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Organization of future work: working paper prepared by the Secretariat

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ORGANIZATION OF FUTURE WORK

[Agenda item 6]

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Working paper prepared by the Secretariat

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CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1-4	337
I. Topics of international law currently under study by the International Law Commission	5	338
II. Topics which the Commission has placed on its programme of work but on which no Special Rapporteur has yet been appointed	6-11	338
III. Provisional list of topics for codification drawn up by the Commission in 1949	12	339
IV. Topics suggested for study by the Commission which have not yet been placed on its programme of work	13-15	340

Introduction

1. The beginning of a new five-year term of office of the members of the International Law Commission and the recent completion of its work on one major topic may make it desirable for the Commission to review its programme of work, to which it may wish to add one or more new topics, and the organization of its future work. The purpose of this note is to facilitate such a review. The note has been kept as brief as possible, and for further information about the various topics mentioned, members may consult other relevant documents of the Commission. Among the most useful are:

(i) *Survey of International Law in relation to the Work of Codification of the International Law Commission*¹

(ii) *Future work in the field of the codification and progressive development of international law: Working paper*²

¹ Document A/CN.4/1/Rev.1; United Nations publication, Sales No.: 1948.V.I(1).

² *Yearbook of the International Law Commission, 1962*, vol. II, document A/CN.4/145, pp. 84-100.

2. The note will first briefly mention the topics of international law which are currently under study by the Commission with the assistance of its Special Rapporteurs. In this connexion it will be recalled that the Commission at its eighteenth session (1966) decided "that a Special Rapporteur who is re-elected as a member should continue his work on his topic, if not yet finally disposed of by the Commission, unless and until the Commission as newly constituted decides otherwise".³ In accordance with this decision, the Commission has received reports from Special Rapporteurs at its nineteenth session. The only Special Rapporteur who was not re-elected to the Commission at the last election was Mr. Manfred Lachs, the Special Rapporteur on succession of States and Governments, who is now a member of the International Court of Justice.

3. The Commission in recent years has worked concurrently on five topics of international law, with a Special Rapporteur on each. The completion of the Commission's work on the law of treaties at the eighteenth session

³ *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, part II, p. 277, para. 73.

means that there are now only four topics under current study, and one of those four, special missions, is near completion. The Commission may consequently wish to consider at its present session whether to take up the study of one or two additional topics. To facilitate the Commission's examination of its future programme, this note will refer to two topics which the General Assembly has requested the Commission to examine and which in 1962 were placed on the Commission's programme, but on which no Special Rapporteurs have yet been appointed. The provisional list of topics for codification drawn up by the Commission at its first session (1949)⁴ will then be set out, with brief notes as to the extent to which the Commission and codification conferences have dealt with them. Finally, the note will list certain topics which have been suggested in the past for study by the Commission, but have not been placed on its programme of work.

4. When the Commission has established the list of topics on which it will work, it may wish in accordance with its past practice, to decide upon priorities among the various topics, and possibly also upon tentative dates for the completion of study of each of them.

I. Topics of international law currently under study by the International Law Commission

5. As the Special Rapporteurs on these topics have given or will no doubt wish to give the Commission all necessary explanations on these topics, it will be appropriate only to list them here, with indications of the latest documents furnishing a basis for their consideration.

(i) *Special missions*

Fourth report of Mr. Milan Bartoš, Special Rapporteur (A/CN.4/194 and Add.1-5).

(ii) *Relations between States and inter-governmental organizations*

Second report of Mr. Abdullah El-Erian, Special Rapporteur (A/CN.4/195 and Add.1).

(iii) *State responsibility*

Mr. Roberto Ago is Special Rapporteur. The Commission's report on the work of its fifteenth session (1963)⁵ summarizes the latest decisions and expressions of views of the Commission, and the report of a sub-committee on the topic is given in annex I to that report.

(iv) *Succession of States and Governments*

There is now no Special Reporter on this topic. The Commission's report on the work of its fifteenth session⁶ summarizes the latest decisions and expressions of views of the Commission, and the report of a sub-committee on the topic is given in annex II to that report.

⁴ *Yearbook of the International Law Commission, 1949*, report of the Commission to the General Assembly, p. 281, para. 16.

⁵ *Yearbook of the International Law Commission, 1963*, vol. II, document A/5509, pp. 223 and 224, paras. 51-55.

⁶ *Ibid.*, pp. 224 and 225, paras. 56-61.

II. Topics which the Commission has placed on its programme of work, but on which no Special Rapporteur has yet been appointed

A. *Right of asylum*

6. This topic was included in the provisional list for codification drawn up by the Commission in 1949. The General Assembly at its fourteenth session adopted resolution 1400 (XIV) of 21 November 1959, which reads as follows:

The General Assembly,

Considering that it is desirable to standardize the application of the principles and rules relating to the right of asylum,

Recalling that the International Law Commission at its first session included the right of asylum in the provisional list of topics of international law selected for codification,

Requests the International Law Commission, as soon as it considers it advisable, to undertake the codification of the principles and rules of international law relating to the right of asylum.

7. The Commission at its twelfth session (1960) "took note of the resolution and decided to defer further consideration of this question to a future session".⁷ At its fourteenth session (1962) the Commission decided to include the topic in its programme, but without setting any date for the start of consideration.⁸ Meanwhile, work on the right of asylum was proceeding in other organs of the United Nations. The Commission on Human Rights, which had been considering a draft declaration on the right of asylum since 1957, completed the draft in 1960,⁹ and that draft was transmitted to the General Assembly by the Economic and Social Council in its resolution 772 E (XXX) of 25 July 1960. The General Assembly, at its seventeenth session (1962), referred the draft to the Third Committee, which adopted the text of a preamble and of one article¹⁰ but was unable to complete the draft because of the pressure of other work. At the eighteenth session of the Assembly (1963) the Third Committee was unable to deal with the item, and the Committee did not meet during the nineteenth session (1964).

8. At its twentieth session (1965) the General Assembly referred the item on the draft declaration on the right of asylum to the Sixth Committee instead of to the Third Committee. The Sixth Committee, with the assistance of a working group, considered certain procedural aspects of the item, and prepared a draft resolution which was adopted by the General Assembly as resolution 2100 (XX) of 20 December 1965, by which it was decided to take up the item again at the twenty-first session.

9. At the twenty-first session of the Assembly (1966), the item was again referred to the Sixth Committee,

⁷ *Yearbook of the International Law Commission, 1960*, vol II, document A/4425, p. 180, para. 39.

⁸ *Yearbook of the International Law Commission, 1962*, vol. II, document A/5209, p. 190, para. 60.

⁹ *Official Records of the Economic and Social Council, Thirtieth Session, Supplement No. 8*, chap. VI. Also *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 63, documents A/5926 and A/C.6/L.581.

¹⁰ *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 46, document A/5359.

which again appointed a working group to consider it. The working group prepared a complete text entitled "Draft declaration on territorial asylum"¹¹ The General Assembly, by resolution 2203 (XXI) of 16 December 1966, decided to transmit that draft to Member States for their further consideration, and to place an item entitled "Draft declaration on territorial asylum" on the provisional agenda of its twenty-second session, with a view to the final adoption of a declaration on the subject.

B. Juridical régime of historic waters, including historic bays

10. The first United Nations Conference on the Law of the Sea (1958) adopted, in paragraph 6 of article 7 of the Convention on the Territorial Sea and Contiguous Zone, a provision to the effect that its rules on bays "shall not apply to so-called 'historic' bays".¹² The Conference on 27 April 1958 also adopted a resolution requesting the General Assembly to arrange for the study of the juridical régime of historic waters, including historic bays.¹³ The General Assembly thereafter adopted resolution 1453 (XIV) of 7 December 1959, reading as follows:

The General Assembly,

Recalling that, by a resolution adopted on 27 April 1958, the United Nations Conference on the Law of the Sea requested the General Assembly to arrange for the study of the juridical régime of historic waters, including historic bays, and for the communication of the results of the study to all States Members of the United Nations,

Requests the International Law Commission, as soon as it considers it advisable, to undertake the study of the question of the juridical régime of historic waters, including historic bays, and to make such recommendations regarding the matter as the Commission deems appropriate.

11. The Commission, at its twelfth session (1960), requested the Secretariat to undertake a study of the topic, and deferred further consideration to a future session.¹⁴ A study prepared by the Secretariat was published in 1962.¹⁵ Also in 1962, the Commission, at its fifteenth session, decided to include the topic in its programme, but without setting any date for the start of consideration.¹⁶

III. Provisional list of topics for codification drawn up by the Commission in 1949

12. The list of topics of international law provisionally selected for codification by the Commission in 1949¹⁷ is given hereunder, with brief notes indicating the extent

¹¹ *Ibid.*, Twenty-first Session, Annexes, agenda item 85, document A/6570, annex, para. 1.

¹² *United Nations Conference on the Law of the Sea (1958)*, Official Records, vol. II, p. 133.

¹³ *Ibid.*, Annexes, document A/CONF.13/L.56, resolution VII.

¹⁴ *Yearbook of the International Law Commission, 1960*, vol. II, document A/4425, p. 180, para. 40.

¹⁵ *Yearbook of the International Law Commission, 1962*, vol. II, document A/CN.4/143, pp. 1-25.

¹⁶ *Ibid.*, document A/5209, p. 190, para. 60.

¹⁷ *Yearbook of the International Law Commission, 1949*, report of the Commission to the General Assembly, p. 281, para. 16.

to which they have been dealt with by the Commission and by codification conferences which considered drafts prepared by it.

(i) Recognition of States and Governments

Article 11 of the draft declaration on rights and duties of States, adopted by the Commission at its first session (1949), refers to a duty of States to refrain from recognizing any territorial acquisition made by illegal means by another State, but the Commission "concluded that the whole matter of recognition was too delicate and too fraught with political implications to be dealt with in a brief paragraph in this draft Declaration . . .".¹⁸

(ii) Succession of States and Governments

See paragraph 5 (iv) above.

(iii) Jurisdictional immunities of States and their property

The immunities of State-owned ships and warships are referred to in the Convention on the Territorial Sea and the Contiguous Zone¹⁹ and the Convention on the High Seas,²⁰ both adopted at the first United Nations Conference on the Law of the Sea (1958). The immunities of State property used in connexion with diplomatic missions are regulated in the Vienna Convention on Diplomatic Relations (1961)²¹ and those of such property used in connexion with consular posts in the Vienna Convention on Consular Relations (1963).²² The draft articles on special missions (A/CN.4/194 and addenda) also contain provisions on the immunity of State property, and so presumably will the draft articles on relations between States and inter-governmental organizations. One main aspect of the topic which has not yet been touched on by the Commission is the immunities, if any, of State-owned property used for commercial purposes.

(iv) Jurisdiction with regard to crimes committed outside national territory

The Convention on the Territorial Sea and the Contiguous Zone (1958) and the Convention on the High Seas (1958) contain provisions concerning crimes committed at sea. One aspect not yet touched on by the Commission is jurisdiction with regard to crimes committed on land in foreign countries (except for those committed by persons with diplomatic or consular status, which have been or are being dealt with by the Commission).

(v) Régime of the high seas

The first United Nations Conference on the Law of the Sea (1958) adopted the Convention on the High Seas.

¹⁸ *Ibid.*, p. 289, para. 50.

¹⁹ *United Nations Conference on the Law of the Sea (1958)*, Official Records, vol. II, Annexes, document A/CONF.13/L.52.

²⁰ *Ibid.*, document A/CONF.13/L.53.

²¹ *United Nations Conference on Diplomatic Intercourse and Immunities*, Official Records, vol. II, Annexes, document A/CONF.20/13 and Cor.1.

²² *United Nations Conference on Consular Relations*, Official Records, vol. II, Annexes, document A/CONF.25/12.

(vi) *Régime of territorial waters*

The first United Nations Conference on the Law of the Sea (1958) adopted the Convention on the Territorial Sea and the Contiguous Zone. The questions of the breadth of the territorial sea and fishery limits were considered at the Second United Nations Conference on the Law of the Sea (1960)²³ but the Conference did not adopt any decisions on those questions. The topic of the juridical régime of historic waters, including historic bays (see above, para. 10) is also connected with this topic.

(vii) *Nationality, including statelessness*

A United Nations Conference on the Elimination or Reduction of Future Statelessness, which met in 1959 and 1961, adopted the Convention on the Reduction of Statelessness (A/CONF.9/15), which has not yet come into force. It may also be mentioned that the nationality of married women, a topic which the Commission was requested to study by Economic and Social Council resolution 304 D (XI) of 17 July 1950, is the subject of a Convention on the Nationality of Married Women, not based on a draft by the Commission, which was adopted by the General Assembly in its resolution 1040 (XI) of 29 January 1957, and which is now in force.

(viii) *Treatment of aliens*

The Commission at its seventh session (1955) appointed Mr. F. V. García Amador as Special Rapporteur on State responsibility, a topic which he conceived as closely related to the topic of treatment of aliens. From the eighth (1956) to the thirteenth (1961) session of the Commission Mr. García Amador submitted a series of six reports on international responsibility²⁴ which were mainly devoted to the development and explanation of a draft on the responsibility of a State for injuries caused in its territory to the person or property of aliens. The Commission, which was occupied with other work, was unable to give full consideration to these reports. Mr. Roberto Ago was subsequently appointed Special Rapporteur on State responsibility. The Commission, after considering at its fifteenth session (1963) a report of a sub-committee on that topic (A/CN.4/152)²⁵ agreed "(1) that, in an attempt to codify the topic of State responsibility, priority should be given to the definitions of the general rules governing the international responsi-

bility of the State, and (2) that in defining these general rules the experience and material gathered in certain special sectors, especially that of responsibility for injuries to the persons or property of aliens, should not be overlooked . . .".²⁶

(ix) *Right of asylum*

See paragraphs 6-9 above.

(x) *Law of treaties*

The Commission adopted a set of draft articles at its eighteenth session (1966).²⁷

(xi) *Diplomatic intercourse and immunities*

The United Nations Conference on Diplomatic Intercourse and Immunities (1961) adopted the Vienna Convention on Diplomatic Relations. The topics of Special missions (see para. 5 (i) above) and Relations between States and inter-governmental organizations (see para. 5 (ii) above) also constitute parts of this topic.

(xii) *Consular intercourse and immunities*

The United Nations Conference on Consular Relations (1963) adopted the Vienna Convention on Consular Relations.

(xiii) *State responsibility*

See paragraph 5 (iii) above.

(xiv) *Arbitral procedure*

The Commission at its fifth session (1953) adopted a draft convention on arbitral procedure²⁸ which was the subject of General Assembly resolution 989 (X) of 14 December 1955. At its tenth session (1958) the Commission adopted a set of Model Rules on Arbitral Procedure,²⁹ which were the subject of General Assembly resolution 1262 (XIII) of 14 November 1958.

IV. Topics suggested for study by the Commission, which have not yet been placed on its programme of work

A. Topics suggested in 1949, but not included by the Commission in its provisional list for codification

13. The provisional list of topics for codification referred to in the preceding paragraph was drawn up after consideration of a memorandum by the Secretary-General entitled "Survey of International Law in relation to the Work of Codification of the International Law Commission" (see paragraph 1 of the Introduction to this working paper). That memorandum suggested certain topics which after discussion by the Commission were not selected by it, and those topics, concerning which

²³ *Second United Nations Conference on the Law of the Sea (1960), Official Records Committee, of the Whole 2nd-28th meetings, and Plenary Meetings, 3rd, 5th, 6th, 9th, 11th, 12th, 13th and 14th meetings.*

²⁴ *Yearbook of the International Law Commission, 1956, vol. II, document A/CN.4/96, pp. 173-231; Yearbook of the International Law Commission, 1967, vol. II, document A/CN.4/106, pp. 104-130; Yearbook of the International Law Commission, 1958, vol. II, document A/CN.4/111, pp. 47-73; Yearbook of the International Law Commission, 1959, vol. II, document A/CN.4/119, pp. 1-36; Yearbook of the International Law Commission, 1960, vol. II, document A/CN.4/125, pp. 41-68; Yearbook of the International Law Commission, 1961, vol. II, document A/CN.4/134 and Add.1, pp. 1-54.*

²⁵ *Yearbook of the International Law Commission, 1963, vol. II, document A/5509, annex I, p. 227.*

²⁶ *Ibid.*, document A/5509, p. 224, para. 52.

²⁷ *Yearbook of the International Law Commission, 1966, vol. II, document A/6309/Rev.1, part II, pp. 177-187.*

²⁸ *Yearbook of the International Law Commission, 1953, vol. II, document A/2456, pp. 208-212, para. 57.*

²⁹ *Yearbook of the International Law Commission, 1958, vol. II, document A/3859, pp. 83-86, para. 22.*

the memorandum makes full explanations, were the following.³⁰

- (i) Subjects of international law
- (ii) Sources of international law
- (iii) Obligations of international law in relation to the law of States
- (iv) Fundamental rights and duties of States³¹
- (v) Domestic jurisdiction
- (vi) Recognition of acts of foreign States
- (vii) Obligations of territorial jurisdiction
- (viii) Territorial domain of States
- (ix) Pacific settlement of international disputes³²
- (x) Extradition

B. Topics suggested by Governments in response to General Assembly resolution 1505 (XV) and in the Sixth Committee at the fifteenth and sixteenth sessions

14. The General Assembly, by resolution 1505 (XV) of 12 December 1960, decided to place on the provisional agenda of its sixteenth session an item entitled "Future work in the field of codification and progressive development of international law", and also asked for the views and suggestions of Member States thereon. Various suggestions were made by Member States in written form, and other suggestions were made orally in the debates of the Sixth Committee at the fifteenth and sixteenth sessions. The General Assembly, by resolution 1686 (XVI) of 18 December 1961, requested the

³⁰ The Commission also discussed the topic of the laws of war, which had not been suggested in the memorandum: the topic was not included in the list (*Yearbook of the International Law Commission, 1949*, report of the Commission to the General Assembly, p. 281, para. 18).

³¹ The Commission at its first session (1949) adopted a draft declaration on the rights and duties of States on the basis of a draft referred to it by General Assembly resolution 178 (II) of 21 November 1947 (*ibid.*, part II, pp. 287 and 288). The General Assembly, by its resolution 596 (VI) of 7 December 1951, postponed further consideration of the draft declaration.

³² Without attempting to recall all the various efforts of the United Nations on this topic, it may be mentioned that an item entitled "Peaceful settlement of disputes" has been discussed at the past two sessions of the General Assembly (twentieth session, agenda item 99 and twenty-first session, agenda item 36—*Official Records of the General Assembly, Twentieth Session, Special Political Committee*, 489th to 492nd meetings; and *ibid.*, *Plenary Meetings*, 1403rd meeting; *ibid.*, *Twenty-first Session, Special Political Committee*, 547th and 548th meetings and *ibid.*, *Plenary Meetings*, 1498th meeting) but no resolution on it has been adopted. Also, one of the principles considered by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, which will meet again in 1967, is "the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security are not endangered" (*ibid.*, *Twenty-first Session, Annexes*, agenda item 87, document A/6230).

International Law Commission to consider its future programme of work in the light of all the suggestions. The Secretariat prepared a working paper³³ summarizing what had been suggested. The Commission considered the matter at its fourteenth session (1962) and decided to include in its programme of work four items (special missions, relations between States and inter-governmental organizations, the right of asylum, and the juridical régime of historic waters, including historic bays) which had been referred to it by earlier General Assembly resolutions. As to other topics, however, the Commission observed:

"The Commission considered that many of the topics proposed by Governments deserved study with a view to codification. In drawing up its future programme of work, however, it is obliged to take account of its resources . . . The Commission . . . considers it inadvisable for the time being to add anything further to the already long list of topics on its agenda."³⁴

15. The list of new topics suggested by Governments, as given in the Secretariat's working paper, is as follows:

- (i) Law of space³⁵
- (ii) Law of international organizations³⁶
- (iii) Human rights and defence of democracy³⁷
- (iv) Independence and sovereignty of States
- (v) Enforcement of international law
- (vi) Utilization of international rivers³⁸
- (vii) Economic and trade relations³⁹

³³ *Yearbook of the International Law Commission, 1962*, vol. II, document A/CN.4/145, p. 84.

³⁴ *Ibid.*, document A/5209, p. 190, para. 61.

³⁵ This topic is being studied by the General Assembly's Committee on the Peaceful Uses of Outer Space. At its twenty-first session the General Assembly adopted resolution 2222 (XXI) of 19 December 1966, relating to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

³⁶ Under this heading were grouped various suggestions relating not only in general to the status of international organizations and their relations with States but also to their responsibility, the law of treaties respecting them, and the entrance of new members in the international community.

³⁷ The General Assembly, by resolution 2200 A (XXI) of 19 December 1966, adopted the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights.

³⁸ In accordance with General Assembly resolution 1401 (XIV) of 21 November 1959, the Secretary-General submitted a report (A/5409) on legal problems relating to the utilization and use of international rivers. A collection of legislative texts and treaty provisions concerning the utilization of international rivers for other purposes than navigation has been printed in the *United Nations Legislative Series* ST/LEG.SER.B/12 (United Nations publication, Sales No.: 63.V.4).

³⁹ The General Assembly by resolution 2205 (XXI) of 17 December 1966, decided to establish the United Nations Commission on International Trade Law.