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Review of the Commission's programme of work and of the topics recommended or suggested for inclusion in the programme - working paper prepared by the Secretariat

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ORGANIZATION OF FUTURE WORK

[Agenda item 7]

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**Review of the Commission's programme of work and of the topics recommended
or suggested for inclusion in the programme**

Working paper prepared by the Secretariat

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ABBREVIATIONS

FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
IMCO	Inter-Governmental Maritime Consultative Organization
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNITAR	United Nations Institute for Training and Research

Introduction

1. The International Law Commission included on its agenda at its twentieth session (1968) an item entitled "Review of the Commission's programme and methods of work". In its report on the work of its twenty-first session, the Commission

[...] confirmed its intention of bringing up to date in 1970 or 1971 its long-term programme of work, taking into account the General Assembly's recommendations and the international community's current needs, and discarding those topics on the 1949 list which were no longer suitable for treatment. For this purpose the Commission will again survey the topics suitable for codification in the whole field of international law, in accordance with

article 18 of its Statutes. It asked the Secretary-General to submit a preparatory working paper with a view to facilitating this task.¹

2. By resolution 2501 (XXIV) of 12 November 1969, the General Assembly noted with approval the programme and organization of work planned by the Commission, including its intention of bringing up to date its long-term programme of work before the expiry of the term of office of its present membership.

3. The present document has been prepared in response to the Commission's request that the Secretary-General

¹ See *Yearbook of the International Law Commission, 1969*, vol. II, p. 235, document A/7610/Rev.1, para. 91.

submit a preparatory working paper in order to facilitate the Commission's task. The paper has been divided in two parts: the first part deals with items which have been included in the Commission's programme of work, and the second with the topics which have been suggested or recommended at various times by the General Assembly, by Governments of Member States, or by members of the Commission, but which have not so far been included in the programme.

4. The Commission first examined the question of the selection of topics for study at its opening session in 1949. On the basis of a memorandum prepared by the Secretariat entitled "Survey of international law in relation to the work of codification of the International Law Commission",² the Commission reviewed twenty-five topics, which are listed in the report of its session.³ After due deliberation, the Commission drew up a provisional list of fourteen topics selected for codification; it was understood that the list was only provisional and that additions or deletions might be made after further study by the Commission or in compliance with the wishes of the General Assembly.⁴ This list of fourteen topics has remained the basis of the Commission's long-term programme of work. The Commission has, however, also examined other topics at the request of the General Assembly. Part I of this paper, dealing with the Commission's programme of work, covers both the items contained in the 1949 list and those included in the Commission's programme in response to a General Assembly recommendation, in order to provide as complete an account as possible of the whole range of the Commission's activities.⁵ By way of sub-division, chapter I of Part I deals with the topics on which the Commission has submitted final drafts or recommendations to the General Assembly, and chapter II with those on which such drafts or recommendations have not been submitted. Chapter II contains two sections, the first covering the subjects currently under study by the Commission and the second dealing with the remaining six topics on which the Commission has not submitted final drafts or recommendations.

5. By way of further explanation of the organization of the paper, it may be recalled that the General Assembly, by resolution 1505 (XV) of 12 December 1960, decided

to place on the provisional agenda of its sixteenth session an item entitled "Future work in the field of codification and progressive development of international law", and also asked for the views and suggestions of Member States thereon. Various written comments were made by Member States, and other suggestions were made orally in the debates of the Sixth Committee, at the fifteenth (1960) and sixteenth (1961) sessions of the General Assembly. In operative paragraph 3 (b) of resolution 1686 (XVI) of 18 December 1961, the General Assembly requested the International Law Commission to consider at its fourteenth session its future programme of work in the light of all the suggestions made.⁶ The Secretariat prepared a working paper entitled "Future work in the field of the codification and progressive development of international law"⁷ summarizing what had been suggested. The Commission considered the matter at its fourteenth session (1962) and decided to limit for the time being its future programme of work to the three main topics then under study or to be studied pursuant to operative paragraph 3 (a) of resolution 1686 (XVI) (Law of treaties, State responsibility and succession of States and Governments) and to additional topics of more limited scope (special missions, relations between States and international organizations,⁸ the right of asylum, and the juridical régime of historic waters,

⁶ By operative paragraph 4 of the same resolution, the General Assembly decided to place on the provisional agenda of its seventeenth session the question entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations". The General Assembly, in resolution 1815 (XVII) of 18 December 1962 resolved to undertake, pursuant to Article 13 of the Charter, a study of the "principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations", with a view to their progressive development and codification, the aim of the study being the adoption by the General Assembly of a declaration containing an enunciation of the principles. Since then, the Sixth Committee and the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, established in 1963 and reconstituted in 1965, have examined the following seven principles [listed in General Assembly resolution 1815 (XVII)] (1) the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purpose of the United Nations; (2) the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; (3) the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; (4) the principle of sovereign equality of States; (5) the duty of States to co-operate with one another in accordance with the Charter; (6) the principle of equal rights and self-determination of peoples; and (7) the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

At its sessions held in 1966, 1967, 1968 and 1969 the Special Committee has adopted or taken note of texts and elements of texts in an effort to reach an agreed formulation of the seven principles. In resolution 2533 (XXIV) of 8 December 1969, the General Assembly requested the Special Committee to endeavour to resolve at its 1970 session the remaining questions relating to the formulation of the principles, in order to complete its work, and to submit to the General Assembly at its twenty-fifth session a comprehensive report containing a draft declaration of all the seven principles.

⁷ See *Yearbook of the International Law Commission, 1962*, vol. II, p. 84, document A/CN.4/145.

⁸ See foot-note 42 below.

² Document A/CN.4/1/Rev.1 (United Nations publication, Sales No.: 48.V.1(1)).

³ See *Yearbook of the International Law Commission, 1949*, pp. 280-281. The topics which were not selected were the following: subjects of international law; sources of international law; obligations of international law in relation to the law of States; fundamental rights and duties of States; domestic jurisdiction; recognition of acts of foreign States; obligations of territorial jurisdiction; territorial domain of States; pacific settlement of international disputes; extradition; and laws of war. The question of the preparation of a draft declaration on the rights and duties of States had been referred to the Commission by General Assembly resolution 178 (II) of 21 November 1947 (see para. 12 below).

⁴ *Ibid.*, p. 281, paras 16-17.

⁵ The only topic the Commission has considered which was not either included in the 1949 list or recommended by the General Assembly was the topic "Ways and means for making the evidence of customary international law more readily available" which was examined in pursuance of article 24 of the Commission's Statute (para. 15 below).

including historic bays), which had been referred to it by earlier General Assembly resolutions.⁹

6. As regards the suggestions made, the Commission expressed the view

that many of the topics proposed by Governments deserved study with a view to codification. In drawing up its future programme of work, however, it is obliged to take account of its resources . . . The Commission . . . considers it inadvisable for the time being to add anything further to the already long list of topics on its agenda.¹⁰

7. As indicated by this passage of its report on its fourteenth session, the Commission's decision in 1962 was based on its assessment of its immediate undertakings at that time, rather than on a definite ruling as to the suitability or otherwise of particular subjects for study at a later date. Moreover, the opportunity given to Governments in 1960 and 1961 to submit written comments and to discuss the Commission's future programme as a whole, was the main occasion they have had to express their views on the subject. For these reasons it was thought that it would be useful to include in the present paper a summary of the suggestions made at that time. Where, as in a considerable number of cases, there have been subsequent developments which need to be considered in relation to these proposals, these developments have also been noted.

8. Some of the suggestions made by Member States in 1960 and 1961 related to topics included in the 1949 list or to topics which the Commission has included in its programme in response to a request from the General Assembly. In such cases the suggestions have been referred to under the appropriate heading in Part I, so as to place all information relevant to a particular topic, so far as possible, under a single heading. Many of the suggestions made in 1960 and 1961, however, related to new topics which, in the light of the Commission's decision in 1962, were not included in its programme. It is these suggestions which are therefore listed in chapter I of Part II of the paper, together with information on subsequent developments or any later comments made. Such additional new topics as have been suggested by representatives in the Sixth Committee since the sixteenth session (1961) of the General Assembly or by members of the Commission, are contained in chapter II of Part II. Lastly, chapter III records the recommendation made by the General Assembly in its resolution 2501 (XXIV) of 12 November 1969, with respect to the question of treaties concluded between States and international organizations or between two or more international organizations.

9. The present paper has been limited to a review of the Commission's programme of work and of the topics previously recommended or suggested for inclusion in the programme. It is clear from the Commission's decision quoted in paragraph 1 above that the Commission has as its first task the bringing up to date of its long-term programme of work. As an initial step in its survey of the

whole field of international law, the Commission will therefore have to review the six topics that are already included in its programme of work and in respect of which it has so far undertaken no substantive study. Furthermore, it would seem appropriate that the Commission should give consideration to the eleven topics suggested for inclusion which are listed in chapter I of Part II, and which were brought to the Commission's attention by General Assembly resolution 1686 (XVI). The Commission must also take a decision with respect to the topic of treaties concluded between States and international organizations or between two or more international organizations, which was recommended for study by General Assembly resolution 2501 (XXIV) "as an important question", in pursuance of a resolution adopted by the United Nations Conference on the Law of Treaties. There is thus a considerable list of topics already in existence, covering a wide span of international law, which the Commission must review as a first step towards the bringing up to date of its long-term programme of work. The range of existing subjects, together with those on the Commission's present programme of work, makes it clear that the number and the nature of the additional topics to be selected by the Commission in the course of its survey of the remaining field of international law will be very much dependent on the number, and nature, of the topics chosen from amongst those covered in the present paper. For this reason, the paper has been prepared in the manner indicated. Such further assistance as the Secretariat might provide, if requested to do so in the course of the Commission's survey of the topics suitable for codification, will depend on the decisions which the Commission will take during its present session with respect to the list of topics already in existence.

PART I

Topics included in the Commission's programme of work

10. As explained in the introduction, Part I deals with all items included in the 1949 list¹¹ and with those which the Commission has considered or included in its programme following a General Assembly recommendation. In the account given below, a reference is given, after the title of the topic, either to the 1949 list, when the topic was included in that list, or to the pertinent General Assembly resolution, with the sole exception of the topic "Ways and means for making the evidence of customary international law more readily available", which was considered by the Commission pursuant to article 24 of its Statute. Topics are arranged so far as possible according to the chronological order in which the Commission completed its final draft or report.

11. As regard the fourteen topics included in the 1949 list, the present position may be summarized as follows: the Commission has submitted final drafts or reports with

⁹ See *Yearbook of the International Law Commission, 1962*, vol. II, p. 190, document A/5209, para. 60.

¹⁰ *Ibid.*, para. 61.

¹¹ See para. 4 above.

respect to seven topics (régime of the high seas; régime of territorial waters; nationality, including statelessness; law of treaties; diplomatic intercourse and immunities; consular intercourse and immunities; and arbitral procedure); and two (succession of States and Governments); and State responsibility) are currently under study. The remaining five topics, namely, those which have not been the subject of a final draft or reports and which are not currently under study, are: recognition of States and Governments; jurisdictional immunities of States and their property; jurisdiction with regard to crimes committed outside national territory; treatment of aliens; and right of asylum.

CHAPTER I

Topics on which the Commission has submitted final drafts or recommendations to the General Assembly

1. *Draft Declaration on the Rights and Duties of States*

[General Assembly resolution 178 (II) of 21 November 1947]

12. At its first session in 1949, in accordance with the request made by the General Assembly, the Commission drew up a draft Declaration on the Rights and Duties of States,¹² which was submitted to the General Assembly. By resolution 375 (IV) of 6 December 1949, the General Assembly commended the draft Declaration to the continuing attention of Member States and jurists and requested Member States to comment on the draft. Because of the few comments it received, the Assembly decided, in resolution 596 (VI) of 7 December 1951, to postpone consideration of the draft Declaration until a sufficient number of States had transmitted their comments and to undertake consideration when a majority of Member States had sent their replies. By the end of 1952 eighteen States had replied. No further replies have been received since then, and the Assembly has taken no further action.

13. Several Member States referred to the topic either in their written comments submitted in response to resolution 1505 (XV) of 12 December 1960 or during the discussions held in the Sixth Committee during the sixteenth session (1961) of the General Assembly. Venezuela in its written comments suggested that priority might be given in the future work of the Commission to the fundamental rights and duties of States.¹³ The Nicaraguan representative, speaking in the Sixth Committee during the sixteenth session (1961), included the question among those topics for which codification was urgently needed.¹⁴ Similarly the Mexican representative referred to the necessity of drawing up a set of rules

concerning the rights and duties of States. He stated that developments in the past fifteen years might make it necessary to adapt the Declaration which the International Law Commission had drafted in 1949 to the new conditions now prevailing. In his view, the draft was far from perfect and the Mexican delegations had serious reservations respecting it; but it could be amended and improved. The 1949 draft and other documents, such as chapter III of the Charter of the Organization of American States, might serve as a guide. Although it did not make a formal proposal, the Mexican delegation believed that it would be appropriate to draw the attention of the International Law Commission to that problem.¹⁵ The Brazilian representative on the other hand wished to avoid as far as possible the preparation of academic documents devoid of practical significance, such as the Declaration on the Rights and Duties of States.¹⁶

14. During the twenty-second (1967) session of the General Assembly the representative of Mexico in the Sixth Committee suggested that the International Law Commission might study the possibility of revising the draft Declaration after the Commission had completed its examination of priority issues or in the intervals between its work; failing that, the General Assembly should decide to take up the issue again.¹⁷ Speaking at the twenty-third (1968) session, the delegate of Mexico referred again to the topic and

wondered whether in the next few years it might not be advisable to turn again to the question of a declaration on the rights and duties of States in the light of the seven principles which were to be formulated by the Committee specially established for that purpose.¹⁸

2. *Ways and means for making the evidence of customary international law more readily available*

(Article 24 of the Commission's Statute)

15. At its second session in 1950 the Commission prepared its report to the General Assembly containing various specific suggestions on the subject.¹⁹ Since the submission of these recommendations, the General Assembly has authorized the Secretary-General to issue most of the publications suggested by the Commission and certain other publications relevant to the Commission's recommendations.

3. *Formulation of the Nürnberg principles*

[General Assembly resolution 177 (II) of 21 November 1947]

16. At its second session (1950) the Commission completed its work on the formulation of the principles of

¹² See *Yearbook of the International Law Commission, 1949*, p. 287.

¹³ See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add. 1-8, annex, section 14.

¹⁴ *Ibid.*, Sixth Committee, 722nd meeting, para. 23.

¹⁵ *Ibid.*, para. 42.

¹⁶ *Ibid.*, 721st meeting, para. 21.

¹⁷ *Ibid.*, Twenty-second Session, Sixth Committee, 961st meeting, para. 8.

¹⁸ *Ibid.*, Twenty-third Session, Sixth Committee, 1033rd meeting, para. 33. For a list of the seven principles and reference to the Special Committee concerned, see foot-note 6 above.

¹⁹ See *Yearbook of the International Law Commission, 1950*, vol. II, pp. 367-374.

international law recognized in the Charter of the Nürnberg Tribunal and in the Judgement of the Tribunal.²⁰ By resolution 488 (V) of 12 December 1950, the General Assembly decided to send the formulation to the Governments of Member States for comments, and requested the Commission, in preparing the draft Code of Offences against the Peace and Security of Mankind (see para. 24 below), to take account of the observations made on this formulation by delegations and Governments.

4. *Question of an international criminal jurisdiction*

[General Assembly resolution 260 B (III)
of 9 December 1948]

17. The Commission concluded at its second session (1950) that the establishment of an international juridical organ for the trial of persons charged with genocide or other crimes was both desirable and possible.²¹ It recommended against such an organ being set up as a chamber of the International Court of Justice.²² The task of preparing concrete proposals relating to the creation and the statute of an international criminal court and of studying the implications and consequences of establishing such a court was entrusted by the General Assembly to two Committees composed of the representatives of seventeen Member States set up respectively by resolutions 489 (V) of 12 December 1950 and 687 (VII) of 5 December 1952. General Assembly resolutions 898 (IX) of 14 December 1954 and 1187 (XII) of 11 December 1957 deferred discussion of the topic until such a time as the Assembly again took up two related items, namely, the question of defining aggression and the draft Code of Offences against the Peace and Security of Mankind (see paras. 20-22 and para. 24 below).

18. In resolution 2391 (XXIII) of 26 November 1968, the General Assembly adopted a Convention on the Non-Application of Statutory Limitations to War Crimes and Crimes against Humanity. In resolution 2392 (XXIII) of the same date the General Assembly decided to take up a draft optional protocol to the Convention, which raised issues related to the question of international criminal jurisdiction, when it resumed consideration of the latter question.

5. *Reservations to multilateral conventions*

[General Assembly resolution 478 (V)
of 16 November 1950]

19. The Commission's conclusions on this topic were reported to the General Assembly in the report of the Commission covering the work of its third session (1951).²³ The question was the subject of General Assembly resolutions 598 (VI) of 12 January 1952 and 1452 (XIV) of 7 December 1959. The Commission returned again to the subject in the course of its preparation of draft articles on the law of treaties (see para. 35 below).

²⁰ *Ibid.*, pp. 374-378.

²¹ *Ibid.*, p. 379, para. 140.

²² *Ibid.*, para. 145.

²³ *Ibid.*, 1951, vol. II, pp. 130-131, document A/1858, paras. 33-34

6. *Question of defining aggression*

[General Assembly resolution 378 B (V)
of 17 November 1950]

20. The Commission considered the question at its third session (1951) but it did not draw up a definition of aggression. During the same session, however, the matter was reconsidered in connexion with the preparation of the draft Code of Offences against the Peace and Security of Mankind (see para. 24 below) and the Commission decided to include among the offences defined in the draft Code any act of aggression and any threat of aggression.²⁴

21. Since 1952 the question of defining aggression has been under consideration by a series of special committees. By resolution 599 (VI) of 31 January 1952, the General Assembly concluded that it was "possible and desirable" to define aggression. A Special Committee composed of the representatives of fifteen Member States was established by resolution 688 (VII) of 20 December 1952 to submit to the General Assembly "draft definitions of aggression or draft statements of the notion of aggression". Another Special Committee, consisting of the representatives of nineteen Member States, was established by General Assembly resolution 895 (IX) of 4 December 1954. By resolution 1181 (XII) of 29 November 1957, the General Assembly decided to establish a new Committee, composed of the Member States which served on the General Committee of the Assembly at its most recent regular session, and entrusted the Committee with the procedural task of studying Governments' comments "for the purpose of determining when it shall be appropriate for the General Assembly to consider again the question of defining aggression". The Committee established by resolution 1181 (XII) met in 1959, 1962, 1965 and 1967, but on each occasion found itself unable to determine any particular time as appropriate for the Assembly to resume consideration of the question of defining aggression.

22. At its twenty-second session (1967), the General Assembly included in its agenda an item entitled "Need to expedite the drafting of a definition of aggression in the light of the present international situation". As a result of the consideration of that item, the General Assembly, by resolution 2330 (XXII) of 18 December 1967: (1) recognized that there is a widespread conviction of the need to expedite the definition of aggression; (2) established a Special Committee on the Question of Defining Aggression, composed of thirty-five Member States; (3) instructed the Special Committee to consider all aspects of the question so that an adequate definition of aggression may be prepared and to report to the General Assembly at its twenty-third session. The Special Committee on the Question of Defining Aggression established by resolution 2330 (XXII) met in June 1968 and, following the submission of its report²⁵ to the General Assembly and the adoption of General Assembly resolution 2420

²⁴ *Ibid.*, p. 135.

²⁵ See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 86, document A/7185/Rev. 1.

(XXIII), was reconvened between 24 February and 3 April 1969. The Special Committee's report to the twenty-fourth session of the General Assembly²⁶ contained a summary of the views expressed on certain general aspects of the question of defining aggression and on various draft proposals submitted to the Special Committee at its 1968 and 1969 sessions. Following consideration of the matter by the Sixth Committee, the General Assembly adopted resolution 2549 (XXIV) of 12 December 1969, whereby the General Assembly decided that the Special Committee should resume its work in the second half of 1970 and that the item "Report of the Special Committee on the Question of Defining Aggression" should be included in the provisional agenda of the Assembly's twenty-fifth session.

7. *Arbitral procedure*

[1949 list]

23. At its fifth session (1953) the Commission adopted a draft Convention on Arbitral Procedure, which was the subject of General Assembly resolution 989 (X) of 14 December 1955. At its tenth session (1958) the Commission adopted a set of Model Rules on Arbitral Procedure, which were the subject of General Assembly resolution 1262 (XIII) of 14 November 1958.

8. *Draft Code of Offences against the Peace and Security of Mankind*

[General Assembly resolution 177 (II)
of 21 November 1947]

24. The Commission, at its sixth session in 1954, adopted the text of a draft Code of Offences against the Peace and Security of Mankind²⁷ and submitted it to the General Assembly. By resolution 897 (IX) of 4 December 1954 the General Assembly postponed consideration of the draft Code until the Special Committee on the question of defining aggression established by resolution 895 (IX) had submitted its report (see para. 21 above). Resolution 1186 (XII) of 11 December 1957 transmitted the text of the draft Code to Member States for comment and further deferred the consideration of the topic until such time as the General Assembly again took up the question of defining aggression.

9. *Nationality, including statelessness*

[1949 list]

25. At its sixth session (1954), the Commission adopted a draft Convention on the Elimination of Future Statelessness and a draft Convention on the Reduction of Future Statelessness,²⁸ as well as certain suggestions concerning the problem of present statelessness.²⁹ At the

same session, the Commission decided to defer any further consideration of multiple nationality and other questions relating to nationality.³⁰ A conference which met in 1959 and 1961 adopted the Convention on the Reduction of Statelessness, which has not yet come into force.³¹

10. *Law of the Sea*

[1949 list]

26. In accordance with the request made by the General Assembly in resolution 899 (IX) of 14 December 1954, the Commission grouped together systematically the articles it had previously adopted concerning the high seas, the territorial sea, the continental shelf, the contiguous zone and the conservation of the living resources of the sea. A final draft on the law of the sea was submitted to the General Assembly in 1956 and referred by the Assembly to the first United Nations Conference on the Law of the Sea. The Conference³² adopted four Conventions, all of which are now in force: (1) the Convention on the High Seas; (2) the Convention on Fishing and Conservation of the Living Resources of the High Seas; (3) the Convention on the Continental Shelf; and (4) the Convention on the Territorial Sea and the Contiguous Zone. The questions of the breadth of the territorial sea and the breadth of fishery limits were considered at the Second United Nations Conference on the Law of the Sea (1960), but the Conference did not adopt any decisions concerning them.

27. By resolution 2467 A (XXIII) of 21 December 1968, the General Assembly established the Committee on the Peaceful Uses of the Sea-bed and Ocean Floor beyond the Limits of National Jurisdiction, in succession to the previous *Ad Hoc* Committee on the subject. The present Committee has set up a Legal Sub-Committee and an Economic and Technical Sub-Committee. Particular issues relating to the question of the development of marine resources are also being dealt with by various specialized agencies, in particular by FAO, the Intergovernmental Oceanographic Commission of UNESCO, and by IMCO.

28. Following submission of the Committee's report and discussion of the item during the twenty-fourth session (1969), the General Assembly adopted on 15 December 1969 four resolutions grouped together under the symbol 2574 (XXIV). Operative paragraph 1 of resolution 2574 A (XXIV) requested the Secretary-General

²⁶ *Ibid.*, p. 149, para. 39.

³¹ It should be mentioned that the nationality of married women, a topic which the Commission was requested to study by the Economic and Social Council (resolution 304 D (XI) of 17 July 1950), is the subject of a convention adopted by the General Assembly (resolution 1040 (XI) of 29 January 1957) and now in force.

³² The first United Nations Conference on the Law of the Sea adopted a resolution requesting the General Assembly to arrange for the study of the juridical régime of historic waters, including historic bays. Following the adoption by the General Assembly of resolution 1453 (XIV) of 7 December 1959, and the preparation of a study by the Secretariat, the topic was included in the Commission's programme of work in 1962 (see para. 78 below).

²⁸ *Ibid.*, *Twenty-fourth Session, Supplement No. 20 (A/7620)*.

²⁷ See *Yearbook of the International Law Commission, 1954*, vol. II, p. 151, document A/2693, para. 54.

²⁹ *Ibid.*, p. 142, para. 25.

³⁰ *Ibid.*, p. 148, para. 37.

to ascertain the views of Member States on the desirability of convening at an early date a conference on the law of the sea to review the régimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing and conservation of the living resources of the high seas, particularly in order to arrive at a clear, precise and internationally accepted definition of the area of the sea-bed and ocean floor which lies beyond national jurisdiction, in the light of the international régime to be established for that area.

The Secretary-General was asked to report on the results of his consultations to the General Assembly at its twenty-fifth session.

29. In resolution 2574 B (XXIV) the General Assembly requested the Committee to expedite its work of preparing a statement of the principles designed to promote international co-operation in the exploration and use of the area concerned, and to submit a draft declaration to the General Assembly at its twenty-fifth session; and requested the Committee to formulate recommendations regarding the economic and technical conditions and the rules for the exploitation of the resources of the area in the context of the régime to be set up. The Secretary-General was requested, in resolution 2574 C (XXIV), to prepare a further study on various types of international machinery,

particularly a study covering in depth the status, structure, functions and powers of an international machinery, having jurisdiction over the peaceful uses of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, including the power to regulate, co-ordinate, supervise and control all activities relating to the exploration and exploitation of their resources, for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries, whether landlocked or coastal.

30. Lastly, in resolution 2574 D (XXIV) the General Assembly declared that, pending the establishment of an international régime for the area,

(a) States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction;

(b) No claim to any part of that area or its resources shall be recognized.

31. It may also be noted that in resolution 2566 (XXIV) of 13 December 1969, dealing with the promotion of effective measures for the prevention and control of marine pollution, the General Assembly requested the Secretary-General to seek "the views of Member States on the desirability and feasibility of an international treaty or treaties on the subject".

11. *Diplomatic relations*

[1949 list]

32. On the basis of the final draft articles on diplomatic intercourse and immunities adopted by the Commission at its tenth session (1958),³³ the United Nations Conference

³³ See *Yearbook of the International Law Commission, 1958*, vol. II, p. 89, document A/3859, para. 53.

on Diplomatic Intercourse and Immunities (1961) adopted the Vienna Convention on Diplomatic Relations,³⁴ which is now in force.

12. *Consular relations*

[1949 list]

33. Final draft articles on consular relations³⁵ were adopted by the Commission at its thirteenth session (1961). On the basis of this draft the United Nations Conference on Consular Relations (1963) adopted the Vienna Convention on Consular Relations,³⁶ which has now entered into force.

13. *Extended participation in general multilateral treaties concluded under the auspices of the League of Nations*

[General Assembly resolution 1766 (XVII) of 20 November 1962]

34. The conclusions resulting from the Commission's study of this question are summarized in the report covering the work of its fifteenth session (1963).³⁷ On the basis of these conclusions the General Assembly, in resolution 1903 (XVIII) of 18 November 1963, decided that the Assembly was the appropriate organ of the United Nations to exercise the functions of the League Council under twenty-one general multilateral treaties of a technical and non-political character concluded under the auspices of the League of Nations; it also placed on record the assent to this decision by Members of the United Nations. The resolution requested the Secretary-General to invite certain States to accede to the treaties in question by depositing an instrument of accession with the Secretary-General of the United Nations. By resolution 2021 (XX) of 5 November 1965, the General Assembly recognized that nine of these treaties, listed in the annex to the resolution, might be of interest for accession by additional States within the terms of resolution 1903 (XVIII) and drew the attention of the parties to the desirability of adapting some of them to contemporary conditions.

14. *Law of Treaties*

[1949 list]

35. The Commission adopted a set of draft articles on the law of treaties at its eighteenth session (1966),³⁸ which were forwarded by the General Assembly to the United Nations Conference on the Law of Treaties (1968, 1969) as the basic proposal for consideration. The Conference adopted on 22 May 1969 the Vienna Convention on the

³⁴ United Nations, *Treaty Series*, vol. 500, p. 95.

³⁵ See *Yearbook of the International Law Commission, 1961*, vol. II, p. 92, document A/4843, para. 37.

³⁶ United Nations, *Treaty Series*, vol. 596, p. 261.

³⁷ See *Yearbook of the International Law Commission, 1963*, vol. II, p. 223, document A/5509, para. 50.

³⁸ *Ibid.*, 1966, vol. II, p. 177, document A/6309/Rev.1, Part II, para. 38.

Law of Treaties.³⁹ The Convention is due to enter into force thirty days after the date of deposit of the thirty-fifth instrument of ratification or accession.

15. *Special missions*

[General Assembly resolution 1687 (XVI)
of 18 December 1961]

36. By resolution 1687 (XVI) of 18 December 1961 the General Assembly made a request that the Commission should give further study to the subject of Special Missions and should report thereon to the General Assembly.⁴⁰ A series of draft articles on Special Missions were adopted by the Commission at its nineteenth session (1967),⁴¹ and an item entitled "Draft Convention on Special Missions" was included in the agenda of the General Assembly at its twenty-third (1968) and twenty-fourth (1969) sessions. By resolution 2530 (XXIV) of 8 December 1969, the General Assembly adopted a Convention on Special Missions. The instrument is due to enter into force thirty days after the date of deposit of the twenty-second instrument of ratification or accession.

CHAPTER II

Topics on which the Commission has not submitted final drafts or recommendations to the General Assembly

37. The present chapter is divided in two sections, the first of which deals with the four topics currently under study by the Commission; this section is intended only as a brief summary of the main steps taken and does not attempt to give a complete account of all the views which have been expressed at different times by Member States and their representatives, or by members of the Commission, as regards the various aspects or topics which might possibly be included or studied under these headings. The second section summarizes the position with respect to the remaining six topics which were either included in the 1949 list or added to the Commission's programme in response to a request by the General Assembly, and which are not currently under study.

³⁹ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No.: E.70.V.5), p. 287. The Conference also adopted a resolution recommending to the General Assembly that the question of treaties concluded between States and international organizations or between two or more international organizations be referred to the International Law Commission (see paras. 145-146 below).

⁴⁰ Arising out of its work on diplomatic intercourse and immunities, the Commission prepared a brief draft on special missions for use in connexion with the United Nations Conference on Diplomatic Intercourse and Immunities. The Conference, however, recommended that the question should be left over for further study (see *Yearbook of the International Law Commission, 1961*, vol. II, p. 86, document A/CN.4/L.94, paras. 2-4).

⁴¹ *Ibid.*, 1967, vol. II, p. 347, document A/6709/Rev.1 and Corr.1, para. 35.

SECTION A. *Topics currently under study by the Commission*

1. *Relations between States and international organizations*⁴²

[General Assembly resolution 1289 (XIII)
of 5 December 1958]

38. By its resolution 1289 (XIII) of 5 December 1958 the General Assembly invited the International Law Commission to consider the question of

relations between States and inter-governmental international organizations at the appropriate time, after study of diplomatic intercourse and immunities, consular intercourse and immunities and *ad hoc* diplomacy has been completed by the United Nations and in the light of the results of that study and of the discussion in the General Assembly.

At its eleventh session (1959) the Commission took note of the resolution and decided to consider the topic in due course. At its fourteenth session (1962) the Commission decided to place the question on the agenda of its next session and appointed Mr. Abdullah El-Erian as Special Rapporteur for the topic.

39. The Special Rapporteur submitted his first report⁴³ at the fifteenth session (1963) of the Commission, and a working paper⁴⁴ at the sixteenth session (1964), with a view to defining the scope of the subject and the method of treatment to be followed. The conclusion reached by the Commission, following discussion, was recorded in the report on the work of its sixteenth session in the following terms:

The majority of the Commission, while agreeing in principle that the topic had a broad scope, expressed the view that for the purpose of its immediate study the question of diplomatic law in its application to relations between States and intergovernmental organizations should receive priority.⁴⁵

40. Following the submission of the Special Rapporteur's second⁴⁶ and third⁴⁷ reports, at its twentieth session (1968) the Commission adopted a provisional draft of twenty-one articles; the first five of these articles contained general provisions and the remaining articles dealt with permanent missions to international organizations. This provisional draft, together with the Commission's commentary, was transmitted to States for their observations.

41. At the Commission's twenty-first session (1969), the Special Rapporteur submitted a fourth report⁴⁸ containing a revised set of draft articles with commentaries, on

⁴² Prior to the Commission's twentieth session (1968), this topic was entitled "Relations between States and Inter-governmental Organizations", but the Commission decided in 1968 to replace the word "Inter-governmental" by "International". (*Ibid.*, 1968, vol. II, p. 195, document A/7209/Rev.1, para. 23.)

⁴³ *Ibid.*, 1963, vol. II, p. 159, document A/CN.4/161 and Add. 1.

⁴⁴ Document A/CN.4/L.104 (mimeographed). For the substance of this paper see chapter V of the Commission's report (A/5809) [*Yearbook of the International Law Commission, 1964*, vol. II, p. 226].

⁴⁵ *Ibid.*, p. 227, document A/5809, para. 42.

⁴⁶ *Ibid.*, 1967, vol. II, p. 133, document A/CN.4/195 and Add.1.

⁴⁷ *Ibid.*, 1968, vol. II, p. 119, document A/CN.4/203 and Add.1-5.

⁴⁸ *Ibid.*, 1969, vol. II, p. 1, document A/CN.4/218 and Add.1.

representatives of States to international organizations, and a working paper⁴⁹ containing draft articles on permanent observers of non-members to international organizations. The Commission adopted a provisional draft of a further twenty-nine articles on permanent missions to international organizations which were transmitted to the Governments of Member States and also, together with the earlier group of draft articles, to the Government of Switzerland and to the secretariats of the United Nations, the specialized agencies and IAEA, for their observations. In its report the Commission stated its intention, as a matter of priority, of concluding at its twenty-second session (1970) the first reading of its draft on relations between States and international organizations.⁵⁰ In operative paragraph 4 (a) of resolution 2501 (XXIV) of 12 November 1969, the General Assembly recommended that the Commission should continue its work on relations between States and international organizations "with a view to completing in 1971 its draft articles on representatives of States to international organizations".

42. It may be noted that in the replies from Governments transmitted in response to resolution 1505 (XV) the topics proposed for study included, besides the law of treaties in respect of international organizations (see paras. 145-146 below), the following three subjects:

(a) Status of international organizations and the relations between States and international organizations;

(b) The validity of norms of international law with regard to the entrance of new members in the international community;

(c) The responsibility of international organizations.

43. The first topic was proposed by both Austria⁵¹ and the Netherlands,⁵² and the two others by Austria. These and further topics or aspects, such as the international personality of international organizations and the privileges and immunities of international civil servants, have also been referred to at various times by representatives in the Sixth Committee as matters falling under the general heading of relations between States and international organizations.⁵³

2. Succession of States and Governments

[1949 list]

44. The topic of the succession of States and Governments was included in the 1949 list. In resolution 1686 (XVI) of 18 December 1961 the General Assembly recommended that the Commission should include the topic on its priority list. After the establishment by the Com-

mission of a sub-committee in 1963 and acceptance of its report, the Commission appointed Mr. Manfred Lachs as Special Rapporteur. Following the election of Mr. Lachs to the International Court of Justice, the Commission decided, at its nineteenth session (1967) to divide the topic under three headings, in accordance with the broad outline of the subject laid down in the report of the sub-committee in 1963. That Commission appointed Sir Humphrey Waldock Special Rapporteur with regard to succession in respect of treaties, and Mr. Mohammed Bedjaoui as Special Rapporteur with regard to succession in respect of matters other than treaties. The Commission decided to leave aside for the time being the third aspect, succession in respect of membership of international organizations, without assigning it to a special rapporteur. It was considered that succession in respect of membership of international organizations related both to succession in respect of treaties and to relations between States and international organizations.⁵⁴

45. The Commission indicated in 1968 that it deemed it desirable, *inter alia*, to complete the study of the question of succession in respect of treaties and to make progress in the study of succession in respect of matters other than treaties, during the remainder of the Commission's term of office in its present composition. In the report of the work of its twenty-first session (1969), the Commission stated its intention to undertake as a matter of priority, at its twenty-second session (1970) substantive consideration of succession in respect of treaties, and to further the study of succession of States in economic and financial matters.⁵⁵ In resolution 2501 (XXIV) of 12 November 1969, the General Assembly repeated the recommendation contained in resolution 2400 (XXIII) of 11 December 1968, that the Commission should continue its work on the succession of States and Governments, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) of 20 November 1962 and 1902 (XVIII) of 18 November 1963.

(a) Succession in respect of treaties

46. The first report⁵⁶ of Sir Humphrey Waldock, the Special Rapporteur, was considered by the Commission during its twentieth session (1968). The Special Rapporteur's second report⁵⁷ was submitted in 1969; owing to lack of time during the twenty-first session (1969), the Commission did not consider this report.

(b) Succession in respect of matters other than treaties

47. The first report⁵⁸ submitted by Mr. Mohammed Bedjaoui, the Special Rapporteur, was considered by the Commission at its twentieth session (1968); the Commission requested the Special Rapporteur to prepare a report on the succession of States in economic and financial

⁴⁹ Document A/CN.4/L.136 (mimeographed).

⁵⁰ See *Yearbook of the International Law Commission, 1969*, vol. II, p. 235, document A/7610, Rev.1, para. 93.

⁵¹ See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add.1-8, annex, section 15.

⁵² *Ibid.*, section 16.

⁵³ See, for example, the statement by the representative of Argentina, *ibid.*, *Seventeenth Session, Sixth Committee, 744th meeting*, para. 7.

⁵⁴ See *Yearbook of the International Law Commission, 1967*, vol. II, p. 368, document A/6709/Rev.1 and Corr.1., paras. 38-41.

⁵⁵ *Ibid.*, 1969, vol. II, p. 235, document A/7610/Rev.1, para. 93.

⁵⁶ *Ibid.*, 1968, vol. II, p. 87, document A/CN.4/202.

⁵⁷ *Ibid.*, 1969, vol. II, p. 45, document A/CN.4/214 and Add.1 and 2.

⁵⁸ *Ibid.*, 1968, vol. II, p. 94, document A/CN.4/204.

matters. At the Commission's twenty-first session (1969), the Special Rapporteur presented a second report,⁵⁹ entitled "Economic and financial acquired rights and State succession". Having examined this report, the Commission requested the Special Rapporteur to prepare a further report containing draft articles on succession of States in respect of economic and financial matters, taking into account the comments of members of the Commission in the reports he had already submitted. The Commission took note of the Special Rapporteur's intention to devote his next report to public property and public debts.

3. State responsibility [1949 list]

48. In 1955 the Commission appointed Mr. F. V. García Amador as Special Rapporteur for the topic. He submitted six reports between 1956 and 1961. Following discussion in the Commission at its fourteenth session (1962) and the submission of a report by a sub-committee, Mr. Roberto Ago was appointed Special Rapporteur in 1963. At the twenty-first session (1969) of the Commission, the Special Rapporteur submitted his first report,⁶⁰ entitled "Review of previous work on codification of the topic of the international responsibility of States". It was agreed, following discussion, that the Special Rapporteur should prepare a report containing a first set of draft articles on the topic of the international responsibility of States, for submission at the Commission's twenty-second session (1970), the aim being, in the Commission's words,

to establish, in an initial part of the proposed draft articles, the conditions under which an act which is internationally illicit and which, as such, generates an international responsibility can be imputed to a State.⁶¹

The Commission stated also

that the strict criteria by which it proposes to be guided in codifying the topic of the international responsibility of States do not necessarily entail renouncing the idea of proceeding, under a separate heading, with the codification of certain separate subjects of international law with which that of responsibility has often been linked.⁶²

49. In resolution 2501 (XXIV) of 12 November 1969, the General Assembly recommended that the Commission should continue its work on State responsibility, "taking into account paragraph 4 (c) of General Assembly resolution 2400 (XXIII) of 11 December 1968", wherein the Assembly requested the Commission to

make every effort to begin substantive work on State responsibility as from its next session, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII).

4. Most-favoured-nation clause [General Assembly resolution 2272 (XXII) of 1 December 1967]

50. The Commission decided to place this topic on its

programme at its nineteenth session (1967) and appointed Mr. Endre Ustor as Special Rapporteur. The Special Rapporteur submitted a working paper⁶³ for consideration at the twentieth session (1968) of the Commission. Following the Commission's discussion of the item at that session, the Special Rapporteur prepared his first report⁶⁴ which was considered by the Commission during its twenty-first session (1969). The Commission accepted the Special Rapporteur's suggestion that he should prepare next a study based largely on the replies received from organizations and interested agencies and relying also on three relevant cases dealt with by the International Court of Justice. In resolution 2501 (XXIV) of 12 November 1969 the General Assembly recommended that the Commission should continue its study of the most-favoured-nation clause.

SECTION B. Other topics on which the Commission has not submitted final drafts or recommendations

1. Recognition of States and Governments [1949 list]

51. The Commission has referred to the subject of the recognition of States and Governments in three of its drafts, but without entering into an extensive examination of the question. The draft Declaration on Rights and Duties of States (see para. 12 above), adopted by the Commission at its first session (1949), refers in article 11 to a duty of States to refrain from recognizing any territorial acquisition made by illegal means by another State, but the Commission

concluded that the whole matter of recognition was too delicate and too fraught with political implications to be dealt with in a brief paragraph in this draft Declaration [. . .].⁶⁵

Paragraph 1 of the commentary to article 60 (Severance of diplomatic relations) of the draft articles on the law of treaties (see para. 35 above) adopted by the Commission at its eighteenth session (1966) stated:

. . . any problems that may arise in the sphere of treaties from the absence of recognition of a Government do not appear to be such as should be covered in a statement of the general law of treaties. It is thought more appropriate to deal with them in the context of other topics with which they are closely related, either succession of States and Governments, which is excluded from the present discussion [. . .], or recognition of States and Governments, which the Commission in 1949 decided to include in its provisional list of topics selected for codification.⁶⁶

Paragraph 2 of article 7 of the draft articles on special missions (see para. 36 above) adopted by the Commission at its nineteenth session (1967), stated: "A State may send a special mission to a State, or receive one from a State which it does not recognize".⁶⁷ As indicated in the com-

⁵⁹ *Ibid.*, 1969, vol. II, p. 70, document A/CN.4/216/Rev.1.

⁶⁰ *Ibid.*, p. 125, document A/CN.4/217 and Add.1.

⁶¹ *Ibid.*, p. 233, document A/7610/Rev.1, para. 80.

⁶² *Ibid.*, para. 84.

⁶³ *Ibid.*, 1968, vol. II, p. 260, document A/6309/Rev.1, part II, chap. II.

⁶⁴ *Ibid.*, 1969, vol. II, p. 157, document A/CN.4/213.

⁶⁵ *Ibid.*, 1949, p. 289.

⁶⁶ *Ibid.*, 1966, vol. II, p. 260, document A/6309/Rev.1, part II, chap. II.

⁶⁷ *Ibid.*, 1967, vol. II, p. 350, document A/6709/Rev.1 and Corr.1, chap. II, D.

mentary to the draft article, the Commission did not, however, decide the question whether the sending or reception of a special mission prejudices the solution of the problem of recognition, as that problem lies outside the scope of the topic of special missions. The Sixth Committee, which considered the draft articles at the twenty-third session of the General Assembly in 1968, decided to delete the paragraph quoted and the Convention on Special Missions adopted by the General Assembly 8 December 1969 [resolution 2530 (XXIV)] does not refer to the existence or absence of recognition on the part of the States concerned. Finally, it may be noted that during its twenty-first session (1969), the Commission briefly considered in connexion with the topic entitled "Relations between States and International Organizations", the desirability of dealing, in separate articles, with the possible effects of various exceptional situations, such as absence of recognition, on the representation of States in international organizations. The Commission decided, in view of the delicate and complex nature of the questions concerned, to resume examination of the matter at a future session and to postpone any decision.⁶⁸

52. Of the Governments which submitted written comments in pursuance of resolution 1505 (XV) of 12 December 1960, three expressed support for a study of the question of the recognition of States and Governments: Ghana,⁶⁹ Venezuela⁷⁰ and Yugoslavia.⁷¹

53. In its observations, Colombia pointed out:

The Charter of the Organization of American States in article 9 refer incidentally to the recognition of States. Furthermore, in so far as the question of recognition of Governments is concerned, the antecedents for relations between American States include the Tobar (Secretary for External Relations of Ecuador, 1908) doctrine and the Estrada (Secretary for External Relations of Mexico, 1930) doctrine. Also relevant are resolutions 35 and 36 of the Ninth International Conference of American States dealing with the Right of Legation and the Recognition of *de facto* Governments, as well as the work done on this latter topic by the Inter-American Juridical Committee and the Inter-American Council of Jurists and reported on in the records of the four meetings of the latter body.⁷²

54. The Netherlands considered that discussion of the topic "might [...] be postponed for the time being because a number of basic questions are interwoven with political considerations".⁷³

55. During the discussion in the Sixth Committee, the representatives of Denmark,⁷⁴ Nicaragua,⁷⁵ Mexico⁷⁶ and Yugoslavia⁷⁷ expressed themselves in favour of a study of the topic.

⁶⁸ *Ibid.*, 1969, vol. II, p. 206 document A/7610/Rev.1, para. 18.

⁶⁹ See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add.1-8, annex, section 9.

⁷⁰ *Ibid.*, section 14.

⁷¹ *Ibid.*, section 7.

⁷² *Ibid.*, section 3, para. 8.

⁷³ *Ibid.*, section 16, para. 5.

⁷⁴ *Ibid.*, *Sixteenth Session, Sixth Committee*, 725th meeting, para. 12.

⁷⁵ *Ibid.*, 722nd meeting, para. 20.

⁷⁶ *Ibid.*, para. 46.

⁷⁷ *Ibid.*, 714th meeting, para. 16.

56. The representative of Yugoslavia, enlarging on the ideas contained in his Government's reply, stated *inter alia* that it was not so much a matter of

seeking to find an answer to the classical question of the relationship between the declarative and constitutive theories of recognition, although that matter, too, would have to be treated within the framework of the codification of the general topic.

The main point was

to ascertain the criteria that had recently governed the recognition of States and Governments and to find out whether certain general rules might be established on that basis. In addition, the legal significance of the admission of a State to membership in the United Nations and in other international organizations, more especially as regards collective recognition, should be defined. Of no less urgency was the question of the recognition of insurgents and of Governments. The uniformity of practice which could be achieved through the codification of those rules would be of considerable interest from the point of view of establishing more stable relations among States and of facilitating the position of the newly independent States.⁷⁸

57. On the other hand, the representative of Brazil included the topic among those which were essentially dominated by political considerations. In his view

The Commission was unlikely to succeed in attempts to deal with subjects of that type for while it might produce clever formulations, it would not achieve effective solutions.⁷⁹

58. Speaking in the Sixth Committee during the twenty-third session (1968) of the General Assembly, the representative of Mongolia expressed the hope that, after considering the questions to which priority had been given, the Commission would set about studying the problem of the recognition of States and Governments and would be able to prepare a set of rules, which might take the form of a Convention.⁸⁰

59. Lastly, it may be noted that the topic of unilateral acts, proposed during the Commission's nineteenth session (1967) for possible study by the Commission, may include certain aspects of the question of recognition (see para. 137 below).

2. Jurisdictional immunities of States and their property [1949 list]

60. Particular aspects of this question have been touched on in a number of the conventions concluded on the basis of the Commission's drafts, but no specific study or report has been made on the subject itself. The immunities of State-owned ships and warships are referred to in the Convention on the Territorial Sea and Contiguous Zone and in the Convention on the High Seas. The immunities of State property used in connexion with diplomatic and special missions, and consular posts, are regulated in the respective Conventions on those topics. The draft articles on "Relations between States and International Organiza-

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, 721st meeting, para. 14.

⁸⁰ *Ibid.*, *Twenty-third Session, Sixth Committee*, 1035th meeting, para. 2. The representative of Mexico also drew attention to the topic: *ibid.*, 1033rd meeting, para. 34.

tions", some of which were adopted at the Commission's twenty-first session (1969), also contain provisions on the immunity of State property used in connexion with representation in international organizations. One main aspect of the topic which has not yet been touched by the Commission is the immunities, if any, of State-owned property used for commercial purposes.

61. In the written comments submitted by States in pursuance of resolution 1505 (XV), two States, Belgium⁸¹ and the Netherlands,⁸² suggested that the topic should be studied. Belgium stated that

it would seem logical, after the consideration of these problems [succession of States, special missions and right of asylum], to examine the question of the jurisdictional immunities of States and of their property.

Ceylon⁸³ proposed the codification of a more limited aspect of the topic, namely the question of the jurisdictional immunities of States with respect to commercial transactions.

62. In the course of the discussion in the Sixth Committee during the sixteenth session (1961), the representatives of Belgium,⁸⁴ Denmark,⁸⁵ Ireland⁸⁶ and New Zealand⁸⁷ expressed themselves in favour of a study of the topic. The representative of Brazil⁸⁸ said that a sensible solution of some aspects of that problem would encourage trade between countries with different social systems. Although his delegations realized that the subject was a controversial one it would not oppose its reference to the International Law Commission for study.

63. The representative of Mexico⁸⁹ in the Sixth Committee drew attention to the topic during the twenty-third session (1968) of the General Assembly.

3. Jurisdiction with regard to crimes committed outside national territory [1949 list]

64. The Convention on the Territorial Sea and the Contiguous Zone and the Convention on the High Seas contain provisions concerning crimes committed at sea. The Commission has not, however, dealt with the question of jurisdiction with respect to crimes committed on land in foreign countries, except as regards the specific case of crimes committed by persons falling within the scope of the Conventions on Diplomatic and Consular Relations and Special Missions. The draft articles on Relations between States and International Organizations", some of which were adopted by the Commission in 1969, include

⁸¹ *Ibid.*, Sixteenth Session, Annexes, agenda item 70, document A/4796 and Add.1-8, annex, section 13.

⁸² *Ibid.*, section 16.

⁸³ *Ibid.*, section 17.

⁸⁴ *Ibid.*, Sixteenth Session, Sixth Committee, 721st meeting, para. 2.

⁸⁵ *Ibid.*, 725th meeting, para. 12.

⁸⁶ *Ibid.*, 727th meeting, para. 6.

⁸⁷ *Ibid.*, 719th meeting, para. 26.

⁸⁸ *Ibid.*, 721st meeting, para. 18.

⁸⁹ *Ibid.*, Twenty-third Session, Sixth Committee, 1033rd meeting, para. 34.

provisions relating to the position in this regard of State representatives to international organizations.

65. In their written comments submitted in pursuance of resolution 1505 (XV), the Netherlands⁹⁰ and Venezuela⁹¹ expressed the view that the subject should be studied.

66. The representative of Mexico in the Sixth Committee drew attention to the topic during the twenty-third session (1968) of the General Assembly.⁹²

4. Treatment of aliens [1949 list]

67. From its eighth (1956) to its thirteenth (1961) sessions, the Commission had before it a series of six reports on State responsibility which were mainly devoted to the development and explanation of a draft on the responsibility of a State for injuries caused in its territory to the person or property of aliens. The Commission, which was occupied with other work, was unable to give full consideration to these reports. After considering at its fifteenth session (1963) a report of a Sub-Committee on State responsibility, the Commission agreed

(1) [. . .] that, in an attempt to codify the topic of State responsibility, priority should be given to the definitions of the general rules governing the international responsibility of the State, and (2) that in defining these general rules the experience and material gathered in certain special sectors, especially that of responsibility for injuries to the persons or property of aliens, should not be overlooked . . .⁹³

68. Information with respect to the Commission's subsequent consideration of the topic of State responsibility is given in paragraph 48 above. The Commission has continued to give attention to the question of the relation between the topic of the treatment of aliens and that of State responsibility.⁹⁴

69. In the written comments submitted in pursuance of resolution 1505 (XV), Ceylon,⁹⁵ Ghana⁹⁶ and Venezuela⁹⁷ proposed that the question of the treatment of aliens should be studied. During the discussions in the Sixth Committee, the representative of New Zealand⁹⁸ supported the proposal.

⁹⁰ *Ibid.*, Sixteenth Session, Annexes, agenda item 70, document A/4796 and Add.1-8, annex, section 16.

⁹¹ *Ibid.*, section 14.

⁹² See foot-note 89 above.

⁹³ See *Yearbook of the International Law Commission, 1963*, vol. II, p. 224, document A/5509, para. 52. The Sub-Committee was established following extensive discussion at the Commission's fourteenth session (1962) of the question whether consideration of the topic of treatment of aliens falls within the topic of State responsibility.

⁹⁴ *Ibid.*, 1969, vol. II, p. 233, document A/7610/Rev.1, paras. 80-82 and 84.

⁹⁵ See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add.1-8, annex, section 17.

⁹⁶ *Ibid.*, section 9.

⁹⁷ *Ibid.*, section 14.

⁹⁸ *Ibid.*, Sixteenth Session, Sixth Committee, 719th meeting, para. 26.

5. Right of asylum [1949 list]

70. This topic, which was included in the 1949 list, was referred to in resolution 1400 (XIV) of 21 November 1959, whereby the General Assembly requested "the International Law Commission, as soon as it considers it advisable, to undertake the codification of the principles and rules of international law relating to the right of asylum". The Commission, at its twelfth session (1960), took note of the resolution and decided to defer further consideration of the question to a future session.⁹⁹

71. In the written comments submitted in pursuance of resolution 1505 (XV), five countries proposed that the question should be studied: Belgium,¹⁰⁰ Ceylon,¹⁰¹ Colombia,¹⁰² Ghana¹⁰³ and Venezuela.¹⁰⁴

72. During the discussions in the Sixth Committee, the representative of Colombia¹⁰⁵ proposed, *inter alia*, in a draft resolution that the International Law Commission should include the topic of the right of asylum on its priority list. The representative of the United Arab Republic,¹⁰⁶ the representative of Nicaragua¹⁰⁷ and the representative of Belgium¹⁰⁸ were in favour of study of the subject. However, the Colombian proposal met with some opposition on the ground, not that the question of the right of asylum was unworthy of United Nations attention, but that it was already on the agenda of the International Law Commission, which would study it in due course. As a result, the Colombian representative later withdrew his proposal on the understanding that his views and those of the representatives¹⁰⁹ who supported them would be brought to the attention of the International Law Commission.

73. At its fourteenth session (1962), the International Law Commission decided to include the topic in its future programme of work, but without setting any date for the start of its consideration. The Commission took similar action with respect to a second topic, entitled "Juridical régime of historic waters, including historic bays", whose codification had earlier been requested by the General Assembly (see para. 78 below).

74. The advisability of proceeding actively in the near future with the study of these topics was examined by the Commission in 1967 at its nineteenth session. The Commission's report on that session summarized the views expressed on the matter as follows:

⁹⁹ See *Yearbook of the International Law Commission, 1960*, vol. II, p. 180, document A/4425, para. 39.

¹⁰⁰ See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add.1-8, annex, section 13.

¹⁰¹ *Ibid.*, section 17.

¹⁰² *Ibid.*, section 3.

¹⁰³ *Ibid.*, section 9.

¹⁰⁴ *Ibid.*, section 14.

¹⁰⁵ *Ibid.*, Sixteenth Session, Sixth Committee, 727th meeting, para. 23.

¹⁰⁶ *Ibid.*, 723rd meeting, para. 3.

¹⁰⁷ *Ibid.*, 722nd meeting, para. 23.

¹⁰⁸ *Ibid.*, 721st meeting, para. 2.

¹⁰⁹ Ecuador and Nicaragua, *ibid.*, 730th meeting, paras. 19, 28; Venezuela, *ibid.*, 729th meeting, para. 13.

The Commission considered in the first place two topics which the General Assembly had requested it to take up as it considered it advisable, and which had been included in its programme of work, though no Special Rapporteur had ever been appointed to deal with them. These were the right of asylum, referred to the Commission by General Assembly resolution 1400 (XIV) of 21 November 1959, and historic waters, including historic bays, referred by General Assembly resolution 1453 (XIV) of 7 December 1959. Most members doubted whether the time had yet come to proceed actively with either of these topics. Both were of considerable scope and raised some political problems, and to undertake either of them at the present time might seriously delay the completion of work on the important topics already under study, on which several resolutions of the General Assembly had recommended that the Commission should continue its work.¹¹⁰

75. Since the Commission's consideration of the matter at its nineteenth session (1967), the General Assembly has adopted, by resolution 2312 (XXII) of 14 December 1967, a Declaration on Territorial Asylum. The culmination of many years of effort by the Commission on Human Rights (1957-1960), the Third Committee (1962-1964), and the Sixth Committee (1965-1967), the Declaration constitutes an elaboration of article 14 of the Universal Declaration on Human Rights. Resolution 2312 (XXII) contains a preambular part which reads as follows:

The General Assembly,

Recalling its resolutions 1839 (XVII) of 19 December 1962, 2100 (XX) of 20 December 1965 and 2203 (XXI) of 16 December 1966 concerning a declaration on the right of asylum,

Considering the work of codification to be undertaken by the International Law Commission in accordance with General Assembly resolution 1400 (XIV) of 21 November 1959,

Adopts the following Declaration.

76. In this connexion the Sixth Committee's report indicates:

It was further explained that the sponsors had found it necessary, in order to stress that the adoption of a declaration on territorial asylum would not bring to an end the work of the United Nations in codifying the rules and principles relating to the institution of asylum, to make a reference at the very beginning of the draft resolution, in a preambular paragraph to the proposed declaration, to the work of codification on the right of asylum to be undertaken by the International Law Commission pursuant to General Assembly resolution 1400 (XIV) of 21 November 1959.

Some other delegations, while accepting such a reference, recorded their understanding that the preambular paragraph in question should not be understood as modifying or prejudicing in any way the order of priorities for the consideration of items already established by the International Law Commission and by the General Assembly.¹¹¹

77. The views expressed on the meaning of the Declaration on Territorial Asylum for the future codification of legal rules relating to the rights of asylum are summarized in the Sixth Committee's report as follows:

It was also said that the practical effect given to the declaration by States would help to indicate whether or not the time was ripe for the final step of elaborating and codifying precise legal rules relating to asylum. In this respect, many representatives expressed the conviction that the declaration, when adopted, should be

¹¹⁰ See *Yearbook of the International Law Commission, 1967*, vol. II, p. 369, document A/6709/Rev.1 and Corr.1, para. 45.

¹¹¹ See *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 89, document A/6912, paras. 64 and 65.

regarded as a transitional step, which should lead in the future to the adoption of binding rules of law in an international convention. They drew attention to the fact that asylum was on the programme of work of the International Law Commission pursuant to General Assembly resolution 1400 (XIV) of 21 November 1959. The declaration now to be adopted would be one of the elements to be considered by the Commission in its work. Certain of these representatives expressed the hope that, when it took up the codification of the institution of asylum, the Commission would correct some of the ambiguities in the terms of the Declaration and would also extend the subject to cover other forms of asylum, such as diplomatic asylum, on which there was extensive treaty law in Latin America and an extensive practice, both in Latin America and elsewhere. It was also said that the existence of the Declaration should not in any way diminish the scope or depth of the work to be undertaken when the International Law Commission took up the subject of asylum.¹¹²

6. *Juridical régime of historic waters, including historic bays*

[General Assembly resolution 1453 (XIV) of 7 December 1959]

78. The first United Nations Conference on the Law of the Sea (1958) adopted, in paragraph 6 of article 7 of the Convention of the Territorial Sea and Contiguous Zone, a provision to the effect that its rules on bays "shall not apply to so-called 'historic' bays".¹¹³ The Conference also adopted on 27 April 1958 a resolution requesting the General Assembly to arrange for the study of the juridical régime of historic waters, including historic bays.¹¹⁴ The General Assembly thereafter adopted resolution 1453 (XIV) of 7 December 1959, which requested the International Law Commission, as soon as it considers it advisable, to undertake the study of the question of the juridical régime of historic waters, including historic bays, and to make such recommendations regarding the matter as the Commission deems appropriate.

The Commission, at its twelfth session (1960) requested the Secretariat to undertake a study of the topic, and deferred further consideration to a future session.¹¹⁵ A study prepared by the Secretariat was published in 1962.¹¹⁶ Also in 1962, the Commission, at its fourteenth session, decided to include the topic in its programme, but without setting any date for the start of its consideration.¹¹⁷ At its nineteenth session (1967), the Commission examined the advisability of proceeding actively with the study of this topic; the views expressed, as recorded in the Commission's report, are reproduced in paragraph 74 above.

79. During the General Assembly's twenty-third session (1968) the representatives of Australia,¹¹⁸ Canada¹¹⁹ and

Mexico¹²⁰ in the Sixth Committee referred to the topic in connexion with the future work of the Commission, the Canadian representative in particular stressing the importance his delegation attached to the subject.

PART II

Topics suggested or recommended for inclusion in the Commission's programme of work

CHAPTER I

Topics suggested by Member States in response to resolution 1505 (XV) of 12 December 1960 or by representatives in the Sixth Committee during the fifteenth (1960) and sixteenth (1961) sessions of the General Assembly

80. A summary is given below of the written comments made by Member States in response to resolution 1505 (XV) of 12 December 1960, and of the suggestions made by representatives in the Sixth Committee during the fifteenth (1960) and sixteenth (1961) sessions of the General Assembly, with respect to topics which have not been included, either at that time or subsequently, in the Commission's programme. It may be recalled that, in accordance with the provisions of resolution 1686 (XVI), the International Law Commission considered these topics at its fourteenth session (1962) and adopted the decisions summarized in paragraphs 5 to 7 above. Indications have been given where appropriate of any subsequent developments relating to the topics in question.

1. *Sources of international law*¹²¹

81. In its written comments Mexico requested that this question should be studied. It stated its grounds for the request in the following terms:

There is need for a re-examination of this question in the light of the many and varied decisions and resolutions of all kinds, some of doubtful legal validity, which have been adopted by the various international organizations. The actions of these organizations undoubtedly have a strong impact on international affairs and contribute in one form or another to the creation of international law. As the creation of international law in this manner is becoming daily more important, this might be a profitable topic of study for the International Law Commission.¹²²

The Mexican representative in the Sixth Committee reiterated his Government's observations.¹²³

¹¹² *Ibid.*, para. 16.

¹¹³ United Nations, *Treaty Series*, vol. 516, p. 210.

¹¹⁴ *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, *Plenary Meetings*, (United Nations publication, Sales No.: 58.V.4, vol. II), p. 145.

¹¹⁵ See *Yearbook of the International Law Commission, 1960*, vol. II, p. 180, document A/4425, para. 40.

¹¹⁶ *Ibid.*, 1962, vol. II, p. 1, document A/CN.4/143.

¹¹⁷ *Ibid.*, p. 190, document A/5209, para. 60.

¹¹⁸ See *Official Records of the General Assembly, Twenty-third Session, Sixth Committee*, 1036th meeting, para. 12.

¹¹⁹ *Ibid.*, 1031st meeting, para. 26.

¹²⁰ *Ibid.*, 1033rd meeting, para. 34.

¹²¹ This topic, together with recognition of the acts of foreign States (para. 82 below), the territorial domain of States (para. 83), the pacific settlement of international disputes (paras. 84-100) and the law of war and neutrality (paras. 101-103), was amongst those considered by the Commission at its first session (1949) but not included in the 1949 list.

¹²² See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add.1-8, annex, section 10, para. 3.

¹²³ *Ibid.*, *Sixth Committee*, 722nd meeting, para. 46.

2. Recognition of acts of foreign States

82. Venezuela requested in its written comments that the topic should be studied.¹²⁴

3. Territorial domain of States

83. This question was also proposed by Venezuela.¹²⁵ The principle

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

is amongst those which have been examined by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, established in 1963 and reconstituted in 1965 (see foot-note 6 above).

4. Pacific settlement of international disputes

84. The subject covers the very wide field of prohibition of war, procedures for investigation, mediation and conciliation, the arbitral or judicial settlement of disputes and the obligatory jurisdiction of the International Court of Justice.

(a) General remarks

85. At the Assembly's sixteenth session (1961), the representative of Israel stated in the Sixth Committee¹²⁶ that the time had come to pass under review all the established machinery for the peaceful settlement of international disputes. There was no assurance that the existing procedures for settlement were really reliable, and their overhaul and adaptation to the contemporary patterns and conceptions of international intercourse were long overdue. The delegation of Israel considered that, if complete machinery for the peaceful settlement of international disputes was to be established, it would be worth instructing the Sixth Committee to undertake a legal study on the same lines as that being made at the political level by the First Committee, particularly in the field of disarmament.

86. Similarly, the representative of Argentina stated that it was essential to attempt, by both codification and progressive development, to establish a complete legal system of methods for securing the peaceful solution of international disputes.¹²⁷ The representative of Indonesia also spoke in favour of a study of the question by the International Law Commission.¹²⁸

87. Since 1961, an item entitled "Peaceful Settlement of Disputes" had been discussed at the twentieth (item 99) and twenty-first (item 36) sessions of the General Assem-

bly, held in 1965 and 1966, but no resolution on the subject had been adopted. It may also be noted that the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, established in 1963, has examined, amongst others, the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered (see foot-note 6 above).

88. The representative of Romania, speaking in the Sixth Committee during the twenty-third session (1968) of the General Assembly, expressed the hope that the Commission would undertake as soon as possible a study of the peaceful settlement of international disputes.¹²⁹

89. Current UNITAR research projects include a large-scale inquiry into the topic of the peaceful settlement of disputes.

(b) Prohibition of war

90. In its written comments Afghanistan suggested the preparation of a declaration on the prohibition of war, in line with the Declaration of St. Petersburg of 1868 and the Brussels Conference of 1874, and the Geneva Protocol of 1925.¹³⁰

91. Czechoslovakia proposed in its written comments

the elaboration of legal principles to govern the prohibition of wars of aggression and the determination of the responsibility for the violation of peace (definition of aggression, prohibition of the use of weapons of mass destruction, consequences of the responsibility for a violation of peace and security).¹³¹

(c) Recourse to procedures for investigation, mediation and conciliation

92. The written comments submitted by Colombia included the following passage:

The International Law Commission has already examined the topic of arbitral procedure and produced a set of model rules which is submitted to the General Assembly and which the latter transmitted to Governments in November 1958 for comments and for their use in drawing up treaties of arbitration. The Commission, as the codifying organ of the United Nations has still, however, to consider the other procedures for pacific settlement provided for both in Article 33 of the Charter of the United Nations and in article 21 of the Charter of the Organization of American States, *viz.*, good offices, mediation, investigation and conciliation—judicial procedure being regulated by the Statute of the International Court of Justice annexed to the Charter of the United Nations. With regard to such procedures for the pacific settlement of international disputes, there are many inter-American precedents having a bearing on codification (Treaty to Avoid or Prevent Conflicts between the American States (Gondra Treaty), approved at the fifth International Conference of American States and centred around the investigation procedure; General Convention on Inter-American Conciliation, General Treaty of Inter-American Arbitration and Protocol of Progressive Arbitration, all approved at the International Conference of American States on Conciliation and Arbitration held at Washing-

¹²⁴ *Ibid.*, Sixteenth Session, Annexes, agenda item 70, document A/4796 and Add.1-8, annex, section 14.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*, Sixth Committee, 726th meeting, para. 38.

¹²⁷ *Ibid.*, 720th meeting, para. 14.

¹²⁸ *Ibid.*, 726th meeting, para. 13.

¹²⁹ *Ibid.*, Twenty-third Session, Sixth Committee, 1031st meeting, para. 16.

¹³⁰ *Ibid.*, Sixteenth Session, Annexes, agenda item 70, document A/4796 and Add.1-8, annex, section 1, para. 2.

¹³¹ *Ibid.*, section 12 (a). The question of defining aggression is referred to in paragraphs 20-22 above.

ton in 1929; Anti-War Treaty of Non-Aggression and Conciliation (Saavedra Lamas Treaty), concluded at Rio de Janeiro in 1933; American Treaty on Good Office and Mediation, adopted by the Inter-American Conference for the Maintenance of Peace at Buenos Aires in 1936; Inter-American Treaty on Pacific Settlement (Pact of Bogotá), approved at the ninth International Conference of American States.

Consequently the Colombian Government proposed the study of the following question: "Pacific settlement of international disputes; procedures for investigation, mediation and conciliation".¹⁸²

93. The representative of Indonesia expressed the view that the Commission should take up the subject of the peaceful settlement of disputes.¹⁸³

(d) *More frequent recourse to arbitral and judicial settlement*¹⁸⁴

94. In its written comments, Denmark stated that it could not but

welcome any proposal tending to enlarge the scope of arbitral and judicial procedures in international relations. Far from being met with criticism, the International Law Commission ought to be encouraged to pursue its efforts in this direction.¹⁸⁵

95. In the view of Sweden

... one of the most important questions of the day is that of strengthening the role of international law in the settlement of conflicts between States.

Under Article 2 of the Charter of the United Nations, Member States are enjoined to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. Nowadays, however, many disputes which lend themselves to settlement by the International Court of Justice or by other international judicial or arbitral bodies are not submitted for such settlement, with the result that they continue to burden relations between the States concerned. In view of this state of affairs, consideration should be given to the means by which States might be induced to resort more frequently to a judicial or arbitral settlement of their disputes. The Swedish Government considers that this question is of such importance that it should be given priority on the list of topics to be studied by the International Law Commission.¹⁸⁶

96. During the Sixth Committee's debates at the sixteenth session of the General Assembly, the Swedish representative¹⁸⁷ expanded his Government's arguments. He was supported by the representatives of Ireland¹⁸⁸ and Pakistan.¹⁸⁹

(e) *Obligatory jurisdiction of the International Court of Justice*

97. During the Sixth Committee's debates at the fifteenth session (1960) of the General Assembly, the represen-

tatives of Aghanistan,¹⁴⁰ Canada¹⁴¹ and the United Kingdom¹⁴² put forward the question of the obligatory competence of the International Court of Justice as one of the topics to be studied by the International Law Commission. The representative of Burma stated that

adequate measures should be taken [. . .] to educate world public opinion to accept the United Nations as the organ for laying down international law and the International Court of Justice as the forum for the determination of international disputes.¹⁴³

98. In its written comments Denmark stated:

Codification and development of international law should be contemplated as only one aspect of the rule of law in international relations, and should—in addition to the purposes immediately served—contribute towards the creation of conditions in which the compulsory jurisdiction of the International Court of Justice may gain extended recognition.¹⁴⁴

The Danish representative in the Sixth Committee stated during the debates at the sixteenth session that his delegation considered that the Sixth Committee would be "the appropriate forum for a thorough debate on that well-defined and vital field of international law".¹⁴⁵ The Swedish representative also hoped that the Sixth Committee would take up the question "unless the International Law Commission inserted it in its list of priority topics".¹⁴⁶

99. In its written comments the Netherlands expressed the view that "a further development in this field is urgently called for "but that the preparatory work should be left to bodies other than the International Law Commission.¹⁴⁷

100. The representative of Ghana suggested that the Court should be permitted to decide what was within the domestic jurisdiction of a State, just as domestic courts decided whether or not they had jurisdiction in a particular matter. He stated that he was in favour of the obligatory jurisdiction of the Court.¹⁴⁸ The Israel representative supported that proposal.¹⁴⁹

5. Law of war and neutrality

101. At the fifteenth session (1960) of the General Assembly, the representative of Ceylon proposed that the law of neutrality should be codified.¹⁵⁰

102. In its written comments, Austria proposed the codification of the laws of war and neutrality. The Austrian Government observed that the

¹⁴⁰ *Ibid.*, Fifteenth Session, Sixth Committee, 66th meeting, para. 3.

¹⁴¹ *Ibid.*, 656th meeting, para. 10.

¹⁴² *Ibid.*, 652nd meeting, para. 2.

¹⁴³ *Ibid.*, 653rd meeting, para. 2.

¹⁴⁴ *Ibid.*, Sixteenth Session, Annexes, agenda item 70, document A/4796 and Add.1-8, annex, section 8, para. VII (3).

¹⁴⁵ *Ibid.*, Sixth Committee, 725th meeting, para. 14.

¹⁴⁶ *Ibid.*, 724th meeting, para. 29.

¹⁴⁷ *Ibid.*, Sixteenth Session, Annexes, agenda item 70, document A/4796 and Add.1-8, annex, section 16, para. 3.

¹⁴⁸ *Ibid.*, Sixth Committee, 723rd meeting, para. 35.

¹⁴⁹ *Ibid.*, 726th meeting, para. 37.

¹⁵⁰ *Ibid.*, Fifteenth Session, Sixth Committee, 658th meeting, paras. 19-20.

¹⁸² *Ibid.*, document A/4796 and Add.1-8, annex, section 3.

¹⁸³ *Ibid.*, Sixth Committee, 726th meeting, para. 13.

¹⁸⁴ The Commission's activities with respect to the question of arbitral procedure are referred to in paragraph 23 above.

¹⁸⁵ See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add.1-8, annex, section 8, para. III.

¹⁸⁶ *Ibid.*, document A/4796 and Add.1-8, annex, section 6.

¹⁸⁷ *Ibid.*, Sixth Committee, 724th meeting, paras. 28-29.

¹⁸⁸ *Ibid.*, 727th meeting, para. 6.

¹⁸⁹ *Ibid.*, 720th meeting, para. 37.

provisions of the Charter may have had an effect other than abrogation on traditional norms of international law. Some norms, for instance, may have to be modified in order to correspond to the regulations of the Charter. This is especially true for the laws of war and neutrality which reflect the State practice for the nineteenth century and do, therefore, not provide for military actions of a world organization of States.¹⁵¹

103. On the other hand, the Netherlands expressed the view

that the laws of war—though their adaptation to modern methods of warfare is an urgent necessity—are not susceptible of codification, since this topic is closely connected with problems of disarmament which are under discussion in other bodies of the United Nations.¹⁵²

6. Law of space

104. In the written comments of Governments submitted in accordance with resolution 1505 (XV), and in the statements of representatives during discussions in the Sixth Committee at the fifteenth (1960) and sixteenth (1961) sessions of the General Assembly, a number of suggestions were made that the International Law Commission should examine the legal aspects of the use of outer space, although different views were expressed as to whether this subject would be suitable for the Commission to study.¹⁵³

105. At the present time space law is being examined by the General Assembly's Committee on the Peaceful Uses of Outer Space, in particular by its Legal Sub-Committee. At its twenty-first session the General Assembly adopted resolution 2222 (XXI) of 19 December 1966, relating to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. By resolution 2260 (XXII) of 3 November 1967, the General Assembly requested the Committee on the Peaceful Uses of Outer Space

in the further progressive development of the law of outer space, to continue with a sense of urgency its work on the elaboration of an agreement on liability for damage caused by the launching of objects into outer space and an agreement on assistance to and return of astronauts and space vehicles, and to pursue actively its work on questions relative to the definition of outer space and the utilization of outer space and celestial bodies, including the various implications of space communications.

At its twenty-second session the General Assembly also adopted resolution 2345 (XXII) of 19 December 1967, commending the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, which was annexed to that resolution.

106. At its following session the General Assembly adopted resolution 2453 B (XXIII) of 20 December 1968,

¹⁵¹ *Ibid.*, Sixteenth Session, Annexes, agenda item 70, document A/4796 and Add.1-8, annex, section 15.

¹⁵² *Ibid.*, section 16, para. 3.

¹⁵³ For a summary of these proposals, see *Yearbook of the International Law Commission, 1962*, vol. II, p. 96, document A/CN.4/145, para. 162.

requesting the Committee on the Peaceful Uses of Outer Space to complete urgently the preparation of a draft agreement on liability for damage caused by the launching of objects into outer space and to continue to study questions relative to the definition of outer space and the utilization of outer space and celestial bodies, including various implications of space communications. In resolution 2601 B (XXIV) of 16 December 1969, the General Assembly expressed its regret that the Committee had not yet been able to complete the drafting of a liability convention and urged it to do so in time for final consideration by the Assembly during its twenty-fifth session.

7. Human rights and defence of democracy

(a) *Preparation of a draft Convention for the defence of democracy, to be co-ordinated with the work currently being done along those lines by the Organization of American States and the Inter-American Commission on Human Rights*

107. The preparation of a draft convention was proposed by Venezuela in its written comments.¹⁵⁴

108. Colombia in its written comments stated:

Another topic studied by the Inter-American Council of Jurists is the effective exercise of representative democracy, which has been placed on the agenda of the eleventh Inter-American Conference. Since, however, this topic is relatively political in nature and within the inter-American regional organization comes directly under article 5 (d) of the Charter of Bogotá, it might for the moment be regarded as exclusively inter-American. The same would seem to apply to the topic of the juridical relationship between respect for human rights and the exercise of representative democracy, which is also a subject of study by the Inter-American Council of Jurists and of a report to the eleventh Inter-American Conference.¹⁵⁵

(b) *International protection of human rights through the creation of a special international court*

109. The subject was proposed by Colombia in its written comments.¹⁵⁶ During the sixteenth session (1961) of the General Assembly the representative of Colombia submitted a draft resolution,¹⁵⁷ the operative part of which provided for the inclusion in the agenda of the seventeenth session of the Assembly of the question of the establishment of an international tribunal for the protection of human rights. That draft was subsequently replaced by an amendment.¹⁵⁸ In the course of the debate the representative of Colombia withdrew his amendment, accepting the fact that most representatives, while recognizing the importance of the question, felt that its inclusion in the agenda of the next session of the General Assembly was inappropriate, since it had already for some years been on the agenda of the Commission on Human Rights.¹⁵⁹

¹⁵⁴ See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add.1-8, annex, section 14.

¹⁵⁵ *Ibid.*, section 3, para. 11.

¹⁵⁶ *Ibid.*, section 3.

¹⁵⁷ *Ibid.*, document A/C.6/L.493.

¹⁵⁸ *Ibid.*, document A/5036, para. 12.

¹⁵⁹ *Ibid.*, para. 37.

(c) *Jurisdiction of international courts and organizations with special reference to the plea of exclusion by the domestic jurisdiction in relation to questions affecting human rights*

110. This question was proposed by Ceylon in its written comments.¹⁶⁰

(d) *Preparation of multilateral instruments relating to human rights since 1962*

111. In recent years the General Assembly has adopted the following instruments: the International Convention on the Elimination of all Forms of Racial Discrimination (resolution 2106 A (XX) of 21 December 1965); the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights (resolution 2200 A (XXI) of 16 December 1966); the Declaration on the Elimination of Discrimination against Women (resolution 2263 (XXII) of 7 November 1967); and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (resolution 2391 (XXIII) of 26 November 1968). Some of the provisions of the Draft Declaration of the Elimination of All Forms of Religious Intolerance and the Draft International Convention on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief were considered by the General Assembly during its twenty-third session, in 1968; at its twenty-fourth session the General Assembly postponed further consideration of these instruments until its twenty-fifth session, in 1970.

8. Independence and sovereignty of States

(a) *The acquisition of statehood*

112. This question was proposed by Ghana in its written comments.¹⁶¹ At the sixteenth session of the General Assembly, the representative of Ghana stated in the Sixth Committee that the matter was "obviously important", as the expansion of the international society by the emergence of new States was fast being relegated to history; in fact, after General Assembly resolution 1514 (XV) on the granting of independence to colonial countries and peoples had been fully implemented, new States would come into being only by the disintegration, disruption or total extinction of the existing States and the formation of new groupings through fission or fusion. Then the birth of a new State and its recognition would be linked inextricably to the problem of State succession.¹⁶²

(b) *The right of a State, in particular a new State, to determine, to implement and to perfect in its political form, socially and economically, in conformity with its professed ideology and to take all necessary steps to accomplish this, e.g. decolonization, normalization, nationalization, and also steps to control all its natural*

resources and to ensure that those resources are utilized for the interests of the State and the people
and

(c) *The right of every State to take steps which, in its opinion, are necessary to safeguard its national unity, its territorial integrity and for its self-defence*

113. These two topics were proposed by Indonesia in its written comments.¹⁶³

(d) *Elaboration of legal principles ensuring the granting of independence to colonial countries and peoples*

114. This topic was proposed by Czechoslovakia in its written comments.¹⁶⁴ It related particularly to the right of nations, to self-determination, ensuring to nations full sovereignty over their natural resources, the complex of problems of recognition, State succession and others.

(e) *Acts of one State in the territory of another State*

115. The Netherlands referred in its written comments to the possibility that the Commission might deal with the question of the acts of one State in the territory of another.¹⁶⁵ Speaking in the Commission during its nineteenth session (1967), Mr. Tammes suggested that

the question whether acts of foreign States could, under international law, be directly subjected to the judgement and scrutiny of national courts, might well be studied.¹⁶⁶

(f) *The principle of non-intervention*

116. Study of this topic was proposed by Mexico in its written comments.¹⁶⁷ At the inter-American level, a Convention containing five articles, signed at Havana in 1928, sets out the obligations and rights of States in cases of civil war. In the view of Mexico, consideration should be given to the desirability of extending the provisions of that Convention to all countries or perhaps of formulating new provisions that would be in keeping with present conditions and be universally applicable.

117. At the sixteenth session of the General Assembly, the representative of the Union of Soviet Socialist Republics on the Sixth Committee suggested the codification of the question of the sovereignty of States and the principle of non-interference.¹⁶⁸

118. The representative of Mexico pointed out that, in view of the current importance of the question of non-intervention, its study should be undertaken as soon as possible.¹⁶⁹

¹⁶³ *Ibid.*, Sixteenth Session, Annexes, agenda item 70, document A/4796, and Add.1-8, annex, section 11.

¹⁶⁴ *Ibid.*, section 12.

¹⁶⁵ *Ibid.*, section 16.

¹⁶⁶ *Yearbook of the International Law Commission, 1967*, vol. I, p. 179, 928th meeting, para. 8.

¹⁶⁷ *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add.1-8, annex, section 10.

¹⁶⁸ *Ibid.*, Sixth Committee, 717th meeting, para. 33.

¹⁶⁹ *Ibid.*, 722nd meeting, para. 46.

¹⁶⁰ *Ibid.*, document A/4796 and Add.1-8, annex, section 17.

¹⁶¹ *Ibid.*, section 9.

¹⁶² *Ibid.*, Sixth Committee, 723rd meeting, para. 38.

(g) *The principle of self-determination of peoples*

119. Study of this topic was proposed by Austria in its written comments.¹⁷⁰

(h) *Work of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States*

120. The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States has been engaged since 1963 in a study of the following principles, amongst others: the duty not to intervene in matters within the domestic jurisdiction of any State in accordance with the Charter; and the principle of equal rights and self-determination of peoples (see foot-note 6 above).

9. *Enforcement of international law*

121. The topic was proposed by Ghana in its written comments.¹⁷¹ In a statement in the Sixth Committee during the sixteenth session of the General Assembly, the representative of Ghana said that this topic was closely related to the acceptance by all States of the compulsory jurisdiction of the International Court of Justice. If it were possible to enforce international law against all nations in all cases, many of the difficulties at present confronting the world would be obviated. His delegation hoped that the topic would receive early attention.¹⁷²

122. The representative of Argentina stated that his Government considered it essential to attempt, by both codification and progressive development, to establish a complete legal system of methods for securing the peaceful solution of international disputes and to create additional means of ensuring peace through the rule of law.¹⁷³

10. *Utilization of international rivers*

123. At the fourteenth session (1959) of the General Assembly, the representative of Bolivia in the Sixth Committee pointed out that the utilization of international rivers was governed by law was purely customary, ill-defined and lacking in uniformity. He therefore suggested that the International Law Commission should include in its agenda the question of the utilization and exploitation of international waterways.¹⁷⁴

124. Several representatives emphasized the complexity of the problem, which would necessarily require suitable technical knowledge. Other representatives were of the opinion that an attempt to codify the matter would be premature and could do more harm than good. It would be better to leave it to the International Law Commission to decide whether the utilization of international rivers was an appropriate subject for codification.

125. Following the Sixth Committee's discussion the General Assembly adopted resolution 1401 (XIV) of 21 November 1959, whereby the General Assembly, considering it desirable to initiate preliminary studies on this topic "with a view to determining whether the subject is appropriate for codification", requested the Secretary-General to submit a report on legal problems relating to the utilization and use of international rivers. The Secretary-General accordingly prepared and circulated to Member States a report (A/5409) as requested by the General Assembly's resolution. A collection of legislative texts and treaty provisions on the subject has been printed in the United Nations Legislative Series.¹⁷⁵

126. In its written comments the Netherlands requested that the subject of the utilization of international rivers should be studied by the International Law Commission.¹⁷⁶

127. At the sixteenth session (1961) of the General Assembly, the representative of Iran in the Sixth Committee suggested that the International Law Commission could well use the research accomplished by the Secretariat as a starting point for an international convention. Such a convention would serve to regulate the use of international rivers by riparian States on the basis of well-defined rules and thus put an end to numerous disputes on the subject.¹⁷⁷

128. At the twenty-second session (1967) of the General Assembly the representative of Mexico in the Sixth Committee expressed the hope that after dealing with the topics now being studied, the International Law Commission would consider taking up the legal problem relating to the utilization and use of international rivers, a topic on which it could take into consideration the opinion adopted several years by the Inter-American Juridical Committee.¹⁷⁸

129. The topic was also mentioned by members of the Commission during its nineteenth session (1967). Mr. Tammes suggested that it might be appropriate to lend the authority of the Commission and of plenipotentiary conferences to what had already been done in this sphere by such private bodies as the International Law Association.¹⁷⁹ The Chairman of the nineteenth session, Sir Humphrey Waldock, expressed the view that the topic was too extensive to be undertaken at the same time as the Commission's current work.¹⁸⁰ Mr. Kearney said that he would support the inclusion of the topic in the Commission's programme, subject to the demands of its existing work.¹⁸¹ Mr. Bartoš stated that

¹⁷⁵ *Legislative texts and treaty provisions concerning the utilization of international rivers for other purposes than navigation* (United Nations publication, Sales No.: 63.V.4).

¹⁷⁶ See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add.1-8, annex, section 16.

¹⁷⁷ *Ibid.*, Sixth Committee, 725th meeting, para. 22.

¹⁷⁸ *Ibid.*, Twenty-Second Session, Sixth Committee, 961st meeting, para. 7.

¹⁷⁹ See *Yearbook of the International Law Commission, 1967*, vol. I, p. 179, 928th meeting, para. 8.

¹⁸⁰ *Ibid.*, p. 248, 938th meeting, para. 78.

¹⁸¹ *Ibid.*, p. 189, 929th meeting, para. 80 and p. 251, 939th meeting, para. 18.

¹⁷⁰ *Ibid.*, Sixteenth Session, Annexes, agenda item 70, document A/4796 and Add.1-8, annex, section 15.

¹⁷¹ *Ibid.*, section 9.

¹⁷² *Ibid.*, Sixth Committee, 723rd meeting, para. 36.

¹⁷³ *Ibid.*, 720th meeting, para. 14.

¹⁷⁴ *Ibid.*, Fourteenth Session, Annexes, agenda item 55, document A/4253, paras. 33 *et seq.*

the General Assembly had never proposed the topic of international rivers for study, since the developing countries regarded the formulation of rules for navigation on such waterways as likely to infringe their sovereignty.¹⁸²

11. Economic and trade relations

(a) *The rules governing multilateral trade*

130. In proposing the study of this topic, Yugoslavia stated in its written comments that

the rules governing international trade, and more especially trade among States with different economic and social systems, raise a number of novel problems to which satisfactory legal solutions should now be sought in the interest of the normal development of both economic and political relations in a particularly sensitive area of world affairs. What we have in mind are not, of course, the technical aspects of the legal regulation of international trade, but the new institutions and rules that have arisen since the Second World and which make the general pattern of international trade very much different from what it had previously been.¹⁸³

At the sixteenth session of the General Assembly, the Yugoslav representative developed the ideas in a statement in the Sixth Committee.¹⁸⁴

(b) *The rules pertaining to the various forms of economic assistance to under-developed countries*

131. This topic was also proposed by Yugoslavia. In its observations the Yugoslav Government stated that:

The question of promoting the economic development of the hitherto under-developed countries is generally recognized to be one of the foremost international problems of our time. The various forms of assistance that are now given to the development of these countries—economic and technical, multilateral and bilateral—have considerable legal implications and call for the determination of the principles of international law that should govern their application, if they are to achieve their basic purposes.¹⁸⁵

132. In the Sixth Committee, the Yugoslav representative argued that

in codifying the legal rules concerning economic and technical assistance, the [International Law] Commission should not enter into technical questions, but should seek to define, in the light of general international law, the respective positions of the States and organizations concerned. His delegation was convinced that existing legal standards could provide a basis for establishing some rules which had been reaffirmed many times in the practice of the post-war period. For example, the requirement that no political or other conditions should be attached to the aid extended to under-developed countries was now a generally recognized legal rule.¹⁸⁶

133. On the other hand, the representative of the United Kingdom, referring to the two topics suggested by Yugoslavia, stated in the Sixth Committee that both tasks

seemed more appropriate for an economic body than for the International Law Commission. He further stated that some aspect of international trade might be covered by other subjects, such as the jurisdictional immunities of States.¹⁸⁷

134. By resolution 2205 (XXI) of 17 December 1966 the General Assembly established the United Nations Commission on International Trade Law (UNCITRAL). At the first session (1968) of UNCITRAL a great number of delegations considered that the following, non-exhaustive, list of topics should form the future work programme of UNCITRAL: (1) international sale of goods; (2) commercial arbitration; (3) transportation; (4) insurance; (5) international payments; (6) intellectual property; (7) elimination of discrimination in laws affecting international trade; (8) agency; and (9) legalization of documents. UNCITRAL decided that priority should be given to three topics: international sale of goods; international payments; and international commercial arbitration.¹⁸⁸ At its second session (1969) UNCITRAL decided to take up also the topic of international shipping legislation, in response to a request by UNCTAD.¹⁸⁹

CHAPTER II

Topics subsequently suggested by representatives in the Sixth Committee or by members of the International Law Commission

SECTION A. *Topics subsequently suggested by representatives in the Sixth Committee*

135. Since the sixteenth session (1961) of the General Assembly the Sixth Committee has not examined the question of future work in the field of the codification and progressive development of international law, as a separate item on its agenda. The comments of representatives in the Sixth Committee with respect to the work of the International Law Commission have therefore been largely devoted to the topics dealt with in the Commission's annual reports. Such comments or suggestions as have been made relating to the other topics on the Commission's programme, or to the proposals made by Member States in 1960 and 1961, have been noted earlier in the present paper. The only specific new proposals which appear to have been made were those put forward at the twenty-fourth session (1969) of the General Assembly by the representative of El Salvador, who stated that, in his view, the Commission

... should concentrate on the topics of greatest practical importance, such as the law of State development and community law, which were so vital today in the light of the economic and social development problems of the non-industrialized countries and

¹⁸² *Ibid.*, p. 248, 938th meeting, para. 51.

¹⁸³ See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add.1-8, annex, section 7, para. 4.

¹⁸⁴ *Ibid.*, *Sixth Committee*, 714th meeting, para. 21.

¹⁸⁵ *Ibid.*, *Sixteenth Session, Annexes*, agenda item 70, document A/4796 and Add.1-8, annex, section 7, para. 4.

¹⁸⁶ *Ibid.*, *Sixth Committee*, 714th meeting, para. 22.

¹⁸⁷ *Ibid.*, 717th meeting, para. 9.

¹⁸⁸ *Ibid.*, *Twenty-third Session, Supplement No. 16 (A/7216)*, para. 40.

¹⁸⁹ *Ibid.*, *Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 133.

the present trend towards economic integration. Another topic which had not been fully studied under the law of treaties was that of conflicts between treaties and domestic law, especially national constitutions.¹⁹⁰

SECTION B. *Topics subsequently suggested by members of the International Law Commission*

136. At its fourteenth session (1962) the Commission considered the proposals which Governments had suggested in response to General Assembly resolution 1505 (XV) and in the Sixth Committee at the fifteenth (1960) and sixteenth (1961) sessions of the General Assembly, and decided to limit, for the time being, the future programme of work to the topics already under study or to be studied pursuant to earlier General Assembly resolutions (see paras. 5-6 above). Since that session the main occasion on which new topics for study have been suggested, additional to those previously proposed or included in the Commission's programme, was at the Commission's nineteenth session (1967).

1. *Unilateral acts*

137. The possibility of the Commission's examining the topic of unilateral acts was mentioned during the nineteenth session (1967) by Mr. Tammes. He stated that ample research and practice were available concerning the topic, which greatly needed clarification and systematization.

The topic covered recognition as a positive act acknowledging a given situation to be a legal situation and, conversely, protests rejecting changes in a legal situation. It also included the principle of estoppel applied by the International Court of Justice. Other unilateral acts which might possibly be dealt with in a systematic draft were proclamations, waivers and renunciations.¹⁹¹

This suggestion was also referred to by Mr. Ago,¹⁹² Sir Humphrey Waldock,¹⁹³ Mr. Bartoš¹⁹⁴ and Mr. Castrén.¹⁹⁵

2. *Status of international organizations before the International Court of Justice*

138. Mr. Tammes, referring to the general question of the implementation of international law, stated that

... a specific question of practical significance had arisen in connexion with the South West Africa case and the Commission might well take up the problem of enabling the United Nations and other international organizations to have the status of litigating parties before the International Court of Justice.¹⁹⁶

¹⁹⁰ A/C.6/SR.1106, p. 13.

¹⁹¹ See *Yearbook of the International Law Commission, 1967*, vol. I, p. 179, 928th meeting, para. 6. See also p. 187, 929th meeting, para. 63.

¹⁹² *Ibid.*, p. 182, 928th meeting, para. 32.

¹⁹³ *Ibid.*, p. 248, 938th meeting, para. 78.

¹⁹⁴ *Ibid.*, para. 81.

¹⁹⁵ *Ibid.*, p. 250, 939th meeting, para. 11.

¹⁹⁶ *Ibid.*, p. 179, 928th meeting, para. 9. See also, p. 187, 929th meeting, para. 65.

3. *Statute of a new United Nations body for fact-finding*

139. Mr. Tammes also expressed the view

... that it would not be contrary to the Commission's terms of reference for it to draw up a statute for a new auxiliary body of the United Nations to study, for instance, methods of fact-finding, which the General Assembly had unanimously decided to place on the agenda for its twenty-second session. The Commission might well give the General Assembly guidance on certain underlying legal and institutional principles of fact-finding, as a contribution to the instrumentality of peace independent of other means of peaceful settlement, such as arbitration, conciliation and judicial settlement, referred to in Article 33 of the Charter.¹⁹⁷

140. General Assembly resolution 2329 (XXII) of 18 December 1967, relating to fact-finding, did not establish any new body for that purpose. Operative paragraph 4 requested the Secretary-General

to prepare a register of experts in legal and other fields, whose services the States parties to a dispute may use by agreement for fact-finding in relation to the dispute, and requests Member States to nominate up to five of their nationals to be included in such a register.

A first version of the register was issued in 1968 (A/7240) and a second version, containing summaries of biographical data supplied by Member States in respect of their nationals, was issued in 1969 (A/7751).

4. *Law of international economic co-operation*

141. At the Commission's nineteenth session (1967) Mr. Castañeda stated:

Another matter which the Commission should consider in the distant future was the law of international economic co-operation, which was continually developing within the United Nations, the specialized agencies and the regional and world-wide economic organizations.¹⁹⁸

However, it was necessary to wait until practice had become established and ideas on the subject had crystallized.

142. During the Commission's twentieth session (1968) a related proposal was made by Mr. Albónico, who suggested that the topic of the legal principles of reciprocal assistance between States was one which required urgent study:

The topic had become particularly important since the Second World War. The work of the Economic and Social Council of the United Nations, the Marshall Plan, the organization in Europe of three economic communities, the progress made towards economic integration in Central America, the establishment of a Latin American free trade area, and the late President Kennedy's Alliance for Progress, were all expressions of the duty of States to render assistance to one another in economic matters. The first and second sessions of the United Nations Conference on Trade and Development at Geneva in 1964 and at New Delhi in 1968, pointed in the same direction. The time had now come to consider the question whether there was a legal obligation on the

¹⁹⁷ *Ibid.*, p. 179, 928th meeting, para. 10. See also p. 187, 929th meeting, para. 64.

¹⁹⁸ *Ibid.*, p. 188, 929th meeting, para. 70.

richly endowed countries to render assistance to those countries which needed it and if so, what was the scope of that obligation. Simultaneously, the parallel question should be considered of the corresponding obligations of States and peoples whom it was intended to help, particularly the obligation to carry out the structural changes which were essential if they were to benefit from the assistance of the wealthier countries.¹⁹⁹

5. Model rules on conciliation

143. Mr. Eustathiades suggested that the Commission might consider drawing up a set of model rules on conciliation, on the same lines as the model draft on arbitral procedure (para. 23 above) which it had adopted at its tenth session (1958).²⁰⁰

6. International bays and international straits

144. During the Commission's nineteenth session (1967) Mr. Ago expressed the view that the Commission might be requested by an appropriate organ of the United Nations to give its opinion on topics such as international bays and international straits.²⁰¹

CHAPTER III

Recommendation by the General Assembly concerning the question of treaties concluded between states and international organizations or between two or more international organizations

145. In operative paragraph 5 of resolution 2501 (XXIV) of 12 November 1969, the General Assembly recommended

that the International Law Commission should study, in consultation with the principal international organizations, as it may consider appropriate in accordance with its practice, the question of treaties concluded between States and international organizations or between two or more international organizations, as an important question.

146. The General Assembly's recommendation follows that contained in a resolution adopted by the United Nations Conference on the Law of Treaties. The summary of the discussion in the Sixth Committee states in part as follows:

Several representatives supported the proposal to refer the question to the International Law Commission, on the understanding that that would not alter the order of priority of the topics currently being studied, especially State responsibility and the succession of States and Governments. Other representatives considered that it would be advisable for the Commission to take up the question in the near future and give it a measure of priority, taking due account of the other items on its current programme of work. Other representatives felt that for the time being the Commission should simply include the question in its long-term programme of work. Lastly, some representatives stressed that it was for the Commission itself to decide when would be the best time to begin its study of the question and what degree of priority it should be given in the light of its current programme of work and the conclusions resulting from the envisaged updating of its long-term programme of work.²⁰²

¹⁹⁹ *Ibid.*, 1968, vol. I, p. 193, 977th meeting, para. 27.

²⁰⁰ *Ibid.*, 1967, vol. I, p. 188, 929th meeting, para. 73.

²⁰¹ *Ibid.*, p. 182, 928th meeting, para. 32.

²⁰² See *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda items 86 and 94 (b), document A/7746, para. 114. For the text of the resolution adopted by the United Nations Conference on the Law of Treaties, *ibid.*, para. 5.