of seeking the views of States on the present state of the codification process within the United Nations system.⁴³

³¹ See paras. 78, 83 and 84 of the present study.

³² See GA (50), Suppl. No. 20, A/50/20; GA (51), Suppl. No. 20, A/51/20; GA (52), Suppl. No. 20, A/52/20; GA (53), Suppl. No. 20, A/53/20; GA (54), Suppl. No. 20, A/54/20; A/AC.105/607; A/AC.105/639; A/AC.105/674; A/AC.105/698; and A/AC.105/721.

³³ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 12 and 13.

³⁴ See also paras. 86 and 111 of the present study.

³⁵ The Vienna Declaration was adopted by the United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III) at its 10th plenary meeting on 30 July 1999 (see A/CONF.184/6). See also para. 87 of the present study.

³⁶ See A/AC.105/698, Part III, paras. 46-64. See also paras. 88 and 89 of the present study.

³⁷ As it was agreed in 1999 by the Committee on the Peaceful Uses of Outer Space (see GA (54), Suppl. No. 20, A/54/20, Part C, 4 (b), para. 114).

³⁸ See A/50/550, containing text of the Agreement and related resolutions. See also paras. 90, 91 and 113 of the present study. For previous work in this field see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 14 and 66-69.

³⁹ See *Repertory, Supplement No. 3*, vol. I, under Article 13 (1) (a), para. 10; *Supplement No. 4*, vol. I, under Article 13 (1) (a), para. 16; *Supplement No. 5*, vol. I, under Article 13 (1) (a), para. 11; *Supplement No. 6*, vol. II, under Article 13 (1) (a), para. 21; *Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 19; and *Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 15.

⁴⁰ GA resolutions 50/44, para. 6; and 51/157, para. 8 and annex III, para. 9.

⁴¹ GA resolution 49/51, para. 5. See also *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 15.

⁴² GA resolution 50/45, para. 7.

⁴³ GA resolution 50/45, para. 10.

II. Analytical summary of practice

A. The initiation of studies

1. International Law Commission

21. During the period under review, the International Law Commission made progress on the studies previously initiated.⁴⁴ The Commission also initiated two new studies on diplomatic protection and unilateral acts of States, and the General Assembly endorsed the decision of the Commission to include these topics in its agenda.⁴⁵ The General Assembly further requested in its various resolutions throughout this period that the Commission continue its work on all the topics on its agenda.⁴⁶

22. Regarding the draft code of crimes against the peace and security of mankind, the Commission, during its forty-eighth session, adopted the final text of a set of 20 draft articles constituting the code of crimes against the peace and security of mankind, with the understanding that the inclusion of certain crimes in the Code did not affect the status of other crimes under international law, and that the adoption of the Code did not in any way preclude the further development of this important area of law,⁴⁷ and recommended to the General Assembly that the Assembly select the most appropriate form the code should take to ensure its widest possible acceptance.⁴⁸ The General Assembly, by its resolution 51/160,⁴⁹ expressed appreciation to the Commission for the completion of the final draft code, and took action on the recommendation.

23. Concerning the topic “State succession and its impact on the nationality of natural and legal persons”, the Commission, during its forty-eighth session, decided to recommend to the General Assembly that it should take note of the completion of the preliminary study of the topic and that it request the Commission to undertake the substantive study of the topic, on the understanding that consideration of the question of the nationality of natural persons would be separated from

that of the nationality of legal persons and that priority would be given to the former.⁵⁰ Subsequently, the Commission, during its forty-ninth session, considered the third report⁵¹ of the Special Rapporteur,⁵² containing a set of 25 draft articles with commentaries on the nationality of natural persons in relation to the succession of States, and referred the draft articles to the Drafting Committee.⁵³ During the same session, the Commission considered the report of the Drafting Committee and adopted on first reading a draft preamble and a set of 27 draft articles on the nationality of natural persons in relation to the succession of States,⁵⁴ and decided to transmit the draft articles, through the Secretary-General, to Governments for comments and observations.⁵⁵ During its fifty-first session, the Commission adopted the final text of the draft articles on the nationality of natural persons in relation to the succession of States⁵⁶ and recommended to the General Assembly the adoption, in the form of a declaration, of the draft articles.⁵⁷ Concerning the second part of the topic, the Commission, at its fiftieth session, considered the Special Rapporteur’s fourth report,⁵⁸ regarding the question of the nationality of legal persons in relation to the succession of States and established a working group to consider the question.⁵⁹ During its fifty-first session, the Commission, recalling the conclusion of the Working Group that, in the absence of positive comments from States, the Commission would have to conclude that States were not interested in the study of the second part of the topic, and taking into account that no such comments had been submitted by States, decided to recommend to the General Assembly that with the adoption of the draft articles on the nationality of natural persons in relation to the succession of States, the work of the Commission on the topic

⁴⁴ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 17-25.

⁴⁵ GA resolution 52/156, para. 8.

⁴⁶ See GA resolutions 50/45, paras. 3 and 4; 51/160, para. 4; 52/156, para. 3; 53/102, para. 3; and 54/111, para. 6.

⁴⁷ *Yearbook of the International Law Commission 1996*, vol. II (Part Two), paras. 45-46.

⁴⁸ *Ibid.*, para. 48.

⁴⁹ GA resolution 51/160, paras. 2-3.

⁵⁰ *Yearbook of the International Law Commission 1996*, vol. II (Part Two), para. 88.

⁵¹ A/CN.4/480 and Corr.1 (French only) and Add.1 and Corr.1 and Corr.2 (French only).

⁵² Vaclav Mikulka.

⁵³ *Yearbook of the International Law Commission 1997*, vol. II (Part Two), paras. 39-40.

⁵⁴ *Ibid.*, para. 41.

⁵⁵ *Ibid.*, para. 43.

⁵⁶ *Ibid.*, 1999, para. 42.

⁵⁷ *Ibid.*, para. 44.

⁵⁸ A/CN.4/489.

⁵⁹ *Yearbook of the International Law Commission 1998*, vol. II (Part Two), paras. 456 and 459.

“Nationality in relation to the succession of States” be considered concluded.⁶⁰ By its resolution 54/111,⁶¹ the General Assembly expressed its appreciation to the Commission for the completion of the second reading of the draft articles on the nationality of natural persons in relation to the succession of States, and noted that the Commission had completed its work on the topic “Nationality in relation to the succession of States”.

24. With respect to the draft articles on State responsibility, the Commission, at its forty-eighth session, considered the eighth report⁶² of the Special Rapporteur,⁶³ and, at the same session, the Special Rapporteur announced his resignation.⁶⁴ The Commission further decided to transmit the draft articles, through the Secretary-General, to Governments for comments and observations by 1 January 1998.⁶⁵ During the same session, the Commission provisionally adopted on the first reading the text of the draft articles on the topic.⁶⁶ At its forty-ninth session, the Commission established a working group to address matters dealing with the second reading of the topic⁶⁷ and on the recommendation of the working group the Commission appointed James Richard Crawford as Special Rapporteur for the topic.⁶⁸ The Commission, during its fiftieth session, considered the first report⁶⁹ of the Special Rapporteur,⁷⁰ and at its fifty-first session considered the second report⁷¹ of the Special Rapporteur.⁷² The General Assembly, by its resolution 51/160,⁷³ drew the attention of Governments to the

importance for the Commission of having their views on the draft articles on State responsibility adopted on first reading by the Commission and urged them to submit their comments and observations in writing by 1 January 1998. It also recalled the importance of this request in resolution 52/156.⁷⁴

25. Regarding the draft articles on international liability for injurious consequences arising out of acts prohibited by international law, the Commission, during its forty-eighth session, established a working group in order to review the topic in all its aspects in the light of the reports of the Special Rapporteur and the discussions held over the years in the Commission.⁷⁵ At the same session, the working group submitted a report,⁷⁶ which the Commission considered a complete picture of the topic relating to the principle of prevention and that of liability for compensation or other relief.⁷⁷ The Commission, during its forty-ninth session, on the basis of the recommendation of the working group, decided to proceed with its work on the topic, addressing first the question of prevention under the subtitle “Prevention of transboundary damage from hazardous activities”; to appoint Pemmaraju Sreenivasa Rao as Special Rapporteur for this part of the topic; and further to reiterate its request for the comments of Governments on the issue of international liability, if they had not previously provided them.⁷⁸ During its fiftieth session, the Commission considered the first report⁷⁹ of the Special Rapporteur.⁸⁰ The Commission further adopted on first reading a set of 17 draft articles on prevention of transboundary damage from hazardous activities,⁸¹ and decided to transmit the draft articles, through the Secretary-General, to Governments for comments and observations.⁸² During the fifty-first session, the Commission considered the second report⁸³ of the Special Rapporteur⁸⁴ and based on the discussion the

⁶⁰ Ibid., para. 45.

⁶¹ GA resolution 54/111, para. 2.

⁶² A/CN.4/476 and A/CN.4/476/Add.1 and Corr.1 (English only) and Add.1.

⁶³ Gaetano Aranzio-Ruiz.

⁶⁴ *Yearbook of the International Law Commission 1996*, vol. II (Part Two), paras. 61-62.

⁶⁵ Ibid., para. 64.

⁶⁶ Ibid., para. 65.

⁶⁷ Ibid., 1997, para. 158.

⁶⁸ Ibid., para. 161.

⁶⁹ A/CN.4/490 and Add.1, Add.2, Add.2/Rev.1 (French only) and Add.2/Corr.1 (Arabic, Chinese, English, Russian and Spanish only) and Add.3, Add.4, Add.4/Corr.1, Add.5 and Add.6.

⁷⁰ *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 215.

⁷¹ A/CN.4/498 and Add.1-4.

⁷² *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 168.

⁷³ GA resolution 51/160, para. 5.

⁷⁴ GA resolution 52/156, para. 6.

⁷⁵ *Yearbook of the International Law Commission 1996*, vol. II (Part Two), para. 97.

⁷⁶ Ibid., annex.

⁷⁷ Ibid., paras. 98-99.

⁷⁸ *Yearbook of the International Law Commission 1997*, vol. II (Part Two), para. 168.

⁷⁹ A/CN.4/487 and Add.1.

⁸⁰ *Yearbook of the International Law Commission 1998*, vol. II (Part Two), para. 46.

⁸¹ Ibid., para. 52.

⁸² Ibid., para. 54.

⁸³ A/CN.4/501.

⁸⁴ *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 606.

Commission decided to defer consideration of the question of international liability, pending completion of the second reading of the draft articles on the prevention of transboundary damage from hazardous activities.⁸⁵ By its resolution 52/156,⁸⁶ the General Assembly took note of the decision of the Commission to proceed with its work on the topic, undertaking as a first step the issue of prevention, and by its resolution 53/102⁸⁷ requested the Commission, while continuing its work on prevention, to also examine other issues arising out of the topic, taking into account comments made by Governments, and to submit its recommendations on the future work to be done on these issues to the Sixth Committee. The General Assembly, by its resolution 54/111,⁸⁸ requested the Commission to resume consideration of the liability aspects of the topic as soon as the second reading of the draft articles on the prevention of transboundary damage from hazardous activities was finalized, taking into account developments in international law and comments by Governments.

26. Concerning the topic of the law and practice relating to reservations to treaties, the Commission, at its forty-seventh session, considered the first report⁸⁹ of the Special Rapporteur,⁹⁰ and further considered that the title of the topic should be amended to read "Reservations to treaties".⁹¹ At its forty-ninth session, the Commission considered the second report⁹² of the Special Rapporteur,⁹³ and following the debate adopted preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties.⁹⁴ At its fiftieth session, the Commission considered the third report⁹⁵ of the Special Rapporteur, which mainly dealt with the definition of reservations (and of interpretative declarations) to treaties.⁹⁶ At its fifty-first session, the Commission considered the remaining part

of the Special Rapporteur's third report that was not considered at the fiftieth session and part of the fourth report⁹⁷ of the Special Rapporteur,⁹⁸ and adopted on first reading 18 draft guidelines on definitions of reservations and interpretative declarations.⁹⁹ The General Assembly, by its resolution 52/156, expressed appreciation to the Commission for the completion of the preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties,¹⁰⁰ and drew the attention of Governments to the importance of having their views on the preliminary conclusions.¹⁰¹ By the same resolution, the Assembly also took note of the invitation by the Commission to all treaty bodies set up by normative multilateral treaties that may wish to do so to provide their comments and observations on the preliminary conclusions of the Commission on reservations to normative multilateral treaties, including human rights treaties, and took note of the views expressed by Member States on the matter.¹⁰²

27. With respect to diplomatic protection, the Commission, during its forty-ninth session, appointed Mohamed Bennouna as Special Rapporteur for the topic,¹⁰³ and at its fiftieth session considered the preliminary report¹⁰⁴ of the Special Rapporteur.¹⁰⁵ The General Assembly, in its resolution 52/156,¹⁰⁶ having endorsed the decision of the Commission to include the topic in its agenda by its resolution 53/102,¹⁰⁷ invited Governments to submit the most relevant national legislation, decisions of domestic courts and State practice relevant to diplomatic protection in order to assist the International Law Commission in its future work on the topic, and subsequently reiterated its invitation in resolution 54/111.¹⁰⁸

⁸⁵ Ibid., para. 608.

⁸⁶ GA resolution 52/156, para. 7.

⁸⁷ GA resolution 53/102, para. 4.

⁸⁸ GA resolution 54/111, para. 7.

⁸⁹ A/CN.4/470 and Corr.1 and 2.

⁹⁰ Alain Pellet.

⁹¹ *Yearbook of the International Law Commission 1995*, vol. II (Part Two), paras. 415 and 491.

⁹² A/CN.4/477 and Add.1.

⁹³ *Yearbook of the International Law Commission 1997*, vol. II (Part Two), para. 50.

⁹⁴ Ibid., para. 148.

⁹⁵ A/CN.4/491 and Add.1-6.

⁹⁶ *Yearbook of the International Law Commission 1998*, vol. II (Part Two), para. 478.

⁹⁷ A/CN.4/499.

⁹⁸ *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 467.

⁹⁹ Ibid., para. 469.

¹⁰⁰ GA resolution 52/156, para. 1.

¹⁰¹ Ibid., para. 2 (b).

¹⁰² Ibid., para. 4.

¹⁰³ *Yearbook of the International Law Commission 1997*, vol. II (Part Two), para. 190.

¹⁰⁴ A/CN.4/484.

¹⁰⁵ *Yearbook of the International Law Commission 1998*, vol. II (Part Two), para. 60.

¹⁰⁶ GA resolution 52/156, para. 8.

¹⁰⁷ GA resolution 53/102, para. 5.

¹⁰⁸ GA resolution 54/111, para. 5.

28. Regarding the topic “Unilateral acts of States”, the Commission, during its forty-ninth session, appointed Victor Rodriguez-Cedeno as Special Rapporteur for the topic,¹⁰⁹ and at its fiftieth session considered the first report¹¹⁰ of the Special Rapporteur,¹¹¹ and the second report¹¹² at its fifty-first session.¹¹³ It was agreed at the fifty-first session by the Commission that the Secretariat, in consultation with the Special Rapporteur, should elaborate and send to Governments by October 1999 a questionnaire for possible reply within a reasonable deadline, requesting materials and inquiring about their practice in the area of unilateral acts as well as their position on certain aspects of the study of the topic by the Commission.¹¹⁴ The General Assembly, having endorsed the decision of the Commission to include the topic in its agenda in its resolution 52/156,¹¹⁵ by its resolution 54/111¹¹⁶ invited Governments to respond in writing by 1 March 2000 to the questionnaire on unilateral acts of States circulated by the Secretariat to all Governments on 30 September 1999.

29. Regarding the draft articles on jurisdictional immunities of States and their property, the work of the Commission on this topic is described in section 3 below.

2. Draft articles on the Law of Non-Navigational Uses of International Watercourses

30. Concerning the draft articles on the Law of Non-Navigational Uses of International Watercourses, adopted by the Commission on its second reading,¹¹⁷ and the General Assembly recommendation on this matter,¹¹⁸ during the period under review the General Assembly, by its resolution 51/206,¹¹⁹ took note of the

report of the Working Group of the Whole¹²⁰ and decided to convene a second session of the Working Group for a period of two weeks from 24 March to 4 April 1997, to elaborate a framework convention on the Law of Non-Navigational Uses of International Watercourses. During the first session of the Working Group, held from 7 to 25 October 1996,¹²¹ a number of draft articles had been worked out in the Drafting Committee; however, a number of core issues remained to be resolved. Accordingly, additional time was required for the Working Group to complete its work and, based on its recommendation, the General Assembly decided to convene a second session with a view to completing the elaboration of the convention.

3. Draft Articles on Jurisdictional Immunities of States and Their Properties

31. With regard to the draft articles on jurisdictional immunities of States and their property adopted by the Commission at its forty-third session and the acceptance by the General Assembly of the recommendation of the Commission that an international conference of plenipotentiaries be convened to consider the articles and to conclude a convention on the subject,¹²² during the period under review the General Assembly, by its resolution 52/151,¹²³ decided to consider the item again at its fifty-third session with a view to the establishment of a working group at its fifty-fourth session, taking into account the comments submitted by States in accordance with paragraph 2 of resolution 49/61, and urged States, if they had not yet done so, to submit their comments to the Secretary-General. By its resolution 53/98,¹²⁴ the General Assembly decided to establish at its fifty-fourth session an open-ended working group of the Sixth Committee, open also to participation by States members of the specialized agencies, to consider outstanding substantive issues related to the draft articles on jurisdictional immunities of States and their property adopted by the Commission, taking into account the recent developments of State practice and legislation and any other factors related to this issue since the adoption of the draft articles, as well as the comments submitted by States; and to consider whether there were any issues identified by the working

¹⁰⁹ *Yearbook of the International Law Commission 1997*, vol. II (Part Two), para. 212.

¹¹⁰ A/CN.4/486.

¹¹¹ *Yearbook of the International Law Commission 1998*, vol. II (Part Two), para. 112.

¹¹² A/CN.4/500 and Add.1.

¹¹³ *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 493.

¹¹⁴ *Ibid.*, para. 593.

¹¹⁵ GA resolution 52/156, para. 8.

¹¹⁶ GA resolution 54/111, para. 4.

¹¹⁷ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 20.

¹¹⁸ *Ibid.*, para. 73.

¹¹⁹ GA resolution 51/206, paras. 1-2.

¹²⁰ A/C.6/51/L.3.

¹²¹ See A/C.6/51/L.3.

¹²² See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 18.

¹²³ GA resolution 52/151, paras. 1-2.

group upon which it would be useful to seek further comments and recommendations of the Commission. By the same resolution,¹²⁵ the Assembly invited the Commission to present any preliminary comments it might have regarding outstanding substantive issues related to the draft articles by 31 August 1999, in the light of the results of the informal consultations held pursuant to General Assembly decision 48/413 of 9 December 1993 and taking into account the recent developments of State practice and other factors related to this issue since the adoption of the draft articles, in order to facilitate the task of the Working Group.

32. The Commission, at its fifty-first session on the topic, decided to establish a Working Group on Jurisdictional Immunities of States and Their Property to prepare the preliminary comments, pursuant to General Assembly resolution 53/98.¹²⁶ At the same session, the Commission took note of the report of the Working Group¹²⁷ and decided to adopt the suggestions of the Working Group, as amended in the course of the discussion.¹²⁸

33. The General Assembly, by its resolution 54/111,¹²⁹ expressed appreciation to the Commission for the work accomplished at its fifty-first session on the topic. Furthermore, the General Assembly, by its resolution 54/101,¹³⁰ took note of the report of the Working Group on Jurisdictional Immunities of States and Their Property of the International Law Commission¹³¹ and urged States, if they had not yet done so, to submit their comments to the Secretary-General in accordance with General Assembly resolution 49/61. It also invited States to submit in writing to the Secretary-General, by 1 August 2000, their comments on the report of the Working Group.

4. United Nations Commission on International Trade Law

34. From its twenty-eighth session in 1995 until its thirty-second session in 1999, the priority subjects

¹²⁴ GA resolution 53/98, para. 1.

¹²⁵ *Ibid.*, para. 2.

¹²⁶ *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 481.

¹²⁷ *Ibid.*, annex.

¹²⁸ *Ibid.*, para. 484.

¹²⁹ GA resolution 54/111, para. 2.

¹³⁰ GA resolution 54/101, paras. 1 and 2.

¹³¹ GA (54), Suppl. No. 10 and corrigenda.

which the Commission¹³² considered, in accordance with relevant General Assembly resolutions,¹³³ were the following: independent guarantees and standby letters of credit; electronic commerce; international commercial arbitration; receivables financing; cross-border insolvency; privately financed infrastructure projects; and coordination and cooperation.

(a) International payments — independent guarantees and standby letters of credit

35. At its twenty-eighth session, the Commission completed its consideration of the draft convention on independent guarantees and standby letters of credit on the basis of the draft submitted by the Working Group on International Contract Practices¹³⁴ and decided to submit the draft convention to the General Assembly with a recommendation that the Assembly consider the draft convention with a view to concluding at the fiftieth session of the Assembly, on the basis of the draft convention approved by the Commission, a United Nations convention on independent guarantees and standby letters of credit.¹³⁵ The General Assembly, by its resolution 50/48, adopted the Convention.¹³⁶

(b) Electronic commerce — Model Law on Electronic Commerce

36. At its twenty-eighth and twenty-ninth sessions,¹³⁷ the Commission considered the text of the draft model law on legal aspects of electronic data interchange (EDI)

¹³² For the mandate of UNCITRAL, see GA resolution 2205 (XXI), GA (21), annexes, agenda item 88. *Yearbook of the United Nations Commission on International Trade Law*, vol. I: 1968-1970, Part One, chap. II, E. The Commission's terms of reference and the work programme established to fulfil its mandate are described in *Supplement No. 4*, vol. I, of the *Repertory* under Article 13 (1) (a), para. 24.

¹³³ For the general mandate given to the Commission by the GA with respect to the topics in the Commission's programme of work, see GA resolutions 50/47, 51/61, 52/157, 53/103 and 54/103.

¹³⁴ See A/CN.9/408, annex. For the reports of the Working Group on the work of its twentieth to twenty-third sessions, see A/CN.9/388, A/CN.9/391, A/CN.9/405 and A/CN.9/408, respectively.

¹³⁵ GA (50) Suppl. No. 17, chap. II, para. 201 and annex I.

¹³⁶ For the text of the Convention, see GA resolution 50/48, annex. See also para. 100 of the present study.

¹³⁷ See, respectively, GA (50) Suppl. No. 17, chap. III, paras. 202-306; and GA (51) Suppl. No. 17, chap. III, paras. 55-209.

and related means of communication, submitted by the Working Group on Electronic Data Interchange in the report on the work of its twenty-eighth session.¹³⁸ At its twenty-ninth session, the Commission also considered and finalized additional rules concerning transport documents on the basis of the text¹³⁹ presented to the Commission by the Working Group, which the Commission decided to incorporate in the draft model law.¹⁴⁰ At that session, the Commission adopted the UNCITRAL Model Law on Electronic Commerce.¹⁴¹

(c) *Electronic commerce — uniform rules on electronic signatures*

37. At its thirtieth session, the Commission entrusted the Working Group on Electronic Commerce¹⁴² with the preparation of uniform rules on the legal issues of digital signatures and certification authorities.¹⁴³ At its thirty-first and thirty-second sessions,¹⁴⁴ the Commission, after considering the reports of the Working Group on the work of its thirty-second to thirty-fourth sessions,¹⁴⁵ reaffirmed its decisions as to the feasibility of preparing such uniform rules, and expressed its confidence that more progress could be accomplished by the Working Group at its forthcoming sessions.¹⁴⁶

¹³⁸ See A/CN.9/406, annex.

¹³⁹ See A/CN.9/421, annex.

¹⁴⁰ GA (51) Suppl. No. 17, chap. III, paras. 139-144. At the same session, the Commission renamed the Model Law to the Model Law on Electronic Commerce. GA (51) Suppl. No. 17, chap. III, paras. 174-177. It also discussed the draft Guide to Enactment of the Model Law prepared by the Secretariat (A/CN.9/426), which final version it mandated to publish together with the text of the Model Law, as a single document. GA (51) Suppl. No. 17, chap. III, paras. 205-208.

¹⁴¹ GA (51) Suppl. No. 17, chap. III, para. 209. See also para. 100 of the present study. For the text of the Model Law, see GA (51) Suppl. No. 17, annex I.

¹⁴² The Working Group had worked under the title “Working Group on Electronic Data Interchange” prior to the Commission’s decision at its twenty-ninth session to rename it. GA (51) Suppl. No. 17, chap. III, para. 224.

¹⁴³ GA (52) Suppl. No. 17, chap. IV, para. 250. For the report of the Working Group before the Commission at that session, see A/CN.9/437.

¹⁴⁴ See, respectively, GA (53) Suppl. No. 17, chap. III, paras. 207-221; and GA (54) Suppl. No. 17, chap. III, paras. 308-314.

¹⁴⁵ See A/CN.9/446, A/CN.9/454 and A/CN.9/457, respectively.

¹⁴⁶ GA (53) Suppl. No. 17, chap. III, para. 208; and GA (54) Suppl. No. 17, chap. III, para. 313.

(d) *International commercial arbitration*

38. As mentioned in *Supplement No. 8*,¹⁴⁷ the General Assembly welcomed the decision of the Commission made at its twenty-sixth session¹⁴⁸ to commence work on preparation of guidelines for pre-hearing conferences in arbitral proceedings. At its twenty-seventh to twenty-ninth sessions,¹⁴⁹ the Commission considered drafts prepared by the Secretariat on the project.¹⁵⁰ At its twenty-ninth session, the Commission adopted the UNCITRAL Notes on Organizing Arbitral Proceedings.¹⁵¹

39. At its twenty-eighth session, the Commission approved the project, undertaken jointly with Committee D of the International Bar Association, aimed at monitoring the legislative implementation by the States parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958¹⁵² (the 1958 Convention), with the primary objective of analysing and publishing the findings of the survey of the national legislation governing the recognition and enforcement of foreign arbitral awards and decide on the basis of those findings whether any further action by the Commission would be desirable to achieve further harmonization and unification of norms in this area of international trade law.¹⁵³ During the period under review, the Commission heard progress reports by the Secretariat on the project, called upon States parties to the Convention to provide information requested by the Secretariat in connection with the project and requested the Secretariat to prepare, for consideration by the Commission at a

¹⁴⁷ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 76.

¹⁴⁸ GA (48) Suppl. No. 17, chap. VI, para. 294.

¹⁴⁹ See, respectively, GA (49) Suppl. No. 17; Report of the United Nations Commission on International Trade Law on the work of its twenty-seventh session, 31 May-17 June 1994, chap. III, paras. 113-195; GA (50) Suppl. No. 17, chap. IV, paras. 314-373; and GA (51) Suppl. No. 17, chap. II, paras. 11-54.

¹⁵⁰ See A/CN.9/396/Add.1, A/CN.9/410 and A/CN.9/423. Since the Commission’s twenty-eighth session, the drafts have been entitled “Draft notes on organizing arbitral proceedings”.

¹⁵¹ GA (51) Suppl. No. 17, chap. II, para. 52. See also para. 100 of the present study. For the text of the notes, see United Nations publication, Sales No. 97.V.11.

¹⁵² United Nations, *Treaty Series*, vol. 330, p. 3.

¹⁵³ GA (50) Suppl. No. 17, chap. VI, paras. 401-404.

future session, a note presenting the findings based on the analysis of the information gathered.¹⁵⁴

(e) Assignment in receivables financing

40. After preliminary consideration of legal problems in the area of assignment at its twenty-sixth to twenty-eighth sessions,¹⁵⁵ the Commission, at its twenty-eighth session, entrusted the Working Group on International Contract Practices with the task of preparing a uniform law on assignment in receivables financing.¹⁵⁶ The Working Group commenced its work on the project at its twenty-fourth session¹⁵⁷ and completed it at its thirty-first session with the adoption of a draft convention and submission of it to the Commission at its thirty-third session¹⁵⁸ for final review and adoption.¹⁵⁹

(f) Cross-border insolvency

41. At its twenty-eighth session, the Commission entrusted the Working Group on Insolvency Law¹⁶⁰ with the preparation of uniform legislative provisions on cross-border insolvency.¹⁶¹ The Working Group commenced its work on the project at its eighteenth session and devoted four sessions to that work.¹⁶² At its

thirtieth session, the Commission, following its consideration of the draft model legislative provisions on cross-border insolvency¹⁶³ on the basis of the draft submitted by the Working Group,¹⁶⁴ adopted the UNCITRAL Model Law on Cross-Border Insolvency.¹⁶⁵

(g) Privately financed infrastructure projects

42. At its twenty-ninth session, the Commission decided to endorse the proposals for work on the subject set out in the report presented by the Secretariat¹⁶⁶ at that session and to prepare a legislative guide on build-operate-transfer (BOT) and related types of projects.¹⁶⁷ At its thirtieth to thirty-second sessions, the Commission considered a legislative guide on privately financed infrastructure projects¹⁶⁸ on the basis of the drafts submitted by the Secretariat.¹⁶⁹ Following consideration by the Commission of the subject at its thirty-second session, the Secretariat produced a revised draft of the legislative guide¹⁷⁰ for consideration by the Commission at its next session.

¹⁵⁴ GA (51) Suppl. No. 17, chap. VII, paras. 241-243; GA (52) Suppl. No. 17, chap. VI, para. 258; GA (53) Suppl. No. 17, chap. V, para. 233; and GA (54) Suppl. No. 17, chap. V, para. 332.

¹⁵⁵ See, respectively, GA (48) Suppl. No. 17, chap. VI, paras. 297-301; GA (49) Suppl. No. 17, chap. VII, paras. 208-214; and GA (50) Suppl. No. 17, chap. V, paras. 374-381.

¹⁵⁶ GA (50) Suppl. No. 17, chap. V, para. 379 and chap. XI, para. 450.

¹⁵⁷ For the reports of the Working Group on the work of its twenty-fourth to thirty-first sessions, see A/CN.9/420, A/CN.9/432, A/CN.9/434, A/CN.9/445, A/CN.9/447, A/CN.9/455, A/CN.9/456 and A/CN.9/466, respectively.

¹⁵⁸ See A/CN.9/466, para. 19.

¹⁵⁹ For the consideration of the subject by the Commission at its twenty-ninth to thirty-second sessions, see, respectively, GA (51) Suppl. No. 17, chap. V, paras. 233 and 234; GA (52) Suppl. No. 17, chap. V, paras. 254-256; GA (53) Suppl. No. 17, chap. IV, paras. 224-231; and GA (54) Suppl. No. 17, chap. IV, paras. 321-3350.

¹⁶⁰ The Working Group had worked under the title "Working Group on the New International Economic Order" prior to the Commission's decision at its twenty-eighth session to rename it. GA (50) Suppl. No. 17, chap. XI, para. 449.

¹⁶¹ GA (50) Suppl. No. 17, chap. VI, para. 392.

¹⁶² For the reports of the Working Group on the work of its eighteenth to twenty-first sessions, see, respectively, A/CN.9/419 and Corr.1, A/CN.9/422, A/CN.9/433 and A/CN.9/435.

¹⁶³ GA (52) Suppl. No. 17, chap. II, paras. 25-219. At the same session, the Commission also had before it the draft Guide to Enactment of the UNCITRAL Model Legislative Provisions on Cross-Border Insolvency prepared by the Secretariat (A/CN.9/436) which it did not have time to consider but which final version it mandated to publish together with the text of the Model Law, as a single document. GA (52) Suppl. No. 17, chap. II, para. 220.

¹⁶⁴ See A/CN.9/435, annex.

¹⁶⁵ GA (52) Suppl. No. 17, chap. II, para. 221. See also para. 100 of the present study. For the text of the Model Law, see GA (52) Suppl. No. 17, annex I.

¹⁶⁶ See A/CN.9/424.

¹⁶⁷ GA (51) Suppl. No. 17, chap. IV, para. 228.

¹⁶⁸ See, respectively, GA (52) Suppl. No. 17, chap. III, paras. 230-247; GA (53) Suppl. No. 17, chap. II, paras. 15-206; and GA (54) Suppl. No. 17, chap. II, paras. 15-307.

¹⁶⁹ See A/CN.9/438 and Add.1-3, A/CN.9/444/Add.1-5 and A/CN.9/458/Add.1-9.

¹⁷⁰ See A/CN.9/471/Add.1-9.

5. Ad Hoc Committee on the Establishment of an International Criminal Court

43. The Ad Hoc Committee on the Establishment of an International Criminal Court¹⁷¹ met at United Nations Headquarters twice.¹⁷² It reviewed the major substantive and administrative issues arising out of the draft statute for an international criminal court prepared by the International Law Commission.¹⁷³ In particular, it considered issues related to the establishment and composition of the Court, the principle of complementarity, jurisdiction, methods of proceedings, due process, relationship between States and non-States parties and the international criminal court, budget and administration matters, etc. In addition, it considered arrangements for the convening of an international conference of plenipotentiaries.

6. Preparatory Committee on the Establishment of an International Criminal Court

44. At its fiftieth session, the General Assembly noted that the Ad Hoc Committee had recommended that the General Assembly take up the organization of future work with a view to its early completion, given the interest of the international community in the establishment of an international criminal court.¹⁷⁴ It established the Preparatory Committee on the Establishment of an International Criminal Court and directed it to discuss further the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, taking into account the different views expressed during meetings, to draft texts, with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries.¹⁷⁵

45. The Preparatory Committee on the Establishment of an International Criminal Court met at United Nations Headquarters twice during 1996.¹⁷⁶ In accordance with its mandate, it discussed the major substantive and administrative issues arising out of the draft Statute and proceeded to consider draft texts, with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court. The Preparatory Committee concluded in its report covering these meetings¹⁷⁷ that it considered that it was realistic to regard the holding of a diplomatic conference of plenipotentiaries in 1998 as feasible.

46. At its fifty-first session, the Assembly decided to reaffirm the mandate of the Preparatory Committee and directed it to proceed in accordance with paragraph 368 of its report.¹⁷⁸ Accordingly, it had to deal, inter alia, with the following: (i) definition and elements of crimes; (ii) principles of criminal law and penalties; (iii) organization of the Court; (iv) procedures; (v) complementarity and trigger mechanism; (vi) cooperation with States; (vii) establishment of an International Criminal Court and its relationship with the United Nations; (viii) final clauses and financial matters; and (ix) other matters.

47. In accordance with General Assembly resolution 51/207, the Preparatory Committee met three times in 1997, during which time it continued to prepare a widely acceptable consolidated text of a convention for an international criminal court.¹⁷⁹ It also met in 1998,¹⁸⁰ at which time it adopted the text of a draft statute on the establishment of an international criminal court¹⁸¹ and the draft final act,¹⁸² and agreed to transmit to the Conference those two documents,

¹⁷¹ The Ad Hoc Committee on the Establishment of an International Criminal Court was established by GA resolution 49/53.

¹⁷² See GA (50) Suppl. No. 22. For comments received pursuant to para. 4 of GA resolution 49/53 see A/AC.244/1 and Add.1-4. For previous work on the draft statute see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 22.

¹⁷³ GA (49) Suppl. No. 10, chap. II.B.I.5 and A/49/355 chap. II; also see *Repertory, Supplement No. 8*, vol. II under Article 13 (1) (a), para. 22.

¹⁷⁴ GA resolution 50/46, eighth preambular paragraph.

¹⁷⁵ *Ibid.*, para. 2. For discussions in the Sixth Committee during the fiftieth session see A/C.6/50/SR.25-31 and 46. See also para. 102 of the present study.

¹⁷⁶ In accordance with GA resolution 50/46, the Preparatory Committee met from 25 March to 12 April and from 12 to 30 August 1996.

¹⁷⁷ See GA (51) Suppl. No. 22, vol. I. For a compilation of proposals regarding the Court see GA (51) Suppl. No. 22A, A/51/22 ().

¹⁷⁸ GA resolution 51/207, para. 3. Also see GA (51) Suppl. No. 22, A/51/22 (vol. I).

¹⁷⁹ See the decisions taken by the Preparatory Committee at its session held from 11 to 21 July 1997 (A/AC.249/1997/L.5); at its session held from 4 to 15 August 1997 (A/AC.249/1997/L.8/Rev.1); and at its session held from 1 to 12 December 1997 (A/AC.249/1997/L.9/Rev.1).

¹⁸⁰ See A/AC.249/1998/L.16 and Add.1.

¹⁸¹ See A/AC.249/1998/L.13, chap. II.

¹⁸² *Ibid.*, chap. III (A).

together with the draft provisional rules of procedure of the conference¹⁸³ and the draft organization of work.

7. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

48. At its fifty-second session, the General Assembly decided to hold a Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in Rome from 15 June to 17 July 1998, with a view to finalizing and adopting a convention.¹⁸⁴

49. The United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court had before it a draft statute on the establishment of an international criminal court¹⁸⁵ submitted by the Preparatory Committee in accordance with its mandate. The Conference entrusted the Drafting Committee, without reopening substantive discussion on any matter, with coordinating and refining the drafting of all texts referred to it without altering the substance, formulating drafts and giving advice on drafting as requested by the Conference or by the Committee of the Whole, and reporting to the Conference or to the Committee of the Whole as appropriate.¹⁸⁶

50. On the basis of the deliberations during the Conference¹⁸⁷ and of the Committee of the Whole¹⁸⁸ and the reports of the Committee of the Whole¹⁸⁹ and of the Drafting Committee,¹⁹⁰ the Conference drew up the Rome Statute of the International Criminal Court,¹⁹¹ whereby the International Criminal Court was established.

51. The Rome Statute¹⁹² addresses both substantive and procedural criminal law issues related to the operation of the Court. It comprises thirteen parts and 128 articles.

52. The Court is a permanent institution, independent from the United Nations. It is based at The Hague in the Netherlands, but it may sit elsewhere whenever it considers it desirable.¹⁹³ The Court is comprised of 18 judges, a prosecutor and a registrar. The organs of the Court are: (a) the Presidency; (b) an Appeals Division, a Trials Division and a Pretrial Division; (c) the Office of the Prosecutor; and (d) the Registry.¹⁹⁴

53. The jurisdiction of the Court is limited to the most serious crimes of concern to the international community as a whole: genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute, as well as the crime of aggression. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted, defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.¹⁹⁵ The Court has jurisdiction only with respect to crimes committed after the Statute enters into force.¹⁹⁶ Elements of crimes, which need to be adopted by a two-thirds majority of the members of the Assembly of States Parties, shall assist the Court in the interpretation and application of the above articles.¹⁹⁷

54. The Court complements national jurisdictions and may only exercise jurisdiction if the State concerned is unwilling or unable genuinely to carry out the investigation or prosecution.¹⁹⁸ Cases may be submitted to it either by the Security Council or by a State Party, or by the Prosecutor, acting on the basis of information received from sources the Prosecutor considers appropriate.¹⁹⁹ No investigation or prosecution may be commenced or proceeded with under the Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of

¹⁸³ The draft provisional rules of procedure of the Conference (A/AC.249/1998/CRP.3) were prepared by the Secretary-General pursuant to GA resolution 52/160.

¹⁸⁴ GA resolution 52/160, para. 3. See also para. 103 of the present study.

¹⁸⁵ A/CONF.183/2/Add.1.

¹⁸⁶ See A/CONF.183/13 (vol. I), (B) Final Act, para. 22.

¹⁸⁷ *Ibid.*, vol. II, summary records of the plenary meetings.

¹⁸⁸ *Ibid.*, summary records of the meetings of the Committee of the Whole.

¹⁸⁹ *Ibid.*, vol. III (Part One) (C) Reports of the Committee of the Whole.

¹⁹⁰ *Ibid.*, (D) Reports of the Drafting Committee.

¹⁹¹ *Ibid.*, vol. I (B) Final Act, para. 23.

¹⁹² See A/CONF.183/13 (vol. I), (A) Rome Statute.

¹⁹³ *Ibid.*, Article 3.

¹⁹⁴ *Ibid.*, Article 34.

¹⁹⁵ *Ibid.*, Article 5.

¹⁹⁶ *Ibid.*, Article 11.

¹⁹⁷ *Ibid.*, Article 9.

¹⁹⁸ *Ibid.*, Article 17.

¹⁹⁹ *Ibid.*, Articles 13-15.

the United Nations, has requested the Court to that effect.²⁰⁰

55. The trial is conducted at the seat of the Court, unless otherwise decided.²⁰¹ The accused shall be present during the trial.²⁰² The judges are required to attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.²⁰³ The Court may grant reparations to victims, which can include restitution, compensation and rehabilitation.²⁰⁴ As regards penalties, the death penalty is excluded and life imprisonment is the highest penalty that may be given.²⁰⁵ Under the Statute, States Parties must cooperate fully with the Court in the investigation and prosecution of crimes within the jurisdiction of the Court,²⁰⁶ including with regard to the surrender of persons to the Court or production of evidence.

56. According to the Statute, the Assembly of States Parties will provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court, will consider and adopt its budget, as well as perform other functions consistent with the Statute or the rules of procedure and evidence.²⁰⁷ The Assembly is also responsible for adopting the rules of procedure and evidence of the Court and its financial regulations and rules. The Assembly of States Parties is composed of one representative per State Party, each having one vote. Other States that have either signed the Statute or signed the Final Act of the Rome Diplomatic Conference may sit in the Assembly as observers. The Assembly meets at least once a year. It has its Bureau consisting of a President, two Vice-presidents and 18 members.²⁰⁸

57. In its final clauses the Statute provides that the Secretary-General of the United Nations shall convene a conference to review the Statute seven years after its entry into force.²⁰⁹ No reservations may be made to the

Statute.²¹⁰ Article 126 provides for the Statute to come into force after the submission of 60 instruments of ratification.

58. By its resolution E contained in annex I of the Final Act, the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court recommended:

... that a Review Conference pursuant to article 123 of the Statute of the International Criminal Court consider the crimes of terrorism and drug crimes with a view to arriving at an acceptable definition and their inclusion in the list of crimes within the jurisdiction of the Court.

8. Preparatory Commission for the International Criminal Court

59. The Conference, by its resolution F,²¹¹ decided to establish the Preparatory Commission for the International Criminal Court, which shall consist of representatives of States which have signed the Final Act of the Conference, and other States which have been invited to participate in the Conference. According to paragraph 5 of that resolution:

The Commission shall prepare proposals for practical arrangements for the establishment and coming into operation of the Court, including the draft texts of:

- (a) Rules of Procedure and Evidence;
- (b) Elements of Crimes;
- (c) A relationship agreement between the Court and the host country;
- (d) Basic principles governing a headquarters agreement to be negotiated between the Court and the host country;
- (e) Financial regulations and rules;
- (f) An agreement on the privileges and immunities of the Court;
- (g) A budget for the first financial year;
- (h) The rules of procedure of the Assembly of States Parties.

²⁰⁰ Ibid., Article 16.

²⁰¹ Ibid., Article 62.

²⁰² Ibid., Article 63.

²⁰³ Ibid., Article 74.

²⁰⁴ Ibid., Article 75.

²⁰⁵ See A/CONF.183/13 (vol. I), (A) Rome Statute, Article 77.

²⁰⁶ Ibid., Article 86.

²⁰⁷ Ibid., Article 112.

²⁰⁸ Ibid.

²⁰⁹ Ibid., Article 123.

²¹⁰ Ibid., Article 120.

²¹¹ Ibid., (B) Final Act, annex I.

60. The Preparatory Commission for the International Criminal Court shall among others:

... prepare proposals for a provision on aggression, including the definition and Elements of Crimes of aggression and the conditions under which the International Criminal Court shall exercise its jurisdiction with regard to this crime. The Commission shall submit such proposals to the Assembly of States Parties at a Review Conference, with a view to arriving at an acceptable provision on the crime of aggression for inclusion in this Statute.²¹²

61. At its fifty-third session, the General Assembly requested the Secretary-General to convene the Preparatory Commission in order to carry out the mandate of resolution F adopted by the Conference, and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.²¹³

62. Accordingly, the Preparatory Commission met three times during 1999.²¹⁴ In accordance with its mandate, it worked towards the preparation of proposals for practical arrangements for the establishment and coming into operation of the Court, including the finalization before 30 June 2000 of the draft texts of the rules of procedure and evidence and of the elements of crimes.

9. Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism

63. During the period under consideration the General Assembly continued its efforts aimed at the codification and progressive development of international law in the field of measures to eliminate international terrorism, summarized in *Supplement No. 8*.²¹⁵

64. At its fiftieth and fifty-first sessions, the General Assembly reaffirmed the Declaration on Measures to

²¹² See A/CONF.183/13, (C), (B), Final Act, annex I, section F, para. 7.

²¹³ GA resolution 53/105, para. 4. See also paras. 104 and 105 of the present study.

²¹⁴ For a summary of the proceedings of the Preparatory Commission at its three sessions (from 16 to 26 February, from 26 July to 13 August and from 29 November to 17 December 1999), see PCNICC/1999/L.5.

²¹⁵ See *Repertory, Supplement No. 8*, under Article 13 (1) (a), paras. 45 and 46.

Eliminate International Terrorism, annexed to Assembly resolution 49/60. It requested the Secretary-General to follow up its implementation and to submit an annual report on the implementation of paragraph 10 of the Declaration, taking into account the modalities set out in his report²¹⁶ and the views expressed by States in the debate of the Sixth Committee during the fiftieth session of the Assembly.²¹⁷ It also called upon all States to take the necessary steps to implement their obligations under existing international conventions, to observe fully the principles of international law and to contribute to the further development of international law on this matter.²¹⁸

65. At its fifty-first session, by its resolution 51/210, the General Assembly approved the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism²¹⁹ prepared on the basis of informal consultations in the Sixth Committee.

10. Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December 1996

66. At its fifty-first session, the General Assembly decided to establish an ad hoc committee to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.²²⁰

67. The Ad Hoc Committee met three times during the period under review. At all its sessions it conducted its work in the form of a Working Group of the Whole. During its first session,²²¹ a series of texts of articles of the draft convention for the suppression of terrorist bombings were prepared, on the basis of which future

²¹⁶ See A/50/372 and Add.1.

²¹⁷ See A/C.6/50/SR.6-10 and 46.

²¹⁸ GA resolution 50/53, para. 6.

²¹⁹ GA resolution 51/210, para. 8. See also para. 106 of the present study.

²²⁰ *Ibid.*, para. 9. See also para. 106 of the present study.

²²¹ In accordance with GA resolution 51/210, the Ad Hoc Committee's first session was held from 24 February to 7 March 1997.

work would continue.²²² During its second session,²²³ the Ad Hoc Committee met to elaborate an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments.²²⁴ During its third session,²²⁵ the Ad Hoc Committee commenced its work on the elaboration of an international convention for the suppression of terrorist financing.²²⁶

68. At the fifty-second session, the General Assembly reaffirmed the mandate of the Ad Hoc Committee established by resolution 51/210, contained in paragraph 9 of that resolution.²²⁷ Also pursuant to that resolution, the Sixth Committee, at its 2nd meeting, established a Working Group on a draft international convention for the suppression of terrorist bombings.²²⁸ Discussions were held both in the Working Group and in informal consultations, and at its last meeting, the Working Group decided to recommend to the Sixth Committee the consideration of the text of a draft convention.²²⁹ The General Assembly, by its resolution 52/164 of 15 December 1997, adopted the International Convention for the Suppression of Terrorist Bombings. In the Convention, the States Parties expressed their deep concern about the worldwide escalation of acts of terrorism in all its forms and manifestations and noted that existing multilateral legal provisions did not adequately address these attacks. They also expressed their conviction of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators.²³⁰

69. The draft international convention for the suppression of the financing of terrorism²³¹ was considered during the fifty-fourth session of the General Assembly²³² in the Working Group of the Sixth Committee. Upon the recommendation of the Sixth Committee, the General Assembly adopted the Convention by its resolution 54/109 of 9 December 1999. In terms of the Convention, the financing of terrorism is a matter of grave concern to the international community as a whole. The Convention aims at devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators.²³³

70. During the fifty-third²³⁴ and fifty-fourth sessions of the General Assembly,²³⁵ the Working Group of the Sixth Committee also continued work on a draft international convention for the suppression of acts of nuclear terrorism.²³⁶ At both those sessions, the General Assembly reiterated that the Ad Hoc Committee should continue to elaborate that draft convention with a view to completing it and should address means of further developing a comprehensive legal framework of conventions dealing with international terrorism, including considering, on a priority basis, the elaboration of a comprehensive convention on international terrorism; and should address the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.²³⁷

²²² See GA (52), Suppl. No. 37.

²²³ In accordance with GA resolution 52/165, the Ad Hoc Committee's second session was held from 17 to 27 February 1998.

²²⁴ See GA (54), Suppl. No. 37.

²²⁵ In accordance with GA resolution 53/108, the Ad Hoc Committee's third session was held from 15 to 26 March 1999.

²²⁶ See GA (54), Suppl. No. 37, A/54/37, chaps. I, II and III. For an informal summary of the discussions in the Working Group see *Ibid.*, annex IV.

²²⁷ *Ibid.*, para. 8.

²²⁸ The Working Group held 17 meetings from 22 September to 3 October 1997. See A/C.6/52/L.3 and annex I.

²²⁹ See A/52/653. For discussions in the Sixth Committee see A/C.6/52/SR.2, 27-30 and 32-34.

²³⁰ GA resolution 52/164, annex, second, eighth and ninth preambular paragraphs. See also para. 107 of the present study.

²³¹ A/C.6/54/L.2, annex I.

²³² The Working Group held 11 meetings from 27 September to 8 October 1999. For an informal summary of the discussions in the Working Group see A/C.6/54/L.2, annex III.

²³³ GA resolution 54/109, annex, ninth, tenth and twelfth preambular paragraphs. See also para. 108 of the present study.

²³⁴ The Working Group held 13 meetings, from 28 September to 9 October 1998. For discussions in the Working group see A/C.6/53/L.4.

²³⁵ See A/C.6/54/L.2.

²³⁶ See A/53/636, para. 5.

²³⁷ GA resolutions 53/108, paras. 10 and 11; and 54/110, para. 12.

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

71. During the period under review, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, in accordance with relevant General Assembly resolutions,²³⁸ 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.²³⁹ Following consideration by the Committee of the question of the deletion of the “enemy State” clauses of the Charter containing references directed to certain States Members of the United Nations which, according to the Assembly, “represent a valuable asset in all the endeavours of the Organization”,²⁴⁰ the Assembly, at its fiftieth session in 1995, taking note of the recommendation of the Committee, expressed its intention to initiate the procedure set out in Article 108 of the Charter of the United Nations to amend the Charter, with prospective effect, by the deletion of the “enemy State” clauses of the Charter at its earliest appropriate future session.²⁴¹

72. The Committee, pursuant to General Assembly resolutions 50/52 and 50/55 and its subsequent resolutions 51/209, 52/161, 53/106 and 54/106, also considered new proposals concerning the status of the Trusteeship Council, namely to have it abolished, to retain it, or, as suggested, inter alia, by Malta, to assign to it the functions of the guardian of the common heritage of mankind.²⁴²

²³⁸ GA resolutions 49/58, 50/51, 50/52, 51/208, 51/209, 52/161, 52/162, 53/106, 53/107, 54/106 and 54/107.

²³⁹ 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”.

²⁴⁰ See GA resolution 49/58, twelfth to fourteenth preambular paragraphs and para. 4 (c) and GA (50), Suppl. No. 33, paras. 64 and 65. See also *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 38.

²⁴¹ See GA resolution 50/52, para. 3 and twelfth to fifteenth preambular paragraphs. See also para. 110 of the present study.

²⁴² See also GA (51), Suppl. No. 33, paras. 97-106; GA (52), Suppl. No. 33, paras. 117-122; GA (53), Suppl. No. 33, paras. 144-152; GA (54), Suppl. No. 33, paras. 123-128.

73. In the context of the maintenance of international peace and security, the Committee, with the assistance of its Working Group, inter alia, continued its work²⁴³ on the questions relating to proposals with a view to enhancing the effectiveness of the Security Council and strengthening of the role of the United Nations in the maintenance of international peace and security,²⁴⁴ and on the strengthening of the role of the Organization and enhancing its effectiveness.²⁴⁵ In 1999, the Assembly requested the Committee to continue its consideration of the above proposals, as well as relevant proposals which might be submitted to the Committee at its session in 2000 and to report on its work to the Assembly at its fifty-fifth session.²⁴⁶

74. From 1995 to 1999, the Committee, as requested by the Assembly,²⁴⁷ also discussed new proposals relating to the draft declaration on the basic principles and criteria for the work of United Nations peace-keeping missions and mechanisms for the prevention and settlement of crises and conflicts²⁴⁸ and the basic conditions and criteria for imposing and implementing

²⁴³ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 41.

²⁴⁴ For the revised proposal submitted at the 1993 session of the Committee and its 1996 and 1998 revised versions and relevant comments see, respectively, GA (50), Suppl. No. 33, paras. 43-46; GA (51), Suppl. No. 33, paras. 56 and 57; GA (53), Suppl. No. 33, paras. 98-100; and GA (54), Suppl. No. 33, paras. 84-88.

²⁴⁵ For the second revised proposal submitted at the 1995 session of the Committee and its 1997 revised version and 1998 additional working paper as well as relevant discussions see, respectively, GA (50), Suppl. No. 33, paras. 47-49; GA (51), Suppl. No. 33, paras. 58-60; GA (52), Suppl. No. 33, paras. 59-74; GA (53), Suppl. No. 33, paras. 84-97; and GA (54), Suppl. No. 33, para. 83.

²⁴⁶ GA resolution 54/106.

²⁴⁷ See GA resolutions 50/52, 51/209, 52/161 and 53/106.

²⁴⁸ For the proposal, submitted at the 1996 session of the Committee and relevant discussion see GA (51), Suppl. No. 33, paras. 128-137; and GA (52), Suppl. No. 33, paras. 39-57. For the informal working paper on the topic and a working paper on the fundamentals of the legal basis for United Nations peacekeeping operations, submitted, respectively, at the 1997 and 1998 sessions of the Committee, and relevant discussions see GA (52), Suppl. No. 33, para. 58; GA (53), Suppl. No. 33, paras. 73-83; and GA (54), Suppl. No. 33, paras. 70-82.

sanctions and other enforcement measures.²⁴⁹ In 1999, the Assembly requested the Committee to continue its consideration of the above proposals, as well as relevant proposals which might be submitted to the Committee at its session in 2000 and to report on its work to the Assembly at its fifty-fifth session.²⁵⁰

75. In the context of the peaceful settlement of disputes between States, the Committee, with the assistance of its Working Group, at its 1995 session completed its consideration of the proposal on the United Nations model rules for the conciliation of disputes between states and recommended that the General Assembly bring the text to the attention of States by annexing it to a decision or resolution.²⁵¹ The Assembly, at its fiftieth session in 1995, adopted the resolution containing the model rules as an annex.²⁵²

76. During the period under review, the Committee continued its consideration of the proposal on the establishment of a dispute settlement service offering or responding with its services early in disputes²⁵³ and the proposals relating to the enhancement of the role of

the International Court of Justice.²⁵⁴ In 1999 the Assembly requested the Committee to continue its consideration of the above proposals and to report on its work to the Assembly at its fifty-fifth session.²⁵⁵ In 1999 the Assembly also adopted resolution 54/108, entitled “Strengthening of the International Court of Justice” focusing on practical ways and means of strengthening the Court while respecting its authority and independence.

12. Principles and norms of international law Relating to the new economic order

77. The General Assembly in its decision 51/441, inter alia, decided to defer consideration of the legal aspects of international economic relations to its fifty-fifth session.²⁵⁶

13. United Nations Decade of International Law

78. During the period under review the Assembly considered the item annually, reconfirming the encouragement of the progressive development of international law and its codification among the main purposes of the Decade in its resolutions,²⁵⁷ as well as in the programme of activities for the third (1995-1996)

²⁴⁹ For the proposal, submitted at the 1997 session of the Committee, as a revised version of the proposal regarding the implementation of the provisions of the Charter on assistance to third States adversely affected by the application of sanctions (submitted at the 1996 session, see GA (51), Suppl. No. 33, paras. 42-55), and a working paper, submitted at the 1998 session, and relevant discussions see GA (52), Suppl. No. 33, paras. 29-38; GA (53), Suppl. No. 33, paras. 35-72; and GA (54), Suppl. No. 33, paras. 34-69.

²⁵⁰ GA resolution 54/106.

²⁵¹ For previous work on the proposal see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 43. For the consideration of the proposal including the amendments to the text of the proposal, submitted at the 1995 session of the Committee, see GA (50), Suppl. No. 33, paras. 51-55.

²⁵² GA resolution 50/50, para. 2 and annex. See also paras. 51-55.

²⁵³ For previous work on the proposal see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 43. See GA resolutions 50/52, 51/209, 52/161 and 53/106. For the proposals on the issue submitted and considered at 1995-1999 sessions of the Committee, as well as relevant discussions in the Committee see, respectively: GA (50), Suppl. No. 33, paras. 56-63; GA (51), Suppl. No. 33, paras. 62-96; GA (52), Suppl. No. 33, paras. 75-100; GA (53), Suppl. No. 33, paras. 101-127; and GA (54), Suppl. No. 33, paras. 105-108.

²⁵⁴ For previous work on the proposal see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 43. See GA resolutions 50/52, 51/209, 52/161 and 53/106. For the proposal submitted at the 1997 session of the Committee regarding possible amendments to the Statute of the Court to extend its competence with respect to contentious matters to disputes between States and international organizations and subsequent proposals submitted at 1997-1999 sessions, as well as the proposal submitted at the 1999 session on practical ways and means of strengthening the Court while respecting its authority and independence, and relevant discussions and the recommendation of the Committee see GA (52), Suppl. No. 33, paras. 101-116; GA (53), Suppl. No. 33, paras. 128-143; and GA (54), Suppl. No. 33, paras. 109-122.

²⁵⁵ GA resolution 54/106.

²⁵⁶ For previous work on this issue see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 10 and 47. For discussions in the Sixth Committee during the fifty-first session of the GA see A/C.6/51/SR.9 and 49.

²⁵⁷ See GA resolutions 50/44, 51/157, 52/153, 53/100 and 54/28. Within the framework of the Decade, the Assembly also adopted its resolution 53/101. See also GA resolution 52/155. The representative of the sponsor delegation, expressed his confidence that the document would prove useful for the creation of new norms of international conduct — see A/54/PV. 55, page 6.

and final (1997-1999) terms of the Decade.²⁵⁸ The Assembly, inter alia, repeatedly requested the Secretary-General to submit a report²⁵⁹ 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.²⁶⁰ Reaffirming the promotion of the rule of law as the underlying goal of the Decade, the Assembly pointed out that while progressive development and codification of international law remained important, the furtherance of the rule of international law would best be served by the faithful compliance of States with existing international obligations.²⁶¹

79. The debate in the General Assembly and its Sixth Committee had underscored achievements in the area of progressive development of international law and its codification. The President of the fifty-fourth session of the General Assembly acknowledged the contribution by the relevant legal bodies of the Assembly “towards the realization of one of the most important goals of the United Nations” as mandated by Article 13 (1) (a) of the Charter and stressed the need to further strengthen “important legal bodies, such as the Sixth Committee ..., the International Law Commission and the United Nations Commission on International Trade Law”.²⁶²

80. During the debate, support was expressed for improving existing legal instruments and formulating new instruments which would allow the international community to meet the challenges of the twenty-first century²⁶³ and specific suggestions were made in this connection.²⁶⁴ However, it was stressed that efforts to

develop the law would be successful only if they were based on a commitment to its full implementation.²⁶⁵ It was also stated that wars and internal conflicts which occurred during the Decade reflected the continued deficiency in the development of, and adherence to, international law.²⁶⁶

81. With regard to the future role of the United Nations in the process of progressive development of international law and its codification, it was believed that the conclusion of the Decade would not result in a reduction in United Nations activities promoting the progressive development and codification of international law.²⁶⁷ Emphasis was laid on the duty to advance the progressive development and codification of all provisions likely to strengthen the vitality and the impact of international law.²⁶⁸ It was suggested that the General Assembly should continue considering developments in the progress made in the implementation of the purposes of the Decade beyond its conclusion.²⁶⁹ The achievements of regional organizations in treaty-making,²⁷⁰ as well as the importance of universal participation in the development and codification of international law,²⁷¹ with the full involvement of the developing countries in this process,²⁷² were re-emphasized.²⁷³

²⁵⁸ See annex, section III, to GA resolutions 49/50 and 51/157.

²⁵⁹ See GA resolutions 50/44, 51/157, 52/153 and 53/100.

²⁶⁰ The Working Group on the Decade was originally established pursuant to GA resolution 44/23.

²⁶¹ See GA resolution 54/27, seventh preambular paragraph.

²⁶² A/54/PV.54, pages 2 and 3.

²⁶³ A/C.6/50/SR.38, para. 16. See also, for instance, A/C.6/50/SR. 39, para. 10; A/C.6/50/SR. 40, para. 23.

²⁶⁴ See, for instance, A/54/PV.54, page 5; A/C.6/50/SR. 40, para. 37; A/C.6/51/SR. 43, para. 24; A/C.6/51/SR. 44, paras. 1 and 34; A/C.6/52/SR. 30, para. 16; A/C.6/53/SR. 32, para. 15; A/C.6/54/SR. 9, para. 52; A/C.6/54/SR. 10, para. 7. In this connection, see also “International Law as a Language for International Relations. Proceedings of the United Nations Congress on Public International Law, New York, 13-17 March 1995”, Kluwer Law International, 1996 (United Nations Sales No. T. 96.V.4), especially pages 207-285.

²⁶⁵ See, for instance, A/54/PV.54, page 8. In this connection, see also, for instance, A/C.6/50/SR. 39, para. 1; A/C.6/50/SR. 40, para. 10; A/C.6/50/SR. 41, para. 9; A/C.6/54/SR.8, para. 65.

²⁶⁶ A/54/PV.55, page 11.

²⁶⁷ A/54/PV.54, page 10; see also, in this connection, pages 17, 18; A/54/PV.55, page 6; A/C.6/53/SR. 32, para. 25.

²⁶⁸ A/54/PV.54, page 18.

²⁶⁹ *Ibid.*, page 12; see also, in this connection, pages 13, 17 and 18. See also A/54/PV.55, page 3; and A/C.6/53/SR.31, paras. 30, 36 and 48.

²⁷⁰ See, for instance, A/C.6/50/SR.40, paras. 1 and 2; A/C.6/50/SR.41, para. 14; A/C.6/52/SR.9, para. 12; A/C.6/54/SR.9, para. 9; and A/C.6/54/SR.10, paras. 34 and 64.

²⁷¹ A/C.6/52/SR.9, para. 7. See also A/C.6/54/SR.8, para. 79.

²⁷² A/54/PV.54, page 23; and A/54/PV.55, page 16. See also A/C.6/50/SR.41, para. 6; A/C.6/51/SR.44, paras. 21 and 28; A/C.6/52/SR.9, para. 7; A/C.6/53/SR.31, para. 17; A/C.6/54/SR.8, para. 63; and A/C.6/54/SR.10, paras. 8 and 10.

²⁷³ For previous debate on this issue see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 55.

82. The issues of the procedures, methods and forms to be used in the process of progressive development of international law and its codification²⁷⁴ continued to be raised during the debate, including such issues as the role of consensus in treaty making,²⁷⁵ the role of non-binding instruments²⁷⁶ and the interrelationship between conventional and customary norms in the development of international law.²⁷⁷

83. The contribution of civil society, including academia, to the process of progressive development of international law and its codification was reconfirmed.²⁷⁸ This involvement was vividly manifested, in particular, during the realization of the programme of action dedicated to the centennial of the first International Peace Conference²⁷⁹ and the holding in 1995 of the United Nations Congress on Public International Law.²⁸⁰

84. At its fifty-fourth session in 1999, the General Assembly, in its final resolution on the Decade, while welcoming the achievements during the Decade in the codification and progressive development of international law, reaffirmed the continued validity of the main objectives of the Decade, the fulfilment of which is essential to achieve the purposes of the United Nations, and invited States to continue to pay attention to the identification of areas of international law that might be ripe for progressive development or

codification, and to promote discussion thereon in the competent forums.²⁸¹

14. Committee on the Peaceful Uses of Outer Space

85. During the period under review, the General Assembly, in its resolutions 50/27, 51/122, 51/123, 52/56, 53/45, 54/67 and 54/68, continued to encourage work on topics relating to the development and codification of the law of outer space on the basis of proposals by States and the reports submitted by the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee on topics noted in *Supplement No. 8*.²⁸²

86. The General Assembly, by its resolution 50/27, endorsed the recommendation of the Committee that the Legal Subcommittee should continue to consider, among other questions, 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. In 1996, the Legal Subcommittee, through its working group, finalized the text of the Declaration. The Declaration was endorsed by the Committee on the Peaceful Uses of Outer Space²⁸³ and adopted by the General Assembly in its resolution 51/122.

87. In its resolutions 50/27 and 51/123 the General Assembly considered the organization of a Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III). In 1997, by its resolution 52/56, the General Assembly agreed that the Conference should be convened at the United Nations Office at Vienna from 19 to 30 July 1999 as a special session of the Committee on the Peaceful Uses of Outer Space, open to all States Members of the United Nations. At its 10th plenary meeting, on 30 July 1999, the Conference adopted the resolution entitled "The Space Millennium: Vienna Declaration on Space and Human Development".²⁸⁴ The resolution calls for the promotion of the efforts of the Committee on the Peaceful Uses of Outer Space in the development of space law by inviting States to ratify or accede to, and inviting intergovernmental

²⁷⁴ For previous debate on this issue see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 56.

²⁷⁵ A/C.6/54/SR. 10, para. 2; and A/54/PV.55, page 7.

²⁷⁶ A/C.6/49/SR. 35, para. 27; A/54/PV.54, page 21; and A/54/PV.55, page 3.

²⁷⁷ A/54/PV.55, page 3.

²⁷⁸ A/54/PV.54, page 4. For previous debate on this issue see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 57.

²⁷⁹ See GA resolutions 51/159, 52/154, 53/99 and 54/27. See also, for instance, A/54/PV.54, pages 10 and 11; A/54/PV.55, page 12; A/C.6/54/SR.9, para. 25; and A/C.6/54/SR. 9, paras. 56 and 65.

²⁸⁰ The GA, in paragraph 4 of its resolution 51/157 recalled the successful organization of the Congress, and welcomed the publication of its proceedings which was viewed as a useful opportunity to consider the codification, progressive development and dissemination of public international law — see A/C.6/50/SR.40, paras. 16 and 50; and A/C.6/51/SR.44, paras. 19, 28 and 33.

²⁸¹ GA resolution 54/28, paras. 14, 3 and 17.

²⁸² See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 58-62.

²⁸³ See GA (51), Suppl. No. 20, Part C, para. 3.

²⁸⁴ See A/CONF.184/6, chapter II, paras. 361-376.

organizations to declare acceptance of, the outer space treaties developed by the Committee and by considering the further development of space law to meet the needs of the international community, taking into particular account the needs of developing countries and countries with economies in transition.²⁸⁵ By its resolution 54/68 the General Assembly endorsed the resolution adopted by the Conference, calling upon all concerned to implement the recommendations made by UNISPACE III, as reflected in its report.²⁸⁶

88. By its resolution 52/56 the General Assembly endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee should continue its consideration of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space;²⁸⁷ continue, through its working group, its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union, and begin its review of the status of the five international legal instruments governing outer space. By its resolution 53/45 the General Assembly endorsed the recommendation of the Committee that the Legal Subcommittee should establish a working group to consider the review of the status of the five international legal instruments governing outer space²⁸⁸ and that it should continue its consideration of other matters, including informal consultations on specific proposals already made for possible new agenda items for the Legal Subcommittee.

89. In 1999, by its resolution 54/67, the General Assembly welcomed the new approach taken by the Committee in composing the agenda of the Legal Subcommittee and, *inter alia*, endorsed the recommendation of the Committee that at its thirty-eighth session, the Legal Subcommittee should consider as regular agenda items (i) general exchange of views, (ii) status of the international treaties governing the uses of outer space, (iii) information on the activities of

international organizations relating to space law, (iv) 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; review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space²⁸⁹ as a single issue and item for discussion; and review of the status of the five international legal instruments governing outer space and review of the concept of the “launching State” in accordance with work plans adopted by the Committee. The General Assembly also endorsed the recommendation of the Committee that the Legal Subcommittee would submit, at its thirty-ninth session, proposals to the Committee for new items to be considered by the Subcommittee at its fortieth session, in 2001.

15. Law of the Sea

(a) *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*

90. Pursuant to General Assembly resolution 47/192, the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks held six sessions, the first from 19 to 23 April 1993 and the sixth and final session from 24 July to 4 August 1995.²⁹⁰ On 4 August 1995, the Conference adopted, without a vote, the 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 (the Agreement), as well as resolutions I and II.²⁹¹ At the same meeting, the Conference approved the Final Act.²⁹² A resumed sixth

²⁸⁵ See para. 1 (e) (iv) of the resolution (A/CONF.184/6, chap. I).

²⁸⁶ See A/CONF.184/6, paras. 361-376.

²⁸⁷ See also paras. 89 and 112 of the present study.

²⁸⁸ See also A/AC.105/721, annex II, para. 13.

²⁸⁹ See also para. 112 of the present study.

²⁹⁰ See A/50/550, paragraph 7. For previous work in this field see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 14 and 66-69.

²⁹¹ See A/50/550, annexes I and II; see also A/CONF.164/37 and A/CONF.164/38, annex. See also paras. 91 and 113 of the present study.

²⁹² A/CONF.164/38.

session was held on 4 December 1995 for a ceremony of signature of the Agreement and the Final Act.

91. The Agreement sets out principles for the conservation and management of straddling fish stocks and highly migratory fish stocks and establishes that such management must be based on the precautionary approach and the best available scientific information. It also provides a framework for cooperation in the conservation and management of those resources. It promotes good order in the oceans through the effective management and conservation of high seas resources by establishing, among other things, detailed minimum international standards for the conservation and management of straddling fish stocks and highly migratory fish stocks; and ensuring that measures taken for the conservation and management of those stocks in areas under national jurisdiction and in the adjacent high seas are compatible and coherent.

(a) *United Nations Convention on the Law of the Sea of 10 December 1982*

92. During the period under review, the General Assembly also repeatedly noted the strategic importance of the United Nations Convention on the Law of the Sea of 10 December 1982 as a framework for national, regional and global action in the marine sector.²⁹³ Moreover, the Assembly decided to undertake an annual review and evaluation of the implementation of the Convention and other developments relating to ocean affairs and the law of the sea.²⁹⁴

16. Commission on Human Rights

93. 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.

²⁹³ GA resolutions 50/23, fifth preambular paragraph; 51/34, eighteenth preambular paragraph; 52/26, third preambular paragraph; 53/32, sixth preambular paragraph; and 54/31, eleventh preambular paragraph.

²⁹⁴ GA resolutions 50/23, eighth preambular paragraph; 51/34, para. 14; 52/26, para. 17; 53/32, para. 25; and 54/31, para. 32.

B. The making of recommendations

94. As observed in *Supplements Nos. 3-8*,²⁹⁵ many actions by the General Assembly recorded above in part II.A, “The initiation of studies” can be said to be recommendations for the purpose of encouraging the development of international law and its codification. The initiation of studies and making of recommendations are not necessarily activities, which are mutually exclusive. However, the stage of initiation is clearly passed when the preparatory work on a topic results in a final draft submitted by a subsidiary body to the General Assembly, and the action taken by the Assembly on a draft comes exclusively within the scope of “making of recommendations”.

95. Concerning 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, adopted by the Commission at its forty-first session,²⁹⁶ during the period under review the General Assembly, by its decision 50/416 entitled “Consideration of 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”, decided to bring the draft articles, to the attention of Member States, together with the observations made by Member States in written form or orally during the debates of the Sixth Committee, including the report of the Vice-Chairman of the Sixth Committee at the forty-seventh session of the General Assembly,²⁹⁷ and to remind Member States of the possibility that this field of international law and any further developments within it may be subject to codification at an appropriate time in the future.

96. By its resolution 51/206,²⁹⁸ entitled “Convention on the law of the non-navigational uses of international watercourses”, the General Assembly decided that, on the completion of its mandate to elaborate a framework

²⁹⁵ See *Repertory, Supplement No. 3*, vol. I, under Article 13 (1) (a), paras. 48-49; *Supplement No. 4*, vol. I, under Article 13 (1) (a), para. 69; *Supplement No. 5*, vol. I, under Article 13 (1) (a), para. 54; *Supplement No. 6*, vol. II, under Article 13 (1) (a), para. 111; *Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 67; and *Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 71.

²⁹⁶ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 19.

²⁹⁷ *Ibid.*

²⁹⁸ GA resolution 51/206, para. 3.

convention on the law of non-navigational uses of international watercourses, the Working Group of the Whole should report directly to the Assembly.

97. By its resolution 54/101,²⁹⁹ entitled “Convention on jurisdictional immunities of States and their property”, the General Assembly decided that the open-ended working group of the Sixth Committee established under resolution 53/98 would continue its work at the fifty-fifth session of the General Assembly to consider the future form of, and outstanding substantive issues related to, the draft articles on jurisdictional immunities of States and their property, adopted by the Commission at its forty-third session.

98. With regard to the draft code of crimes against the peace and security of mankind, the General Assembly, by its resolution 51/160³⁰⁰ on the report of the Commission, requested the Secretary-General to invite Governments to submit, before the end of the fifty-third session of the General Assembly, their written comments and observations on action which might be taken in relation to the draft code.

99. The General Assembly, by its resolution 54/112,³⁰¹ on the draft articles on the nationality of natural persons in relation to the succession of States, decided to include the item in the provisional agenda of its fifty-fifth session, with a view to the consideration of the draft articles and their adoption as a declaration at that session.

100. During the period under review, the General Assembly adopted and opened for signature the United Nations Convention on Independent Guarantees and Standby Letters of Credit and expressed its appreciation to the Commission for having prepared the draft of that Convention;³⁰² as well as for the completion and adoption of the Model Law on Electronic Commerce³⁰³ and the Model Law on Cross-Border Insolvency.³⁰⁴ It also commended the Commission for finalizing the Notes on Organizing Arbitral Proceedings.³⁰⁵

101. During the period under consideration the General Assembly made a series of recommendations aimed first at the preparation of a widely acceptable

text of a Statute for the International Criminal Court and later at the enhancement of the effectiveness and acceptance of the Court.

102. By its resolution 50/46³⁰⁶ the General Assembly decided:

to establish a preparatory committee open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, to discuss further the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, taking into account the different views expressed during the meetings, to draft texts, with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries ...

103. By its resolution 52/160³⁰⁷ the General Assembly decided that the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court:

... open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, shall be held at Rome from 15 June to 17 July 1998, with a view to finalizing and adopting a convention on the establishment of an international criminal court ...

104. By its resolution 53/105³⁰⁸ the General Assembly requested the Secretary-General:

... to convene the Preparatory Commission, in accordance with resolution F adopted by the Conference ... to carry out the mandate of that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

105. It also called upon all States:

... to consider signing and ratifying the Rome Statute, and encouraged efforts aimed at promoting awareness of the results of the

²⁹⁹ GA resolution 54/101, para. 3.

³⁰⁰ GA resolution 51/160, para. 3.

³⁰¹ GA resolution 54/112, para. 2.

³⁰² GA resolution 50/48.

³⁰³ GA resolutions 51/161 and 51/162.

³⁰⁴ GA resolutions 52/157 and 52/158.

³⁰⁵ GA resolution 51/161.

³⁰⁶ GA resolution 50/46, para. 2.

³⁰⁷ GA resolution 52/160, para. 3.

³⁰⁸ GA resolution 53/105, para. 4.

Conference and of the provisions of the Rome Statute.³⁰⁹

106. At its fifty-first session in 1996, in its resolution 51/210, the General Assembly:

... *Guided* by the Principles of the Charter of the United Nations,

Deeply disturbed by the persistence of terrorist acts, which have taken place worldwide,

...

Mindful of the need to enhance the role of the United Nations and the relevant specialized agencies in combating international terrorism,

...

Bearing in mind the possibility of considering in the future the elaboration of a comprehensive convention on international terrorism,³¹⁰

reaffirmed the Declaration on Measures to Eliminate International Terrorism contained in the annex to resolution 49/60,³¹¹ approved the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism³¹² and decided:

to establish an Ad Hoc Committee ... to elaborate an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.³¹³

107. At its fifty-second session in 1997, the General Assembly adopted the International Convention for the Suppression of Terrorist Bombings³¹⁴ and urged all States to sign and ratify, accept, approve or accede to the Convention.³¹⁵

108. At its fifty-fourth session in 1999, the General Assembly adopted the International Convention for the

Suppression of the Financing of Terrorism³¹⁶ and urged all States to sign and ratify, accept, approve or accede to the Convention.³¹⁷

109. At its fiftieth session in 1995, in its resolution 50/50, to which the United Nations Model Rules for the Conciliation of Disputes between States were annexed, the General Assembly:

... *Convinced* that the establishment of model rules for the conciliation of disputes between States. can contribute to the development of harmonious relations between States,³¹⁸

drew to the attention of States the possibility of applying the Model Rules³¹⁹ and requested the Secretary-General to lend his assistance to the States resorting to conciliation.³²⁰ As stated in the Model Rules:

... These rules apply to the conciliation of disputes between States where those States have expressly agreed in writing to their application.³²¹

The States ... may at any time, through mutual agreement, exclude or amend any of their provisions.³²²

110. At its fiftieth session in 1995, in its resolution 50/52, the General Assembly:

... *Recognizing* that, having regard to the substantial changes that have taken place in the world, the "enemy State" clauses in Articles 53, 77 and 107 of the Charter have become obsolete,³²³

Noting that the States to which those clauses were directed are Members of the United Nations and represent a valuable asset in all the endeavours of the Organization,³²⁴

...

Expresses its intention to initiate the procedure set out in Article 108 of the Charter of

³⁰⁹ Ibid., para. 3.

³¹⁰ GA resolution 51/210, third, sixth and tenth preambular paragraphs.

³¹¹ Ibid., para. 7.

³¹² Ibid., para. 8.

³¹³ Ibid., para. 9.

³¹⁴ GA resolution 52/164, annex.

³¹⁵ Ibid., paras. 1 and 2.

³¹⁶ GA resolution 54/109, annex.

³¹⁷ Ibid., paras. 1 and 2.

³¹⁸ GA resolution 50/50, second preambular paragraph.

³¹⁹ Ibid., para. 2.

³²⁰ Ibid., para. 3.

³²¹ Ibid., annex, article 1, para. 1.

³²² Ibid., para. 2.

³²³ GA resolution 50/52, thirteenth preambular paragraph.

³²⁴ Ibid., fourteenth preambular paragraph.

the United Nations to amend the Charter, with prospective effect, by the deletion of the “enemy State” clauses from Articles 53, 77 and 107 at its earliest appropriate future session.³²⁵

111. At its fifty-first session in 1996, in its resolution 51/122, the General Assembly:

... *Desirous* of facilitating the application of the principle that the exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interest of all countries, irrespective of their degree of economic or scientific development, and shall be the province of mankind,³²⁶

adopted the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries.³²⁷ In the Declaration itself, the General Assembly emphasized that:

... International cooperation in the exploration and use of outer space for peaceful purposes ... shall be conducted in accordance with the provisions of international law, including the Charter of the United Nations and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies ...³²⁸

112. In its resolutions 50/27, 51/123, 52/56, 53/45 and 54/67 the General Assembly endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee should suspend consideration in its working group of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space pending the results of the work in the Scientific and Technical Subcommittee, without prejudice to the possibility of reconvening its working group on that item if, in the opinion of the Legal Subcommittee, sufficient progress was made in the Scientific and Technical Subcommittee at its sessions to warrant the reconvening of the working group.

113. In its resolution 50/24, the General Assembly welcomed the adoption in 1995 by the United Nations Conference on Straddling Fish Stocks and Highly

³²⁵ Ibid., para. 3.

³²⁶ GA resolution 51/122, ninth preambular paragraph.

³²⁷ Ibid., tenth preambular paragraph.

³²⁸ Ibid., annex, para. 1.

Migratory Fish Stocks of the 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.³²⁹ In its subsequent resolutions the Assembly recognized “the significance of the Agreement as an important contribution to ensuring the conservation and management of straddling fish stocks and highly migratory fish stocks”,³³⁰ and called upon:

... all States and other entities referred to in article 1, paragraph 2 (b), of the Agreement... to sign and ratify or accede to it and to consider applying it provisionally.³³¹

The Assembly also kept on its agenda, under the item on oceans and law of the sea, the sub-item entitled “Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks”.³³²

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

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

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

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

115. Pursuant to General Assembly resolution 50/45,³³³ the Commission, during its forty-eighth session, examined its methods of work for the purpose

³²⁹ See GA resolution 50/24, para. 1. See also A/CONF.164/37 and A/50/550, annex I.

³³⁰ GA resolutions 51/35 and 52/28, para. 1.

³³¹ Ibid., 50/24, para. 4; 51/35, para. 3; 52/28, para. 3; 53/33, para. 4; and 54/32, para. 2.

³³² Ibid., 50/24, paras. 5 and 7; 51/35, paras. 8 and 10; 52/28, paras. 9 and 11; and 54/32, paras. 14 and 15.

³³³ GA resolution 50/45, para. 9.

of further enhancing its contribution to the progressive development and codification of international law on the basis of the report of its Planning Group.³³⁴

116. The Commission agreed with the conclusion of the Planning Group that the distinction between codification and progressive development was difficult if not impossible to draw in practice; the Commission had proceeded on the basis of a composite idea of codification and progressive development. Distinctions drawn in its Statute between the two processes had proved unworkable and could be eliminated in any review of the Statute.³³⁵ Furthermore, notwithstanding that there was a distinction drawn in the Statute between codification and progressive development relating to the selection of topics for work by the Commission, in practice the procedure for considering most of the subjects which the Commission had taken up had been much the same, whether or not the aspect of progressive development or codification had been thought to predominate.³³⁶

117. It was also recognized that there was important continuing value in an orderly process of codification and progressive development,³³⁷ and that so long as the process of liaison and dialogue was effective, through Sixth Committee requests to Governments for

information and comment and through the Commission's direct links with regional consultative committees, the need for a body like the Commission for the codification and progressive development of international law was likely to continue.³³⁸ It was thought that there was, however, a number of ways in which the Commission's work methods might be made more responsive and efficient, and the relationship with the Sixth Committee structured and enhanced.³³⁹

118. The Commission, at its fiftieth session, bearing in mind the recommendation of the Working Group on the long-term programme of work established by the Planning Group at its forty-ninth session, agreed that the selection of topics for the long-term programme of work should be guided by the following criteria: the topic should reflect the needs of the States in respect of the progressive development and codification of international law; the topic should be sufficiently advanced in stage in terms of State practice to permit progressive development and codification; that the topic was concrete and feasible for progressive development and codification. The Commission further agreed that it should not restrict itself to traditional topics, but could also consider those that reflected new developments in international law and pressing concerns of the international community as a whole.³⁴⁰

³³⁴ *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), paras. 144-244.

³³⁵ *Ibid.*, para. 148 (a).

³³⁶ *Ibid.*, paras. 159-160.

³³⁷ *Ibid.*, para. 148 (b).

³³⁸ *Ibid.*, para. 171.

³³⁹ *Ibid.*, para. 148 (c).

³⁴⁰ *Ibid.*, 1998, para. 553.

Article 13 (1) (a)

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Text of Article 13 (1) (a)

Provisions relating to the progressive development and codification of international law

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

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

Introductory note

1. The study of Article 13 (1) (a) generally follows the format established in the *Repertory* and continued in *Supplements Nos. 1-8*. It is divided into two major parts, namely part I entitled “General survey” and part II entitled “Analytical summary of practice”. Part II consists of three sections: section A “The initiation of studies”, section B “The making of recommendations” and section C “The meaning of ‘progressive development’ and of ‘codification’ of international law”.

2. Following the format set out in *Supplement No. 8* of the *Repertory*,¹ a review of the trends and developments in the general survey serves as a background to the analytical summary of practice

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

I. General survey

3. In *Supplements Nos. 3-8*, 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 of international law experts appointed in their personal capacity.³ During the period under review these procedures continued.

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

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

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

5. The previous *Supplements Nos. 3-8* 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

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

and submitted them with its recommendations to the General Assembly; the Assembly, after consideration, referred the draft to an international conference and the conference, after deliberations on the basis of the draft, adopted one or more conventions, protocols and resolutions".⁵

6. During the period under consideration, this procedure was applied, with some adjustments, in the case of the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome from 15 June to 17 July 1998. The Conference was the major event in the field of codification and progressive development of international criminal law.⁶ The Rome Conference was the culmination of efforts aimed at the preparation of the Statute of the permanent Criminal Court, starting with the first draft prepared by the International Law Commission, and continuing with the work of the Ad Hoc Committee⁷ and the Preparatory Committee⁸ on the establishment of an International Criminal Court. The Conference adopted the Rome Statute for the International Criminal Court on 17 July 1998. Subsequently, the Preparatory Commission for the International Criminal Court was established.⁹ In accordance with its mandate,¹⁰ the Preparatory Commission continued to work towards practical arrangements for the establishment and coming into

operation of the Court, including drafting of a number of important legal instruments.

7. Regarding the draft code of crimes against the peace and security of mankind, the General Assembly, by its resolution 51/160,¹¹ requested the Secretary-General to invite Governments to submit their written comments and observations on the action which might be taken in relation to the draft code.¹² No further action was taken in relation to the draft code, in view of the fact that the Rome Statute incorporated also substantive law concerning crimes dealt with in the draft code.

8. The General Assembly did not use the procedure of referring the draft articles to an international conference in the case of two other topics, namely the law of non-navigational uses of international watercourses and jurisdictional immunities of States and their property.¹³ Instead it decided to convene a Working Group of the Sixth Committee to consider the draft articles adopted and recommended to the Assembly by the Commission.¹⁴

9. Still another course of action was followed regarding the draft articles on the nationality of natural persons in relation to the succession of States, adopted by the Commission. At its fifty-first session, the General Assembly decided to include the item in the provisional agenda of its fifty-fifth session, with a view to consideration of the draft articles as a declaration.¹⁵

10. Another departure from the procedure noted in *Supplements Nos. 3-8* is found in the case of 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, which had been adopted by the Commission and which recommended to the General Assembly that an international conference of plenipotentiaries be convened to consider the draft articles.¹⁶ However, the General Assembly, by its decision 50/416, decided to bring the draft articles to the attention of Member States, together with observations

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

⁶ The Conference was also considered as an opportunity to take a monumental step in the name of human rights and the rule of law. See Opening Statement of the United Nations Secretary-General, Kofi Annan, to the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June 1998. See also paras. 48-58 and 102, 103 and 105.

⁷ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 22; and para. 43 of the present study.

⁸ See paras. 44-47 of the present study.

⁹ See document A/CONF.183/13 (vol. I), (B) Final Act, annex, resolution F, para. 1. See also paras. 59-62 and 104 of the present study.

¹⁰ See document A/CONF.183/13 (vol. I), (B) Final Act, annex, resolution F, paras. 5-7.

¹¹ GA resolution 51/160, para. 3.

¹² See paras. 11, 22 and 98 of the present study.

¹³ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 5.

¹⁴ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 73 and 18, respectively.

¹⁵ See paras. 23 and 99 of the present study.

¹⁶ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 19.

by Member States and to remind Member States of the possibility that this field of international law and any further developments within it may be subject to codification at an appropriate time in the future.¹⁷

11. Concerning the current work programme of the Commission, the General Assembly recommended that the Commission continue its consideration of all topics previously begun, which are noted in *Supplement No. 8*,¹⁸ e.g., 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, 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), as well as the law and practice relating to reservations to treaties¹⁹ and State succession and its impact on the nationality of natural and legal persons. Two new studies were initiated by the General Assembly, namely diplomatic protection and unilateral acts of States. 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.²⁰

12. During the period under review, the United Nations Commission on International Trade Law (UNCITRAL) continued its consideration of questions initiated previously,²¹ commenced work on new subjects and completed its work on the draft convention on independent guarantees and standby letters of credit; the UNCITRAL Model Law on Electronic Commerce; the UNCITRAL Notes on Organizing Arbitral Proceedings; and the UNCITRAL Model Law on Cross-Border Insolvency.²²

13. During the period under consideration, the General Assembly adopted the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International

Terrorism²³ and two conventions, namely the International Convention for the Suppression of Terrorist Bombings²⁴ and the International Convention for the Suppression of the Financing of Terrorism²⁵ prepared by the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996.

14. The General Assembly in its resolution 50/50 adopted the United Nations Model Rules for the Conciliation of Disputes between States, which were elaborated by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.²⁶ In its resolution 50/52, taking note of the recommendation of the Committee, the Assembly also expressed its intention to initiate the procedure set out in Article 108 of the Charter of the United Nations to amend the Charter by the deletion of its “enemy State” clauses at its earliest appropriate future session.²⁷

15. During the period under review the General Assembly continued its consideration of other questions aimed at progressive development of international law and its codification noted already in *Supplement No. 8*. The question of the progressive development of the principles and norms of international law relating to the new international economic order²⁸ was considered by the Sixth Committee at the fifty-first session of the General Assembly²⁹ and, as a result, the Assembly adopted decision 51/441 deferring this matter to its fifty-fifth session. In the framework of the United Nations Decade of International Law,³⁰ the Assembly adopted resolution 53/101 on the principles and guidelines for

¹⁷ See also paras. 11 and 95 of the present study.

¹⁸ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 6 and 17.

¹⁹ The title was changed to read “Reservations to treaties”. See para. 26 of the present study.

²⁰ See paras. 21-33 and 95-99 of the present study.

²¹ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 29 and 35.

²² For the actions taken by the GA in connection with those texts, see para. 100 of the present study. See also paras. 34-42.

²³ GA resolution 51/210, annex. See also paras. 65 and 106 of the present study.

²⁴ GA resolution 52/164, annex I. See also paras. 66-68 and 107 of the present study.

²⁵ GA resolution 54/109, annex. See also paras. 67, 69 and 108 of the present study.

²⁶ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 43; and paras. 75 and 109 of the present study.

²⁷ See GA resolution 50/52, para. 3 and twelfth to fifteenth preambular paragraphs. See also paras. 71 and 110 of the present study.

²⁸ For previous work on this issue see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 10 and 47.

²⁹ See para. 77 of the present study.

³⁰ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 11 and 48-57. See also paras. 78-84 of the present study.

international negotiations, which was elaborated by the Sixth Committee, with the assistance of its Working Group on the Decade, as well as resolutions 54/27 and 54/28 respectively, on the outcome of the action dedicated to the 1999 centennial of the first International Peace Conference and on the outcome of the United Nations Decade of International Law.³¹

16. 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.³² The Committee and the Subcommittee continued consideration of questions on topics noted in *Supplement No. 8*³³ and concluded their work on 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. By its resolution 51/122, the General Assembly adopted the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries.³⁴ By its resolution 54/68, the General Assembly endorsed a resolution entitled “The Space Millennium: Vienna Declaration on Space and Human Development” adopted by the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III), held in July 1999.³⁵

17. In 1998 the Legal Subcommittee began consideration of a new agenda item entitled “Review of the status of the five international legal instruments governing outer space”.³⁶ In 2000, the Legal

Subcommittee started to consider through a working group the new agenda item entitled “Review of the concept of the ‘launching State’”.³⁷

18. During the period under review, progressive development and codification in the area of the Law of the Sea led to the adoption in 1995 by a conference convened under the auspices of the General Assembly of the “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”.³⁸

19. The practice noted in the previous supplements of entrusting the Secretary-General with the preparation of studies continued through the period under review.³⁹ The General Assembly requested, in particular, the Secretary-General to prepare reports on the activities of the United Nations relevant to the progressive development of international law and its codification.⁴⁰ The Secretary-General, following the Assembly’s request,⁴¹ updated 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 1984.⁴²

20. The Assembly also entrusted the Secretary-General with the task of seeking the views of States on the present state of the codification process within the United Nations system.⁴³

³¹ See paras. 78, 83 and 84 of the present study.

³² See GA (50), Suppl. No. 20, A/50/20; GA (51), Suppl. No. 20, A/51/20; GA (52), Suppl. No. 20, A/52/20; GA (53), Suppl. No. 20, A/53/20; GA (54), Suppl. No. 20, A/54/20; A/AC.105/607; A/AC.105/639; A/AC.105/674; A/AC.105/698; and A/AC.105/721.

³³ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 12 and 13.

³⁴ See also paras. 86 and 111 of the present study.

³⁵ The Vienna Declaration was adopted by the United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III) at its 10th plenary meeting on 30 July 1999 (see A/CONF.184/6). See also para. 87 of the present study.

³⁶ See A/AC.105/698, Part III, paras. 46-64. See also paras. 88 and 89 of the present study.

³⁷ As it was agreed in 1999 by the Committee on the Peaceful Uses of Outer Space (see GA (54), Suppl. No. 20, A/54/20, Part C, 4 (b), para. 114).

³⁸ See A/50/550, containing text of the Agreement and related resolutions. See also paras. 90, 91 and 113 of the present study. For previous work in this field see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 14 and 66-69.

³⁹ See *Repertory, Supplement No. 3*, vol. I, under Article 13 (1) (a), para. 10; *Supplement No. 4*, vol. I, under Article 13 (1) (a), para. 16; *Supplement No. 5*, vol. I, under Article 13 (1) (a), para. 11; *Supplement No. 6*, vol. II, under Article 13 (1) (a), para. 21; *Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 19; and *Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 15.

⁴⁰ GA resolutions 50/44, para. 6; and 51/157, para. 8 and annex III, para. 9.

⁴¹ GA resolution 49/51, para. 5. See also *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 15.

⁴² GA resolution 50/45, para. 7.

⁴³ GA resolution 50/45, para. 10.

II. Analytical summary of practice

A. The initiation of studies

1. International Law Commission

21. During the period under review, the International Law Commission made progress on the studies previously initiated.⁴⁴ The Commission also initiated two new studies on diplomatic protection and unilateral acts of States, and the General Assembly endorsed the decision of the Commission to include these topics in its agenda.⁴⁵ The General Assembly further requested in its various resolutions throughout this period that the Commission continue its work on all the topics on its agenda.⁴⁶

22. Regarding the draft code of crimes against the peace and security of mankind, the Commission, during its forty-eighth session, adopted the final text of a set of 20 draft articles constituting the code of crimes against the peace and security of mankind, with the understanding that the inclusion of certain crimes in the Code did not affect the status of other crimes under international law, and that the adoption of the Code did not in any way preclude the further development of this important area of law,⁴⁷ and recommended to the General Assembly that the Assembly select the most appropriate form the code should take to ensure its widest possible acceptance.⁴⁸ The General Assembly, by its resolution 51/160,⁴⁹ expressed appreciation to the Commission for the completion of the final draft code, and took action on the recommendation.

23. Concerning the topic “State succession and its impact on the nationality of natural and legal persons”, the Commission, during its forty-eighth session, decided to recommend to the General Assembly that it should take note of the completion of the preliminary study of the topic and that it request the Commission to undertake the substantive study of the topic, on the understanding that consideration of the question of the nationality of natural persons would be separated from

that of the nationality of legal persons and that priority would be given to the former.⁵⁰ Subsequently, the Commission, during its forty-ninth session, considered the third report⁵¹ of the Special Rapporteur,⁵² containing a set of 25 draft articles with commentaries on the nationality of natural persons in relation to the succession of States, and referred the draft articles to the Drafting Committee.⁵³ During the same session, the Commission considered the report of the Drafting Committee and adopted on first reading a draft preamble and a set of 27 draft articles on the nationality of natural persons in relation to the succession of States,⁵⁴ and decided to transmit the draft articles, through the Secretary-General, to Governments for comments and observations.⁵⁵ During its fifty-first session, the Commission adopted the final text of the draft articles on the nationality of natural persons in relation to the succession of States⁵⁶ and recommended to the General Assembly the adoption, in the form of a declaration, of the draft articles.⁵⁷ Concerning the second part of the topic, the Commission, at its fiftieth session, considered the Special Rapporteur’s fourth report,⁵⁸ regarding the question of the nationality of legal persons in relation to the succession of States and established a working group to consider the question.⁵⁹ During its fifty-first session, the Commission, recalling the conclusion of the Working Group that, in the absence of positive comments from States, the Commission would have to conclude that States were not interested in the study of the second part of the topic, and taking into account that no such comments had been submitted by States, decided to recommend to the General Assembly that with the adoption of the draft articles on the nationality of natural persons in relation to the succession of States, the work of the Commission on the topic

⁴⁴ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 17-25.

⁴⁵ GA resolution 52/156, para. 8.

⁴⁶ See GA resolutions 50/45, paras. 3 and 4; 51/160, para. 4; 52/156, para. 3; 53/102, para. 3; and 54/111, para. 6.

⁴⁷ *Yearbook of the International Law Commission 1996*, vol. II (Part Two), paras. 45-46.

⁴⁸ *Ibid.*, para. 48.

⁴⁹ GA resolution 51/160, paras. 2-3.

⁵⁰ *Yearbook of the International Law Commission 1996*, vol. II (Part Two), para. 88.

⁵¹ A/CN.4/480 and Corr.1 (French only) and Add.1 and Corr.1 and Corr.2 (French only).

⁵² Vaclav Mikulka.

⁵³ *Yearbook of the International Law Commission 1997*, vol. II (Part Two), paras. 39-40.

⁵⁴ *Ibid.*, para. 41.

⁵⁵ *Ibid.*, para. 43.

⁵⁶ *Ibid.*, 1999, para. 42.

⁵⁷ *Ibid.*, para. 44.

⁵⁸ A/CN.4/489.

⁵⁹ *Yearbook of the International Law Commission 1998*, vol. II (Part Two), paras. 456 and 459.

“Nationality in relation to the succession of States” be considered concluded.⁶⁰ By its resolution 54/111,⁶¹ the General Assembly expressed its appreciation to the Commission for the completion of the second reading of the draft articles on the nationality of natural persons in relation to the succession of States, and noted that the Commission had completed its work on the topic “Nationality in relation to the succession of States”.

24. With respect to the draft articles on State responsibility, the Commission, at its forty-eighth session, considered the eighth report⁶² of the Special Rapporteur,⁶³ and, at the same session, the Special Rapporteur announced his resignation.⁶⁴ The Commission further decided to transmit the draft articles, through the Secretary-General, to Governments for comments and observations by 1 January 1998.⁶⁵ During the same session, the Commission provisionally adopted on the first reading the text of the draft articles on the topic.⁶⁶ At its forty-ninth session, the Commission established a working group to address matters dealing with the second reading of the topic⁶⁷ and on the recommendation of the working group the Commission appointed James Richard Crawford as Special Rapporteur for the topic.⁶⁸ The Commission, during its fiftieth session, considered the first report⁶⁹ of the Special Rapporteur,⁷⁰ and at its fifty-first session considered the second report⁷¹ of the Special Rapporteur.⁷² The General Assembly, by its resolution 51/160,⁷³ drew the attention of Governments to the

importance for the Commission of having their views on the draft articles on State responsibility adopted on first reading by the Commission and urged them to submit their comments and observations in writing by 1 January 1998. It also recalled the importance of this request in resolution 52/156.⁷⁴

25. Regarding the draft articles on international liability for injurious consequences arising out of acts prohibited by international law, the Commission, during its forty-eighth session, established a working group in order to review the topic in all its aspects in the light of the reports of the Special Rapporteur and the discussions held over the years in the Commission.⁷⁵ At the same session, the working group submitted a report,⁷⁶ which the Commission considered a complete picture of the topic relating to the principle of prevention and that of liability for compensation or other relief.⁷⁷ The Commission, during its forty-ninth session, on the basis of the recommendation of the working group, decided to proceed with its work on the topic, addressing first the question of prevention under the subtitle “Prevention of transboundary damage from hazardous activities”; to appoint Pemmaraju Sreenivasa Rao as Special Rapporteur for this part of the topic; and further to reiterate its request for the comments of Governments on the issue of international liability, if they had not previously provided them.⁷⁸ During its fiftieth session, the Commission considered the first report⁷⁹ of the Special Rapporteur.⁸⁰ The Commission further adopted on first reading a set of 17 draft articles on prevention of transboundary damage from hazardous activities,⁸¹ and decided to transmit the draft articles, through the Secretary-General, to Governments for comments and observations.⁸² During the fifty-first session, the Commission considered the second report⁸³ of the Special Rapporteur⁸⁴ and based on the discussion the

⁶⁰ Ibid., para. 45.

⁶¹ GA resolution 54/111, para. 2.

⁶² A/CN.4/476 and A/CN.4/476/Add.1 and Corr.1 (English only) and Add.1.

⁶³ Gaetano Aranzio-Ruiz.

⁶⁴ *Yearbook of the International Law Commission 1996*, vol. II (Part Two), paras. 61-62.

⁶⁵ Ibid., para. 64.

⁶⁶ Ibid., para. 65.

⁶⁷ Ibid., 1997, para. 158.

⁶⁸ Ibid., para. 161.

⁶⁹ A/CN.4/490 and Add.1, Add.2, Add.2/Rev.1 (French only) and Add.2/Corr.1 (Arabic, Chinese, English, Russian and Spanish only) and Add.3, Add.4, Add.4/Corr.1, Add.5 and Add.6.

⁷⁰ *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 215.

⁷¹ A/CN.4/498 and Add.1-4.

⁷² *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 168.

⁷³ GA resolution 51/160, para. 5.

⁷⁴ GA resolution 52/156, para. 6.

⁷⁵ *Yearbook of the International Law Commission 1996*, vol. II (Part Two), para. 97.

⁷⁶ Ibid., annex.

⁷⁷ Ibid., paras. 98-99.

⁷⁸ *Yearbook of the International Law Commission 1997*, vol. II (Part Two), para. 168.

⁷⁹ A/CN.4/487 and Add.1.

⁸⁰ *Yearbook of the International Law Commission 1998*, vol. II (Part Two), para. 46.

⁸¹ Ibid., para. 52.

⁸² Ibid., para. 54.

⁸³ A/CN.4/501.

⁸⁴ *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 606.

Commission decided to defer consideration of the question of international liability, pending completion of the second reading of the draft articles on the prevention of transboundary damage from hazardous activities.⁸⁵ By its resolution 52/156,⁸⁶ the General Assembly took note of the decision of the Commission to proceed with its work on the topic, undertaking as a first step the issue of prevention, and by its resolution 53/102⁸⁷ requested the Commission, while continuing its work on prevention, to also examine other issues arising out of the topic, taking into account comments made by Governments, and to submit its recommendations on the future work to be done on these issues to the Sixth Committee. The General Assembly, by its resolution 54/111,⁸⁸ requested the Commission to resume consideration of the liability aspects of the topic as soon as the second reading of the draft articles on the prevention of transboundary damage from hazardous activities was finalized, taking into account developments in international law and comments by Governments.

26. Concerning the topic of the law and practice relating to reservations to treaties, the Commission, at its forty-seventh session, considered the first report⁸⁹ of the Special Rapporteur,⁹⁰ and further considered that the title of the topic should be amended to read "Reservations to treaties".⁹¹ At its forty-ninth session, the Commission considered the second report⁹² of the Special Rapporteur,⁹³ and following the debate adopted preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties.⁹⁴ At its fiftieth session, the Commission considered the third report⁹⁵ of the Special Rapporteur, which mainly dealt with the definition of reservations (and of interpretative declarations) to treaties.⁹⁶ At its fifty-first session, the Commission considered the remaining part

of the Special Rapporteur's third report that was not considered at the fiftieth session and part of the fourth report⁹⁷ of the Special Rapporteur,⁹⁸ and adopted on first reading 18 draft guidelines on definitions of reservations and interpretative declarations.⁹⁹ The General Assembly, by its resolution 52/156, expressed appreciation to the Commission for the completion of the preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties,¹⁰⁰ and drew the attention of Governments to the importance of having their views on the preliminary conclusions.¹⁰¹ By the same resolution, the Assembly also took note of the invitation by the Commission to all treaty bodies set up by normative multilateral treaties that may wish to do so to provide their comments and observations on the preliminary conclusions of the Commission on reservations to normative multilateral treaties, including human rights treaties, and took note of the views expressed by Member States on the matter.¹⁰²

27. With respect to diplomatic protection, the Commission, during its forty-ninth session, appointed Mohamed Bennouna as Special Rapporteur for the topic,¹⁰³ and at its fiftieth session considered the preliminary report¹⁰⁴ of the Special Rapporteur.¹⁰⁵ The General Assembly, in its resolution 52/156,¹⁰⁶ having endorsed the decision of the Commission to include the topic in its agenda by its resolution 53/102,¹⁰⁷ invited Governments to submit the most relevant national legislation, decisions of domestic courts and State practice relevant to diplomatic protection in order to assist the International Law Commission in its future work on the topic, and subsequently reiterated its invitation in resolution 54/111.¹⁰⁸

⁸⁵ Ibid., para. 608.

⁸⁶ GA resolution 52/156, para. 7.

⁸⁷ GA resolution 53/102, para. 4.

⁸⁸ GA resolution 54/111, para. 7.

⁸⁹ A/CN.4/470 and Corr.1 and 2.

⁹⁰ Alain Pellet.

⁹¹ *Yearbook of the International Law Commission 1995*, vol. II (Part Two), paras. 415 and 491.

⁹² A/CN.4/477 and Add.1.

⁹³ *Yearbook of the International Law Commission 1997*, vol. II (Part Two), para. 50.

⁹⁴ Ibid., para. 148.

⁹⁵ A/CN.4/491 and Add.1-6.

⁹⁶ *Yearbook of the International Law Commission 1998*, vol. II (Part Two), para. 478.

⁹⁷ A/CN.4/499.

⁹⁸ *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 467.

⁹⁹ Ibid., para. 469.

¹⁰⁰ GA resolution 52/156, para. 1.

¹⁰¹ Ibid., para. 2 (b).

¹⁰² Ibid., para. 4.

¹⁰³ *Yearbook of the International Law Commission 1997*, vol. II (Part Two), para. 190.

¹⁰⁴ A/CN.4/484.

¹⁰⁵ *Yearbook of the International Law Commission 1998*, vol. II (Part Two), para. 60.

¹⁰⁶ GA resolution 52/156, para. 8.

¹⁰⁷ GA resolution 53/102, para. 5.

¹⁰⁸ GA resolution 54/111, para. 5.

28. Regarding the topic “Unilateral acts of States”, the Commission, during its forty-ninth session, appointed Victor Rodriguez-Cedeno as Special Rapporteur for the topic,¹⁰⁹ and at its fiftieth session considered the first report¹¹⁰ of the Special Rapporteur,¹¹¹ and the second report¹¹² at its fifty-first session.¹¹³ It was agreed at the fifty-first session by the Commission that the Secretariat, in consultation with the Special Rapporteur, should elaborate and send to Governments by October 1999 a questionnaire for possible reply within a reasonable deadline, requesting materials and inquiring about their practice in the area of unilateral acts as well as their position on certain aspects of the study of the topic by the Commission.¹¹⁴ The General Assembly, having endorsed the decision of the Commission to include the topic in its agenda in its resolution 52/156,¹¹⁵ by its resolution 54/111¹¹⁶ invited Governments to respond in writing by 1 March 2000 to the questionnaire on unilateral acts of States circulated by the Secretariat to all Governments on 30 September 1999.

29. Regarding the draft articles on jurisdictional immunities of States and their property, the work of the Commission on this topic is described in section 3 below.

2. Draft articles on the Law of Non-Navigational Uses of International Watercourses

30. Concerning the draft articles on the Law of Non-Navigational Uses of International Watercourses, adopted by the Commission on its second reading,¹¹⁷ and the General Assembly recommendation on this matter,¹¹⁸ during the period under review the General Assembly, by its resolution 51/206,¹¹⁹ took note of the

report of the Working Group of the Whole¹²⁰ and decided to convene a second session of the Working Group for a period of two weeks from 24 March to 4 April 1997, to elaborate a framework convention on the Law of Non-Navigational Uses of International Watercourses. During the first session of the Working Group, held from 7 to 25 October 1996,¹²¹ a number of draft articles had been worked out in the Drafting Committee; however, a number of core issues remained to be resolved. Accordingly, additional time was required for the Working Group to complete its work and, based on its recommendation, the General Assembly decided to convene a second session with a view to completing the elaboration of the convention.

3. Draft Articles on Jurisdictional Immunities of States and Their Properties

31. With regard to the draft articles on jurisdictional immunities of States and their property adopted by the Commission at its forty-third session and the acceptance by the General Assembly of the recommendation of the Commission that an international conference of plenipotentiaries be convened to consider the articles and to conclude a convention on the subject,¹²² during the period under review the General Assembly, by its resolution 52/151,¹²³ decided to consider the item again at its fifty-third session with a view to the establishment of a working group at its fifty-fourth session, taking into account the comments submitted by States in accordance with paragraph 2 of resolution 49/61, and urged States, if they had not yet done so, to submit their comments to the Secretary-General. By its resolution 53/98,¹²⁴ the General Assembly decided to establish at its fifty-fourth session an open-ended working group of the Sixth Committee, open also to participation by States members of the specialized agencies, to consider outstanding substantive issues related to the draft articles on jurisdictional immunities of States and their property adopted by the Commission, taking into account the recent developments of State practice and legislation and any other factors related to this issue since the adoption of the draft articles, as well as the comments submitted by States; and to consider whether there were any issues identified by the working

¹⁰⁹ *Yearbook of the International Law Commission 1997*, vol. II (Part Two), para. 212.

¹¹⁰ A/CN.4/486.

¹¹¹ *Yearbook of the International Law Commission 1998*, vol. II (Part Two), para. 112.

¹¹² A/CN.4/500 and Add.1.

¹¹³ *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 493.

¹¹⁴ *Ibid.*, para. 593.

¹¹⁵ GA resolution 52/156, para. 8.

¹¹⁶ GA resolution 54/111, para. 4.

¹¹⁷ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 20.

¹¹⁸ *Ibid.*, para. 73.

¹¹⁹ GA resolution 51/206, paras. 1-2.

¹²⁰ A/C.6/51/L.3.

¹²¹ See A/C.6/51/L.3.

¹²² See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 18.

¹²³ GA resolution 52/151, paras. 1-2.

group upon which it would be useful to seek further comments and recommendations of the Commission. By the same resolution,¹²⁵ the Assembly invited the Commission to present any preliminary comments it might have regarding outstanding substantive issues related to the draft articles by 31 August 1999, in the light of the results of the informal consultations held pursuant to General Assembly decision 48/413 of 9 December 1993 and taking into account the recent developments of State practice and other factors related to this issue since the adoption of the draft articles, in order to facilitate the task of the Working Group.

32. The Commission, at its fifty-first session on the topic, decided to establish a Working Group on Jurisdictional Immunities of States and Their Property to prepare the preliminary comments, pursuant to General Assembly resolution 53/98.¹²⁶ At the same session, the Commission took note of the report of the Working Group¹²⁷ and decided to adopt the suggestions of the Working Group, as amended in the course of the discussion.¹²⁸

33. The General Assembly, by its resolution 54/111,¹²⁹ expressed appreciation to the Commission for the work accomplished at its fifty-first session on the topic. Furthermore, the General Assembly, by its resolution 54/101,¹³⁰ took note of the report of the Working Group on Jurisdictional Immunities of States and Their Property of the International Law Commission¹³¹ and urged States, if they had not yet done so, to submit their comments to the Secretary-General in accordance with General Assembly resolution 49/61. It also invited States to submit in writing to the Secretary-General, by 1 August 2000, their comments on the report of the Working Group.

4. United Nations Commission on International Trade Law

34. From its twenty-eighth session in 1995 until its thirty-second session in 1999, the priority subjects

¹²⁴ GA resolution 53/98, para. 1.

¹²⁵ *Ibid.*, para. 2.

¹²⁶ *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 481.

¹²⁷ *Ibid.*, annex.

¹²⁸ *Ibid.*, para. 484.

¹²⁹ GA resolution 54/111, para. 2.

¹³⁰ GA resolution 54/101, paras. 1 and 2.

¹³¹ GA (54), Suppl. No. 10 and corrigenda.

which the Commission¹³² considered, in accordance with relevant General Assembly resolutions,¹³³ were the following: independent guarantees and standby letters of credit; electronic commerce; international commercial arbitration; receivables financing; cross-border insolvency; privately financed infrastructure projects; and coordination and cooperation.

(a) International payments — independent guarantees and standby letters of credit

35. At its twenty-eighth session, the Commission completed its consideration of the draft convention on independent guarantees and standby letters of credit on the basis of the draft submitted by the Working Group on International Contract Practices¹³⁴ and decided to submit the draft convention to the General Assembly with a recommendation that the Assembly consider the draft convention with a view to concluding at the fiftieth session of the Assembly, on the basis of the draft convention approved by the Commission, a United Nations convention on independent guarantees and standby letters of credit.¹³⁵ The General Assembly, by its resolution 50/48, adopted the Convention.¹³⁶

(b) Electronic commerce — Model Law on Electronic Commerce

36. At its twenty-eighth and twenty-ninth sessions,¹³⁷ the Commission considered the text of the draft model law on legal aspects of electronic data interchange (EDI)

¹³² For the mandate of UNCITRAL, see GA resolution 2205 (XXI), GA (21), annexes, agenda item 88. *Yearbook of the United Nations Commission on International Trade Law*, vol. I: 1968-1970, Part One, chap. II, E. The Commission's terms of reference and the work programme established to fulfil its mandate are described in *Supplement No. 4*, vol. I, of the *Repertory* under Article 13 (1) (a), para. 24.

¹³³ For the general mandate given to the Commission by the GA with respect to the topics in the Commission's programme of work, see GA resolutions 50/47, 51/61, 52/157, 53/103 and 54/103.

¹³⁴ See A/CN.9/408, annex. For the reports of the Working Group on the work of its twentieth to twenty-third sessions, see A/CN.9/388, A/CN.9/391, A/CN.9/405 and A/CN.9/408, respectively.

¹³⁵ GA (50) Suppl. No. 17, chap. II, para. 201 and annex I.

¹³⁶ For the text of the Convention, see GA resolution 50/48, annex. See also para. 100 of the present study.

¹³⁷ See, respectively, GA (50) Suppl. No. 17, chap. III, paras. 202-306; and GA (51) Suppl. No. 17, chap. III, paras. 55-209.

and related means of communication, submitted by the Working Group on Electronic Data Interchange in the report on the work of its twenty-eighth session.¹³⁸ At its twenty-ninth session, the Commission also considered and finalized additional rules concerning transport documents on the basis of the text¹³⁹ presented to the Commission by the Working Group, which the Commission decided to incorporate in the draft model law.¹⁴⁰ At that session, the Commission adopted the UNCITRAL Model Law on Electronic Commerce.¹⁴¹

(c) *Electronic commerce — uniform rules on electronic signatures*

37. At its thirtieth session, the Commission entrusted the Working Group on Electronic Commerce¹⁴² with the preparation of uniform rules on the legal issues of digital signatures and certification authorities.¹⁴³ At its thirty-first and thirty-second sessions,¹⁴⁴ the Commission, after considering the reports of the Working Group on the work of its thirty-second to thirty-fourth sessions,¹⁴⁵ reaffirmed its decisions as to the feasibility of preparing such uniform rules, and expressed its confidence that more progress could be accomplished by the Working Group at its forthcoming sessions.¹⁴⁶

¹³⁸ See A/CN.9/406, annex.

¹³⁹ See A/CN.9/421, annex.

¹⁴⁰ GA (51) Suppl. No. 17, chap. III, paras. 139-144. At the same session, the Commission renamed the Model Law to the Model Law on Electronic Commerce. GA (51) Suppl. No. 17, chap. III, paras. 174-177. It also discussed the draft Guide to Enactment of the Model Law prepared by the Secretariat (A/CN.9/426), which final version it mandated to publish together with the text of the Model Law, as a single document. GA (51) Suppl. No. 17, chap. III, paras. 205-208.

¹⁴¹ GA (51) Suppl. No. 17, chap. III, para. 209. See also para. 100 of the present study. For the text of the Model Law, see GA (51) Suppl. No. 17, annex I.

¹⁴² The Working Group had worked under the title “Working Group on Electronic Data Interchange” prior to the Commission’s decision at its twenty-ninth session to rename it. GA (51) Suppl. No. 17, chap. III, para. 224.

¹⁴³ GA (52) Suppl. No. 17, chap. IV, para. 250. For the report of the Working Group before the Commission at that session, see A/CN.9/437.

¹⁴⁴ See, respectively, GA (53) Suppl. No. 17, chap. III, paras. 207-221; and GA (54) Suppl. No. 17, chap. III, paras. 308-314.

¹⁴⁵ See A/CN.9/446, A/CN.9/454 and A/CN.9/457, respectively.

¹⁴⁶ GA (53) Suppl. No. 17, chap. III, para. 208; and GA (54) Suppl. No. 17, chap. III, para. 313.

(d) *International commercial arbitration*

38. As mentioned in *Supplement No. 8*,¹⁴⁷ the General Assembly welcomed the decision of the Commission made at its twenty-sixth session¹⁴⁸ to commence work on preparation of guidelines for pre-hearing conferences in arbitral proceedings. At its twenty-seventh to twenty-ninth sessions,¹⁴⁹ the Commission considered drafts prepared by the Secretariat on the project.¹⁵⁰ At its twenty-ninth session, the Commission adopted the UNCITRAL Notes on Organizing Arbitral Proceedings.¹⁵¹

39. At its twenty-eighth session, the Commission approved the project, undertaken jointly with Committee D of the International Bar Association, aimed at monitoring the legislative implementation by the States parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958¹⁵² (the 1958 Convention), with the primary objective of analysing and publishing the findings of the survey of the national legislation governing the recognition and enforcement of foreign arbitral awards and decide on the basis of those findings whether any further action by the Commission would be desirable to achieve further harmonization and unification of norms in this area of international trade law.¹⁵³ During the period under review, the Commission heard progress reports by the Secretariat on the project, called upon States parties to the Convention to provide information requested by the Secretariat in connection with the project and requested the Secretariat to prepare, for consideration by the Commission at a

¹⁴⁷ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 76.

¹⁴⁸ GA (48) Suppl. No. 17, chap. VI, para. 294.

¹⁴⁹ See, respectively, GA (49) Suppl. No. 17; Report of the United Nations Commission on International Trade Law on the work of its twenty-seventh session, 31 May-17 June 1994, chap. III, paras. 113-195; GA (50) Suppl. No. 17, chap. IV, paras. 314-373; and GA (51) Suppl. No. 17, chap. II, paras. 11-54.

¹⁵⁰ See A/CN.9/396/Add.1, A/CN.9/410 and A/CN.9/423. Since the Commission’s twenty-eighth session, the drafts have been entitled “Draft notes on organizing arbitral proceedings”.

¹⁵¹ GA (51) Suppl. No. 17, chap. II, para. 52. See also para. 100 of the present study. For the text of the notes, see United Nations publication, Sales No. 97.V.11.

¹⁵² United Nations, *Treaty Series*, vol. 330, p. 3.

¹⁵³ GA (50) Suppl. No. 17, chap. VI, paras. 401-404.

future session, a note presenting the findings based on the analysis of the information gathered.¹⁵⁴

(e) Assignment in receivables financing

40. After preliminary consideration of legal problems in the area of assignment at its twenty-sixth to twenty-eighth sessions,¹⁵⁵ the Commission, at its twenty-eighth session, entrusted the Working Group on International Contract Practices with the task of preparing a uniform law on assignment in receivables financing.¹⁵⁶ The Working Group commenced its work on the project at its twenty-fourth session¹⁵⁷ and completed it at its thirty-first session with the adoption of a draft convention and submission of it to the Commission at its thirty-third session¹⁵⁸ for final review and adoption.¹⁵⁹

(f) Cross-border insolvency

41. At its twenty-eighth session, the Commission entrusted the Working Group on Insolvency Law¹⁶⁰ with the preparation of uniform legislative provisions on cross-border insolvency.¹⁶¹ The Working Group commenced its work on the project at its eighteenth session and devoted four sessions to that work.¹⁶² At its

thirtieth session, the Commission, following its consideration of the draft model legislative provisions on cross-border insolvency¹⁶³ on the basis of the draft submitted by the Working Group,¹⁶⁴ adopted the UNCITRAL Model Law on Cross-Border Insolvency.¹⁶⁵

(g) Privately financed infrastructure projects

42. At its twenty-ninth session, the Commission decided to endorse the proposals for work on the subject set out in the report presented by the Secretariat¹⁶⁶ at that session and to prepare a legislative guide on build-operate-transfer (BOT) and related types of projects.¹⁶⁷ At its thirtieth to thirty-second sessions, the Commission considered a legislative guide on privately financed infrastructure projects¹⁶⁸ on the basis of the drafts submitted by the Secretariat.¹⁶⁹ Following consideration by the Commission of the subject at its thirty-second session, the Secretariat produced a revised draft of the legislative guide¹⁷⁰ for consideration by the Commission at its next session.

¹⁵⁴ GA (51) Suppl. No. 17, chap. VII, paras. 241-243; GA (52) Suppl. No. 17, chap. VI, para. 258; GA (53) Suppl. No. 17, chap. V, para. 233; and GA (54) Suppl. No. 17, chap. V, para. 332.

¹⁵⁵ See, respectively, GA (48) Suppl. No. 17, chap. VI, paras. 297-301; GA (49) Suppl. No. 17, chap. VII, paras. 208-214; and GA (50) Suppl. No. 17, chap. V, paras. 374-381.

¹⁵⁶ GA (50) Suppl. No. 17, chap. V, para. 379 and chap. XI, para. 450.

¹⁵⁷ For the reports of the Working Group on the work of its twenty-fourth to thirty-first sessions, see A/CN.9/420, A/CN.9/432, A/CN.9/434, A/CN.9/445, A/CN.9/447, A/CN.9/455, A/CN.9/456 and A/CN.9/466, respectively.

¹⁵⁸ See A/CN.9/466, para. 19.

¹⁵⁹ For the consideration of the subject by the Commission at its twenty-ninth to thirty-second sessions, see, respectively, GA (51) Suppl. No. 17, chap. V, paras. 233 and 234; GA (52) Suppl. No. 17, chap. V, paras. 254-256; GA (53) Suppl. No. 17, chap. IV, paras. 224-231; and GA (54) Suppl. No. 17, chap. IV, paras. 321-3350.

¹⁶⁰ The Working Group had worked under the title "Working Group on the New International Economic Order" prior to the Commission's decision at its twenty-eighth session to rename it. GA (50) Suppl. No. 17, chap. XI, para. 449.

¹⁶¹ GA (50) Suppl. No. 17, chap. VI, para. 392.

¹⁶² For the reports of the Working Group on the work of its eighteenth to twenty-first sessions, see, respectively, A/CN.9/419 and Corr.1, A/CN.9/422, A/CN.9/433 and A/CN.9/435.

¹⁶³ GA (52) Suppl. No. 17, chap. II, paras. 25-219. At the same session, the Commission also had before it the draft Guide to Enactment of the UNCITRAL Model Legislative Provisions on Cross-Border Insolvency prepared by the Secretariat (A/CN.9/436) which it did not have time to consider but which final version it mandated to publish together with the text of the Model Law, as a single document. GA (52) Suppl. No. 17, chap. II, para. 220.

¹⁶⁴ See A/CN.9/435, annex.

¹⁶⁵ GA (52) Suppl. No. 17, chap. II, para. 221. See also para. 100 of the present study. For the text of the Model Law, see GA (52) Suppl. No. 17, annex I.

¹⁶⁶ See A/CN.9/424.

¹⁶⁷ GA (51) Suppl. No. 17, chap. IV, para. 228.

¹⁶⁸ See, respectively, GA (52) Suppl. No. 17, chap. III, paras. 230-247; GA (53) Suppl. No. 17, chap. II, paras. 15-206; and GA (54) Suppl. No. 17, chap. II, paras. 15-307.

¹⁶⁹ See A/CN.9/438 and Add.1-3, A/CN.9/444/Add.1-5 and A/CN.9/458/Add.1-9.

¹⁷⁰ See A/CN.9/471/Add.1-9.

5. Ad Hoc Committee on the Establishment of an International Criminal Court

43. The Ad Hoc Committee on the Establishment of an International Criminal Court¹⁷¹ met at United Nations Headquarters twice.¹⁷² It reviewed the major substantive and administrative issues arising out of the draft statute for an international criminal court prepared by the International Law Commission.¹⁷³ In particular, it considered issues related to the establishment and composition of the Court, the principle of complementarity, jurisdiction, methods of proceedings, due process, relationship between States and non-States parties and the international criminal court, budget and administration matters, etc. In addition, it considered arrangements for the convening of an international conference of plenipotentiaries.

6. Preparatory Committee on the Establishment of an International Criminal Court

44. At its fiftieth session, the General Assembly noted that the Ad Hoc Committee had recommended that the General Assembly take up the organization of future work with a view to its early completion, given the interest of the international community in the establishment of an international criminal court.¹⁷⁴ It established the Preparatory Committee on the Establishment of an International Criminal Court and directed it to discuss further the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, taking into account the different views expressed during meetings, to draft texts, with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries.¹⁷⁵

45. The Preparatory Committee on the Establishment of an International Criminal Court met at United Nations Headquarters twice during 1996.¹⁷⁶ In accordance with its mandate, it discussed the major substantive and administrative issues arising out of the draft Statute and proceeded to consider draft texts, with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court. The Preparatory Committee concluded in its report covering these meetings¹⁷⁷ that it considered that it was realistic to regard the holding of a diplomatic conference of plenipotentiaries in 1998 as feasible.

46. At its fifty-first session, the Assembly decided to reaffirm the mandate of the Preparatory Committee and directed it to proceed in accordance with paragraph 368 of its report.¹⁷⁸ Accordingly, it had to deal, inter alia, with the following: (i) definition and elements of crimes; (ii) principles of criminal law and penalties; (iii) organization of the Court; (iv) procedures; (v) complementarity and trigger mechanism; (vi) cooperation with States; (vii) establishment of an International Criminal Court and its relationship with the United Nations; (viii) final clauses and financial matters; and (ix) other matters.

47. In accordance with General Assembly resolution 51/207, the Preparatory Committee met three times in 1997, during which time it continued to prepare a widely acceptable consolidated text of a convention for an international criminal court.¹⁷⁹ It also met in 1998,¹⁸⁰ at which time it adopted the text of a draft statute on the establishment of an international criminal court¹⁸¹ and the draft final act,¹⁸² and agreed to transmit to the Conference those two documents,

¹⁷¹ The Ad Hoc Committee on the Establishment of an International Criminal Court was established by GA resolution 49/53.

¹⁷² See GA (50) Suppl. No. 22. For comments received pursuant to para. 4 of GA resolution 49/53 see A/AC.244/1 and Add.1-4. For previous work on the draft statute see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 22.

¹⁷³ GA (49) Suppl. No. 10, chap. II.B.I.5 and A/49/355 chap. II; also see *Repertory, Supplement No. 8*, vol. II under Article 13 (1) (a), para. 22.

¹⁷⁴ GA resolution 50/46, eighth preambular paragraph.

¹⁷⁵ *Ibid.*, para. 2. For discussions in the Sixth Committee during the fiftieth session see A/C.6/50/SR.25-31 and 46. See also para. 102 of the present study.

¹⁷⁶ In accordance with GA resolution 50/46, the Preparatory Committee met from 25 March to 12 April and from 12 to 30 August 1996.

¹⁷⁷ See GA (51) Suppl. No. 22, vol. I. For a compilation of proposals regarding the Court see GA (51) Suppl. No. 22A, A/51/22 ().

¹⁷⁸ GA resolution 51/207, para. 3. Also see GA (51) Suppl. No. 22, A/51/22 (vol. I).

¹⁷⁹ See the decisions taken by the Preparatory Committee at its session held from 11 to 21 July 1997

(A/AC.249/1997/L.5); at its session held from 4 to 15 August 1997 (A/AC.249/1997/L.8/Rev.1); and at its session held from 1 to 12 December 1997 (A/AC.249/1997/L.9/Rev.1).

¹⁸⁰ See A/AC.249/1998/L.16 and Add.1.

¹⁸¹ See A/AC.249/1998/L.13, chap. II.

¹⁸² *Ibid.*, chap. III (A).

together with the draft provisional rules of procedure of the conference¹⁸³ and the draft organization of work.

7. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

48. At its fifty-second session, the General Assembly decided to hold a Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in Rome from 15 June to 17 July 1998, with a view to finalizing and adopting a convention.¹⁸⁴

49. The United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court had before it a draft statute on the establishment of an international criminal court¹⁸⁵ submitted by the Preparatory Committee in accordance with its mandate. The Conference entrusted the Drafting Committee, without reopening substantive discussion on any matter, with coordinating and refining the drafting of all texts referred to it without altering the substance, formulating drafts and giving advice on drafting as requested by the Conference or by the Committee of the Whole, and reporting to the Conference or to the Committee of the Whole as appropriate.¹⁸⁶

50. On the basis of the deliberations during the Conference¹⁸⁷ and of the Committee of the Whole¹⁸⁸ and the reports of the Committee of the Whole¹⁸⁹ and of the Drafting Committee,¹⁹⁰ the Conference drew up the Rome Statute of the International Criminal Court,¹⁹¹ whereby the International Criminal Court was established.

51. The Rome Statute¹⁹² addresses both substantive and procedural criminal law issues related to the operation of the Court. It comprises thirteen parts and 128 articles.

52. The Court is a permanent institution, independent from the United Nations. It is based at The Hague in the Netherlands, but it may sit elsewhere whenever it considers it desirable.¹⁹³ The Court is comprised of 18 judges, a prosecutor and a registrar. The organs of the Court are: (a) the Presidency; (b) an Appeals Division, a Trials Division and a Pretrial Division; (c) the Office of the Prosecutor; and (d) the Registry.¹⁹⁴

53. The jurisdiction of the Court is limited to the most serious crimes of concern to the international community as a whole: genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute, as well as the crime of aggression. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted, defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.¹⁹⁵ The Court has jurisdiction only with respect to crimes committed after the Statute enters into force.¹⁹⁶ Elements of crimes, which need to be adopted by a two-thirds majority of the members of the Assembly of States Parties, shall assist the Court in the interpretation and application of the above articles.¹⁹⁷

54. The Court complements national jurisdictions and may only exercise jurisdiction if the State concerned is unwilling or unable genuinely to carry out the investigation or prosecution.¹⁹⁸ Cases may be submitted to it either by the Security Council or by a State Party, or by the Prosecutor, acting on the basis of information received from sources the Prosecutor considers appropriate.¹⁹⁹ No investigation or prosecution may be commenced or proceeded with under the Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of

¹⁸³ The draft provisional rules of procedure of the Conference (A/AC.249/1998/CRP.3) were prepared by the Secretary-General pursuant to GA resolution 52/160.

¹⁸⁴ GA resolution 52/160, para. 3. See also para. 103 of the present study.

¹⁸⁵ A/CONF.183/2/Add.1.

¹⁸⁶ See A/CONF.183/13 (vol. I), (B) Final Act, para. 22.

¹⁸⁷ *Ibid.*, vol. II, summary records of the plenary meetings.

¹⁸⁸ *Ibid.*, summary records of the meetings of the Committee of the Whole.

¹⁸⁹ *Ibid.*, vol. III (Part One) (C) Reports of the Committee of the Whole.

¹⁹⁰ *Ibid.*, (D) Reports of the Drafting Committee.

¹⁹¹ *Ibid.*, vol. I (B) Final Act, para. 23.

¹⁹² See A/CONF.183/13 (vol. I), (A) Rome Statute.

¹⁹³ *Ibid.*, Article 3.

¹⁹⁴ *Ibid.*, Article 34.

¹⁹⁵ *Ibid.*, Article 5.

¹⁹⁶ *Ibid.*, Article 11.

¹⁹⁷ *Ibid.*, Article 9.

¹⁹⁸ *Ibid.*, Article 17.

¹⁹⁹ *Ibid.*, Articles 13-15.

the United Nations, has requested the Court to that effect.²⁰⁰

55. The trial is conducted at the seat of the Court, unless otherwise decided.²⁰¹ The accused shall be present during the trial.²⁰² The judges are required to attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.²⁰³ The Court may grant reparations to victims, which can include restitution, compensation and rehabilitation.²⁰⁴ As regards penalties, the death penalty is excluded and life imprisonment is the highest penalty that may be given.²⁰⁵ Under the Statute, States Parties must cooperate fully with the Court in the investigation and prosecution of crimes within the jurisdiction of the Court,²⁰⁶ including with regard to the surrender of persons to the Court or production of evidence.

56. According to the Statute, the Assembly of States Parties will provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court, will consider and adopt its budget, as well as perform other functions consistent with the Statute or the rules of procedure and evidence.²⁰⁷ The Assembly is also responsible for adopting the rules of procedure and evidence of the Court and its financial regulations and rules. The Assembly of States Parties is composed of one representative per State Party, each having one vote. Other States that have either signed the Statute or signed the Final Act of the Rome Diplomatic Conference may sit in the Assembly as observers. The Assembly meets at least once a year. It has its Bureau consisting of a President, two Vice-presidents and 18 members.²⁰⁸

57. In its final clauses the Statute provides that the Secretary-General of the United Nations shall convene a conference to review the Statute seven years after its entry into force.²⁰⁹ No reservations may be made to the

Statute.²¹⁰ Article 126 provides for the Statute to come into force after the submission of 60 instruments of ratification.

58. By its resolution E contained in annex I of the Final Act, the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court recommended:

... that a Review Conference pursuant to article 123 of the Statute of the International Criminal Court consider the crimes of terrorism and drug crimes with a view to arriving at an acceptable definition and their inclusion in the list of crimes within the jurisdiction of the Court.

8. Preparatory Commission for the International Criminal Court

59. The Conference, by its resolution F,²¹¹ decided to establish the Preparatory Commission for the International Criminal Court, which shall consist of representatives of States which have signed the Final Act of the Conference, and other States which have been invited to participate in the Conference. According to paragraph 5 of that resolution:

The Commission shall prepare proposals for practical arrangements for the establishment and coming into operation of the Court, including the draft texts of:

- (a) Rules of Procedure and Evidence;
- (b) Elements of Crimes;
- (c) A relationship agreement between the Court and the host country;
- (d) Basic principles governing a headquarters agreement to be negotiated between the Court and the host country;
- (e) Financial regulations and rules;
- (f) An agreement on the privileges and immunities of the Court;
- (g) A budget for the first financial year;
- (h) The rules of procedure of the Assembly of States Parties.

²⁰⁰ Ibid., Article 16.

²⁰¹ Ibid., Article 62.

²⁰² Ibid., Article 63.

²⁰³ Ibid., Article 74.

²⁰⁴ Ibid., Article 75.

²⁰⁵ See A/CONF.183/13 (vol. I), (A) Rome Statute, Article 77.

²⁰⁶ Ibid., Article 86.

²⁰⁷ Ibid., Article 112.

²⁰⁸ Ibid.

²⁰⁹ Ibid., Article 123.

²¹⁰ Ibid., Article 120.

²¹¹ Ibid., (B) Final Act, annex I.

60. The Preparatory Commission for the International Criminal Court shall among others:

... prepare proposals for a provision on aggression, including the definition and Elements of Crimes of aggression and the conditions under which the International Criminal Court shall exercise its jurisdiction with regard to this crime. The Commission shall submit such proposals to the Assembly of States Parties at a Review Conference, with a view to arriving at an acceptable provision on the crime of aggression for inclusion in this Statute.²¹²

61. At its fifty-third session, the General Assembly requested the Secretary-General to convene the Preparatory Commission in order to carry out the mandate of resolution F adopted by the Conference, and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.²¹³

62. Accordingly, the Preparatory Commission met three times during 1999.²¹⁴ In accordance with its mandate, it worked towards the preparation of proposals for practical arrangements for the establishment and coming into operation of the Court, including the finalization before 30 June 2000 of the draft texts of the rules of procedure and evidence and of the elements of crimes.

9. Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism

63. During the period under consideration the General Assembly continued its efforts aimed at the codification and progressive development of international law in the field of measures to eliminate international terrorism, summarized in *Supplement No. 8*.²¹⁵

64. At its fiftieth and fifty-first sessions, the General Assembly reaffirmed the Declaration on Measures to

²¹² See A/CONF.183/13, (C), (B), Final Act, annex I, section F, para. 7.

²¹³ GA resolution 53/105, para. 4. See also paras. 104 and 105 of the present study.

²¹⁴ For a summary of the proceedings of the Preparatory Commission at its three sessions (from 16 to 26 February, from 26 July to 13 August and from 29 November to 17 December 1999), see PCNICC/1999/L.5.

²¹⁵ See *Repertory, Supplement No. 8*, under Article 13 (1) (a), paras. 45 and 46.

Eliminate International Terrorism, annexed to Assembly resolution 49/60. It requested the Secretary-General to follow up its implementation and to submit an annual report on the implementation of paragraph 10 of the Declaration, taking into account the modalities set out in his report²¹⁶ and the views expressed by States in the debate of the Sixth Committee during the fiftieth session of the Assembly.²¹⁷ It also called upon all States to take the necessary steps to implement their obligations under existing international conventions, to observe fully the principles of international law and to contribute to the further development of international law on this matter.²¹⁸

65. At its fifty-first session, by its resolution 51/210, the General Assembly approved the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism²¹⁹ prepared on the basis of informal consultations in the Sixth Committee.

10. Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December 1996

66. At its fifty-first session, the General Assembly decided to establish an ad hoc committee to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.²²⁰

67. The Ad Hoc Committee met three times during the period under review. At all its sessions it conducted its work in the form of a Working Group of the Whole. During its first session,²²¹ a series of texts of articles of the draft convention for the suppression of terrorist bombings were prepared, on the basis of which future

²¹⁶ See A/50/372 and Add.1.

²¹⁷ See A/C.6/50/SR.6-10 and 46.

²¹⁸ GA resolution 50/53, para. 6.

²¹⁹ GA resolution 51/210, para. 8. See also para. 106 of the present study.

²²⁰ *Ibid.*, para. 9. See also para. 106 of the present study.

²²¹ In accordance with GA resolution 51/210, the Ad Hoc Committee's first session was held from 24 February to 7 March 1997.

work would continue.²²² During its second session,²²³ the Ad Hoc Committee met to elaborate an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments.²²⁴ During its third session,²²⁵ the Ad Hoc Committee commenced its work on the elaboration of an international convention for the suppression of terrorist financing.²²⁶

68. At the fifty-second session, the General Assembly reaffirmed the mandate of the Ad Hoc Committee established by resolution 51/210, contained in paragraph 9 of that resolution.²²⁷ Also pursuant to that resolution, the Sixth Committee, at its 2nd meeting, established a Working Group on a draft international convention for the suppression of terrorist bombings.²²⁸ Discussions were held both in the Working Group and in informal consultations, and at its last meeting, the Working Group decided to recommend to the Sixth Committee the consideration of the text of a draft convention.²²⁹ The General Assembly, by its resolution 52/164 of 15 December 1997, adopted the International Convention for the Suppression of Terrorist Bombings. In the Convention, the States Parties expressed their deep concern about the worldwide escalation of acts of terrorism in all its forms and manifestations and noted that existing multilateral legal provisions did not adequately address these attacks. They also expressed their conviction of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators.²³⁰

69. The draft international convention for the suppression of the financing of terrorism²³¹ was considered during the fifty-fourth session of the General Assembly²³² in the Working Group of the Sixth Committee. Upon the recommendation of the Sixth Committee, the General Assembly adopted the Convention by its resolution 54/109 of 9 December 1999. In terms of the Convention, the financing of terrorism is a matter of grave concern to the international community as a whole. The Convention aims at devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators.²³³

70. During the fifty-third²³⁴ and fifty-fourth sessions of the General Assembly,²³⁵ the Working Group of the Sixth Committee also continued work on a draft international convention for the suppression of acts of nuclear terrorism.²³⁶ At both those sessions, the General Assembly reiterated that the Ad Hoc Committee should continue to elaborate that draft convention with a view to completing it and should address means of further developing a comprehensive legal framework of conventions dealing with international terrorism, including considering, on a priority basis, the elaboration of a comprehensive convention on international terrorism; and should address the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.²³⁷

²²² See GA (52), Suppl. No. 37.

²²³ In accordance with GA resolution 52/165, the Ad Hoc Committee's second session was held from 17 to 27 February 1998.

²²⁴ See GA (54), Suppl. No. 37.

²²⁵ In accordance with GA resolution 53/108, the Ad Hoc Committee's third session was held from 15 to 26 March 1999.

²²⁶ See GA (54), Suppl. No. 37, A/54/37, chaps. I, II and III. For an informal summary of the discussions in the Working Group see *Ibid.*, annex IV.

²²⁷ *Ibid.*, para. 8.

²²⁸ The Working Group held 17 meetings from 22 September to 3 October 1997. See A/C.6/52/L.3 and annex I.

²²⁹ See A/52/653. For discussions in the Sixth Committee see A/C.6/52/SR.2, 27-30 and 32-34.

²³⁰ GA resolution 52/164, annex, second, eighth and ninth preambular paragraphs. See also para. 107 of the present study.

²³¹ A/C.6/54/L.2, annex I.

²³² The Working Group held 11 meetings from 27 September to 8 October 1999. For an informal summary of the discussions in the Working Group see A/C.6/54/L.2, annex III.

²³³ GA resolution 54/109, annex, ninth, tenth and twelfth preambular paragraphs. See also para. 108 of the present study.

²³⁴ The Working Group held 13 meetings, from 28 September to 9 October 1998. For discussions in the Working group see A/C.6/53/L.4.

²³⁵ See A/C.6/54/L.2.

²³⁶ See A/53/636, para. 5.

²³⁷ GA resolutions 53/108, paras. 10 and 11; and 54/110, para. 12.

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

71. During the period under review, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, in accordance with relevant General Assembly resolutions,²³⁸ 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.²³⁹ Following consideration by the Committee of the question of the deletion of the “enemy State” clauses of the Charter containing references directed to certain States Members of the United Nations which, according to the Assembly, “represent a valuable asset in all the endeavours of the Organization”,²⁴⁰ the Assembly, at its fiftieth session in 1995, taking note of the recommendation of the Committee, expressed its intention to initiate the procedure set out in Article 108 of the Charter of the United Nations to amend the Charter, with prospective effect, by the deletion of the “enemy State” clauses of the Charter at its earliest appropriate future session.²⁴¹

72. The Committee, pursuant to General Assembly resolutions 50/52 and 50/55 and its subsequent resolutions 51/209, 52/161, 53/106 and 54/106, also considered new proposals concerning the status of the Trusteeship Council, namely to have it abolished, to retain it, or, as suggested, inter alia, by Malta, to assign to it the functions of the guardian of the common heritage of mankind.²⁴²

²³⁸ GA resolutions 49/58, 50/51, 50/52, 51/208, 51/209, 52/161, 52/162, 53/106, 53/107, 54/106 and 54/107.

²³⁹ 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”.

²⁴⁰ See GA resolution 49/58, twelfth to fourteenth preambular paragraphs and para. 4 (c) and GA (50), Suppl. No. 33, paras. 64 and 65. See also *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 38.

²⁴¹ See GA resolution 50/52, para. 3 and twelfth to fifteenth preambular paragraphs. See also para. 110 of the present study.

²⁴² See also GA (51), Suppl. No. 33, paras. 97-106; GA (52), Suppl. No. 33, paras. 117-122; GA (53), Suppl. No. 33, paras. 144-152; GA (54), Suppl. No. 33, paras. 123-128.

73. In the context of the maintenance of international peace and security, the Committee, with the assistance of its Working Group, inter alia, continued its work²⁴³ on the questions relating to proposals with a view to enhancing the effectiveness of the Security Council and strengthening of the role of the United Nations in the maintenance of international peace and security,²⁴⁴ and on the strengthening of the role of the Organization and enhancing its effectiveness.²⁴⁵ In 1999, the Assembly requested the Committee to continue its consideration of the above proposals, as well as relevant proposals which might be submitted to the Committee at its session in 2000 and to report on its work to the Assembly at its fifty-fifth session.²⁴⁶

74. From 1995 to 1999, the Committee, as requested by the Assembly,²⁴⁷ also discussed new proposals relating to the draft declaration on the basic principles and criteria for the work of United Nations peace-keeping missions and mechanisms for the prevention and settlement of crises and conflicts²⁴⁸ and the basic conditions and criteria for imposing and implementing

²⁴³ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 41.

²⁴⁴ For the revised proposal submitted at the 1993 session of the Committee and its 1996 and 1998 revised versions and relevant comments see, respectively, GA (50), Suppl. No. 33, paras. 43-46; GA (51), Suppl. No. 33, paras. 56 and 57; GA (53), Suppl. No. 33, paras. 98-100; and GA (54), Suppl. No. 33, paras. 84-88.

²⁴⁵ For the second revised proposal submitted at the 1995 session of the Committee and its 1997 revised version and 1998 additional working paper as well as relevant discussions see, respectively, GA (50), Suppl. No. 33, paras. 47-49; GA (51), Suppl. No. 33, paras. 58-60; GA (52), Suppl. No. 33, paras. 59-74; GA (53), Suppl. No. 33, paras. 84-97; and GA (54), Suppl. No. 33, para. 83.

²⁴⁶ GA resolution 54/106.

²⁴⁷ See GA resolutions 50/52, 51/209, 52/161 and 53/106.

²⁴⁸ For the proposal, submitted at the 1996 session of the Committee and relevant discussion see GA (51), Suppl. No. 33, paras. 128-137; and GA (52), Suppl. No. 33, paras. 39-57. For the informal working paper on the topic and a working paper on the fundamentals of the legal basis for United Nations peacekeeping operations, submitted, respectively, at the 1997 and 1998 sessions of the Committee, and relevant discussions see GA (52), Suppl. No. 33, para. 58; GA (53), Suppl. No. 33, paras. 73-83; and GA (54), Suppl. No. 33, paras. 70-82.

sanctions and other enforcement measures.²⁴⁹ In 1999, the Assembly requested the Committee to continue its consideration of the above proposals, as well as relevant proposals which might be submitted to the Committee at its session in 2000 and to report on its work to the Assembly at its fifty-fifth session.²⁵⁰

75. In the context of the peaceful settlement of disputes between States, the Committee, with the assistance of its Working Group, at its 1995 session completed its consideration of the proposal on the United Nations model rules for the conciliation of disputes between states and recommended that the General Assembly bring the text to the attention of States by annexing it to a decision or resolution.²⁵¹ The Assembly, at its fiftieth session in 1995, adopted the resolution containing the model rules as an annex.²⁵²

76. During the period under review, the Committee continued its consideration of the proposal on the establishment of a dispute settlement service offering or responding with its services early in disputes²⁵³ and the proposals relating to the enhancement of the role of

the International Court of Justice.²⁵⁴ In 1999 the Assembly requested the Committee to continue its consideration of the above proposals and to report on its work to the Assembly at its fifty-fifth session.²⁵⁵ In 1999 the Assembly also adopted resolution 54/108, entitled “Strengthening of the International Court of Justice” focusing on practical ways and means of strengthening the Court while respecting its authority and independence.

12. Principles and norms of international law Relating to the new economic order

77. The General Assembly in its decision 51/441, inter alia, decided to defer consideration of the legal aspects of international economic relations to its fifty-fifth session.²⁵⁶

13. United Nations Decade of International Law

78. During the period under review the Assembly considered the item annually, reconfirming the encouragement of the progressive development of international law and its codification among the main purposes of the Decade in its resolutions,²⁵⁷ as well as in the programme of activities for the third (1995-1996)

²⁴⁹ For the proposal, submitted at the 1997 session of the Committee, as a revised version of the proposal regarding the implementation of the provisions of the Charter on assistance to third States adversely affected by the application of sanctions (submitted at the 1996 session, see GA (51), Suppl. No. 33, paras. 42-55), and a working paper, submitted at the 1998 session, and relevant discussions see GA (52), Suppl. No. 33, paras. 29-38; GA (53), Suppl. No. 33, paras. 35-72; and GA (54), Suppl. No. 33, paras. 34-69.

²⁵⁰ GA resolution 54/106.

²⁵¹ For previous work on the proposal see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 43. For the consideration of the proposal including the amendments to the text of the proposal, submitted at the 1995 session of the Committee, see GA (50), Suppl. No. 33, paras. 51-55.

²⁵² GA resolution 50/50, para. 2 and annex. See also paras. 51-55.

²⁵³ For previous work on the proposal see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 43. See GA resolutions 50/52, 51/209, 52/161 and 53/106. For the proposals on the issue submitted and considered at 1995-1999 sessions of the Committee, as well as relevant discussions in the Committee see, respectively: GA (50), Suppl. No. 33, paras. 56-63; GA (51), Suppl. No. 33, paras. 62-96; GA (52), Suppl. No. 33, paras. 75-100; GA (53), Suppl. No. 33, paras. 101-127; and GA (54), Suppl. No. 33, paras. 105-108.

²⁵⁴ For previous work on the proposal see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 43. See GA resolutions 50/52, 51/209, 52/161 and 53/106. For the proposal submitted at the 1997 session of the Committee regarding possible amendments to the Statute of the Court to extend its competence with respect to contentious matters to disputes between States and international organizations and subsequent proposals submitted at 1997-1999 sessions, as well as the proposal submitted at the 1999 session on practical ways and means of strengthening the Court while respecting its authority and independence, and relevant discussions and the recommendation of the Committee see GA (52), Suppl. No. 33, paras. 101-116; GA (53), Suppl. No. 33, paras. 128-143; and GA (54), Suppl. No. 33, paras. 109-122.

²⁵⁵ GA resolution 54/106.

²⁵⁶ For previous work on this issue see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 10 and 47. For discussions in the Sixth Committee during the fifty-first session of the GA see A/C.6/51/SR.9 and 49.

²⁵⁷ See GA resolutions 50/44, 51/157, 52/153, 53/100 and 54/28. Within the framework of the Decade, the Assembly also adopted its resolution 53/101. See also GA resolution 52/155. The representative of the sponsor delegation, expressed his confidence that the document would prove useful for the creation of new norms of international conduct — see A/54/PV. 55, page 6.

and final (1997-1999) terms of the Decade.²⁵⁸ The Assembly, inter alia, repeatedly requested the Secretary-General to submit a report²⁵⁹ 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.²⁶⁰ Reaffirming the promotion of the rule of law as the underlying goal of the Decade, the Assembly pointed out that while progressive development and codification of international law remained important, the furtherance of the rule of international law would best be served by the faithful compliance of States with existing international obligations.²⁶¹

79. The debate in the General Assembly and its Sixth Committee had underscored achievements in the area of progressive development of international law and its codification. The President of the fifty-fourth session of the General Assembly acknowledged the contribution by the relevant legal bodies of the Assembly “towards the realization of one of the most important goals of the United Nations” as mandated by Article 13 (1) (a) of the Charter and stressed the need to further strengthen “important legal bodies, such as the Sixth Committee ..., the International Law Commission and the United Nations Commission on International Trade Law”.²⁶²

80. During the debate, support was expressed for improving existing legal instruments and formulating new instruments which would allow the international community to meet the challenges of the twenty-first century²⁶³ and specific suggestions were made in this connection.²⁶⁴ However, it was stressed that efforts to

develop the law would be successful only if they were based on a commitment to its full implementation.²⁶⁵ It was also stated that wars and internal conflicts which occurred during the Decade reflected the continued deficiency in the development of, and adherence to, international law.²⁶⁶

81. With regard to the future role of the United Nations in the process of progressive development of international law and its codification, it was believed that the conclusion of the Decade would not result in a reduction in United Nations activities promoting the progressive development and codification of international law.²⁶⁷ Emphasis was laid on the duty to advance the progressive development and codification of all provisions likely to strengthen the vitality and the impact of international law.²⁶⁸ It was suggested that the General Assembly should continue considering developments in the progress made in the implementation of the purposes of the Decade beyond its conclusion.²⁶⁹ The achievements of regional organizations in treaty-making,²⁷⁰ as well as the importance of universal participation in the development and codification of international law,²⁷¹ with the full involvement of the developing countries in this process,²⁷² were re-emphasized.²⁷³

²⁵⁸ See annex, section III, to GA resolutions 49/50 and 51/157.

²⁵⁹ See GA resolutions 50/44, 51/157, 52/153 and 53/100.

²⁶⁰ The Working Group on the Decade was originally established pursuant to GA resolution 44/23.

²⁶¹ See GA resolution 54/27, seventh preambular paragraph.

²⁶² A/54/PV.54, pages 2 and 3.

²⁶³ A/C.6/50/SR.38, para. 16. See also, for instance, A/C.6/50/SR. 39, para. 10; A/C.6/50/SR. 40, para. 23.

²⁶⁴ See, for instance, A/54/PV.54, page 5; A/C.6/50/SR. 40, para. 37; A/C.6/51/SR. 43, para. 24; A/C.6/51/SR. 44, paras. 1 and 34; A/C.6/52/SR. 30, para. 16; A/C.6/53/SR. 32, para. 15; A/C.6/54/SR. 9, para. 52; A/C.6/54/SR. 10, para. 7. In this connection, see also “International Law as a Language for International Relations. Proceedings of the United Nations Congress on Public International Law, New York, 13-17 March 1995”, Kluwer Law International, 1996 (United Nations Sales No. T. 96.V.4), especially pages 207-285.

²⁶⁵ See, for instance, A/54/PV.54, page 8. In this connection, see also, for instance, A/C.6/50/SR. 39, para. 1; A/C.6/50/SR. 40, para. 10; A/C.6/50/SR. 41, para. 9; A/C.6/54/SR.8, para. 65.

²⁶⁶ A/54/PV.55, page 11.

²⁶⁷ A/54/PV.54, page 10; see also, in this connection, pages 17, 18; A/54/PV.55, page 6; A/C.6/53/SR. 32, para. 25.

²⁶⁸ A/54/PV.54, page 18.

²⁶⁹ *Ibid.*, page 12; see also, in this connection, pages 13, 17 and 18. See also A/54/PV.55, page 3; and A/C.6/53/SR.31, paras. 30, 36 and 48.

²⁷⁰ See, for instance, A/C.6/50/SR.40, paras. 1 and 2; A/C.6/50/SR.41, para. 14; A/C.6/52/SR.9, para. 12; A/C.6/54/SR.9, para. 9; and A/C.6/54/SR.10, paras. 34 and 64.

²⁷¹ A/C.6/52/SR.9, para. 7. See also A/C.6/54/SR.8, para. 79.

²⁷² A/54/PV.54, page 23; and A/54/PV.55, page 16. See also A/C.6/50/SR.41, para. 6; A/C.6/51/SR.44, paras. 21 and 28; A/C.6/52/SR.9, para. 7; A/C.6/53/SR.31, para. 17; A/C.6/54/SR.8, para. 63; and A/C.6/54/SR.10, paras. 8 and 10.

²⁷³ For previous debate on this issue see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 55.

82. The issues of the procedures, methods and forms to be used in the process of progressive development of international law and its codification²⁷⁴ continued to be raised during the debate, including such issues as the role of consensus in treaty making,²⁷⁵ the role of non-binding instruments²⁷⁶ and the interrelationship between conventional and customary norms in the development of international law.²⁷⁷

83. The contribution of civil society, including academia, to the process of progressive development of international law and its codification was reconfirmed.²⁷⁸ This involvement was vividly manifested, in particular, during the realization of the programme of action dedicated to the centennial of the first International Peace Conference²⁷⁹ and the holding in 1995 of the United Nations Congress on Public International Law.²⁸⁰

84. At its fifty-fourth session in 1999, the General Assembly, in its final resolution on the Decade, while welcoming the achievements during the Decade in the codification and progressive development of international law, reaffirmed the continued validity of the main objectives of the Decade, the fulfilment of which is essential to achieve the purposes of the United Nations, and invited States to continue to pay attention to the identification of areas of international law that might be ripe for progressive development or

codification, and to promote discussion thereon in the competent forums.²⁸¹

14. Committee on the Peaceful Uses of Outer Space

85. During the period under review, the General Assembly, in its resolutions 50/27, 51/122, 51/123, 52/56, 53/45, 54/67 and 54/68, continued to encourage work on topics relating to the development and codification of the law of outer space on the basis of proposals by States and the reports submitted by the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee on topics noted in *Supplement No. 8*.²⁸²

86. The General Assembly, by its resolution 50/27, endorsed the recommendation of the Committee that the Legal Subcommittee should continue to consider, among other questions, 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. In 1996, the Legal Subcommittee, through its working group, finalized the text of the Declaration. The Declaration was endorsed by the Committee on the Peaceful Uses of Outer Space²⁸³ and adopted by the General Assembly in its resolution 51/122.

87. In its resolutions 50/27 and 51/123 the General Assembly considered the organization of a Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III). In 1997, by its resolution 52/56, the General Assembly agreed that the Conference should be convened at the United Nations Office at Vienna from 19 to 30 July 1999 as a special session of the Committee on the Peaceful Uses of Outer Space, open to all States Members of the United Nations. At its 10th plenary meeting, on 30 July 1999, the Conference adopted the resolution entitled "The Space Millennium: Vienna Declaration on Space and Human Development".²⁸⁴ The resolution calls for the promotion of the efforts of the Committee on the Peaceful Uses of Outer Space in the development of space law by inviting States to ratify or accede to, and inviting intergovernmental

²⁷⁴ For previous debate on this issue see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 56.

²⁷⁵ A/C.6/54/SR. 10, para. 2; and A/54/PV.55, page 7.

²⁷⁶ A/C.6/49/SR. 35, para. 27; A/54/PV.54, page 21; and A/54/PV.55, page 3.

²⁷⁷ A/54/PV.55, page 3.

²⁷⁸ A/54/PV.54, page 4. For previous debate on this issue see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 57.

²⁷⁹ See GA resolutions 51/159, 52/154, 53/99 and 54/27. See also, for instance, A/54/PV.54, pages 10 and 11; A/54/PV.55, page 12; A/C.6/54/SR.9, para. 25; and A/C.6/54/SR. 9, paras. 56 and 65.

²⁸⁰ The GA, in paragraph 4 of its resolution 51/157 recalled the successful organization of the Congress, and welcomed the publication of its proceedings which was viewed as a useful opportunity to consider the codification, progressive development and dissemination of public international law — see A/C.6/50/SR.40, paras. 16 and 50; and A/C.6/51/SR.44, paras. 19, 28 and 33.

²⁸¹ GA resolution 54/28, paras. 14, 3 and 17.

²⁸² See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 58-62.

²⁸³ See GA (51), Suppl. No. 20, Part C, para. 3.

²⁸⁴ See A/CONF.184/6, chapter II, paras. 361-376.

organizations to declare acceptance of, the outer space treaties developed by the Committee and by considering the further development of space law to meet the needs of the international community, taking into particular account the needs of developing countries and countries with economies in transition.²⁸⁵ By its resolution 54/68 the General Assembly endorsed the resolution adopted by the Conference, calling upon all concerned to implement the recommendations made by UNISPACE III, as reflected in its report.²⁸⁶

88. By its resolution 52/56 the General Assembly endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee should continue its consideration of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space;²⁸⁷ continue, through its working group, its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union, and begin its review of the status of the five international legal instruments governing outer space. By its resolution 53/45 the General Assembly endorsed the recommendation of the Committee that the Legal Subcommittee should establish a working group to consider the review of the status of the five international legal instruments governing outer space²⁸⁸ and that it should continue its consideration of other matters, including informal consultations on specific proposals already made for possible new agenda items for the Legal Subcommittee.

89. In 1999, by its resolution 54/67, the General Assembly welcomed the new approach taken by the Committee in composing the agenda of the Legal Subcommittee and, *inter alia*, endorsed the recommendation of the Committee that at its thirty-eighth session, the Legal Subcommittee should consider as regular agenda items (i) general exchange of views, (ii) status of the international treaties governing the uses of outer space, (iii) information on the activities of

international organizations relating to space law, (iv) 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; review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space²⁸⁹ as a single issue and item for discussion; and review of the status of the five international legal instruments governing outer space and review of the concept of the “launching State” in accordance with work plans adopted by the Committee. The General Assembly also endorsed the recommendation of the Committee that the Legal Subcommittee would submit, at its thirty-ninth session, proposals to the Committee for new items to be considered by the Subcommittee at its fortieth session, in 2001.

15. Law of the Sea

(a) *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*

90. Pursuant to General Assembly resolution 47/192, the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks held six sessions, the first from 19 to 23 April 1993 and the sixth and final session from 24 July to 4 August 1995.²⁹⁰ On 4 August 1995, the Conference adopted, without a vote, the 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 (the Agreement), as well as resolutions I and II.²⁹¹ At the same meeting, the Conference approved the Final Act.²⁹² A resumed sixth

²⁸⁵ See para. 1 (e) (iv) of the resolution (A/CONF.184/6, chap. I).

²⁸⁶ See A/CONF.184/6, paras. 361-376.

²⁸⁷ See also paras. 89 and 112 of the present study.

²⁸⁸ See also A/AC.105/721, annex II, para. 13.

²⁸⁹ See also para. 112 of the present study.

²⁹⁰ See A/50/550, paragraph 7. For previous work in this field see *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), paras. 14 and 66-69.

²⁹¹ See A/50/550, annexes I and II; see also A/CONF.164/37 and A/CONF.164/38, annex. See also paras. 91 and 113 of the present study.

²⁹² A/CONF.164/38.

session was held on 4 December 1995 for a ceremony of signature of the Agreement and the Final Act.

91. The Agreement sets out principles for the conservation and management of straddling fish stocks and highly migratory fish stocks and establishes that such management must be based on the precautionary approach and the best available scientific information. It also provides a framework for cooperation in the conservation and management of those resources. It promotes good order in the oceans through the effective management and conservation of high seas resources by establishing, among other things, detailed minimum international standards for the conservation and management of straddling fish stocks and highly migratory fish stocks; and ensuring that measures taken for the conservation and management of those stocks in areas under national jurisdiction and in the adjacent high seas are compatible and coherent.

(a) *United Nations Convention on the Law of the Sea of 10 December 1982*

92. During the period under review, the General Assembly also repeatedly noted the strategic importance of the United Nations Convention on the Law of the Sea of 10 December 1982 as a framework for national, regional and global action in the marine sector.²⁹³ Moreover, the Assembly decided to undertake an annual review and evaluation of the implementation of the Convention and other developments relating to ocean affairs and the law of the sea.²⁹⁴

16. Commission on Human Rights

93. 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.

²⁹³ GA resolutions 50/23, fifth preambular paragraph; 51/34, eighteenth preambular paragraph; 52/26, third preambular paragraph; 53/32, sixth preambular paragraph; and 54/31, eleventh preambular paragraph.

²⁹⁴ GA resolutions 50/23, eighth preambular paragraph; 51/34, para. 14; 52/26, para. 17; 53/32, para. 25; and 54/31, para. 32.

B. The making of recommendations

94. As observed in *Supplements Nos. 3-8*,²⁹⁵ many actions by the General Assembly recorded above in part II.A, “The initiation of studies” can be said to be recommendations for the purpose of encouraging the development of international law and its codification. The initiation of studies and making of recommendations are not necessarily activities, which are mutually exclusive. However, the stage of initiation is clearly passed when the preparatory work on a topic results in a final draft submitted by a subsidiary body to the General Assembly, and the action taken by the Assembly on a draft comes exclusively within the scope of “making of recommendations”.

95. Concerning 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, adopted by the Commission at its forty-first session,²⁹⁶ during the period under review the General Assembly, by its decision 50/416 entitled “Consideration of 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”, decided to bring the draft articles, to the attention of Member States, together with the observations made by Member States in written form or orally during the debates of the Sixth Committee, including the report of the Vice-Chairman of the Sixth Committee at the forty-seventh session of the General Assembly,²⁹⁷ and to remind Member States of the possibility that this field of international law and any further developments within it may be subject to codification at an appropriate time in the future.

96. By its resolution 51/206,²⁹⁸ entitled “Convention on the law of the non-navigational uses of international watercourses”, the General Assembly decided that, on the completion of its mandate to elaborate a framework

²⁹⁵ See *Repertory, Supplement No. 3*, vol. I, under Article 13 (1) (a), paras. 48-49; *Supplement No. 4*, vol. I, under Article 13 (1) (a), para. 69; *Supplement No. 5*, vol. I, under Article 13 (1) (a), para. 54; *Supplement No. 6*, vol. II, under Article 13 (1) (a), para. 111; *Supplement No. 7*, vol. II, under Article 13 (1) (a), para. 67; and *Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 71.

²⁹⁶ See *Repertory, Supplement No. 8*, vol. II, under Article 13 (1) (a), para. 19.

²⁹⁷ *Ibid.*

²⁹⁸ GA resolution 51/206, para. 3.

convention on the law of non-navigational uses of international watercourses, the Working Group of the Whole should report directly to the Assembly.

97. By its resolution 54/101,²⁹⁹ entitled “Convention on jurisdictional immunities of States and their property”, the General Assembly decided that the open-ended working group of the Sixth Committee established under resolution 53/98 would continue its work at the fifty-fifth session of the General Assembly to consider the future form of, and outstanding substantive issues related to, the draft articles on jurisdictional immunities of States and their property, adopted by the Commission at its forty-third session.

98. With regard to the draft code of crimes against the peace and security of mankind, the General Assembly, by its resolution 51/160³⁰⁰ on the report of the Commission, requested the Secretary-General to invite Governments to submit, before the end of the fifty-third session of the General Assembly, their written comments and observations on action which might be taken in relation to the draft code.

99. The General Assembly, by its resolution 54/112,³⁰¹ on the draft articles on the nationality of natural persons in relation to the succession of States, decided to include the item in the provisional agenda of its fifty-fifth session, with a view to the consideration of the draft articles and their adoption as a declaration at that session.

100. During the period under review, the General Assembly adopted and opened for signature the United Nations Convention on Independent Guarantees and Standby Letters of Credit and expressed its appreciation to the Commission for having prepared the draft of that Convention;³⁰² as well as for the completion and adoption of the Model Law on Electronic Commerce³⁰³ and the Model Law on Cross-Border Insolvency.³⁰⁴ It also commended the Commission for finalizing the Notes on Organizing Arbitral Proceedings.³⁰⁵

101. During the period under consideration the General Assembly made a series of recommendations aimed first at the preparation of a widely acceptable

text of a Statute for the International Criminal Court and later at the enhancement of the effectiveness and acceptance of the Court.

102. By its resolution 50/46³⁰⁶ the General Assembly decided:

to establish a preparatory committee open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, to discuss further the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, taking into account the different views expressed during the meetings, to draft texts, with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries ...

103. By its resolution 52/160³⁰⁷ the General Assembly decided that the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court:

... open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, shall be held at Rome from 15 June to 17 July 1998, with a view to finalizing and adopting a convention on the establishment of an international criminal court ...

104. By its resolution 53/105³⁰⁸ the General Assembly requested the Secretary-General:

... to convene the Preparatory Commission, in accordance with resolution F adopted by the Conference ... to carry out the mandate of that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

105. It also called upon all States:

... to consider signing and ratifying the Rome Statute, and encouraged efforts aimed at promoting awareness of the results of the

²⁹⁹ GA resolution 54/101, para. 3.

³⁰⁰ GA resolution 51/160, para. 3.

³⁰¹ GA resolution 54/112, para. 2.

³⁰² GA resolution 50/48.

³⁰³ GA resolutions 51/161 and 51/162.

³⁰⁴ GA resolutions 52/157 and 52/158.

³⁰⁵ GA resolution 51/161.

³⁰⁶ GA resolution 50/46, para. 2.

³⁰⁷ GA resolution 52/160, para. 3.

³⁰⁸ GA resolution 53/105, para. 4.

Conference and of the provisions of the Rome Statute.³⁰⁹

106. At its fifty-first session in 1996, in its resolution 51/210, the General Assembly:

... *Guided* by the Principles of the Charter of the United Nations,

Deeply disturbed by the persistence of terrorist acts, which have taken place worldwide,

...

Mindful of the need to enhance the role of the United Nations and the relevant specialized agencies in combating international terrorism,

...

Bearing in mind the possibility of considering in the future the elaboration of a comprehensive convention on international terrorism,³¹⁰

reaffirmed the Declaration on Measures to Eliminate International Terrorism contained in the annex to resolution 49/60,³¹¹ approved the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism³¹² and decided:

to establish an Ad Hoc Committee ... to elaborate an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.³¹³

107. At its fifty-second session in 1997, the General Assembly adopted the International Convention for the Suppression of Terrorist Bombings³¹⁴ and urged all States to sign and ratify, accept, approve or accede to the Convention.³¹⁵

108. At its fifty-fourth session in 1999, the General Assembly adopted the International Convention for the

Suppression of the Financing of Terrorism³¹⁶ and urged all States to sign and ratify, accept, approve or accede to the Convention.³¹⁷

109. At its fiftieth session in 1995, in its resolution 50/50, to which the United Nations Model Rules for the Conciliation of Disputes between States were annexed, the General Assembly:

... *Convinced* that the establishment of model rules for the conciliation of disputes between States. can contribute to the development of harmonious relations between States,³¹⁸

drew to the attention of States the possibility of applying the Model Rules³¹⁹ and requested the Secretary-General to lend his assistance to the States resorting to conciliation.³²⁰ As stated in the Model Rules:

... These rules apply to the conciliation of disputes between States where those States have expressly agreed in writing to their application.³²¹

The States ... may at any time, through mutual agreement, exclude or amend any of their provisions.³²²

110. At its fiftieth session in 1995, in its resolution 50/52, the General Assembly:

... *Recognizing* that, having regard to the substantial changes that have taken place in the world, the "enemy State" clauses in Articles 53, 77 and 107 of the Charter have become obsolete,³²³

Noting that the States to which those clauses were directed are Members of the United Nations and represent a valuable asset in all the endeavours of the Organization,³²⁴

...

Expresses its intention to initiate the procedure set out in Article 108 of the Charter of

³⁰⁹ Ibid., para. 3.

³¹⁰ GA resolution 51/210, third, sixth and tenth preambular paragraphs.

³¹¹ Ibid., para. 7.

³¹² Ibid., para. 8.

³¹³ Ibid., para. 9.

³¹⁴ GA resolution 52/164, annex.

³¹⁵ Ibid., paras. 1 and 2.

³¹⁶ GA resolution 54/109, annex.

³¹⁷ Ibid., paras. 1 and 2.

³¹⁸ GA resolution 50/50, second preambular paragraph.

³¹⁹ Ibid., para. 2.

³²⁰ Ibid., para. 3.

³²¹ Ibid., annex, article 1, para. 1.

³²² Ibid., para. 2.

³²³ GA resolution 50/52, thirteenth preambular paragraph.

³²⁴ Ibid., fourteenth preambular paragraph.

the United Nations to amend the Charter, with prospective effect, by the deletion of the “enemy State” clauses from Articles 53, 77 and 107 at its earliest appropriate future session.³²⁵

111. At its fifty-first session in 1996, in its resolution 51/122, the General Assembly:

... *Desirous* of facilitating the application of the principle that the exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interest of all countries, irrespective of their degree of economic or scientific development, and shall be the province of mankind,³²⁶

adopted the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries.³²⁷ In the Declaration itself, the General Assembly emphasized that:

... International cooperation in the exploration and use of outer space for peaceful purposes ... shall be conducted in accordance with the provisions of international law, including the Charter of the United Nations and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies ...³²⁸

112. In its resolutions 50/27, 51/123, 52/56, 53/45 and 54/67 the General Assembly endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee should suspend consideration in its working group of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space pending the results of the work in the Scientific and Technical Subcommittee, without prejudice to the possibility of reconvening its working group on that item if, in the opinion of the Legal Subcommittee, sufficient progress was made in the Scientific and Technical Subcommittee at its sessions to warrant the reconvening of the working group.

113. In its resolution 50/24, the General Assembly welcomed the adoption in 1995 by the United Nations Conference on Straddling Fish Stocks and Highly

³²⁵ Ibid., para. 3.

³²⁶ GA resolution 51/122, ninth preambular paragraph.

³²⁷ Ibid., tenth preambular paragraph.

³²⁸ Ibid., annex, para. 1.

Migratory Fish Stocks of the 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.³²⁹ In its subsequent resolutions the Assembly recognized “the significance of the Agreement as an important contribution to ensuring the conservation and management of straddling fish stocks and highly migratory fish stocks”,³³⁰ and called upon:

... all States and other entities referred to in article 1, paragraph 2 (b), of the Agreement... to sign and ratify or accede to it and to consider applying it provisionally.³³¹

The Assembly also kept on its agenda, under the item on oceans and law of the sea, the sub-item entitled “Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks”.³³²

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

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

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

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

115. Pursuant to General Assembly resolution 50/45,³³³ the Commission, during its forty-eighth session, examined its methods of work for the purpose

³²⁹ See GA resolution 50/24, para. 1. See also A/CONF.164/37 and A/50/550, annex I.

³³⁰ GA resolutions 51/35 and 52/28, para. 1.

³³¹ Ibid., 50/24, para. 4; 51/35, para. 3; 52/28, para. 3; 53/33, para. 4; and 54/32, para. 2.

³³² Ibid., 50/24, paras. 5 and 7; 51/35, paras. 8 and 10; 52/28, paras. 9 and 11; and 54/32, paras. 14 and 15.

³³³ GA resolution 50/45, para. 9.

of further enhancing its contribution to the progressive development and codification of international law on the basis of the report of its Planning Group.³³⁴

116. The Commission agreed with the conclusion of the Planning Group that the distinction between codification and progressive development was difficult if not impossible to draw in practice; the Commission had proceeded on the basis of a composite idea of codification and progressive development. Distinctions drawn in its Statute between the two processes had proved unworkable and could be eliminated in any review of the Statute.³³⁵ Furthermore, notwithstanding that there was a distinction drawn in the Statute between codification and progressive development relating to the selection of topics for work by the Commission, in practice the procedure for considering most of the subjects which the Commission had taken up had been much the same, whether or not the aspect of progressive development or codification had been thought to predominate.³³⁶

117. It was also recognized that there was important continuing value in an orderly process of codification and progressive development,³³⁷ and that so long as the process of liaison and dialogue was effective, through Sixth Committee requests to Governments for

information and comment and through the Commission's direct links with regional consultative committees, the need for a body like the Commission for the codification and progressive development of international law was likely to continue.³³⁸ It was thought that there was, however, a number of ways in which the Commission's work methods might be made more responsive and efficient, and the relationship with the Sixth Committee structured and enhanced.³³⁹

118. The Commission, at its fiftieth session, bearing in mind the recommendation of the Working Group on the long-term programme of work established by the Planning Group at its forty-ninth session, agreed that the selection of topics for the long-term programme of work should be guided by the following criteria: the topic should reflect the needs of the States in respect of the progressive development and codification of international law; the topic should be sufficiently advanced in stage in terms of State practice to permit progressive development and codification; that the topic was concrete and feasible for progressive development and codification. The Commission further agreed that it should not restrict itself to traditional topics, but could also consider those that reflected new developments in international law and pressing concerns of the international community as a whole.³⁴⁰

³³⁴ *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), paras. 144-244.

³³⁵ *Ibid.*, para. 148 (a).

³³⁶ *Ibid.*, paras. 159-160.

³³⁷ *Ibid.*, para. 148 (b).

³³⁸ *Ibid.*, para. 171.

³³⁹ *Ibid.*, para. 148 (c).

³⁴⁰ *Ibid.*, 1998, para. 553.