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Report of the Working Group on review of the multilateral treaty-making process

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REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS (PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/48)

[Agenda item 6]

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* The International Law Commission approved the Report of the Working Group at a private meeting held on 30 July 1979. At the 1580th meeting of the Commission, on 31 July 1979, the Chairman placed on record the decision of the Commission to approve the report and to transmit—in accordance with General Assembly resolution 32/48—its observations contained therein to the Secretary-General.

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Introduction

i. By General Assembly resolution 32/48 of 8 December 1977, entitled "Review of the multilateral treaty-making process", the Secretary-General was requested "to prepare a report on the techniques and procedures used in the elaboration of multilateral treaties". Also in that resolution, the Assembly, bearing in mind "the important contribution of the International Law Commission to the preparation of multilateral treaties during the past twenty-nine years", provided for participation of the Commission in the review in question. The Commission was invited, as were Governments, to submit its observations on the subject by 31 July 1979, for inclusion in the Secretary-General's report.

ii. Pursuant to that invitation, the Commission included in the agenda of its thirtieth session an item entitled "Review of the multilateral treaty-making process".¹ At its 1486th meeting, held on 25 May 1978, the Commission set up a Working Group composed of Mr. Robert Q. Quentin-Baxter (Chairman), Mr. Juan José Calle y Calle, Mr. Frank X.J.C. Njenga, Mr. C.W. Pinto and Mr. Alexander Yankov, to consider preliminary questions raised by resolution 32/48 and to recommend to the Commission the action to be taken in response to the General Assembly's invitation.²

iii. At the meetings of the Working Group in 1978, there were exchanges of views as to the way in which the Commission could best respond to the invitation of the General Assembly. The Commission, at its 1526th meeting, on 26 July 1978, adopted the report of the Working Group and, as recommended by the Working Group, decided to include in its report to the General Assembly on the work done at the thirtieth session the paragraphs quoted below:

164. The Commission considers that a review of the multilateral treaty-making process constitutes a very important question and that such an endeavour requires serious con-

sideration and thought. In the light of that fact, and of the role the Commission plays, pursuant to its Statute, in the progressive development of international law and its codification, the Commission welcomes the opportunity to make a contribution to the study of the question.

165. In accordance with General Assembly resolution 32/48, the Secretary-General's report is to be a factual report on the techniques and procedures used in multilateral treaty-making, primarily within the United Nations. It would take account of other treaty-making practices to the extent needed for purposes of comparison. The report would describe the various technical and procedural United Nations patterns in treaty-making so as to facilitate the assessment of their merits by the General Assembly.

166. It had been recognized, during discussion in the Sixth Committee of the General Assembly, that the International Law Commission's observations would necessarily be more in the nature of an appraisal. The Commission will wish to make a careful evaluation of its performance and potential. In so doing, the Commission will be greatly helped by past reports of its Planning Group and by its members' extensive experience in other treaty-making forums.

167. It has to be stressed that the Commission's productive capacity depends primarily upon two factors: first, the work that the Commission can accomplish during a 12-week annual session and the work that its members, particularly the Special Rapporteurs, can accomplish at other times of the year; secondly, the analysis of materials, selection of documentation and preparation of studies by the Codification Division of the Office of Legal Affairs in the sphere of work of the Commission on the various topics on its agenda . . .

168. Moreover, as was recognized during the debate on this question in the Sixth Committee of the General Assembly, an assessment of the technical and procedural aspects of treaty-making, as practised by the Commission, would have to be set in a wider context that took into account the subject-matter of the topics chosen for codification and progressive development. Indeed, a study of the process of selection of topics, and of the interplay between the work of the Commission and that of other treaty-making forums, should be one of the most interesting and constructive facets of the Commission's response to the General Assembly's invitation to furnish comments.

169. In the light of the foregoing considerations, the Commission approved the recommendations of the Working Group that the Group be reconstituted, taking into account as far as possible the need for continuity of membership, at the beginning of the Commission's thirty-first session, and that it be asked to present a final report to the Commission not later than 30 June 1979.³

iv. At the thirty-third session of the General Assembly, in the course of the consideration by the Sixth

¹ See *Yearbook . . . 1978*, vol. II (Part Two), p. 148, document A/33/10, para. 161.

² *Ibid.*, para. 162.

³ *Ibid.*, paras. 164-169.

Committee of the Commission's report on the work of its thirtieth session, many representatives spoke on the preliminary observations made by the Commission on the topic of review of the multilateral treaty-making process. Their views were recorded in the report of the Sixth Committee as follows:

259. Several representatives noted favourably the preliminary observations which the Commission had submitted on the review of the multilateral treaty-making process. The hope was expressed that as the Commission itself expected[,] serious attention would be paid to this question during its next session in order to facilitate discussion on that topic at the thirty-fourth session of the General Assembly.

260. Certain representatives stressed the utmost importance of the role which the Commission had played and would play in the progressive development of international law and its codification. The view was expressed that in its self-evaluation of the treaty-making procedure, the Commission would no doubt wish to consider the law-making process, bearing in mind that the codification process could no longer be viewed as a function exclusively devoted to finding legal solutions based on precedents, and that it should also conform to the realities of international life. As progressive development of the law came more and more to the fore, the drafters of treaties could not be indifferent to the purpose to be served by the legal régimes they were preparing. It was necessary to test legal norms against the needs of the international community, searching for rules to reflect universal aspirations, many of which were as yet incompletely understood and only partly articulated. Reference was made in this connection to the long list of multilateral treaties that had not come into force for want of a minimum level of support. Mention was also made [of] the fact that there were treaties currently being drafted the elaboration of which had been entrusted to non-legal organs of the United Nations.⁴

v. At its thirty-first session, the Commission included in its agenda the item "Review of the multilateral treaty-making process", and at its 1546th meeting, on 6 June 1979, reconstituted the Working Group established at its previous session, with an enlarged membership. Accordingly, the Working Group was composed as follows: Mr. Robert Q. Quentin-Baxter (Chairman), Mr. Juan José Calle y Calle, Mr. Emmanuel Kodjoe Dadzie, Mr. Leonardo Díaz González, Mr. Laurel B. Francis, Mr. Frank X.J.C. Njenga, Mr. C.W. Pinto, Mr. Senjin Tsuruoka, Mr. Nikolai Ushakov, Sir Francis Vallat and Mr. Alexander Yankov.

vi. The Working Group held five meetings between 13 June and 23 July 1979. An informal preparatory working paper compiled by the Secretariat entitled "The role of the United Nations International Law Commission in the multilateral treaty-making process" was considered by the Working Group at its first meetings. At its fourth meeting, the Working Group had before it another working paper, entitled "Draft report of the Working Group", submitted by its Chairman. At its fifth meeting, the Working Group adopted that working paper, together with some conclusions, as the report of the Working Group. The following report is submitted by the Working Group to the Commission for its consideration and approval.

⁴ *Official Records of the General Assembly, Thirty-third Session, Annexes*, agenda item 114, document A/33/419, paras. 259-260.

Observations of the International Law Commission on the review of the multilateral treaty-making process, submitted pursuant to General Assembly resolution 32/48

1. In accordance with General Assembly resolution 32/48 of 8 December 1977, the International Law Commission transmits for inclusion in the report on the techniques and procedures used in the elaboration of multilateral treaties to be prepared by the Secretary-General pursuant to that resolution its observations on the review of the multilateral treaty-making process.

2. Those observations are presented in nine sections, as follows:

A. The International Law Commission as a United Nations body;

B. Object and functions of the International Law Commission;

C. Programme of work of the International Law Commission;

D. Role of the International Law Commission and its contribution to the treaty-making process through the preparation of draft articles;

E. Consolidated methods and techniques of work of the International Law Commission as applied in general to the preparation of draft articles;

F. Other methods and techniques employed by the International Law Commission;

G. Relationship between the General Assembly and the International Law Commission;

H. Elaboration and conclusion of conventions on the basis of draft articles prepared by the International Law Commission following a General Assembly decision to that effect;

I. Conclusions.

A. The International Law Commission as a United Nations body

3. As a means of fulfilling the task entrusted to it under Article 13 (1) of the Charter of the United

Nations, the General Assembly, following the recommendations of the Committee on the Progressive Development of International Law and its Codification, by resolution 174 (II) of 21 November 1947 established the International Law Commission, to be constituted and to exercise its functions in accordance with the provisions of the Statute annexed thereto.⁵

4. The Commission is a permanent and part-time subsidiary organ of the General Assembly. In accordance with its Statute, it consists of 25 members who are persons of recognized competence in international law, elected for five years, in a manner such as to assure representation in the Commission as a whole of the main forms of civilization and of the principal legal systems of the world. The members of the Commission sit in their individual capacity and not as representatives of Governments.

5. Members of the Commission are elected by the General Assembly from a list of candidates nominated by States Members of the United Nations. Casual vacancies are filled by the Commission itself, having regard to the same provisions originally addressed to the General Assembly concerning qualifications. The Commission's members are eligible for re-election.

6. The Commission sits at the Office of the United Nations of Geneva, as provided in article 12 of its Statute. Under present arrangements, the Commission annually holds a 12-week session in the spring and early summer. At each session, the Commission elects the five officers who constitute the Bureau of the session: the Chairman, First and Second-Chairmen, Chairman of the Drafting Committee and Rapporteur. These officers, plus former Chairmen of the Commission and the Special Rapporteurs, constitute the Enlarged Bureau of any given session. The practice has developed that, on the recommendation of the Enlarged Bureau, the Commission sets up for a particular session a Planning Group to consider matters relating to the organization, programme and methods of work of the Commission and to report thereon to the Enlarged Bureau. The Commission appoints at each session a Drafting Committee.⁶ Also, sub-committees or working groups may be established for the performance of specific tasks entrusted to them by the Commission.⁷

7. At the beginning of each session, the Commission adopts the agenda for the session. The provisional agenda is prepared by the Secretariat on the basis of the relevant decisions of the General Assembly and the Commission and the pertinent provisions of the Statute. The order in which items are listed in the agenda adopted does not necessarily determine their actual order of consideration by the Commission, the latter being rather a result of *ad hoc* decisions. The agenda of a given session is to be distinguished from the Commission's programme of work, which is established as indicated below.⁸ Not every topic on the programme of work of the Commission is necessarily included in the agenda of a particular session.

8. At its first session in 1949, the Commission decided that the rules referred to in rule 161 (establishment and rules of procedure of subsidiary organs) of the General Assembly Rules of Procedure would be provisionally applicable to the Commission and that it would, if need arose, draft its own rules of procedure.⁹ Accordingly, rule 125 of the Rules of Procedure of the General Assembly, which provides that decisions of committees shall be made by a majority of the members present and voting, applies to the proceedings of the Commission. However, over the years the Commission has increasingly taken decisions on both substantive and procedural matters without a vote, by common understanding or consensus.

The Commission holds its plenary meetings in public unless it decides otherwise, in particular when dealing with certain organizational or administrative matters. Summary records of the public meetings are issued provisionally for participants only, and after Commission members have had the opportunity to correct the provisional versions, are subsequently printed in final form in volume I of the *Yearbook of the International Law Commission*, a United Nations publication.

9. According to article 14 of the Commission's Statute, "the Secretary-General shall, so far as he is able, make available staff and facilities required by the Commission to fulfil its task". The Codification Division of the Office of Legal Affairs of the United Nations has, as one of its main functions, that of providing the secretariat for the Commission. In order to facilitate the work of the Commission and its Special Rapporteurs, the Codification Division prepares studies, research projects, surveys and compilations on general questions relating to the progressive development of international law and its codification, as well as on particular topics on the programme of work of the Commission or aspects thereof. Published studies, research projects and surveys prepared by the Codification Division for the Commission are issued as documents of the Commission and printed in volume II of the *Yearbook of the International Law*

⁵ A general introduction to the Commission and its work is given by the publication entitled *The Work of the International Law Commission* (United Nations publication, Sales No. E.80.V.11). The publication includes an account of the organization, programme and methods of work of the Commission, as well as brief descriptions of the various topics of international law the Commission has dealt with. It also gives an account of the actions decided upon by the General Assembly following the consideration of those topics by the Commission and of the results achieved by diplomatic conferences or the Assembly itself when considering draft articles prepared by the Commission.

⁶ See paras. 45–46 below.

⁷ See para. 37 below.

⁸ See paras. 20–23 below.

⁹ See *Yearbook . . . 1949*, pp. 10–11, 1st meeting, para. 18.

Commission. The Codification Division also publishes, for the assistance of the Commission, the United Nations Legislative Series, each volume of the Series being a compilation of laws, decrees, treaty provisions and other relevant materials concerning a specific topic, as well as the series entitled *Reports of International Arbitral Awards*, an annotated collection of texts of arbitral awards.¹⁰

B. Object and functions of the Commission

10. Article 1, paragraph 1, of the Statute of the Commission provides that the "Commission shall have for its object the promotion of the progressive development of international law and its codification". Paragraph 2 of the same article states that the Commission "shall concern itself primarily with public international law, but is not precluded from entering the field of private international law".¹¹ The Commission has therefore been invested by the General Assembly with general permanent functions in its own field of activity, as defined by its Statute, occupying in that respect a central position within the United Nations system in the task of assisting the General Assembly in the promotion of the progressive development of international law and its codification.

11. Other subsidiary organs set up within the United Nations have also been entrusted with functions aimed at or resulting in the promotion of the progressive development of international law and its codification by the United Nations. The United Nations Commission on International Trade Law (UNCITRAL), the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space and the Commission on Human Rights could be mentioned as examples of bodies established on a permanent basis and dealing with questions of international law or matters relevant thereto.

Special or *ad hoc* committees set up by the General Assembly are also frequently entrusted with functions having or presenting an interest for the promotion of the progressive development of international law and its codification. The work done by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States and the Special Committee on the Question of Defining Aggression could be singled out in that context. Other special or *ad hoc* committees, such as the *Ad Hoc* Committee on International Terrorism, the

Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, the *Ad Hoc* Committee on the Drafting of an International Convention against the Taking of Hostages and the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations, are engaged in work which may also result in furthering the development of international law and its codification. A point common to all the above-mentioned permanent or *ad hoc* bodies is that their contributions to the progressive development of international law and its codification take place in specific fields as defined in their mandates. Article 18 of the Statute of the Commission provides that it shall "survey the whole field of international law with a view to selecting topics for codification". Moreover, in the course of the years, the General Assembly has referred to the Commission for consideration topics belonging to various fields of international law.¹²

12. The functions of the Commission are set out in Chapter II of its Statute.¹³ The opening article of that chapter, article 15, makes a distinction "for convenience" between the expressions "progressive development" (as meaning "the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States") and "codification" (as meaning "the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine"). Having made such a distinction, the Statute enumerates separately the methods to be followed by the Commission, on the one hand with regard to the progressive development of international law, and on the other with regard to the codification of international law. The general method for the progressive development of international law is provided in article 16 of the Statute. Provision is made in article 17 for a specific method with respect to the progressive development of international law in certain cases. The method for the codification of international law is outlined in articles 18 to 23 of the Statute.

13. In practice, however, the functions performed by the Commission proved not to require a method for "codification" and another for "progressive development", the draft articles prepared on particular topics incorporating and combining elements of both *lex lata* and *lex ferenda*. When submitting its final draft articles on the *law of the sea* to the General Assembly in 1956, the Commission made the following observations to that effect:

25. When the International Law Commission was set up, it was thought that the Commission's work might have two different aspects: on the one hand the "codification of international law"

¹⁰ At its first two sessions, the Commission, pursuant to article 24 of its Statute, considered ways and means for making the evidence of customary international law more readily available and made recommendations thereon to the General Assembly. The publications entrusted to the Codification Division referred to above had their origin in the said recommendations of the Commission and in actions taken by the General Assembly.

¹¹ During its first thirty-one sessions, however, the Commission, with the endorsement of the General Assembly, has worked almost exclusively in the field of public international law.

¹² See para. 21 below.

¹³ Reproduced as an annex to this document.

or, in the words of article 15 of the Commission's Statute, "the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine"; and on the other hand, the "progressive development of international law" or "the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States".

26. In preparing its rules on the law of the sea, the Commission has become convinced that, in this domain at any rate, the distinction established in the statute between these two activities can hardly be maintained. Not only may there be wide differences of opinion as to whether a subject is already "sufficiently developed in practice", but also several of the provisions adopted by the Commission, based on a "recognized principle of international law", have been framed in such a way as to place them in the "progressive development" category. Although it tried at first to specify which articles fell into one and which into the other category, the Commission has had to abandon the attempt, as several do not wholly belong to either.

27. In these circumstances, in order to give effect to the project as a whole, it will be necessary to have recourse to conventional means.¹⁴

14. Another statement underlining the close inter-relationship between "codification" and "progressive development" in the Commission's work may be found in the following general considerations made by the Commission when submitting to the General Assembly its final draft articles on *consular relations*:

29. The codification of the international law on consular intercourse and immunities involves another special problem arising from the fact that the subject is regulated partly by customary international law and partly by a great many international conventions which today constitute the principal source of consular law. A draft which codified only the international customary law would perforce remain incomplete and have little practical value. For this reason, the Commission agreed, in accordance with the Special Rapporteur's proposal, to base its draft articles not only on customary international law, but also on the material furnished by international conventions, especially consular conventions.

30. An international convention admittedly establishes rules binding the contracting parties only, and based on reciprocity; but it must be remembered that these rules become generalized through the conclusion of other similar conventions containing identical or similar provisions, and also through the operation of the most-favoured-nation clause. The Special Rapporteur's analysis of these conventions revealed the existence of rules widely applied by States, which, if incorporated in a draft codification, may be expected to obtain the support of many States.

31. If it should not prove possible, on the basis of the two sources mentioned—conventions and customary law—to settle all controversial and obscure points, or if there remain gaps, it will be necessary to have recourse to the practice of States as evidenced by internal regulations concerning the organization of the consular service and the status of foreign consuls, in so far, of course, as these are in conformity with the fundamental principles of international law.

32. It follows from what has been said that the Commission's work on this subject is both codification and progressive development of international law in the sense in which these concepts are defined in article 15 of the Commission's statute.

The draft to be prepared by the Commission is described by the Special Rapporteur in his report in these words:

"A draft set of articles prepared by that method will therefore entail codification of general customary law, of the concordant rules to be found in most international conventions, and of any provisions adopted under the world's main legal systems which may be proposed for inclusion in the regulations."¹⁵

15. In connection with its most recent final draft articles, the Commission reiterated its observations regarding the incorporation into the draft articles in question of elements of both "codification" and "progressive development":

Law of treaties (1966)

The Commission's work on the law of treaties constitutes both codification and progressive development of international law in the sense in which those concepts are defined in article 15 of the Commission's Statute, and, as was the case with several previous drafts, it is not practicable to determine into which category each provision falls. Some of the commentaries, however, indicate that certain new rules are being proposed for the consideration of the General Assembly and of Governments.¹⁶

Special missions (1967)

In preparing the draft articles, the Commission has sought to codify the modern rules of international law concerning special missions, and the articles formulated by the Commission contain elements of progressive development as well as of codification of the law.¹⁷

Representation of States in their relations with international organizations (1971)

The Commission's work on the representation of States in their relations with international organizations constitutes both codification and progressive development of international law in the sense in which those concepts are defined in article 15 of the Commission's Statute and, as in the case of several previous drafts, it is not practicable to determine into which category each provision falls. Some of the commentaries, however, indicate that certain new rules are being proposed for the consideration of the General Assembly and of Governments.¹⁸

Succession of States in respect of treaties (1974)

The Commission's work on succession of States in respect of treaties constitutes both codification and progressive development of international law in the sense in which those concepts are defined in article 15 of the Commission's Statute. The articles it has formulated contain elements of both progressive development as well as of codification of the law and, as in the case of several previous drafts, it is not practicable to determine into which category each provision falls.¹⁹

Most-favoured-nation clauses (1978)

... the Commission wishes to indicate that it considers that its work on most-favoured-nation clauses constitutes both codification and progressive development of international law in the sense in which those concepts are defined in article 15 of the

¹⁵ *Yearbook* ... 1961, vol. II, p. 91, document A/4843, paras. 29–32.

¹⁶ *Yearbook* ... 1966, vol. II, p. 177, document A/6309/Rev.1, Part II, para. 35.

¹⁷ *Yearbook* ... 1967, vol. II, p. 346, document A/6709/Rev.1, para. 23.

¹⁸ *Yearbook* ... 1971, vol. II (Part One), p. 283, document A/8410/Rev.1, para. 50.

¹⁹ *Yearbook* ... 1974, vol. II (Part One), p. 174, document A/9610/Rev.1, para. 83.

¹⁴ *Yearbook* ... 1956, vol. II, pp. 255–256, document A/3159, paras. 25–27.

Commission's Statute. The articles it has formulated contain elements both of progressive development and of codification of the law and, as in the case of several previous drafts, it is not practicable to determine into which category each provision falls.²⁰

16. As a consequence of the considerations discussed in the preceding paragraphs, the distinction made "for convenience" in the Statute between the method applicable to "progressive development" and the method applicable to "codification" has not been strictly maintained in the practice of the Commission. Actually a consolidated procedure based on the relevant provisions of the Statute has evolved, the Commission devising the most adequate and effective method and form of identifying and embodying the rules of international law relating to a given topic—draft articles prepared in a form to render them capable of serving as a basis for the conclusion of an international convention, should this be decided upon in an appropriate way. Similarities in the Statute between the methods it provides for "progressive development" and for "codification" have, on the other hand, facilitated the development of the consolidated procedure. The achievements of the Commission so far, the authority attached to its work, and the high degree of support and acceptability that its draft articles receive in the Sixth Committee of the General Assembly and in conferences of plenipotentiaries are the best proof of the merits of the consolidated method followed by the Commission. It must also be added that the Commission had applied that method in a flexible manner, making, within the general framework provided for by it, the adjustments that the specific features of the topic concerned or other circumstances demand. Moreover, the Commission has constantly under review its methods and techniques of work, as requested by the General Assembly,²¹ taking into account the comments or suggestions made in that respect in the Sixth Committee or in the Commission itself with a view to speeding-up or streamlining its procedure to respond more readily to the tasks entrusted to it.

17. Governments have an important role in every stage of the work of codification and progressive development carried out by the Commission. Individually, they furnish information at the outset of the Commission's work and comment upon its drafts, and collectively, through the General Assembly, they decide sometimes upon the initiation or priority of the work and always upon its outcome. The Statute of the Commission contains provisions designed to give Governments an opportunity to make their views known at each stage of the Commission's work. Thus, with regard to progressive development, article 16 (c)

requires the Commission, at the outset of its work, to circulate a questionnaire to Governments inviting them to supply data and information relevant to items included in the plan of work, and article 16 (g) requires the publication of a Commission document containing its drafts along with explanations, supporting materials and the information supplied by Governments in reply to the questionnaire. Under article 16 (h) and (i), Governments are then invited to submit comments on this document, and these must be taken into consideration by the Commission in preparing its final drafts. Similar provisions appear also in regard to codification in articles 19, 21 and 22.

18. Moreover, although the Statute of the Commission is silent on the matter, the Commission has from its first session submitted to the General Assembly a report on the work done at each of its sessions. The well-established practice of annually considering the Commission's reports in the Sixth Committee has facilitated the development of the existing relationship between the General Assembly and the Commission. The Sixth Committee has indicated broad policy guidelines when assigning topics to the Commission or when giving priority to some topics, and has exercised its judgement as to action in regard to the Commission's final drafts and recommendations. The policy supervision of the Sixth Committee, however, has tended to be exercised with great restraint. The fact that the Commission is a subsidiary organ of the General Assembly has not prevented wide acceptance in the Sixth Committee of the view that the Commission should have a substantial degree of autonomy in the exercise of its own functions and that it should not be subject to detailed directives from the Assembly. On the other hand, at each of its sessions the Commission takes fully into consideration the recommendations addressed to it by the General Assembly and the observations made in the Sixth Committee in connection with the Commission's work in general or its specific drafts.

19. Working independently, although in close contact with States through the Sixth Committee of the General Assembly and the procedure of written comments, the Commission is enabled to formulate texts embodying an objective determination of the legal rules governing the particular area of international relations concerned as well as taking into account the different trends existing today in the principal legal systems of the world, so as to facilitate the progressive development of international law in a coherent manner and in accordance with the current interests, structures and needs of the international community as a whole. In this connection it should be noted that, in accordance with article 26 of its Statute, the Commission has established and maintained a permanent relationship of co-operation with regional legal bodies such as the Inter-American Juridical Committee, the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Arab Commission for International Law.

²⁰ *Yearbook ... 1978*, vol II (Part Two), p. 16, document A/33/10, para. 72.

²¹ See, for example, General Assembly resolutions 31/97 of 15 December 1976, 32/151 of 19 December 1977 and 33/139 of 19 December 1978.

C. Programme of work of the International Law Commission

20. At its first session, in 1949, the Commission reviewed, pursuant to the relevant provisions of its Statute and on the basis of a Secretariat memorandum entitled *Survey of international law in relation to the work of codification of the International Law Commission*,²² 25 topics for possible inclusion in a list of topics for study. Following its consideration of the matter, the Commission drew up a provisional list of 14 topics selected for codification,²³ as follows:

- (1) Recognition of States and Governments;
- (2) Succession of States and Governments;
- (3) Jurisdictional immunities of States and their property;
- (4) Jurisdiction with regard to crimes committed outside national territory;
- (5) Regime of the high seas;
- (6) Regime of territorial waters;
- (7) Nationality, including statelessness;
- (8) Treatment of aliens;
- (9) Right of asylum;
- (10) Law of treaties;
- (11) Diplomatic intercourse and immunities;
- (12) Consular intercourse and immunities;
- (13) State responsibility;
- (14) Arbitral procedure.²⁴

21. It was understood that the foregoing list of topics 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.²⁵ By its resolution 373 (IV) of 6 December 1949, the General Assembly approved part I of the Commission's report covering its first session, which included the list of topics provisionally selected by the Commission for codification. Since 1949, the General

Assembly has referred to the Commission for study, in some cases following an earlier initiative of the Commission itself, the following topics or items:

- Draft Declaration on Rights and Duties of States;
- Formulation of the Nürnberg principles;
- Question of international criminal jurisdiction;
- Reservations to multilateral conventions;
- Question of defining aggression;
- Draft Code of Offences against the Peace and Security of Mankind;
- Relations between States and international organizations;
- Juridical regime of historic waters, including historic bays;
- Special missions;
- Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations;
- Most-favoured-nation clause;
- Question of treaties concluded between States and international organizations or between two or more international organizations;
- The law of the non-navigational uses of international watercourses;
- Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law;
- International liability for injurious consequences arising out of acts not prohibited by international law;
- Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier;
- Review of the multilateral treaty-making process.

In several cases, topics listed above have been referred by the General Assembly to the Commission, becoming new or separate topics on its programme of work, following consideration by the Commission of the parent topic included in the 1949 list. Such was the case, for instance, with respect to topics such as relations between States and international organizations (General Assembly resolution 1289 (XIII) of 5 December 1958), judicial regime of historic waters, including historic bays (General Assembly resolution 1453 (XIV) of 7 December 1959), special missions (General Assembly resolution 1687 (XVI) of 18 December 1961), the most-favoured-nation clause (General Assembly resolution 2272 (XXII) of 1 December 1967), question of treaties concluded between States and international organizations or between two or more international organizations (General Assembly resolution 2501 (XXIV) of 12 November 1969) and international liability for injurious consequences arising out of acts not prohibited by international law (General Assembly resolution 3071 (XXVIII) of 30 November 1973). In some of those cases, the General Assembly's recommendation followed its consideration of a resolution previously adopted to that effect in a codification conference of plenipotentiaries: juridical regime of historic waters, including historic bays; special missions; and question of treaties concluded between States and international

²² United Nations publication, Sales No. 1948.V.I (I).

²³ The sense of the Commission was that, while the codification of the whole of international law was the ultimate objective, it was desirable for the present to begin work on the codification of a few of the topics, rather than to discuss a general systematic plan which might be left to later elaboration (*Yearbook . . . 1949*, p. 280, document A/CN.4/13, para. 14).

²⁴ *Ibid.*, p. 281, para. 16. The eleven topics not selected by the Commission 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; laws of war (*ibid.*, pp. 280–281, para. 15).

²⁵ In pursuance of General Assembly resolution 899 (IX) of 14 December 1954, the Commission grouped together systematically all the rules it had adopted concerning the "regime of the high seas" and the "regime of territorial waters" (two topics included in the 1949 list) with those which it had earlier elaborated regarding the continental shelf, the contiguous zone and the conservation of the living resources of the sea in a single final consolidated draft entitled "Articles concerning the law of the sea" (*Yearbook . . . 1956*, vol. II, pp. 256 *et seq.*, document A/3159, chap. II, sect. II).

organizations or between two or more international organizations. In other instances, the referral of a topic by the General Assembly to the Commission was made quite independently of previous work of the Commission on a parent topic or of a resolution adopted by a codification conference. This was the case, for example, with regard to topics such as the law of the non-navigational uses of international water-courses (resolution 2669 (XXV) of 8 December 1970); question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law (resolution 2780 (XXVI) of 3 December 1971) and status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (resolutions 31/76 of 13 December 1976 and 33/139 and 33/140 of 19 December 1978).

22. The topics or items referred by the General Assembly to the Commission, together with those on the 1949 list, have constituted the Commission's total programme of work at any one time.²⁶ The inclusion of a topic or item in the programme of work of the Commission does not necessarily imply, however, its immediate study by the Commission. Actual consideration by the Commission of a topic or item on its programme results, rather, from further decisions of the General Assembly and of the Commission as to the priority to be given to the study of the topic or item concerned. Topics or items selected for priority consideration constitute, while under study, "the current programme of work" of the Commission.

23. The programme of work has been reviewed from time to time by the Commission with a view to bringing it up to date, taking into account General Assembly recommendations and the international community's current needs, and discarding those topics which are no longer suitable for treatment. Such a review has sometimes taken place at the request of the General Assembly. In 1962, for example, the Commission considered its future programme of work pursuant to General Assembly resolution 1686 (XVI) of 18 December 1961, which contained, *inter alia*, a recommendation to the Commission to that effect. The resolution had been adopted by the General Assembly in the context of an item entitled "Future work in the field of the codification and progressive development of international law", discussed in the Sixth Committee at the fifteenth and sixteenth sessions of the General Assembly. Another overall review of the Commission's programme of work took place in the Commission in 1973, on the basis of a working paper entitled "Survey of International Law" prepared by the Secretary-

General in 1971.²⁷ In recent years, the Enlarged Bureau of the Commission and its Planning Group have sometimes been entrusted with the task of making recommendations relating to the Commission's current programme of work going beyond the organization of work of the forthcoming session of the Commission. It was, for example, on the basis of recommendations made by the Enlarged Bureau and its Planning Group that the Commission concluded, in 1977, that it was advisable to place on its active or current programme the topic on the 1949 list entitled "Jurisdictional immunities of States and their property" as well as the topic entitled "International liability for injurious consequences arising out of acts not prohibited by international law" included in 1974 as a separate topic on the programme of work of the Commission, pursuant to General Assembly resolution 3071 (XXVIII) of 30 November 1973.²⁸ On the same occasion the Commission agreed that two topics on its programme of work, namely the "Right of asylum" and the "Juridical regime of historic waters, including historic bays", did not appear to require active consideration by the Commission in the near future.²⁹ In its resolution 32/151 of 19 December 1977, the General Assembly invited the Commission to commence work on the topics "Jurisdictional immunities of States and their property" and "International liability for injurious consequences arising out of acts not prohibited by international law".

D. Role of the Commission and its contribution to the treaty-making process through the preparation of draft articles

24. With the ever-increasing importance of treaties as a source of international law and their fundamental role in the history of international relations, an importance and role acknowledged in the preamble of the Vienna Convention on the Law of Treaties,³⁰ the conclusion of multilateral agreements has become the main device in the legal regulation of relations between States. The process of progressive development of international law and its codification could not but follow such a general trend. Thus, in exercising the functions attributed to it by Article 13, paragraph 1 (a), of the Charter of the United Nations, the General Assembly has increasingly called for the conclusion of multilateral treaties as a means of promoting the progressive development of international law and its

²⁶ A topic the Commission considered but which was not included in the 1949 list or referred to it by the General Assembly was "Ways and means for making the evidence of customary law more readily available". This topic was considered by the Commission on the basis of article 24 of its Statute.

²⁷ *Yearbook ... 1971*, vol. II (Part Two), p. 1, document A/CN.4/245.

²⁸ *Yearbook ... 1977*, vol. II (Part Two), document A/32/10, paras. 108 and 110.

²⁹ *Ibid.*, para. 109.

³⁰ For the text of the Convention, 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.

codification and recommended that articles prepared by the Commission serve as a basis for the conclusion of codification conventions. As a result the preparation of draft articles by the International Law Commission, a primary task inherent in its functions, has become an undertaking frequently leading to the elaboration of multilateral treaties, constituting to that extent part and parcel of the contemporary multilateral treaty-making process.

25. The contribution of the Commission to the multilateral treaty-making process is, however, determined not only by its object (the promotion of the progressive development of international law and its codification), but also by the specific tasks entrusted to the Commission by its Statute. It is not for the Commission to elaborate multilateral treaties or conventions, but rather to prepare drafts susceptible of providing a basis for the elaboration of such treaties or conventions by States, should the General Assembly decide to make a recommendation to that effect. The contribution of the Commission to the treaty-making process in the sense indicated, namely through the preparation of draft articles, is, on the other hand, expressly recognized in the Statute of the Commission in connection with the progressive development of international law as well as with its codification. Thus article 15 of the Statute states that the expression "progressive development of international law" is used for convenience as meaning "the preparation of draft conventions on subjects which have not yet been regulated by international law". Furthermore, according to article 17 of its Statute, the Commission "shall also consider proposals and draft multilateral conventions submitted by Members of the United Nations, the principal organs of the United Nations other than the General Assembly, specialized agencies, or official bodies established by inter-governmental agreement to encourage the progressive development of international law and its codification, and transmitted to it for that purpose by the Secretary-General". As regards the codification of international law, article 23 of the Statute empowers the Commission to recommend to the General Assembly that it recommend Commission drafts to States with a view to the conclusion of a convention or that a conference be convened to conclude a convention.

26. The record of Commission activities over more than thirty years of its existence includes several drafts prepared by the Commission on the basis of which important multilateral conventions have been concluded, testifying to the progressive development of international law and its codification in the respective fields. Those conventions, and their related instruments, are the following:

- Conventions on the Law of the Sea and Optional Protocol* (1958)
 - Convention on the Continental Shelf
 - Convention on Fishing and Conservation of the Living Resources of the High Seas
 - Convention on the High Seas
 - Convention on the Territorial Sea and the Contiguous Zone

- Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes

- Convention on the Reduction of Statelessness* (1961)

- Vienna Convention on Diplomatic Relations and Optional Protocols* (1961)

- Vienna Convention on Diplomatic Relations
- Optional Protocol concerning Acquisition of Nationality
- Optional Protocol concerning the Compulsory Settlement of Disputes

- Vienna Convention on Consular Relations and Optional Protocols* (1963)

- Vienna Convention on Consular Relations
- Optional Protocol concerning Acquisition of Nationality
- Optional Protocol concerning the Compulsory Settlement of Disputes

- Convention on Special Missions and Optional Protocol* (1969)

- Convention on Special Missions
- Optional Protocol concerning the Compulsory Settlement of Disputes

- Vienna Convention on the Law of Treaties* (1969)

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents* (1973)

- Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character* (1975)

- Vienna Convention on Succession of States in Respect of Treaties* (1978)

27. The four conventions on the Law of the Sea of 1958, the Convention on the Reduction of Statelessness of 1961, the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, the Vienna Convention on the Law of Treaties of 1969 and the Vienna Convention on Succession of States in Respect of Treaties of 1978 were all elaborated on the basis of draft articles prepared by the Commission as a result of the study of topics included in the list of topics selected by the Commission for codification in 1949.³¹ The three other conventions listed in the preceding paragraph—the Convention on Special Missions of 1969, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 1973, and the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 1975—were elaborated on the basis of draft articles prepared by the Commission following the study of topics in addition to those contained in the 1949 list.

28. The Convention on Special Missions, for example, originated from an initiative taken by the Commission when submitting its final draft articles on diplomatic intercourse and immunities to the General Assembly in 1958. In the introduction to the said draft articles, the Commission singled out the problem of "ad hoc diplomacy" covering, *inter alia*, special missions sent to a State for limited purposes. In 1960, it adopted three draft articles constituting a pre-

³¹ See para. 20 above.

liminary survey of the subject-matter, which were referred by General Assembly resolution 1504 (XV) of 12 December 1960 to the United Nations Conference on Diplomatic Intercourse and Immunities, to be considered by it together with the draft articles adopted by the Commission on diplomatic intercourse and immunities. Following a recommendation of the Conference that the General Assembly refer the subject of special missions to the Commission for further study "in the light of the Vienna Convention on Diplomatic Relations", the General Assembly, in resolution 1687 (XVI) of 18 December 1961, requested the Commission to do so and to report back to the General Assembly. Pursuant to that request, the Commission prepared draft articles on the topic and submitted them to the General Assembly in 1967 with a recommendation that appropriate measures be taken "for the conclusion of a convention on special missions".³² The General Assembly, in its resolution 2273 (XXII) of 1 December 1967, included an item entitled "Draft Convention on Special Missions" in the agenda of its 1968 and 1969 sessions "with a view to the adoption of such a convention by the General Assembly". At its twenty-fourth session, the Assembly completed the elaboration of the convention and adopted it by resolution 2530 (XXIV) of 8 December 1969.

29. The topic "Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law" was brought to the attention of the General Assembly in 1971 by the Commission. By its resolution 2780 (XXVI) of 3 December 1971, the General Assembly requested the Commission to study the topic in question as soon as possible, in the light of the comments of Member States, with a view to preparing a set of draft articles dealing with offences committed against diplomats and other persons entitled to special protection under international law for submission to the General Assembly. Pursuant to this request, the Commission prepared the draft articles in 1972, on the basis of which the General Assembly elaborated the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, which it adopted by resolution 3166 (XXVIII) of 14 December 1973.

30. The topic "Relations between States and inter-governmental organizations" was included in the programme of work of the Commission in accordance with a request made by the General Assembly in resolution 1289 (XIII) of 5 December 1958, following a reference to the question made by the Commission in the report it submitted to the Assembly at that time. By its resolution 2780 (XXVI) of 3 December 1971, the General Assembly expressed its desire that an international convention be elaborated and concluded

expeditiously on the basis of the draft articles on the first part of the topic adopted by the Commission in 1971 (Representation of States in their Relations with International Organizations) and in the light of the comments and observations submitted in accordance with that resolution. By its resolutions 2966 (XXVII) of 14 December 1972, and 3072 (XXVIII) of 30 November 1973, the General Assembly made arrangements for the convening of an international conference. The Conference met in 1975 and adopted the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.

31. The record of codification conventions concluded on the basis of draft articles prepared by the Commission prompted the General Assembly, on the occasion of the twenty-fifth anniversary of the United Nations, to express in its resolution 2634 (XXV) of 12 November 1970 its profound gratitude to the Commission "for its outstanding contribution to the achievements of the Organization during this period, particularly through the preparation of drafts which have served as basis for the adoption of important codification conventions". In addition to the codification conventions already concluded on the basis of draft articles it had prepared, the Commission, in 1978, adopted its final draft articles on most-favoured-nation clauses and submitted them to the General Assembly with a recommendation that the draft "should be recommended to Member States with a view to the conclusion of a convention on the subject".³³ Topics on the 1949 list or added subsequently to the programme of work of the Commission by actions taken by the General Assembly and by the Commission, or aspects thereof, currently under study in the Commission might eventually result in, if so decided by the General Assembly and States, the adoption of new codification conventions in a relatively near future. Those topics are: State responsibility; Succession of States in respect of matters other than treaties; question of treaties concluded between States and international organizations or between two or more international organizations; the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier; the law of the non-navigational uses of international watercourses; jurisdictional immunities of States and their property; international liability for injurious consequences arising out of acts not prohibited by international law; and relations between States and international organizations (second part of the topic). Sets of draft articles on State responsibility for internationally wrongful acts, succession of States in matters other than treaties, and treaties concluded between States and international organizations or between international organizations are already in an advanced stage of preparation within the Commission. Moreover, the General Assembly, in

³² *Yearbook . . . 1967*, vol. II, p. 347, document A/6709/Rev.1, para. 33.

³³ *Yearbook . . . 1978*, vol. II (Part Two), p. 16, document A/33/10, para. 73.

its resolution 33/139 of 19 December 1978, has recommended that the Commission should continue the study concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, in the light of comments made or to be submitted by Governments "with a view to the possible elaboration of an appropriate legal instrument".

32. It should further be recalled that contributions of the Commission to the multilateral treaty-making process may also result from the consideration of proposals and draft multilateral conventions submitted to it pursuant to article 17 of its Statute, by, *inter alia*, principal organs of the United Nations other than the General Assembly.

At its second and third sessions, in 1950 and 1951, the Commission was notified of resolutions adopted by the Economic and Social Council of the United Nations (resolutions 304 D (XI) of 17 July 1950 and 319 B III (XI) of 11 August 1950), in which the Council requested the Commission to deal with two subjects: the nationality of married women and the elimination of statelessness. The Commission dealt with these subjects in connection with the comprehensive topic of "nationality, including statelessness", which had already been selected for codification by the Commission in 1949. The Special Rapporteur for the topic "nationality, including statelessness" prepared, in 1952, a draft convention on the nationality of married persons. The Commission decided, however, that the question of the nationality of married women could only be considered "in the context, and as an integral part, of the whole subject of nationality including statelessness" and did not therefore take further action with regard to the draft. Thereafter the question of the nationality of married women was considered by other United Nations organs, including the Commission on the Status of Women, culminating in the adoption on 29 January 1957 of the Convention on the Nationality of Married Women.

In 1953, at its fifth session, the Commission on the basis of draft conventions prepared by the Special Rapporteur on the topic, adopted on first reading a draft Convention on the Elimination of Future Statelessness and a draft Convention on the Reduction of Future Statelessness and invited Governments to submit their comments thereon. The Economic and Social Council approved the principles of the two draft conventions by its resolution 526 B (XVII) of 26 April 1954. The Commission then revised the two draft conventions, in the light of the comments received from Governments, and in 1954 submitted its final texts of the two draft conventions to the General Assembly. The General Assembly, in resolution 896 (IX) of 4 December 1954, expressed its desire that an international conference of plenipotentiaries be convened to conclude a convention for the reduction or elimination of future statelessness as soon as at least twenty States had communicated to the Secretary-General their willingness to co-operate in such a conference. The United Nations Conference on the Elimination or

Reduction of Future Statelessness met in 1959 and 1961, and on 30 August 1961 adopted the Convention on the Reduction of Statelessness.

33. Lastly, it should be pointed out that the contribution of the Commission to the multilateral treaty-making process has not been confined to the preparation of draft articles that have served as a basis for the conclusion of codification conventions in particular topics of international law. In preparing its 1966 draft articles on the law of treaties, which served as a basis for the conclusion of the Vienna Convention on the Law of Treaties of 1969, the Commission made a contribution to the codification and development of the very rules of treaty-making. The convention embodies, *inter alia*, a number of rules of direct relevance to the treaty-making process, particularly those in Part II, which sets out the rules governing the conclusion and entry into force of treaties.³⁴ The results of the work of the Commission on another topic which was on the 1949 list, arbitral procedure, may in some way also be considered as being relevant to treaty-making, both multilateral and bilateral. The Commission prepared in 1958 a set of draft articles entitled "Model Rules on Arbitral Procedure" which, according to the comments contained in the report of the Commission, would have no binding effect on States unless accepted by them and save to the extent that each one is accepted by them in conventions of arbitration or in a *compromis*. Having taken note of the Commission's comments and the relevant chapter of its report, the General Assembly, in its resolution 1262 (XIII) of 14 November 1958, brought the draft articles on arbitral procedure "to the attention of Member States for their consideration and use, in such cases and to such extent as they consider appropriate, in drawing up treaties of arbitration or *compromis*."³⁵

E. Consolidated methods and techniques of work of the Commission as applied in general to the preparation of draft articles

34. The methods and techniques followed by the Commission as applied to the preparation of draft articles are based on the provisions embodied in its Statute as well as on the arrangements governing its sessions. The object, functions and composition of the Commission as well as the established procedural stages for codifying and progressively developing a given topic have a direct bearing on such methods and techniques. However, out of the need to incorporate

³⁴ Part II of the draft articles on treaties concluded between States and international organizations or between international organizations, currently under preparation, also sets out rules governing the conclusion and entry into force of the treaties falling within the scope of the draft articles.

³⁵ It may be recalled that originally the Commission, at its fifth session (1953), adopted a draft convention on arbitral procedure. See para. 80 below.

elements of both *lex lata* and *lex ferenda* in the rules to be formulated, the Commission, as indicated above,³⁶ follows generally speaking a consolidated system of methods and techniques which incorporates the various elements set forth in articles 16 to 23 of its Statute.

35. Three main stages in the consideration of a given topic may be distinguished within the consolidated method followed by the Commission: a first preliminary stage, devoted mainly to the organization and planning of the work, the appointment of a Special Rapporteur and the gathering of relevant materials; a second stage, during which the Commission carries out the first reading of the draft articles submitted by the Special Rapporteur; a third and final stage, devoted to a second reading of the provisionally adopted draft articles in the light of the comments and observations made by Governments, as well as intergovernmental organizations concerned when appropriate. The role performed by the Special Rapporteur is of paramount importance, particularly during the second and third stages referred to above. The work done by the Drafting Committee during those stages is also essential. The Secretariat is also entrusted with various tasks and is frequently called upon to make contributions, especially during the preliminary and second stages.

1. PRELIMINARY STAGE OF THE CONSIDERATION OF A TOPIC

(a) *Plan of work on a topic selected for consideration and appointment of a Special Rapporteur*

36. After the decision has been taken to undertake work on a topic already placed on its programme of work, the Commission engages in a discussion as to when and how to deal with it. This discussion normally results in the appointment of a Special Rapporteur for the topic in question. A discussion on the plan of work on a topic may also take place when, notwithstanding a previous study of the topic, it is decided that its codification should be approached *ex novo* or differently.

37. On a number of occasions, the initial appointment or the replacement of a Special Rapporteur has been preceded by the assignment of the topic to a sub-committee or working group for examination and establishment of a plan of work. For example, in 1962, the Commission appointed sub-committees on State responsibility and on the succession of States and Governments. At its 1963 session, the Commission approved the conclusions and recommendations, including a plan of work, set out in the report of each sub-committee and thereafter appointed Special Rapporteurs for the two topics.³⁷ The appointment of a

Special Rapporteur has also been preceded by the referral of the topic to a sub-committee or working group on the following topics under current consideration: the question of treaties concluded between States and international organizations or between two or more international organizations;³⁸ the law of the non-navigational uses of international watercourses;³⁹ jurisdictional immunities of States and their property;⁴⁰ and international liability for injurious consequences arising out of acts not prohibited by international law.⁴¹ In all the cases referred to in the present paragraph, those members of the Commission who had served as chairmen of the sub-committees or working groups concerned were appointed Special Rapporteurs for the respective topics after the Commission had approved the conclusions and recommendations set out in the reports of those bodies. Members of sub-committees or working groups are frequently requested to submit written contributions, in the form of memoranda or working papers, in order to facilitate the work of such sub-committees or working groups.⁴²

38. New arrangements for dealing with a topic which has been the subject of an earlier plan of work may be made by the Commission when, upon reflection, it seems appropriate to do so. For example, in 1963 a Special Rapporteur was appointed for the three aspects of the topic "Succession of States and Governments" identified by the Commission following the report of the Sub-committee on Succession of States and Governments. However, in 1967, two of the three aspects of that topic were assigned each to a Special Rapporteur, in order to advance the study of the topic more rapidly. The third aspect was left aside for the time being, without having been so assigned. This re-arrangement of the original plan greatly facilitated the finalization by the Commission, in 1974, of the

³⁸ *Yearbook ... 1971*, vol. II (Part One), pp. 347-348 document A/8410/Rev.1, paras. 114-118.

³⁹ *Yearbook ... 1974*, vol. II (Part One), pp. 300-301 document A/9610/Rev.1, paras. 146-159.

⁴⁰ *Yearbook ... 1978*, vol. II (Part Two), pp. 152-153 document A/33/10, paras. 179-190.

⁴¹ *Ibid.*, pp. 149-150, document A/33/10, paras. 170-178, and chap. VIII, sect. C, annex.

⁴² Thus, for example, members of the Sub-committees on State responsibility and on succession of States and Governments submitted memoranda and working papers printed in the *Yearbook of the Commission (Yearbook ... 1963*, vol. II, pp. 237 *et seq.*, document A/5509, annex I, append. II; and *ibid.*, pp. 282 *et seq.*, annex II, append. II). The Chairman of the Sub-committee on treaties concluded between States and international organizations or between two or more international organizations sent to the members of the Sub-committee a questionnaire requesting their views on the methods of treating the topic and its scope, the replies to which, together with the questionnaire, are printed in the Commission's *Yearbook (Yearbook ... 1971*, vol. II (Part Two), pp. 185 *et seq.*, document A/CN.4/250). Members of the Sub-committee on the law of non-navigational uses of international watercourses also submitted memoranda setting forth suggestions on the contents of a working plan for the topic, as well as on organizational and substantive matters having a bearing on such a plan (*Yearbook ... 1974*, vol. II (Part One), p. 301, document A/9610/Rev.1, chap. V, annex, para. 5).

³⁶ Paras. 13 *et seq.*

³⁷ See *Yearbook ... 1963*, vol. II, pp. 223-225, document A/5509, paras. 51-61, and *ibid.*, pp. 227 and 260, annexes I and II.

draft articles on succession of States in respect of treaties as well as the completion, at the thirty-first session, of the first reading of the draft articles on succession of States in respect of matters other than treaties.

39. The Special Rapporteur is appointed by the Commission from among its members. Once appointed, the Special Rapporteur is expected to submit to the Commission a substantive report on the topic entrusted to him. However, at the Commission's request or on his initiative, his initial presentation may be of a general and exploratory character, in the form of a working paper or preliminary report.

40. It has been the established practice in the Commission that a newly appointed Special Rapporteur deals with his topic as he deems it most appropriate. The Commission, however, on the occasion of the appointment of the Special Rapporteur or upon his submission of a working paper or a preliminary or further report, may engage in a general debate or discussion aimed at giving him guidelines or instructions on aspects such as the manner of treatment, parts of the subject to be dealt with and priorities to be given to them, especially in the light of relevant decisions of the General Assembly or in cases where the topic has been already dealt with by a previous Special Rapporteur or if it is related to subjects already dealt with or being dealt with by the Commission. For example, at its fifteenth session (1963), the Commission, while approving the recommendations contained in the reports of the Sub-Committees on State Responsibility and on the Succession of States and Governments, pointed out that the questions listed in the report of the Sub-Committee on State Responsibility were intended solely to serve as an *aide-mémoire* for the Special Rapporteur and that the report of the Sub-Committee on Succession of States and Governments laid down guiding principles for the Special Rapporteur, who, however, would not be obliged to conform to them in detail.⁴³ On the other hand, a newly appointed Special Rapporteur may feel the need for guidelines or instructions and request them from the Commission or its members. This occurred, for instance, in 1956 when the Special Rapporteur for the topic of consular relations submitted a questionnaire to other members of the Commission with a view to obtaining their opinion thereon for his guidance in the preparation of his first report.⁴⁴ Another example occurred in 1961 on the occasion of the appointment of the fourth Special Rapporteur on the topic of the law of treaties. The newly appointed Special Rapporteur requested guidance of the Commission. The Commission, in response, held a debate which revealed the main

approaches to the subject which the Special Rapporteur might follow.⁴⁵

41. For the preparation of his initial report or reports, the Special Rapporteur has at his disposal the data and information furnished by Governments and, when appropriate, intergovernmental organizations, as well as the substantive assistance of the Secretariat.⁴⁶ For the preparation of subsequent reports, the Special Rapporteur has, in addition, the benefit of the discussions held in the Commission on the basis of his initial reports and the subsequent conclusions and decisions of the Commission; the comments and observations of representatives of Member States made in the Sixth Committee of the General Assembly in the course of its consideration of the item concerning the report that the Commission submits annually to the Assembly; the reports of the Sixth Committee to the General Assembly on its consideration of that item; and the relevant recommendations contained in the resolutions adopted by the General Assembly.⁴⁷ The Special Rapporteur may also consult with experts with a view to elucidating technical questions.⁴⁸

(b) *Request for data and information from Governments*

42. Following the decision to undertake work on a given topic, the Commission usually asks the Secretary-General to address a request to Governments to furnish it with data and information relevant to the topic in question, which may take the form of texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other materials. The request may also take the form of a questionnaire elaborated by the Commission. A recent example of this method of gathering data and information is provided by the Commission's questionnaire transmitted to Governments of Member States in 1975, through the Secretary-General, in connection with the study of the law of non-navigational uses of international watercourses.⁴⁹ Questionnaires may also be prepared by Special Rapporteurs in consultation with

⁴³ *Yearbook . . . 1961*, vol. I, p. 99, 597th meeting, paras. 28-35; pp. 247 *et seq.*, 620th meeting; 621st meeting, pp. 254 *et seq.*, paras. 1-47; and *ibid.*, vol. II, p. 128, document A/4843, para. 39.

⁴⁶ See para. 43 below.

⁴⁷ For reports submitted by the Special Rapporteur for the purpose of the second reading by the Commission of a set of draft articles, the Special Rapporteur also has available to him the written comments and observations on the preliminary draft articles received from Governments and, if requested, intergovernmental organizations (see para. 50 below).

⁴⁸ See *Yearbook . . . 1954*, vol. II, document A/2693, paras. 60 and 63; and *Yearbook . . . 1956*, vol. II, p. 255, document A/3159, paras. 15-18.

⁴⁹ See *Yearbook . . . 1974*, vol. II (Part One), pp. 302 and 303, document A/9610/Rev.1, chap. V, annex, paras. 17 and 30; and *Yearbook . . . 1975*, vol. II, pp. 183-184, document A/10010/Rev.1, para. 138.

⁴³ *Yearbook . . . 1963*, vol. II, p. 224, document A/5509, paras. 54 and 60.

⁴⁴ *Yearbook . . . 1956*, vol. II, p. 301, document A/3159, para. 36.

the Secretariat⁵⁰ or by the Secretariat alone, in both cases with the concurrence of the Commission. Data and information may be requested from intergovernmental organizations when, in view of the subject matter of the topic, the Commission or the Special Rapporteur concerned deems it advisable. This request may also take the form of a questionnaire.⁵¹ The Secretariat systematizes the data and information thus gathered, which is transmitted to the Special Rapporteur and published as a document of the Commission, later to be included in the *Yearbook of the International Law Commission* or as a compilation in a volume of the United Nations Legislative Series.

(c) *Studies and research projects by the Secretariat*

43. At the preliminary stage of the consideration of a topic, the Secretariat may, at the Commission's request or on its own initiative, prepare substantive studies and carry out research projects to facilitate the commencement of work on the topic by the Commission and the Special Rapporteur concerned. Secretariat studies and research projects may be also requested by the Commission or the Special Rapporteur concerned at other stages in the consideration of a topic.

2. FIRST READING OF THE DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

(a) *Discussion of the Special Rapporteur's reports*

44. The reports submitted by the Special Rapporteur for the Commission's consideration, as distinguished from working papers or preliminary reports, normally contain a set of draft articles with commentaries. After the introduction of the report by the Special Rapporteur and an exchange of views thereon, the Commission proceeds to an article by article discussion with a view to the formulation of a set of draft articles. Prior to its consideration by the Commission, each draft article is introduced by the Special Rapporteur. Members may submit amendments or alternative formulations to the draft articles presented by the Special Rapporteur or written memoranda thereon.

⁵⁰ For example, this method was used in connection with the gathering of data and information on the topics of the law of treaties, arbitral procedure and regime of the high seas. See *Yearbook ... 1949*, p. 281, document A/925, para. 22, and *Yearbook ... 1950*, vol. II, pp. 380, 381 and 383, document A/1316, paras. 160, 165 and 182.

⁵¹ For example, questionnaires have been prepared during recent years for the purpose of gathering information from international organizations on relations between States and international organizations and the question of treaties concluded between States and international organizations or between two or more international organizations, when such information was needed for the study of those topics by the Special Rapporteurs concerned. See *Yearbook ... 1971*, vol. II (Part One), p. 279, document A/8410/Rev.1, para. 15; *Yearbook ... 1978*, vol. II (Part Two), pp. 145 and 146, document A/33/10, paras. 148, 150-153.

Upon the conclusion of its consideration of a given draft article, the Commission transmits it, together with pertinent suggestions and proposals, to the Drafting Committee.

(b) *The Drafting Committee*

45. Committees in the nature of drafting committees were set up by the Commission to deal with specific topics or questions at its first three sessions; however, a standing Drafting Committee had been used at each session of the Commission since its fourth session (1952). The Chairman of the Drafting Committee is elected by the Commission, and, since 1974, is a member of the Commission's Bureau for the session concerned. This represents a change in the previous practice, begun in 1955, by which the First Vice-Chairman of the Commission also served as Chairman of the Drafting Committee. Other members of the Drafting Committee are appointed by the Commission at each session on the recommendation of the Chairman of the Commission, with a view to ensuring an adequate representation and taking into account other factors, including linguistic competence. The Rapporteur of the Commission for the session concerned also takes part in the Committee's work. Special Rapporteurs who have not been appointed members of the Drafting Committee take part in the Committee's work when the draft articles relating to their topics are considered. Under the Commission's terms of referral, the Special Rapporteur normally prepares and submits new texts to the Drafting Committee as a basis for the consideration of the draft articles in question. The Drafting Committee is provided with simultaneous interpretation services, but no records of its discussions are maintained.

46. The Drafting Committee prepares texts of draft articles for the consideration of the Commission and assists the Commission in co-ordinating and consolidating the draft articles. The texts as submitted by the Committee may embody solutions not only to questions of drafting but also to points of substance which the Commission "has been unable to resolve or which appeared likely to give rise to unduly protracted discussion".⁵² The Committee therefore provides a framework not only for drafting but also for negotiation. Entrusting the Drafting Committee, whose proceedings are of an informal nature, with the functions referred to above has proved to be an extremely useful procedure which greatly helps to speed up the work of the Commission. The Drafting Committee constitutes an indispensable component of the Commission's methods of work and plays a major, central role in assisting the Commission in fulfilling the performance of its tasks.

⁵² *Yearbook ... 1958*, vol. II, p. 108, document A/3859, para. 65.

(c) *Consideration by the Commission of the texts approved by the Drafting Committee*

47. The Commission discusses the text of each of the draft articles adopted by the Drafting Committee, following its introduction by the Committee Chairman. The Drafting Committee's texts are subject to amendments or alternative formulations submitted by members of the Commission and may be referred back to the Committee for further consideration. The texts of the draft articles recommended by the Drafting Committee and adopted by the Commission are included in the relevant chapter of the Commission's report for the session. As these texts generally reflect a common understanding, the need to vote on them seldom arises. In general, detailed explanations of dissenting opinions are not included in the report, which may, however, state that for the reasons given in the records a member was opposed to the adoption of a certain article.

(d) *Transmittal of provisional draft articles to Governments for comments and observations*

48. The result of a first reading by the Commission is a set of provisional draft articles, with commentaries, on a given topic. The Commission will then usually decide to transmit them, through the Secretary-General, to Governments for their comments and observations, in accordance with articles 16 and 29 of its Statute. On some occasions, the Commission transmits provisional draft articles to Governments for the purpose indicated after having completed the first reading of the entire draft. In other instances, particularly when drafts of considerable length are involved, the Commission transmits provisional draft articles to Governments in instalments without waiting for the completion of the provisional draft as a whole. Provisional draft articles are sometimes transmitted by the Commission to certain intergovernmental organizations for their observations and comments, pursuant to General Assembly recommendations or when the subject-matter makes it advisable.

49. In the course of the first reading of provisional draft articles, or upon its completion, the Commission may deem it necessary to indicate that the draft articles have been prepared on the assumption that they would form the basis of a convention or that they are cast in such a form that they can be used as the basis for concluding a convention, should this be decided upon at a later stage.

3. SECOND READING OF THE DRAFT ARTICLES UNDER PREPARATION BY THE COMMISSION

(a) *Re-examination of the preliminary draft articles and the adoption of a final draft*

50. In the light of the written comments received from Governments and the oral observations made in

the Sixth Committee, the Commission re-examines the preliminary draft adopted on the basis of a further report or reports by the Special Rapporteur. These reports of the Special Rapporteur usually include a summary of the comments and observations made on the respective articles of the draft and his suggestions as to whether to amend the given article, to leave it as it is, to delete it or to treat it in some other way. They also include a summary of the comments and observations received from intergovernmental organizations when comments and observations were requested from them as well as from States. The procedure of article-by-article consideration is followed by the Commission along the lines of that described above,⁵³ including the referral of articles, together with the relevant proposals and suggestions, to the Drafting Committee, which examines each article, elaborates its formula and reports back to the Plenary of the Commission. When considering the report of the Drafting Committee, the Commission follows the procedure enunciated above.⁵⁴ At this stage of the procedure it is not infrequent, in the practice, for the Commission to proceed to revising, co-ordinating and consolidating the articles, sections and parts of a given draft, particularly in connection with drafts of considerable length adopted in the course of consecutive sessions.⁵⁵ Normally, the Commission undertakes such a task with the assistance of the Special Rapporteur concerned and the Drafting Committee. In the case of the first aspect of the topic of relations between States and international organizations, however, the Commission was assisted in such an undertaking by a Working Group it established for such a purpose.⁵⁶ The Commission then proceeds to the adoption of the final draft articles on the topic and includes them in the report covering the work of the session which it submits to the General Assembly.

(b) *Recommendations by the Commission to the General Assembly with respect to the final draft articles*

51. When adopting the final draft articles, the Commission, pursuant to article 23 of its Statute, usually makes a formal recommendation to the General Assembly that an international convention or conventions should be concluded on the basis of the draft. The formulae of the recommendations in question vary.

⁵³ Paras. 44–46.

⁵⁴ See para. 47 above.

⁵⁵ In certain cases, the need for making an overall review of a given set of draft articles arises before they are adopted provisionally in first reading. Thus, for example, in the course of the current session the Commission undertook an overall review of all the draft articles on succession of States in respect of State property and State debts, including those articles of the draft adopted previously in the course of its first reading.

⁵⁶ *Yearbook ... 1971*, vol. II (Part One), p. 281, document A/8410/Rev.1, para. 39, and vol. II (Part Two), p. 107, documents A/CN.4/L.174 and Add.1–6.

52. Thus in some instances the Commission, basing itself on article 23, paragraph 1(d), of its Statute, recommended that an international conference of plenipotentiaries should be convened to elaborate a convention or conventions on the basis of the draft articles concerned. The wording of this kind of recommendation may, however, differ from case to case, as the examples below demonstrate:

Law of the Sea (1956)

The Commission therefore recommends, in conformity with article 23, paragraph 1(d) of its Statute, that the General Assembly should summon an international conference of plenipotentiaries to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate.⁵⁷

Consular Relations (1961)

At its 624th meeting, the Commission, considering that it should follow the procedure previously adopted by the General Assembly in the case of the Commission's draft concerning diplomatic privileges and immunities, decided, in conformity with article 23, paragraph 1(d) of its Statute, to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft on consular relations and conclude one or more conventions on the subject.⁵⁸

Law of treaties (1966)

At its 892nd meeting, on 18 July 1966, the Commission decided, in conformity with article 23, paragraph 1(d) of its Statute, to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles on the law of treaties and to conclude a convention on the subject.⁵⁹

Representation of States in Their Relations with International Organizations (1971)

At its 1146th meeting, on 28 July 1971, the Commission decided, in conformity with article 23, paragraph 1(d), of its Statute, to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles on the representation of States in their relations with international organizations and to conclude a convention on the subject.⁶⁰

Succession of States in Respect of Treaties (1974)

At the 1301st meeting, on 26 July 1974, the Commission decided, in conformity with article 23 of its Statute, to recommend that the General Assembly should invite Member States to submit their written comments and observations on the Commission's final draft articles on succession of States in respect of treaties and convene an international conference of plenipotentiaries to study the draft articles and to conclude a convention on the subject.⁶¹

53. In other cases, the Commission, basing itself on article 23, paragraph 1(c) of the Statute, confined itself to recommending the draft concerned to Member States with a view to the conclusion of a convention, without referring to the convening of an international conference or any other procedural means for concluding the convention:

Diplomatic Relations (1958)

At its 468th meeting, the Commission decided (under article 23, paragraph 1(c) of its Statute) to recommend to the General Assembly that the draft articles on diplomatic intercourse and immunities should be recommended to Member States with a view to the conclusion of a convention.⁶²

Most-favoured-nation clauses (1978)

At the 1522nd meeting, on 20 July 1978, the Commission decided, in conformity with article 23 of its Statute, to recommend to the General Assembly that the draft articles on most-favoured-nation clauses should be recommended to Member States with a view to the conclusion of a convention on the subject.⁶³

54. The recommendation made by the Commission when submitting the final draft articles on *special missions* presented a third main variant. In that case, the Commission decided, "in conformity with article 23 of its Statute, to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions."⁶⁴

55. Sometimes the Commission includes in its recommendation to the General Assembly a specific comment/suggestion, such as the one contained in its recommendation on the draft articles dealing with the representation of States in their relations with international organizations:

The Commission wishes to refer to the titles given to parts and articles of its draft, which it considers helpful for an understanding of the structure of the draft and for promoting ease of reference. It expresses the hope, as it did concerning its draft articles on consular relations, law of treaties and special missions, that these titles, subject to any appropriate changes, will be retained in any convention which may be concluded in the future on the basis of the Commission's draft articles.⁶⁵

The Commission has also made other kinds of comments when formulating its recommendations to the General Assembly with respect to final draft articles. Thus, for example, when recommending the conclusion of a convention or conventions on the law of the sea and the convening of an international conference for the purpose, the Commission made the following observations:

The Commission considers that such a conference has been adequately prepared for by the work the Commission has done.

⁵⁷ *Yearbook ... 1956*, vol. II, p. 256, document A/3159, para. 28. This recommendation was preceded by an exposé of the reasons upon which it was based, reproduced in para. 13 above.

⁵⁸ *Yearbook ... 1961*, vol. II, p. 91, document A/4834, para. 27.

⁵⁹ *Yearbook ... 1966*, vol. II, p. 177, document A/6309/Rev.1, para. 36.

⁶⁰ *Yearbook ... 1971*, vol. II (Part One), p. 284, document A/8410/Rev.1, para. 57.

⁶¹ *Yearbook ... 1974*, vol. II (Part One), p. 174, document A/9610/Rev.1, para. 84.

⁶² *Yearbook ... 1958*, vol. II, p. 89, document A/3859, para. 50.

⁶³ *Yearbook ... 1978*, vol. II (Part Two), p. 16, document A/33/10, para. 73.

⁶⁴ *Yearbook ... 1967*, vol. II, p. 347, document A/6709/Rev.1, para. 33.

⁶⁵ *Yearbook ... 1971*, vol. II (Part One), p. 284, document A/8410/Rev.1, para. 59.

The fact that there have been fairly substantial differences of opinion on certain points should not be regarded as a reason for putting off such a conference. There has been widespread regret at the attitude of the Governments after The Hague Codification Conference of 1930 in allowing the disagreement over the breadth of the territorial sea to dissuade them from any attempt at concluding a convention on the points on which agreement had been reached. The Commission expresses the hope that this mistake will not be repeated.

In recommending confirmation of the proposed rules as indicated in paragraph 28, the Commission has not had to concern itself with the question of the relationship between the proposed rules and existing conventions. The answer to that question must be found in the general rules of international law and the provisions drawn up by the proposed international conference.

The Commission also wishes to make two other observations, which apply to the whole draft:

1. The draft regulates the law of the sea in time of peace only.
2. The term 'mile' means nautical mile (1,852 metres) reckoned at sixty to one degree of latitude.⁶⁶

56. Lastly, it should be noted that because of the terms of reference of the request to the Commission, final draft articles prepared by it may be submitted to the General Assembly as "draft conventions". Thus, the draft articles on the *elimination of future statelessness* and on the *reduction of future statelessness* were submitted by the Commission to the General Assembly as "draft conventions". Such a presentation rendered it unnecessary for the Commission to make any formal recommendation to the General Assembly that international conventions should be concluded on the basis of the submitted drafts.

F. Other methods and techniques employed by the Commission

57. The General Assembly has from time to time requested the Commission to report on particular legal problems or to examine particular texts or to prepare a particular set of draft articles. The question has then arisen whether the Commission, in performing such tasks, should use the methods laid down in its Statute for carrying out its normal work of progressive development and codification or whether it was free to adopt other methods in dealing with such cases. The Commission has consistently decided that it was free to adopt special methods for special tasks.⁶⁷

⁶⁶ *Yearbook . . . 1956*, vol. II, p. 256, document A/3159, paras. 30–32.

⁶⁷ The Commission was confronted with the question from its very first session, held in 1949. On that occasion, having been instructed by General Assembly resolution 178 (II) of 21 November 1947 to prepare a draft declaration on rights and duties of States, on the basis of a Panamanian draft, the Commission came to the conclusion that its function in relation to the draft declaration fell within neither of the two principal duties laid down upon it by its Statute, but constituted a "special assignment" from the General Assembly. Thereafter, the Commission submitted its 1949 draft "Declaration on Rights and Duties of States" immediately to the General Assembly, placing on record its conclusion that it was for the General Assembly to

58. Thus, the Commission has followed special methods in connection with assignments referred to it by the General Assembly for the purpose of giving a legal opinion, elaborating a definition or formulating conclusions or observations on a particular subject-matter, e.g. when dealing with the question of international criminal jurisdiction (1950), the definition of aggression (1951), reservations to multilateral conventions (1951), extended participation in general multilateral treaties concluded under the auspices of the League of Nations (1963) and the review of the multilateral treaty-making process (1979). The Commission's reports containing draft articles with commentaries on the draft Declaration on the Rights and Duties of States (1949) and the Formulation of the Nürnberg Principles (1950) were also prepared by the use of *ad hoc* methods and techniques. Although a Special Rapporteur was appointed in the case of the latter topic, neither the text of the draft Declaration of the Rights and Duties of States nor the text of the Formulation of the Nürnberg Principles was subject to the procedure of a first and second reading. In the case of the draft Code of Offences against the Peace and Security of Mankind, the Commission, having appointed a Special Rapporteur for the topic in 1950, completed a draft code in 1951 and submitted it to the General Assembly, together with commentaries thereon, without recommending arrangements for its implementation. At its 1952 session, the Assembly omitted the item from its agenda on the understanding that the topic would continue to be considered by the Commission. The Commission accordingly, in 1953, requested the Special Rapporteur for the topic to prepare a new report, taking into account the observations received from Governments, and at its next session, in 1954, revised the draft Code and submitted it to the General Assembly,⁶⁸ refraining again from making recommendations as to how the Code was to become operative.⁶⁹

59. More interesting for the subject-matter of the present observations are departures from the con-

decide what further course of action should be taken in relation to the draft Declaration and, in particular, whether it should be transmitted to Governments of Member States for comments (*Yearbook . . . 1949*, p. 290, document A/295, para. 53).

⁶⁸ *Yearbook . . . 1954*, vol. II, pp. 149–150, document A/2693, paras. 41–50.

⁶⁹ In 1977, the Commission expressed the opinion that the draft Code could be reviewed in the future if the General Assembly so wished (*Yearbook . . . 1977*, vol. II (Part Two), p. 130, document A/32/10, para. 111). An item entitled "Draft Code of Offences against the Peace and Security of Mankind" was inscribed on the agenda of the thirty-second session (1977) of the General Assembly at the request of certain Member States. After consideration by the Sixth Committee, the General Assembly, at its thirty-third session, adopted resolution 33/97 of 16 December 1978, thereby requesting the Secretary-General to invite Member States and relevant international intergovernmental organizations to submit their comments and observations on the draft Code. The Assembly also decided to include the item in the provisional agenda at its thirty-fifth session (1981).

solidated methods and techniques of work usually followed by the Commission in certain cases involving the preparation of draft articles which have provided a basis for the elaboration of conventional instruments or whose study is pursued on the assumption that the draft to be prepared should provide such a basis if so decided by the General Assembly at a later stage. The explanation for such departures are usually related to the nature of the topic and to the terms of reference set forth by the General Assembly for its study. The topics entitled "Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law" and "Status of the diplomatic courier and of the diplomatic bag not accompanied by diplomatic courier" may be mentioned in this respect as examples of cases in which the Commission introduced variations in the basic method of work followed by it for the preparation of draft articles.

60. With regard to these two topics, the Commission, instead of appointing Special Rapporteurs, set up, at its twenty-fourth (1972) and thirtieth (1978) sessions, working groups to review the problems involved and, in the case of the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, to prepare a set of draft articles for submission to the Commission. The Working Group on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier identified in 1978 a series of issues relevant to the study of the topic. Reconstituted at the thirty-first session, the Working Group is studying the topic in the light of recommendations contained in General Assembly resolutions 33/139 and 33/140 of 19 December 1978.

61. The draft articles submitted in 1972 by the Working Group on the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law were not subject to the procedure of a first and second reading. On this topic, the Commission had before it written observations received from Member States in response to a request made by the General Assembly. In addition, the Commission had before it two texts of a draft convention submitted by Member States and a working paper containing draft articles submitted by one of the Commission's members. Extensive documentation relevant to the question was submitted by the Secretariat. After an initial general discussion, the Commission referred the matter to the Working Group. At the conclusion of the initial stage of its work, the Working Group submitted to the Commission a first report containing a set of draft articles. After considering the report, the Commission referred the set of draft articles back to the Working Group for revision in the light of the discussion. The Working Group submitted two further reports containing a revised set of draft articles, which were then provisionally adopted by the Commission and transmitted to the

General Assembly as well as to Governments for their comments.⁷⁰ The General Assembly decided, in its resolution 2926 (XXVII) of 28 November 1972, to consider at its twenty-eighth session (1973) an item entitled "Draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons", with a view to the final elaboration of such a convention by the General Assembly. The Convention was elaborated and adopted by the General Assembly in 1973.

62. Lastly, it should be noted that the Commission has always applied its consolidated method and techniques of work with flexibility to the preparation of draft articles. Minor variations in the application of the consolidated method and techniques are, therefore, ascertainable in the practice of the Commission when a given set of draft articles is compared retrospectively with another set or sets of draft articles from the standpoint of the steps followed by the Commission in their preparation. In certain cases, for instance, the two-readings procedure described in section E above was not strictly followed by the Commission. The preparation of the final draft articles on the law of the sea provides an interesting example in this respect. The Commission in 1953 adopted, after a second reading, draft articles on the continental shelf; the international regulation of fisheries; and the contiguous zone, prepared in the context of its work on the topic "regime of the high seas". The General Assembly decided, however, by its resolution 798 (VIII) of 7 December 1953, not to deal with any aspect of the topics, "regime of the high seas" or "regime of territorial waters" until all the problems involved had been studied by the Commission and reported on by it to the Assembly. In a further resolution (899 (IX) of 14 December 1954), the General Assembly requested the Commission to devote the necessary time to the study of the two topics mentioned "and all related problems" in order to complete its work on these topics and submit its final report for the Assembly to consider them as a whole. The consolidation by the Commission in 1956, pursuant to the Assembly requests referred to, of all the rules it had adopted concerning the high seas, the territorial sea, the continental shelf, the contiguous zone and the conservation of the living resources of the sea into a single set of draft articles on the law of the sea, implied a systematic rearrangement of the rules concerned, which, in turn, led the Commission to introduce further changes in the text of some draft articles which had already been adopted in second reading.⁷¹

63. In other instances, the Commission made minor departures from its consolidated method and techniques of work in order to accelerate its work on a

⁷⁰ *Yearbook ... 1972*, vol. II, pp. 309-311, document A/8710/Rev.1, paras. 58-64.

⁷¹ *Yearbook ... 1956*, vol. II, p. 255, document A/3159, para. 22.

given topic. This happened, for example, with the preparation of the draft articles on consular relations with respect to both the first and the second readings of the draft articles in question. Regarding the first reading, the Commission decided in 1959 that, because of the similarity of the topic of consular relations to that of diplomatic intercourse and immunities which had been debated at two previous sessions, members who might wish to propose amendments to the existing draft presented by the Special Rapporteur should come to the next (1960) session prepared to put in their principal amendments in writing, within a week, or at most ten days, of its opening.⁷² With respect to the second reading of the said draft articles, the Commission shortened the deadline normally given to Governments for the submission of comments and observations.⁷³ As a result, the second reading of the 1960 provisional draft articles on consular relations took place at the next session (1961), when the Commission adopted and submitted to the General Assembly its final draft articles on the topic.

G. Relationship between the General Assembly and the International Law Commission

1. ANNUAL REPORT SUBMITTED BY THE COMMISSION TO THE GENERAL ASSEMBLY

64. As noted earlier in these observations,⁷⁴ from its first session (1949), the Commission has submitted to the General Assembly a report on the work done at each session. The report is the vehicle whereby the Commission keeps the General Assembly informed regularly of the progress of its work on the various topics on its current programme as well as of its achievements in the preparation of draft articles on these topics. The report also serves as a means of giving to the Commission's drafts on the various topics the publicity provided for in the Statute of the Commission.

65. The report is adopted by the Commission at the end of the session concerned on the basis of a draft report prepared by the Rapporteur of the Commission with the assistance of the Special Rapporteurs concerned and the Secretariat. Before adopting it, the Commission examines the draft report paragraph by paragraph.

66. Apart from the chapters dealing with the organization of the session and other decisions and conclusions of the Commission, the report devotes separate chapters to the topics given substantive consideration at the session concerned. Each of the

chapters devoted to topics which have been substantively considered at the session includes information on the progress of work and the future work of the Commission on the topic in question as well as, when appropriate, the texts of the draft articles prepared by the Commission on the topic and commentaries relating thereto and, whenever advisable or necessary, procedural recommendations calling for a decision on the part of the General Assembly. Comments and observations by Governments, and when appropriate by intergovernmental organizations, on a given set of provisional draft articles adopted by the Commission are included as an annex to the Commission's report in which the draft articles are presented in their final form to the General Assembly.

2. CONSIDERATION BY THE GENERAL ASSEMBLY OF THE REPORTS OF THE COMMISSION

67. The General Assembly as the parent body of the Commission exercises its functions with regard to the Commission mainly through the consideration of the report submitted annually to it by the Commission.⁷⁵ An item entitled "Report of the International Law Commission" is included by the General Assembly in its agenda for each regular session and allocated to the Sixth Committee, where the substantive discussion of the Commission's report takes place. The oral comments and observations on the various chapters of the Commission's report, including the draft articles contained therein, made by representatives of Member States in the Sixth Committee are included in the summary records of the Sixth Committee. An analytical summary of such comments has usually been included in the report on the item that the Sixth Committee submits to the General Assembly. The Sixth Committee's report also contains the draft resolution or resolutions on the work and activities of the Commission agreed upon as a result of the consideration of the item entitled "Report of the International Law Commission". Once adopted in plenary, such draft resolutions become resolutions of the General Assembly.

68. The resolution adopted by the General Assembly following consideration by the Sixth Committee of the item entitled "Report of the International Law Commission" contains a variety of recommendations and decisions addressed to the Commission. Some of those recommendations relate to the performance by the Commission of its task in general, but others concern the consideration by the Commission of specific topics. Such recommendations or decisions may be of a procedural or a substantive nature. They may, in addition, provide for the referral to the Commission of

⁷² *Yearbook ... 1960*, vol. II, p. 145, document A/4425, para. 15.

⁷³ *Yearbook ... 1961*, vol. II, p. 90, document A/4843, para. 19.

⁷⁴ See para. 18 above.

⁷⁵ The exercise by the General Assembly of its functions regarding the Commission also takes place sometimes in the context of the consideration of separate items included in its agenda.

certain documents relevant to its consideration of particular draft articles.

(a) *Procedural recommendations concerning the Commission's beginning work on a topic, continuing work on a topic, giving priority to the study of a topic, completing particular draft articles under preparation, etc.*

69. Quite a number of General Assembly recommendations addressed to the Commission following consideration of the item entitled "Report of the International Law Commission" request the Commission to start studying a particular topic, to continue its work on a topic, to give priority to the study of one topic or another, to complete the first or second reading of a set of draft articles relating to a particular topic, etc.

70. Some General Assembly resolutions requested the Commission "to undertake the codification of a given topic on its programme,"⁷⁶ or "to undertake the study of the question" or "study the topic" referred to in a particular resolution,⁷⁷ or to "make every effort to begin substantive work" on a given topic.⁷⁸ Some resolutions recommended that the Commission should "undertake ... a separate study" of a topic⁷⁹ or "commence its work" on a topic "by, *inter alia*, adopting preliminary measures provided for under article 16" of the Commission's Statute.⁸⁰ On other occasions, General Assembly resolutions have instructed the Commission to consolidate into a single draft, articles on a broad subject on some aspects of which draft articles had previously been prepared.⁸¹ When making such recommendations the General Assembly sometimes requests that the Commission study the particular topic concerned "as an important question".⁸²

⁷⁶ For example, resolutions 685 (VII) of 5 December 1952 (diplomatic intercourse and immunities), 799 (VIII) of 7 December 1953 (State responsibility), and 1400 (XIV) of 21 November 1959 (right of asylum).

⁷⁷ For example, resolutions 1453 (XIV) of 7 December 1959 (juridical regime of historic waters, including historic bays), 2272 (XXII) of 1 December 1967 (most-favoured-nation clause), 2501 (XXIV) of 12 November 1969 (question of treaties concluded between States and international organizations or between two or more international organizations).

⁷⁸ For example, resolution 2400 (XXIII) of 11 December 1968 (State responsibility).

⁷⁹ For example, resolution 3071 (XXVIII) of 30 November 1973 (international liability for injurious consequences arising out of acts not prohibited by international law).

⁸⁰ For example, resolution 3071 (XXVIII) of 30 November 1973 (the law of non-navigational uses of international watercourses).

⁸¹ For example, in connection with the preparation by the Commission of its 1956 draft articles on the law of the sea, see resolution 798 (VIII) of 7 December 1953 and 899 (IX) of 14 December 1954.

⁸² For example, resolution 2501 (XXIV) of 12 November 1969 (question of treaties concluded between States and international organizations or between two or more international organizations).

71. In many resolutions the General Assembly has recommended that the Commission should "continue the work of codification and progressive development of the law" in a particular field⁸³ or should "continue its work" on a given topic.⁸⁴ There are also resolutions requesting the Commission "to study further" the subject "as soon as it considers it advisable"⁸⁵ or inviting the Commission "to give further consideration" to the topic "after study" of some other topics "has been completed by the United Nations"⁸⁶ or inviting it "to commence work" on a topic "at an appropriate time and in the light of progress made on draft articles" on other topics under preparation,⁸⁷ and thereby introducing an element of timing as to the consideration of the topic by the Commission. The General Assembly recommended on one occasion to the Commission that it should "expedite the study" of a topic under consideration.⁸⁸

72. In some resolutions the General Assembly has made recommendations or taken decisions on the question of the priority to be given by the Commission to the study of particular topics or to the preparation of draft articles concerning these topics. The scope of such recommendations and decisions, however, vary from case to case. Thus, for example, the General Assembly has sometimes requested or recommended that the Commission include in its priority list topics the study of which had not yet been undertaken, at that time, by the Commission. This occurred, for example, with respect to the regime of the territorial waters,⁸⁹ diplomatic intercourse and immunities⁹⁰ and succession of States and Governments.⁹¹ In other cases, the General Assembly recommended that a certain priority be given to the preparation of draft articles under consideration by the Commission by using formulae such as: "to continue on a high priority basis" its work on a given topic "with a view to completing the preparation of a first set of draft articles ... at the earliest possible time";⁹² or "to continue on a priority basis" its work on a particular topic "with a view to the preparation of a first set of

⁸³ For example, resolution 1902 (XVIII) of 18 November 1963 (law of treaties).

⁸⁴ For example, resolution 33/139 of 19 December 1978 (law of the non-navigational uses of international watercourses).

⁸⁵ For example, resolution 1687 (XVI) of 18 December 1961 (special missions).

⁸⁶ For example, resolution 1289 (XIII) of 5 December 1958 (relations between States and intergovernmental organizations).

⁸⁷ For example, resolution 32/151 of 19 December 1977 (international liability for injurious consequences arising out of acts not prohibited by international law; jurisdictional immunities of States and their property).

⁸⁸ Resolution 2272 (XXII) of 1 December 1967 (State responsibility).

⁸⁹ Resolution 374 (IV) of 6 December 1949.

⁹⁰ Resolution 685 (VII) of 5 December 1952.

⁹¹ Resolution 1686 (XVI) of 18 December 1961.

⁹² For example, resolution 3495 (XXX) of 15 December 1975 (State responsibility).

draft articles" on the topic concerned;⁹³ or "to proceed with the preparation, on a priority basis, of draft articles" on a given topic.⁹⁴ On certain occasions the General Assembly left it to the Commission to "decide upon the priority to be given to the topic" in question.⁹⁵

73. Certain General Assembly resolutions, when recommending to the Commission that it continue to work on a particular topic, set forth specific goals. Formulae to that effect vary, as exemplified as follows: to study, "with a view to preparing a set of draft articles", or to "proceed with the preparation of draft articles" on a topic;⁹⁶ to continue its work with a view to making "substantial progress in the preparation of draft articles" on a topic⁹⁷ or "with a view to . . . making progress in the consideration" of a given topic;⁹⁸ completing "the first reading of the draft articles" on a topic;⁹⁹ or continue work "with the object of presenting final drafts" on topics or "complete the second reading" thereof.¹⁰⁰ Some of the latter resolutions specified that completion of the first or second reading of a given set of draft articles under preparation should be achieved at a given session of the Commission. There are also resolutions which recommend the continuance of a study of a topic "with a view to the possible elaboration of an appropriate legal instrument".¹⁰¹

⁹³ For example, resolution 3071 (XXVIII) of 30 November 1973 (State responsibility).

⁹⁴ For example, resolutions 31/97 of 15 December 1976 and 32/151 of 19 December 1977 (succession of States in respect of matters other than treaties; treaties concluded between States and international organizations or between international organizations).

⁹⁵ For example, General Assembly resolutions 2780 (XXVI) of 3 December 1971 and 2926 (XXVII) of 28 November 1972 (law of the non-navigational uses of international watercourses).

⁹⁶ For example, resolutions 2780 (XXVI) of 3 December 1971 (question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law) and 3071 (XXVIII) of 30 November 1973 (succession of States in respect of matters other than treaties; most-favoured-nation clause).

⁹⁷ For example, resolution 2780 (XXVI) of 3 December 1971 (State responsibility).

⁹⁸ For example, resolution 2634 (XXV) of 12 November 1970 (succession of States in respect of matters other than treaties).

⁹⁹ For example, resolutions 2780 (XXVI) of 3 December 1971 (succession of States in respect of treaties), 3495 (XXX) of 15 December 1975 (most-favoured-nation clause) and 33/139 of 19 December 1978 (succession of States in respect of matters other than treaties).

¹⁰⁰ For example, resolutions 2045 (XX) of 8 December 1965 (law of treaties), 2167 (XXI) of 5 December 1966 (special missions), 2634 (XXV) of 12 November 1970 (relations between States and international organizations), 3071 (XXVIII) of 30 November 1973 (succession of States in respect of treaties), and 32/151 of 19 December 1977 (most-favoured-nation clause).

¹⁰¹ For example, resolution 33/139 of 19 December 1978 (status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier).

74. It may be noted that on several occasions the General Assembly endorsed general conclusions and decisions reached by the Commission on the study of particular topics.¹⁰²

75. Finally, reference should be made to the fact that the General Assembly customarily transmits to the Commission for its attention the records of the discussion on the Commission's report at a given session of the General Assembly. There are also cases where the General Assembly made a specific decision transmitting to the Commission documentation relevant to the consideration of a particular topic or aspects thereof.¹⁰³

(b) *Substantive recommendations concerning the study of a given topic or the preparation of a specific set of draft articles*

76. Apart from provisions in General Assembly resolutions recommending that the Commission should proceed with the study of a given topic or the preparation of a specific set of draft articles, taking into account previous General Assembly recommendations, views expressed in the General Assembly and its Sixth Committee and written comments submitted by Governments and, as the case may be, by international organizations, the General Assembly on occasion gives the Commission broad guidance on matters closely related to the substance of a topic under study or of a draft under preparation.

77. For example, the General Assembly recommended that the Commission should continue the work of codification and progressive development of the law of treaties "in order that the law of treaties may be placed upon the widest and most secure foundations".¹⁰⁴ It was also recommended that the Commission continue its work on State responsibility "giving due consideration to the purposes and principles enshrined in the Charter of the United Nations",¹⁰⁵ and on the succession of States and Governments "with appropriate reference to the views of States which have achieved independence since the Second World War".¹⁰⁶

¹⁰² For example, General Assembly resolutions 32/151 of 19 December 1977 (second part of the topic of relations between States and international organizations; status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier) and 33/139 of 19 December 1978 (State responsibility).

¹⁰³ For example, by its resolution 900 (IX) of 14 December 1954, the General Assembly decided to refer the report of the International Technical Conference on the Conservation of the Living Resources of the Sea to the Commission "as a further technical contribution to be taken into account in its study of the questions to be dealt with in [its] final report" on the law of the sea.

¹⁰⁴ General Assembly resolutions 1765 (XVII) of 20 November 1962 and 1902 (XVIII) of 18 November 1963.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

(c) *Decisions on recommendations made by the Commission to conclude a convention on the basis of final draft articles prepared by it*

78. As was indicated above,¹⁰⁷ final draft articles on a given topic are normally submitted by the Commission to the General Assembly, together with a formal recommendation concerning the conclusion of a convention on that basis. Thus, when the General Assembly receives a report of the Commission containing a final set of draft articles together with such a recommendation, the General Assembly is called upon to take a decision as to whether or not such a convention should be concluded and, in the affirmative, what organ should be entrusted with the task of elaborating and concluding the convention in question.

79. The Commission has recommended to the General Assembly the conclusion of conventions on the basis of final draft articles prepared by it on a number of occasions. On all those occasions except one,¹⁰⁸ the General Assembly has endorsed the recommendation made to that effect by the Commission. This was the case with the final draft articles relating to the law of the sea, diplomatic intercourse and immunities, consular relations, law of treaties, special missions, representation of States in their relations with international organizations and succession of States in respect of treaties. Moreover, the General Assembly called for the elaboration and conclusion of a conventional instrument or instruments in a case in which its final draft articles were presented to it by the Commission in the form of "draft conventions" because of the particular terms of reference of the request (elimination or reduction of future statelessness). In another case, the General Assembly decided to elaborate and conclude a convention on the basis of draft articles submitted to it by the Commission as "provisional" (prevention and punishment of crimes against diplomatic agents and other internationally protected persons).

80. The draft convention on arbitral procedure submitted to the General Assembly by the Commission, as final, in 1953, together with a formal recommendation to conclude a convention on the topic, provides, on the other hand, the only example in which the General Assembly declined to endorse the recommendation made by the Commission. By its resolution 797 (VIII) of 7 December 1953, the General Assembly decided to transmit the draft on arbitral procedure to Member States "with a view to the submission by Governments of whatever comments they may deem appropriate"; an item on the question also was included in the provisional agenda of its tenth session. At that session, the General Assembly, by resolution 989 (X) of 14 December 1955, invited the

Commission to consider the comments of Governments and the discussions in the Sixth Committee "in so far as they may contribute further to the value of the draft on arbitral procedure" and to report to the Assembly at its thirteenth session. By the same resolution, the General Assembly decided to place the question on the provisional agenda at its thirteenth session, "including the problem of the desirability of convening an international conference of plenipotentiaries to conclude a convention on arbitral procedure". At its thirteenth session, the General Assembly had before it the report requested from the Commission. The revised draft articles on arbitral procedure contained in that report were this time submitted by the Commission to the General Assembly as "model rules". By resolution 1262 (XIII) of 14 November 1958, the General Assembly brought the draft on arbitral procedure submitted by the Commission to the attention of Member States for their consideration and use, in such cases and to such extent as they consider appropriate, in drawing up treaties of arbitration or *compromis*.¹⁰⁹

81. As already mentioned,¹¹⁰ the Commission is also empowered by its Statute to recommend to the General Assembly that an international conference of plenipotentiaries be convened for the elaboration and conclusion of a recommended convention on the basis of draft articles prepared by the Commission. Such a recommendation was made by the Commission when submitting its final draft articles on the law of the sea, consular relations, the law of treaties, the representation of States in their relations with international organizations, and the succession of States in respect of treaties. In all those cases, the General Assembly decided to entrust the elaboration and conclusion of the convention concerned to an international conference of plenipotentiaries as recommended by the Commission. It also decided to convene an international conference of plenipotentiaries in a case in which the Commission did not make such a recommendation, namely, that of the draft articles on diplomatic intercourse and immunities.

82. In some instances, before adopting a decision on the conventional form to be given to a set of final draft articles submitted to it by the Commission and/or on the convening of an international conference of plenipotentiaries to that effect, the General Assembly has given to itself and Governments of Member States time for further reflection. In those cases, an item relating to the draft articles prepared by the Commission is included in the agenda of a subsequent session of the General Assembly, and Governments are invited to submit comments and observations on the form and/or the procedure in which work on the draft articles concerned should be completed. Thus, for example, at its thirteenth session, the General Assem-

¹⁰⁷ See paras. 51–56 above.

¹⁰⁸ See para. 80 below.

¹⁰⁹ See para. 33 above.

¹¹⁰ See para. 25 above.

bly made a decision to include the item entitled "Diplomatic intercourse and immunities" in the provisional agenda of its fourteenth session "with a view to the early conclusion of a convention" on the matter and to consider at that session "the question to what body the formulation of the convention should be entrusted".¹¹¹ Initial consideration by the General Assembly of the Commission's final draft articles on succession of States in respect of treaties provides another example. At its twenty-ninth session, the General Assembly decided to include an item entitled "Succession of States in respect of treaties" in the provisional agenda of its thirtieth session for the purpose of determining the procedure and form in which work on the said draft articles should be completed.¹¹²

83. The most recent example of a General Assembly decision aimed at providing a delay for reflection relates to the draft articles on most-favoured-nation clauses adopted by the Commission in 1978. By resolution 33/139 of 19 December 1978, the General Assembly decided to include in the provisional agenda of its thirty-fifth session an item entitled "Consideration of the draft articles on most-favoured-nation clauses". By the same resolution, States were requested by the General Assembly, *inter alia*, to comment on the recommendation of the Commission that the draft articles should be recommended to Member States with a view to the conclusion of a convention on the subject.

84. In the case of the Commission's draft conventions on the elimination or reduction of future statelessness, General Assembly resolution 896 (IX) of 4 December 1954 expressed the desire that an international conference of plenipotentiaries be convened to conclude a convention for the reduction or elimination of future statelessness "as soon as at least twenty States have communicated to the Secretary-General their willingness to co-operate in such a conference". After that condition was fulfilled, and the Secretary-General reported on the matter to the General Assembly, the conference was convened in 1959.

85. Before adopting its final decisions on the form to be given to a set of draft articles submitted by the Commission and/or the body to be entrusted with such a task, the General Assembly has invited States and, as

¹¹¹ General Assembly resolution 1288 (XIII) of 5 December 1958. A somewhat similar decision was taken by the General Assembly in connection with the Commission's draft articles on representation of States in their relations with international organizations. In resolution 2780 (XXVI) of 3 December 1971, the Assembly decided to elaborate and conclude a convention on the basis of the draft articles, but it postponed its decision as to the body to be entrusted with that task. An item entitled "Representation of States in their relations with international organizations" was included in the provisional agenda of the next regular session of the General Assembly.

¹¹² General Assembly resolution 3315 (XXIX) of 14 December 1974.

the case may be, specialized agencies and other interested intergovernmental organizations to submit, also in writing, comments and observations on the relevant chapter of the Commission report and, in particular, on the final draft articles contained therein, and eventually on those provisions relating to the topic on which the Commission was unable to take decisions. This kind of request for comments and observations was made, for example, in the case of the draft articles on diplomatic intercourse and immunities, representation of States in their relations with international organizations, succession of States in respect of treaties, and the most-favoured-nation clauses.¹¹³ In the last-mentioned case, organs of the United Nations with competence on the subject-matter were also invited to submit their comments and observations. The Secretary-General is usually requested to circulate the above-mentioned comments and observations in due time.

H. Elaboration and conclusion of conventions on the basis of draft articles prepared by the Commission following a General Assembly decision to that effect

1. BY AN INTERNATIONAL CONFERENCE CONVENED BY THE GENERAL ASSEMBLY

86. Ten conventions have been elaborated and concluded, on the basis of draft articles prepared by the Commission, by international conferences convened to that effect by the General Assembly: the four 1958 conventions on the law of the sea (High Seas; Territorial Sea and Contiguous Zone; Fishing and Conservation of the Living Resources of the High Seas; Continental Shelf); the 1961 Convention on the Reduction of Statelessness; the 1961 Vienna Convention on Diplomatic Relations; the 1963 Vienna Convention on Consular Relations; the 1969 Vienna Convention on the Law of Treaties; the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character and the 1978 Vienna Convention on Succession of States in Respect of Treaties. The 1958 Conference on the Law of the Sea elaborated and adopted an Optional Protocol concerning the compulsory settlement of disputes related to the said four conventions on the law of the sea. The 1961 Conference on Diplomatic Intercourse and Immunities and the 1963 Conference on Consular Relations elaborated and adopted two Optional Protocols, each related to one of the adopted conventions and concerning, respectively, acquisition of nationality and compulsory settlement of disputes.

87. When making a decision that an international conference of plenipotentiaries should be convened to

¹¹³ General Assembly resolutions 1282 (XIII) of 5 December 1958, 2780 (XXVI) of 3 December 1971, 3315 (XXIX) of 14 December 1974, and 33/139 of 19 December 1978.

elaborate and conclude a conventional instrument or instruments on the basis of draft articles prepared by the Commission, the General Assembly resolution providing for that decision usually sets forth the task which is before the conference concerned. An elaborate formula on the task entrusted to the conference was included in General Assembly resolution 1105 (XI) of 21 February 1957 on the convening of the first United Nations Conference on the Law of the Sea. Having emphasized that the various problems of the law of the sea "were closely linked together juridically as well as physically" and "closely interdependent", the Assembly requested the Conference "to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate". The Conference was also requested to "study the question of free access to the sea of land-locked countries, as established by international practice of treaties".

88. Other formulae used by General Assembly resolutions concerning the task before the conference concerned read as follows:

Diplomatic intercourse and immunities (1959)

Decides that an international conference of plenipotentiaries shall be convoked to consider the question of diplomatic intercourse and immunities and to embody the results of its work in an international convention, together with such ancillary instruments as may be necessary.¹¹⁴

Consular relations (1961)

Decides that an international conference of plenipotentiaries be convened to consider the question of consular relations and to embody the results of its work in an international convention and such other instruments as it may deem appropriate.¹¹⁵

Law of treaties (1966)

Decides that an international conference of plenipotentiaries shall be convened to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate.¹¹⁶

Representation of States in their Relations with international organizations (1972)

Decides that an international conference of plenipotentiaries shall be convened as soon as practicable to consider the draft articles on the representation of States in their relations with international organizations and to embody the results of its work in an international convention and such other instruments as it may deem appropriate.¹¹⁷

Succession of States in respect of treaties (1975)

Decides to convene a conference of plenipotentiaries in 1977 to consider the draft articles on succession of States in respect of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate.¹¹⁸

89. Another decision of importance from the point of view of treaty-making which the General Assembly normally makes when convening an international conference is that determining what will be the basis for the work of the conference. There have evolved four types of formulae embodying such decisions:

(a) In resolution of 1105 (XI) of 21 February 1957, relating to the first Conference on the Law of the Sea, the General Assembly referred to it

the report of the International Law Commission as the basis for its consideration of the various problems involved in the development and codification of the law of the sea, and also the verbatim records of the relevant debates in the General Assembly, for consideration by the conference in conjunction with the Commission's report.

A more or less similar formula was included in General Assembly resolutions 1685 (XVI) of 18 December 1961 and 1813 (XVII) of 18 December 1962, relating to the Conference on Consular Relations.

(b) In resolution 1450 (XIV) of 7 December 1959, concerning the Conference on Diplomatic Intercourse and Immunities, the General Assembly referred to it only the relevant chapter of the Commission's report "as the basis for its consideration of the question", without any record of the relevant debates being specifically transmitted to the conference;

(c) In resolution 2166 (XXI) of 5 December 1966, relating to the Conference on the Law of Treaties, the General Assembly referred to it the Commission's draft articles "as the basic proposal for consideration" by the Conference. The records of relevant debates held at a subsequent session of the General Assembly were also transmitted to the Conference by General Assembly resolution 2287 (XXII);

(d) In resolutions 3072 (XXVIII) of 30 November 1973 and 31/18 of 24 November 1976, relating to the Conferences on the Representation of States in Their Relations with International Organizations and on Succession of States in Respect of Treaties, the General Assembly referred to the conferences the corresponding draft articles of the Commission "as the basic proposal for consideration", without any specific mention of the relevant debates being transmitted to the Conferences.

90. The General Assembly resolution 1105 (XI) convening the first United Nations Conference on the Law of the Sea:

Calls upon the Governments invited to the Conference and groups thereof to utilize the time remaining before the opening of the conference for exchanges of views on the controversial questions relative to the law of the sea.

¹¹⁴ General Assembly resolution 1450 (XIV) of 7 December 1959. By its resolution 1504 (XV) of 12 December 1960, the General Assembly decided that the provisional draft articles on special missions adopted by the Commission in 1960 be referred to the Conference so that they might be considered together with the draft articles on diplomatic intercourse and immunities.

¹¹⁵ General Assembly resolution 1685 (XVI) of 18 December 1961.

¹¹⁶ General Assembly resolution 2166 (XXI) of 5 December 1966.

¹¹⁷ General Assembly resolution 2966 (XXVII) of 14 December 1972.

¹¹⁸ General Assembly resolution 3496 (XXX) of 15 December 1975.

On other occasions, the General Assembly made arrangements for the consideration by it of the subject prior to the opening of the conference concerned, including an item to that effect on the agenda of one of its subsequent sessions. Thus, for example, an item entitled "Consular relations" was included by resolution 1685 (XVI) of 18 December 1961 in the provisional agenda of its seventeenth session "to allow further expressions and exchanges of views concerning the draft articles on consular relations" before the opening of the Conference. Another example is provided by resolution 2166 (XXI), whereby the General Assembly decided to include an item entitled "Law of treaties" in the provisional agenda of its twenty-second session "with a view to further discussion of the draft articles in order to facilitate the conclusion of a convention on the law of treaties at the conference of plenipotentiaries convened pursuant to the present resolution".

91. Another arrangement which the General Assembly used to make when convening an international conference to consider draft articles prepared by the Commission is the request to States to submit to the Secretary-General for circulation written comments and observations on the final draft articles in order that they may be circulated to Governments prior to the opening of the conference. Such requests were embodied in the resolutions concerning the Conferences on Consular Relations, the Law of Treaties, the Representation of States in Their Relations with International Organizations and the Succession of States in respect of Treaties. In one case, the first United Nations Conference on the Law of the Sea, the General Assembly convening resolution 1105 (XI) requested the Secretary-General to invite appropriate experts to advise and assist the Secretariat in preparing the Conference, with terms of reference which included the following:

To obtain, in the manner which they think most appropriate, from the Governments invited to the conference any further provisional comments the Governments may wish to make on the Commission's report and related matters, and to present to the conference in systematic form any comments made by the Governments, as well as the relevant statements made in the Sixth Committee at the eleventh and previous sessions of the General Assembly.

92. On two occasions, States intending to participate in conferences were invited by the General Assembly to submit any amendments to the draft articles prepared by the Commission that they might want to propose in advance of the Conference.¹¹⁹ Amendments submitted pursuant to that invitation were circulated at the opening of the conferences in question.

93. The resolutions convening the codification conferences also include provisions which determine the

¹¹⁹ General Assembly resolutions 1813 (XVII) of 18 December 1962 (consular relations) and 2287 (XXII) of 6 December 1967 (law of treaties).

States invited to participate.¹²⁰ Such resolutions also provide invitations to the interested specialized agencies and intergovernmental organizations to send observers to the conference. Over the last years, representatives of national liberation movements have likewise been invited to participate in codification conferences. The Secretary-General is also requested to arrange for the presence at the conferences of the Commission's Special Rapporteur on the topic in question. In the case of the first United Nations Conference on the Law of the Sea, the Secretary-General was also requested by the necessary General Assembly resolutions to arrange for the technical services of experts.

94. For all the codification conferences, the Secretary-General was requested to present recommendations concerning the methods of work and procedures. For the first United Nations Conference on the Law of the Sea, a decision was also made to the effect that appropriate experts were invited by the Secretary-General to advise and assist the Secretariat with recommendations concerning the methods of work and procedures of the conference and the preparation of working documents of a legal, technical, scientific or economic nature to be submitted to the Conference in order to facilitate its work. General Assembly convening resolutions also request the Secretary-General to arrange for the necessary staff and facilities and to submit relevant documentation to the conferences. Resolution 1105 (XI) of 21 February 1957 convening the first United Nations Conference on the Law of the Sea specified in that respect that the Secretary-General should transmit to the Conference "all such records of world-wide or regional international meetings as may serve as official background material for its work".

95. Each United Nations codification conference called to elaborate and conclude an international conventional instrument or instruments on the basis of draft articles prepared by the Commission approves its own rules of procedure as well as the basic methods of work and techniques to be followed in the conference. The articles of the Commission's draft and amendments thereto are considered first at committee level and then by the plenary of the conference. The first

¹²⁰ In some cases, such as that of the Conference on the Representation of States in their Relations with International Organizations and the Conference on the Succession of States in Respect of Treaties, the General Assembly decided on the question of participation at the conference at a session subsequent to one at which it decided upon the convening of a conference to consider the draft articles adopted by the Commission and to conclude a convention thereon. Items entitled "Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975" and "Conference of plenipotentiaries on succession of States in respect of treaties" were included in the provisional agendas of the twenty-ninth and thirty-first sessions, respectively, of the General Assembly, for the purpose of determining questions of participation and other organizational matters.

United Nations Conference on the Law of the Sea set up five main committees, and the United Nations Conference on Consular Relations two main committees. In other cases, the conferences established a single committee of the whole. All United Nations codification conferences have been assisted by a drafting committee. Working groups are sometimes set up by the conference to consider specific questions and report back to a main committee or to the plenary of the conference.

96. After all articles and amendments thereto have been considered, the preamble of the instrument and the final clauses, the draft convention or conventions are put to the vote as a whole. Once adopted, the conventions, as well as related optional protocols, are open for signature and ratification or for accession. Each conference also adopts its final act, to which resolutions adopted by the conference are normally annexed.

2. BY THE GENERAL ASSEMBLY

97. The 1969 Convention of Special Missions and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, were elaborated and adopted, on the basis of the respective draft articles submitted by the Commission, by the General Assembly itself. The draft articles on special missions, prepared by the Commission following the two-reading procedure, had been recommended by the Commission for conclusion of a convention. The draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons had been provisionally adopted by the Commission and submitted to the General Assembly without any formal recommendations as to the conclusion of a convention on that basis.

98. Having received from the Commission the sets of draft articles mentioned above, the General Assembly made the following arrangements for the elaboration and conclusion on the respective conventions:

(a) States, and in the case of the draft articles on the prevention and punishment of crimes against internationally protected persons, "the specialized agencies and interested inter-governmental organizations", were invited to submit their written comments and observations on the draft articles prepared by the Commission,¹²¹

(b) The Secretary-General was requested to circulate those comments in order "to facilitate the consideration" of the draft articles by the General

Assembly "in the light of those comments and observations";¹²²

(c) The items entitled "Draft Convention on Special Missions" and "Draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons" were included in the agenda of subsequent sessions of the General Assembly, "with a view to the adoption" (special missions) or "the final elaboration" (internationally protected persons) of the conventions in question.¹²³ Having been unable, because of lack of time, to conclude in a single session the elaboration of the Convention on Special Missions, the General Assembly inscribed again the item "Draft Convention on Special Missions" in the agenda of its following session, "with a view to the adoption of the Convention" at that session.¹²⁴

(d) In the case of special missions, States were invited to include as far as possible in their delegations experts competent in the field, and the Secretary-General was requested to arrange for the presence of the Special Rapporteur of the International Law Commission for the topic as an expert during the debates on the topic at the twenty-third and twenty-fourth sessions of the General Assembly.¹²⁵

99. The work of the elaboration of the two conventions was done by the Sixth Committee of the General Assembly, which studied in detail each of the provisions of the draft articles, amended them, prepared the preamble and final clauses of the conventions and, in the case of the articles on special missions, an Optional Protocol concerning the compulsory settlement of disputes arising out of the interpretation or application of the Convention. The Sixth Committee was assisted in both instances by a drafting committee it had established. The General Assembly adopted by resolution the Conventions and the Optional Protocol relevant to the Convention on Special Missions, recommended by the Sixth Committee, and opened the Conventions and the Optional Protocol for signature and ratification or for accession.¹²⁶ The General

¹²² *Ibid.*

¹²³ *Ibid.* The draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons had been prepared by a working group established for that purpose by the Commission.

¹²⁴ General Assembly resolution 2419 (XXIII) of 18 December 1968.

¹²⁵ General Assembly resolutions 2273 (XXII) and 2419 (XXIII).

¹²⁶ General Assembly resolutions 2530 (XXIV) of 8 December 1969 (Convention on Special Missions and Optional Protocol concerning the Compulsory Settlement of Disputes) and 3166 (XXVIII) of 14 December 1973 (Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents). When adopting the latter Convention by resolution 3166 (XXVIII), the General Assembly recognized that the provisions of the Convention

¹²¹ General Assembly resolutions 2273 (XXII) of 1 December 1967 (special missions), and 2926 (XXVII) of 28 November 1972 (internationally protected persons).

Assembly also adopted a resolution on the settlement of civil claims in connection with the Special Missions Convention.¹²⁷

I. Conclusions

100. With the assistance of the Working Group established at its thirtieth session and enlarged at its thirty-first session,¹²⁸ the Commission, in the light of the General Assembly's request for observations, has made an evaluation of its own performance and of its potential. This has been done on the basis of the information contained in Sections A to H above.

101. This information shows that the techniques and procedures provided in the Statute of the Commission, as they have evolved during a period of three decades, are well adapted for the object stated in Article 1 of its Statute and further defined in Article 15, i.e. "the progressive development of international law and its codification".

102. Nevertheless, experience has shown that it is not normally feasible in any particular case to separate the elements of progressive development from those of codification, and that the Commission, as a permanent body of legal experts, is well qualified to prepare draft conventions or articles in those cases in which elements of progressive development predominate as well as those in which elements of codification predominate.

103. The Commission, while constantly keeping under review its techniques and procedures and

(Footnote 126 continued.)

"could not in any way prejudice the exercise of the legitimate right to self-determination and independence, in accordance with the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, by peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and apartheid."

The Assembly also decided, in resolution 3166 (XXVIII), that that resolution, "whose provisions are related to the annexed Convention, shall always be published together with it".

¹²⁷ General Assembly resolution 2531 (XXIV) of 8 December 1969.

¹²⁸ See Introduction, paras. ii to vi above.

adapting them to meet the needs of circumstances as they arise, considers that, on the whole, its rate of progress is satisfactory, in view of the time and resources at its disposal and the assistance which it requires from Governments at all stages.

104. Institutional features which contribute to the efficient performance of its functions by the Commission are: (a) Special Rapporteurs, (b) the Drafting Committee, and (c) Working Groups.

(a) The institution of Special Rapporteurs was foreseen in the Statute of the Commission. They have served the Commission well, but it will be necessary to provide them with more assistance and more facilities to enable them to perform their duties in the future.¹²⁹

(b) The Drafting Committee, which has a somewhat wider mandate than a normal drafting committee, is an indispensable and very effective organ of the Commission.

(c) For preliminary examination of the scope of new topics and for special topics assigned to the Commission by the General Assembly, Working Groups created *ad hoc* have also proved to be valuable.

105. It is essential not only that the Commission should produce drafts of a high technical quality but also that these drafts should reflect the comments and observations of Governments, whether made directly or through their representatives in the General Assembly. The established procedures do, in fact, provide such opportunities for Governments to make comments and observations and for the Commission to examine them. It may, however, well become necessary for the Commission to make more use of questionnaires addressed to Governments than it has done in the past.

106. Finally, it should be noted that there is a risk that the rate of progress of the Commission may be impeded by its agenda becoming too congested, and it is for consideration whether topics selected for inclusion in its programme should, where appropriate, be specific rather than general.

¹²⁹ Text of para. (a) as it was modified by the Commission.

ANNEX^a

Statute of the International Law Commission

Article 1

1. The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification.

2. The Commission shall concern itself primarily with public international law, but is not precluded from entering the field of private international law.

^a Text of the annex as it was approved by the Commission.

Chapter II. Functions of the International Law Commission

Article 15

In the following articles the expression "progressive development of international law" is used for convenience as meaning the preparation of draft conventions on subjects which have not yet

been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression "codification of international law" is used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine.

A. PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW

Article 16

When the General Assembly refers to the Commission a proposal for the progressive development of international law, the Commission shall follow in general a procedure on the following lines:

- (a) It shall appoint one of its members to be Rapporteur;
- (b) It shall formulate a plan of work;
- (c) It shall circulate a questionnaire to the Governments, and shall invite them to supply within a fixed period of time data and information relevant to items included in the plan of work;
- (d) It may appoint some of its members to work with the Rapporteur on the preparation of drafts pending receipt of replies to this questionnaire;
- (e) It may consult with scientific institutions and individual experts; these experts need not necessarily be nationals of Members of the United Nations. The Secretary-General will provide, when necessary and within the limits of the budget, for the expenses of these consultations of experts;
- (f) It shall consider the drafts proposed by the Rapporteur;
- (g) When the Commission considers a draft to be satisfactory, it shall request the Secretary-General to issue it as a Commission document. The Secretariat shall give all necessary publicity to this document which shall be accompanied by such explanations and supporting material as the Commission considers appropriate. The publication shall include any information supplied to the Commission in reply to the questionnaire referred to in subparagraph (c) above;
- (h) The Commission shall invite the Governments to submit their comments on this document within a reasonable time;
- (i) The Rapporteur and the members appointed for that purpose shall reconsider the draft taking into consideration these comments and shall prepare a final draft and explanatory report which they shall submit for consideration and adoption by the Commission;
- (j) The Commission shall submit the draft so adopted with its recommendations through the Secretary-General to the General Assembly.

Article 17

1. The Commission shall also consider proposals and draft multilateral conventions submitted by Members of the United Nations, the principal organs of the United Nations other than the General-Assembly, specialized agencies, or official bodies established by inter-governmental agreement to encourage the progressive development of international law and its codification, and transmitted to it for that purpose by the Secretary-General.

2. If in such cases the Commission deems it appropriate to proceed with the study of such proposals or drafts, it shall follow in general a procedure on the following lines:

- (a) The Commission shall formulate a plan of work, and study such proposals or drafts, and compare them with any other proposals and drafts on the same subjects;
- (b) The Commission shall circulate a questionnaire to all Members of the United Nations and to the organs, specialized

agencies and official bodies mentioned above which are concerned with the question, and shall invite them to transmit their comments within a reasonable time;

(c) The Commission shall submit a report and its recommendations to the General Assembly. Before doing so, it may also, if it deems it desirable, make an interim report to the organ or agency which has submitted the proposal or draft;

(d) If the General Assembly should invite the Commission to proceed with its work in accordance with a suggested plan, the procedure outlined in article 16 above shall apply. The questionnaire referred to in paragraph (c) of that article may not, however, be necessary.

B. CODIFICATION OF INTERNATIONAL LAW

Article 18

1. The Commission shall survey the whole field of international law with a view to selecting topics for codification, having in mind existing drafts whether governmental or not.

2. When the Commission considers that the codification of a particular topic is necessary or desirable, it shall submit its recommendations to the General Assembly.

3. The Commission shall give priority to requests of the General Assembly to deal with any question.

Article 19

1. The Commission shall adopt a plan of work appropriate to each case.

2. The Commission shall, through the Secretary-General, address to Governments a detailed request to furnish the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other documents relevant to the topic being studied and which the Commission deems necessary.

Article 20

The Commission shall prepare its drafts in the form of articles and shall submit them to the General Assembly together with a commentary containing:

- (a) Adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine;
- (b) Conclusions relevant to:
 - (i) The extent of agreement on each point in the practice of States and in doctrine;
 - (ii) Divergencies and disagreements which exist, as well as arguments invoked in favour of one or another solution.

Article 21

1. When the Commission considers a draft to be satisfactory, it shall request the Secretary-General to issue it as a Commission document. The Secretariat shall give all necessary publicity to the document including such explanations and supporting material as the Commission may consider appropriate. The publication shall include any information supplied to the Commission by Governments in accordance with article 19. The Commission shall decide whether the opinions of any scientific institution or individual experts consulted by the Commission shall be included in the publication.

2. The Commission shall request Governments to submit comments on this document within a reasonable time.

Article 22

Taking such comments into consideration, the Commission shall prepare a final draft and explanatory report which it shall submit with its recommendations through the Secretary-General to the General Assembly.

Article 23

1. The Commission may recommend to the General Assembly:

- (a) To take no action, the report having already been published;
- (b) To take note of or adopt the report by resolution;
- (c) To recommend the draft to Members with a view to the conclusion of a convention;
- (d) To convoke a conference to conclude a convention.

2. Whenever it deems it desirable, the General Assembly may refer drafts back to the Commission for reconsideration or redrafting.

Article 24

The Commission shall consider ways and means for making the evidence of customary international law more readily available, such as the collection and publication of documents concerning State practice and of the decisions of national and international courts on questions of international law, and shall make a report to the General Assembly on this matter.

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