

Part Four

MULTILATERAL TREATY-MAKING PROCESS IN THE UNITED NATIONS, THE SPECIALIZED AND RELATED AGENCIES AND OTHER INTER- NATIONAL ORGANIZATIONS

I. UNITED NATIONS

A. CENTRE FOR HUMAN RIGHTS

1. *Introduction*

1. This outline of techniques and procedures used by the United Nations in the elaboration of multilateral treaties relating to human rights covers the following international conventions concluded since the establishment of the United Nations:

—Convention on the Prevention and Punishment of the Crime of Genocide (1948);

—Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949);

—Convention on the International Right of Correction (1952);

—Protocol amending the Slavery Convention signed at Geneva on 26 September 1926 (1953);

—Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956);

—International Convention on the Elimination of All Forms of Racial Discrimination (1965);

—International Covenant on Economic, Social and Cultural Rights (1966);

—International Covenant on Civil and Political Rights (1966);

—Optional Protocol to the International Covenant on Civil and Political Rights (1966);

—Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968);

—International Convention on the Suppression and Punishment of the Crime of *Apartheid* (1973).

2. The following proposed conventions which are being considered currently will also be considered:

—Draft International Convention on Freedom of Information;

—Draft International Convention on the Elimination of All Forms of Religious Intolerance;

—Draft International Convention against Torture;

—Draft International Convention on the Rights of the Child.

2. *The process*

3. In the multilateral treaty-making process in the field of human rights, the following patterns of techniques and procedures may be identified:

(a) Conventions drafted in human rights organs, forwarded to the General Assembly through the Economic and Social Council and opened for signature and ratification or accession by the General Assembly.

(b) Conventions drafted in human rights organs, considered by international conferences convened by the United Nations and opened for signature and ratification or accession by such conferences.

(c) Conventions initiated in human rights organs and sent for consideration by conferences not convened by the United Nations.

(d) Conventions initiated by international conferences convened by the United Nations and referred to United Nations human rights organs.

(e) Instruments drafted mainly at the final stage by the General Assembly.

(f) Instruments conceived in United Nations human rights organs but elaborated elsewhere in the United Nations system.

4. An element common to patterns (a), (b), (c) and (e) above is that the draft instrument is usually prepared by United Nations organs, often with the assistance of the Secretariat and sometimes of outside experts. This feature, however, does not apply to patterns (d) and (f), which are somewhat unusual. A general feature which may be noted is that there is a tendency, before concluding conventions, to elaborate declarations or bodies of principles as a first stage. This may be seen, for example, in the Universal Declaration of Human Rights, which led to the International Covenants on Human Rights; the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, which led to the International Convention on that subject;¹ the Declaration on the Rights of the Child, which appears to be leading presently to a convention on this subject; the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which also appears to be leading presently to a convention on this subject; and the Declaration on Territorial Asylum, which is expected to lead eventually to a convention on this subject. It is significant that in two cases where draft conventions were submitted to it before declarations had been adopted (freedom of information and religious intolerance), the General Assembly decided to defer the draft conventions until it was able to consider the adoption of declarations on the topics.

(a) *Treaties drafted in human rights organs, forwarded to the General Assembly through the Economic and Social Council and opened for signature and ratification or accession by the General Assembly*

(i) *Convention on the Prevention and Punishment of the Crime of Genocide (1948)*

5. At the second part of its first session, held from 23 October to 15 December 1946, the General Assembly included on its agenda an item entitled "Resolution on the crime of genocide" and adopted, on 11 December 1946, resolution 96 (1) in which it, *inter alia*, recommended that international cooperation be organized between States with a view to facilitating the speedy

prevention and punishment of the crime of genocide, and, to this end, requested the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly.

6. At its fourth session, held in 1947, the Economic and Social Council adopted, on 28 March 1947, resolution 47 (IV) on the crime of genocide, in which it took cognizance of General Assembly resolution 96 (I) and instructed the Secretary-General to undertake, "with the assistance of experts in the field of international and criminal law, the necessary studies with a view to drawing up a draft convention in accordance with the General Assembly Committee on the Development and Codification of International Law and, if feasible, the International Commission on Human Rights, and after reference to all Member Governments for comments" to submit that draft to the next session of the Economic and Social Council.

7. In pursuance of that resolution, the Secretary-General had a preliminary draft convention prepared, and requested three experts—Professors Lemkin, Pella and Donnedieu de Vabres—to give him their assistance. On the basis of the comments of those experts, the Secretary-General amended and supplemented the preliminary draft, which thus became the draft convention on the prevention and punishment of the crime of genocide, drawn up by the Secretariat, with the assistance of experts in the field of international and criminal law.²

8. In accordance with Economic and Social Council resolution 47 (IV), the Secretary-General transmitted the draft, by his letter of 13 June 1947, to the Committee on the Development and Codification of International Law. That Committee's Chairman, by a letter dated 17 June 1947 addressed to the Secretary-General, replied that "the Committee fully realizes the urgency . . . of organizing co-operation between States with a view to facilitating the speedy prevention and punishment of the crime of genocide". The Committee, however, "regretted that, in the absence of information as to the views of the Governments, it feels unable at present to express any opinion in the matter".³ The draft convention was also transmitted to Member States for comments.⁴

9. Consultation with the Commission on Human Rights, which was also mentioned in Council resolution 47 (IV), was not possible, because the Commission did not meet between the fourth and fifth sessions of the Economic and Social Council.

10. At its fifth session, held from 19 July to 17 August 1947, the Economic and Social Council adopted resolution 77 (V) of 6 August 1947, in which, taking note of the fact that the General Assembly Committee on the Development and Codification of International Law and the Commission on Human Rights had not considered the draft convention on the crime of genocide prepared by the Secretariat and that the comments of the Member Governments on that draft convention had not been received in time for consideration at the fifth session of the Economic and Social Council, it decided "to inform the General Assembly that it proposes to proceed as rapidly as possible with the consideration of the question subject to any further instructions of the General Assembly". The Council requested the "Secretary-General, in

the meanwhile, to transmit to the General Assembly the draft convention on the crime of genocide" prepared by the Secretariat.

11. At its second session, the General Assembly adopted resolution 180 (II) of 21 November 1947, in which it declared, *inter alia*, that "genocide is an international crime entailing national and international responsibility on the part of individuals and States" and requested "the Economic and Social Council to continue the work it has begun concerning the suppression of the crime of genocide, including the study of the draft convention prepared by the Secretariat, and to proceed with the completion of a convention . . .".

12. Taking cognizance of General Assembly resolution 180 (II), the Economic and Social Council at its sixth session, held from 2 February to 11 March 1948, established in resolution 117 (VI) of March 1948 an *Ad Hoc* Committee composed of the following members of the Council: China, France, Lebanon, Poland, the Union of Soviet Socialist Republics, the United States of America and Venezuela, and instructed it:

(a) To meet at the Headquarters of the United Nations, in order to prepare the draft convention on the crime of genocide in accordance with the above-mentioned resolution of the General Assembly, and to submit this draft convention, together with the recommendation of the Commission on Human Rights thereon, to the next session of the Economic and Social Council; and

(b) To take into consideration, in the preparation of the draft convention, the draft convention prepared by the Secretary-General, the comments of the Member Governments on this draft convention, and other drafts on the matter submitted by any Member Government.

13. The *Ad Hoc* Committee on Genocide met at Lake Success from 5 April to 10 May 1948 and prepared a report⁵ containing a draft convention on the prevention and punishment of genocide.⁶

14. At its third session, held from 24 May to 18 June 1948, owing to lack of time, the Commission on Human Rights was not able to consider thoroughly the draft convention on the prevention and punishment of genocide and therefore was not in a position to make any observations concerning its substance. It expressed the opinion that "the draft convention represents an appropriate basis for urgent consideration and decisive action by the Economic and Social Council and by the General Assembly during their coming sessions."⁷

15. At its seventh session, held from 19 July to 29 August 1948, the Economic and Social Council in resolution 153 (VII) of 26 August 1948 decided to transmit to the General Assembly the draft Convention on the Prevention and Punishment of the Crime of Genocide submitted to the Council in the report of the *Ad Hoc* Committee on Genocide, together with the remainder of that report and the records of the proceedings of the Council at its seventh session on that subject.

16. At the third session (first part) of the General Assembly, the draft convention prepared by the *Ad Hoc* Committee was referred to the Sixth Committee. The Sixth Committee examined the draft article by article, as well as the amendments submitted to it, at its 63rd to 69th meetings, its 71st to 81st meetings, its 91st to 110th meetings and its 128th to 134th meetings. The draft convention as revised by the Sixth Committee, together with certain amend-

ments which had not been accepted by the Committee, was considered by the General Assembly at its 178th and 179th meetings. In the plenary, five amendments proposed to the draft convention were defeated and one was not put to the vote. No amendments were therefore made at this stage. In resolution 260 A (III) of 9 December 1948, the Assembly approved the Convention on the Prevention and Punishment of the Crime of Genocide, which was annexed to the resolution, and opened it for signature and ratification or accession by Member States.

(ii) *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*

17. In accordance with General Assembly resolution 51 (I), the Economic and Social Council, by its resolution 43 (IV), requested the Secretary-General, *inter alia*, to resume the study of the draft Convention prepared by the League of Nations in 1937 regarding the suppression of the exploitation of the prostitution of others; to make any necessary amendments to bring it up to date; and to introduce any desirable improvement in view of the changes in the general situation since 1937. The Economic and Social Council, by resolution 83 (V), further requested the Secretary-General to report to the Social Commission on the possibility of the unification of the existing international instruments for the suppression of the traffic in women and children. The Social Commission was, by the same resolution, requested to advise the Council as to the steps necessary for the implementation of such unification.

18. At its third session the Social Commission, having studied the report of the Secretary-General regarding the revision of the 1937 draft Convention mentioned above, advised the Economic and Social Council that developments since 1937 allowed for the immediate formulation and conclusion of a new and comprehensive convention for the suppression of the traffic in women and children and the prevention of prostitution, and that such a convention should unify the existing international instruments in this field and also embody the substance of the 1937 draft Convention as well as any desirable improvement thereto.

19. The Economic and Social Council, by resolution 155 E (VII), requested the Secretary-General to prepare a draft of such a convention, to ascertain the views of Governments and international organizations specialized in this field regarding this draft, and to submit the draft Convention and any views expressed to the Social Commission at its fourth session. The Social Commission, at its fourth session, considered the report of the Secretary-General as well as the views expressed by Governments and interested international organizations, and submitted a draft of a unified convention to the Economic and Social Council.

20. At its ninth session, the Economic and Social Council examined the draft unified convention submitted by the Social Commission (E/1359) and decided to submit it, together with the records of its proceedings on this subject to the fourth regular session of the General Assembly (A/977).

21. At its 224th plenary meeting on 22 September 1949, the General Assembly referred the draft Convention to the Third Committee, which began consideration of this item at its 237th meeting.

22. At its 239th, 240th and 243rd meetings, the Third Committee decided to request the Sixth Committee to give consideration to articles 8, 9, 10, 12, 25, 26, 28, 29, 30, 31 and 32 of the draft Convention and to make recommendations as to the text to be adopted for these articles. The Third Committee also requested the Sixth Committee to inform it as to what would be the legal effects of deleting or retaining the clause "subject to the requirements of domestic law" in articles 4, 7, 16, 19 and 20 of the draft Convention and to transmit to it any comments the Sixth Committee deemed necessary or any other legal problem arising from the draft Convention.

23. The Third Committee devoted its 237th to 248th meetings inclusive to the consideration of articles 1, 2, 3, 5, 6, 14, 15, 17, 18, 21, 22, 23 and 24 of the draft Convention as well as the Preamble and Final Protocol. At its 248th meeting, the Committee decided by 25 votes to 1, with 4 abstentions, to delete article 27 of the draft Convention.

24. A memorandum from the Chairman of the Third Committee on points to be referred for consideration to the Sixth Committee (A/C.6/333) was forwarded by the President of the Assembly to the Chairman of the Sixth Committee and examined by that Committee and by a Sub-Committee established to that effect. A memorandum from the Chairman of the Sixth Committee (A/C.6/L.102) setting forth the conclusions reached by that Committee on all the questions referred to it was forwarded by the President of the Assembly to the Chairman of the Third Committee.

25. At its 268th and 269th meetings, the Third Committee examined the text proposed by the Sixth Committee for articles 8, 9, 12, 25, 28, 29, 30 and 31. It approved the suggestion of the Sixth Committee to delete articles 10, 26 and 32. It approved the recommendation of the Sixth Committee for a new text for article 24. It approved articles 4, 7, 11, 13, 16, 19 and 20 of the draft Convention, taking into account the suggestions and recommendations concerning these articles which had been made by the Sixth Committee. It finally approved several drafting changes proposed by the Sixth Committee in articles previously adopted by the Third Committee.

26. At its 269th meeting held on 28 November 1949, the Third Committee, by 34 votes to none, with 8 abstentions, adopted the draft Convention as a whole and recommended its approval to the General Assembly. The Convention was approved by General Assembly resolution 317 (IV) of 2 December 1949. No changes were made at the final stage in the Plenary, as three amendments moved were rejected.

(iii) *International Convention on the Elimination of All Forms of Racial Discrimination (1965)*

27. In its resolution 1906 (XVIII), entitled "Preparation of a draft international convention on the elimination of all forms of racial discrimination", adopted by the General Assembly on 20 November 1963, the Assembly requested the Economic and Social Council to invite the Commission on Human Rights, bearing in mind the views of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the debates at the seventeenth and eighteenth sessions of the General Assembly, any proposals on the matter that might be submitted by the Governments of Member States and any international instruments already adopted in that field, to give absolute

priority to the preparation of a draft international Convention on the elimination of all forms of racial discrimination, to be submitted to the Assembly for consideration at its nineteenth session.

28. The Commission on Human Rights accordingly gave absolute priority to the drafting of a Convention at its twentieth session and adopted the substantive articles of a draft Convention on the Elimination of All Forms of Racial Discrimination.⁸

29. The Economic and Social Council, in resolution 1015 B (XXXVII) of 30 July 1964, submitted to the General Assembly for consideration at the Assembly's nineteenth session the substantive articles prepared by the Commission on Human Rights, as well as the following documents which had not been voted upon by the Commission:

(a) The proposal for an additional article submitted by the United States of America and the sub-amendment submitted thereto by the Union of Soviet Socialist Republics⁹ as well as the records of the discussion thereon in the Commission;¹⁰

(b) Article X of the draft Convention transmitted to the Commission on Human Rights by resolution I (XVI) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which dealt with measures of implementation,¹¹ as well as the records of the discussion thereon in the Commission;¹²

(c) The preliminary draft of additional measures of implementation transmitted to the Commission by resolution 2 (XVI) of the Sub-Commission (annex I of the report of the Commission on Human Rights)¹³ as well as the records of the discussion thereon in the Commission;¹⁴

(d) The working paper prepared by the Secretary-General for the final clauses of the draft Convention on the Elimination of All Forms of Racial Discrimination;¹⁵

(e) The records of the discussion of this item by the Commission on Human Rights.¹⁶ The Assembly did not consider the item at its nineteenth session and it was included in the agenda of the twentieth session.

30. At its twentieth session the Third Committee decided that it would not hold a general debate on the draft Convention as a whole. It proceeded to consider the texts of the preamble and each of the substantive articles submitted by the Commission on Human Rights (A/5921, annex). After a general discussion on measures of implementation, the Committee proceeded to elaborate these measures based on a text submitted by Ghana, Mauritania, and the Philippines (A/C.3/L.1291). The Committee then considered the final clauses, based on a preliminary draft suggested by the officers of the Third Committee (A/C.3/L.1237). At its 1373rd meeting on 15 December 1965, the Third Committee recommended the draft Convention for adoption by the General Assembly. The Convention was adopted by the General Assembly in its resolution 2106 A (XX) of 21 December 1965. In the plenary an amendment inserting an article on reservations was accepted.

(iv) *International Covenants on Human Rights*

31. It may be recalled that at its second session in December 1947 the Commission on Human Rights had decided to prepare an International Bill of

Human Rights consisting of a “declaration”, a “covenant” and “measures of implementation”.¹⁷ When the General Assembly adopted and proclaimed the Universal Declaration of Human Rights on 10 December 1948, it requested, by resolution 217 F (III), that continued priority be given to the preparation of a draft covenant on human rights and draft measures of implementation. Thereafter, the Commission devoted six sessions (fifth to tenth) from 1949 to 1954 to the preparation of the covenants.¹⁸ During this time it received observations and comments from Governments of Member States, specialized agencies and non-governmental organizations; proposals and suggestions from the Commission on the Status of Women and the Sub-Commission on Freedom of Information and of the Press and the Sub-Commission on Prevention of Discrimination and Protection of Minorities; as well as directives and instructions from the General Assembly and the Economic and Social Council.

32. At its ninth session (1954), the General Assembly had before it the text of two draft Covenants, one on economic, social and cultural rights and the other on civil and political rights, together with certain proposals and amendments and documents.¹⁹ At that session the Third Committee of the Assembly heard a general discussion on the texts and proposals and amendments thereto.²⁰

(a) At the tenth session (1955) the Third Committee considered and adopted the preamble and article 1 of both draft Covenants.²¹

(b) At the eleventh session (1956) the Third Committee considered and adopted articles 6 to 13 of the draft Covenant on Economic, Social and Cultural Rights.²²

(c) At the twelfth session (1957) the Third Committee considered and adopted articles 14 to 16 of the draft Covenant on Economic, Social and Cultural Rights and article 6 of the draft Covenant on Civil and Political Rights.²³

(d) At the thirteenth session (1958) the Third Committee considered and adopted articles 7 to 11 of the draft Covenant on Civil and Political Rights.²⁴

(e) At the fourteenth session (1959) the Third Committee considered and adopted articles 12 to 14 of the draft Covenant on Civil and Political Rights.²⁵

(f) At the fifteenth session (1961) the Third Committee considered and adopted articles 15 to 18 of the draft Covenant on Civil and Political Rights.²⁶

(g) At the sixteenth session (1961) the Third Committee considered and adopted articles 19 to 25 of the draft Covenant on Civil and Political Rights.²⁷

(h) At the seventeenth session (1962) the Third Committee considered certain additional articles proposed for inclusion in the draft Covenant on Civil and Political Rights, and it considered and adopted articles 2 to 5 of the draft Covenant on Economic, Social and Cultural Rights as well as articles 3 and 5 of the draft Covenant on Civil and Political Rights.²⁸

(i) At the eighteenth session (1963) the Third Committee considered and adopted articles 2 and 4 and an additional article to follow article 22 of the draft Covenant on Civil and Political Rights, and an additional paragraph for the combined articles 11 and 12 of the draft Covenant on Economic, Social and Political Rights.²⁹

(j) At the twentieth session (1965) the Third Committee, owing to its heavy agenda, was unable to consider the draft Covenants.

33. At the twenty-first and twenty-second sessions of the General Assembly, the Third Committee examined the provisions of the text proposed by the Commission on Human Rights which still required consideration: the articles on measures of implementation (part IV, articles 17-25, of the draft Covenant on Economic, Social and Cultural Rights; part IV, articles 27-48, and part V, articles 49 and 50, of the draft Covenant on Civil and Political Rights) and the final clauses, which were identical in both draft Covenants (part V, articles 26-29, of the draft Covenant on Economic, Social and Cultural Rights; part VI, articles 51-54, of the draft Covenant on Civil and Political Rights).³⁰

34. In addition, the Third Committee had before it: the texts of proposals and amendments relating to reservations and the final clauses³¹ and the proposal for the establishment of an office of the United Nations High Commissioner (Attorney-General) for Human Rights,³² transmitted by the Commission on Human Rights; observations made by Governments³³ and the specialized agencies³⁴ on the texts of the draft Covenants, in accordance with resolution 883 (IX) of the General Assembly; a working paper by the Secretary-General³⁵ containing the proposals and amendments submitted by Governments in their above-mentioned observations; an annotation of the text of the draft Covenants, prepared by the Secretary-General;³⁶ an explanatory paper by the Secretary-General on measures of implementation, and Governments' comments thereon;³⁷ as well as further observations submitted by Governments in accordance with resolution 1960 (XVIII) of the General Assembly.³⁸

35. At its twenty-second session the Third Committee completed the drafting of two Covenants by adopting articles relating to measures of implementation and final clauses of the draft Covenant on Economic, Social and Cultural Rights and the draft Covenant on Civil and Political Rights, as well as by adopting provisions for an optional protocol relating to the Covenant on Civil and Political Rights. The Optional Protocol was initiated and drafted in the Third Committee.

36. The two Covenants and the Protocol were adopted and opened for signature and ratification or accession by General Assembly resolution 2200 (XXI) of 16 December 1966. No amendments were made in the plenary.

(v) *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity*

37. The question of the punishment of war criminals and of persons who have committed crimes against humanity was considered by the Commission on Human Rights at its twenty-first and twenty-second sessions.

38. In resolution 3 (XXI), the Commission requested the Secretary-General "to undertake a study of the problems raised in international law by war crimes and crimes against humanity, and by priority a study of legal procedures to ensure that no period of limitation shall apply to such crimes". In accordance with resolution 3 (XXI) of the Commission, the Secretary-General submitted to the twenty-second session of the Commission a study on the question of the non-applicability of periods of limitation to war crimes and crimes against humanity, and, in particular, on legal procedures to ensure that

no period of limitation shall apply to such crimes in international law (E/CN.4/906). The Commission also had before it statements submitted by the following non-governmental organizations: the Coordinating Board of Jewish Organizations (E/CN.4/NGO/133) and the World Veterans Federation (E/CN.4/NGO/138).

39. By resolution 1158 (XLI) of 5 August 1966, the Economic and Social Council, upon the recommendation of the Commission, contained in the latter's resolution 3 (XXII), invited the Commission to prepare at its twenty-third session as a matter of priority a draft Convention providing that no statutory limitations shall apply to war crimes and crimes against humanity, irrespective of the date of their commission, for consideration by the Economic and Social Council at its forty-third session and for adoption by the General Assembly at its twenty-second session, and to consider and make any further recommendations it believes desirable with a view to developing international co-operation in the prosecution and punishment of those responsible for war crimes and crimes against humanity. The Council also requested the Secretary-General to prepare a preliminary draft for such a Convention to assist the Commission in its task and also to carry out a study as regards ensuring the arrest, extradition and punishment of persons responsible for war crimes and crimes against humanity and the exchange of documentation relating thereto.

40. At its twenty-third session, the Commission had before it a note by the Secretary-General (E/CN.4/926), and a preliminary draft convention, prepared by the Secretary-General, on the non-applicability of statutory limitations to war crimes and crimes against humanity (E/CN.4/928). The Commission established a working group to assist it in the consideration of this preliminary draft convention.

41. The Commission considered the preliminary draft convention and the report of its Working Group on this item (E/CN.4/L.943), containing draft texts for an article I, for paragraphs 1 and 3 of an article II, and alternative texts for paragraph 2 of an article II; and a draft text contained in paragraph 11 of the said report. The Commission, however, by its resolution 4 (XXIII) expressed its regret that for lack of time it was not possible for it to prepare a draft convention on the non-applicability of statutory limitations to war crimes and crimes against humanity; and transmitted to the Economic and Social Council the preliminary draft convention prepared by the Secretary-General and the report of the Commission's Working Group, together with all proposals submitted to the Commission (E/CN.4/L.917, E/CN.4/L.946, E/CN.4/L.947, E/CN.4/L.948, E/CN.4/L.957, E/CN.4/L.958, E/CN.4/L.959, E/CN.4/L.962, E/CN.4/L.963) and the records of discussions in the Commission on this item (E/CN.4/SR.919, 921, 931 and 933-935). The Commission requested the Economic and Social Council to transmit the above documents and records to the General Assembly with the request that they be taken into consideration in the preparation and adoption by the Assembly of a draft convention on the non-applicability of statutory limitations to war crimes and crimes against humanity. The Commission further requested the Economic and Social Council to request the Secretary-General to include in the provisional agenda of the General Assembly the question of punishment of war criminals

and of persons who have committed crimes against humanity, as a new and separate item.

42. At its forty-second session, the Economic and Social Council, by resolution 1220 (XLII), transmitted to the General Assembly all the relevant documents on this question and expressed the hope that the General Assembly would adopt the convention on the subject at the earliest possible date.

43. At the twenty-second session of the General Assembly, a joint working group of the Third and Sixth Committees was established to prepare a draft convention. The Third Committee discussed the report and the draft convention prepared by the joint working group, but was unable to complete consideration of the draft convention. In resolution 2338 (XXII) the General Assembly, *inter alia*, requested the Secretary-General to transmit to Member States the report of the joint working group containing the text of the draft convention, and to invite Member States to submit comments on the draft convention to be contained in a report to be issued by the Secretary-General before the twenty-third session of the General Assembly (A/7174 and Add.1-3). In the same resolution the Assembly decided to give high priority to the completion of the draft convention with a view to its adoption at the twenty-third session.

44. The Committee discussed this item at its 1562nd to 1574th and 1604th to 1605th meetings, held between 7 October and 12 November 1968. The Committee concentrated on the adoption of the draft convention on the non-applicability of statutory limitations to war crimes and crimes against humanity as prepared by the joint working group.

45. The draft convention, as amended, was adopted by the Committee at its 1573rd meeting, held on 15 October 1968. It was adopted by General Assembly resolution 2391 (XXIII) of 26 November 1968. No changes were made in the plenary.

(vi) *International Convention on the Suppression and Punishment of the Crime of Apartheid*

46. At the twenty-sixth session of the General Assembly in 1971 two delegations submitted to the Third Committee a draft Convention on the Suppression and Punishment of the Crime of *Apartheid*.³⁹ By its resolution 2786 (XXVII) of 6 December 1971, the Assembly transmitted to the Commission on Human Rights the draft Convention, together with the relevant records of the discussion. The Commission considered the question at its twenty-eighth session in 1972 when it had before it, in addition to a draft Convention, also a draft Protocol (E/CN.4/L.1189), which was intended to be annexed to the International Convention on the Elimination of All Forms of Racial Discrimination. Pursuant to a General Assembly directive, the Commission on Human Rights also decided that the pertinent documents should be sent to the Special Committee on *Apartheid* so that it could examine them and prepare comments.⁴⁰

47. At the twenty-seventh session of the General Assembly a revised version of the draft Convention was submitted to the Third Committee. The General Assembly, in its resolution 2922 (XXVII) of 15 November 1972, reaffirmed its firm conviction that the conclusion of an international convention on the subject would be an important contribution to the struggle against *apartheid*,

racism, economic exploitation, colonial domination and foreign occupation. The Assembly decided to transmit to the Special Committee on *Apartheid* and to States the revised draft Convention and the amendments thereto for their comments and views, and invited the Commission on Human Rights, through the Economic and Social Council, to consider as a priority item the revised draft Convention and the amendments thereto, and to submit the results of its consideration to the General Assembly at its twenty-eighth session.

48. The Secretary-General transmitted the revised draft Convention and the amendments thereto to the Governments of States Members of the United Nations and of specialized agencies, for their comments and views. He also transmitted these documents to the Special Committee on *Apartheid*.

49. At its 1849th meeting, on 10 January 1973, the Economic and Social Council decided to transmit General Assembly resolution 2922 (XXVII) to the Commission on Human Rights, and requested the Commission to consider as an item of priority the revised draft Convention and the amendments thereto and to submit the results of its consideration to the Council at its fifty-fourth session.

50. The Commission, at its twenty-ninth session, set up a Working Group to consider the revised draft Convention and related documentation. At the same session, on the recommendation of the Working Group, the Commission approved the preamble and the articles (excluding article VIII), of the draft Convention.⁴¹

51. The Economic and Social Council, in resolution 1784 (LIV) of 18 May 1973, approved the draft Convention and recommended that the General Assembly should consider and approve it at its twenty-eighth session.

52. The Special Committee on *Apartheid* considered the revised draft Convention and the amendments thereto at its 248th and 249th meetings, held on 15 and 29 May. The Special Committee decided at its 249th meeting to approve the draft Convention, as amended by the Commission on Human Rights, for submission to the twenty-eighth session of the General Assembly, bearing in mind the remarks made by its members.

53. The Third Committee considered this item at its 2002nd to 2008th meetings, from 19 to 26 October 1973.

54. Various amendments to the draft Convention (A/9095, annex, and A/9095/Add.1) were submitted: A/C.3/L.2016; A/C.3/L.2017; A/C.3/L.2018/Rev.1; A/C.3/L.2020; A/C.3/L.2021; A/C.3/L.2024; A/C.3/L.2026.

55. The Third Committee voted on the draft Convention and the amendments thereto at its 2008th meeting, on 26 October. At the same meeting, the Committee recommended the Convention for adoption by the General Assembly. The Convention was adopted by the General Assembly in its resolution 3068 (XXVIII) of 30 November 1973. In the plenary an amendment inserting a provision was accepted.

- (b) *Treaties drafted in human rights organs, considered by international conferences convened by the United Nations and opened for signature and ratification or accession by such conferences: Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*

56. On 27 April 1953 the Economic and Social Council adopted resolution 475 (XV), in which it requested the Secretary-General to consult the Governments of all States, both Members and non-members of the United Nations, concerning the desirability of a supplementary convention and its possible contents, at the same time communicating to them the proposals of the *Ad Hoc* Committee of Experts on Slavery contained in its recommendation B (E/1988), and to report to the Council, if possible at its first regular session in 1954.

57. In accordance with the Council's request, the Secretary-General addressed a communication on 18 June 1953 to the Governments of all States, both Members and non-members, drawing their attention to the resolution and requesting them to submit their comments. Two annexes were attached to the Secretary-General's communication: the text of the International Slavery Convention of 1926 and the text of Recommendation B of the *Ad Hoc* Committee on Slavery.⁴²

58. The Secretary-General also enclosed a copy of his Report to the fifteenth session of the Council on Slavery, the Slave Trade and Other Forms of Servitude (E/2357), paragraphs 31 to 51, 70 and 71 of which contained the Secretary-General's comments on Recommendation B and his supplementary suggestions as to methods of dealing with the problems referred to in that recommendation. The Secretary-General received replies from nineteen Governments.

59. The Secretary-General communicated to the Economic and Social Council, at its 17th session, a report on his consultations concerning the desirability of a supplementary convention on slavery and its possible contents. The replies of Governments were analysed under the following headings: I. Desirability of a Supplementary Convention; II. Possible Contents of a Supplementary Convention; III. Other Comments. By its resolution 525 A (XVII) the Economic and Social Council urged all Governments which had not yet done so to reply to the questionnaire transmitted to them, and invited the other Governments to forward any additional data or information which they thought necessary or appropriate to submit. The Council also decided to appoint the Permanent Representative of Norway to the United Nations, His Excellency Mr. Hans Engen, as Rapporteur to prepare a concise summary of the information supplied in accordance with the resolutions referred to above and the present resolution and of any relevant information supplied by the International Labour Organisation, for consideration at the nineteenth session of the Council. The Secretary-General was requested to place the report of the Rapporteur on the agenda of the nineteenth session of the Council.

60. In part B of its resolution, the Council, noting that the Government of the United Kingdom of Great Britain and Northern Ireland had submitted a draft of a supplementary convention, decided to transmit to all Governments and to the International Labour Organisation any draft supplementary convention on slavery submitted by Governments and requested the Secretary-General to deal accordingly with the United Kingdom draft. Governments and the International Labour Organisation were invited to submit comments on this draft and on any other draft to the Secretary-General. The Secretary-General was further requested to prepare a report on the replies received for consideration by the Council at its nineteenth session.

61. By its resolution 564 (XIX), the Economic and Social Council considered:

(a) The report of the Rapporteur prepared in accordance with its resolution 525 A (XVII);

(b) The report of the Secretary-General containing the comments of Governments on the draft supplementary convention on slavery submitted by the United Kingdom;

(c) The comments of the International Labour Organisation on the United Kingdom draft. The Council, noting that many Governments had not yet commented on the latter draft, considered that, in the light of the situation as revealed by the report of the Rapporteur and earlier reports on the subject, it was desirable to prepare a text of a draft supplementary convention which would deal with those practices resembling slavery not covered in the International Slavery Convention of 1926, and decided:

- (i) To appoint a committee consisting of representatives of the Governments of Australia, Ecuador, Egypt, France, India, the Netherlands, Turkey, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and Yugoslavia for the purpose of preparing a text of a draft supplementary convention for submission to the Council at its twenty-first session;
- (ii) To transmit to the committee the United Kingdom draft supplementary convention contained in document E/2540/Add.4, together with all the comments received on it from Governments, the International Labour Organisation or non-governmental organizations;
- (iii) To request the Secretary-General to convene the committee at a time and a place to be decided by him in consultation with the Governments represented on the committee. The Council also invited all Governments which had not yet commented on the draft contained in document E/2540/Add.4 to do so before the committee convened, and decided to consider at its twenty-first session the draft prepared by the committee.

62. The Committee provided for in Council resolution 564 (XIX) met at Headquarters from 16 January to 6 February 1956. At its 1st to 20th meetings, the Committee considered the preparation of a draft supplementary convention dealing with those practices resembling slavery not covered in the International Slavery Convention of 1926.

63. The Committee had before it the Draft Convention on the Abolition of Slavery and Servitude (E/2540/Add.4), which had been submitted to the Economic and Social Council by the Government of the United Kingdom of Great Britain and Northern Ireland, and the comments that had been received on it from Governments, the International Labour Organisation, and non-governmental organizations which had been transmitted to the Committee by the Economic and Social Council in resolution 564 (XIX).

64. For the convenience of the Committee, the Secretary-General had prepared a memorandum (E/AC.43/L.1 and Add.1 and 2 and Corr.1 and 2), containing the text of the Draft Supplementary Convention on Slavery and Servitude and the comments thereon received from Governments, the International Labour Organisation and various non-governmental organiza-

tions. The memorandum also contained a number of comments submitted by the Secretary-General. The Committee decided to use this memorandum as its basic working document, and to examine the articles of the draft convention one by one.

65. The Committee gave the draft convention three readings. The first reading, which took place at the 2nd to 7th meetings, was devoted to an examination of the draft convention, article by article. Amendments to the articles were submitted by members of the Committee, but decisions with respect to such amendments were postponed until the second reading, which took place at the 8th to 19th meetings. The third reading, which took place at the 20th meeting, was devoted to consideration of drafting proposals and suggestions for improvement of the style of the English, French, Spanish and Russian texts.

66. At its 20th meeting, the Committee adopted the Draft Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery for submission to the Economic and Social Council.

67. By its resolution 608 (XXI), the Economic and Social Council, having examined the report of the *Ad Hoc* Committee,⁴³ considered that it was desirable that the drafting of the convention should be completed by a conference of plenipotentiaries and that the convention should be opened for signature as soon as possible. The Council decided: (a) That a conference of plenipotentiaries should be convened in order to complete the drafting of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery and to open it for signature; (b) That invitations to attend the conference should be extended to all States Members of the United Nations and to those States non-members of the United Nations which are members of any of the specialized agencies; (c) That the conference should be held at Geneva as soon as possible after the end of the twenty-second session of the Council. The Secretary-General was requested to make all necessary arrangements for the calling of the conference of plenipotentiaries in accordance with the terms of General Assembly resolution 366 (IV) and of the present resolution; and to transmit the report of the *Ad Hoc* Committee to those States invited to attend the conference.

68. The conference met at the European Office of the United Nations in Geneva from 13 August to 4 September 1956 and adopted the Convention and opened it for signature.

(c) *Treaties initiated in human rights organs and sent for consideration by conferences not convened by the United Nations: draft convention for the protection of journalists*

69. A topic proposed for an international convention but referred to a non-United Nations conference was the draft convention for the protection of journalists. An initiative to provide for the protection of journalists engaged in dangerous missions was taken by the General Assembly at its twenty-fifth session, when in resolution 2673 (XXV) it stated that it was essential for the United Nations to obtain complete information concerning armed conflicts and that journalists, whatever their nationality, had an important role to play in that regard. The General Assembly noted with regret that journalists engaged

in missions in areas of armed conflict sometimes suffered as a result of their professional duty. The General Assembly listed the provisions of the Geneva Conventions of 1949, in the protection of which journalists partake, but added that these provisions did not cover some categories of journalists engaged in dangerous missions and did not correspond to their present needs. Convinced of the need for an additional humanitarian international instrument to ensure the better protection of journalists engaged in dangerous missions, the General Assembly in resolution 2673 (XXV) invited the Economic and Social Council to request the Commission on Human Rights to consider the possibility of preparing a draft international agreement on the question which would provide, *inter alia*, for the creation of a universally recognized and guaranteed identification document.

70. The Commission on Human Rights accordingly considered this question at its twenty-seventh session in 1971 when it had before it a preliminary draft international convention on the protection of journalists engaged in dangerous missions, presented by one delegation (E/CN.4/L.1149), and a revised text thereof co-sponsored by six delegations (E/CN.4/L.1149/Rev.1).

71. In its resolution 15 (XXVII)⁴⁴ the Commission recommended that the Economic and Social Council consider the transmission of the preliminary draft convention to the General Assembly, to States Members of the organizations of the United Nations system and—through the International Committee of the Red Cross—to the parties to the Geneva Conventions of 1949 as well as to the Intergovernmental Conference of Experts of the International Committee of the Red Cross.

72. The Secretary-General was requested to establish a group of experts to consider the appropriate composition for an international professional committee for the protection of journalists engaged in dangerous missions and to consider the conditions, procedure and criteria for the issuance and withdrawal of the safe-conduct card.

73. The Working Group of Experts established under Commission resolution 15 (XXVIII) met in September 1971 and submitted in its report (A/8438) a number of conclusions and recommendations concerning the contemplated International Professional Committee for the protection of journalists engaged in dangerous missions and the issuance, withdrawal and recognition of the contemplated safe-conduct card and also a draft Protocol relating to the composition and functions of the International Professional Committee.

74. At its fiftieth session the Economic and Social Council, by resolution 1597 (L) of 21 May 1971, transmitted to the General Assembly the preliminary draft convention on the protection of journalists and the pertinent documentation.

75. At its twenty-sixth session, the General Assembly dealt with the protection of journalists engaged in dangerous missions in its resolution 2854 (XXVI) of 20 December 1971. It expressed the belief that it was necessary to adopt a convention providing for the protection of journalists engaged in dangerous missions in areas of armed conflict and invited the Commission on Human Rights, through the Economic and Social Council, to consider as a matter of priority the preliminary draft convention, taking also into consideration the draft convention submitted by one Government, the working paper

submitted by another, the observations of Governments and subsequent documents including the draft protocol prepared by the Working Group. It arranged also for the submission of the text to the Conference of Government Experts at its second session, convened in 1972 by the International Committee of the Red Cross.

76. The Commission on Human Rights at its twenty-eighth session in March/April 1972 approved as a basis for further work the draft articles of an international convention on the protection of journalists engaged in dangerous professional missions in areas of armed conflict.⁴⁵ It also decided to transmit the draft articles to the second session of the Conference of Government Experts convened by the International Committee of the Red Cross in order that they might be brought to the notice of the Conference for its observations. On the recommendation of the Commission, the Economic and Social Council, by resolution 1690 (LII), transmitted to the General Assembly the draft articles and relevant other documentation.

77. At its twenty-seventh session in 1972, the Third Committee conducted an examination of the draft Convention before it. Many amendments were proposed and, after an informal working group had studied the various texts with a view to reconciling the differences, a number of delegations submitted a new text of the revised draft articles (A/C.3/L.1963/Rev.1), to which additional amendments were also proposed. Eventually, on the recommendation of the Third Committee, the General Assembly, at its 2017th plenary meeting on 12 December 1972, decided to include the item "Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflict" in the provisional agenda of its twenty-eighth session and to consider it as a matter of high priority.

78. At its twenty-eighth session in 1973, the General Assembly, having examined, article by article, the draft articles of a convention proposed by Australia, Austria, Denmark, Ecuador, Finland, France, Iran, Lebanon, Morocco and Turkey,⁴⁶ as well as some related amendments, expressed the opinion that it would be desirable to adopt a convention ensuring the protection of journalists engaged in dangerous missions in areas of armed conflict. However, taking into account that the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was scheduled to be held at Geneva from 20 February to 29 March 1974 under the auspices of the Swiss Government, the General Assembly requested the Secretary-General to transmit to the Diplomatic Conference the draft articles and amendments annexed to his note of 9 July 1973,⁴⁷ together with the observations and suggestions made during the twenty-eighth session of the General Assembly, and to invite the Diplomatic Conference to submit its comments and advice on the above-mentioned texts. The Assembly further decided to continue the examination of this question at its twenty-ninth session, as a matter of priority, having regard to the deliberations and findings of the Diplomatic Conference.⁴⁸

79. At its twenty-ninth session, the General Assembly, by resolution 3245 (XXIX), noted the resolution of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, of 28 March 1974,⁴⁹ in which the Diplomatic Conference decided to consider this item as a matter of priority at its second session,

to be held in 1975, and expressed the wish that the Diplomatic Conference should submit its observations and suggestions to the General Assembly at its thirtieth session. The Assembly decided to continue the examination of this question as a matter of priority at its thirtieth session, having regard to the deliberations and findings of the Diplomatic Conference.

80. Between 1974 and 1976 the Diplomatic Conference reported to the General Assembly that it was considering the inclusion in the draft Additional Protocols to the Geneva Conventions of 1949 of articles on the protection of journalists engaged in dangerous missions in areas of armed conflict. In Protocol I, finally adopted by the Diplomatic Conference in 1977, article 79 was included on this subject. At its thirty-second session in 1977, the General Assembly, by resolution 32/44, welcomed the successful conclusion of the Diplomatic Conference, urged States to consider without delay signing, ratifying or acceding to the two Protocols Additional to the Geneva Conventions of 1949 and requested the Secretary-General to submit to the General Assembly at its thirty-fourth session a report concerning the state of signatures and ratifications of the two Protocols. The General Assembly also decided to include in the provisional agenda of its thirty-fourth session an item entitled "Report of the Secretary-General on the state of signatures and ratifications of the Protocols Additional to the Geneva Conventions of 1949 concerning the respect of human rights in armed conflicts". The General Assembly did not refer in this resolution to its earlier resolutions of 1973 and 1974 to continue the examination of a convention on the protection of journalists engaged in dangerous missions in areas of armed conflict.

(d) *Treaties initiated by international conferences convened by the United Nations and referred to United Nations human rights organs: Convention on the International Right of Correction*

81. At its first session, the General Assembly declared that freedom of information is a fundamental right and is the touchstone of all freedoms to which the United Nations is consecrated; resolved to authorize the holding of a conference of all Members of the United Nations on freedom of information; and instructed the Economic and Social Council to undertake the convocation of such a conference (resolution 59 (I)).

82. The United Nations Conference on Freedom of Information met at Geneva in March and April 1948. The Conference prepared three draft conventions—on the gathering and international transmission of news, on the instituting of an international right of correction and on freedom of information—as well as a draft article for inclusion in the Universal Declaration of Human Rights and a number of resolutions. The Final Act of the Conference (E/CONF.6/79) was referred to the Economic and Social Council for action.

83. At its third session, the General Assembly approved the draft Convention on the International Transmission of News and the Right of Correction, which consisted of an amalgamation of the provisions of the draft Conventions on the Gathering and International Transmission of News and on the Institution of an International Right of Correction prepared by the Conference of 1948. The Assembly, however, resolved that the draft Convention should not be opened for signature until it had taken definite action on the draft Convention on Freedom of Information (resolutions 277 A and C (III)).

84. At its seventh session, the General Assembly separated the provisions relating to the right of correction from the draft Convention on the International Transmission of News and the Right of Correction and decided to open for signature a Convention on the International Right of Correction (resolution 63 (VII)).

(e) *Instruments drafted mainly at the final stage by the General Assembly: Optional Protocol to the International Covenant on Civil and Political Rights*

85. The optional Protocol to the International Covenant on Civil and Political Rights (1966) was an instrument conceived and drafted mainly in the Third Committee of the General Assembly. During the consideration of the implementation provisions of the International Covenant on Civil and Political Rights in the Third Committee of the General Assembly in 1966, it was suggested that the right of individual petition should be inserted in the Covenant. In the end it was finally decided to include provisions to this effect in an Optional Protocol to the Covenant. The draft Optional Protocol was proposed in the Third Committee and debated, revised and adopted at the same session of the Third Committee, in 1966.

(f) *Treaties conceived in United Nations human rights organs but elaborated elsewhere in the United Nations system*

86. In two instances, the idea for an international instrument was proposed by United Nations human rights organs but actually elaborated elsewhere. Thus, an instrument on Discrimination in Employment was first recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. This recommendation was then taken up by the ILO, which eventually elaborated the Convention on Discrimination in Employment (1958). The Sub-Commission, following a study prepared for it on Discrimination in Education, also recommended an instrument on this subject. This recommendation was taken up by UNESCO, which elaborated the Convention against Discrimination in Education.

3. *The form*

87. From the point of view of form, human rights treaties may be grouped into four categories, the first two of which are related to form and the third and fourth more to substance:

(a) *Treaties*, such as the International Convention on the Elimination of Racial Discrimination and the International Covenants on Human Rights;

(b) *Protocols*, such as the Protocol amending the Slavery Convention of 1926 and the Optional Protocol to the International Covenant on Civil and Political Rights;

(c) *Consolidations*, such as the Convention for the Suppression of the Traffic in Persons;

(d) *Adaptations*, such as the Protocol amending the Slavery Convention of 1926. The latter instrument, which was not discussed in Section I above, will be considered below.

Protocol amending the Slavery Convention of 25 September 1926

88. By resolution 475 (XV) of 27 April 1953, the Economic and Social Council: (a) recommended that the General Assembly should invite States

which were or might become parties to the International Slavery Convention of 25 September 1926 to agree to the transfer to the United Nations of the functions undertaken by the League of Nations under that Convention and (b) requested the Secretary-General to prepare a draft protocol to that end.

89. In accordance with this resolution, the Secretary-General prepared a draft protocol which he submitted to the General Assembly as an annex to document A/2435.

90. The Secretary-General also transmitted to the General Assembly observations (A/2435/Add.1, 2 and 3) he had received from Governments on the draft protocol which he had circulated to States parties to the International Slavery Convention in accordance with the request in Economic and Social Council resolution 475 (XV).

91. At its 435th plenary meeting on 17 September 1953, the General Assembly decided to include in the agenda of its eighth session the item: "Transfer to the United Nations of functions and powers exercised by the League of Nations under the International Slavery Convention of 25 September 1926: draft protocol prepared by the Secretary-General", and referred the item to the Sixth Committee for consideration.

92. The Sixth Committee considered the item at its 369th and 370th meetings, held on 12 and 15 October 1953.

93. The Committee also had before it a draft resolution submitted by the United Kingdom (A/C.6/L.304).

94. During the discussions in the Sixth Committee, the question was raised, in connection with the broader problem of the adaptation of League of Nations Conventions to the United Nations, whether a protocol was necessary for the transfer to the Organization of the functions and powers exercised by the League of Nations under the International Slavery Convention. In that connection, the Committee's attention was drawn to General Assembly resolution 24 (I) on the transfer to the United Nations of certain functions and activities of the League of Nations and to the resolution of the League of Nations Assembly of 18 April 1946. The United Nations General Assembly had stated in resolution 24 (I) that the Organization was prepared to accept the custody of international instruments formerly entrusted to the League of Nations and to charge the Secretariat of the United Nations with the task of performing for the parties the functions pertaining to a secretariat, formerly entrusted to the League of Nations and set forth in part A of that resolution. There was therefore no need for a protocol for the transfer of such functions. An analysis of the International Slavery Convention moreover showed that only article 7, which laid upon parties the obligation to inform the Secretary-General of the League of Nations of, *inter alia*, the laws and regulations enacted by them for the purpose of applying the Convention, might perhaps require a protocol before it could be sanctioned. But it was pointed out in that connection that, even if that were the case, some practical remedy for the deficiency might easily be found. Finally, with regard to the invitation addressed to certain States Members or non-members which could not at the present stage accede to the Convention, it would be enough for the General Assembly to adopt a resolution to that effect (A/C.6/SR.370).

95. Some delegations expressed the opinion that a protocol was desirable for the purpose of transferring to the United Nations the functions and powers exercised by the League of Nations under the International Slavery Convention so that States non-members which were parties to the Convention might give their assent to such a transfer. The same delegations also pointed out that there were several precedents.

96. The Secretary-General's representative said that the Secretary-General considered himself bound by the terms of General Assembly resolution 24 A (I) of 12 February 1946. In accordance with the provisions of that resolution, the Secretary-General had always confined himself to the exercise of purely administrative functions and there had never been any objections. Thus, he had accepted, and notified the States concerned of, the depositing with him of instruments relating to Conventions which entrusted the Secretary-General of the League of Nations with the function of depositary and which had never been the subject of a protocol of transfer. The adoption of a protocol, which the General Assembly had frequently thought desirable, would nevertheless not reflect upon the status of States which, by depositing an instrument of accession or ratification with the Secretary-General, had become parties to such Conventions.

97. Some delegations emphasized that in their opinion the International Slavery Convention of 25 September 1926 appeared inadequate, particularly in the light of the report of the Special Committee on Slavery (E/1988). They indicated that they had nonetheless supported the transfer to the United Nations of the functions exercised by the League of Nations under that Convention in the hope that the whole problem would shortly be re-examined and a fresh Convention adopted so as to place the campaign against slavery on a broader footing.

98. With reference to the provisions of the Protocol accompanying the United Kingdom draft resolution (A/C.6/L.304), several delegations indicated that they were in favour of the provisions of its article II, particularly in the matter of the method of acceptance by successive stages, as in other international instruments concluded under the auspices of the United Nations or the specialized agencies, which enabled States to become parties without having to go through the more complicated procedure of ratification or accession.

99. The United Kingdom draft resolution was adopted by 38 votes to none, with 9 abstentions. It was subsequently adopted by the General Assembly in its resolution 794 (VIII) of 23 October 1953.

4. *Proposed conventions currently under consideration*

(a) *Draft international convention on freedom of information*

100. As was seen earlier, the General Assembly in resolution 59 (I) of 14 December 1946 instructed the Economic and Social Council to convoke a conference on freedom of information. In resolution 74 (V) of 15 August 1947, the Economic and Social Council decided:

“(a) To request the Secretary-General to send a request for information based upon the provisional agenda of the Conference to all States Members of the United Nations, and to all States not Members of the

United Nations which will be invited to the International Conference on Freedom of Information; and

“(b) To request the Secretary-General to prepare a memorandum based upon the replies received, as documentation for the Conference;

“(c) To request UNESCO to submit the findings based upon its questionnaire concerning technical information needs in war devastated areas, together with other relevant material, to the Conference;

“(d) To request the Secretary-General to prepare the necessary documentation under each item of the proposed agenda for the Conference, and should he deem it necessary, to seek the co-operation of UNESCO and other international organizations working in this field;

“(e) To request that the documentation be organized under each item of the agenda and consist of a compilation and analysis of existing practices and problems.”

101. The Conference met at the United Nations Office at Geneva from 23 March to 21 April 1978.

102. The Conference was attended by: (a) delegations representing the Governments of 44 States Members of the United Nations; (b) delegations representing the Governments of 10 States which at that time were not Members of the United Nations; (c) observers representing the Governments of two States Members of the United Nations and one State non-member of the Organization; (d) observers and consultants from the International Labour Office, the International Telecommunication Union and the United Nations Educational, Scientific and Cultural Organization; and observers and consultants from five non-governmental organizations.

103. On the basis of its deliberations the Conference prepared and forwarded to the Economic and Social Council three draft conventions: a Draft Convention on the Gathering and International Transmission of News; a Draft Convention Concerning the Institution of an International Right of Correction; and a Draft Convention on Freedom of Information.

104. Furthermore, the Conference adopted 43 resolutions, most of them of a substantive nature, including one on possible modes of action by means of which the recommendations of the Conference could best be put into effect. Under this latter heading the Conference, in resolution No. 43, resolved:

“1. That all documents passed by the Conference, resolutions or draft conventions, be referred to the Economic and Social Council for study at its next session;

“2. That all Governments invited to this Conference be requested to forward to the Secretary-General of the United Nations before 5 July 1948 their comments on the draft conventions proposed by the Conference and proposals for other draft conventions based on the recommendations of this Conference;

“3. That the Economic and Social Council be requested to examine at its seventh session the draft conventions referred to it by the Conference in the light of such comments and other proposed draft conventions as provided in paragraph 2, and to submit to the General Assembly at its third session draft conventions which may thereafter be opened at that session for signature or accession by those States entitled and will-

ing to become parties thereto, and remain open subsequently for additional accessions.”

105. As was seen above, the General Assembly, at its third session, approved the draft Convention on the International Transmission of News and the Right of Correction, which consisted of an amalgamation of the provisions of the draft Conventions on the Gathering and International Transmission of News and on the Institution of an International Right of Correction prepared by the Conference of 1948. The Assembly, however, resolved that the draft Convention should not be opened for signature until it had taken definite action on the draft Convention on Freedom of Information (resolutions 227 A and C (III)). At its seventh session, the General Assembly separated the provisions relating to the right of correction from the draft Convention on the International Transmission of News and the Right of Correction and decided to open for signature a Convention on the International Right of Correction (resolution 630 (VII)).

106. In its resolution 426 (V), the General Assembly appointed a Committee consisting of the representatives of the following fifteen countries: Cuba, Ecuador, Egypt, France, India, Lebanon, Mexico, the Netherlands, Pakistan, the Philippines, Saudi Arabia, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Yugoslavia, to meet at the Headquarters of the United Nations to prepare a draft Convention on Freedom of Information, taking into consideration the draft⁵⁰ approved by the United Nations Conference on Freedom of Information held at Geneva from 23 March to 21 April 1948; the text⁵¹ voted during the second part of the third session of the General Assembly; article 14 of the provisional text⁵² of the draft First International Covenant on Human Rights; and the observations⁵³ contained in the summary records of the meetings of the Third Committee dealing with the question. The General Assembly also requested the Committee to report to the Economic and Social Council at its thirteenth session on the results of its work and to submit recommendations, in particular with regard to the advisability of convening a conference of plenipotentiaries with a view to the framing and signature of a Convention on Freedom of Information. The Assembly further requested the Secretary-General to submit the Committee's report, together with the draft or drafts of the Convention prepared by the Committee, to the various Governments concerned for their consideration and invited the Governments so consulted to transmit their suggestions and observations to the Secretary-General by 15 June 1951.

107. The Economic and Social Council was invited to consider the Committee's report at its thirteenth session and, if it thought fit, in the light of the Committee's recommendations and the observations of Governments, and also taking into consideration the General Assembly's wish that one or more conventions to ensure freedom of information in the world should be adopted as soon as possible, to convene a conference of plenipotentiaries to meet as soon as possible and not later than 1 February 1952, with a view to the framing and signature of a Convention on Freedom of Information, based on the draft or drafts prepared by the above-mentioned Committee and on the observations of Governments.

108. This Committee prepared a new version of the draft Convention on Freedom of Information.⁵⁴ On the basis of the work done by that Committee, the Third Committee, at the fourteenth, fifteenth and sixteenth sessions of the General Assembly, approved the preamble and four operative paragraphs of the draft Convention on Freedom of Information.⁵⁵ The articles have not yet been approved by the Assembly in plenary meeting. From the seventeenth to the thirty-second session, the Assembly was not able to continue the consideration of the draft Convention.⁵⁶

(b) *Draft international convention on the elimination of all forms of religious intolerance*

109. In resolution 1781 (XVII) of 7 December 1962, the General Assembly requested the Economic and Social Council to ask the Commission on Human Rights, bearing in mind the views of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the debates at the seventeenth session of the General Assembly, any proposals on the matter that might be submitted by Governments and any international instruments already adopted in that field by the specialized agencies, to prepare: (a) a draft declaration on the elimination of all forms of religious intolerance, to be submitted to the Assembly for consideration at its eighteenth session; and (b) a draft international convention on the elimination of all forms of religious intolerance, to be submitted to the Assembly if possible at its nineteenth session and, in any case, not later than at its twentieth session. The Assembly also invited Member States to submit their comments and proposals concerning the draft convention by 15 January 1964.

110. At its resumed thirty-fourth session, the Economic and Social Council, on 19 December 1962 (1238th meeting), decided to transmit the General Assembly resolution to the Commission on Human Rights and to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

111. At its nineteenth session, held from 11 March to 5 April 1963, the Commission held a brief exchange of views on the resolution of the General Assembly, noted resolution 8 (XV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,⁵⁷ and decided⁵⁸ to give priority at its twentieth session to the preparation of a draft declaration on the elimination of all forms of religious intolerance. The Commission also requested the Sub-Commission to prepare and submit to the Commission at its twentieth session a preliminary draft of a declaration on the elimination of all forms of religious intolerance, taking into account the views expressed during the debate on the subject at the nineteenth session of the Commission, and requested the Secretary-General to invite the Governments of Member States to submit any proposals which they may wish to make as to the provisions which such a declaration should contain, in time for consideration by the Commission at its twentieth session.

112. On the recommendation of the Commission, the Economic and Social Council in resolution 958 F (XXXVI) of 12 July 1963 drew the attention of the General Assembly to the Commission's decision.⁵⁹

113. At its sixteenth session, held from 13 to 31 January 1964, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 3 (XVI),⁶⁰ submitting to the Commission on Human Rights

a preliminary draft of a United Nations declaration on the elimination of all forms of religious intolerance as representing the Sub-Commission's general views, consistent with the Principles of Freedom and Non-Discrimination in the Matter of Religious Rights and Practices that it had adopted in 1969,⁶¹ regarding the substance which should be taken into account in preparing a draft declaration, together with other relevant documentation.

114. At its twentieth session, held from 17 February to 18 March 1964,⁶² the Commission on Human Rights set up a working group to prepare, on the basis of the preliminary draft of the Sub-Commission and all other relevant documentation, a draft declaration on the elimination of all forms of religious intolerance. The working group, however, was able to consider only the first six articles of the text submitted by the Sub-Commission in relation to which it prepared a provisional text consisting of six articles. It also submitted to the Commission certain alternative texts and proposals presented to it.

115. Owing to lack of time, the Commission was unable to consider and adopt a draft declaration on the elimination of all forms of religious intolerance. In resolution 2 (XX), the Commission requested the Secretary-General to transmit to Member Governments for comments the report of the working group⁶³ and the preliminary draft of a declaration on the elimination of all forms of religious intolerance submitted by the Sub-Commission⁶⁴ and to submit to the Economic and Social Council at its thirty-seventh session the comments of Governments as well as the working group's report and the Sub-Commission's draft of a declaration. The Commission recommended to the Economic and Social Council "to give such further consideration as it may deem practicable to the drafting of a declaration on the elimination of all forms of religious intolerance, in the light of the comments of Governments, and that it transmit the appropriate documents to the General Assembly for consideration at its nineteenth session".

116. At its twentieth session in 1964, the Commission on Human Rights decided, in resolution 2 (XX), to prepare at its twenty-first session a draft convention on the elimination of all forms of religious intolerance in compliance with General Assembly resolution 1781 (XVII) and invited the Sub-Commission to prepare and submit to the Commission at its twenty-first session a preliminary draft convention on the elimination of all forms of religious intolerance.

117. The Sub-Commission on Prevention of Discrimination and Protection of Minorities considered this item at its 17th session in 1965. The Sub-Commission had before it a note by the Secretary-General (E/CN.4/Sub.2/243), summarizing the consideration of the draft convention on the elimination of all forms of religious intolerance in the United Nations. The note referred to substantive comments or proposals concerning the proposed draft convention which had been submitted, in accordance with the General Assembly's invitation to Member States, by the Governments of Chad, Finland, Ireland, Nigeria and the United Kingdom of Great Britain and Northern Ireland (E/CN.4/Sub.2/243, Annex), China and Kenya (E/3925), and the Netherlands (E/3925/Add.1). The Sub-Commission also had before it a memorandum (E/CN.4/Sub.2/L.365) setting out the text of article 18 of the draft covenant on civil and political rights as adopted by the Third Committee of the General Assembly (A/5705, Annex), and the paragraphs adopted by the

Commission on Human Rights at its eighteenth session for inclusion in the preamble of the proposed draft principles on freedom and non-discrimination in the matter of religious rights and practices.⁶⁵ The note also referred to the report of the working group set up by the Commission on Human Rights at its twentieth session to prepare a draft declaration on the elimination of all forms of religious intolerance.⁶⁶ The latter report contained the texts of articles adopted by the working group for inclusion in the draft declaration.

118. Written statements relating to the draft convention on the elimination of all forms of religious intolerance were submitted to the Sub-Commission by the Co-ordinating Board of Jewish Organizations (E/CN.4/Sub.2/NGO/41) and the International Humanist and Ethical Union (E/CN.4/Sub.2/NGO/42). Oral statements were made by the representatives of the International League for the Rights of Man (438th meeting), the Commission of the Churches on International Affairs (438th meeting), the Co-ordinating Board of Jewish Organizations (436th meeting), Pax Romana (439th meeting) and the World Jewish Congress (438th and 441st meetings).

119. Three draft conventions on the elimination of all forms of religious intolerance were submitted to the Sub-Commission at its 436th meeting: (i) a draft convention submitted by Mr. Calvocoressi (E/CN.4/Sub.2/L.360); (ii) a draft convention submitted by Mr. Abram (E/CN.4/Sub.2/L.361 and Rev.1); and (iii) a draft convention submitted by Mr. Krishnaswami (E/CN.4/Sub.2/L.364 and Add.1 and 2). Six draft articles for the draft convention were also submitted to the Sub-Commission at its 440th meeting by Mr. Nassinovsky (E/CN.4/Sub.2/L.369). In the course of the discussion of the draft convention two additional articles were submitted to the Sub-Commission by Mr. Ingles (E/CN.4/Sub.2/L.392 and 395).

120. At the 436th meeting, the authors of the three draft conventions then before the Sub-Commission, Messrs. Abram, Calvocoressi and Krishnaswami, were requested to meet in an informal group, open to all interested members of the Sub-Commission, with a view to combining the three conventions into a single joint text which could serve as a basis for further discussion. In preparing the draft convention, the Sub-Commission examined the preamble and provisions presented by the informal working group which it had set up, the draft articles submitted by Mr. Nassinovsky, and the additional articles submitted by Mr. Ingles. The Sub-Commission adopted a draft convention containing a preamble and thirteen articles (resolution I (XVII), annex).

121. At its eighteenth and nineteenth sessions, the General Assembly adopted resolutions inviting the Commission on Human Rights to give priority to this topic.

122. By its resolution 2020 (XX), the General Assembly requested the Economic and Social Council to invite the Commission to make every effort to complete, at its twenty-second session, the preparation of the draft declaration and of the draft international convention on the elimination of all forms of religious intolerance, in order that they might be submitted to the Assembly at its twenty-first session.

123. At its twenty-second session, the Commission adopted five more articles of the draft convention, but was unable, for lack of time, to complete its work on that instrument. The consideration and adoption of articles VIII,

IX, XI and XII, and of the articles concerning implementation, could not be completed at that session. In resolution I (XXII), the Commission decided to give the highest priority at its twenty-third session to the completion of the preparation of the draft convention.

124. At its twenty-third session the Commission adopted three more articles and, by resolution 3 (XXIII) of 9 March 1967, transmitted to the Economic and Social Council:

(a) A preamble and twelve articles of a draft international convention on the elimination of all forms of religious intolerance, adopted by the Commission and annexed to its resolution;

(b) An additional draft article submitted by the delegation of Jamaica and draft article XIII proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which, after some discussion, the Commission considered should be submitted to the Assembly;

(c) The preliminary draft of additional measures of implementation submitted by the Sub-Commission in its resolution 2 (XVII) which the Commission did not consider for lack of time.

125. The Commission recommended to the Economic and Social Council to transmit these documents to the General Assembly and expressed the hope that the General Assembly would decide upon suitable measures of implementation and final clauses of the draft convention.

126. The General Assembly kept this topic on its agenda between its twentieth and twenty-seventh sessions. At its twenty-seventh session, the General Assembly decided to accord priority to the completion of the Declaration on the Elimination of All Forms of Religious Intolerance before resuming consideration of the draft International Convention on this subject (resolution 3027 (XXVII)).

127. The Commission on Human Rights is still engaged in the preparation of a draft declaration and will continue its work on this matter at its thirty-fifth session in 1979.

(c) *Draft international convention against torture*

128. By its resolution 32/62 of 8 December 1977, the General Assembly requested the Commission on Human Rights to draw up a draft convention on torture and other cruel, inhuman or degrading treatment or punishment, in the light of the principles embodied in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Assembly further requested the Commission to submit a progress report to it at its thirty-third session.

129. At its thirty-fourth session in 1978, the Commission had before it the text of a "Draft International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", proposed by the delegation of Sweden (E/CN.4/1285). It also had before it the text of a "Draft Convention for the Prevention and Suppression of Torture" presented by the International Association of Penal Law (E/CN.4/NGO/213).

130. By its resolution 18 (XXXIV) adopted on 7 March 1978, the Commission requested the Secretary-General "... to transmit all relevant documents of the thirty-fourth session of the Commission on Human Rights concerning

the draft convention on torture and other cruel, inhuman or degrading treatment or punishment to the Governments of States Members of the United Nations or members of specialized agencies wishing to express their views on this subject for their comments, and to prepare a summary of those comments". Upon the recommendation of the Commission, the Economic and Social Council, by its decision E/DEC/1978/24, decided to approve the recommendation made by the Commission on Human Rights in paragraph 2 of its resolution 18 (XXXIV) and to authorize the holding of a meeting of a working group open to all members of the Commission for one week immediately before the thirty-fifth session of the Commission with the task of preparing for the Commission concrete drafting proposals for a draft convention on torture and other cruel, inhuman or degrading treatment or punishment.

(d) *Draft international convention on the rights of the child*

131. At the 1438th meeting of the Commission on Human Rights in 1978, the representative of Poland introduced a draft resolution (E/CN.4/L.1366/Rev.1) sponsored by Austria, Bulgaria, Colombia, Jordan, Poland, Senegal and the Syrian Arab Republic which contained in an annex a draft Convention on the Rights of the Child. He recalled that in 1959 the General Assembly had adopted the Declaration of the Rights of the Child. He felt that, almost 20 years after the proclamation of the principles of that Declaration by the General Assembly, it was time to take further and more consistent steps by adopting an internationally binding instrument in the form of a convention, and expressed the view that the draft Convention should be based on the principles of the Declaration of the Rights of the Child. By its resolution 20 (XXXIV) adopted on 8 March 1978, the Commission requested the Secretary-General to transmit the draft Convention to Member States and to the competent specialized agencies, regional intergovernmental organizations and non-governmental organizations, inviting them to communicate to him, not later than 31 October 1978, their views, observations and suggestions on such a convention, and requested him to submit a report thereon to the Commission on Human Rights at its thirty-fifth session. The Commission also decided to continue at its thirty-fifth session, as one of its priorities, its consideration of a draft Convention on the Rights of the Child, taking into account both the draft Convention referred to above and the report of the Secretary-General, with a view to concluding, if possible, a convention at that session for transmission to the General Assembly through the Economic and Social Council. By its resolution 78/18, the Economic and Social Council took note with satisfaction of the initiative taken by the Commission at its thirty-fourth session with a view to the conclusion of a convention on the rights of the child and to the adoption of this Convention by the General Assembly, if possible during the International Year of the Child; and recommended to the General Assembly to consider including in the agenda for its thirty-fourth session, as a priority matter, the question of the adoption of a convention on the rights of the child.

5. *Initiation*

132. The initiation of international conventions is usually made by four main sources: (1) by Governments; (2) by United Nations organs; (3) by rapporteurs; and (4) by non-governmental organizations.

(a) *Governments*

133. As can be seen from the chart annexed to the present paper, practically all of the treaties considered were initiated by Governments or by their representatives in United Nations organs (though in some cases the idea may have been taken from other sources).

134. A recent instance of a convention initiated by a Government was the draft International Convention on the Rights of the Child. At the 1438th meeting of the Commission on Human Rights in 1978, the representative of Poland introduced a draft resolution E/CN.4/L.1366/Rev.1, sponsored by Austria, Bulgaria, Colombia, Jordan, Poland, Senegal and the Syrian Arab Republic. He recalled that in 1959 the General Assembly had adopted the Declaration of the Rights of the Child, which had been instrumental in promoting the rights of children throughout the world as well as in shaping various forms of international co-operation in that field. He felt, however, that, almost 20 years after the proclamation of the principles of that Declaration by the General Assembly, it was time to take further and more consistent steps by adopting an internationally binding instrument in the form of a convention, and expressed the view that the draft Convention should be based on the principles of the Declaration of the Rights of the Child. As was seen earlier, the Commission on Human Rights, as a result of this initiative, decided to draft an international convention on this subject.

(b) *United Nations organs*

135. There are several examples of initiation by United Nations organs although it should be borne in mind that a decision of an organ composed of government representatives invariably stems from a proposal made in the first place by one or more of the government representatives sitting on it. The idea of drafting one or more international covenants on human rights as part of the International Bill of Human Rights was initiated by the Commission on Human Rights in 1947 and was subsequently endorsed by the Economic and Social Council and by the General Assembly. Apart from the Convention on the International Right of Correction and the draft Convention on Freedom of Information, work on all of the treaties considered in this paper commenced as a result of decisions of United Nations organs. The two instruments mentioned were initiated by a United Nations Conference but the decisions to proceed with the drafting of the treaties were then taken by the General Assembly. On some occasions the decision to initiate a treaty was taken by a superior organ such as the General Assembly. In others it was taken by the Commission on Human Rights or the Economic and Social Council and subsequently endorsed by the General Assembly.

(c) *Rapporteurs or authors of studies*

136. As was seen earlier, the UNESCO Convention on Discrimination in Education was conceived in a study on this subject prepared for the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Another recent example was the recommendation made by Mr. Hector Gros Espiell, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, for a codification of the law relating to self-determination.⁶⁷ While the form of this codification is not yet settled, it is

possible that in the end a draft convention may be elaborated. At its thirty-first session in 1978, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Commission on Human Rights to entrust Mr. Gros Espiell with the preparation of the preliminary draft of the international instrument proposed by him, and requested the Secretary-General to give him all the necessary assistance for the completion of this task.

(d) *Non-governmental organizations*

137. An example of the role played by non-governmental organizations in the initiation of an international convention was the draft international convention against torture. For some time certain non-governmental organizations, notably, the International Commission of Jurists, Amnesty International and the International Association of Penal Law, have been calling for an international convention against torture; they convened meetings and held consultations on the preparation of a draft convention. In 1977, the General Assembly requested the Commission on Human Rights to draw up a draft convention on torture and other cruel, inhuman or degrading treatment or punishment. When this matter came before the Commission on Human Rights in 1978, the Commission received, in addition to a draft international convention proposed by the delegation of Sweden (E/CN.4/1285), a draft convention presented by the International Association of Penal Law (E/CN.4/NGO/213) which is being used in the Commission's work in elaborating the draft convention.

6. *Provision of drafts or study of issues*

138. Drafts utilized in the preparation of international treaties in the field of human rights have come from five main sources: (1) Governments; (2) human rights organs; (3) rapporteurs; (4) non-governmental organizations; and (5) the Secretariat.

(a) *Governments*

139. As can be seen from the annexed chart, initial drafts were submitted by Governments for the Protocol amending the Slavery Convention; the Optional Protocol to the International Covenant on Civil and Political Rights; the draft Convention on the Suppression and Punishment of the Crime of *Apartheid*; the draft Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the draft International Convention on the Rights of the Child.

(b) *United Nations organs*

140. As can be seen from the annexed chart, initial drafts were submitted by United Nations organs for the following instruments: the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the draft International Convention on the Elimination of All Forms of Religious Intolerance. An important feature has been the valuable role played by a body of experts, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in the initial drafting of many treaties, including the Covenants on Human Rights; the International Convention on

the Elimination of All Forms of Racial Discrimination; and the draft International Convention on the Elimination of All Forms of Religious Intolerance.

(c) *Rapporteurs or authors of studies*

141. Draft principles submitted by rapporteurs entrusted with the preparation of reports or studies for human rights organs sometimes form the basis of further work leading eventually to the elaboration of conventions. This was seen above as regards the UNESCO Convention against Discrimination in Education and the proposed codification of the law of self-determination.⁶⁸ In resolution 564 (XIX) of 7 April 1955, the Economic and Social Council, having considered,⁶⁹ *inter alia*, a report on slavery prepared by one of its rapporteurs, decided to initiate work on a draft supplementary convention on the question.

(d) *Non-governmental organizations*

142. As was seen above, the Commission on Human Rights at its thirty-fourth session in 1978 was seized of a draft convention for the prevention and suppression of torture presented by the International Association of Penal Law (E/CN.4/NGO/213).

(e) *Secretariat*

143. Instances of drafts provided by the Secretariat were the Convention on the Crime of Genocide; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the Protocol amending the Slavery Convention; and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The Secretariat also played an important role in the drafting of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

7. *Consultation of Governments*

144. Apart from the consultation of Governments which takes place by virtue of the fact that the Commission on Human Rights, the Economic and Social Council and the General Assembly are composed of government representatives, there was express consultation in respect of the following instruments: the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the International Right of Correction; the Protocol amending the Slavery Convention of 1926; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; the International Convention on the Suppression and Punishment of the Crime of *Apartheid*; the draft Convention on Freedom of Information; the draft International Convention on the Elimination of All Forms of Religious Intolerance; the draft International Convention against Torture; and the draft International Convention on the Rights of the Child. To take a recent example, the Commission on Human Rights, at its thirty-fourth session in 1978, requested the Secretary-General to transmit all the relevant documents concerning the draft Convention on Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment to the Governments of States Members of the United Nations or members of the specialized agencies wishing to express their views on this subject, for their comments. The Commission took a similar decision on the draft Convention on the Rights of the Child.

8. *Negotiation*

145. The negotiation of multilateral treaties in the field of human rights is done mainly in: (1) the Commission on Human Rights and its subsidiary organs; (2) the Economic and Social Council; (3) the General Assembly; and (4) international conferences.

146. The negotiation stages of the various treaties were given in section II above and therefore it is not necessary to repeat them. Certain significant aspects may, however, be noted:

(a) *Working Group of Experts*

147. In some instances, Working Groups of Experts were appointed to assist in the preparation of drafts or to study particular issues involved in the drafting of an instrument. Thus, by its resolution 15 (XXVIII) the Commission on Human Rights established a Working Group of Experts to consider questions pertaining to the protection of journalists engaged in dangerous missions.

(b) *Ad hoc committees of government representatives*

148. In some instances, an *ad hoc* committee of government representatives was appointed to work out a draft instrument for further consideration. This occurred during the drafting of the Convention on the Prevention and Punishment of the Crime of Genocide, the draft Convention on Freedom of Information and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.

(c) *Co-operation between the Third Committee and the Sixth Committee*

149. In most of the treaties considered, the final drafting before the treaty reached the plenary of the General Assembly was done by the Third Committee of the General Assembly. However, the Convention on the Prevention and Punishment of the Crime of Genocide was considered by the Sixth Committee. In some cases, there was collaboration between the Third Committee and the Sixth Committee. This occurred as regards the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. In the latter case a Joint Working Group of the Third and Sixth Committees was established at one stage to elaborate a draft convention.

(d) *Dispensation with general debate in the Third Committee*

150. In two instances, the Third Committee decided to dispense with general debates when it came to consider draft conventions. This was done in the consideration of the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

9. *Level of change introduced at last stage*

151. An assessment of changes introduced in the Third and/or Sixth Committees would be beyond the scope of the present paper. On the whole, it can be said that the basic structure and substance of draft instruments reaching the Third or Sixth Committee were retained in the cases of the human rights treaties considered in the present paper. However, provisions for the implementation of these treaties were heavily shaped by the Treaty Committee. Usually, there are few changes in the plenary of the General Assembly. As can be seen from the annexed chart, an important amendment was made in the plenary as regards the Protocol amending the Slavery Convention signed at Geneva on 26 September 1926. Slight amendments were also made in the plenary to the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of *Apartheid*. In other instances, occasional amendments were moved but were rejected (Convention on the Prevention and Punishment of the Crime of Genocide; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others).

ANNEX

<i>Instrument</i>	<i>Initiated by</i>	<i>Initial drafts submitted</i>	<i>Expert or other assistance</i>	<i>Negotiation stage</i>	<i>Consultation of Governments</i>	<i>Consultation of other bodies</i>	<i>Changes introduced at last stage (Plenary)</i>	<i>Concluded and opened for signature by</i>	<i>Time taken from proposal to completion</i>
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	Governments (General Assembly)	Secretariat	1. Secretariat 2. <i>Ad Hoc</i> Committee of the Council 3. Individual Experts 4. General Assembly Committee on the Codification and Progressive Development of International Law	<i>Ad Hoc</i> Committee of ECOSOC—General Assembly	Yes. Draft Convention submitted to Member States for comments	Commission on Human Rights (provided for but not realized due to technical difficulty)	None (an amendment to the Pre-ambule was rejected in Plenary)	General Assembly	1946-1948
Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others (1949)	Governments ECOSOC	1. League of Nations 2. Secretariat 3. Social Commission	—	ECOSOC, General Assembly	In ECOSOC and General Assembly	International organizations specialized in the field	None. Three amendments moved in the Plenary were rejected	General Assembly	1949
Convention on the International Right of Correction	Governments (UN Conference)	UN Conference	—	CONF, ECOSOC, General Assembly	Views of Governments requested	—	—	—	1948-1952
Protocol amending the Slavery Convention	Governments (ECOSOC)	1. Secretariat 2. Governments	Secretariat	ECOSOC, General Assembly	Yes	—	Yes	General Assembly	One year (1953)

Supplementary Convention on the Abolition of Slavery	Governments 1. Governments 2. Secretariat	Rapporteur of study	ECOSOC, General Assembly	Yes	Specialized Agencies NGOs	--	Plenipotentiary Conference	1953-1956
International Convention on the Elimination of All Forms of Racial Discrimination	Governments (General Assembly)	CHR and its Sub-Commission on Prevention of Discrimination and Protection of Minorities	General Assembly CHR, ECOSOC, General Assembly	Yes. Also in CHR, ECOSOC and General Assembly	Specialized Agencies NGOs	Yes. One article on reservations in Plenary	General Assembly	1963-1965
International Covenant on Economic and Cultural Rights	Governments (CHR)	CHR	CHR, ECOSOC, General Assembly	Yes—written debates in UN organs	NGOs; Scientific Associations	Nont	General Assembly	1949-1966
International Convention on the Suppression and Punishment of the Crime of <i>Apartheid</i>	Governments (General Assembly)	Governments CHR	General Assembly— CHR— Assembly	Yes	Special Committee on <i>Apartheid</i>	Yes. One amendment inserting a provision was accepted in the Plenary	General Assembly	1971-1973
Draft Convention on Freedom of Information	Governments Conference	UN Conference on Freedom of Information (1948)	Conference— ECOSOC— General Assembly	Yes	--	--	--	Initiated in 1948 still not completed

ANNEX (continued)

<i>Instrument</i>	<i>Initiated by</i>	<i>Initial drafts submitted</i>	<i>Expert or other assistance</i>	<i>Negotiation stage</i>	<i>Consultation of Governments</i>	<i>Consultation of other bodies</i>	<i>Changes introduced at last stage (Plenary)</i>	<i>Concluded and opened for signature by</i>	<i>Time taken from proposal to completion</i>
Draft International Convention on the Elimination of All Forms of Religious Intolerance.....	Governments (General Assembly)	Sub-Commission on Prevention of Discrimination and Protection of Minorities	Sub-Commission on Prevention of Discrimination and Protection of Minorities	CHR	Yes	-	-	-	Initiated 1962 but still pending
Draft International Convention against Torture.....	Governments (General Assembly)	1. Government of Sweden 2. NGOs	-	CHR	Yes—at initial stage	-	-	-	1977
Draft International Convention on the Rights of the Child.....	Governments (CHR)	Government of Poland in CHR	-	CHR	Yes—at initial stage	Yes—at initial stage; regional intergovernmental organs and NGOs	-	-	1978
International Covenant on Civil and Political Rights.....	Governments (CHR)	CHR	Secretariat	CHR, ECOSOC, General Assembly	Yes—written debates in UN organs	NGOs; Scientific Association	None	General Assembly	1949-1966
Optional Protocol to International Covenant on Civil and Political Rights.....	Governments (Third Committee of General Assembly)	Governments	-	Third Committee of General Assembly	Only in Third Committee	-	None	General Assembly	One year (1966)

Convention on the Non-Application of Statutory Limitations to War Crimes against Humanity	Secretariat	Secretariat	Secretariat	CHR, ECOSOC, General Assembly	Yes. Information sought by Secretary-General from Governments	--	None	General Assembly	1966-1968
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NOTES

¹ See below, paragraphs 21-33.

² See E/447, part II, sections I, 11.

³ *Ibid.*, part III.

⁴ For these comments, see A/401 and Add.1-3 and E/623 and Add.1-4.

⁵ *Official Records of the Economic and Social Council, Third Year, Seventh Session, Supplement No. 6.*

⁶ *Ibid.*, annex.

⁷ *Ibid.*, Supplement No. 2, para. 24.

⁸ *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8 (E/3873), chapter II, draft resolution I (XX), annex.*

⁹ *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8 (E/3873), chapter II, draft resolution I (XX), annex, paras. 273 and 274.*

¹⁰ *Ibid.*, paras. 273 and 274.

¹¹ E/CN.4/SR.805, 807 and 808.

¹² *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8 (E/3873), para. 281.*

¹³ E/CN.4/SR.805, 808 and 810.

¹⁴ *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8 (E/3873), annex I.*

¹⁵ E/CN.4/L.679.

¹⁶ E/CN.4/SR.774-810.

¹⁷ *Official Records of the Economic and Social Council, Sixth Session, Supplement No. I (E/600), chapter II.*

¹⁸ *Ibid.*, Ninth Session, Supplement No. 10 (E/1371); Eleventh Session, Supplement No. 5 (E/1681); Thirteenth Session, Supplement No. 9 (E/1992); Fourteenth Session, Supplement No. 4 (E/2256); Sixteenth Session, Supplement No. 8 (E/2447); Eighteenth Session, Supplement No. 7 (E/2573).

¹⁹ *Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7 (E/2573), chapter III, and annexes I to III.*

²⁰ *Official Records of the General Assembly, Ninth Session, Annexes, agenda item 58, document A/2808 and Corr.1.*

²¹ *Ibid.*, Tenth Session, Annexes, agenda item 28, part I, document A/3077, and in particular paras. 17-77 thereof.

²² *Ibid.*, Eleventh Session, Annexes, agenda item 31, document A/3525, and in particular paras. 13 to 157 thereof.

²³ *Ibid.*, Twelfth Session, Annexes, agenda item 33, document A/3764 and Add.1, and in particular paras. 5 to 121 thereof.

²⁴ *Ibid.*, Thirteenth Session, Annexes, agenda item 32, document A/4045, and in particular paras. 3 to 91 thereof.

²⁵ *Ibid.*, Fourteenth Session, Annexes, agenda item 34, document A/4299 and Corr.1, and in particular paras. 3 to 64 thereof.

²⁶ *Ibid.*, Fifteenth Session, Annexes, agenda item 34, document A/4625, and in particular paras. 4 to 58 thereof.

²⁷ *Ibid.*, Sixteenth Session, Annexes, agenda item 35, document A/5000, and in particular paras. 5 to 126 thereof.

²⁸ *Ibid.*, Seventeenth Session, Annexes, agenda item 43, document A/5365, and in particular paras. 5 to 98 thereof.

²⁹ *Ibid.*, Eighteenth Session, Annexes, agenda item 48, document A/5655, and in particular paras. 6 to 108 thereof.

³⁰ *Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7 (E/2573), annex I.* The texts of these provisions were reproduced in the *Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 62 (A/6342), annex II.*

³¹ *Ibid.*, annex II.

³² *Ibid.*, annex III.

³³ *Official Records of the General Assembly, Tenth Session, Annexes*, agenda item 28, part I, documents E/2910 and Add.1-6.

³⁴ *Ibid.*, documents E/2907 and Add.1 and 2.

³⁵ *Ibid.*, document A/C.3/L.460.

³⁶ *Ibid.*, part II, document A/2929.

³⁷ *Ibid.*, *Eighteenth Session, Annexes*, agenda item 48, documents A/5411 and Add.1 and 2.

³⁸ *Ibid.*, *Twentieth Session, Annexes*, agenda item 65, documents A/5702 and Add.1.

³⁹ *Ibid.*, *Twenty-sixth Session, Annexes*, agenda item 54, document A/8542, para. 32.

⁴⁰ See *Official Records of the Economic and Social Council, Fifty-second Session, Supplement No. 7* (E/5113), paras. 37-48 and chap. XIII, resolution 4 (XXVIII).

⁴¹ *Ibid.*, *Fifty-fourth Session, Supplement No. 6* (E/5265), chap. IV, sect. b; chap. XX, resolution 16 (XXIX); and chap. XXI, draft resolution X.

⁴² The text of the International Slavery Convention of 1926 is contained in League of Nations document No. C.586.M.223.1926.VI. The text of Recommendation B of the *Ad Hoc* Committee is contained in document E/1988.

⁴³ *Ibid.*, *Twenty-first Session, Annexes*, agenda item 12, document E/2824.

⁴⁴ *Ibid.*, *Fiftieth Session, Supplement No. 4* (E/4949), chap. XIX.

⁴⁵ *Ibid.*, *Fifty-second Session, Supplement No. 7* (E/5113), chap. XIII, resolution 6 (XXVIII), annex.

⁴⁶ A/9073, annex 1.

⁴⁷ *Ibid.*, annexes I and II.

⁴⁸ General Assembly resolution 3058 (XXVIII) of 2 November 1973.

⁴⁹ See A/9669, para. 129.

⁵⁰ See *Official Records of the General Assembly, Fourth Session, Third Committee, Annex*, documents A/961 and A/C.3/518 and A/C.3/518/Corr.1.

⁵¹ See resolution 277 A (III).

⁵² See *Official Records of the Economic and Social Council, Fifth Year, Eleventh Session, Supplement No. 5*, annex I.

⁵³ See *Official Records of the General Assembly, Fifth Session, Third Committee*, 320th-324th meetings.

⁵⁴ A/AC.42/7 and Corr.1.

⁵⁵ A/4341; A/4636; A/5041.

⁵⁶ The question of a draft Declaration on Freedom of Information was discussed by the Economic and Social Council at its twenty-seventh and twenty-eighth sessions, in 1959. In its resolution 732 (XXVIII), the Council invited Member States to comment on the desirability of the adoption by the United Nations of a declaration on freedom of information and on the draft text of such a declaration which was annexed to the resolution. At its twenty-ninth session, the Council considered and adopted a draft Declaration and by resolution 756 (XXIX) transmitted it to the General Assembly for its consideration. The question entitled "Draft Declaration on Freedom of Information" has been on the Assembly's agenda since its fifteenth session, but at that and subsequent sessions the Assembly was not able to consider it.

⁵⁷ E/CN.4/846, para. 221.

⁵⁸ *Official Records of the Economic and Social Council, Thirty-sixth Session, Supplement No. 8*, chapter X, resolution 10 (XIX).

⁵⁹ *Official Records of the General Assembly, Eighteenth Session, Annexes*, agenda items 40, 41, 42, 44, 45 and 46, document A/5460.

⁶⁰ E/CN.4/873, para. 142.

⁶¹ E/CN.4/800, resolution 1 (XII).

⁶² See *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8* (E/3873), chapter III.

⁶³ *Ibid.*, para. 296.

⁶⁴ *Ibid.*, para. 294.

⁶⁵ *Ibid.*, *Thirty-fourth Session, Supplement No. 8* (E/3616/Rev.1, para. 158).

⁶⁶ *Ibid.*, *Thirty-seventh Session, Supplement No. 8* (E/3873, para. 296).

⁶⁷ E/CN.4/Sub.2/405.

⁶⁸ See para. 142 above.

⁶⁹ E/2673 and Add.1-4.

B. DEPARTMENT FOR DISARMAMENT AFFAIRS

1. During the period under review (1945-1981), the following multi-lateral agreements were concluded in the field of arms limitation and disarmament:

- (a) The Antarctic Treaty (1 December 1959);¹
- (b) Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water (5 August 1963);
- (c) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (27 January 1967);
- (d) Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) with Additional Protocols I and II (14 February 1967);
- (e) Treaty on the Non-Proliferation of Nuclear Weapons (1 July 1968);
- (f) Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof (11 February 1971);
- (g) Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (10 April 1972);
- (h) Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (18 May 1977);
- (i) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (10 April 1981).

2. Among these agreements, only the Antarctic Treaty was negotiated entirely outside the framework of the United Nations.

1. *Treaty Banning Nuclear Weapon Tests in the Atmosphere,
in Outer Space and under Water*

3. This Treaty was actually negotiated and concluded outside the United Nations, in 1963, by the Soviet Union, the United Kingdom and the United States, but the question of a nuclear test ban had received active consideration by the General Assembly of the United Nations as early as 1954 and since 1957 there had been a separate item on the subject on the Assembly agenda. In addition, from 1958 to 1962, the three nuclear Powers had conducted negotiations on a nuclear test ban in the tripartite Conference on the Discontinuance of Nuclear Weapon Tests, at which a representative of the Secretary-General of the United Nations was present, but no agreement had been reached.

4. At the time the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water was negotiated, in July/August 1963,

the issue of a nuclear test ban, in all its aspects, was being considered by the Eighteen-Nation Committee on Disarmament (ENDC), the multilateral disarmament negotiating body, which reported to the General Assembly and the other deliberative subsidiary body, the Disarmament Commission. At the ENDC, a representative of the Secretary-General of the United Nations was present.

5. The Committee had been established early in 1962, following the adoption of General Assembly resolution 1722 (XVI) of 20 December 1961 by which the Assembly, noting with satisfaction the report submitted by the Soviet Union and the United States following an exchange of views on questions relating to disarmament and to the resumption of negotiations in an appropriate body,² had endorsed the agreement that had been reached on the composition of the Eighteen-Nation Committee on Disarmament.³

6. The Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water was signed in Moscow on 5 August 1963 and then, on 8 August, was opened for signature at London, Moscow and Washington—the capitals of the three depositary Governments. In the Treaty, the three Governments are referred to as the “Original Parties” of the Treaty. In Article III of the Treaty it was stated that “the Treaty shall be open to all States for signature” and that any State which does not sign it before its entry into force may accede to it at any time. The Treaty entered into force on 10 October 1963, after its ratification by the three Original Parties. On 27 November 1963, the General Assembly adopted resolution 1910 (XVIII) by which, *inter alia*, it called upon all States to become parties to the Treaty and to abide by its spirit and provisions.

2. *Treaty for the Prohibition of Nuclear Weapons in Latin America*

7. The process leading to this Treaty was started at the seventeenth session of the General Assembly, in 1962, and the United Nations was involved at various stages in the process leading to the conclusion of the Treaty, even though the Treaty was actually negotiated outside of the United Nations, as in the case of the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water.

8. At the seventeenth session of the General Assembly, Brazil submitted a draft resolution, which was later revised and co-sponsored by Bolivia, Chile and Ecuador,⁴ concerning the establishment of a denuclearized zone in Latin America. The Assembly decided, however, to defer consideration of this proposal to the eighteenth session, at which Brazil requested the inclusion of “Denuclearization of Latin America” as a separate item in the agenda.

9. In the interim between the two sessions, the Presidents of Bolivia, Brazil, Chile, Ecuador and Mexico, on 29 April 1963, issued a declaration by which they announced that their Governments were prepared to sign a multilateral agreement whereby countries would undertake not to manufacture, receive, store or test nuclear weapons or nuclear launching devices.

10. At the eighteenth session, at the initiative of a group of Latin American States, the General Assembly adopted resolution 1911 (XVIII) by which it: (a) noted with satisfaction the initiative for the denuclearization of Latin America taken in the joint declaration of 29 April 1963; (b) expressed the

hope that the States of Latin America would initiate studies, as they deemed appropriate, in the light of the principles of the Charter of the United Nations and of regional agreements and by the means and through the channels which they deemed suitable, concerning the measures that should be agreed upon with a view to achieving the aims of the said declaration; (c) trusted that at the appropriate moment, after a satisfactory agreement had been reached, all States, particularly the nuclear Powers, would lend their co-operation for the effective realization of the peaceful aims inspiring the resolution; and (d) requested the Secretary-General to extend to the States of Latin America, at their request, such technical facilities as they might require in order to achieve the aims set forth in the resolution.

11. Negotiations on a treaty to prohibit nuclear weapons in Latin America were carried out by the parties concerned between 1964 and the beginning of 1967. The negotiating sessions were attended by a United Nations expert appointed by the Secretary-General. At the end of January 1967, the negotiations on a treaty for the denuclearization of Latin America entered the final stage. These negotiations led to the signing at Mexico City (Borough of Tlatelolco), on 14 February 1967, of the Treaty for the Prohibition of Nuclear Weapons in Latin America. Annexed to the Treaty were two Protocols. In Additional Protocol I, it was provided that the extraterritorial Powers (France, the Netherlands, the United Kingdom and the United States) controlling certain territories situated within the limits of the Latin American geographical zone, as defined in the Treaty, would undertake to apply the statute of denuclearization in those territories for which, *de jure* or *de facto*, they were internationally responsible. Additional Protocol II provided that the nuclear-weapon Powers would undertake fully to respect the status of denuclearization of Latin America and also would undertake not to use or threaten to use nuclear weapons against the parties to the Treaty.

12. At its twenty-second session, the General Assembly adopted resolution 2286 (XXII) by which it welcomed with special satisfaction the Treaty; called for its observance; and invited the Powers contemplated in Additional Protocols I and II to sign and ratify the two documents. In subsequent years, the Assembly adopted numerous resolutions on the question of adherence to the two Protocols.

3. *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*

13. The process which led to the conclusion of this Treaty was started by the General Assembly and remained closely connected with that body in subsequent developments.

14. Early efforts to prevent the spread of the arms race to outer space were made in the Assembly in the late 1950s and early 1960s and Assembly resolutions 1148 (XII), 1348 (XIII), 1472 (XIV), 1721 A (XVI) and 1962 (XVIII), which were adopted on the subject, laid the ground for subsequent progress. In particular, by resolution 1472 (XIV), the Committee on the Peaceful Uses of Outer Space was established.

15. Meanwhile, in 1962, the ENDC turned its attention to the question of the peaceful uses of outer space. In particular, Canada, supported by Italy and Mexico, proposed that the question be given priority. It was also under-

lined that the two draft agreements on general and complete disarmament submitted to the ENDC, one by the Soviet Union and the other by the United States, included a ban on the placing of weapons of mass destruction in orbit and that the two Powers had proposed that such a measure be implemented independently of general and complete disarmament. No action was taken in 1962, but the United States declared its readiness to enter into such an agreement.

16. During 1963, the issue again arose in the ENDC when, on 21 June, Mexico submitted a draft treaty on the prohibition of the orbiting or stationing in outer space of nuclear weapons and other weapons of mass destruction.⁵ The draft treaty also prohibited tests in outer space of all weapons of mass destruction or any other warlike devices. In introducing the document, Mexico stressed the *sui generis* character of the problem which made its solution distinct from other disarmament measures.

17. At the beginning of the General Assembly's eighteenth session, on 19 September 1963, the Soviet Union declared that it deemed it necessary that steps be taken to prevent the spread of the armaments race to outer space and to that end suggested that an agreement be reached between the Soviet Union and the United States to ban the placing in orbit of objects equipped with nuclear weapons or other weapons of mass destruction. It was assumed that an exchange of views on this subject would be continued between the two Governments on a bilateral basis. The United States, on 20 September, welcomed the Soviet response to the suggestion for an arrangement to keep weapons of mass destruction out of outer space, and proposed that negotiators work out the details to attain this goal.

18. Following private talks and agreement between the United States and the Soviet Union, Mexico submitted a joint draft resolution, on behalf of the seventeen participating members of the ENDC, to ban nuclear and other weapons of mass destruction from outer space. On 17 October 1963, the General Assembly adopted the seventeen-Power draft by acclamation as resolution 1884 (XVIII). By the resolution the General Assembly welcomed the expressions by the Soviet Union and the United States of their intention not to station in outer space any objects carrying nuclear weapons or other kinds of weapons of mass destruction and solemnly called upon all States: (a) to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner; and (b) to refrain from causing, encouraging or in any way participating in the conduct of the foregoing activities.

19. Thereafter, the matter was considered in the Committee on the Peaceful Uses of Outer Space and by the General Assembly. After the Soviet Union and the United States had reached agreement on the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, the General Assembly commended the Treaty in resolution 2222 (XXI), unanimously adopted on 14 December 1966.

20. The Treaty was opened for signature on 27 January 1967 at London, Moscow and Washington, the capitals of the three depositary Governments, and entered into force on 10 October 1967.

4. *Treaty on the Non-Proliferation of Nuclear Weapons*

21. The four agreements listed as (e) to (h) above were mainly, though not exclusively, the outcome of joint efforts by the General Assembly and the ENDC/CCD. In the ENDC/CCD, the two Co-Chairmen, i.e. the Soviet Union and the United States, often played a catalytic role. During the negotiating process, on several occasions, the non-aligned countries submitted joint memoranda, with a view to clarifying the issues and suggesting possible solutions.

22. All four agreements were completed in the ENDC/CCD and submitted to the General Assembly as part of reports of either the ENDC or the CCD. Only in the case of the Treaty on the Non-Proliferation of Nuclear Weapons did the Assembly amend the text submitted to it, as indicated below.

23. The first proposals dealing directly with the prevention of the proliferation of nuclear weapons were advanced by the Soviet Union and the United States in the Sub-Committee of the Disarmament Commission in the years 1956 and 1957. The General Assembly's concern about the possible spread of nuclear weapons through dissemination and acquisition took concrete shape in 1958 when, at the thirteenth session of the General Assembly, Ireland submitted a draft resolution⁶ on the subject which, though not pressed to a vote, prepared the way for future United Nations decisions. In subsequent years, the General Assembly adopted a number of resolutions on the subject, namely, 1380 (XIV), 1576 (XV), 1664 (XVI) and 1665 (XVI). In 1965, the Disarmament Commission adopted a resolution (DC/225) calling upon the ENDC to accord special priority to the consideration of the question of a treaty or convention to prevent the proliferation of nuclear weapons.

24. On 17 August 1965, the United States submitted to the ENDC a draft treaty on the subject. Then, at the twentieth session of the General Assembly, the Soviet Union submitted another draft. After intensive deliberations the Assembly adopted resolution 2028 (XX) which, *inter alia*, called upon the CCD to negotiate a treaty to prevent the proliferation of nuclear weapons, based on the following principles: (a) the treaty should be void of any loopholes which might permit nuclear or non-nuclear Powers to proliferate, directly or indirectly, nuclear weapons in any form; (b) the treaty should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers; (c) the treaty should be a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament; (d) there should be acceptable and workable provisions to ensure the effectiveness of the treaty; and (e) nothing in the treaty should adversely affect the right of any group of States to conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories. Subsequently, the General Assembly adopted further resolutions on the subject (2149 (XXI) and 2153 (XXI)).

25. On 24 August 1967, identical but separate and still incomplete drafts of a non-proliferation treaty were submitted by the Soviet Union and the United States superseding their earlier separate and different drafts. This provided the basis for concrete and intensive negotiations by the ENDC, which continued during most of the 1967 General Assembly session. In an interim report to the Assembly, on 7 December 1967, the ENDC stated that "the

Committee has undertaken intensive consideration of a draft treaty on the non-proliferation of nuclear weapons” and that it “has already made substantial progress, although a final draft has not yet been achieved”.⁷ The Assembly, for its part, adopted resolution 2346 A (XXII) calling on the ENDC urgently to continue its work; requesting the Committee to submit a full report on or before 15 March 1968; and recommending that shortly after that date the twenty-second session of the General Assembly should be resumed to consider the report on the ENDC.

26. The ENDC reconvened in Geneva on 18 January 1968 and remained in session until 14 March. At the opening meeting, on 18 January, the Soviet Union and the United States submitted identical revised treaty drafts. On 11 March 1968, the two Powers presented a joint revised draft treaty which incorporated some of the additional suggestions made in the course of the session by other ENDC members. The draft treaty was submitted to the General Assembly as part of the Committee report, on 14 March 1968. At the resumed twenty-second session of the General Assembly, the draft treaty was further amended. On 12 June 1968, by resolution 2373 (XXII), the General Assembly commended the Treaty on the Non-Proliferation of Nuclear Weapons and requested the depositary Governments (the Soviet Union, the United Kingdom and the United States) to open the Treaty for signature and ratification at the earliest possible date.

27. Following the approval of General Assembly resolution 2373 (XXII), the three nuclear Powers made identical formal declarations in the Security Council on the subject of safeguards to non-nuclear-weapon States. Thereupon, the Security Council adopted resolution 255 (1968) on the same subject.

5. *Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof*

28. The question of an international agreement on the limitation of the military use of the sea-bed and the ocean floor was formally raised by the Soviet Union and the United States in the ENDC in 1968. The following year, each of the two Powers submitted to the Committee its own draft treaty on the subject. Subsequently, on 7 October 1969, they submitted a joint draft treaty which was then revised in the light of comments by the members of the Committee (CCD). At its twenty-fourth session the General Assembly, by resolution 2602 F (XXIV), welcomed the submission of the draft treaty and the various proposals and suggestions made in regard to the draft treaty (including suggestions by the Committee on the Peaceful Uses of the Sea-Bed) and called upon the CCD to take into account all the proposals and suggestions that had been made and to continue its work on the subject.

29. On 23 April 1970 the Soviet Union and the United States, after extensive consultations with other CCD members, submitted a new revised draft treaty, which was then further revised in the light of the discussion in the Committee. The text of the final draft of the treaty was submitted to the General Assembly on 11 September 1970.

30. At its twenty-fifth session, on 7 December 1970, the General Assembly adopted resolution 2660 (XXV) by which it commended the Treaty on the

Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof and requested the depositary Governments (the Soviet Union, the United Kingdom and the United States) to open the Treaty for signature and ratification at the earliest possible date. It also expressed its hope for the widest possible adherence to the Treaty.

6. *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*

31. The various initiatives within the framework of the United Nations which ultimately led to the conclusion of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction are closely linked with initiatives and achievements of an earlier period.

32. The Members of the United Nations have always been aware of the threat posed by chemical and biological weapons. Over the years, as the toxicity of these weapons and the potential for their widespread use increased, efforts were made to ban them both through a single international agreement, in a way that would supplement and strengthen the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, adopted and signed in Geneva in 1925.

33. In 1969, the United Kingdom submitted to the ENDC a draft convention for the prohibition of biological methods of warfare, the rationale of the proposal being that it would be preferable and possible to reach early agreement on a separate convention banning biological weapons as a first step. Later, in 1970, the United States proposed that toxins be added to the list of agents whose use would be prohibited under the provisions of the United Kingdom draft convention. The United Kingdom accepted the United States proposals and subsequently submitted a revised draft. However, the view that chemical and biological weapons should be dealt with together in a single treaty continued to prevail in the CCD and also at the twenty-fifth session of the General Assembly (resolution 2662 (XXV)).

34. At the beginning of the 1971 session of the CCD, efforts for a comprehensive solution of the problem of chemical and biological weapons continued without any immediate change in the positions of the parties. However, as a compromise, on 30 March 1971, Bulgaria, Czechoslovakia, Hungary, Mongolia, Poland, Romania and the Union of Soviet Socialist Republics introduced a draft convention on the prohibition of the development, production and stockpiling of bacteriological (biological) weapons and toxins and on their destruction, with the understanding that the need to achieve the complete prohibition and elimination of chemical and biological weapons remained unchanged.

35. On 5 August 1971, two separate but identical drafts of a convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction were submitted by (a) Bulgaria, Czechoslovakia, Hungary, Mongolia, Poland, Romania and the USSR, and (b) the United States. In introducing the revised draft convention, the Soviet Union recognized once again the significance of the 1925

Geneva Protocol and reaffirmed adherence to its purposes and principles, noting that one of its important objectives was to ensure the eventual complete prohibition and elimination of chemical weapons. The United States also held that the draft convention on biological weapons would in no way detract from continued efforts to ban chemical weapons and that it would strengthen the Geneva Protocol. Moreover, inclusion of a ban on toxins would significantly broaden the scope of this first agreement in the field of chemical and biological weapons.

36. On 28 September 1971, a revised draft convention was submitted by Bulgaria, Canada, Czechoslovakia, Hungary, Italy, Mongolia, the Netherlands, Poland, Romania, the USSR, the United Kingdom and the United States, taking into account the views expressed by Committee members.

37. At the twenty-sixth session of the General Assembly, resolution 2826 (XXVI) was adopted. By the resolution, the Assembly commended the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and requested the depositary Governments (the Soviet Union, the United Kingdom and the United States) to open the Convention for signature and ratification at the earliest possible date. The Assembly also expressed its hope for the widest possible adherence to the Convention.

7. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques

38. During the current decade increasing attention has been given to the question of the artificial modification of the environment for warlike purposes.

39. Concern over the general issue of environmental protection was expressed as early as 1972 in the Declaration of the United Nations Conference on the Human Environment, that was held at Stockholm that year.

40. Subsequently, in 1974, some attention was given to the question of meteorological warfare, at the CCD. That same year, the question of environmental warfare was examined at the Moscow summit meeting by the Soviet Union and the United States and a joint statement was issued, in which the two Powers, taking into consideration the fact that scientific and technical advances in the environmental field, including climate modification, might open possibilities for using environmental modification techniques for military purposes, advocated the most effective measures possible to overcome the danger of the use of such techniques.

41. Also in 1974, at the request of the Soviet Union, an item entitled "Prohibition of action to influence the environment and climate for military and other purposes incompatible with the maintenance of international security, human well-being and health" was inscribed in the agenda of the twenty-ninth session of the General Assembly. The request emphasized the need to draw up and conclude an international convention to outlaw action to influence the environment for military purposes and urged the General Assembly to adopt a resolution with that objective in view. By resolution 3264 (XXIX) of 9 December 1974, the General Assembly recognized such a need. The Assembly also took note of a draft convention on the subject submitted by the Soviet Union, which was annexed to the resolution.

42. In 1975, the CCD considered the question in both formal and informal meetings and, on 21 August that year, the Soviet Union and the United States submitted to the CCD identical texts of a draft convention on the prohibition of military or any other hostile use of environmental modification techniques. Preliminary comments on the draft convention were made in the Committee by a number of delegations and those comments were reflected in the report of the CCD to the General Assembly.

43. At its thirtieth session, in 1975, the General Assembly considered the report of the CCD on the matter and adopted resolution 3475 (XXX). By the resolution, the Assembly: (1) noted with satisfaction that the Soviet Union and the United States had submitted identical drafts of a convention and that other delegations had offered suggestions and preliminary observations regarding the drafts; (2) requested the CCD to continue negotiations, bearing in mind existing proposals and suggestions as well as relevant discussion by the Assembly, with a view to reaching early agreement, if possible during the 1976 meetings of the CCD, on the text of a convention on the prohibition of military or other hostile uses of environmental modification techniques; and (3) requested the CCD to submit a special report on the results achieved for consideration by the Assembly at its thirty-first session.

44. Negotiations on the text of the draft convention continued in the CCD, in 1976, in plenary and, later, in a Working Group. The Working Group held 29 meetings between 2 July and 1 September 1976, in which all the CCD members participated. During its deliberations, the Working Group considered modifications proposed by various delegations to the identical texts of the draft convention by the Soviet Union and the United States dated 21 August 1975. As stated in the report of the Working Group to the CCD,⁸ there was agreement on many modifications, but no agreement on others. Therefore, the report of the Working Group included, in addition to the text of a revised draft convention on the prohibition of military or any other hostile use of environmental modification techniques, comments, dissenting views or reservations of certain delegations.

45. At the thirty-first session of the General Assembly, after an extended debate, the Assembly adopted resolution 31/72. By the resolution, the Assembly: (1) referred the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, the text of which was annexed to the resolution, to all States for their consideration, signature and ratification; (2) requested the Secretary-General, as Depositary of the Convention, to open it for signature and ratification at the earliest possible date; (3) expressed its hope for the widest possible adherence to the Convention; and (4) called upon the Conference of the Committee on Disarmament, without prejudice to the priorities established in its programme of work, to keep under review the problem of effectively averting the dangers of military or any other hostile use of environmental modification techniques.

8. *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*

46. The question of prohibitions or restrictions on the use of certain conventional weapons that may be deemed to be excessively injurious or to have

indiscriminate effects has, over the years, been considered by the international community under the aegis of the United Nations, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and the International Committee of the Red Cross (ICRC).

47. At the United Nations, the matter has been discussed by the General Assembly under various topics. For instance, at its twenty-seventh session, in 1972, the Assembly considered the question under general and complete disarmament. At that session it had before it a report of the Secretary-General entitled *Napalm and Other Incendiary Weapons and All Aspects of Their Possible Use*,⁹ which submitted that there was a need for measures prohibiting their use, production, development and stockpiling. The General Assembly adopted resolution 2392 A (XXVII), by which it deplored the use of napalm and other incendiary weapons in all armed conflicts and commended the report to the attention of all Governments and peoples.

48. The following year, the Assembly discussed the question as a separate agenda item entitled "Napalm and other incendiary weapons and all aspects of their possible use" and adopted resolution 3076 (XXVIII), by which it invited the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which held four sessions from 1974 to 1977, to consider the question of the use of napalm and other incendiary weapons, as well as other specific conventional weapons which might be deemed to cause unnecessary suffering or to have indiscriminate effects, and to seek agreement on rules prohibiting or restricting the use of such weapons. The Diplomatic Conference established an *Ad Hoc* Committee on Conventional Weapons for that purpose.

49. A notable contribution to the study of the question was also made at the expert level by the International Committee of the Red Cross (ICRC) between 1973 and 1976.¹⁰

50. In 1977, on the recommendation of the Diplomatic Conference, the General Assembly decided to hold a United Nations conference in 1979, with a view to reaching agreement on prohibitions or restrictions on the use of certain inhumane conventional weapons. To that end, the Assembly decided, by resolution 32/152, to convene a preparatory conference for the United Nations Conference open to all participants and Member States which had been invited to attend the Diplomatic Conference.

51. In 1978, at the first special session of the General Assembly devoted to disarmament (tenth special session), the decision of the General Assembly to convene the 1979 United Nations conference was widely welcomed. As a result of the deliberations at the special session, the General Assembly agreed on the following provisions, which were included in the Final Document of the session:¹¹

"86. The United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, to be held in 1979, should seek agreement, in the light of humanitarian and military considerations, on the prohibition or restriction of use of certain conventional weapons including those which may cause unnecessary suffering or

have indiscriminate effects. The Conference should consider specific categories of such weapons, including those which were the subject-matter of previously conducted discussions.

“87. All States are called upon to contribute towards carrying out this task.

“88. The result of the Conference should be considered by all States, especially producer States, in regard to the question of the transfer of such weapons to other States.”

52. The Preparatory Conference held two sessions in Geneva, from 28 August to 15 September 1978 and from 19 March to 12 April 1979. The Conference had before it a number of proposals on land-mines and other devices, incendiary weapons, small-calibre weapons systems, non-detectable fragments, fuel-air explosives, anti-personnel fragmentation weapons and flechettes, as well as an outline of a general treaty to which optional protocols or clauses embodying agreed prohibitions or restrictions on the use of specific weapons were to be attached.

53. Although the Preparatory Conference made some progress in its consideration of some of the proposals, it was able to finalize only one draft text for submission to the United Nations Conference, namely the proposal on non-detectable fragments, on which unanimous agreement was reached.

54. The United Nations Conference held two sessions, also at Geneva: one from 10 to 28 September 1979 and the other from 15 September to 10 October 1980. It had before it the report of the Preparatory Conference,¹² as well as a number of additional proposals submitted in the course of its work.

55. At the thirty-fourth session of the General Assembly, in 1979, Member States underlined the importance of the matters dealt with by the Conference and reaffirmed their support of its objectives. This was reflected in General Assembly resolution 34/82 of 11 December 1979, adopted by consensus, by which the General Assembly, *inter alia*, endorsed the recommendation of the Conference to hold a second and final session in 1980 and took note of the understanding of the Conference that issues on which agreement had already been achieved should not be reopened at the forthcoming session, so that all efforts would be concentrated on working out agreements on outstanding issues.

56. On 10 October 1980, the Conference unanimously adopted its Final Act,¹³ to which the following four instruments and one resolution were annexed:

(a) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects;

(b) Protocol on Non-Detectable Fragments (Protocol I);

(c) Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps or Other Devices (Protocol II);

(d) Protocol on Prohibitions or Restriction on the Use of Incendiary Weapons (Protocol III);

(e) Resolution on small-calibre weapons systems.

57. It was provided in the Convention (Art. 4) that any State wishing to become a party to the Convention must, at the same time, express its consent to be bound at least by two annexed Protocols of its choice, which would then become an integral part of the Convention. The Secretary-General of the United Nations is the Depositary of the Convention (Art. 10).

58. On 12 December 1980, the General Assembly adopted resolution 32/153, by which it recommended the Convention and the three annexed Protocols to all States, with a view to achieving the widest possible adherence to those instruments.

9. *Conclusions*

59. It is evident from the above that there is no single pattern in the multilateral disarmament treaty-making process within the framework of the United Nations. In the search for disarmament, the United Nations has been confronted with a complex and difficult task and, in seeking to discharge its responsibilities, the Organization, in the light of the circumstances, has resorted to different methods and approaches. In every case, the Organization has tried to face the many problems involved in the disarmament treaty-making process with a high degree of flexibility.

60. Some characteristic elements can, however, be identified in the process. For instance, the interplay between the deliberative and negotiating bodies in the process is evident. It is also clear that, in a field in which delicate matters of national and international security are involved, the initiative for seeking an accord must necessarily be taken by Governments. Sometimes the initiative originated in the multilateral deliberative body and other times in the multilateral negotiating body, but in the process both were usually involved. Also, the initiative was often taken by the Government or Governments concerned by formulating and submitting a draft agreement for consideration by the other parties concerned. In this connection, the specific role played by the two major Powers in the formulation of several draft agreements has been referred to earlier in the text. However, in several cases, the submission was preceded by debates—often long debates—in the deliberative body, notably in the General Assembly.

61. Indeed, at different stages in the treaty-making process, the General Assembly had usually the opportunity to give consideration to the subject-matter of the future agreement and, ultimately, to recommend the agreement for signature or ratification by States, with or without prior amendments.

62. Three nuclear Powers—the Soviet Union, the United Kingdom and the United States—are the joint depositaries of the multilateral disarmament agreements listed under (b), (c), (e), (f) and (g) above. In the case of the two most recent agreements—those under (h) and (i)—the Secretary-General of the United Nations was designated as the Depositary.

63. At its tenth special session, on 30 June 1978, the General Assembly adopted by consensus a Final Document (A/RES/S-10/2), which, in paragraph 116, reads as follows: "Draft multilateral disarmament conventions should be subjected to the normal procedures applicable in the law of treaties. Those submitted to the General Assembly for its commendation should be subject to full review by the Assembly".

NOTES

¹The date after each agreement indicates when the agreement was opened for signature and ratification.

²*Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 19, document A/4879.

³Initially, Brazil, Bulgaria, Burma, Canada, Czechoslovakia, Ethiopia, France, India, Italy, Mexico, Nigeria, Poland, Romania, Sweden, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland and United States of America were the members of the Committee. The membership was enlarged in 1969 and again in 1974. After the enlargement in 1969, the name was changed to the Conference of the Committee on Disarmament (CCD).

⁴*Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 90, document A/C.1/L.312/Rev.2.

⁵*Official Records of the Disarmament Commission, Supplement for January to December 1963*, document DC/208, Annex 1, N (ENDC/98).

⁶*Official Records of the General Assembly, Thirteenth Session, Annexes*, agenda items 64, 70, 72, document A/C.1/L.206.

⁷*Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 28, document A/6951-DC/229, para. 5.

⁸*Official Records of the General Assembly, Thirty-first Session, Supplement No. 27 (A/31/27)*, volume I, Annex I.

⁹United Nations publication, Sales No. E.73.I.3.

¹⁰See, for instance, the report entitled *Weapons That May Cause Unnecessary Sufferings or Have Indiscriminate Effects* (International Committee of the Red Cross, Geneva, 1973) and the reports entitled *Conference of Government Experts on the Use of Certain Conventional Weapons* (International Committee of the Red Cross, Geneva, 1975 and 1976).

¹¹*Official Records of the General Assembly, Tenth Special Session*, resolution S-10/2.

¹²*Ibid.*, *Thirty-third Session, Supplement No. 44 (A/33/44)*.

¹³A/CONF.95/15.

C. DIVISION OF NARCOTIC DRUGS

1. Introduction

1. Under the Secretary-General, the Commission on Narcotic Drugs (hereinafter called "the Commission") and the Economic and Social Council (hereinafter called "the Council"), the Division of Narcotic Drugs is responsible for supervising the application of the international conventions concerning narcotic drugs and psychotropic substances and for assisting in elaborating any new texts which may be necessary in the light of changing circumstances. Furthermore, the Division acts as the secretariat of the Commission whose task it is, among others, to "prepare such draft international conventions as may be necessary",¹ derived from the powers of the Council according to Article 2, paragraph 3, of the Charter.

2. It should be recalled that narcotic drugs have been a matter of international concern and control since at least the turn of the century, and it was, therefore, important for the United Nations to re-establish the full operation of the pre-war control system immediately after the Second World War. Subsequently, it became the task of the United Nations to improve and codify the existing multilateral treaty law in this field, to simplify the international control

machinery and to extend the control system to new narcotic drugs and psychotropic substances.

3. In the present paper, the six post-war instruments on narcotic drugs and psychotropic substances, adopted within or under the auspices of the United Nations, will be examined with regard to the techniques and procedures used in their elaboration. For detailed examination of the preparation of each treaty, the reader is referred to annexes I-VI below, and for a presentation in summary form reference is made to the chart in annex VII.

2. *The initiative*

4. The initiative for drawing up two of the six treaties under review can be traced back to a Member State. Thus both the Single Convention and the 1972 Protocol were initiated by the United States: in the case of the Single Convention the United States representative submitted to the Commission, at its third session in May 1948, a draft resolution proposing that the existing instruments relating to narcotic drugs be replaced by a single convention;² in the case of the 1972 Protocol the United States Ambassador to the United Nations communicated, in March 1971, the text of a number of amendments to the Single Convention to the Secretary-General,³ and at the subsequent fiftieth session of the Council the United States representative sponsored a draft resolution calling for a plenipotentiary conference to consider the question.

5. The initiative for preparing the other four treaties originated with organs under the United Nations or elsewhere in the United Nations system. It should, of course, be borne in mind that a decision by an organ composed of government representatives usually stems from a proposal or suggestion put forward or taken up by one or more government representatives serving thereon.

6. The General Assembly may be said to have initiated the Protocol of 1946 (which adapted the pre-war treaties to the United Nations era) in deciding, at its first session (February 1946), upon a survey of the non-political activities of the League of Nations to be assumed by the United Nations.⁴

7. Both the Paris Protocol of 1948 and the Opium Protocol of 1953 originated from decisions taken by the Commission at its first session (November-December 1946) requesting the Secretary-General to undertake the necessary preparatory work.

8. The work on the Convention on Psychotropic Substances was set in motion by a resolution of the World Health Assembly (in 1965) requesting the Director-General of WHO to study the possibilities of international control of sedatives and stimulants.⁵

3. *The process*

Basic pattern

9. The basic pattern for elaborating the multilateral treaties in the field of drug-abuse control may be summarized in the following sequence:

Secretariat—Commission—Council—General Assembly or a plenipotentiary conference.

10. This general pattern may be described more in detail as follows: On the basis of preparatory work and possibly a preliminary draft by the Secretariat (Division of Narcotic Drugs), a text is negotiated by the Commission, which, to this end, may establish sub-committees to meet either during or between the Commission's sessions. The text, as prepared by the Commission, is submitted to the Council for consideration and forwarded either to the General Assembly or—more often—to a plenipotentiary conference for final adoption.

11. The basic pattern described above was departed from with regard to the Protocol of 1946. In this case the draft protocol prepared by the Secretariat was negotiated by the Council itself (in September 1946), since it was not possible for the newly established Commission to meet before the forthcoming sessions of the Council and the General Assembly during which the Protocol was to be completed. However, the members of the Commission were consulted in writing.

12. Moreover, a departure from the general pattern may be noted with regard to the 1972 Protocol, in which case a Secretariat study or draft was not involved, since the Protocol was based on various amendments to the Single Convention, submitted by Member States.

Initial stage

13. Once a decision has been taken to study or negotiate the elaboration of a treaty (with the exception of the 1972 Protocol, see paragraph 12 above), it has been left to the Secretariat to play the very important role of undertaking the preparatory studies necessary for the further work and of drawing up an outline of the provisions to be included in the new treaty or of preparing a first draft (with commentaries) of the treaty.

Intermediate stage

14. The intermediate stage has involved negotiations which have taken place in the Commission and its sub-committees and in the Council. During this stage, the Secretariat has also made important contributions by assisting in the preparation of drafts or in the study of particular issues connected with the drafting of the treaty in question.

15. The length of the intermediate stage has varied according to the difficulties inherent in the subject-matter of the treaty. Thus the intermediate stage for the Protocol of 1946 (which dealt with non-controversial matters of form) comprised less than three months' work, whereas the comparable stage for the Single Convention (including all the manifold aspects of narcotics control) involved almost ten years of elaborate preparations.

16. Certain significant aspects of the intermediate stage may be noted:

17. During the preparation of the Opium Protocol of 1953, the Commission had recourse to assistance from *ad hoc* committees: thus an *ad hoc* committee composed of the representatives on the Commission of the principal opium-producing countries met in 1949 and a corresponding committee of the principal drug-manufacturing countries met in 1950, and a joint meeting of the two committees followed later that year.

18. In the preparation of the Convention on Psychotropic Substances, the Commission established a Committee on substances not under interna-

tional control, which met in 1966 to discuss various questions connected with the adoption of an international control system.

19. In order to expedite the drafting of the Convention on Psychotropic Substances, the Commission held a special session devoted solely to that end in 1970.

20. During its sessions the Commission—and in one instance the Council—has made ample use of drafting committees or working groups to deal with specific questions involved in the preparation of the various treaties.

21. The final stage comprises the conclusion of the treaty, either within the General Assembly or within a plenipotentiary conference. Two of the treaties under review, namely the Protocol of 1946 and the Paris Protocol of 1948, were adopted by the General Assembly, in the first case after consideration both in the Third Committee and in the Sixth Committee, in the latter case after consideration in the Third Committee alone.

22. The other four drug control treaties, which are of a more complex nature than the two Protocols mentioned above, have all been concluded in conferences of plenipotentiaries, convened—in 1953, 1961, 1971 and 1972—by the Council in accordance with Article 62, paragraph 4, of the Charter and with the provisions of General Assembly resolution 366 (IV) of 3 December 1949. This practice also reflects the general tendency whereby the General Assembly since 1949 has refrained to a great extent from taking part in the drafting of international treaties,⁶ especially those of a technical, as distinct from a political, character.

4. *Organization of the plenipotentiary conferences*

23. Each of the four above-mentioned plenipotentiary conferences has had its own distinct form of organization. The Opium Conference of 1953⁷ represents the “classical” pattern whereby the Conference establishes a committee of the whole to deal with the draft treaty, article by article, before referring the material to a drafting committee which sends the edited text back for consideration by the committee of the whole and for ultimate approval in the plenary conference. At the Opium Conference all decisions were taken by simple majority, thus implicitly reflecting the rules of procedure of the functional commissions of the Council, as well as the majority required in the Council itself according to Article 67 of the Charter.

24. The Conference for the adoption of the Single Convention in 1961⁸ appointed eleven *ad hoc* committees of limited membership to deal with each principal article or group of articles or scientific questions. After a first reading by the Conference, the various articles were referred to the appropriate committees, which studied them in greater detail before referring them back for a second reading in plenary. From here they were sent to the Drafting Committee and then back to the plenary Conference for ultimate adoption. Decisions of the plenary Conference on all matters of substance were taken by a two-thirds majority, whereas all other decisions were made by simple majority, a practice which has been reflected in the Vienna Convention on the Law of Treaties, article 9, paragraph 2.

25. The Conference for the adoption of the Convention on Psychotropic Substances in 1971⁹ appointed a Technical Committee of limited membership

to deal with scientific questions and an open-ended committee on control measures which in turn established nine *ad hoc* working groups. After a brief general debate, the Conference allocated the various articles to the two committees. Having considered the committees' reports as well as the articles to be dealt with in plenary, the Conference transmitted the texts to the drafting committee for review before adopting the Convention.

26. The Conference for the adoption of the 1972 Protocol¹⁰ appointed two main committees, both open-ended, and divided the detailed substantive work between them. As the draft texts were approved by either main committee, they were referred to the Drafting Committee, which edited the finished drafts for consideration and adoption by the plenary Conference.

5. Consultations

27. Apart from the consultation of Governments which takes place by virtue of the fact that the Commission, the Council, the General Assembly and the plenipotentiary conferences consist of government representatives, written consultations—in some cases by transmission of questionnaires—occurred with regard to all of the treaties under review, except for the 1972 Protocol (which dealt with various amendments to the Single Convention proposed by a few Member States). On the whole the Secretary-General's requests for observations met with a very high response.

28. Besides Governments, relevant international organizations or organs, in particular WHO and the International Narcotics Control Board (INCB) (or its two parent bodies) have also been consulted.

6. Level of changes

29. In general it may be said that the basic structure and the substance of the draft instruments reaching either the General Assembly or the plenipotentiary conference concerned were retained in the case of the drug control treaties considered in the present paper. Those changes which did take place may, broadly speaking, be said to deal especially with such provisions which—in the words of some delegates—could be considered as infringements of national sovereignty. A few examples of more significant changes will be mentioned below.

30. As far as the Single Convention is concerned, the final draft had limited the number of countries producing opium for export to eight expressly enumerated countries, whereas the Single Convention permits the traditional producers to continue such cultivation and leaves it to the INCB or the Council to approve or try to dissuade production for export by other countries. Moreover, the draft had given the INCB the authority to impose a mandatory embargo on trade in narcotics with countries which had accumulated excessive quantities; the Convention merely gives the Board the right to recommend the embargo. Similarly, the draft had given the Commission the possibility of issuing a mandatory prohibition on the use of especially dangerous drugs, whereas the Convention leaves it to the Parties to adopt the special measures of control deemed necessary, including prohibition.

31. With regard to the Convention on Psychotropic Substances, the article concerning the scope of the control of those substances has been

significantly modified in comparison with the final draft. For instance, the Commission has been given a wider discretion to place a substance under a particular control régime than in the draft. On the other hand, the Parties have been given a “right of non-acceptance” of the Commission’s decision in the case of all substances, whereas the draft disallowed this right with respect to the most dangerous substances. Finally, it may be mentioned that the draft had authorized the Commission to make decisions, bringing upon the Parties to place substances considered especially dangerous under provisional control, but the Convention merely provides that the Parties shall examine the possibility of provisional control for such substances.

32. Although not introduced at the last stage, the fundamental change which occurred during the intermediate negotiating stage of the Opium Protocol might be briefly mentioned: the original idea of establishing direct control over the production of opium by means of an international opium monopoly had to be abandoned, and in its stead a new scheme was adopted to control opium production by the indirect method of limiting the amount of opium that any country might stock.

7. *Records*

33. For all the treaties under review, records have been kept of the deliberations in all bodies and at all stages, except for discussions in certain drafting committees, sub-committees and *ad hoc* working groups.

8. *Official commentaries*

34. Model Guides for the application of the Opium Protocol of 1953 and of the Single Convention have been published. Official Commentaries on the Single Convention, the Convention on Psychotropic Substances and the 1972 Protocol have likewise appeared as aids to the interpretation of those treaties.

9. *Conclusions*

35. The elaborations of the international drug control treaties have been collective endeavours to which the Commission and its secretariat, the Division of Narcotic Drugs, have been the main contributors, while such other international bodies as WHO and the INCB (or its two predecessors) have also participated actively. In addition, Governments have been consulted systematically and continuously. The painstaking and time-consuming preparatory work—and the fact that the treaties deal with a worldwide problem largely of a non-political nature—is certainly the reason for the high acceptance record of those treaties: thus 112 States have so far adhered to the Single Convention, whereas 75 have adhered to the Convention on Psychotropic Substances, adopted ten years later.

ANNEX I

Protocol of 11 December 1946

1. The Protocol, consisting of a preamble, nine articles and an annex containing the amendments to the pre-war instruments, transferred to the United Nations the func-

tions previously exercised by the League of Nations under the six agreements, conventions and treaties concluded between 1912 and 1936.

2. The initiative for drawing up the Protocol originated with the General Assembly, which on 12 February 1946 requested the Economic and Social Council "to survey... the activities of a non-political character ... by the League of Nations in order to determine which of them should . . . be assumed by organs of the United Nations".¹¹

3. At the request of the Council,¹² the Secretariat drew up a draft protocol and consulted the members of the Commission on Narcotic Drugs in writing, since it was not possible to hold a session of the newly established Commission before the forthcoming sessions of the Council and the General Assembly.

4. The draft protocol and the comments from Commission members were considered at five meetings by a Drafting Committee appointed at a Council meeting (September 1946). At a subsequent meeting the Council invited the Secretary-General to scrutinize the work of the Drafting Committee. The Council's report and the Secretary-General's comments¹³ were examined and approved at a meeting of the Third Committee of the General Assembly, which referred the documents to the Sixth Committee (November 1946). At two meetings the latter discussed the legal questions involved and reported back to the Third Committee. Finally, on 19 November 1946, the General Assembly unanimously approved the protocol,¹⁴ which was opened for signature on 11 December 1946 and signed by 36 representatives to that session of the Assembly, duly empowered to sign.

5. The proceedings in the various bodies referred to above have all been recorded.

6. Only three months passed between the publication by the Secretary-General of the Draft Protocol, on 10 September 1946, and its signature on 11 December 1946. This speedy procedure was due, no doubt, to the fact that the Protocol dealt with non-controversial matters of form. On the other hand, these matters were important if international control of narcotic drugs were to be continued and carried out by the United Nations.

7. The handling of the matter was thorough, implying (in this order) the Secretariat and—by letter—the Commission; the Council and its *ad hoc* Drafting Committee; the Secretariat anew; the Third and Sixth Committees; and finally a plenary meeting of the General Assembly.

ANNEX II

The Paris Protocol of 19 November 1948 bringing under control drugs outside the scope of the 1931 Convention

1. The Protocol, consisting of a preamble and eleven articles, authorized the World Health Organization (WHO) to place under full international control any new drug (including substances made synthetically) liable to produce addiction which did not fall under the 1931 Convention (the provisions of which were limited to control of drugs derived from certain natural raw materials).

2. At its first session in November-December 1946, the Commission requested the Secretary-General to undertake a study of measures to be taken with a view to bringing under international control drugs not covered by the then existing conventions. In his study, the Secretary-General recommended the drafting of a new protocol and included an outline of the provisions to be incorporated in such an instrument.

3. Following a recommendation adopted by the Commission after four meetings at its second session (July-August 1947), the Council, at its fifth session held at the same time, instructed the Secretary-General to draft a protocol as suggested in his outline.¹⁵ This draft protocol, together with replies and observations from 33 Governments and WHO, was considered at eight meetings by the Commission during its third session (May

1948) and a revised text—prepared by a Drafting Committee—was forwarded to the Council at its seventh session (July-August 1948).

4. The draft protocol was examined by the Council's Social Committee at three meetings, at which certain amendments were adopted, and subsequently by the Council at a plenary meeting, which recommended to the General Assembly that it approve the draft protocol.¹⁶

5. During the General Assembly's third session, the draft protocol was considered at three meetings by the Third Committee and at two plenary meetings. On 8 October 1948 the General Assembly approved the protocol without a vote;¹⁷ it was opened for signature during the session on 19 November 1948.

6. The proceedings in the various bodies referred to above have all been recorded.

7. Two years passed from the Commission's initial request in 1946 and 16 months passed from the publication of the Secretary-General's study in July 1947 to the signing of the Protocol in November 1948. In spite of the promptness with which the various United Nations organs had acted—because of the urgency of bringing the new drugs under international control—a thorough handling of the matter was secured, comprising an initial study by the Secretariat, consideration of that study by the Commission and the Council, the drafting of the Protocol by the Secretariat and its circulation to Governments for observations, and renewed examination by the Commission and the Council followed by the General Assembly in its Third Committee and in plenary.

ANNEX III

The Opium Protocol of 23 June 1953

CONTENTS

1. This Protocol, consisting of a preamble and 26 articles, is entitled "The Protocol for limiting and regulating the cultivation of the poppy plant, the production of, international and wholesale trade in, and use of opium". It limited the use of opium and the international trade in it exclusively to medical and scientific needs, as established by a system of estimates and statistical returns. Only seven countries were authorized to produce opium for export, and the stock of opium maintained by individual States was to be restricted. Supervisory and enforcement measures could be employed by the Permanent Central Opium Board.

2. The Protocol was based on the idea that free competition in the licit trade of opium—subject to a system of import and export certificates—should in principle be maintained in so far as it was compatible with the limitation of production and with the maintenance of effective government control. Thus it differed radically from the original idea by the Commission, which had been to bring about an international opium monopoly, with quotas allocated annually to the various opium-producing countries and with some form of international inspection. This idea, however, had had to be abandoned, since the principal opium-producing and drug-manufacturing countries could not reach agreement on such important questions as the basic price of opium and the system of international inspection.

PREPARATORY STUDIES

3. The problem of limiting the production of the raw materials needed for the manufacture of narcotic drugs had been examined by the League of Nations, which in the Thirties had begun the preparatory work on the limitation of the production of opium. This preparatory work, which the United States Government had endeavoured to continue during the war, was reviewed by the Commission at its first session (November-December 1946); it unanimously decided that the Secretary-General should collect such

information and statistics on the world opium situation as would be necessary to carry on the preparatory work. This decision was approved by the Council at its fourth session (March 1974).¹⁸

4. During its third session (May 1948), the Commission examined the Secretary-General's report at six meetings; it decided to draw up a Single Convention (see below, Annex IV) to replace the existing instruments relating to narcotic drugs and also to include provisions for limiting the production of narcotic raw materials. However, since the elaboration of the Single Convention would be a long-term project, a majority of Commission members found that important immediate results might be obtained with regard to opium by convening a joint conference of opium-producing countries and drug-manufacturing countries with a view to reaching an interim agreement, limiting the production and export of opium to medical and scientific needs. Consequently, the Commission proposed, by 6 votes to 5, with 4 abstentions, that the Secretary-General study the desirability of convening such a conference. This proposal was approved by the Council at its seventh session (July-August 1948) by 13 votes to 1, with 4 abstentions,¹⁹ after consideration in its Social Committee at one meeting.

5. The Commission considered the Secretariat study at . . . meetings during its fourth session (May-June 1949)²⁰ and appointed a sub-committee which, at two meetings, studied the matter in detail. The sub-committee unanimously agreed that an interim agreement was necessary and found the holding of the above-mentioned joint conference most desirable, but proposed that, as a preliminary step, a meeting of the principal opium-producing countries be convened before the end of the year. This proposal was endorsed by the Commission and approved by the Council at its ninth session (July-August 1949) by 13 votes to none, with 5 abstentions, after the matter had been discussed in two plenary meetings.²¹

MEETINGS OF OPIUM-PRODUCING COUNTRIES (1949) AND OF DRUG-MANUFACTURING COUNTRIES

6. Pursuant to the Council's decision, an *ad hoc* committee, composed of the representatives on the Commission of the principal opium-producing countries, met in Ankara in November-December 1949. At twelve meetings the *ad hoc* committee worked out a proposed structure for an interim agreement, of which an important feature—as already indicated—was the creation of an international purchasing and selling agency which would have a monopoly in the trade to countries desirous of importing opium for the manufacture of drugs. The *ad hoc* committee also recommended that the above-mentioned joint conference be held in 1950. All decisions of the committee were adopted unanimously.

7. On the basis of the proposals of the *ad hoc* committee, the Secretary-General drew up a first draft of an interim agreement and submitted it to the Meeting of the principal drug-manufacturing countries, which held a total of twelve meetings in Geneva at the beginning of August 1950. The Meeting accepted, in principle, the decisions made in Ankara.

JOINT COMMITTEE (1950)

8. Following the meeting of the principal drug-manufacturing countries, a Joint Committee of the principal opium-producing and drug-manufacturing countries met in Geneva during the latter half of August and in New York in November. However, as already indicated above, the Joint Committee, which held 28 meetings altogether, was unable to reach agreement on several important questions, among others on the basic price at which the international opium monopoly should conduct its transactions and the precise form that international inspection of the opium trade should take.

CONSIDERATION BY THE COMMISSION AND THE COUNCIL

9. During its fifth session (December 1950), the Commission devoted . . . meetings²² to an examination of the situation in the light of the discussions mentioned above, but being unable to find a solution to the outstanding problems the Commission requested the Council to be authorized to hold a two-month session in 1951 in order to be able to complete its work at that session.

10. At its twelfth session in February-March 1951, the Council—upon the advice of its Social Committee, which discussed the matter at three meetings—resolved, by 14 votes to 3, to urge the Commission to make every possible effort to find a basis for a solution,²³ but the Commission, at its sixth session in April-May 1951, was still unable to reach agreement on any of the outstanding problems.

DRAFT PROTOCOL

11. In view of the deadlock which had been reached, the Commission then pondered other means to limit opium production. Having heard a French proposal that such limitation be based on the principles of the 1931 Convention for limiting the manufacture of narcotics, the Commission formed a sub-committee to study the implications of the French proposal. After consideration of the sub-committee's report, the Commission found that international control of opium production could be carried out through the indirect method of limiting the amount of opium that any country might stock under a proposed new protocol. Subsequently, a (second) committee was appointed to consider in detail the contents of such a protocol, and upon the recommendation of this committee, the Commission drew up—with the assistance of a Drafting Committee—a set of general principles upon which the proposed protocol could be based. These principles were adopted by 8 votes to 2, with 2 abstentions.

12. The difficulties which the Commission encountered at its sixth session are clearly revealed by the fact that it had to devote a total of 23 meetings—not counting the meetings of the sub-committees—to the problem of the limitation of opium production.

13. At its thirteenth session in July-August 1951, the Council considered the question at three meetings of its Social Committee and at one plenary meeting. The Council decided, by 14 votes to 3, with 1 abstention, that both the draft of the proposed interim agreement and the text of the general principles of the protocol should be submitted to Governments for their comments, that an annotated compendium of these observations should be prepared and the draft protocol be drawn up by the Secretary-General.²⁴

DECISION OF THE COUNCIL TO CONVENE AN INTERNATIONAL CONFERENCE

14. Since the observations by Governments were for the most part favourable to the draft protocol,²⁵ the Council felt, at its fourteenth session in May-June 1952, that the discussion on the proposed interim agreement and international opium monopoly should not be reopened, but that the deliberations should be concentrated on the protocol. After having examined the questions at two plenary meetings, the Council decided, by 13 votes to 3, with 2 abstentions, to convene an international conference to draft and adopt a protocol relating to the limitation of the production of opium and to request the Secretary-General to take the necessary measures, including the preparation of the provisional rules of procedure.²⁶

THE UNITED NATIONS OPIUM CONFERENCE

15. The United Nations Opium Conference was held at Headquarters from 11 May to 18 June 1953 with 34 participating States and with observers from seven States, WHO and the two then existing international drug control bodies.

16. The Conference had before it a draft protocol; provisional rules of procedure; a compilation of observations from 26 Governments and from the two then existing interna-

tional drug control bodies; as well as technical papers and statistics on various subjects relating to opium.²⁷

ORGANIZATION OF WORK

17. In conformity with the rules of procedure, the Conference appointed a Credentials Committee (five members), a Business Committee (consisting of the Bureau), a Main Committee (Committee of the Whole) and a Drafting Committee (ten members).

18. After having conducted a general debate on the draft protocol, the Conference assigned further consideration to the Main Committee, which initially discussed the draft chapter by chapter, except when a representative requested that specific points of a given chapter be debated. A total of six particularly difficult topics were referred to a sub-committee for detailed examination. Material dealt with by the Main Committee was referred to the Drafting Committee, which referred the draft text back to the Main Committee for consideration article by article. Finally, the plenary Conference considered the draft article by article, taking a vote on the whole text, as amended, at the end.

19. The Conference met eleven times, whereas the Main Committee held 24 meetings. All decisions were made by a majority of the delegations present and voting.

20. The Protocol was adopted on 18 June 1953, by 27 votes to none, with 2 abstentions, the Final Act by 28 votes to none, with 1 abstention, and the Protocol was opened for signature on 23 June 1953.

RECORDS

21. The proceedings in the various bodies referred to above have all been recorded, except the meetings in the sub-committees and drafting committees established during the Commission's fourth and sixth sessions and during the Conference.

OFFICIAL COMMENTARY

22. Pursuant to resolution XIV annexed to the Final Act of the Conference, an expert was designated to prepare a draft code and commentary on the Protocol. Accordingly, a Model Guide for the Application of the Protocol was drawn up and reviewed and adopted by the Commission at its tenth session in 1955.²⁸

OBSERVATION

23. Almost seven years and well over 100 meetings elapsed from the initial decision by the Commission in 1946 until the adoption of the Protocol in 1953. However, it should be recalled that the original idea of creating an international opium monopoly had to be abandoned during the negotiations. In this perspective it took two years and some 60 meetings from 1951, when agreement was reached on the alternative principle of limiting opium production by indirect means, to the adoption of the Protocol in 1953.

ANNEX IV

The Single Convention on Narcotic Drugs, 1961

CONTENTS

1. The Single Convention on Narcotic Drugs, consisting of a preamble, 51 articles and four lists of drugs, under various forms of control, replaces the six pre-war and three post-war international instruments, simplifies the international control machinery by establishing a single body to perform all supervisory functions, and provides for the limitation of the production of narcotic raw materials (not only the opium poppy, but also the cocoa bush and cannabis plant).

PREPARATORY STUDIES AND FIRST DRAFT

2. At the suggestion of the United States representative, the Commission, at its third session in May 1948, decided—after three meetings of deliberations—to draw up a Single Convention to replace the existing instruments relating to narcotic drugs. This decision was unanimously approved by the Council at its seventh session (July-August 1948) and the Secretary-General was requested to begin work on the drafting.²⁹

3. During its fourth session (May-June 1949) the Commission dwelt at some length on the documentary material prepared by the Secretary-General, consisting of four monographs on the problems of and possible solutions to drafting the new treaty. Subsequently, it decided to request the Secretary-General to prepare an annotated draft convention; this decision was approved by the Council by 13 votes to none, with 5 abstentions, at the ninth session (July-August 1949).³⁰

4. At its following six sessions the Commission worked on the Secretary-General's draft convention. At its fifth session (December 1950) it devoted several meetings to a preliminary general debate on the draft, but during its sixth session (April-May 1951) it only discussed the matter briefly at a single meeting, since it was preoccupied with the elaboration of the Opium Protocol (as described in Annex III).

5. During its seventh and eighth sessions (April-May 1952 and March-April 1953) the Commission devoted considerable time to a detailed examination of those articles of the draft which dealt with the scope of the convention, the obligations of the parties, the international and national control organs and the control of the manufacture of and international trade in narcotic drugs.

6. During its ninth session (April-May 1954) the Commission considered the sections of the draft covering control of internal trade in narcotics and of the production of agricultural raw materials, and provisions on domestic penal legislation, enforcement measures and the treatment of addiction. Finally, at its tenth session (April-May 1955), it further discussed control measures at the cultivation level, regulation of synthetic narcotics, provisions for the estimate and statistical returns systems and final clauses.

7. At the end of the tenth session the Commission requested the Secretary-General to prepare a second draft in accordance with the decisions and drafting suggestions which it had adopted during its last six sessions. The Commission decided to examine the new text before sending it to Governments for comments.

8. Between 1952 and 1955 the Commission devoted a total of 44 meetings to the first draft of the Single Convention; in addition, it appointed both at its seventh and at its eighth sessions a Drafting Committee which held five meetings at each session. The Commission had received at its request written observations from Governments represented on the Commission and various working papers from the Secretariat, the two international drug control bodies and WHO.

9. The Council did not discuss the draft in detail during this period, but at its eighteenth session in 1954 it invited the Commission to give the draft priority.³¹

THE SECOND AND THIRD DRAFTS

10. During its eleventh session (April-May 1956) the Commission devoted six meetings to the Secretary-General's second draft of the Single Convention (which contained numerous alternative texts in square brackets) and, in particular, considered the further procedure for the preparation of a final text. The Commission suggested several procedural possibilities, but the Council, at its twenty-second session (July-August 1956) decided to request the Commission to devote the maximum time at its twelfth and, if necessary, thirteenth session to the completion of the draft; it also decided that the second draft should be transmitted, for comments, to all Governments represented on the Council.³²

11. During its twelfth session (April-May 1957) the Commission devoted 13 meetings and a Drafting Committee nine meetings to the further work, and after another 18 plenary meetings and 13 meetings in the Drafting Committee during its thirteenth session (April-May 1958) the Commission approved a third and final draft. The Commission submitted the draft to the Council, recommending that it convene a conference of plenipotentiaries for the adoption of the convention.

DECISION OF THE COUNCIL TO CONVENE AN INTERNATIONAL CONFERENCE

12. At its twenty-sixth session in July 1958, the Council considered the matter at two meetings of its Social Committee and at one plenary meeting. The Council decided unanimously³³ to instruct the Secretary-General to convene a plenipotentiary conference, not only inviting States, but also asking interested international organizations to participate in the deliberations. Governments and organizations were given ample time (until October 1959) to make their comments on the draft treaty, in view of its complex and comprehensive character.

THE UNITED NATIONS CONFERENCE FOR THE ADOPTION OF A SINGLE CONVENTION ON NARCOTIC DRUGS

13. In accordance with the Council's resolution, the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs was held at Headquarters from 24 January to 25 March 1961. Seventy-three States were represented; four inter-governmental organizations, the two then existing international drug control bodies and three non-governmental organizations also participated.

14. The Conference had before it the third draft of the Single Convention, provisional rules of procedure and a compilation of replies and observations from 55 Governments and 16 organizations, as well as various other organizational and technical papers.³⁴

ORGANIZATION OF WORK

15. In conformity with the rules of procedure the Conference appointed a Credentials Committee (nine members), a General Committee (consisting of the Bureau) and a Drafting Committee (17 members). In addition, instead of establishing a committee, or committees, of the whole, the Conference appointed ten *ad hoc* committees to deal with each principal article or group of articles, as well as a Technical Committee to consider scientific questions, particularly the contents of the list of drugs to be controlled.

16. After having conducted a brief general debate, the Conference proceeded to discuss articles or groups of articles in plenary session and then referred them to the eleven Committees mentioned above, which, in turn, studied them in greater detail before submitting a report back to plenary. Here they were given a second reading before being sent to the Drafting Committee and then back for ultimate approval by the plenary Conference, which considered the text article by article, taking a vote on the whole text, as amended, at the end.

17. The Conference met 43 times, the Drafting Committee held 22 meetings, whereas the other Committees held a total of 61 meetings. Decisions of the plenary Conference on all matters of substance were taken by a two-thirds majority of the representatives present and voting, while all other decisions were made by simple majority.

18. The Convention was adopted on 25 March 1961 by 46 votes to none, with 8 abstentions, the Final Act by 50 votes to none, with 1 abstention, and the Convention was opened for signature on 30 March 1961.

RECORDS

19. The proceedings in the various bodies referred to above have all been recorded, except the meetings in the drafting committees established during the Commission's seventh, twelfth and thirteenth sessions and during the Conference.

OFFICIAL COMMENTARY

20. Pursuant to the Council's resolution E/RES/914 D (XXXIV), the Secretary-General issued a Guide for the Application of the Single Convention, in 1966, and a Legal Commentary was published in 1973.³⁵

OBSERVATION

21. The almost 13 years, a total of more than 250 meetings and the detailed preparatory papers involved in elaborating the Single Convention reflect a most patient and careful consideration of all the complicated aspects of international narcotics control. In judging the efforts required, it should be remembered that the Commission, during its nine annual sessions from its fifth to its thirteenth, could devote only part of its time to work on the Convention and to tackling the many difficult problems of an economic, social, medical, legal and administrative nature which such a comprehensive Convention entailed.

ANNEX V

The Convention on Psychotropic Substances of 1971

CONTENTS

1. The Convention on Psychotropic Substances, consisting of a preamble, 33 articles and four lists of such substances, subjects these substances to four régimes of international control, corresponding to their different degrees of health hazard. Provisions are made for bringing new substances under control and for transferring a substance from one régime to another.

PREPARATORY STUDIES

2. During the past decades there has been increasing concern over the danger to public health and the social hazards arising from the abuse of hallucinogens, stimulants and sedative-hypnotics. Therefore, in the late sixties, WHO, the Commission and the Council repeatedly adopted resolutions recommending that Governments take appropriate measures to place such psychotropic substances under strict national control. However, as time went on it became ever more evident that national measures would have to be supplemented by co-operation and action at the international level.

3. In 1965, at its eighteenth session, the World Health Assembly requested the Director-General to study the advisability and feasibility of international measures for control of sedatives and stimulants.³⁶ This resolution and the corresponding recommendations of the WHO Expert Committee on Dependence-producing Drugs were brought to the attention of the Commission at its twentieth session (November-December 1965).

4. The Commission dealt with the matter at five meetings and recommended that a committee meet to study the problem and report back to the Commission at its twenty-first session. This recommendation was approved by the Council at its fortieth session (February-March 1966)³⁷ after consideration by the Social Commission at two meetings.

5. The Committee on substances not under international control consisted of ten Member States, and nine other States, as well as WHO and the Permanent Central Nar-

cotics Board (PCNB), sent observers. The Committee held eight meetings in August 1966 and—apart from the acute problem of controlling LSD—discussed the question of whether the Single Convention on Narcotic Drugs could be employed for the control of psychotropic substances or whether a new treaty should be drafted. The Committee suggested that the Secretary-General, in consultation with WHO and PCNB, undertake a study of the legal, administrative and other questions connected with the adoption of an international control system.

6. At its twenty-first session (December 1966), the Commission devoted five meetings to the Committee's report and approved its recommendation for a study by the Secretary-General. The Council took note of the need for this study at its forty-second session in May 1967.

7. The Secretary-General submitted a thorough study to the Commission's twenty-second session (January 1968); he concluded that, for legal and practical reasons, a special treaty should be drawn up. The problem was discussed at six plenary meetings and at five meetings of a working group, after which the majority of the Commission's members came to agree with the Secretary-General's assessment that a new treaty would be necessary. Consequently, the Secretary-General was requested to transmit to Governments a detailed questionnaire seeking their opinion on the eventual contents of such a treaty and to begin the formulation of the operative part of such an instrument.

8. The Council, at its forty-fourth session (May 1968), had learned with satisfaction of the progress of the work.³⁸ The General Assembly, at its twenty-third session, requested the Council to call upon the Commission to give urgent attention to the problem.³⁹

FIRST AND SECOND DRAFTS

9. At its twenty-third session, the Commission had before it a compilation of replies to the above-mentioned questionnaire from 74 Governments and an annotated draft protocol set forth in two alternatives, which differed mainly as to the mandatory nature of the control provisions. After an extensive discussion at 18 meetings, the Commission agreed on a new annotated draft to be sent to Governments for comments; these comments were to be considered at a special session of the Commission, which would meet solely to complete a final text.

10. The Council, at its forty-sixth session (May-June 1969), authorized the convening of the special session.⁴⁰ Furthermore, the General Assembly, at its twenty-fourth session, requested the Council to call upon the Commission to proceed without delay to complete the draft protocol.⁴¹

THE COMMISSION'S SPECIAL SESSION AND THE THIRD DRAFT

11. The Commission's first special session was held at Geneva in January 1970. The background documents were the draft protocol, as revised during the Commission's twenty-third session, and a compilation of observations from 55 Governments, WHO and the International Narcotics Control Board (INCB, successor to PCNB).

12. During the special session for the completion of the final draft, the Commission held 30 plenary meetings, a Technical Committee met nine times, and a Working Party held four meetings; in addition, an *ad hoc* working group met once.

13. The Commission submitted the new draft protocol to the Council, which, at its forty-eighth session (March-April 1970), dealt with the matter at four meetings. Following a recommendation from the Commission, it decided to convene a Conference of plenipotentiaries for the adoption of the protocol on psychotropic substances.⁴²

THE UNITED NATIONS CONFERENCE FOR THE ADOPTION OF A PROTOCOL
ON PSYCHOTROPIC SUBSTANCES

14. The United Nations Conference for the Adoption of a Protocol on Psychotropic Substances met in Vienna from 11 January to 19 February 1971 at the invitation of the Government of Austria. Seventy-one States were represented and four sent observers; in addition, WHO, INCB and the International Criminal Police Organization participated.

15. The work of the Conference was based on the (third) draft protocol which the Commission had completed at its special session and the report and summary records of that session. It was decided to call the new treaty "convention" instead of "protocol".⁴³

ORGANIZATION OF WORK

16. In conformity with its rules of procedure, the Conference appointed a Credentials Committee (nine members), a General Committee (consisting of the Bureau and committee chairmen) and a Drafting Committee (15 members). In addition, the Conference appointed a Technical Committee (26 members), which in turn established an *ad hoc* working group; it also appointed an open-ended Committee on Control Measures which established nine *ad hoc* working groups.

17. After a brief general debate, the Conference referred articles of a scientific nature to the Technical Committee and provisions regarding the control system to the Committee on Control Measures. Having considered the report of the committees as well as the articles to be dealt with in plenary, the Conference transmitted the texts to the Drafting Committee for review; the convention thus reviewed was adopted article by article and as a whole by the plenary Conference.

18. The Conference met 28 times, the Committee on Control Measures held 26 meetings, and the Technical Committee and Drafting Committee met 22 and 14 times respectively. Decisions of the plenary Conference and all matters of substance were taken by a two-thirds majority of the representatives present and voting, whereas all other decisions were made by simple majority.

19. The Convention was adopted on 19 February 1971 by 51 votes to none, with 9 abstentions, the Final Act without a vote, and the Convention was opened for signature on 21 February 1971.

RECORDS

20. The proceedings in the bodies referred to above have all been recorded, except the meetings in the various committees under the Commission and the meetings in the Drafting Committee, the Technical Committee and the working groups during the Conference.

OFFICIAL COMMENTARY

21. A commentary on the Convention on Psychotropic Substances was prepared and financed as a project of the United Nations Fund for Drug Abuse Control; it was published in 1976.⁴⁴

OBSERVATION

22. Not counting the meetings which various organs of WHO may have devoted to the elaboration of the Convention, the competent organs of the United Nations dedicated almost 200 meetings to their difficult and time-consuming task between 1965 and 1971.

ANNEX VI

The 1972 Protocol Amending the Single Convention
on Narcotic Drugs, 1961

CONTENTS

1. The 1972 Protocol, consisting of a brief preamble and 22 articles, amends 13 articles of the Single Convention and adds three new articles thereto. The Protocol increases the authority of the International Narcotics Control Board (INCB), harmonizes the Single Convention with the Convention on Psychotropic Substances in respect of penal provisions and measures of fighting drug abuse, renders serious narcotics offences extraditable and introduces the possibility of technical and financial assistance to Parties for the fulfilment of their obligations.

PREPARATORY WORK

2. At the Commission's second special session (September-October 1970), the United States signified its intention to propose amendments to the Single Convention mainly in order to strengthen its control system. Those proposals were formally transmitted to the Secretary-General in March 1971 by a letter from the United States Ambassador to the United Nations and considered by the Council during its fiftieth session (April-May 1971) at four meetings of its Social Committee and at one plenary meeting. The Council decided, by 24 votes to 2, to call a Conference of plenipotentiaries to consider all amendments proposed to the Single Convention and to request the Commission to study and comment on such proposals at its twenty-fourth session.⁴⁵

3. During its twenty-fourth session (September-October 1971), the Commission devoted 12 meetings to the discussion of various amendments to the Single Convention proposed by the United States and three other countries. At the end of the discussion, the Commission adopted a resolution, *inter alia*, requesting the Secretary-General to transmit all relevant documentation to the Conference.

THE UNITED NATIONS CONFERENCE TO CONSIDER AMENDMENTS TO THE
SINGLE CONVENTION ON NARCOTIC DRUGS, 1961

4. The United Nations Conference to Consider Amendments to the Single Convention on Narcotic Drugs, 1961, met in Geneva from 6 to 24 March 1972. The Conference was attended by representatives from 97 States and observers from five States; WHO, INCB and the International Criminal Police Organization also participated.

5. The Conference had before it the texts of the amendments submitted by various States participating in the Conference and the relevant chapter of the Commission's report on its twenty-fourth session, as well as summary records of the discussion on this matter.⁴⁶

ORGANIZATION OF WORK

6. In conformity with its rules of procedure, the Conference appointed a Credentials Committee (nine members), a General Committee (consisting of the Bureau and committee chairmen) and a Drafting Committee (15 members). Moreover, two main committees, both open-ended, were established, between which the detailed substantive work was divided; one of these main committees established a working group.

7. The two main committees began their work on the proposed amendments allocated to them after a brief general debate had taken place in the plenary Conference. As the proposals for amendments were approved by either main committee, they were referred to the Drafting Committee, which edited the finished drafts for consideration in plenary. Here the Protocol was adopted article by article and, at the end, as a whole.

8. The Conference met 14 times, the two main committees held 22 and 18 meetings respectively, and the Drafting Committee met seven times. Decisions of the plenary Conference on all matters of substance were taken by a two-thirds majority of the representatives present and voting, while all other decisions were made by simple majority.

9. The Protocol was adopted on 24 March 1972 by 71 votes to none, with 12 abstentions, the Final Act was adopted without objection, and the Protocol was opened for signature on 25 March 1972.

RECORDS

10. The proceedings in the various bodies referred to above have all been recorded, except the meetings in the Drafting Committee and a working group during the Conference.

OFFICIAL COMMENTARY

11. A commentary was prepared and financed as a project of the United Nations Fund for Drug Abuse Control; it was published in 1976.⁴⁷

ANNEX VII
Resumé in chart form

<i>Instrument</i>	<i>Initiated by</i>	<i>Initial draft submitted by</i>	<i>Intermediate stage</i>	<i>Written consultation of Governments</i>	<i>Organizations which were consulted or sent observers to plenipotentiary conference</i>	<i>Changes introduced at last stage</i>	<i>Concluded and opened for signature by</i>	<i>Time from preparation to compilation</i>
Protocol of 1946	General Assembly	Secretariat	Council and Drafting Committee	Yes (members of the Commission)	—	None	General Assembly	1946 (3 months)
Paris Protocol of 1948	Commission	Secretariat	Commission (1st-3rd sessions) and Drafting Committee; Council	Yes	WHO	None (Amendment to "Colonial clause" rejected)	General Assembly	1946-1948
Opium Protocol of 1953	Commission	Secretariat	Commission (1st-6th sessions) and sub-committees; Committee of opium-producing countries; Committee of drug-manufacturing countries; Joint Committee (of the two above-mentioned); Council	Yes	WHO Permanent Central (Opium) Board; (Drug) Supervisory Body	(Fundamental change in conception during intermediate stage)	Plenipotentiary Conference	1946-1953

Single Convention on Narcotic Drugs, 1961	Government	Secretariat	Commission (4th, 13th sessions) and Drafting Committees; Council	Yes	FAO ICAO IMCO (comments only); ILO UPU (comments only); WHO; Permanent Central (Opium) Board; Drug Supervisory Body; ICPO/Interpol	Yes	Plenipotentiary Conference	1948 1961
Convention on Psychotropic Substances 1971	WHO	Secretariat	Commission (20th 23rd sessions and special session); Committee on Substances not under international control; Council; General Assembly	Yes	WHO; International Narcotics Control Board; ICPO/Interpol; Customs Co-operation Council	Yes	Plenipotentiary Conference	1965 1971
1972 Protocol Amending the Single Convention	Government	Governments	Commission (24th session); Council	No	WHO; International Narcotics Control Board; ICPO/Interpol	Yes	Plenipotentiary Conference	1971-1972

NOTES

- ¹ E/RES/9(1), establishing the Commission.
- ² E/CN/130; adopted by the Council in modified form as E/RES/159 II D (VII).
- ³ E/4971 and Add.1.
- ⁴ A/RES/24(I).
- ⁵ WHA 18.47.
- ⁶ A/RES/362 (IV).
- ⁷ United Nations, *Treaty Series*, vol. 456, p. 3.
- ⁸ United Nations, *Treaty Series*, vol. 520, p. 151; vol. 557, p. 280.
- ⁹ E/CONF.58/6.
- ¹⁰ E/CONF.63/9.
- ¹¹ A/RES.24(I).
- ¹² E/RES.12(I).
- ¹³ A/129.
- ¹⁴ A/RES/54(I).
- ¹⁵ E/RES/86(V).
- ¹⁶ E/RES/159(VII).
- ¹⁷ A/RES/211(III)—United Nations, *Treaty Series*, vol. 44, p. 277.
- ¹⁸ E/RES/49(IV).
- ¹⁹ E/RES/159 II.E (VII).
- ²⁰ Summary Records of the fourth session (E/CN.7/SR.78 *et seq.*) are not available in Geneva.
- ²¹ E/RES/246 D (IX).
- ²² Only certain Summary Records of the fifth session are available in Geneva.
- ²³ E/RES/355 C (XII).
- ²⁴ E/RES/395 B, C (XIII).
- ²⁵ E/2186.
- ²⁶ E/RES/436 A (XIV).
- ²⁷ All material relating to the Conference has been published under E/CONF.14/ and the Protocol itself under E/NT/8 and United Nations, *Treaty Series*, vol. 456, p. 3.
- ²⁸ E/NT/9.
- ²⁹ E/RES/159 IIL D (VII).
- ³⁰ E/RES/246 D (IX).
- ³¹ E/RES/548 K (XXVIII).
- ³² E/RES/626 F (XXII).
- ³³ E/RES/689 J (XXVI).
- ³⁴ All material relating to the Conference has been published under E/CONF.34/ and the Single Convention itself under E/CONF.34/22 and Sales No. 62.XI.1. and United Nations, *Treaty Series*, vol. 520, p. 151.
- ³⁵ E/CN.7/484/Rev.1 (Guide)—Publication Sales No. E.73.XI.1 (Commentary).
- ³⁶ WHA 18.47.
- ³⁷ E/RES/1104 (XL).
- ³⁸ E/RES/1293 (XLIV).
- ³⁹ A/RES/2433 (XXIII).
- ⁴⁰ E/RES/1402 (XLVI).
- ⁴¹ A/RES/2584 (XXIV).
- ⁴² A/RES/1474 (XLVIII).
- ⁴³ All material relating to the Conference has been published under E/CONF.58/ and the Convention itself under E/CONF.58/6 and Sales No. E.78.XI.3.
- ⁴⁴ Publication Sales No. E.76.XI.5.
- ⁴⁵ E/RES/1577 (L).
- ⁴⁶ All material relating to the Conference has been published under E/CONF.63/ and the Protocol itself under E/CONF.63/9. The Single Convention as amended has been issued as a United Nations Publication under Sales No. E.77.XI.3.
- ⁴⁷ United Nations Publication, Sales No. E.76.XI.6.

D. ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC

There are eight cases within the framework of ESCAP which involved multilateral treaty-making process.

1. *Asia and Pacific Coconut Community (APCC)*

1. The ECAFE Commission at its twenty-third session held at Tokyo in April 1967 requested, by resolution (XXIII), the Executive Secretary to conduct and promote studies on economic co-operation and plan harmonization at the subregional and regional levels and to organize meetings and discussions relating to studies on economic co-operation and plan harmonization.

2. The First Series of Intergovernmental Consultations on Regional and Subregional Plan Harmonization and Economic Co-operation, held at Bangkok in November 1967, came to the conclusion that the most feasible approach to regional economic co-operation and plan harmonization was to proceed on a commodity-by-commodity, project-by-project and subregional basis.

3. The subregional consultations on Regional Plan Harmonization on Coconut, Coconut Products and Oil Palms was held at Bangkok in October 1968. The meeting examined proposed regional organization of coconut, and unanimously agreed that there was an urgent need for co-operation among the coconut producing countries of Asia. The meeting suggested the organization be called the "Asian Coconut Community", and requested the Executive Secretary of ESCAP to organize another meeting at inter-governmental level to finalize the draft of the general principles for the establishment of the proposed community which would be submitted to the Governments for ratification.

4. The Inter-governmental Consultations on the Asian Coconut Community were convened at Bangkok in November 1968 by ECAFE in response to the request of the participants in the Sub-regional Consultations on Regional Plan Harmonization: Coconut, Coconut Products and Oil Palms to negotiate an acceptable agreement covering the whole range of policies, functions, structure, finance, administration and legal aspects of the proposed Asian Coconut Community. The Agreement, consisting of a preamble and sixteen articles, was open for signature by the plenipotentiaries of the seven Contracting Parties at ECAFE in Bangkok in June 1969 and was subject to ratification or acceptance by the signatory Governments in accordance with their respective constitutional procedures. Instruments of ratification or acceptance should be deposited with the Secretary-General of the United Nations not later than 31 December 1969.

5. The meeting resolved to recommend to the Governments of the developing countries concerned in the region that they consider joining the Asian Coconut Community and giving it all the support it might need. It requested the Executive Secretary of ECAFE to continue his assistance in the establishment of the Community and to urge all appropriate bodies of the

United Nations family of organizations to give it their full support and assistance.

6. At the 25th session held at Singapore in April 1969 the Commission adopted resolution 95 (XXV) whereby it endorsed fully the formation of the Asian Coconut Community.

7. The Agreement establishing the Asian Coconut Community entered into force on 30 July 1969, the Secretary-General of the United Nations being the depositary of the instruments of ratification and accession. The Community was formally inaugurated on 2 September 1969 in Colombo.

8. At the 26th session of the ECAFE Commission, held at Bangkok in April 1970, the Community was accorded the status of inter-governmental organization pursuant to ECOSOC resolution 1267 (LXIII).

2. *The Asian Development Bank (ADB)*

9. The ECAFE Commission at its 19th session held in Manila in March 1963 adopted resolution 45 (XIX) on "Accelerated measures for regional economic co-operation for development of trade and industry" whereby the Executive Secretary was requested "to convene a meeting of high level representatives of member and associate member governments of the ECAFE (ESCAP) region to review the progress achieved so far and to formulate and adopt more positive measures for concerted regional action". Pursuant to this resolution, the first session of the Ministerial Conference on Asian Economic Co-operation (later renamed as the Council of Ministers for Asian Economic Co-operation in 1970) was held at Manila in December 1963. The First Ministerial Conference adopted a "Resolution on Asian Economic Co-operation" in which the ministers agreed to convene *ad hoc* committees to undertake preparatory and investigatory work on various measures aimed at regional economic co-operation among which was the establishment of an Asian Development Bank.

10. Pursuant to the aforementioned programme on regional economic co-operation adopted at the Manila Ministerial Conference, an *ad hoc* Working Group of Experts on the Asian Development Bank was convened at Bangkok in October 1964 to examine major questions relating to the Asian Development Bank and to recommend institutional arrangements including a draft charter for its establishment.

11. The Commission at its 21st session held at Wellington in March 1965 adopted resolution 62 (XXI) whereby it decided to establish a high level consultative committee of experts designated by the Governments of nine regional member countries to consult the Governments of member countries in the region and of developed countries outside the region, as well as international financial and other institutions regarding various aspects of the establishment of the proposed Bank. The Consultative Committee met four times respectively in June, August, October, and November 1965.

12. Also pursuant to resolution 62 (XXI), the Preparatory Committee on the Asian Development Bank was convened at Bangkok in October/November 1965 to consider the recommendations of the Consultative Committee on the Asian Development Bank, including the draft charter and to prepare its report for consideration by the Second Ministerial Conference on Asian Economic

Co-operation and the Conference of Plenipotentiaries on the Asian Development Bank. The Preparatory Committee endorsed, with minor amendments, the draft Agreement recommended by the Consultative Committee.

13. The Agreement Establishing the Asian Development Bank was submitted by the Preparatory Committee to the Second Ministerial Conference on Asian Economic Co-operation which was held at Manila in November/December 1965. The Second Ministerial Conference adopted the Agreement Establishing the Asian Development Bank.¹

14. Further, the Conference of Plenipotentiaries on the Asian Development Bank was convened immediately after the Second Ministerial Conference on Asian Economic Co-operation, at Manila in December 1965, also in pursuance of ECAFE Commission resolution 62 (XXI). The Conference was attended by representatives of twenty-seven countries, eighteen from the region and nine from countries outside the region. The Agreement Establishing the Asian Development Bank was presented at the Conference for signature by the Plenipotentiaries.

15. The Agreement came into force on 22 August 1966, the Secretary-General of the United Nations being the depositary of the instruments of ratification and accession.

3. *The Asian Rice Trade Fund*

16. The efforts for promotion and development of regional economic co-operation on agricultural commodities including rice were initiated by the First Working Group of Planning Experts on Regional Harmonization of Development Plans held at Bangkok in November-December 1966. Following the recommendations made by this Working Group, the First Series of Intergovernmental Consultations on Regional and Subregional Plan Harmonization and Economic Co-operation was convened at Bangkok in November 1967. The consultations worked out an action programme for accelerating regional co-operation, recommending to adopt a commodity-by-commodity, project-by-project and subregional approach. The efforts made in accordance with the action programme culminated in the establishment of communities or associations on several agricultural commodities such as coconut, pepper, natural rubber and lumber.

17. As for rice, ECAFE/FAO Expert Group Meeting on Stabilization and Expansion of Intra-regional Trade in Rice and some other Agricultural and Non-Agricultural Commodities and Harmonization of National Plans was held at Bangkok in October 1969. The Expert Group reviewed the export availability and import requirements for rice, wheat, other cereals and agricultural requisites in eleven selected ECAFE countries, discussed the possible measures to stabilize and expand intra-regional trade of rice, and recommended to build up a more comprehensive picture of import/export requirements of those commodities in the region.

18. Pursuant to the recommendation of the Expert Group, Intergovernmental Consultation and Regional Co-operation in Rice was convened at Bangkok in March 1970. The Consultation reviewed the issues related to rice economy and rice trade in Asia, examined the proposal on trading arrangement for expansion in intra-regional rice trading which was prepared by the

ECAFE secretariat by modelling after the International Wheat Agreement, and discussed buffer stocks for stabilization of supply and price of rice.

19. The Commission at its 26th session held at Bangkok in April 1970 adopted resolution 105 (XXVI) on "Regional consultations on rice" whereby the Executive Secretary was requested "in consultation with FAO, to undertake studies for and initiate as early as possible regular intergovernmental consultations on rice among the countries of the region within the framework of the trade liberalization and development programme".

20. Pursuant to this resolution, an Expert Group Meeting on Intraregional Trade in Rice and Cereals and Harmonization of National Plans, organized in co-operation with UNCTAD, FAO and UNDP, was convened at Bangkok in September 1971. The Group reviewed anticipated export availability and import requirements of the region in 1975 and examined draft proposals, "A special Asian Rice Trade Scheme", prepared by the ECAFE secretariat.

21. The Intergovernmental Meeting on the Establishment of an Asian Rice Trade Fund convened at Bangkok in March 1973 examined and approved a draft Agreement Establishing the Asian Rice Trade Fund, which was prepared by the ECAFE secretariat taking recommendations of the aforementioned Expert Group into consideration. The draft Agreement finalized and approved by the Meeting was initialed by the representative of the Khmer Republic, the Philippines and Thailand.

22. The Commission at its 29th session held at Tokyo in April 1973 approved the Agreement and adopted resolution 136 (XXIX) on the "Asian Rice Trade Fund".

23. The Agreement Establishing the Asian Rice Trade Fund was opened for signature at ECAFE up to 31 May 1974, and came into force on 1 December 1974 with the deposit of instruments of acceptance with UN Headquarters by three countries, Bangladesh, India and Sri Lanka.

4. *The first Agreement on Trade Negotiations among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (Bangkok Agreement)*

24. In the Kabul Declaration by the Fourth Council of Ministers on Asian Economic Co-operation convened at Kabul, Afghanistan, in December 1970, the Council of Ministers announced its decision, *inter alia*, "to establish an intergovernmental committee—comprising representatives of regional member and associate member countries of ECAFE interested in initiating a trade expansion programme—to conduct such an examination of, and make suitable modifications to, the relevant principles and also to deal with other necessary technical and operational matters, so that a trade development programme can be launched as speedily as possible."

25. In pursuance of this mandate, the first meeting of the Intergovernmental Committee on Trade Expansion Programme was convened at Bangkok, Thailand, from 12 to 17 November 1971. In the light of the studies and documentations presented on trade expansion among the developing countries of the region, the Committee unanimously agreed that the Asian Trade Expansion Programme among developing countries be launched and requested the Executive Secretary to convene as soon as possible the first meeting of the

Trade Negotiations Group composed of the developing countries of ESCAP which would consider and agree on its work programme.

26. The First Meeting of the Trade Negotiations Group (TNG) attended by thirteen developing countries of ESCAP was held in Bangkok on 14 February 1972 and adopted the programme of work and timetable for the Asian Trade Expansion Programme. The Secretariat was made a focal point for the exchange of information among the participating States and was also requested to undertake the necessary research and studies in the field of trade expansion and co-operation among developing countries. At its second session in January 1973, the TNG adopted the group rules and procedures for negotiations. Exchange of request and offer of list of products of interest to the countries were made during the subsequent sessions and during its Fifth Session, 106 bilateral negotiations were held and the exchanges of specific offers for tariff reductions on specific commodities were finalized. These offers were formally adopted through the signing of the Agreement on Trade Negotiations among the developing countries of ESCAP, 31 July 1975, otherwise known as the Bangkok Agreement. The following countries signed the Agreement: Bangladesh, India, Laos, Philippines, Republic of Korea, Sri Lanka and Thailand.

27. According to the Agreement, it was to enter into force for the first time 30 days after the date of deposit of the third instrument of ratification by three signatory States which deposit the instrument of ratification. For every other original signatory State which deposits its instrument of ratification after the deposit of the third instrument of ratification, the Agreement shall come into force 30 days after the date on which that State had deposited its respective instrument of ratification, provided that such instruments of ratification are deposited before 31 January 1976. The following countries have ratified the Agreement: Bangladesh, India, Lao People's Democratic Republic, Republic of Korea and Sri Lanka.

28. The Agreement came into force in June 1976. The Executive Secretary of the Economic and Social Commission for Asia and the Pacific was made the depositary of the Agreement.

5. *Pepper Community*

29. In pursuance of resolution 87 (XXIII) adopted at the 23rd session of ECAFE held at Tokyo in April 1967, the Third Ministerial Conference on Asian Economic Co-operation was convened at Bangkok in December 1968. Following the Agreement reached in regard to coconut, the Conference adopted the resolution in which it requested the Executive Secretary to promote similar co-operative efforts on important products produced in the region such as pepper.

30. India, Indonesia and Malaysia agreed in their informal talks held at Djakarta in July 1970 to establish a Pepper Community, patterned after the Asian Coconut Community.

31. In response to a request by a major pepper producing country and as a follow-up to the above informal talks, Inter-governmental Consultations on Regional Co-operation in Pepper in Asia were convened at ECAFE headquarters in February 1971. At the consultations representatives of Governments of

India, Indonesia and Malaysia approved the draft agreement establishing the pepper community.

32. The Agreement establishing the Pepper Community came into force on 21 April 1971 with the deposit of instruments of ratification by its three original signatories, viz. India, Indonesia and Malaysia.

6. *Agreement Establishing the Southeast Asia Tin Research and Development Centre (SEATRADE)*

33. During the joint eighth session of the Working Party of Senior Geologists and the Sub-Committee on Mineral Resources Development (Bandung, Indonesia, 1970), the representatives of Indonesia, Malaysia and Thailand requested the Executive Secretary of the then Economic Commission for Asia and the Pacific (ECAFE) to establish an appropriate organization for the research and development of tin research in the region.

34. The Committee on Industry and Natural Resources, at its twenty-third session (Bangkok, 1971) and the Commission at its twenty-seventh session (Manila, April 1971) endorsed the request as well as the convening of a meeting of representatives of tin-producing countries of Southeast Asia to consider the establishment of a sub-regional organization.

35. Accordingly, ESCAP secretariat engaged a consultant in 1971 to investigate the requirements for a tin research and development centre for Southeast Asia and his report was circulated to the tin-producing countries in the region. A meeting of government representatives of the leading tin-producing countries of Southeast Asia was held at Bangkok from 24 to 28 January 1978 to consider the consultant's report and to examine the question of establishing a tin centre and to recommend institutional arrangements. The meeting was attended by government representatives from Indonesia, Malaysia and Thailand. A draft agreement for the establishment of the Centre was prepared by the meeting for consideration by participating Governments.

36. At the invitations of the Governments of Indonesia, Malaysia and Thailand, UNDP fielded a fact-finding mission in late 1973 to the three countries. A project proposal for UNDP assistance incorporating the recommendations of the mission was prepared and circulated to the three countries for their consideration.

37. In July and October-November 1974, ESCAP convened two meetings at Bangkok and Kuala Lumpur respectively of government representatives from Indonesia, Malaysia and Thailand to discuss in detail the draft project document for UNDP assistance and the draft agreement for establishing the tin centre.

38. The draft agreement and the project document were accepted after some minor amendments at the Kuala Lumpur meeting. Due to constraints in funding by the UNDP which developed in late 1975, the operations of the tin centre project could not be initiated until early 1977.

39. The Agreement Establishing the Southeast Asia Tin Research and Development Centre at Ipoh, Malaysia, as an inter-governmental body was presented during the 33rd session of the Commission at Bangkok to the three founding countries, Indonesia, Malaysia and Thailand, for signature by the plenipotentiaries. The Agreement was signed on 28 April 1977.

40. The instruments of ratification by the Governments of Indonesia, Malaysia, and Thailand, lodged with the Secretary-General on 12 and 20 September and 18 October 1977, respectively, were officially deposited with the Secretary-General on 11 January 1978, the date of the receipt of the third notification of acceptance.

41. Pursuant to the provisions of article 8, the Agreement entered into force for Indonesia, Malaysia and Thailand on 10 February 1978.

7. *Asian Reinsurance Corporation (under incorporation)*

42. The need to strengthen national insurance and reinsurance markets in order to assist trade expansion was noted at the 1969 session of the Committee on Trade of ECAFE. Resolution 42 (III) of insurance and reinsurance adopted at the 1972 session of UNCTAD recommended, *inter alia*, the establishment of closer co-operation between the insurance supervisory services as well as between their insurance and reinsurance institutions on a regional and/or sub-regional basis and requested UNDP and UNCTAD to finance and organise regional meetings for insurance supervisors for the purpose of exchanging information and experiences, with the participation of UN Regional Economic Commissions. It also requested the UNCTAD secretariat to continue its studies of insurance and reinsurance—including regional and/or sub-regional reinsurance funds.

43. A round table meeting of Asian Insurance Commissioners and other senior government officials in charge of insurance supervision was organised by UNCTAD/ECAFE, financed by UNDP, in July 1972 in Bangkok. It was attended by representatives from 16 countries. The meeting discussed the control on terms and conditions of reinsurance arrangements (especially outward reinsurances). The meeting felt that while Insurance Commissioners should in general abstain from interfering in the purely commercial activities of regional pools, they may play a decisive role in promotion of the idea of regional co-operation of the national insurance markets (both in the form of company-to-company exchange of business and that of global institutional arrangements such as regional pools), by suggesting their establishment and in providing general guidelines for action aimed at increasing the exchange of business among the insurance markets of the member countries.

44. The July 1973 session of the Committee on Invisibles of UNCTAD took note of a study by the secretariat on "Reinsurance problems in developing countries" and invited developing countries to consider the adoption of such measures suggested in the study as may be appropriate in their individual circumstances, aimed at a structural development of their national insurance markets and an increase in regional and sub-regional co-operation among developing countries in the field of reinsurance.

45. As a direct follow-up of the June 1972 meeting of Asian Insurance Commissioners and taking note of the full support of Asian Governments to efforts in this field voiced in the January 1973 meeting of the ECAFE Committee on Trade and July 1973 meeting of the UNCTAD Committee on Invisibles, a round table meeting was organized by UNCTAD/ECAFE in December 1974 on Asian Reinsurance Co-operation. The round table meeting was attended by representatives from 18 developing countries of the ESCAP region.

After a detailed technical discussion of the reinsurance conditions in the Asian countries and the existing Asian sub-regional reinsurance schemes, the participants considered further action in the field of Asian reinsurance co-operation. They unanimously accepted the principle of establishing a pan-Asian reinsurance corporation and decided to establish a Preparatory Committee comprising representatives of 10 Asian countries to pursue the subject further.

46. The Preparatory Committee was given the following terms of reference:

(a) to prepare a feasibility report on the basis of which a final decision can be taken by the Asian countries in respect of the establishment of Asian Reinsurance Corporation;

(b) in particular, to determine the basis of the feasibility study, including projections for revenue accounts and cash flows for a number of years based on the expected business inflow, and to determine the requirements for establishing the corporation regarding, for example, share capital issues, legal acts of constitution, headquarters and immunities; and

(c) to submit not later than the end of 1975 its final report and recommendations to a plenary meeting, which in turn will decide whether the project is ready for submission to the proper intergovernmental body for implementation.

47. The Preparatory Committee met twice in January 1976 and June 1976 and discussed the various issues involved in detail. It also attempted to prepare a draft Agreement Establishing the Corporation based on the text of the Agreement establishing African Reinsurance Corporation. The Committee made a positive recommendation regarding the feasibility of establishing the Asian Reinsurance Corporation even though it was unable to collect sufficient data to make the projections of accounts as required by the terms of reference.

48. UNCTAD/ECAFE, with the financial support of UNDP, organised a second round table meeting on Asian Reinsurance Corporation in December 1976 to consider the report of the Preparatory Committee and the draft Agreement Establishing the Asian Reinsurance Corporation which emerged from the discussions in the Preparatory Committee. The Round Table meeting was attended by representatives from 12 developing countries. The meeting decided to recommend establishment of Asian Reinsurance Corporation as an intergovernmental regional institution with headquarters at Bangkok and to ensure a minimum flow of business to the Corporation through obligatory cessions from insurers of member countries. It finalized the provisions of the Agreement establishing the Asian Reinsurance Corporation and requested the ESCAP secretariat to communicate the report of the round table meeting including its recommendations and the Agreement, to member States for further action. It requested UNCTAD to consult the Office of Legal Affairs of the UN on the legal aspects and then finalize the text.

49. In March 1977, the Executive Secretary of ESCAP forwarded the report of the second round table meeting together with the Agreement Establishing the Asian Reinsurance Corporation to the 18 countries which had participated in the first round table meeting. He stated that the Agreement would be ready for signature at the 33rd session of ESCAP in April 1977.

50. In order to enter into force, the Agreement required that at least 8 developing countries (members of ESCAP) had ratified it and deposited their subscriptions to the share capital.

51. While the project had received wide enough support, it could not be implemented due to the lack of sufficient ratifications. Accordingly, a consultation meeting of representatives of signatory Governments was convened in October/November 1977 to consider the matter. The meeting recommended extension of the last date for signature to 31 March 1978 and reduction in the minimum number of signatory Governments to 7. This recommendation was referred to all the signatory Governments for their approval. On 31 March 1978 an eighth country signed the Agreement. One of the original 7 signatories had made reservations both with regard to subscription to share capital and cession of reinsurance business which had the effect of making its signature inoperative. The November 1977 meeting requested ESCAP to write and persuade that country to withdraw its reservations.

52. The Agreement has not yet entered into force since only one out of the 8 signatories has ratified the Agreement so far and only four countries have deposited their subscriptions to the share capital.

8. *Asia-Pacific Telecommunity*

53. The twenty-second session of the Transport and Communications Committee held at Bangkok in January 1974 first initiated the proposal for establishing an "Asian Telecommunity" in order to assist continuously in the planning, augmentation, switching and tariff revision of the links and channels in the Asian telecommunication network, and recommended that studies in that connexion should be continued by ESCAP and ITU to determine the type and extent of co-operation and organization required for the Asian Telecommunity. Accordingly, ESCAP convened an Expert Group Meeting representing the Governments of the region to prepare the first draft of the Statute of the Asian Telecommunity after detailed discussions of the objectives of the Telecommunity and specially the type of the Statute most suitable for the Asia-Pacific region. This meeting was attended by experts from the following countries: Bangladesh, India, Indonesia, Iran, Japan, Malaysia, Nepal, the Philippines, Singapore, Thailand, United Kingdom and Hong Kong. Representatives of ITU also participated.

54. The draft Statute was placed before an Intergovernmental Working Party of Experts which met to finalize the Constitution of the Asia-Pacific Telecommunity from 24 March to 2 April 1976. At this meeting, which was attended by the representatives of the following member and associate member countries: Afghanistan, Australia, Bangladesh, France, Hong Kong, India, Indonesia, Iran, Japan, Malaysia, Nepal, New Zealand, Pakistan, Papua New Guinea, Philippines, Singapore, Thailand, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and the United States of America, the Constitution was considered in great detail. The establishment of an Asia-Pacific Telecommunity was strongly recommended as a regional telecommunication organization in conformity with Article 32 of the International Telecommunication Convention, Malaga-Torremolinos, 1973:

"Members reserve the right to convene regional conferences, to make regional arrangements and to form regional organization for the purpose

of settling telecommunication questions which are susceptible of being treated on a regional basis. Such arrangements shall not be in conflict with this Convention.”

The objectives of the Telecommunity were specially reviewed and revised taking into consideration the wishes of all the participating Governments. In this Constitution, the General Assembly, the Management Committee and the Permanent Secretariat of the Telecommunity were recommended to take into consideration the large amount of work that would be required. The expenses of the Telecommunity and the methodology in raising the same were also considered and included in Article 11 of the Constitution of the Telecommunity.

55. At the thirty-second session of the Commission (April 1976), a resolution on the Establishment of the Asia-Pacific Telecommunity was unanimously adopted. The Commission, in recognizing the need for co-operation in the detailed planning and management of the existing and projected telecommunication services within the region in the current rapid development of the telecommunication and of the implementation of the Asian telecommunication network, endorsed the report of the Intergovernmental Working Party of Experts to Finalize the Constitution of the Asia-Pacific Telecommunity and adopted the Constitution with certain modification and comments of the various Governments.

56. The Constitution of the Asia-Pacific Telecommunity was kept open for signature at the ESCAP secretariat at Bangkok since 1 April 1976 till 31 October 1976. It was signed at Bangkok by Bangladesh, Burma, China, India, Iran, Nauru, Nepal, Papua New Guinea, the Philippines and Thailand. Subsequently, the Constitution was kept open for signature with the Secretary-General of the United Nations at New York and additional countries signed the Constitution.²

57. ESCAP consulted some of the Governments concerned with a view to preparing draft documents for the inaugural session. These documents were circulated to all Governments who either signed or ratified the Constitution and the comments of the Governments have been received for consideration of the final documents to be submitted to the inaugural sessions of the General Assembly and the Management Committee.

58. According to Article 18 of the Constitution, the Constitution “shall enter into force on the thirtieth day after the deposit of instruments of ratification or acceptance with the Depositary, by seven signatory States that are eligible for membership in the Telecommunity under paragraph 2 of Article 3, including Thailand, the country in which the headquarters of the Telecommunity shall be”. This condition was fulfilled on 25 February 1976. So far, 21 countries have ratified or acceded to the Constitution.

NOTES

¹ United Nations, *Treaty Series*, vol. 571, p. 123.

² For information on the signatures and ratifications, see *Multilateral Treaties Deposited with the Secretary-General*, status as at 31 December 1981 (ST/LEG/SGR.E/1), p. 632.

E. ECONOMIC COMMISSION FOR EUROPE

1. *Inland transport*

1. The treaty-making activities of the ECE in the field of transport cover a wide range of subjects according either to the mode of transport on which a given treaty will apply or fields of activities relating to more than one mode of transport and which call for international rules in the form of binding agreements between the member countries of the organization.

2. According to the subjects to be dealt with in the respective treaty and in particular according to the scope of the treaty—European or world-wide—the initiative for its preparation might vary from case to case.

3. The preparation of European conventions is in general initiated by a subsidiary body of the Inland Transport Committee of the ECE, when the need for multilateral rules on a given subject in its field of competence is felt by several delegations. Proposals in this respect are put forward within these bodies not only by a member country or a group of these countries but also by international organizations participating in the work of the respective body.

4. The work on the preparation of world-wide conventions, in which the ECE has been playing a lead-role, has also been generally initiated in subsidiary bodies of the ECE. The convening of conferences of plenipotentiary representatives in order to conclude such conventions was decided by resolutions of the Economic and Social Council (UN Conference on Road and Motor Transport 1949 (ECOSOC Resolution I47 B (VII)); UN Conference on Road Traffic 1968 (ECOSOC Resolutions 1129 (XLI) and 1203 (XLII)); UN/IMCO Conference on Container Traffic 1972 (ECOSOC Resolutions 1568 (L) and 1569 (L) and IMCO Resolution A.245 (VII)).

5. Another way of initiating treaty-making activities in the sense of the revision of an already existing convention is the application of the procedures provided in a given convention and aiming at its revision. This was done by convening a Conference for reviewing the Customs Convention on the International Transport of Goods under cover of TIR Carnets 1959 in pursuance of its article 46.

6. In the latter case the revision of the TIR Convention had to a great extent also been prepared in the ECE Group of Experts on Customs Questions Affecting Transport. This group had elaborated a series of recommendations concerning the application of several provisions of the TIR Convention by its contracting parties “pending the revision of the TIR Convention” and had also elaborated amendments to the annexes of this Convention in pursuance of its article 47, paragraph 4.

7. In the case of several private law conventions drawn up under the auspices of the ECE, such as the CMR, CVR, CLN and CVN Conventions, it was the International Institute for the Unification of Private Law (UNIDROIT) which had made first drafts which were transmitted to the ECE for further consideration by its competent bodies.

8. As far as the European Agreement supplementing the Convention on Road Signs and Signals (1968) is concerned, draft substantive provisions have been prepared by the European Conference of Ministers of Transport for con-

sideration in the ECE Group of Experts on Road Traffic Safety and the ECE Working Party on Road Transport.

9. The Governments participating in the elaboration of international conventions frequently include in their delegations legal experts. In addition, legal officers in the UN Secretariat have been consulted when necessary, particularly on questions relating to the final clauses of the treaty under consideration. With a view to considering legal subjects in the field of inland navigation, in particular the drafting of legal instruments, the Group of Experts on River Law, a subsidiary body of the ECE Inland Transport Committee, was set up: it has elaborated the text of several civil liability conventions.

10. As to the procedure applied to treaty-making activities in the transport field, the following rules have in general been applied.

11. First drafts of treaties or proposals put forward for certain parts of a given treaty are communicated to all ECE member countries in order to give them the opportunity for commenting on it either in writing or orally at the meetings of the competent body preparing the convention. Several readings of the text are provided for, either for provisions where certain countries participating in the drafting work reserve their position, or when the draft texts of a treaty are submitted to the parent body of the body that undertook the initial drafting.

12. In general any comments in the course of the drafting are considered by the competent body.

13. Decisions of ECE bodies concerning the adoption of a text under consideration are taken in pursuance of the rules of procedure of the ECE. It is the Inland Transport Committee of the ECE that takes the final decision concerning the adoption of the text of a convention of European scope and on the date of its opening for signature.

14. The world-wide conferences of plenipotentiary representatives held in the instances mentioned above were also preceded by preparatory drafting work in the competent ECE bodies or, as was the case for the draft text of the Convention on Safe Containers, in joint meetings between ECE and IMCO.

15. As far as the treaty-making techniques in such conferences are concerned, this procedure varies according to the subject to be dealt with in the convention. It can be said that drafting work is divided between several committees dealing with certain parts of the draft convention and which report to the plenary. It is the plenary that takes final decisions and approves the reports made by committees.

2. Development of trade

16. The following comments relate to the techniques for the elaboration of the 1961 European Convention on International Commercial Arbitration and to one aspect of the techniques used in multilateral treaties regulating international trade procedures.

(a) Description of stages of elaboration of the 1961 European Convention on International Commercial Arbitration

(i) Initiative

17. The initiative belonged to the ECE member States at the time of the drawing up of the programme of work and priorities of the ECE for 1959-

1960. Under that programme, which was considered and approved in May 1959 at the fourteenth session of the Commission, the *ad hoc* Working Party of Experts on Arbitration was also to examine a draft European convention on particular questions concerning, *inter alia*, the relationship of arbitration and judicial procedures. The programme was endorsed by ECOSOC resolution 723 (XXVIII) adopted in July 1959.

(ii) *Preparation of the initial draft by and the role in general of the ad hoc Working Party of Experts on Arbitration*

18. The role of the *ad hoc* Working Party was of particular importance to the elaboration of the European Convention. In point of fact, the Working Party had been set up by the Committee on the Development of Trade much earlier (at the third session of the Committee in October 1954) and with assignments not specifying expressly the preparation of a convention. The Working Party's terms of reference included the collation of information on the present facilities for international commercial arbitration, on any international conventions dealing with arbitration which might then have been in force and on national laws concerning arbitration, and the examination of problems relating to the arbitral settlement of commercial disputes.

19. The Working Party discussed various questions connected with its terms of reference during its first, second, third and fourth sessions held in 1955, 1956 and 1957 respectively. The Committee on the Development of Trade took note of the Working Party's reports and decided that the latter was to continue its work.

20. At its fifth (October 1958), sixth (May 1959) and seventh (November 1959) sessions the Working Party drew up a draft European Convention on International Commercial Arbitration. The draft, as attached to the Working Party's report on the work of its seventh session, was submitted to the Committee on the Development of Trade.

21. As the *ad hoc* Working Party was itself composed of experts, including legal ones, there was no involvement of other experts in the preparation of the draft Convention. Necessary legal services were provided by the ECE secretariat, including in particular the latter's legal adviser, and there were no rapporteurs.

22. The draft was not accompanied by explanatory commentaries.

(iii) *Readings*

23. There were two readings—the first at the sixth session of the *ad hoc* Working Party and the second at the seventh session.

24. The draft was considered by the Committee on the Development of Trade during its eighth session held in October/November 1959. The results of the Committee's deliberations were summarized in the Annual Report of the ECE to the Economic and Social Council covering the period from 7 May 1959 to 7 May 1960 (fifteenth session of the Commission).

25. As Governments commented on the emerging text of the draft Convention there arose some differences of opinion on Article IV (Organization of the Arbitration) of the draft Convention after the seventh session of the Working Party. At the request of several Governments which wished to have further time to examine the draft prepared by the Working Party, the Executive

Secretary of ECE postponed the meeting of plenipotentiaries which was to have been convened in April 1960.

26. In its resolution 7 (XV) adopted on 5 May 1960 the Commission noted, *inter alia*, that differences existing between government experts taking part in the discussions in the *ad hoc* Working Party on the text of Article IV of the draft Convention had prevented the submission of an agreed single text. The Commission therefore requested the Executive Secretary to convene a special meeting to prepare an agreed text of Article IV of the draft Convention in order that a single text of the whole draft Convention might be submitted to the meeting of the plenipotentiaries.

(iv) *Special meeting concerning Article IV (Organization of the Arbitration)*

27. The first part of the special meeting to prepare an agreed text of Article IV of the draft Convention was held from 8 to 12 August 1960. After the Committee on the Development of Trade had taken note of the report of this meeting, the Executive Secretary called the second part of the special meeting and, following thereon, a Special Meeting of Plenipotentiaries for the purpose of negotiating and signing the European Convention on International Commercial Arbitration.

28. During the Special Meeting on Article IV several Governments submitted their proposals concerning the final version of the provisions of this Article.

(v) *Adoption and authentication of final treaty text*

29. On the basis of the draft Convention drawn up by the *ad hoc* Working Party, as well as the text agreed upon by the Special Meeting on Article IV and the draft of final clauses submitted by the secretariat, the Plenipotentiaries prepared the European Convention on International Commercial Arbitration.

30. No formal adoption of the Convention took place, although the Convention was actually adopted at the Meeting of the Plenipotentiaries. Reference to adoption was made in the report of the Special Meeting of Plenipotentiaries (E/ECE/424, E/ECE/TRADE/47, 20 April 1961).

31. Since no authentication procedure had been provided for in the text of the Convention or agreed upon by the States participating in its drawing up, it can be considered, on the basis of Article 10 of the Vienna Convention on the Law of Treaties, that the text of the Convention was established as authentic and definitive by the signature by the representatives of all the participating States of the text of the Convention and/or the Final Act of the Special Meeting of Plenipotentiaries incorporating the text.

(vi) *Opening for signature and accession*

32. The Special Meeting of Plenipotentiaries for the purpose of negotiating and signing a European Convention on International Commercial Arbitration was convened by the Executive Secretary of ECE in accordance with the terms of ECE resolution 7 (XV), and was held in Geneva under the auspices of the Commission from 10 to 21 April 1961. The Convention was opened for signature until 31 December 1961. Thereafter it was opened for accession.

33. The Executive Secretary informed the Commission of the results of the Special Meeting of Plenipotentiaries. After the Chairman of the Commission and various delegations had expressed appreciation of these results, the

European Convention and/or the Final Act thereof were signed during the eighteenth meeting of the sixteenth session of the Commission by special plenipotentiaries of the following States:

The Convention and the Final Act: Austria, Belgium, Bulgaria, Byelorussian SSR, Czechoslovakia, Denmark, Federal Republic of Germany, France, Hungary, Italy, Poland, Romania, Turkey, Ukrainian SSR, USSR, Yugoslavia;

The Final Act only: Finland, Luxembourg, Netherlands, Spain, Sweden, Switzerland.

Thus the answer to the question: Had the Convention been finally considered, adopted and opened for signature by a United Nations committee or diplomatic conference? is that it was a diplomatic conference but one convened and held within a United Nations body and composed only of the States members of that body.

34. In the Final Act itself the terms "accession" or "adhesion" do not appear in conjunction with the signature except that the Government of the USSR considered that the Convention was opened to the signature or adhesion of any European State.

35. In adopting the text of the European Convention on International Commercial Arbitration, the Plenipotentiaries decided that a report should be prepared summarizing the observations made by a number of delegations on some of the provisions of the Convention in the course of the discussion.

36. The Convention entered into force on 7 January 1964 after five of the signatory States had deposited their instruments of ratification or accession. Two non-European States and non-members of the ECE (Upper Volta and Cuba) also acceded to the Convention.

(b) *Comment on one aspect of techniques used in multilateral treaties regulating international trade procedures*

37. Treaties concerning the transport of goods internationally (by road, rail, sea or air), treaties concerning conditions for their transit or import and treaties concerning international trade in certain special products such as dangerous goods and endangered species, usually lay down in great detail requirements concerning information (data elements) that must be submitted to authorities to allow the initiation and completion of the international trade transaction.

38. Experience shows that the need to change such information requirements occurs more frequently than the need to change the main provisions of the treaty. In cases where the information must be submitted in accordance with a standardized document (a form) that is annexed to the treaty and, therefore, part of it, it is necessary to change the treaty whenever it is desirable to change the document. Minor, practical changes reflecting recent changes in reproduction and transmission techniques might thus be introduced to the detriment of facilitation efforts.

39. The Working Party on Facilitation of International Trade Procedures has therefore recommended that standardized documents containing information (i.e. forms containing data elements; data carriers) specified in a treaty should not form an integral part of the text; the drafting of a treaty should allow changes in the content and layout of such documents to be affected by a

decision taken by a competent organ of the organization under the auspices of which the convention in question was negotiated.

40. The text of this recommendation was inserted in the Report of the Working Party on Facilitation of International Trade Procedures at its eighth session (September 1978) when the Chairman observed that the Working Party would appreciate it if the Report by the Secretary-General on the important matter of techniques used in multilateral treaties could mention this aspect, which was of practical importance for treaties regulating international trade procedures and, thus, for the facilitation of international trade.

3. *Description of stages in the elaboration of the 1979 Convention on Long-range Transboundary Air Pollution*

(a) *Initiatives*

41. An ECE Symposium on problems relating to environment held in Prague, Czechoslovakia, in 1971 within the framework of the ECE, marked the start of important initiatives towards international co-operation in the field of protection of natural surroundings. On the global front, the Conference on the Human Environment held in Stockholm, Sweden, in 1972 led to extensive activities on the part of the United Nations Environment Programme. The pertinent provisions of this subject were laid down in the Final Act of the Conference on Security and Co-operation in Europe (CSCE), the participating States in which expressed a wish to take advantage of possibilities extended by relevant international organizations—in particular, by the United Nations Economic Commission for Europe—to give effect to certain provisions contained in CSCE documents.

42. During the thirty-first session of the ECE held in 1976, the delegation of the USSR submitted a proposal with regard to holding all-European congresses on co-operation in the field of protection of the environment, development of transport and energy. This proposal was aimed at giving practical effect to the relevant provisions and principles agreed upon in the *Final Act* of CSCE. In its resolution B (XXXI) of 9 April 1976, the Commission suggested that member Governments study the proposal thoroughly in the light of the provisions of the *Final Act* and requested the Executive Secretary to circulate details of the proposal with a view to member Governments communicating any comments to him.

43. During the thirty-second session of the ECE (held in 1977), the suggestion was put forward that many of the problems arising in the field of environment could be dealt with other than by the traditional methods of the ECE at the level of expert meetings: the holding of all-European congresses, for example, as proposed by the USSR delegation, would contribute to the solution of problems in this area. Hence, in its resolution I (XXXII) of 30 April 1977, the Commission invited the Executive Secretary to carry out a detailed analysis of topics which might be appropriate for consideration at a high-level meeting, within the framework of the ECE, on the protection of the environment, and requested him to present to the thirty-third session a Report on the modalities of organizing a high-level meeting and on the procedural and organizational issues related thereto.

44. During the thirty-third session of the ECE (held in 1978), it was decided that the forthcoming high-level meeting should be devoted to transboundary air pollution, the application of low- and non-waste technology, and re-utilization and re-cycling of wastes; and that the Senior Advisers to ECE Governments on Environmental Problems should undertake detailed work with a view to preparing a selection of themes suitable for a high-level meeting. In its resolution I (XXXIII) of 22 April 1978, the Commission requested the Senior Advisers on Environmental Problems to meet in special sessions and to prepare recommendations and concrete proposals on important decisions to be submitted to a high-level meeting.

(b) *Preparation of the text of the Convention and of accompanying documents*

45. In pursuance of the ECE resolution I (XXXIII) of 22 April 1978, the Senior Advisers on Environmental Problems held four special sessions (June 1978, October 1978, December 1978, March 1979) and during their first special session established two special groups: one for long-range transboundary air pollution, the other for low- and non-waste technology, and re-utilization and re-cycling of wastes.

46. The two special groups drafted the elements of the future Convention and its two accompanying documents. The special group on long-range transboundary air pollution was assisted in its work by a consultant.

(c) *Convocation of the High-level Meeting on the Protection of the Environment*

47. At its thirty-fourth session (held in 1979), the Commission considered the Report of the Senior Advisers on Environmental Problems and noted with satisfaction their work concerning a prospective high-level meeting on the protection of environment. Since many delegations were of the opinion that the results already achieved were sufficient to regard the preparations for a high-level meeting as having been mainly completed, the ECE agreed, first, in its resolution I (XXXIV) of 27 April 1979, that, following completion and acceptance by it of the draft Convention, draft resolution and draft declaration, the criteria for the convening of a high-level meeting had been met. Thereafter, in its decision A (XXXIV) of the same date, the ECE stated that the preparatory work on long-range transboundary air pollution, and low- and non-waste technology and re-utilization and re-cycling of wastes has been completed by it at its present session, and thus brought to a satisfactory conclusion. Consequently, the ECE decided to convene the high-level meeting from 13-16 November 1979 and that the following draft documents be submitted to that meeting for formal adoption:

- Convention on Long-range Transboundary Air Pollution;
- Resolution on Long-range Transboundary Air Pollution;
- Declaration on Low- and Non-waste Technology and Re-utilization and Re-cycling of Wastes.

48. For this purpose, the ECE asked the Executive Secretary to convene an *ad hoc* Group of Experts to finalize the legal and linguistic editing of the above three documents.

(d) *Meeting of the Ad Hoc Group of Experts to Finalize the Legal and Linguistic Editing of the Documents to be submitted to the High-level Meeting on the Protection of the Environment*

49. The *Ad Hoc* Group of Experts met in Geneva from 11 to 15 June 1979. It finalized the legal and linguistic editing of the Draft Convention on Long-range Transboundary Air Pollution, the Draft Resolution on Long-range Transboundary Air Pollution (in which the State signatories agree to start its implementation on an interim basis as soon as possible, and to carry out their obligations to the maximum extent possible pending the entry into force of the Convention), and the Draft Declaration on Low- and Non-waste Technology and Re-utilization and Re-cycling of Wastes.

(e) *Formal adoption of the Convention and of the two accompanying documents*

50. The Convention, the Resolution and the Declaration, which were accepted in substance by the ECE at its thirty-fourth session, were formally (by acclamation) adopted by the High-level Meeting on the Protection of the Environment on 13 November 1979.

(f) *Opening for signature*

51. The Convention was opened for signature at the United Nations Office at Geneva until 16 November 1979, on the occasion of the High-level Meeting within the Framework of the ECE on the Protection of the Environment, by ECE member States as well as by States having consultative status with the ECE pursuant to para. 8 of the ECOSOC resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations, constituted by sovereign States members of the ECE, which have due competence in respect of the negotiation, conclusion and application of international agreements in matters covered by the Convention.

52. The Convention was signed by representatives of all ECE member States with exception of Albania, Cyprus and Malta, and also by representatives of the Holy See, Liechtenstein, San Marino, and the European Economic Community: thirty-five signatures in total.

(g) *Ratification, acceptance, approval and accession*

53. Up to 30 September 1981, the Convention had been ratified, accepted, approved or acceded to by the following States: Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Finland, France, Hungary, Norway, Portugal, Sweden, Ukrainian Soviet Socialist Republic and the United States of America.

54. As the Convention enters into force on the ninetieth day after the deposit of the twenty-fourth instrument of ratification, acceptance, approval or accession, and since, so far, only seven States have deposited such instruments, the Convention has not yet entered into force.

F. ECONOMIC COMMISSION FOR LATIN AMERICA

1. As part of its work programme this secretariat is assisting member nations with the preparation of a draft Latin American convention on the limi-

tation of civil liability for carriers engaged in international land transport of goods. Subsequent to the preparation of the original draft convention of this secretariat, the draft has gone through the following stages. First, in December 1977, a Group of Experts from various governmental organizations was convened to review and make changes, where necessary, to the original draft convention. The Group of Experts recommended in its report (E/CEPAL/1047) that we undertake a study on the effects of establishing relatively high or low limits of financial liability for such carriers. Second, an Intergovernmental Preparatory Meeting was held in September 1978. At this Meeting, governmental delegates reviewed the draft convention prepared by the Group of Experts and the aforementioned study, made changes considered necessary to said draft, and recommended various additional studies. Finally, each successive draft of the convention—that by the secretariat, that prepared by the Group of Experts, and that approved by governmental delegates at the Intergovernmental Preparatory Meeting—has been submitted to member Governments and regional and international organizations for comments and suggestions. At the present time, we are awaiting confirmation of the date of the second Intergovernmental Preparatory Meeting.

2. We would like to suggest that, as part of the initiative for studying or negotiating the elaboration of a multilateral draft treaty, it would be useful to evaluate the various forms by which such agreements could be expressed. The following paragraphs present some ideas which might be pertinent to such evaluation.

3. The International Convention for the Unification of Certain Rules Relating to Bills of Lading (1924), the Convention on the Contract for the International Carriage of Goods by Road (1956) and the draft Latin American Convention on the Civil Liability of Carriers in International Land Transport of Goods, better known as the Hague Rules, CMR and CRT respectively, are examples of mandatory conventions. The mandatory form for a multilateral treaty seems appropriate where the possible contracting parties agree not only that such measures, controls or standards are necessary but also as to what those measures, controls or standards should be. For example, the Code of Conduct for Liner Conferences—which is framed in a mandatory form—is a response to a general recognition that controls over shipping conferences are needed.

4. By way of comparison, the Container Safety Convention (1972) and the Convention on Facilitation of International Maritime Traffic (1965) are examples of working conventions. Conventions such as these are inherently more flexible than mandatory conventions because of their division into articles and annexes. The articles establish, *inter alia*, a forum in which all contracting parties have voting rights, and a procedure for the adoption of annexes—which will contain the measures, controls or standards developed by the contracting parties. This division into articles and annexes permits the contracting parties to settle their individual differences, over the long run, and establish measures, controls or standards on a piecemeal basis. Thus, the working form for a multilateral treaty requires only that the possible contracting parties agree that such measures, controls or standards are necessary—however far apart their individual definitions of those measures, controls or standards might be.

5. Within this basic framework many other provisions might be added to enhance flexibility of both mandatory and working treaties. Such treaties may be made more flexible by the addition of a review procedure as found in articles 49 of the CMR Convention and 62 of the TIR Convention, and by the allowance for bilateral agreements between contracting parties that modify convention provisions, rendering them more suitable to specific conditions as found in articles 49 of the TIR Convention and 41 of the Vienna Convention on the Law of Treaties.

G. INTERNATIONAL LAW COMMISSION

I. In accordance with General Assembly resolution 32/48 of 8 December 1977, the International Law Commission submits 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: (1) The International Law Commission as a United Nations body; (2) Object and functions of the International Law Commission; (3) Programme of work of the International Law Commission; (4) The role of the International Law Commission and its contribution to the treaty-making process through the preparation of draft articles; (5) Consolidated method and techniques of work of the International Law Commission as applied in general to the preparation of draft articles; (6) Other methods and techniques employed by the International Law Commission; (7) Relationship between the General Assembly and the International Law Commission; (8) 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; (9) Conclusions. Appended to the present observations are relevant provisions of the Statute of the International Law Commission.

1. *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.¹

4. The International Law 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 capacities 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, as provided in article 12 of its Statute, at the Office of the United Nations at Geneva. 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: Chairman, First and Second Vice-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 been 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 (see paragraphs 45 and 46 below). Also, sub-committees or working groups may be established for the performance of specific tasks entrusted to them by the Commission (see paragraph 57 below).

7. The Commission adopts at the beginning of each session 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 in paragraphs 20 to 23 below. Not every topic on the programme of work of the Commission is necessarily included in the agenda of a particular session.

8. The Commission, at its first session in 1949, 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.² 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 are, after Commission members have had the opportunity to correct the provisional versions, subsequently printed in final form in volume I of the *Yearbook of the International Law Commission*, a United Nations publication.

9. In accordance with 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 International Law 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 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.³

2. Object and functions of the International Law Commission

10. Article 1, paragraph 1, of the Statute of the International Law Commission provides that the "Commission shall have for its object the promotion of the progressive development of international law and its codification". Article 1, paragraph 2, of the Statute states that the Commission "shall concern itself primarily with public international law".⁴ 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 interna-

tional 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, the General Assembly has, in the course of the years, referred to the Commission for consideration topics belonging to various fields of international law (see paragraph 21 below).

12. The functions of the International Law Commission are set out in Chapter II of its Statute, which is appended to the present observations.⁵ The opening article of that chapter, namely article 15, makes a distinction "for convenience" between "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 with regard to the progressive development of international law from those to be followed 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 International Law 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' 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.”⁶

14. Another statement underlining the close interrelationship between “codification” and “progressive development” in the work of the International Law Commission 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.”⁷

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."⁸

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."⁹

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."¹⁰

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."¹¹

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 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."¹²

16. As a consequence of the considerations made in the preceding paragraphs, the distinction, "for convenience", embodied 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 provided for therein for "progressive development" and "codification" have, on the other hand, facilitated the development of the indicated 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 has 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,¹³ 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 International Law 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 from its first session has 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 would not be subject to detailed directives from the Assembly. On the other hand, the Commission, at each of its sessions, 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 in order 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.

3. *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, on the basis of a Secretariat memorandum entitled "Survey of international law in relation to the work of codification of the International Law Commission",¹⁴ twenty-five 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 fourteen topics selected for codification,¹⁵ 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) Régime of the high seas;
- (6) Régime 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.¹⁶

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.¹⁷ By its resolution 373 (IV) of 6 December 1949 the General Assembly approved part I of the report of the International Law Commission 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 latter, 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 régime of historic waters, including historic bays;
- Special missions;
- 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 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 International Law 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), juridical régime 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 recommendation made by the General Assembly followed its consideration of a resolution previously adopted to that effect in a codification conference of plenipotentiaries: juridical régime of historic waters, including historic bays; special missions; and question of treaties concluded between States and international organizations or between two or more international organizations. In other instances, the referral of a topic by the General Assembly to the International Law 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 non-navigational uses of international watercourses (General Assembly 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 (General Assembly resolution 2780 (XXVI) of 3 December 1971); and status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (General Assembly 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 International Law Commission, together with those in the 1949 list, have constituted the Commission's total programme of work at any time.¹⁸ The inclusion of a given topic or item in the programme of work of the Commission does not imply necessarily, however, its immediate study by the Commission. Actual consideration by the Commission of a topic or item on its programme results, in effect, from further decisions of the General Assembly and of the International Law 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 International Law Commission at a given period of time.

23. The programme of work of the Commission 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 International Law 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 over-all review of the programme of work of the Commission 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 1971.¹⁹ 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 International Law 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 1973.²⁰ On the same occasion the Commission agreed that there are two topics on its programme of work, namely the "Right of asylum" and the "Juridical régime of historic waters, including historic bays", which do not appear at present to require active consideration by the Commission in the near future.²¹ In its resolution 32/151 of 19 December 1977, the General Assembly invited the Commission to commence work on "Jurisdictional

immunities of States and their property” and on “International liability for injurious consequences arising out of acts not prohibited by international law”.

4. *The role of the International Law 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, 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 codification and recommended that articles prepared by the International Law 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 International Law 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 to 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 International Law 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 Territorial Sea and the Contiguous Zone
- Convention on the High Seas
- Convention on Fishing and Conservation of the Living Resources of the High Seas
- Convention on the Continental Shelf
- 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 International Law Commission as a result of the study of topics included in the list of topics selected by the Commission for codification in 1949 (see para. 20 above). The three other conventions listed above, namely 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 International Law 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 preliminary 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 final draft articles of the Commission on diplomatic intercourse and immunities. Following a recommendation of the United Nations Conference on Diplomatic Intercourse and Immunities, the General Assembly requested the Commission to give further study to the topic of special missions “in the light of the Vienna Convention on Diplomatic Relations”. 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”. The General Assembly 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 “Protection and inviolability of diplomatic agents and other persons entitled to special protection under international law” was brought in 1971 to the attention of the General Assembly by the International Law Commission. By its resolution 2780 (XXVI) of 3 December 1971 the General Assembly requested the Commission to study as soon as possible, in the light of the comments of Member States, the topic in question, 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 and the General Assembly elaborated on their basis and adopted by resolution 3166 (XXVIII) of 14 December 1973 the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

30. The topic of “Relations between States and international 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 International Law Commission 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 International Law 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 International Law 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 prepared by the International Law Commission, 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".²² Topics on the 1949 list or added subsequently to the programme of work of the Commission by actions taken by the General Assembly and the International Law 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 the 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 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 respect of matters other than treaties and treaties concluded between States and international organizations are already in an advanced stage of preparation within the Commission. Moreover, the General Assembly in 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 also be recalled that contributions of the International Law 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 the Statute of the Commission, 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 be considered only 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 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 in 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 International Law Commission revised, in the light of comments received from Governments, the above-mentioned draft conventions and submitted in 1954 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, adopting the Convention on the Reduction of Statelessness listed in paragraph 26 above.

33. Lastly, it should be pointed out that the contribution of the International Law Commission to the multilateral treaty-making process has not been confined to the preparation of draft articles which have served as a basis for the conclusion of codification conventions on 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 Vienna Convention on the Law of Treaties 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.²³ The results of the work of the Commission on another topic which was on the 1949 list, namely arbitral procedure, may in some ways 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 on the work of its tenth session, would have no binding effect on States unless accepted by them and save to the extent that each one is accepted by them in treaties 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*".²⁴

5. *Consolidated method and techniques of work of the International Law Commission as applied in general to the preparation of draft articles*

34. The methods and techniques followed by the International Law 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 elements of both *lex lata* and *lex ferenda* in the rules to be formulated, the Commission, as indicated above, 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; and 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 it is frequently called upon to make contributions, especially during the preliminary and second stages.

(a) *Preliminary stage of the consideration of a topic*

(i) *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 succession of States and Governments and State responsibility. 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. 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: treaties concluded between States and international

organizations or between two or more international organizations;²⁵ the law of the non-navigational uses of international watercourses;²⁶ jurisdictional immunities of States and their property;²⁷ and international liability for injurious consequences arising out of acts not prohibited by international law.²⁸ 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.²⁹

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 draft articles on succession of States in respect of treaties as well as the completion, at the present 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, his initial presentation may be, at the Commission's request or on his initiative, 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 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 in 1963, the Commission, while approving the recommendations contained in the reports of the Sub-Committees on State responsibility and on Succession of States and Governments, pointed out that the questions listed in the report of the State Responsibility Sub-Committee were intended solely to serve as an *aide-mémoire* and that the report of the Sub-Committee on Succession of States laid down guiding principles for the Special Rapporteur. The Special Rapporteurs would not, however, be obliged to conform to them in detail.³⁰ 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 1955 when the Special Rapporteur for the topic of consular relations sent 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.³¹ Another example occurred in 1961 on the occasion of the appointment of the fourth Special Rapporteur on the topic "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.³²

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 referred to in paragraph 43 below. For the preparation of subsequent reports, the Special Rapporteur has, in addition, the benefit of, *inter alia*: 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.³³ The Special Rapporteur may also consult with experts with a view to elucidating technical questions.³⁴

(ii) *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 1974 questionnaire transmitted to Governments of Member States, through the Secretary-General, in connection with the study of the topic "The law of non-navigational uses of international watercourses".³⁵ Questionnaires may also be prepared by the Special Rapporteurs in consultation with the Secretariat³⁶ or by the latter alone, in both cases with the concurrence of the Commission. Data and information from intergovernmental organizations may be requested 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.³⁷ 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*.

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

43. At the preliminary stage of the consideration of a topic, the Secretariat, at the Commission's request or on its own initiative, may prepare sub-

stantive 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 requested also by the Commission or the Special Rapporteur concerned at other stages in the consideration of a topic.

(b) *The first reading of the draft articles submitted by the Special Rapporteur*

(i) *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. The Commission, upon the conclusion of its consideration of a given draft article, transmits it, together with pertinent suggestions and proposals, to the Drafting Committee.

(ii) *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 has been used at each session of the Commission since its fourth session in 1952. The Chairman of the Drafting Committee is elected by the Commission. Since 1974, the Chairman of the Drafting Committee is a member of the Commission's Bureau for the session concerned. This represents a change from 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 Drafting 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 term 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".³⁸ The Drafting Committee provides therefore a framework not only for drafting but also for negotiation.

Entrusting the Commission's 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.

(iii) *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 Chairman of the Drafting Committee. 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 Drafting 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.

(iv) *Transmittal of provisional draft articles for comments and observations from Governments*

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, in accordance with articles 16 and 21 of the Statute, through the Secretary-General, to Governments for their comments and observations. The Commission transmits provisional draft articles to Governments for the purpose indicated, on some occasions 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 their 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 the draft articles 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.

(c) *The second reading of the draft articles under preparation by the Commission*

(i) *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 or to delete it or to treat it in some other way. The reports of the Special Rapporteur likewise 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 in paragraphs 44 to 46 above, 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. The Commission, when considering the report of the Drafting Committee, follows the procedure enunciated in paragraph 47 above. At this stage of the procedure, it is not infrequent in 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.³⁹ 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 "Relations between States and international organizations", however, the Commission was assisted in such an undertaking by the Working Group established by the Commission for such a purpose.⁴⁰ 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.

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

51. When adopting the final draft articles the International Law Commission usually makes, pursuant to article 23 of its Statute, 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.

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."⁴¹

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."⁴²

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."⁴³

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."⁴⁴

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."⁴⁵

53. In other cases, the Commission, basing itself on article 23, paragraph I (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."⁴⁶

Most-Favoured-Nation Clauses (1978): "At its 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."⁴⁷

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".⁴⁸

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."⁴⁹

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. 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 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."⁵⁰

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 to the effect that international conventions were concluded on the basis of the submitted drafts.

6. *Other methods and techniques employed by the International Law 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.⁵¹

58. Thus, the Commission has followed special methods in connexion 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 question of 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 on the Rights and Duties of States nor the text of the Formulation of the Nürnberg Principles were 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 International Law 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,⁵² refraining again from making recommendations as to how the Code was to become operative.⁵³

59. More interesting for the subject-matter of the present observations are departures from the basic consolidated method and techniques of work followed by the International Law 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 explanations for such departures are usually related to the nature of the topic and in the terms of reference set forth by the General Assembly for its study. The topics entitled "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 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 for the study of the topic. Reconstituted, at the current session, the Working Group is studying the topic in the light of recommendations contained in General Assembly resolution 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 or 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.⁵⁴ 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 undertaken in accordance with that consolidated method. 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 or other 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-reading procedure, as described in Chapter V 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 second reading draft articles on the continental shelf, fishery resources of the high seas and the contiguous zone, prepared in the context of its work on the topic "régime of the high seas". The General Assembly decided, however, not to deal with any aspect of the topics "régime of the high seas" and "régime 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 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.⁵⁵

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 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 in 1959 decided 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.⁵⁶ With respect to the second reading of the said draft article, the Commission shortened the deadline normally given to Governments for the submission of comments and observations. As a result, the second reading of the 1960 provisional draft articles on consular relations took place at the next session in 1961, when the Commission adopted and submitted to the General Assembly its final draft articles on the topic.⁵⁷

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

(a) The annual report submitted by the International Law Commission to the General Assembly

64. As noted earlier in these observations⁵⁸ the International Law Commission from its first (1949) session 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 draft on the various topics the publicity provided for in the Statute of the Commission.

65. The report is adopted by the International Law 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 its approval, 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 future work of the Commission on the topic in question as well as, as 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.

(b) *Consideration by the General Assembly of the reports of the International Law Commission*

67. The General Assembly as the parent body of the International Law Commission exercises its functions with regard to the Commission mainly through the consideration of the report submitted annually to it by the International Law Commission.⁵⁹ 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 International Law Commission's report, included on 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 and observations has been usually included in the report on the item that the Sixth Committee submits to the General Assembly. The Sixth Committee's report contains also the draft resolution or resolutions on the work and activities of the International Law 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 resolution or resolutions become resolutions of the General Assembly.

68. The resolutions adopted by the General Assembly following consideration at the Sixth Committee of the item entitled "Report of the International Law Commission" contain a variety of recommendations and decisions addressed to the International Law 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 certain documents relevant to its consideration of particular draft articles.

- (i) *Procedural recommendations concerning beginning of 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 International Law 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 a priority to the study of one or another topic, 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 International Law Commission "to undertake codification" of a given topic on its programme,⁶⁰

or that the Commission should “study the topic” referred to in a particular resolution,⁶¹ or “make every effort to begin substantive work” on a given topic.⁶² Some resolutions recommended that the Commission should undertake “a separate study” of a topic⁶³ or “commence its work” on a topic “by, *inter alia*, adopting preliminary measures provided for under article 16” of the Commission’s Statute.⁶⁴ 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.⁶⁵ When making such recommendations the General Assembly sometimes requests that the Commission study the particular topic concerned “as an important question”.⁶⁶

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 field⁶⁷ or should “continue its work” on a given topic.⁶⁸ There are also resolutions requesting the Commission “to study further” the subject “as soon as it considers it advisable”⁶⁹ or inviting the Commission “to give further consideration” to the topic “after study” of some other topics “has been completed by the United Nations”,⁷⁰ 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,⁷¹ 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.⁷²

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, varies 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 régime of the territorial waters,⁷³ diplomatic intercourse and immunities⁷⁴ and succession of States and Governments.⁷⁵ 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”;⁷⁶ or to continue “on a priority basis” its work on a particular topic “with a view to the preparation of a first set of draft articles” on the topic concerned;⁷⁷ or “to proceed with the preparation, on a priority basis, of draft articles” on a given topic.⁷⁸ On certain occasions the General Assembly left it to the Commission to “decide upon the priority to be given to the topic” in question.⁷⁹

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 proceed with the preparation of draft articles” on a topic;⁸⁰ to continue its work with a view to making “substantial progress in the preparation of draft articles” on a given

topic⁸¹ or “with a view to making progress in consideration” of a given topic;⁸² completing “the first reading of draft articles” on a topic;⁸³ or continue work “with the object of presenting a final draft” on a topic or completing “the second reading” thereof.⁸⁴ 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”.⁸⁵

74. It may be noted that on several occasions the General Assembly endorsed general conclusions and decisions reached by the International Law Commission as to the study of particular topics.⁸⁶

75. Finally, reference should be made to the fact that the General Assembly customarily transmits to the International Law 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.⁸⁷

(ii) *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 International Law 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”.⁸⁸ 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 Nation”⁸⁹ 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”.⁹⁰

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

78. As indicated in paragraphs 51 to 56 above, final draft articles on a given topic are normally submitted by the International Law 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 International Law 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 (see paragraph 80 below), 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 International Law 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 articles on arbitral procedure submitted by the International Law Commission, as final, in 1953, together with a formal recommendation to conclude a convention on the topic, provide, 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 to Member States "with a view to the submission by Governments of whatever comments they may deem appropriate", an item on the question being included in the provisional agenda of the tenth session of the General Assembly. 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 "Model Rules 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*.⁹¹

81. As already mentioned,⁹² the International Law Commission is also empowered by its Statute to recommend to the General Assembly that the elaboration and conclusion of a recommended convention on the basis of draft articles prepared by it be effected by an international conference of plenipotentiaries convened by the General Assembly. Such a recommendation was made by the International Law Commission when submitting its final draft articles on law of the sea, consular relations, law of treaties, representation of

States in their relations with international organizations, and 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 International Law 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 in the case of the draft articles on diplomatic intercourse and immunities.

82. In some instances, the General Assembly, before adopting a decision on the conventional form to be given to a set of final draft articles submitted to it by the International Law Commission and/or on the convening of an international conference of plenipotentiaries to that effect, has given to itself and Governments of Member States time for further reflection. In those cases, an item relating to the draft articles concerned 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 Assembly 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".⁹³ 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.⁹⁴

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 International Law 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 International Law Commission's "draft conventions" on the elimination and 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 with 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 the case may be, specialized agencies and other interested intergovernmental organizations to submit also written comments and observations on the relevant chapter of the report of the International Law Commission 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.⁹⁵ In the latest instance, 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 in due time the above-mentioned comments and observations.

8. *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*

(a) *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 International Law Commission by international conferences convened to that effect by the General Assembly, namely: the four 1958 conventions on the law of the sea (Territorial Sea and Contiguous Zone; High Seas; Fishing and Conservation of 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 the respectively adopted Conventions and concerning acquisition of nationality and compulsory settlement of disputes.

87. When making a decision that an international conference of plenipotentiaries should be convened to elaborate and conclude a conventional instrument or instruments on the basis of draft articles prepared by the International Law 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".⁹⁶

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".⁹⁷

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".⁹⁸

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".⁹⁹

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 on an international convention and such other instruments as it may deem appropriate".¹⁰⁰

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 1105 (XI) 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 Commission's report". A more or less similar formulae was included in the General Assembly resolu-

tions 1685 (XVI) and 1813 (XVII) relating to the Conference on Consular Relations;

(b) In resolution 1450 (XIV) 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) 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; 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) And in resolutions 3072 (XXVIII) and 31/18 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 "called 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". 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) 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 International Law Commission is the request to States to submit to the Secretary-General for circulation written comments and observations on the final draft articles prepared by the International Law Commission in order that they may be circulated to Governments prior to the opening of the conference. Such request was 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 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, *inter alia*, the following terms of refer-

ence: "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 Commission at the eleventh and previous sessions of the General Assembly".

92. On two occasions States invited to conferences were invited by the General Assembly to submit any amendment which they might wish to propose in advance of the conference to the draft articles concerned prepared by the International Law Commission.¹⁰¹ 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 States invited to participate.¹⁰² Such resolutions also provide invitations to specialized agencies and the interested 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 International Law 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 of conference. For the first United Nations Conference on the Law of the Sea a decision was also made to the effect that the appropriate experts invited by the Secretary-General to assist the Secretariat in preparing the Conference should also advise it with respect to the 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 to the conferences relevant documentation. The resolution 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 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 International Law Commission approves its own rules of procedure as well as the basic methods of work and techniques to be followed in the conference concerned. The articles of the International Law Commission's draft and amendments thereto are considered first at committee level and then by the plenary of the conference. The first 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 having considered all articles and amendments thereto, the preamble of the instrument and 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.

(b) *By the General Assembly*

97. The 1969 Convention on 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 bases of the respective draft articles submitted by the International Law Commission, by the General Assembly itself. The draft articles on special missions, prepared by the International Law 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 the sets of draft articles from the International Law Commission mentioned above, the General Assembly made the following arrangements for the elaboration and conclusion on the respective conventions:

- (i) 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 International Law Commission;¹⁰³
- (ii) The Secretary-General was requested to circulate those comments and observations “in order to facilitate the consideration” of the drafts by the General Assembly “in the light of those comments and observations”;¹⁰⁴
- (iii) 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), “the final elaboration” (internationally protected persons)¹⁰⁵ of the conventions in question. Having been unable, because of lack of time, to conclude the elaboration in a single session 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;¹⁰⁶

- (iv) 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 item at the twenty-third and twenty-fourth sessions of the General Assembly.¹⁰⁷

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 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 established by it. 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.¹⁰⁸ A resolution on the settlement of civil claims was also adopted in connexion with the Special Missions Convention.

9. *Conclusions*

100. With the assistance of the Working Group, established at its thirtieth session and enlarged at its thirty-first session,¹⁰⁹ the International Law 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 I to VIII 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 and further defined in Article 15 of its Statute, 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 adapting them to meet the needs of circumstances as they arise, considers that, on the whole, its rate of progress is satisfactory having regard to 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. The institution has served the Commission well, but it will be

necessary to provide the Special Rapporteurs with more assistance and more facilities to enable them to perform their duties in the future.

(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.

ANNEX

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.

CHAPTER I. ORGANIZATION OF THE INTERNATIONAL LAW COMMISSION

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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 sub-paragraph (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.

CHAPTER III. CO-OPERATION WITH OTHER BODIES

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NOTES

¹ A general introduction to the International Law Commission and its work is given by the publication entitled "The Work of the International Law Commission" (United Nations publication E.72.I.17) a second revised edition of which is to be published soon. The publication contains, in particular, 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 which have been dealt with by the Commission. It also gives an account of the actions decided upon by the General Assembly following the consideration of the topics by the Commission and of the results achieved by diplomatic conferences or the Assembly itself when considering draft articles prepared by the Commission.

² *Yearbook of the International Law Commission, 1949*, pp. 10-11, 1st meeting, para. 18.

³ At its first two sessions, the International Law 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 International Law Commission and actions taken by the General Assembly.

⁴ 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.

⁵ See the annex to the present report.

⁶ *Yearbook of the International Law Commission, 1956*, vol. II, document A/3159, paras. 25-27.

⁷ *Ibid.*, 1961, vol. II, document A/4843, paras. 29-32.

⁸ *Ibid.*, 1966, vol. II, document A/6309/Rev.1, Part II, para. 35.

⁹ *Ibid.*, 1967, vol. II, document A/6709/Rev.1, para. 23.

¹⁰ *Ibid.*, 1971, vol. II (Part Two), document A/8410/Rev.1, para. 50.

¹¹ *Ibid.*, 1974, vol. II (Part One), document A/9610/Rev.1, para. 83.

¹² *Ibid.*, 1978, vol. II (Part Two), document A/33/10, para. 72.

¹³ 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.

¹⁴ Document A/CN.4/Rev.1.

¹⁵ 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 of the International Law Commission, 1949*, p. 280, para. 14, *in fine*).

¹⁶ *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).

¹⁷ 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 "régime of the high seas" and "régime 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 of the International Law Commission, 1956*, vol. II, document A/3159, para. 33).

¹⁸ A topic the Commission considered but which was not included in the 1949 list or referred to it by the General Assembly was the topic "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.

¹⁹ *Yearbook of the International Law Commission, 1971*, vol. II (Part Two), document A/CN.4/245.

²⁰ *Ibid.*, 1977, vol. II (Part Two), document A/32/10, paras. 108 and 110.

²¹ *Ibid.*, para. 109.

²² *Yearbook of the International Law Commission, 1978*, vol. II (Part Two), document A/33/10, para. 73.

²³ 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.

²⁴ It may be recalled that originally the Commission at its fifth session (1953) adopted a draft convention on arbitral procedure. See para. 80.

²⁵ *Yearbook of the International Law Commission, 1963*, vol. II, document A/5509, paras. 51-61 and *ibid.*, annexes I and 2.

²⁶ *Ibid.*, 1971, vol. II (Part One), document A/8410/Rev.1, paras. 114-118.

²⁷ *Ibid.*, 1974, vol. II (Part One), document A/9610/Rev.1, paras. 146-159.

²⁸ *Ibid.*, 1978, vol. II (Part Two), document A/33/10, paras. 179-190.

²⁹ 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 of the International Law Commission, 1963*, vol. II, at pp. 237-259 and 282-300). 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 are, together with the questionnaire, printed in the Commission's Yearbook (*Yearbook of the International Law Commission, 1971*, vol. II (Part Two), 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 of the International Law Commission, 1974*, vol. II (Part One), document A/9610/Rev.1, Chapter V, Annex, para. 5).

³⁰ *Yearbook of the International Law Commission, 1963*, vol. II, document A/5509, paras. 54 and 60.

³¹ *Ibid.*, 1956, vol. II, document A/3159, para. 36.

³² *Ibid.*, 1961, vol. I, 597th, 620th and 621st meetings and *ibid.*, vol. II, document A/4843, paras. 38-39.

³³ 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).

³⁴ See *Yearbook of the International Law Commission, 1954*, vol. II, document A/2693, paras. 60 and 63; and *ibid.*, 1956, vol. II, document A/3159, paras. 15-18.

³⁵ *Ibid.*, 1974, vol. II (Part One), document A/9610/Rev.1, chapter V and *ibid.*, 1975, vol. II, document A/10010/Rev.1, para. 138.

³⁶ For example, this method was used in connection with the gathering of data and information on the topics "law of treaties", "arbitral procedure" and "régime of the high seas". See *ibid.*, 1949, document A/925, para. 22 and *ibid.*, 1950, vol. II, document A/1316, paras. 160, 165 and 182.

³⁷ For example, questionnaires have been prepared during recent years for the purpose of gathering data and information from international organizations on the topics "relations between States and international organizations" and "question of treaties concluded between States and international organizations or between two or more international organizations", such data and information being needed for the study of those topics by the Special Rapporteurs concerned. See *ibid.*, 1971., vol. II (Part One), document A/8410/Rev.1, para. 15; *ibid.*, 1978, vol. II (Part Two), document A/33/10, paras. 148, 150-153.

³⁸ *Ibid.*, 1958, vol. II, document A/3859, para. 65, p. 108.

³⁹ In certain cases the need for making an over-all review of a given set of draft articles arises before adopting them provisionally in first reading. Thus, for example, in the course of the current session the Commission undertook an over-all 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.

⁴⁰ *Yearbook of the International Law Commission, 1971*, vol. II (Part One), document A/8410/Rev.1, para. 39, and vol. II (Part Two), documents A/CN.4/L.174 and Add.1-6.

⁴¹ *Ibid.*, 1956, vol. II, document A/3159, para. 28. This recommendation was preceded by an exposé of the reasons upon which it was based, reproduced above at para. 13.

⁴² *Ibid.*, 1961, vol. II, document A/4843, para. 27.

⁴³ *Ibid.*, 1966, vol. II, document A/6309/Rev.1, para. 36.

⁴⁴ *Ibid.*, 1971, vol. II (Part One), document A/8410/Rev.1, para. 57.

⁴⁵ *Ibid.*, 1974, vol. II (Part One), document A/9610/Rev.1, para. 84.

⁴⁶ *Ibid.*, 1958, vol. II, document A/3859, para. 50.

⁴⁷ *Official Records of the General Assembly, Supplement No. 10 (A/33/10)*.

⁴⁸ *Yearbook of the International Law Commission, 1967*, vol. II, document A/6769/Rev.1, para. 33.

⁴⁹ *Ibid.*, 1971, vol. II (Part One), document A/8410/Rev.1, para. 59.

⁵⁰ *Ibid.*, 1956, vol. II, document A/3159, paras. 30-32.

⁵¹ 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 the Rights and Duties of States" immediately to the General Assembly, placing on record its conclusion that it was for the General Assembly to 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 (*ibid.*, 1949, document A/295, para. 53).

⁵² *Ibid.*, 1954, vol. II, document A/2693, paras. 41-50.

⁵³In 1977, the Commission expressed the opinion that the draft code could be reviewed in the future if the General Assembly so wishes (*ibid.*, 1977, vol. II (Part Two), 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 it invited 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).

⁵⁴*Ibid.*, 1972, vol. II, document A/8710/Rev.1, paras. 58-64.

⁵⁵*Ibid.*, 1956, vol. II, document A/3159, para. 22.

⁵⁶*Ibid.*, 1960, vol. II, document A/4425, para. 15.

⁵⁷*Ibid.*, 1961, vol. II, document A/4843, para. 19.

⁵⁸See para. 18.

⁵⁹The exercise by the General Assembly of its functions regarding the International Law Commission also takes place sometimes in the context of the consideration of separate items included in its agenda.

⁶⁰For example, General Assembly resolutions 685 (VII) of 5 December 1952 (diplomatic intercourse and immunities), 799 (VIII) of December 1953 (State responsibility) and 1400 (XIV) of 21 November 1959 (right of asylum).

⁶¹For example, General Assembly resolutions 1453 (XIV) of 7 December 1959 (juridical régime of historic waters, including historic bays), 2272 (XXII) of 1 December 1967 (most-favoured-nation clause) and 2501 (XXIV) of 12 November 1969 (question of treaties concluded between States and international organizations or between two or more international organizations).

⁶²For example, General Assembly resolution 2400 (XXIII) of 11 December 1968 (State responsibility).

⁶³For example, General Assembly resolution 3071 (XXVIII) of 30 November 1973 (international liability for injurious consequences arising out of acts not prohibited by international law).

⁶⁴For example, General Assembly resolution 3071 (XXVIII) of 30 November 1973 (the law of non-navigational uses of international watercourses).

⁶⁵For example, in connection with the preparation by the Commission of its 1956 draft articles on the law of the sea, see General Assembly resolution 789 (VIII) of 7 December 1953 and 899 (IX) of 14 December 1954.

⁶⁶For example, General Assembly resolution 2501 (XXIV) of 12 November 1969 (question of treaties concluded between States and international organizations or between two or more international organizations).

⁶⁷For example, General Assembly resolution 1902 (XVIII) of 13 November 1963 (law of treaties).

⁶⁸For example, General Assembly resolution 33/139 of 19 December 1978 (the law of non-navigational uses of international watercourses).

⁶⁹For example, General Assembly resolution 1687 (XVI) of 18 December 1961 (special missions).

⁷⁰For example, General Assembly resolution 1289 (XIII) of 5 December 1958 (relations between States and international organizations).

⁷¹For example, General Assembly 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).

⁷²General Assembly resolution 2272 (XXII) of 1 December 1977 (State responsibility).

⁷³General Assembly resolution 374 (IV) of 6 December 1949.

⁷⁴General Assembly resolution 685 (VII) of 5 December 1952.

⁷⁵General Assembly resolution 1686 (XVI) of 18 December 1961.

⁷⁶ For example, General Assembly resolution 3495 (XXX) of 15 December 1975 (State responsibility).

⁷⁷ For example, General Assembly resolution 3071 (XXVIII) of 30 November 1973 (State responsibility).

⁷⁸ For example, General Assembly resolution 31/97 of 15 December 1976 and 32/151 of 19 December 1977 (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).

⁷⁹ For example, General Assembly resolutions 2780 (XXVI) of 3 December 1971 and 2926 (XXVII) of 28 November 1972 (the law of non-navigational uses of international watercourses).

⁸⁰ For example, General Assembly 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).

⁸¹ For example, General Assembly resolution 2780 (XXVI) of 3 December 1971 (State responsibility).

⁸² For example, General Assembly resolution 2634 (XXV) of 12 November 1970 (succession of States in respect of matters other than treaties).

⁸³ For example, General Assembly 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).

⁸⁴ For example, General Assembly 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).

⁸⁵ For example, General Assembly resolution 33/139 of 19 December 1978 (status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier).

⁸⁶ 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).

⁸⁷ For example, by its resolution 900 (IX) of 14 December 1954, the General Assembly decided to refer to the International Law Commission the report of the International Technical Conference on the Conservation of the Living Resources of the Sea "as a further technical contribution to be taken into account in its study of the questions to be dealt with in the final report on the law of the sea".

⁸⁸ General Assembly resolutions 1765 (XVII) of 20 November 1962 and 1902 (XVIII) of 18 November 1963.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ See paragraph 33 above.

⁹² See paragraph 25 above.

⁹³ General Assembly resolution 1288 (XII) 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.

⁹⁴ General Assembly resolution 3315 (XXIX) of 14 December 1974.

⁹⁵ General Assembly resolution 1282 (XIII), 2780 (XXVI), 3315 (XXIX) and 33/139.

⁹⁶ 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 set of draft articles on special missions adopted by the International Law Commission in 1960 be referred to the Conference so that they may be considered together with the draft articles on diplomatic intercourse and immunities.

⁹⁷ General Assembly resolution 1685 (XVI) of 18 December 1961.

⁹⁸ General Assembly resolution 2166 (XXI) of 5 December 1966.

⁹⁹ General Assembly resolution 2966 (XXVII) of 14 December 1972.

¹⁰⁰ General Assembly resolution 3496 (XXX) of 15 December 1975.

¹⁰¹ General Assembly resolutions 1813 (XVII) of 18 December 1962 (consular relations) and 2287 (XXII) of 6 December 1967 (law of treaties).

¹⁰² In some cases, such as that of 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 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.

¹⁰³ General Assembly resolutions 2273 (XXII) of 1 December 1967 (special missions) and 2926 (XXVII) of 28 November 1972 (internationally protected persons).

¹⁰⁴ *Ibid.*

¹⁰⁵ General Assembly resolution 2419 (XXIII) of 18 December 1968.

¹⁰⁶ General Assembly resolution 2273 (XXII) and 2419 (XXIII). 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 International Law Commission.

¹⁰⁷ *Ibid.*

¹⁰⁸ General Assembly resolutions 2530 (XXIV) of 8 December 1969 (Convention on Special Missions and related 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 in that resolution that the provisions of the "Convention 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 that its resolution 3166 (XXVIII), "whose provisions are related to the annexed Convention shall always be published together with it".

¹⁰⁹ See the report of the International Law Commission on the work of its thirty-first session, *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 10 (A/34/10)*, chapter VIII.

H. OFFICE OF LEGAL AFFAIRS

This section contains a brief summary of the techniques and procedures used in the elaboration of certain multilateral treaties in which the Office of

Legal Affairs was involved. In order to avoid repetitions, they do not include those treaties promulgated through the International Law Commission or those already dealt with by other offices of the United Nations (e.g., Division of Human Rights) or the specialized or related agencies.

The treaty-making process of each instrument dealt with here is reviewed in three stages: initial, intermediate and final. An attempt is made in each case to show: how and by whom the process was initiated; how the drafts were prepared; which organs had participated in the work; whether governmental representatives or experts were used; by what methods views of Governments and other international organizations were obtained; and how the final text was adopted.

1. *Convention on the Privileges and Immunities of the United Nations*

(a) *First stage*

1. The Executive Committee of the Preparatory Commission of the United Nations established ten committees on 1 September 1945 to undertake certain tasks in preparation for the second meeting of the Preparatory Commission.¹ Committee 5, the Legal Committee, was entrusted, *inter alia*, to prepare studies and make recommendations on the privileges and immunities of the United Nations, its officials, the representatives of Members and international officials who might be appointed in an expert capacity by the organs of the United Nations.²

2. The Secretariat included in a draft agenda for Committee 5 an item on privileges and immunities with a section on the drafting of a resolution calling the attention of the General Assembly to the question and recommending that it "should appoint a special committee to deal with this subject (Committee of jurists, constitutional committee)".³ Using, as a basis, the proposal made by one delegation,⁴ Committee 5 prepared and adopted on 4 October 1945 its report to the Executive Committee on the question of immunities and privileges.⁵ It consisted of a draft resolution by which the Executive Committee would have, *inter alia*, approved an attached report on the question⁶ and recommended to the Preparatory Commission that it transmit that report to the General Assembly for consideration.

3. The report of Committee 5 on the question was modified when it was presented to the Executive Committee on 12 October 1945. The draft, as revised and submitted by Committee 5, provided for a recommendation of the Executive Committee that the report on the question "drawn up by a Committee established by the Executive Committee" be, if approved by the Preparatory Commission, referred to the General Assembly for its consideration.⁷ That report was placed in an appendix and re-titled "Study on Immunities and Privileges". As so modified, the recommendation was unanimously approved by the Executive Committee, although modifications were made by the Committee to one of the paragraphs of the appended study.⁸ The recommendation and appended study eventually formed section 5 of chapter V of the Executive Committee's report.⁹

4. On 26 November 1945, the Chairman of the Executive Committee presented its report to the Preparatory Commission. The report was remitted for detailed discussion to eight technical committees. Committee 5 was to con-

sider and report, *inter alia*, on chapter V of the Executive Committee's report and on any proposals or amendments submitted by delegations on matters falling within the scope of that chapter.¹⁰

5. At its second meeting, on 28 November 1945, Committee 5 decided to appoint a sub-committee on privileges and immunities, as the portions of the Executive Committee's report on that question "needed more detailed study which could most suitably be done" in a sub-committee,¹¹ and later elected the representatives of eight States as members of the sub-committee.¹²

6. Available to members of the Committee and its Sub-committee on Privileges and Immunities were a number of relevant documents submitted by the Secretariat, e.g. texts of national legislation, League of Nations practice, statement made by the Rapporteur of Committee IV/2 of the San Francisco Conference and existing arrangements established by the constituent instruments of certain organizations and specialized agencies.¹³ The only proposal circulated was a "draft resolution" proposed by one delegation recommending that the General Assembly in its First Session adopt "Convention on the Immunities, Facilities and Privileges of the United Nations, of Representatives of its Members and of its Officials".¹⁴

7. On 10 December 1945, the Sub-Committee on Privileges and Immunities presented to the Legal Committee its report,¹⁵ which contained a draft recommendation together with a draft convention for submission to the General Assembly.¹⁶ That draft contained a preamble (four paragraphs) and ten articles.¹⁷

(b) *Intermediate stage*

8. The Legal Committee held a general discussion during which some delegates indicated their view that it would be more advisable to concentrate on the material contained in the Study appended to the Executive Committee's report mentioned earlier than to submit a draft convention to the Assembly. It was said that a convention was an extremely difficult document to draft and required much time and detailed study. Several amendments and additions were made subsequently by the Legal Committee during its article-by-article examination.

9. The Chairman of the Sub-Committee, on his own behalf, proposed on 14 December 1945¹⁸ two additions to the draft Conventions as prepared by his Sub-Committee, one involving an additional paragraph to an article, the other involving the addition of a new (11th) article. The Committee then proceeded to an article-by-article examination of the draft Convention. At that meeting, five articles were passed without comment while one was adopted with certain modifications.

10. At its tenth and final meeting, on 15 December 1945, the draft Convention *in toto* was submitted to a vote and was approved unanimously.¹⁹ It consisted of a preamble (four paragraphs) and twelve articles, plus a few explanatory or interpretative footnotes. Many delegations did, however, make important reservations concerning the different articles and it was quite clearly understood that these delegations were at complete liberty to take up again various points at a later stage.²⁰

11. The Chairman of the Legal Committee introduced its report to the third plenary meeting of the Preparatory Commission held on 18 December

1945. He explained in his introduction that the feeling in the Committee was that it was too early to draw up a final convention on the question, but that the proposed draft might be submitted to the General Assembly as a working paper. The Preparatory Commission approved without discussion²¹ the report of the Legal Committee. That recommendation, together with the Study on the question (with annex) and the draft Convention, *inter alia*, formed chapter VII of the Report of the Preparatory Commission²² to the first session of the General Assembly.

12. At the first session, a Sub-Committee on Privileges and Immunities was established under the Sixth Committee, to study the question. It recommended the conclusion of a general Convention between the United Nations as an Organization, on the one hand, and each of its Members individually on the other hand. A draft with nine articles and 36 sections was subsequently prepared.

(c) *Final stage: General Assembly adoption of the Convention on the Privileges and Immunities of the United Nations*

13. The Sixth Committee, by a unanimous vote, adopted the draft introduction and draft resolution recommended by its Sub-Committee and noted that in making its recommendation to the Assembly to propose to the Members the annexed general Convention on the privileges and immunities of the United Nations it had examined the respective advantages, as methods of implementing the provisions of Article 105 of the Charter, of the Assembly (a) making recommendations or (b) proposing conventions to the Members of the Organization.

14. On 13 February 1946, the General Assembly adopted, without objection,²³ resolution 22 A (I) of 13 February 1946 approving the annexed Convention on the Privileges and Immunities of the United Nations and proposing it for accession by each Member of the Organization. The Convention²⁴ entered into force as regards each State on the date of deposit of its instrument of accession, in accordance with Section 32 of the Convention.

2. *Constitution of the International Refugee Organization*

(a) *Initial stage*

1. The question of the refugees was included in the agenda of the General Assembly at the first part of its first session,²⁵ and was allocated to its Third Committee. The Third Committee devoted seven meetings to the full discussion of the problem and drew up a compromise text, which was adopted by General Assembly resolution 8 (I) of 12 February 1946 by which the Assembly referred and recommended to the Economic and Social Council that it take into consideration in this matter the principle that the future of such refugees or displaced persons should become the concern of whatever international body may be recognized or established later.

2. Accordingly, the Economic and Social Council by resolution 3 (II) adopted on 16 February 1946 established a Special Committee on Refugees and Displaced Persons. The Special Committee was composed of nineteen members of the United Nations; the Director of the Inter-governmental Com-

mittee on Refugees and the Director-General of the United Nations Relief and Rehabilitation Administration or their representatives were invited to sit with the Committee in a consultative capacity. The function of the Committee was to carry out promptly a thorough examination in all its aspects of the problems of refugees and displaced persons of all categories, and to make a report thereon to the Council at its second session. The report of the Committee, after revision pursuant to directions given by the Council, should be communicated to the Members for comments. The report, together with the comments of the Members, should then be reviewed by the Council at its third session and the observations and recommendations of the Council thereon transmitted to the General Assembly.

(b) *Intermediate stage*

3. The Special Committee on Refugees and Displaced Persons met in London from 1 April to 1 June 1946 and devoted 45 meetings to the consideration of the question. On the issue concerning the establishment of an international organization of a non-permanent character to deal with the problems of refugees and displaced persons, the Special Committee appointed a Sub-Committee on Organization and Finance composed of 14 Member States. The Sub-Committee held eight meetings, during which a drafting group composed of seven Members, with representatives of the United Nations Relief and Rehabilitation Administration and the International Refugee Organization sitting in a consultative capacity, was set up to make suggestions as to the form of the future body and its relationship to the United Nations and to prepare the body's constitution as well as to propose an appropriate international administrative regime until the international body in question was in a position to commence its duties.

4. The Drafting Group had before it several documents, including two draft constitutions of the International Refugee Organization, submitted by the delegations of Canada and the United States respectively.²⁶ As the time at its disposal was extremely limited, it was not found possible to complete the tasks satisfactorily and it was decided to forward only certain suggestions in regard to the general principles which would govern the drafting of the constitution of the future body. The suggestions were presented in the form of draft articles which could be readily used as a basis for the drafting of a constitution.²⁷ It was made clear, however, that the draft articles would have to be revised from a technical and legal point of view before their incorporation by the Economic and Social Council in a final draft constitution for submission to Governments.

5. The Sub-Committee on Organization and Finance discussed the suggestions for the proposed constitution contained in the report of its Drafting Group at its seventh meeting, during which it made amendments to the suggestions, including the addition of an article on Finance. A report of the Sub-Committee on Organization and Finance²⁸ was submitted to the Special Committee on Refugees and Displaced Persons. The Special Committee considered the report of the Sub-Committee at its 41st meeting, during which the suggestions were further revised.²⁹ A report was adopted by the Special Committee whereby it, *inter alia*, recommended that the Economic and Social Council arrange for the completion of the constitution of the International Refugee Organization based on the suggestion in the form of draft articles included in

the report. It also recommended that a group of experts be appointed to examine the financial questions of the proposed international body.

6. The Economic and Social Council considered the report of the Special Committee at its 13th and 15th meetings, during which it revised and amended the suggestions for a draft constitution of the International Refugee Organization contained in section I of chapter IV of the report. By resolution 2/2 of 21 June 1948, the Council adopted a draft constitution of the International Refugee Organization and two Annexes—Annex I on Definitions, and Annex II on Budget for the First Financial Year.

7. The Council requested the Secretary-General to draft such technical clauses as were necessary to complete the draft constitution from a legal point of view and to transmit copies of the draft constitution as completed to Members for their comments.

8. The Council established by the same resolution a Committee on the Finance of the International Refugee Organization to prepare constitutional provisional administrative and operational budgets for the first financial year of the Organization and scales according to which contributions to these budgets might be allocated equitably among the Members of the United Nations. The Committee was composed of ten members: Canada, France, Netherlands, Poland, Union of Soviet Socialist Republics, United Kingdom, United States of America, with the addition of Brazil, China and Lebanon. The Director of the Inter-governmental Committee on Refugees and the Director-General of the United Nations Relief and Rehabilitation Administration, or their representatives, were invited to sit with the Committee in a consultative capacity.

9. By resolution 2/2 of 21 June 1946, the Council adopted the interim measures concerning refugees and displaced persons whereby it recommended that the Secretary-General of the United Nations take such steps as might be appropriate to plan the initiation of the work of the International Refugee Organization.

10. The Committee on Finance of the International Refugee Organization met in London from 6 July to 20 July 1946. The Committee prepared a provisional administrative and operational budget for the International Refugee Organization and recommended provisional scales of contributions to the administrative budget and the operational budget. The report (document E/REF.FIN/23) of the Committee was circulated to Governments for their comments.

11. At its third session, the Economic and Social Council appointed a Committee of the Whole on Refugees which at its fifth meeting appointed a Sub-Committee on Refugees to consider the draft articles in the light of comments received from Governments. The Sub-Committee appointed four Drafting Sub-Committees, to deal with, respectively, the outstanding issues of functions (Article II), membership (Article IV, para. 546), the resettlement of refugees and the return of unaccompanied children and war orphans. A report was submitted by the Sub-Committee to the Council on these issues.³⁰

12. With regard to the question of finance, the Council at its eighth meeting appointed an *Ad Hoc* Committee on Finance. This Committee reviewed the administrative budget proposed by the Committee on the Finances of the International Refugee Organization in the light of observations made by

Governments and new information surfaced.³¹ By resolution 18 (III) of 3 October 1946, the Council approved the draft constitution of the International Refugee Organization as amended by it, the provisional budget for the first financial year and an interim arrangement calling for the establishment of a preparatory commission pending the coming into force of the constitution of the International Refugee Organization. Both of these instruments were then transmitted to the General Assembly.

(c) *Final stage*

13. At the second part of its first session, the General Assembly referred the question relating to the draft constitution and the interim arrangement for the establishment of a preparatory Commission to its Third Committee. Questions relating to finance, budget and the provisional scales of contributions were referred to its Fifth Committee.

14. The Third Committee devoted 17 meetings to the detailed consideration of the draft constitution and 65 amendments submitted thereto. At its 31st meeting, the Third Committee appointed a Drafting Sub-Committee composed of seven members to study those amendments relating to the draft constitution of the International Refugee Organization concerning persons who had voluntarily assisted the enemy forces, and, at its 36th meeting, it appointed another drafting committee composed of nine members to revise the text of the amendments relating to the draft constitution on the functions and powers of the International Refugee Organization. Twenty-two of the amendments were adopted, 39 rejected and four withdrawn. By 18 votes to 5, with 5 abstentions, the Third Committee recommended the adoption of the draft constitution as amended by it (A/265).

15. The Fifth Committee considered the articles of the draft constitution dealing with budgetary and financial questions (Article 10 on Finance and Annex II on Budget and Contributions for the First Financial Year), including 14 amendments submitted thereto. Subsequently, Article 10 as amended was adopted by 12 votes to 6, with 4 abstentions; Annex II as amended was adopted by 12 votes to 7. A report of the Fifth Committee was submitted to the General Assembly (A/275).

16. The General Assembly, on 15 December 1946 adopted resolution 62 (I), whereby, *inter alia*, it approved the constitution of the International Refugee Organization and the Arrangement for a Preparatory Commission.

17. The General Assembly in resolution 62 (I) of 15 December 1946 requested the Secretary-General to open these two instruments for signature and, in the case of the Constitution, to open it for signature either with or without reservations as to subsequent acceptance, and urged Members of the United Nations to sign these two instruments, and, where constitutional procedures permit, to sign the Constitution without reservations as to subsequent acceptance. The constitution entered into force on 20 August 1948 in accordance with its Article 18. It may be noted that the whole process (from June 1946 to December 1946) was six months and the time elapsed between conclusion and entry into force of the instrument was 20 months.

3. *Convention on the Privileges and Immunities of the Specialized Agencies*

(a) *Initial stage*

1. When the General Assembly approved the Convention on the Privileges and Immunities of the United Nations in 1946, it also adopted a resolution on the co-ordination of the privileges and immunities of the Organization and the specialized agencies. The Assembly considered that there were many advantages in the unification as far as possible of the privileges and immunities enjoyed by the United Nations and the various specialized agencies, and that the Organization's privileges and immunities should be regarded, as a general rule, as a maximum criterion within which the various agencies should enjoy such privileges and immunities as the appropriate fulfilment of their respective functions might require. The Secretary-General was instructed to begin negotiations with a view to the reconsideration of the privileges and immunities provisions under which the specialized agencies then enjoyed in the light of the general Convention.

(b) *Intermediate stage: consultations between the Secretariat of the United Nations and the secretariats of specialized agencies*

2. The Secretary-General consulted the various specialized agencies in pursuance of the above-mentioned resolution. Meetings were held in March and July 1947 and were attended by representatives of the United Nations Secretariat and of the secretariats of the specialized agencies. At the March meeting it was unanimously agreed that the adoption of a single instrument presented the best method for co-ordination and unification and would facilitate the task of States' parliaments which had to accede to the instruments.³² A single draft convention prepared by the Secretariat of the United Nations was considered and discussed at the meetings.

3. Also discussed was the procedure to be followed for the adoption of such a draft general convention. One method envisaged was the discussion and adoption of such an instrument through the General Assembly. The other method was the convening of a general conference of all States members of the various specialized agencies, to which those agencies would be invited to attend in a consultative capacity. The Conference would discuss and adopt the text of a convention which it would propose for accession by Member States of the Organization and non-Member States which were members of the specialized agencies. At the March meetings, the representatives of those agencies felt that the second method was preferable, as it allowed them as well as those members of the agencies non-Member States of the United Nations to participate more fully in the drafting and discussion of the Convention.

4. In submitting his report on the question to the second Assembly session, the Secretary-General noted that while it remained for the Assembly to take the final decision on the procedure to be followed, if a general conference of the specialized agencies were favourably decided upon, it would be advisable to convene the conference in New York during the closing days of the Assembly to save most representatives a special journey, thus reducing expenses to a minimum.³³

5. Subsequent to the March meetings, the Secretary-General received certain comments and observations on his draft from four specialized agencies. A second meeting of the representatives of specialized agencies was held on 23 July 1947 and a draft convention, amended in accordance with observations and proposals made, was adopted. The draft was submitted to the Assembly by the Secretary-General, who included explanatory comments on certain of its provisions and noted that the draft fell within the framework, and reproduced some provisions, of the general Convention on the Privileges and Immunities of the Organization.³⁴ The draft Convention consisted of a preamble (four paragraphs) and nine articles with 40 sections.³⁵

6. At the Assembly's second session, the Sixth Committee decided, by a vote of 36 to 12, to establish a Sub-Committee on Privileges and Immunities to consider, *inter alia*, the item dealing with the Secretary-General's report. Most of the negative votes reflected the view that the Sixth Committee should have held a general discussion of the relevant items before their referral to a sub-committee.³⁶ The Sub-Committee was composed of 11 States, and elected a Chairman and a Rapporteur.

7. On 2 October 1947, the Rapporteur of the Sub-Committee introduced its interim report³⁷ to the Sixth Committee, indicating that the Sub-Committee had first considered whether the co-ordination and unification sought by the Assembly should be brought about by a single convention applicable to all specialized agencies or by some other method, such as drawing up a model convention to be recommended to each of the agencies. The Sub-Committee examined difficulties with the single convention approach,³⁸ but came unanimously to the conclusion that it would be possible to avoid those difficulties by a certain change in the method proposed as the result of the meetings between the Secretariat and the representatives of the specialized agencies.

8. The Sub-Committee concluded by stating its intentions to consider the substance of a single convention, including, in particular, the final clauses, after it had dealt with other items on its agenda. The report of the Sub-Committee was approved by the Sixth Committee without comment.³⁹

(c) *Final stage: General Assembly adoption of the Convention on the Privileges and Immunities of the Specialized Agencies*

9. The Sub-Committee of the Sixth Committee on Privileges and Immunities had before it not only the draft Convention appearing in the Secretary-General's report, but also a "new draft of the proposed convention" presented by the Rapporteur of the Sub-Committee, consisting of a proposed resolution and an annexed "suggested redraft" of the Convention, composed of a preamble (three paragraphs), eleven articles with 46 sections (later revised to 49) and nine annexes.⁴⁰ Amendments and additions were proposed by some delegations to the draft.⁴¹ One delegation also tabled proposals to an article of the draft found in the report of the Secretary-General.⁴² Another delegation proposed two draft Assembly resolutions,⁴³ the Rapporteur also submitting a draft resolution⁴⁴ in addition to the one previously submitted.

10. The report of the Sub-Committee⁴⁵ was before the Sixth Committee at its last meeting held during the Assembly's second session. In that report, the Sub-Committee submitted a draft convention consisting of a preamble

(three paragraphs), eleven articles with 49 sections and nine draft annexes (19 of the sections of this draft are virtually identical to sections of the draft contained in the Secretary-General's report). The Sub-Committee emphasized⁴⁶ that the first part of the draft largely consisted of standard clauses drawn up on the basis of the Convention on the Privileges and Immunities of the United Nations. The privileges and immunities provided for in the standard clauses were modelled on those of the United Nations under that Convention, and, indeed, in a certain number of cases were narrower in scope. The draft annexes in the second part of the draft related to each of the specialized agencies.⁴⁷ The report included, besides a commentary on the general questions considered by the Sub-Committee, a section-by-section commentary on the draft Convention. It also indicated both general and special reservations made by two delegations in the course of the Sub-Committee's work.⁴⁸

11. The Sub-Committee submitted three draft resolutions on co-ordination of the privileges and immunities of the United Nations and of the specialized agencies, one of which called for the Assembly to approve the Convention and propose it for acceptance by the specialized agencies and for accession by all members of the United Nations and by any other State member of a specialized agency.

12. The report of the Sub-Committee was adopted⁴⁹ by the Sixth Committee by a vote of 27 to 3, with 2 abstentions. One representative expressed a general reservation.

13. In the plenary of the General Assembly, it had before it a detailed report of the Sixth Committee⁵⁰ which included 45 paragraphs extracted from the report of its Sub-Committee. The Assembly adopted on 21 November 1947, as resolution 179 (II) by a vote of 45 to none, with 5 abstentions,⁵¹ the recommended resolution by which it, *inter alia*, approved the proposed Convention on the Privileges and Immunities of the Specialized Agencies. Before the vote, the representative of one Member State explained that while his delegation would vote in favour of the resolution, it reserved its position on two clauses in the proposed Convention.

14. The Convention,⁵² registered on 16 August 1949, is in force for each of the acceding States in respect of a specialized agency indicated in its instrument of accession or in a subsequent notification, as from the date of deposit of that instrument or of receipt of that notification. A number of States made declarations or reservations upon accession or subsequent notification.⁵³

4. *Protocols amending the Convention of 30 September 1921 on the Suppression of the Traffic in Women and Children, the Convention of 11 October 1933 on the Suppression of the Traffic of Women of Full Age and the Convention of 12 September 1923 on the Suppression of the Circulation of and Traffic in Obscene Publications*

(a) *Initial stage of the elaboration of the Protocols*

1. At the first part of its first session, the General Assembly, by resolution 24 (I) adopted on 12 February 1946, declared its willingness to assume the exercise of certain functions and powers previously entrusted to the League of Nations under international agreements, and referred to the Economic and

Social Council to take the necessary measures with respect to functions of a technical and non-political character.

2. The Economic and Social Council, at its fourth session, by resolution 43 (IV) adopted on 29 March 1947, decided, *inter alia*, to request the Secretary-General to "take the necessary steps to transfer to the United Nations the functions formerly exercised by the League of Nations under the Conventions of 30 September 1921 and 11 October 1933 relating to the Suppression of the Traffic in Women and Children and the Convention of 12 September 1923 relating to the Suppression of the Circulation of and Traffic in Obscene Publications".

(b) *Intermediate stage*

3. In accordance with resolution 43 (IV), the Secretary-General submitted on 12 June 1947 to the fifth session of the Economic and Social Council a memorandum (E/444) to which were annexed two draft protocols; each of the draft protocols was attached with an annex containing the suggested amendments to the Conventions in question, so that the latter could be adopted to meet the new situation which would be created by the transfer to the United Nations of the former League functions.

4. On 29 July 1947, the Council referred the memorandum to its Social Committee. On 6 August 1947, the Social Committee appointed a drafting committee consisting of seven government representatives to consider the proposals made by the Secretary-General and comments to those proposals made by government representatives (E/482 and E/509) in the Social Committee.

5. The Drafting Committee, at its first meeting, appointed a small working group consisting of three government representatives to examine the question. At its second meeting, the Drafting Committee unanimously adopted the report of the working group (A/AC.7/40) as revised by the Drafting Committee. On 12 August 1947, the Social Committee adopted the report of the Drafting Committee (E/540).

6. Based on the recommendation of the Social Committee, the Economic and Social Council by resolution 81 (V) of 14 August 1947 recommended that the General Assembly approve the assumption by the United Nations of the functions and powers exercised by the League of Nations under the Convention of 30 September 1921 on the Suppression of the Traffic in Women and Children, the Convention of 11 October 1933 on the Suppression of the Traffic of Women of Full Age and the Convention of 12 September 1923 on the Suppression of the Circulation of and Traffic in Obscene Publications, as well as the two draft protocols, to which were annexed the amendments to the Conventions in question so as to effect the transfer.

7. On 23 September 1947, the General Assembly referred the question to its Third Committee, after considering it at its 52nd, 62nd and 63rd meetings. The Third Committee, by 45 votes to none, with 2 abstentions, recommended the draft protocols as amended for approval by the General Assembly.

(c) *Final stage*

8. On 20 October 1947, the General Assembly approved the draft protocols by 52 votes to none, with 3 abstentions (resolution 126 (II)), and urged that they be signed without delay by all the States which were Parties to the

above-mentioned Conventions. It also recommended that, pending the entry into force of the Protocols, effect be given to their provisions by the Parties to any of the Conventions and instructed the Secretary-General to perform the functions conferred upon him by the aforesaid Protocols upon their entry into force.

9. Pursuant to article 2 of the Protocol amending the Convention on the Suppression of the Traffic in Women and Children, of 30 September 1921, and the Convention on the Suppression of the Traffic of Women of Full Age, of 11 October 1933, the Secretary-General was requested to invite Parties to any of the instruments to be amended by the Protocol to apply the amended texts of those instruments as soon as the amendments are in force, even if they have not yet been able to become Parties to the present Protocol. Article 3 of the Protocol provides that the Protocol shall be open for signature or acceptance by any of the Parties to the Convention of 30 September 1921 on the Suppression of the Traffic in Women and Children or the Convention of 11 October 1933 on the Suppression of the Traffic of Women of Full Age, to which the Secretary-General has communicated a copy of this Protocol. Pursuant to Article 4, States may become parties to the present Protocol by:

- (a) Signature without reservation as to approval; or
- (b) Acceptance, which shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations.

The Protocol entered into force on 12 November 1947 in accordance with Article V of its Protocol.

5. *Convention on the Inter-Governmental Maritime Consultative Organization*

(a) *Initial stage*

1. The question of the establishment of a world-wide inter-governmental organization in the field of shipping was brought to the attention of the Economic and Social Council when its Temporary Transport and Communications Commission submitted on 25 May 1946 a report⁵⁴ whereby it deplored the lack of a coherent organization to co-ordinate technical shipping activities. The Commission was of the opinion that a permanent official organization was required for the technical side of shipping regulations and suggested that the United Maritime Consultative Council⁵⁵ be requested to study what inter-governmental machinery should be developed in the shipping field, so that the United Nations might initiate the necessary negotiations under Article 59 of the Charter to bring about its establishment (unless it were believed that the United Maritime Consultative Council could transform itself into a specialized agency under Article 57).

2. The Economic and Social Council, at its second session, having considered the Temporary Commission's report, adopted, on 21 June 1946, resolution 2/7, whereby it instructed its Transport and Communications Commission to examine with the assistance of experts "the question of the establishment of a world-wide inter-governmental shipping organization to deal with technical matters" and authorize the Secretary-General to seek the views of the United Maritime Consultative Council on the question.

(b) *Intermediate stage*

3. The United Maritime Consultative Council considered the question of the establishment of an inter-governmental organization to deal with international shipping matters during its sessions held in June and October 1946. At the latter session, the United Maritime Consultative Council agreed to recommend to Member Governments the text of a draft convention for an inter-governmental maritime organization to be established as a specialized agency of the United Nations (resolution UMCC 2/39 of 30 October 1946 in E/CONF.4/1).

4. The Permanent Transport and Communications Commission, at its first session in February 1947, examined the problem and, in its report (E/270) to the Economic and Social Council, recommended that the United Nations convene a conference of interested Governments for the purpose of establishing an inter-governmental shipping organization and that the draft convention prepared by the United Maritime Consultative Council be utilized as a working draft. It further suggested that the Secretary-General circulate the United Maritime Consultative Council draft to invite comments on that draft by Governments.

5. The Economic and Social Council at its fourth session considered the recommendations both of the United Maritime Consultative Council (E/270) and of the Transport and Communications Commission (E/270). On 28 March 1947, the Economic and Social Council, by the adoption of resolution 35 (IV), requested the Secretary-General: (i) to convene a conference of interested Governments to consider the establishment of an inter-governmental maritime organization using the draft prepared by the United Maritime Consultative Council as a working paper forming the basis of discussion for the conference; (ii) to circulate the above-mentioned draft convention to all the Governments invited to the conference and to inform the Governments which are invited to the conference that any comments which they may wish to make on specific articles of the draft convention or amendments which they may wish to propose in advance of the conference should be submitted to the Secretary-General for circulation to all Governments participating in the conference and for consideration by the conference itself; (iii) to invite all the Members of the United Nations, and the following Governments, to participate in the conference: Albania, Austria, Bulgaria, Finland, Hungary, Ireland, Italy, Portugal, Romania, Switzerland, Transjordan, Yemen.

6. The same resolution expressed the hope that the Governments invited to the conference may give their respective delegations full powers enabling them to sign such convention on the establishment of an inter-governmental maritime organization as may be concluded at the conference. The Secretary-General was also requested to invite the specialized agencies, inter-governmental organizations and international organizations in this field, as may be appropriate, to send observers to the conference.

7. At the sixth session, the Economic and Social Council decided by resolution 113 (VI), adopted on 3 February 1948, that voting rights at the conference would be exercised by the Members of the United Nations and other Governments participating in the Conference under paragraph (e) of its resolution 35 (IV).

(c) *Final stage*

8. The United Nations Maritime Conference met in Geneva from 19 February to 6 March 1948. Thirty-two States were represented at the conference by delegations and four States by observers. Five inter-governmental organizations and four non-governmental organizations were also represented by observers.

9. At the Conference, four working parties were established: a main working party composed of thirteen members to consider all provisions of the draft convention which were dealt with by other working parties; a working party on legal questions composed of eight members to consider the subject listed in document E/CONF.4/28; a working party on maritime safety composed of fifteen members to consider all the provisions of the draft convention concerning safety matters; and a working party composed of eight members to consider the formulation of a text for a draft relationship agreement between the proposed maritime organization and the United Nations. A drafting committee composed of six members was also established to examine the final draft of the convention.

10. The Conference, on 6 March 1948, by 18 votes to 1, with 7 abstentions, adopted the Convention and opened it for signature and acceptance. The whole process took 21 months (from June 1946 to March 1948). The Convention entered into force on 17 March 1958 in accordance with Article 60 of that Convention, ten years after its opening for signature.

6. *Revised General Act for the Pacific Settlement of International Disputes*

(a) *Initial stage*

1. At its third session, the General Assembly had before it from the Interim Committee⁵⁶ a report on the "Study of methods for the promotion of international co-operation in the political field", in which a draft resolution,⁵⁷ originally submitted by Belgium, seeking to restore the original efficacy of the General Act of 26 September 1928 for the Pacific Settlement of International Disputes, was recommended for consideration by the General Assembly.

2. It was explained in the report that the effectiveness of the General Act, which had been drawn up by the League of Nations Assembly, and to which twenty States had become parties, had diminished since some of its machinery had disappeared. The proposed draft resolution was aimed to replace that machinery, so that the full effect of the General Act would be restored.

(b) *Intermediate stage*

3. The report was referred by the General Assembly to the *Ad Hoc* Political Committee for consideration. After devoting three meetings, at its 28th meeting, on 9 December 1948, the *Ad Hoc* Political Committee adopted, by 32 votes to 6 with 2 abstentions, the draft resolution, to which were annexed amendments of a nature to restore to the General Act its original efficacy. As stated in its preambular paragraph, these amendments would apply only as between States having acceded to the General Act as thus amended and, as a

consequence, would not affect the rights of such States, parties to the Act as established on 26 September 1928, as should claim to invoke it in so far as it might still be operative.

(c) *Final stage*

4. At its 199th meeting on 28 April 1949, the General Assembly adopted, by 45 votes to 6, with 1 abstention, resolution 68 A (III), by which it instructed the Secretary-General to prepare a revised text of the General Act to incorporate the amendments mentioned above, and to hold it open to accession by States, under the title "Revised General Act for the Pacific Settlement of International Disputes". The revised General Act entered into force on 20 September 1950 in accordance with Article 44, seventeen months after its conclusion.

7. *Convention on Declaration of Death of Missing Persons*⁵⁸

(a) *Initial stage*

1. The subject was brought to the attention of the Economic and Social Council by the Preparatory Commission for the International Refugee Organization. In its transmittal memorandum (E/824, 15 June 1948), the Commission drew attention to the urgency and importance of solving the legal difficulties arising from the disappearance of numerous victims of war and persecution. It also expressed the view that these difficulties might best be solved by an international convention.

(b) *Intermediate stage*

2. At its seventh session, the Economic and Social Council took note of the memorandum and adopted on 24 August 1948 resolution 158 (VII), in which it requested the Secretary-General to:

- (i) Prepare, in collaboration with the International Refugee Organization and other competent organizations, a preliminary draft convention on the subject;
- (ii) Submit this convention to Member Governments for comments; and
- (iii) Submit it, along with the comments received from the Governments, to the Council at its eighth session "in order to enable the Council to take such action as may be appropriate with a view to definitive action on this matter by the General Assembly at its fourth regular session".

3. In accordance with the request of the Council embodied in the above resolution, the Secretary-General prepared a draft Convention on Declaration of Death of Missing Persons (document E/1071), and submitted it to Governments for comments.

4. In March 1949, the Economic and Social Council, at its eighth session, adopted resolution 209 (VIII), in which it noted the draft Convention and requested Member Governments which had not yet submitted comments thereto to do so. By the same resolution, the Council established an *ad hoc* committee on Declaration of Death of Missing Persons, composed of persons "specially versed in the matter" to be nominated by and to represent the following seven Member Governments: Brazil, Denmark, France, Lebanon,

Poland, United States of America and Union of Soviet Socialist Republics, to study the complex legal issues raised by the draft Convention. In particular, the *ad hoc* committee was instructed by the Council: (i) to examine whether the purpose of Council resolution 158 (VII) may be met by other procedures than by the conclusion of a single international convention; (ii) to study the draft convention prepared by the Secretary-General, with the comments of Governments and of the International Refugee Organization, and thereafter to prepare a draft or, if necessary, any other proposals in case the drafting of a convention was not practicable; and (iii) to place such draft convention or any other proposals before the Council at its ninth session.

5. The *ad hoc* committee met at Geneva between 7 June and 21 June (E/AC.30/SR.1-18). It held 18 sessions and considered various other procedures which might conceivably solve the problem. It had come to the conclusion that a multilateral convention was the best possible means to solve the problem. The *ad hoc* committee then proceeded to a detailed revision of the Secretariat draft convention and prepared a new text (E/1368) which was submitted to the Council at its ninth session.

6. Over the objection of some of its members, the Economic and Social Council at its ninth session decided not to examine the substance of the *ad hoc* committee's draft convention. By resolution 249 (IX) adopted on 9 August 1949, the Council requested the Secretary-General to transmit immediately the draft convention proposed by the *ad hoc* committee, together with the records of the discussions on the subject at the ninth session of the Council, to Governments for their consideration prior to the fourth session of the General Assembly; and recommended that the General Assembly consider the draft convention during its fourth session, with a view to having a convention adopted and opened for signature during that session.

(c) *Final stage*

7. The General Assembly considered the problem at its fourth session and adopted resolution 369 (IV) on 3 December 1949. In this resolution, the General Assembly recognized the importance and urgency of the question of the legal difficulties arising in particular because of differences of legislation in the matter. It decided that an international conference of government representatives should be convened not later than 1 April 1950 with a view to concluding a multilateral convention on the subject. The Secretary-General was instructed to issue invitations to the Governments of Member States to such a conference, asking all Governments interested to inform him as soon as possible of their acceptance. The Assembly referred the draft Convention on the Declaration of Death of Missing Persons to Member States to enable them to examine it and consider the possibility of adopting, if necessary, legislative measures on the legal status of persons missing, as a result of events of war or other disturbances of peace during the post-war years until the present time.

8. Pursuant to General Assembly resolution 369 (IV), the Conference on Declaration of Death of Missing Persons met in New York from 15 March to 6 April 1950. Twenty-five States were represented at the Conference, and six States and the International Refugee Organization were represented by observers.

9. The Conference used as a basis for discussion the draft convention prepared by the *ad hoc* committee and considered it article by article. A drafting committee composed of nine Member States was established by the Conference. On the basis of the decision of the Conference, the drafting committee prepared a revised draft of the Convention and submitted it to the Conference for its approval (A/CONF.1/7).

10. The Conference at its 11th meeting adopted by 20 votes to none, with 1 abstention, the Convention on Declaration of Death of Missing Persons.

11. Pursuant to Article 13 of the Convention, the Convention was opened for accession on behalf of Members of the United Nations, non-member States which are parties to the Statute of the International Court of Justice and also any other non-member States to which an invitation has been addressed by ECOSOC passing upon request to the State concerned. Accession was effected by the deposit of a formal instrument with the Secretary-General of the United Nations. The Convention entered into force on 24 January 1952, 20 months after its opening for signature.

8. *Convention on the Recovery Abroad of Maintenance*

(a) *Initial stage*

1. The problem of families which were left without support for their maintenance resulting from those who are responsible having moved to another country was studied as early as 1929 at the suggestion of the League of Nations by the International Institute for the Unification of Private Law. A committee of experts established by the Institute and composed of legal consultants from eight countries and from the Secretariat of the League of Nations and the Institute drew up in 1938 a preliminary draft convention covering the matter. However, World War II interrupted further developments.

2. As a result of the transfer of the non-political functions from the League of Nations, the United Nations assumed responsibility for developing further international action in this field. The question was brought to the attention of the Social Commission of the Economic and Social Council at its first⁵⁹ and second⁶⁰ sessions.

3. The Social Commission requested the International Institute for the Unification of Private Law to resume its pre-war study with a view to adjusting the 1938 preliminary draft to the changes which had occurred in national and international legislation and to the situation resulting from the war. A new committee appointed by the Institute prepared a draft convention in 1949 and submitted it to the Secretary-General in 1950 together with an explanatory report.⁶¹

(b) *Intermediate stage*

4. In July 1950, the Secretary-General transmitted the new draft convention elaborated by the Institute for comments to all Member Governments and to certain non-member Governments which were deemed to have particular interest and experience in the problem. A similar request for comments was sent to the interested specialized agencies as well as to representatives of non-governmental organizations likely to be concerned with the problem.

5. As a result of the foregoing action, replies had been received from Governments, the International Labour Organisation and the International Refugee Organization as well as from non-governmental organizations. These comments were circulated (E/CN.5/236 and Add.1-4).

6. The subject was discussed at the seventh session of the Social Commission (April 1951) and at the thirteenth session of the Economic and Social Council (August 1951). By resolution 390 (XIII), the Council requested the Secretary-General to prepare a working draft of a model convention or of a model reciprocal law, or both, with the assistance of a committee of experts, appointed by the Secretary-General, of jurists as well as a representative of the Institute.

7. In conformity with the request, the Secretary-General prepared two working drafts, one entitled "Model Convention on the Enforcement of Maintenance Obligations" (E/AC.39/L.3) and the other entitled "Model Agreement on Maintenance Obligations" (E/AC.39/L.6). Each of them was accompanied by a commentary. The two drafts were submitted to the Committee of Experts on the recognition and enforcement abroad of maintenance obligations. The Committee of Experts met in Geneva from 18 to 28 August 1952 and prepared a draft Convention on the Recovery Abroad of Claims for Maintenance and a Model Convention on the Enforcement Abroad of Maintenance Orders, together with an explanatory report (E/AC.39/1).

8. The report of the Committee of Experts was discussed at the seventeenth session of the Council. The Council, on 26 April 1954, adopted resolution 527 (XVII), in which it recommended to Governments to use the Model Convention on the Enforcement Abroad of Maintenance Orders as a guide for the preparation of bilateral treaties or uniform legislation to be enacted by individual States. With respect to the draft Convention on the Recovery Abroad of Claims for Maintenance, the Council requested the Secretary-General "to ascertain from States Members of the United Nations and those non-members of the United Nations which are members of any of the specialized agencies whether they consider it desirable to convene a conference of plenipotentiaries to complete the drafting of the Convention on the Recovery Abroad of Claims for Maintenance, and whether they are prepared to attend such a conference".

9. The result of the consultation, in which a substantial number of Governments had given an affirmative answer as to the desirability of convening such a conference, and had expressed their willingness to participate in the conference, was reported to the Council at its 19th session (E/2711 and Add.2). By resolution 572 (XIX) adopted on 17 May 1955, the Council decided to call a conference of plenipotentiaries to complete the drafting of and to sign the Convention on the Recovery Abroad of Claims of Maintenance and to invite to this conference the States Members of the United Nations and those States non-members of the United Nations which are members of any of the specialized agencies, and to invite the interested specialized agencies in relationship with the United Nations and non-governmental organizations having consultative status with the Council, as well as the Hague Conference on Private International Law and the International Institute for the Unification of Private Law, to participate in the Conference.

10. The printed text of the draft Convention on the Recovery Abroad of Claims for Maintenance and the report of the committee of experts (E/AC.39/1 and Corr.1) was attached to the Secretary-General's letter of invitation to the Conference. Some Governments forwarded to the Secretary-General their comments on the report of the Committee of Experts. These comments were also reproduced (E/CONF.21/4).

(c) *Final stage*

11. The Conference on Maintenance Obligations was held at the Headquarters of the United Nations in New York from 29 May to 20 June 1956 with 32 States participants and nine States observers. One specialized agency and two intergovernmental organizations, and 21 non-governmental organizations, also participated without a right to vote in the Conference. The Conference established a Working Party and a Drafting Committee.

12. The Conference took as the basis of discussion the text of the draft Convention drawn up by the Committee of Experts, and considered the draft article by article. Where necessary, the draft texts were referred to the Working Party and the Drafting Committee for review.

13. At its 13th meeting, the Conference adopted unanimously the Convention on the Recovery Abroad of Maintenance. Pursuant to Article 13 of the Convention, the instrument was opened for signature. The Convention came into force on 25 May 1957, eleven months after its adoption.

9. *Statute of the International Atomic Energy Agency*

(a) *Initial stage*

1. The idea of the establishment of an International Atomic Energy Agency was brought up by President Eisenhower of the United States of America, when he addressed the General Assembly on 8 December 1953 proposing the establishment, under the aegis of the United Nations, of an international agency which would devote its activities exclusively to the peaceful uses of atomic energy.

2. At that session, the representative of the United States of America had requested the inclusion in the agenda of an additional item entitled "International Co-operation in Developing the Peaceful Uses of Atomic Energy: Report of the United States of America", and forwarded an explanatory memorandum (A/2734). At its 478th meeting on 25 September 1954, the General Assembly decided to include the item in the agenda and referred it to the First Committee for consideration and report. The First Committee considered the item, and the joint draft resolution submitted by the eight Powers (Australia, Belgium, Canada, France, Union of South Africa, United Kingdom, United States of America) concerning the establishment of an international atomic energy agency was recommended for adoption by the General Assembly. At its 503rd meeting on 4 December 1954, the General Assembly adopted the recommendation of the First Committee as resolution 810 A (IX), which, *inter alia*, expressed the hope that the International Atomic Energy Agency would be established without delay.

(b) *Intermediate stage*

3. The drafting of a Statute for the Agency was undertaken in Washington, D.C. in April 1955, by the eight sponsoring States mentioned earlier. The draft Statute was then circulated to Governments for their consideration and comments.

4. The General Assembly considered again the question on the establishment of the agency at its tenth session, during which it adopted resolution 912 (X) on 2 December 1955, in which it increased the sponsoring States to include Brazil, Czechoslovakia, India and the Union of Soviet Socialist Republics.

5. The new sponsoring Governments (twelve members) met in Washington, D.C. early in 1956 to complete the draft of the Statute. The draft (IAEA/CS/2) which emerged from the work was submitted on 23 September 1956 to the Conference on the Statute of the International Atomic Energy Agency.

(c) *Final stage*

6. The Conference on the Statute of the International Atomic Energy Agency, sponsored by the twelve negotiating Governments, was convened at the Headquarters of the United Nations from 20 September to 26 October 1956. The sponsoring Governments issued invitations to all Members of the United Nations or the specialized agencies. Eighty-one countries and seven specialized agencies participated in the Conference. At the request of the sponsoring Governments, the Secretary-General of the United Nations served as the Secretary-General of the Conference.

7. At the outset of the Conference, a Main Committee composed of all participating Governments was established to consider separately each of the articles of the draft Statute to which amendments had been submitted. After consideration, the articles were forwarded directly to the Co-ordination Committee composed of representatives of the sponsoring Governments. The Co-ordination Committee reviewed the draft articles and the draft Statute as a whole with a view to eliminating inconsistencies in terminology and recommended to the Conference the final draft of the Statute for its approval. The Statute was unanimously approved by the Conference on 23 October 1956 and opened for signature on 26 October 1956. The Statute came into force on 29 June 1957.

10. *Convention on Transit Trade of Land-locked States*(a) *Initial stage*

1. At the first United Nations Conference on Trade and Development, held from 23 March to 16 June 1964, the problem of land-locked countries was considered by its Fifth Committee under agenda item 10 (e), entitled "Expansion of international trade and its significance for economic development".⁶²

2. The Fifth Committee of the Conference established a Sub-Committee⁶³ composed of 40 Governments to consider the proposal for the formulation of an adequate and effective international convention, or other means, to ensure the freedom of transit trade of land-locked countries and to formulate recommendations on this matter for consideration by the Commit-

tee. The Sub-Committee established two working groups. The first working group, composed of eight members, was requested to examine the proposals already submitted with a view to drawing up a body of principles designed to promote the transit trade of land-locked States. The second working group, composed of seven members, was requested to consider the proposals other than those principles and to prepare a recommendation for consideration by the Sub-Committee.

3. The Sub-Committee had before it several proposals, including a draft convention on transit trade⁶⁴ sponsored by 11 Afro-Asian countries (Afghanistan, Burundi, Central African Republic, Chad, Laos, Nepal, Mali, Niger, Rwanda, Uganda and Upper Volta). Due to lack of time, the Sub-Committee was not able to discuss the draft convention.⁶⁵ At its seventeenth and eighteenth meetings, the Sub-Committee, after consideration of the draft submitted by its second working group, and an amendment thereto submitted by Afghanistan, adopted a recommendation and submitted it to the Fifth Committee. The Fifth Committee considered the recommendation at its thirty-first and thirty-second meetings in May 1964, and adopted the recommendation of the Sub-Committee as amended by it.

4. At the same session, the United Nations Conference on Trade and Development took note of the report of the Fifth Committee, which included the recommendation of the Sub-Committee on Land-Locked Countries. At its twenty-eighth plenary meeting, the Conference adopted the recommendation without dissent. It recommended, *inter alia*, that the United Nations request the Secretary-General of the United Nations to appoint and convene a committee of 24 members, representing land-locked, transit and other interested States as governmental experts and on the basis of equitable geographical distribution; the committee was requested to prepare a new draft convention, treating the proposal made by Afro-Asian land-locked countries as a basic text and taking into account the principles of international law, conventions and agreements in force and submissions by Governments in this regard, as well as the records of the Sub-Committee on Land-locked Countries established by this Conference. It also recommended the convening of a conference of plenipotentiaries in the middle of 1965, for consideration of the draft and adoption of the convention.

(b) *Intermediate stage*

5. Pursuant to the recommendation, the Secretary-General established a Committee on the Preparation of a Draft Convention relating to Transit Trade of Land-Locked Countries, composed of 24 members representing land-locked, transit and other interested States, to prepare a draft Convention. The Committee met at United Nations Headquarters from 26 October to 20 November 1964 and held 30 public meetings.

6. The Committee took as a basis of discussion the draft convention submitted by the Afro-Asian land-locked countries and examined it article by article. After deliberation, a report (A/5906), which included a brief summary of the discussion of each article and the observations made by members to the draft, was adopted for submission to the Conference of Plenipotentiaries.

7. The recommendation by UNCTAD to convene the Conference of Plenipotentiaries for adoption of a Convention on the Transit Trade of Land-

locked Countries in the summer of 1965 was brought to the attention of the General Assembly by the Secretary-General at the 1327th meeting, and was adopted without objection at the 1328th meeting of the General Assembly.⁶⁶

(c) *Final stage*

8. The Conference of Plenipotentiaries was held at United Nations Headquarters from 7 June to 8 July 1965. Fifty-eight States participated in the Conference. Eleven other States, one specialized agency and two non-governmental organizations were designated as observers. The Conference established four working groups, namely: Working Group I on articles 5, 6 and 7, Working Group II on articles 1 and 2, Working Group III on article 11 and Working Group IV on article 16. The Conference also established a Drafting Committee composed of 15 members to consider the report of the Committee on the Preparation of a Draft Convention, to which were annexed a draft convention submitted by the Committee and the Afro-Asian draft convention, as well as all the amendments (A/5906).

9. On the basis of its deliberations, a convention entitled "Convention on Transit Trade of Land-locked States" was adopted by the diplomatic Conference at its 36th plenary meeting on 8 July 1965. It was opened for signature on the same day.

10. At its twentieth session, the General Assembly adopted resolution 2086 (XX) of 20 December 1965, in which it noted with satisfaction that the Convention on Transit Trade of Land-locked States was successfully concluded and requested that the Convention be signed by 31 December 1965 and ratified or acceded to as soon as possible in order to promote the economic and social development of the land-locked countries through international trade. The Convention came into force on 9 June 1967, two years after its opening for signature.

11. *International Convention against the Taking of Hostages*

(a) *Initial stage: Inscription of an item on the agenda of the General Assembly*

1. By a letter to the Secretary-General dated 28 September 1976, the Foreign Minister of a Member State requested the inclusion in the agenda of the thirty-first (1976) session of the General Assembly of a separate item entitled "Drafting of an international convention against the taking of hostages".⁶⁷

(b) *Intermediate stage: Ad Hoc Committee on the drafting of an international convention against the taking of hostages*

2. The Assembly subsequently adopted, on 15 December 1976, the draft as resolution 31/103, by which it decided to establish an *Ad Hoc* Committee on the Drafting of an International Convention against the Taking of Hostages, composed of 35 Member States to be appointed by the President of the Assembly on the basis of equitable geographical distribution and representing the principal legal systems of the world, after consultations with the chairmen of the regional groups. The *Ad Hoc* Committee was requested to draft at the earliest possible date an international convention against the taking of hostages and was authorized, in the fulfilment of its mandate, to consider suggestions

and proposals from any State, bearing in mind the views expressed during the debate on the item at that Assembly session.

3. The *Ad Hoc* Committee⁶⁸ met at United Nations Headquarters from 1 to 19 August 1977.⁶⁹ Certain members of the *Ad Hoc* Committee submitted working papers, one member submitting the text of a draft convention against the taking of hostages composed of a preamble (five paragraphs) and 14 articles. Five amendments or suggestions related to that text were submitted by other delegations. In addition, one proposal was circulated for the preamble of a convention and seven texts circulated on other matters to be included in any such convention.

4. The *Ad Hoc* Committee decided to start its work with a general debate. It then considered the various working papers. At the end of the session, a recommendation was adopted by consensus that the General Assembly at its thirty-second session should invite the *Ad Hoc* Committee to continue its work in 1978.

5. At its 1978 session, the *Ad Hoc* Committee decided to resume its work at the point at which it had left off at the previous session. It also decided to establish two open-ended working groups. Working Group I was requested to examine the thornier questions connected with the drafting of an international convention against the taking of hostages, and to try to find some common ground by means of consultations. Working Group II was requested to deal with draft articles that were not generally controversial and with texts on which Working Group I had come to an agreement. Working Groups I and II elected as their chairmen representatives who had also been elected Vice-Chairmen of the *Ad Hoc* Committee. The reports of Working Groups I and II reflected not only the results of the discussion of formal proposals contained in working papers, but also oral proposals or informal texts suggested in the course of consultations. They also indicated those areas or texts on which agreement had or had not been reached. The *Ad Hoc* Committee included in its report the *caveat* that the report reflected informal discussion which did not prejudge the final positions of States. At its 1979 session, the *Ad Hoc* Committee decided to resume its work at the point at which it had left off at the 1978 session and re-established Working Groups I and II with the same terms of reference.

6. Eight new texts submitted by groups of delegations were considered by Working Group I, as well as relevant previous proposals. Working Group II, besides the previous documentation, also had before it three proposals for amending texts which had emerged from the 1978 second reading on two proposals for new articles. It carried out a third reading of the articles before it.

7. The Working Group reports reflected the article-by-article or issue-by-issue discussion held therein. Thus proposals, counter-proposals, amendments and the final outcome of the negotiation process were recorded for each of the articles or issues. No votes were taken but agreement was reached on 16 articles of a draft convention, although a few delegations expressed reservations on certain articles or provisions. Two draft articles were discussed but no agreement was reached thereon. While there was insufficient time to discuss the whole preamble, one preambular paragraph was prepared to which no objection was raised, but on which several delegations reserved their position pending the consideration of the preamble as a whole.

8. The *Ad Hoc* Committee, on 16 February 1979, recommended to the General Assembly, in pursuance of the relevant Assembly resolutions and in fulfilment of its mandate, the draft Convention against the Taking of Hostages it had prepared, for the Assembly's further consideration and adoption. It consisted of a preambular paragraph and 18 articles, two of which appeared in square brackets to indicate that their provisions had not been completely agreed upon. Also included in the text of the draft Convention were foot-notes indicating that reservations had been made by certain delegations or that certain interpretations had been agreed upon.

(c) *Final stage*

9. At the thirty-fourth session of the General Assembly, this question was referred to the Sixth Committee, which established a Working Group to review on an article-by-article basis the draft Convention prepared by the *Ad Hoc* Committee. The Working Group would be made up of those States which were members of the *ad hoc* committee, with the understanding that its membership was to be open-ended. The Working Group submitted its report (A/C.6/34/L.12), which was reviewed by the Sixth Committee (A/C.6/34/SR.53, 56, 58, 59, 61 and 62).

10. On 7 December 1979 the Sixth Committee adopted the draft resolution and its annex as a whole without a vote (see A/34/819).

11. At its 105th meeting on 17 December 1979, the General Assembly adopted by consensus resolution 34/146, in which it adopted and opened for signature and ratification or for accession the International Convention against the Taking of Hostages. The Convention consisted of a preamble and 20 articles. Article 18 provides that the Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-second instrument of ratification or accession with the Secretary-General of the United Nations. As of 16 August 1982, seventeen States were parties to the Convention.

NOTES

¹ See *Preparatory Commission of the United Nations, Documents*, PC/EX/113/Rev.1, p. 5 and "Interim Arrangements concluded by the Governments represented at the United Nations Conference on International Organization", *ibid.*, *Report of the Preparatory Commission of the United Nations* (PC/20), pp.143-144.

² *Ibid.*, *Documents*, PC/EX/113/Rev.1, p. 134.

³ *Ibid.*, PC/EX/1CJ/17, p. 2.

⁴ *Ibid.*, PC/EX/1CJ/20, and *ibid.*, Summary record of the 7th meeting of Committee 5, PC/EX/1CJ/22, paras. 2-3.

⁵ *Ibid.*, PC/EX/84, and *ibid.*, Summary record of the 9th meeting of Committee 5, PC/EX/1CJ/25, paras. 1-4.

⁶ This report contained a study which dealt with the relevant Charter provisions, privileges and immunities at the seat of the Organization and elsewhere, precedents afforded by constitutions of specialized agencies, co-ordination of the privileges and immunities of the United Nations with those of specialized agencies, creation of an international passport, the concept of "privileges and immunities", taxation of officials in the country of which they are nationals and the International Court of Justice. Annexed to the report were extracts from the constitutions of certain specialized agencies.

⁷ *Ibid.*, Corrigendum to draft resolution and report from Committee 5, PC/EX/84/Corr.1.

⁸ *Ibid.*, Summary record of the 25th meeting of the Executive Committee, PC/EX/96, pp. 6-8.

⁹ *Ibid.*, PC/EX/113/Rev.1, pp. 69-71.

¹⁰ *Ibid.*, PC/9/Annex III, adopted by the Commission on 26 November 1945, *ibid.*, *Journal*, No. 3, p. 2.

¹¹ *Ibid.*, *Journal*, No. 5, *Supplement No. 5* (PC/LEG/10).

¹² *Ibid.*, *Journal*, No. 5, *Supplement No. 5* (PC/LEG/16).

¹³ *Ibid.*, *Documents*, PC/LEG/7, 11, 14, 15, 20, 21 and 22.

¹⁴ *Ibid.*, *Documents*, PC/LEG/17.

¹⁵ *Ibid.*, *Documents*, PC/LEG/34.

¹⁶ *Ibid.*, *Journal*, No. 7, *Supplement No. 5* (PC/LEG/35). The records do not reveal how many meetings were held of the Sub-Committee, but the *Journal* indicates that six meetings were scheduled.

¹⁷ Two articles, however, were identified solely as to their subject matter, the drafting to be left pending the results of the work of Committee 8 (General Questions), which was examining the question of arrangements between the host State and the Organization. See *ibid.*, *Documents*, PC/LEG/33 and Rev.1.

¹⁸ *Ibid.*, *Documents*, PC/LEG/39.

¹⁹ *Ibid.*, *Journal*, No. 19, *Supplement No. 5* (PC/LEG/40). The text as approved was circulated as *ibid.*, *Documents*, PC/LEG/42.

²⁰ *Ibid.*, *Journal*, No. 20, *Supplement No. 5* (PC/LEG/41).

²¹ *Ibid.*, *Journal*, No. 22, pp. 9-11.

²² *Ibid.*, *Report of the Preparatory Commission of the United Nations* (PC/20), pp. 60-80.

²³ *Ibid.*, 31st plenary meeting, point 68, p. 455.

²⁴ For the text of the Convention, see United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327.

²⁵ Agenda item 17.

²⁶ See Doc. E/REF/ORG.FIN/W.1 and 2 respectively.

²⁷ Report of the Drafting Group, see Doc. E/REF/ORG.FIN/W.3.

²⁸ Report of the Sub-Committee on Organization and Finance, see Doc. E/REF/80.

²⁹ See Summary Records of the Special Committee, 41st, 42nd, 43rd and 44th meetings—Document E/REF/88.

³⁰ *Official Records of the Economic and Social Council, First Year, Third Session, Supplement No. 8*.

³¹ See *Official Records of the Economic and Social Council, First Year, Third Session, Supplement No. 8*, p. 77.

³² *Official Records of the General Assembly, Second Session, Sixth Committee, annex 5, document A/339*, p. 279.

³³ *Ibid.*, annex 5, document A/339, p. 280.

³⁴ *Ibid.*, annex 5, document A/339, p. 281.

³⁵ A/339 and Corr.1 (mimeographed versions).

³⁶ *Official Records of the General Assembly, Sixth Committee, 36th meeting*, point 3, pp. 3-4. The Secretariat had suggested in its memorandum on organization of work that items on privileges and immunities be referred to a small sub-committee for initial consideration and that if so established, it be requested to first report on the proposal relating to the privileges and immunities of the specialized agencies, since "favourable action in this regard might necessitate the holding of a conference during the period of the present [second] session of the General Assembly" (A/C.6/136).

³⁷ *Ibid.*, annex 5 (a), document A/C.6/148, pp. 282-285.

³⁸ Those difficulties mainly arose from the facts that not all the agencies were to enjoy exactly the same privileges, that amendment of the basic instruments of certain agencies would be required for unification and that the draft reflected in the report of the Secretary-General had to refer to a number of instruments in order to ascertain the exact scope of privileges of each agency. See *ibid.*, annex 5 (a), document A/C.6/148, p. 283.

³⁹ *Ibid.*, 40th meeting, point 9, p. 23.

⁴⁰ A/C.6/SC.4/W.10 and Corr.1 and 2; A/C.6/SC.4/W.10/Add.1 and Add.1/Corr.1-4 and Add.4; A/C.6/SC.4/W.19 and Corr.1.

⁴¹ A/C.6/SC.4/W.10/Corr.3 and Add.2 and 3.

⁴² A/C.6/SC.4/W.16.

⁴³ A/C.6/SC.4/W.24.

⁴⁴ A/C.6/SC.4/W.26.

⁴⁵ *Official Records of the General Assembly, Second Session*, annex 5 (b), document A/C.6/191 and Corr.1, pp. 285-304.

⁴⁶ *Ibid.*, annex 5 (b), document A/C.6/191 and Corr.1, para. 5, p. 287.

⁴⁷ The Sub-Committee invited all nine specialized agencies to send advisers. Seven such advisers attended meetings of the Sub-Committee, which had the benefit of their assistance in preparing the annexes. But the Sub-Committee's recommendations did not in all cases exactly correspond with the suggestions of advisers. *Ibid.*, annex 5 (b), document A/C.6/191 and Corr.1, para. 13, p. 290.

⁴⁸ *Ibid.*, annex 5 (b), document A/C.6/191 and Corr.1, paras. 16, 26, 33, 51 and 303, pp. 291, 294, 297 and 303.

⁴⁹ *Ibid.*, 59th meeting, point 51, p. 172.

⁵⁰ *Ibid.*, Plenary Meetings, vol. 11, annex 22 (c), document A/503, pp. 1586-1603.

⁵¹ *Ibid.*, 123rd plenary meeting, point 122, pp. 1307-1309.

⁵² For the text, see United Nations, *Treaty Series*, vol. 33, p. 261. There are presently 16 annexes, three with revised versions, for 15 present specialized agencies and one which has been liquidated.

⁵³ See *Multilateral Treaties Deposited with the Secretary-General. Status as at 31 December 1981* (United Nations publication, Sales No. E.81.V.9).

⁵⁴ Doc. E/42 of 25 May 1946.

⁵⁵ The United Maritime Consultative Council was a temporary body to which fourteen maritime nations had subscribed, but whose existence was provided for only until 31 October 1946.

⁵⁶ *GA (III), Suppl. 10, A/605*.

⁵⁷ *Ibid.*, p. 34, A/605, annex 1.

⁵⁸ Two Protocols for extending the period of validity of the Convention on the Declaration of Death of Missing Persons were concluded on 16 January 1957 and 15 January 1967 respectively. The Convention was terminated on 24 January 1972 in accordance with Article 14 of the Protocol of 15 January 1967 (United Nations, *Treaty Series*, vol. 808).

⁵⁹ E/CN.5/15.

⁶⁰ E/CN.5/24, paras. 64-66.

⁶¹ International Institute for the Unification of Private Law, preliminary Draft of a Convention on the Recognition and the Enforcement Abroad of Maintenance Obligations, Doc. 16 (1) 1950.

⁶² The Preparatory Committee of the Conference, which, at its third session, decided that the problem of land-locked countries would be considered under item 10 (e) of the Conference which was adopted by the Conference on 23 March 1964.

⁶³ It should be noted that the decision of the Preparatory Committee of the Conference was reconfirmed at the pre-conference meeting held on 21 March, which agreed that for the consideration of the problem of land-locked countries and the formulation and adoption of a draft convention concerning the subject a special committee should be established.

⁶⁴ For text of the draft convention, see UNCTAD 1964, vol 11.

⁶⁵ See UNCTAD 1964, vol. 1, Report of the Fifth Committee, Appendix I, p. 320, para. 16.

⁶⁶ *Official Records of the General Assembly, Nineteenth Session*, 1328th meeting.

⁶⁷ *Official Records of the General Assembly, Thirty-first Session, Annexes*, agenda item 123, document A/31/242.

⁶⁸The President of the Assembly initially appointed in 1977 only 33 States as members of the *Ad Hoc* Committee, indicating that he would appoint the remaining two members as soon as candidates were nominated by the Eastern European Group (see document A/31/479). Subsequently, in the course of the 1977 session of the *Ad Hoc* Committee, the President appointed a 34th member (A/31/479/Add.1). The 35th member was appointed just prior to the 1979 session of the *Ad Hoc* Committee.

⁶⁹The report of the *Ad Hoc* Committee is contained in *Official Records of the General Assembly, Thirty-second Session, Supplement No. 39 (A/32/39)*.

I. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES¹

1. The main task of United Nations High Commissioner for Refugees (UNHCR) in the promotion of international instruments on the protection of refugees is to urge more countries to accept the 1951 Convention and the 1967 Protocol relating to the status of refugees which are the basic international instruments for the protection of refugees, giving the minimum standards for the treatment and protection of refugees. Article 8 (a) of the Statute of the Office of the United Nations High Commissioner for Refugees states that the Office is competent to promote the conclusion and ratification of international conventions for the protection of refugees and to supervise their application. The enlargement of basic standards for the protection of refugees within the framework of the preparation and adoption of new international instruments constitutes a logical first step in the achievement of fundamental rights for refugees.

2. Concerning the elaboration of multilateral treaties of direct concern to refugees, UNHCR was involved in the work of the Group of Experts on the Draft Convention on Territorial Asylum and the United Nations Conference on Territorial Asylum.

3. In the realization of UNHCR's policy for the further development of Refugee Law which is directed towards the elaboration of refugee rights already laid down in the 1951 Convention and which could be introduced in different multilateral international instruments adopted or in elaboration by Specialized Agencies and other international organizations, UNHCR obtained some positive results.

4. In the elaboration of UNESCO's instruments concerning the recognition of studies, diplomas and degrees in higher education, UNHCR participated in the preparation of these instruments:

(a) UNHCR was invited to be represented at the meetings of the Special Committee of Governmental Experts to prepare the Draft Convention on the recognition of studies, diplomas and degrees in higher education in the Arab and European States bordering on the Mediterranean. This Convention was adopted by the International Conference of States in Nice from 13 to 17 December 1976. The Convention is already in force. UNHCR proposed a special provision which was introduced in this Convention on refugees and displaced persons who will benefit from the Convention. At preliminary stage for the participation of UNHCR in the preparation of the Convention by the Special Committee, UNHCR prepared a working paper which was submitted and discussed at meetings of the Special Committee of Governmental Experts.

When the formula was found at these meetings, the Governmental Experts proposed the final text for the Conference. At the Conference the UNHCR representative made a statement expressing UNHCR's views on the subject and outlining in a summarized and general way UNHCR's activities in the field of protection and assistance to refugees;

(b) UNHCR was also represented at the meetings of the Special Committee of Governmental Experts to prepare the Convention on the recognition of studies, diplomas, and degrees in higher education in Arab States which took place at Rabat from 9 to 13 January 1978. At this meeting, the UNHCR representative presented a special working paper which was discussed with Governmental Experts who accepted the introduction of a special provision in the Convention which provides for refugees and stateless persons benefiting from the Convention. The International Conference of States for the adoption of the Convention on the recognition of studies, diplomas and degrees in higher education in the Arab States was held at UNESCO Headquarters from 18 to 22 December 1978. The UNHCR representative submitted a special paper for this Conference in order to inform the Conference about UNHCR's activities and the necessity to introduce a provision on refugees and stateless persons;

(c) UNHCR also took part at the meetings of Governmental Experts to prepare within UNESCO two Conventions for the recognition of studies, diplomas and degrees in higher education in African and European States. UNHCR prepared a special working paper in order to propose suitable provisions on refugees and stateless persons which could be introduced in these Conventions.

5. The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, which was convened by the Swiss Federal Council and held four sessions in Geneva (from 20 February to 20 March 1974, from 3 February to 18 April 1975, from 21 April to 8 June 1976 and from 17 March to 10 June 1977), adopted two Additional Protocols on the Geneva Conventions of 12 August 1949.

6. In the elaboration of Additional Protocols prepared for this Conference by the International Committee of the Red Cross, UNHCR took an active part in the formulation of special provisions on refugees, stateless persons and family reunion. The UNHCR representative participated in the preparatory work organized by the International Committee of the Red Cross and during the Conference as Observer. In this regard, UNHCR prepared several working papers which were distributed as official documents during the Conference to governmental delegations and attended the meetings of working groups organized by the Conference. Special statements were also prepared during the Conference in order to get agreement of delegations for the adoption of important provisions which protect refugees, stateless persons and family reunion in armed conflicts. Article 73 of Protocol I on refugees and stateless persons is a basic article which protects refugees and stateless persons not only within the Protocol I but also within the Fourth Geneva Convention on the protection of civilian populations.

7. Similar procedures have been used in other Conferences convened under the auspices of the World Intellectual Property Organization and the International Labour Organisation. UNHCR attends meetings organized by

ILO and WIPO on the elaboration of new conventions or the revision of existing conventions which may concern the protection of certain refugee rights.

NOTE

¹See also Section H.2. Constitution of the International Refugee Organization above.

J. OUTER SPACE AFFAIRS DIVISION

1. *United Nations bodies within which the treaties are prepared*

1. The General Assembly, the Committee on the Peaceful Uses of Outer Space, and the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space constitute the organizational framework within which treaties concerning the peaceful uses of outer space are prepared within the United Nations.

2. The General Assembly has each year, since 1958, included on its agenda an item relating to the peaceful uses of outer space. The item was originally assigned to the First Committee but it has been switched to the Special Political Committee since 1978. The report of the Committee on the Peaceful Uses of Outer Space, which includes a detailed section on the work of the Committee's Legal Sub-Committee, is considered under the item. The General Assembly has each year expressed its views on the work of the Legal Sub-Committee and made recommendations as to the subjects to be considered by the Sub-Committee and the relative priorities to be accorded by the Sub-Committee to the subjects in the following year.

3. The Committee on the Peaceful Uses of Outer Space was established by the General Assembly at its fourteenth session in 1959 with a membership of twenty-four member States. The membership of the Committee was enlarged to twenty-eight at the sixteenth session of the General Assembly, to thirty-seven at the twenty-eighth session, to forty-seven at the thirty-second session and to fifty-three at the thirty-fifth session. The Committee is at present composed of the following fifty-three member States:

Albania, Argentina, Australia, Austria, Belgium, Benin, Brazil, Bulgaria, Canada, Chad, Chile, China, Colombia, Czechoslovakia, Ecuador, Egypt, France, German Democratic Republic, Germany, Federal Republic of, Greece.¹ Hungary, India, Indonesia, Iran, Iraq, Italy, Japan, Kenya, Lebanon, Mexico, Mongolia, Morocco, Netherlands, Niger, Nigeria, Pakistan, Philippines. Poland, Romania, Sierra Leone, Spain.² Sudan, Sweden, Syrian Arab Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United States of America, Upper Volta, Uruguay, Venezuela, Viet Nam and Yugoslavia.

4. The Committee meets each year for a period of two weeks ordinarily in June-July and considers, among others matters, the report of its Legal Sub-Committee. The Committee reports each year to the General Assembly on the work of the Sub-Committee. The Legal Sub-Committee is one of the two standing subsidiary bodies of the Committee on the Peaceful Uses of Outer

Space, the other being the Scientific and Technical Sub-Committee. The two Sub-Committees have the same membership as the Committee. The Legal Sub-Committee meets each year for a period of four weeks ordinarily in March-April and reports each year to the Committee. The work of the Committee and its Sub-Committees is so conducted that decisions are made by way of consensus and without proceeding to a vote. Members of the United Nations who are not members of the Committee have on occasion requested and been granted the opportunity of addressing the Committee or its Sub-Committees on matters of concern to them. The specialized agencies and certain intergovernmental and non-governmental bodies concerned with the peaceful uses of outer space participate in meetings of the Committee and its Sub-Committees without the right to vote.

2. *Treaties formulated or in the course of formulation*

5. The following treaties concerning the peaceful uses of outer space have, as of the present date, been formulated. All but one—the “Moon Treaty”—are in force.

(a) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. The Treaty was opened for signature on 27 January 1967 and entered into force on 10 October 1967. There are, as of the present date, sixty-seven Parties to the Treaty.

(b) Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. The Agreement was opened for signature on 22 April 1968 and entered into force on 3 December 1968. There are, as of the present date, sixty-five Parties to the Agreement.

(c) Convention on International Liability for Damage Caused by Space Objects. The Convention was opened for signature on 29 March 1972 and entered into force on 1 September 1972. There are, as of the present date, sixty-one Parties to the Convention.

(d) Convention on Registration of Objects Launched into Outer Space. The Convention was opened for signature on 14 January 1975 and entered into force on 15 September 1976. There are, as of the present date, twenty-seven Parties to the Convention.

(e) Agreement Governing the Activities of States on the Moon and Other Celestial Bodies. The Agreement was opened for signature on 18 December 1979 and is not yet in force. As of the present date, eleven States have signed, of which three have ratified the Agreement.

3. *Initiation of the treaty-making process*

6. In the past, drafting of treaties has been initiated by proposals made by Member States. On the basis of these proposals the General Assembly has mandated the Committee on the Peaceful Uses of Outer Space to draft treaties on specific subjects concerned. The Committee in turn has delegated its Legal Sub-Committee to undertake the drafting of these treaties.

4. *Preparation of a treaty*

(a) *Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space*

7. It is in the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space that work on the preparation of a treaty principally takes place.

(i) *Organization of sessions of the Sub-Committee*

8. The annual four-week session of the Legal Sub-Committee is generally organized as follows. The first week of a session is devoted to the opening plenary meetings of the Sub-Committee and to meetings of one of the Sub-Committee's Working Groups. The second and third weeks are devoted to meetings of Working Groups of the Sub-Committee. The fourth week of a session is devoted to the concluding meetings of the Working Groups and to the concluding plenary meetings of the Sub-Committee.

(ii) *Plenary meetings of Sub-Committee in the first week of a session*

9. The plenary meetings of the Sub-Committee in the first week of a session provide, when the preparation of a treaty is at an initial stage, the occasion for introductory statements on matters of substance and procedure, and for the introduction of texts of draft treaties by delegations.

10. When work on the preparation of a treaty is already in progress, the plenary meetings of the Sub-Committee in the first week of a session provide the occasion for statements by delegations on outstanding issues and on other matters of substance or procedure.

11. The plenary meetings of the Sub-Committee are provided with summary records³ and other Secretariat services including interpretation. The plenary meetings of the Sub-Committee are open to the public.

12. When the Sub-Committee decides that work on the actual formulation of the provisions of a treaty should begin, it is the practice to establish a Working Group for that purpose.

(iii) *Working Groups of the Sub-Committee*

Composition and organization

13. A Working Group established by the Sub-Committee for the formulation of the provisions of a treaty is composed of the whole membership of the Sub-Committee.

14. The process of conversion of the Sub-Committee into a Working Group is accomplished speedily, usually within a period of a few minutes.

15. The choice of a Chairman of a Working Group is made in plenary meeting following consultations between the Chairman of the Sub-Committee and delegations. The representative appointed Chairman of a Working Group continues to serve in that capacity while he continues to attend the Sub-Committee.

16. The meetings of a Working Group are provided with interpretation services and other Secretariat assistance. The Working Group is not, however, provided with summary records and its meetings are closed to the public.

Documentation

17. The documents that are before a Working Group, in connexion with the preparation of a draft treaty, are usually of three kinds: documents of an

introductory or of a background nature; documents that form the immediate basis for the drafting of the provisions of the treaty; and, where there are scientific or technical aspects to be considered, documents of a scientific and technical nature.

18. The introductory or background documents usually include the following: the relevant resolution of the General Assembly concerning the treaty in question, including the priority to be accorded by the Sub-Committee to the preparation of the treaty; the reports of the Committee on the Peaceful Uses of Outer Space and of the Legal Sub-Committee that may be of relevance; papers that may have been requested of the Secretariat by the Committee on the Peaceful Uses of Outer Space, the Legal Sub-Committee, or a Working Group.

19. The documents that form the immediate basis for the drafting of the provisions of a treaty usually include the following: the draft treaties proposed by delegations constitute the principal basis for the formulation of the treaty; a comparative table of the provisions of such draft treaties prepared by the Secretariat at the request of the Legal Sub-Committee or of the Working Group, when detailed comparison of the provisions of the several texts becomes necessary; amendments to articles, or additional articles, proposed by delegations in the course of the formulation of a particular provision.

20. Where there are scientific or technical aspects to be considered, it is customary for these aspects to be considered by the Scientific and Technical Sub-Committee of the Committee on the Peaceful Uses of Outer Space or by other subsidiary bodies of the Committee.

Drafting of provisions—Initial exchanges of views

21. It is customary for a Working Group to begin its deliberations with an introductory statement by its Chairman. The statement, often made following informal consultations with delegations, touches on the work to be accomplished, questions of working procedure and the documents before the Working Group. The views of delegations are invited and there is an introductory exchange of views.

22. Where a Working Group is at the beginning of its work on a treaty, the exchange of views following a Chairman's introductory statement may take some time. It is at this initial stage that decisions are necessary on, among other matters, the procedures of work: whether, for example, there ought to be a general exchange of views before actual drafting of provisions begins; what order ought to be followed by the Working Group in its consideration of the various articles of the draft treaties proposed by delegations; whether it would be desirable to prepare a comparative table of the provisions of the draft treaties.

23. When a Working Group continues its work on a treaty which was begun at an earlier session of the Sub-Committee, the initial exchange of views in the Working Group is usually concluded within a short period of time.

Process of drafting

24. The process of drafting the provisions of a treaty begins in the Working Group immediately after the initial exchange of views in the Working Group is concluded. The process continues until the report to be made by the

Chairman of the Working Group to the Sub-Committee is considered at the concluding meeting of the Working Group.

25. The process of drafting is necessarily detailed, laborious and time-consuming. It involves the examination, in the agreed order, of the provisions of the various draft proposals that are before the Working Group. It also involves, with respect to each subject considered, a comparison of particular provisions: identification of similarities and dissimilarities; consideration of points of dissimilarity; efforts at narrowing differences; the submission and consideration of new proposals which seek to resolve points of disagreement; and, finally, the recording of a text on which preliminary agreement has been reached, with unagreed texts in square brackets.

Informal consultations

26. There is considerable value to the process of drafting of informal consultations between delegations. There are informal consultations both within and outside the framework of the Working Group. A common example of informal consultations within the framework of the Working Group is the brief adjournment of a meeting of a Working Group to enable concerned delegations to consult on a particular point. Another example of frequent occurrence is the establishment by the Working Group of a small group for informal consultations on a particular matter. The opportunities for informal consultations between delegations outside the framework of a Working Group are numerous.

Editorial review of texts

27. When all the provisions of a treaty are formulated, there is, with the assistance of United Nations editorial services, a final editorial review of the provisions of the treaty in its various language versions.

28. A Drafting Group has on occasion been established for that purpose.

Reports of Working Group to the Legal Sub-Committee

29. Where, as has often been the case, a Working Group is unable to complete the formulation of a treaty within the allocated time in the course of a session of the Legal Sub-Committee, the report of the Working Group to the legal Sub-Committee is in the nature of a progress report. The report notes the documents that were before the Working Group at the beginning of its work and the documents that were submitted to the Working Group in the course of its deliberations. The report sets out the texts on which the Working Group was able to reach consensus and the provisions on which consensus was not possible are placed within square brackets. The report briefly records the views of delegations on points where it is requested.

30. Where a Working Group has completed the formulation of a treaty, the text of the treaty is incorporated in the report of the Working Group to the Sub-Committee.

(iv) *Plenary meetings in the fourth and last week of a session of the Sub-Committee*

31. The fourth and last week of a session of the Sub-Committee is devoted principally to the concluding plenary meetings of the session. The Sub-Committee in the course of these plenary meetings receives and considers the reports of its Working Groups.

32. When discussion on a report of a Working Group is concluded, it has been the practice of the Sub-Committee to take note of it and to have it annexed to the Sub-Committee's report to the Committee on the Peaceful Uses of Outer Space.

33. Where work on the formulation of a treaty is still incomplete, at the conclusion of the Sub-Committee's session there have been occasions on which the Sub-Committee has decided that it would be helpful if the Committee on the Peaceful Uses of Outer Space, in the course of its forthcoming session, were to endeavour to complete the formulation of particular provisions of special importance. In such a case the report of the Sub-Committee to the Committee then includes a recommendation to that effect.

34. Where a Working Group has been successful in completing the formulation of a treaty, the text of the treaty is set out in the report of the Sub-Committee to the parent Committee.

35. As has already been noted, the plenary meetings of the Sub-Committee, unlike the meetings of a Working Group, are normally provided with summary records. The plenary meetings thus enable delegations to have their views placed on record. The records of the plenary meetings of the Sub-Committee form part of the *travaux préparatoires* of a treaty.

(b) *Committee on the Peaceful Uses of Outer Space*

36. The Committee on the Peaceful Uses of Outer Space at its annual two-week session generally held in June-July each year considers, among other matters, the report of the Legal Sub-Committee.

37. Where a treaty is still in the course of formulation in the Legal Sub-Committee, the meetings of the Committee, held approximately three months after the conclusion of a session of the Legal Sub-Committee, provide delegations with an opportunity, while the discussions of the Legal Sub-Committee are still relatively fresh in their minds, to review issues unresolved at the conclusion of the session of the Sub-Committee.

38. Where a treaty would cover matters that require examination from the scientific and technical point of view, the meetings of the Committee (where delegations generally include representatives who have attended the Legal Sub-Committee and representatives who have attended the Scientific and Technical Sub-Committee) provide opportunity for the relevant matters to be considered from the point of view of both Sub-Committees. The extent to which the Scientific and Technical Sub-Committee may be of assistance to the Legal Sub-Committee would be considered and co-ordination of the work of the Legal Sub-Committee and of the Scientific and Technical Sub-Committee reviewed.

39. The Legal Sub-Committee, as noted above, has on occasion requested the Committee to endeavour to complete the preparation of particular texts that were pending at the conclusion of the session of the Sub-Committee. The Committee has on such occasions established a drafting or working group for that purpose.

40. The report of the Committee to the General Assembly contains recommendations as to the subject to be included on the agenda of the Legal

Sub-Committee at its next session and the priority to be accorded to such subjects.

41. Where the Legal Sub-Committee has completed the formulation of a treaty, the meetings of the Committee provide occasion for further review of the treaty. It is customary on such occasions for the Chairman of the Legal Sub-Committee to present the treaty to the Committee with a detailed statement explaining the provisions of the treaty. The discussion that follows provides delegations with an opportunity to place their views on record. The records of the Committee form part of the *travaux préparatoires* of the treaty. After its own approval of a treaty prepared by the Legal Sub-Committee, the Committee transmits and commends the treaty to the General Assembly.

(c) *The General Assembly*

42. The report of the Committee on the Peaceful Uses of Outer Space is considered by the General Assembly under its agenda item relating to international co-operation in the peaceful uses of outer space. The item is assigned to the Special Political Committee.

43. Where a treaty is still in the course of formulation in the Legal Sub-Committee, the Special Political Committee considers the views expressed by the Committee on the Peaceful Uses of Outer Space and, if it concurs on the recommendations of the Committee, incorporates such recommendations in the resolution it would propose for adoption by the General Assembly. The meetings of the Special Political Committee provide States that are not members of the Committee on the Peaceful Uses of Outer Space an opportunity to express their views on questions relating to the treaty.

44. Where formulation of a treaty has been completed by the Legal Sub-Committee and the Committee on the Peaceful Uses of Outer Space has transmitted the treaty to the General Assembly for approval, introductory explanatory statements of the provisions of the treaty are made by the Chairman of the Committee on the Peaceful Uses of Outer Space and, in greater detail, by the Chairman of its Legal Sub-Committee. The discussion that follows enables delegations, both members and non-members of the Committee on the Peaceful Uses of Outer Space, to express their views on the treaty.

45. The resolution proposed by the Special Political Committee for adoption by the General Assembly, on the subject of the treaty, would commend the treaty; request that the treaty be opened for signature and ratification at the earliest possible date; express hope for the widest possible adherence to the treaty; and set out the treaty in an annex to the resolution.

46. Adoption of the resolution by the General Assembly concludes preparation of the treaty.

5. *Opening of treaty for signature*

47. If the Secretary-General is the depositary of a treaty, the treaty would be opened for signature at United Nations Headquarters, New York, within a few months of the General Assembly's approval of the treaty.

48. The 1975 Convention on the Registration of Objects Launched into Outer Space, for example, was approved by the General Assembly on 12

November 1974. The treaty was opened for signature at UN Headquarters, New York, on 14 January 1975.

49. It is expected that the Secretary-General will continue to be the depositary of all future outer space treaties formulated within the United Nations.

NOTES

¹Until the end of 1983; Turkey took over the next three years, thus establishing a rotation system of three-year periods between them.

²In the same rotation arrangement with Portugal as above.

³The provision of summary records was suspended in 1980 but resumed in 1981. Its future is subject to review of the General Assembly possibly at its 37th session.

K. SECRETARIAT OF THE THIRD UNITED NATIONS CONFERENCE
ON THE LAW OF THE SEA

1. *Introduction*

1. It appears relevant to note the possible impact that the treaty-making techniques peculiar to the Law of the Sea Conference may have had both on State practice as related to the Law of the Sea and on international law as a whole. This has been the subject of many comments by publicists of different nations who have suggested that the negotiating texts have themselves accelerated and consolidated the process of change.¹

2. With regard to the areas under national jurisdiction, the informal negotiating texts have played a role in the development of State practice. Since the publication of the Single Negotiating Text, 52 States from all regions of the world have adopted legislation basically modelled after the provisions contained in said text. Nineteen States have enacted legislation on fishery zones up to a distance of 200 nautical miles where the jurisdiction of the coastal State is not as comprehensive as that envisaged in the Single Negotiating Text, but is not, *prima facie*, incompatible with it. Five coastal States, all of them in West Africa, have extended their territorial sea to a distance of 200 nautical miles and five other African States have extended their territorial seas to distances beyond 12 miles but less than 200 nautical miles. Since 22 States had, prior to the publication of the Single Negotiating Text, extended under different denominations their national jurisdiction over ocean spaces up to 200 nautical miles, it is now evident that for at least 103 coastal States there is jurisdiction with regard to the resources within a belt of 200 nautical miles. Whether this trend will be reviewed as a customary rule of law in the absence of a treaty can be the subject of many learned dissertations. The fact remains that only a conventional rule can reconcile the interests of the coastal States that benefit from the extension of national jurisdiction with those of other States that either because of their landlocked condition or on account of other geographical disadvantages cannot derive any benefit from the new concept of the exclusive economic zone. The Draft Convention as it stands offers a bal-

ance of rights and freedoms on the one hand and duties and obligations on the other hand that would not normally be retained should the new law of the sea evolve exclusively as a consequence of State practice.

3. With respect to the areas beyond the limits of national jurisdiction, we are in the face of a situation that has no parallel in legal history. On the one side the developing countries and some developed countries are of the view that the right to engage in mining of the resources of the sea-bed is not a legal freedom of the high seas. According to this view there is no practice or custom in the legal sense or general treaty authorizing the exploitation of the sea-bed. The Declaration of Principles embodied in General Assembly resolution 2749 (XXV) expressly excludes the possibility of extending freedom of the high seas to the sea-bed and subjects exploration and exploitation of the sea-bed to the international régime to be established. In their opinion, therefore, the situation is entirely different from that which applies to the exploitation of the traditional resources of the high seas, which is based on three centuries of custom and innumerable treaties. They maintain that the Declaration is a solemn pronouncement by the most representative organ of the international community to the effect that the resources of the sea-bed beyond national jurisdiction are the common heritage of mankind, can be exploited only under an international régime and cannot be unilaterally exploited. Other developed countries although not concurring with this opinion, have appealed to all countries to refrain from taking any action with regard to sea-bed mining before the Conference concludes its work.² Other States maintain the position that the right to explore and exploit the sea-bed beyond the limits of national jurisdiction derives from the freedom of the high seas, that no rule of positive international law prohibits the exploitation of the mineral resources of the oceans and that no State can be bound under international law without its consent.³ Should there be a conflict or dispute with regard to sea-bed mining operations conducted before an international régime is adopted it is far from clear what kind of decision could be handed down by a court of law. In the absence of an international instrument expressly recognized by the contesting States, without any evidence of a general practice accepted as law and when the teachings of the "most highly qualified publicists" of various nations reflect conflicting opinions, it is possible that the only "general principles of law recognized by civilized nations" on which a decision could be based would be those contained in a Declaration of Principles adopted with no dissenting votes by the General Assembly, without going into the question of the legal nature or binding effect of General Assembly resolutions.

4. The preceding considerations are relevant when studying the techniques and procedures used in the elaboration of the law of the sea convention. It has been pointed out that the Conference, since its inception, has found no precedents on which to base the organization of its work and has produced new pragmatic solutions that have been accepted by all of the 165 participants without any reservation. The validity of those innovative methods cannot be ascertained until the Conference has finalized its work. Any comparison with past experiences or any attempt to transplant them to other areas of United Nations activity can be misleading and will have to be approached with great care.

2. *The Sea-Bed Committee*

5. The item concerning the peaceful uses of the sea-bed beyond national jurisdiction was first included in the agenda of the General Assembly in 1967. This item, which, on account of its political and security implications, was in fact allocated to the First Committee,⁴ was described as "Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind".

6. By resolution 2340 (XXII) of 18 December 1967 the General Assembly established an *Ad Hoc* Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, consisting of 35 States. The *Ad Hoc* Committee was required to prepare a study covering three aspects of the question: first, a survey of the past and present activities of the United Nations, the specialized agencies, the International Atomic Energy Agency and other intergovernmental bodies with regard to the sea-bed and the ocean floor, and of existing international agreements concerning these areas; secondly, an account of the scientific, technical, economic, legal and other aspects of this item; and thirdly, an indication regarding practical means of promoting international co-operation in the exploration, conservation and use of the sea-bed and the ocean floor, and subsoil thereof, as contemplated in the title of the item, and of their resources.

7. The *Ad Hoc* Committee created two working groups of the whole, dealing respectively with economic and technical matters and with legal aspects. It worked on the basis of consensus though no formal decision was taken to that effect.⁵

8. In its report⁶ the *Ad Hoc* Committee pointed out, *inter alia*, that it was agreed that the item as a whole needed further study and that institutional arrangements should be established by the General Assembly for that purpose.

9. At its twenty-third session, the General Assembly by resolution 2467 A (XXIII) of 21 December 1968 established the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, composed of 42 States. Thus, the *Ad Hoc* Committee was in effect replaced by a standing Committee.

10. The mandate of this Committee differed substantially from the *Ad Hoc* Committee. It was requested, *inter alia*, to make recommendations on: (a) the elaboration of the legal principles and norms which promote international co-operation in the exploration and use of the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, and ensure the exploitation of their resources for the benefit of mankind, and the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole; (b) the ways and means of promoting the exploitation and use of the resources of this area, and of international co-operation to that end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind that such exploitation should benefit mankind as a whole; (c) intensification of international co-operation and stimulation of the exchange and the widest possible dissemination of scientific knowledge on the subject;

and (d) measures of co-operation to be adopted by the international community in order to prevent the marine pollution which may result from the exploration and exploitation of the resources of this area.

11. The Committee was also requested to study further, within the context of the title of the item and taking into account the studies and international negotiations being undertaken in the field of disarmament, the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor without prejudice to the limits which may be agreed upon in this respect.

12. The organization of the Committee's work was similar to its predecessor, the *Ad Hoc* Committee. However, the two working groups of the *Ad Hoc* Committee were replaced by a Legal Sub-Committee and an Economic and Technical Sub-Committee.⁷ It also carried out its work on the basis of consensus among its members.

13. As reported to the twenty-fourth session of the General Assembly, the Committee focused its attention during 1969 primarily on the questions embodied in resolution 2467 A and C (XXIII),⁸ the elaboration of legal principles and norms for the exploration and exploitation of the sea-bed beyond national jurisdiction; and the establishment of appropriate international machinery to promote such exploration and exploitation for the benefit of mankind.

14. During 1970 the Committee worked intensively on the elaboration of a draft declaration on principles governing the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction. The preparation of a comprehensive and balanced statement of principles had been particularly requested by the General Assembly in resolution 2574 B (XXIV) of 15 December 1969. The Committee was unable to reach complete agreement on the elaboration of a draft declaration of principles. It was only in the course of informal consultations during the General Assembly and at the initiative of the Chairman of the Committee that it was possible to submit the text to the Chairman of the First Committee. During the twenty-fifth session, the General Assembly adopted resolution 2749 (XXV) entitled Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof, beyond the Limits of National Jurisdiction, on 17 December 1970 by a vote of 108 in favour, with 14 abstentions. This resolution has been generally considered a landmark in the work of the Committee.

15. At the twenty-fifth session, the General Assembly also adopted resolution 2750 C (XXV), of 17 December 1970, under which it decided to convene in 1973, a conference on the law of the sea⁹ which would deal with the establishment of an equitable international régime—including an international machinery—for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues, including those concerning the régime of the high seas, the continental shelf, the territorial sea (including the question of the preferential rights of coastal States), the preservation of the marine environment (including, *inter alia*, the prevention of pollution) and scientific research.

16. By this same resolution the Committee was enlarged by 44 members and was instructed to prepare for the Conference on the Law of the Sea, first,

draft treaty articles embodying the international régime—including an international machinery—for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, taking into account the equitable sharing by all States in the benefits to be derived therefrom bearing in mind the special interests and the needs of developing countries, whether coastal or land-locked, on the basis of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction; and secondly, a comprehensive list of subjects and issues relating to the law of the sea which should be dealt with by the Conference, and draft articles on such subjects and issues.

17. Thus, the Committee's mandate underwent a most significant change. It was entrusted with the task of not only elaborating an international sea-bed régime, but also of producing draft articles on a wide range of issues relating to the law of the sea.

18. At its first session, held at Geneva in March 1971, the Committee established three Sub-Committees of the whole.¹⁰

19. During the course of 1972, the membership of the Committee, which had been enlarged by the addition of China and four additional States,¹¹ adopted after intense and lengthy negotiations the list of subjects and issues relating to the law of the sea which in fact served as the basis of the agenda for the Third United Nations Conference on the Law of the Sea.

20. By the end of its work in 1973, it can be said that the Committee reached agreement on only one step of the preparatory work of the law of the sea conference—the adoption of a list of subjects and issues that served as a framework in the drafting of the relevant articles. The report of the Committee to the General Assembly in 1973¹² referred to several documents which included a wide variety of draft articles, working papers, reports and official government proposals. There was, however, no generally agreed set of draft articles.¹³

21. On 16 November 1973, the General Assembly adopted resolution 3067 (XXVIII). By this resolution it was decided to proceed with the immediate inauguration of the Third United Nations Conference on the Law of the Sea in 1973 and the convening of a substantive session in 1974 in order to carry out the negotiations and other work required to complete the adoption of draft articles for a comprehensive convention on the law of the sea. It should here be observed that this resolution had expressly declared that the Committee had accomplished, as far as possible, within the limits of its mandate, the work which the General Assembly had entrusted to it for the preparation of the Third United Nations Conference on the Law of the Sea. On the basis of this resolution the mandate of the Conference was to adopt a convention dealing with all matters relating to the law of the sea, taking into account the subject matter listed in paragraph 2 of General Assembly resolution 2750 C (XXV), and the list of subjects and issues relating to the law of the sea formally approved on 18 August 1972 by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole.

3. *The Third United Nations Conference on the Law of the Sea*

22. The first session of the Conference, held in New York, from 3 December to 15 December 1973, was procedural in nature. The Conference spent that session negotiating the contents of its rules of procedure which were finally adopted at the end of the first week of its second session.

23. The element which revealed most significantly the spirit which pervaded the rules of procedure was contained in the notion of consensus. This notion was embodied in the Declaration incorporating the "Gentleman's Agreement".¹⁴ This Declaration which constitutes an appendix to the rules of procedure states that:

"Bearing in mind that the problems of ocean space are closely inter-related and need to be considered as a whole and the desirability of adopting a Convention on the Law of the Sea which will secure the widest possible acceptance,

"The Conference should make every effort to reach agreement on substantive matters by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted."

This basic principle was reflected in certain important provisions in the rules of procedure, in particular the reference in rule 37 that "before a matter of substance is put to vote, a determination that all efforts at reaching general agreement have been exhausted shall be made by the majority specified for matters of substance", i.e. a two-thirds majority, and the reference also in that rule to the procedure for deferring the taking of a vote on any matter of substance at the initiative of the Presiding Officer or of at least fifteen representatives, in order to exhaust all efforts to achieve general agreement, having regard to the overall progress made on all matters of substance which are closely related. Rule 39 which defines the majority required for decisions on matters of substance and for the decision referred to above, is more demanding than the standard rules adopted by most diplomatic conferences in that it requires not only a two-thirds majority of representatives present and voting, but also that such majority include a majority of the States participating in that particular session of the Conference.

24. The three Main Committees were organized as follows:

The First Committee, under the Chairmanship of Mr. Paul B. Engo of the Republic of Cameroon, deals with the régime for the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction and machinery to implement the aims of the Declaration of Principles;

The Second Committee, chaired by Ambassador Andrés Aguilar of Venezuela, and during the third session by Ambassador Reynaldo Galindo Pohl of El Salvador, deals with maritime areas subject to national jurisdiction and the high seas—including territorial sea, continental shelf, exclusive economic zone and the régime of straits used for international navigation;

The Third Committee, chaired by Ambassador Alexander Yankov of Bulgaria, deals with the rules for the protection of the marine environment, the conduct of scientific research and the transfer of technology.

The three Main Committees in fact continued to deal with the subjects covered by the three sub-committees of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. At a later stage, the plenary was entrusted with the peaceful settlement of disputes and the final clauses with the understanding that, for this purpose, it would operate as a Main Committee. The Drafting Committee, whose role and functions are elaborated on in Part VII, has been chaired by Ambassador Alan Beeseley of Canada.

4. *The negotiating machinery of the Conference*

25. Certain salient features of the Third United Nations Conference on the Law of the Sea shaped, or perhaps, rather dictated the working pattern of the Conference. Factors such as the complexity of the issues facing the Conference, the sharp conflict of interests on certain important issues and the relatively large number of delegations participating in the Conference, have had significant consequences on the type of procedures which the Conference found itself obliged to adopt. In the first place, it was generally felt that negotiations could not be effectively carried out in formal proceedings. The result was that most of the work of the Conference has been conducted informally. There were, of course, no summary records of these informal meetings. During the course of the Third United Nations Conference on the Law of the Sea, countless instances of the use of the informal procedure can be cited. The informal meetings of Committee III on the protection of the environment and the informal meeting of that body on marine scientific research and the transfer of technology furnish an instance of this procedure. Important inter-sessional meetings have also taken place on an informal basis especially on matters relating to Committee I.¹⁵

26. In the second place, large groups of delegations were not well suited for undertaking negotiations on several issues facing the Conference.¹⁶ Thus, it was that much of the work of the Conference was carried out in several small negotiating groups. Examples of such groups were (i) for Committee I matters: there was established the working group composed of 50 States and (ii) for Committee II matters: there was set up, e.g., a working group on baselines, another dealing with historic bays and a third on the territorial sea. Small working groups were created to deal with other issues.

27. It should here be pointed out that though these fairly small informal groups were in fact necessary for the conduct of negotiations, some States which had not participated in such negotiations were not prepared, or were prepared only with great reluctance, to accept their outcome. The importance of the subjects being dealt with by the Conference, and the diversity of the interests represented in it, inhibited delegations, it was said, from "entrusting their interests to delegations from elsewhere".¹⁷ Such an attitude certainly rendered the task of finding an adequate negotiating mechanism somewhat more difficult and may have played a part, as will be seen later,¹⁸ in fashioning some of the more recent negotiating procedures devised by the Conference.

28. Certain other groups which existed outside the framework of the Committees, and which have played an influential role in the work of the Conference, must be mentioned. First the regional groups: (a) African

Group, (b) Asian Group, (c) Latin American Group, (d) Group of Arab States, (e) Western European and others, (f) Eastern European Group, and (g) the Group of 77. In the second place, there are certain interest groups, e.g., the Group of Land-locked and Geographically Disadvantaged States and the Coastal State Group and finally certain "cross interest" negotiating groups which operate outside the formal framework of the Conference. An instance of this latter category is furnished by the Group of States which, having held informal consultations on issues connected with the settlement of disputes which may arise under the law of the sea Conference, submitted during the second session of the Conference a working paper on the settlement of the law of the sea disputes.¹⁹ The above-mentioned groups have exercised an influence, and, at times, have made significant contributions to the work of the Conference. They indeed form an essential component of the negotiating mechanism of the Conference.

5. *A basic negotiating text*

29. At the second session of the Third United Nations Conference on the Law of the Sea, held at Caracas, from 20 June to 29 August 1974, the method of work adopted by the Second Committee revealed the nature of the task which generally faced the Conference. Especially in the case of the Second Committee, there was need to impose some order on the welter of documents with which that Committee had to deal.

30. At its first session, the Second Committee decided to consider the items assigned to it, "one by one", in the order in which they appeared in the list. The idea was to consider each of the items, to identify the principal trends and to reduce them to generally acceptable formulae, and then, "to put them on ice", so to speak, without any decision. During the discussion of any given item, delegations were able to refer to related items. All closely interconnected items had to be fully considered before any decision would be taken.²⁰ As a result of this procedure the Second Committee, at its 46th meeting on 28 August 1974, decided to consolidate the 13 informal working papers into a single working document. The purpose of this document (A/CONF.62/C.2/WP.1)²¹ was to reflect the main trends which had emerged from the proposals submitted either to the Committee on Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, or to the Third United Nations Conference on the Law of the Sea, and it is generally acknowledged that this document represented a stage in the production of a basic working document for the Conference.

31. The need for such a basic working text around which negotiations on the various issues could be centred became clearer at the third session of the Conference held in Geneva from 17 March to 9 May 1975. Then the suggestion was made that the three Committees negotiate on the basis of a single text.²² At the 55th plenary meeting, the Conference accepted the President's proposal that the Chairmen of the three Committees should each prepare a single negotiating text²³ covering the subjects entrusted to his Committee, to take account of all the formal and informal discussions held so far. The texts would not prejudice the position of any delegation, and would not represent any negotiating text or accepted compromise. They would be a basis for negotiations.²⁴ In addition, the single negotiating text was not designed to affect the

status of proposals already made by delegations or the right of delegations to submit amendments or new proposals.²⁵

32. At the fourth session of the Conference, which was held in New York from 15 March to 7 May 1976, it was agreed that the Conference should avoid a general discussion on the informal single negotiating text and that it should proceed with informal negotiations in the Main Committees. Any objections to or proposals regarding the texts should be submitted as informal amendments, since the texts themselves were informal. The Chairmen of the Main Committees were given the mandate to revise the Informal Negotiating Text if they felt that there was a set of amendments commanding such widespread support so as to justify such revisions. It was left to the discretion of the Chairmen to determine whether the negotiating texts were to be discussed article by article, by groups of articles, or by concentrating on the key issues. The precise procedure was thus left within each Committee's competence.²⁶

33. The Chairmen each adopted their own procedure for the revision of the text. For instance, in the Second Committee, the Informal Single Negotiating Text was discussed article by article. The principle was adopted that silence was interpreted as signifying agreement with the negotiating text in all cases. When an amendment was submitted, delegations which were in favour of it, were bound to express their support, so that the Chairman might discern the degree of support each amendment enjoyed. Silence with respect to an amendment denoted satisfaction with the Informal Single Negotiating Text. For his part, the Chairman of the First Committee adopted a different procedure. He submitted first impression drafts of various articles, known as the "PBE Series", to all delegations in the hope that they could be studied and comments made to aid the production of the revised single negotiating text.²⁷

34. The Revised Single Negotiating Text was the product of the fourth session of the Conference and enjoyed the same status as the original Informal Single Negotiating Text. The Chairmen retained sole responsibility for their preparation and the text had no other status than that of serving as the basis for further negotiations without prejudice to the rights of any delegation to move amendments or to introduce new proposals. The texts were not to be regarded as committing any delegation to any of their provisions and they were not to be the basis of any general discussion.²⁸

35. It should be noted that at its 65th plenary meeting, the Conference had authorized the President to prepare a single negotiating text on the settlement of disputes. This text was to have the same status and character as parts I, II and III of A/CONF.62/WP.8. In preparing the text, the President took into account the views expressed during the general informal debates in the plenary which was based on A/CONF.62/WP.9—a text which had been prepared by the President on his own account. Account was also taken of relevant provisions contained in parts I, II and III of document A/CONF.62/WP.8, and of the suggestions put forward by the various groups and delegations.²⁹

36. The emergence of a basic negotiating text for the Conference threw into relief the issues that were most difficult to settle and which produced the most serious differences of opinion. It was on these "key issues", or as they were later called "hard-core issues", that from then on the Conference concen-

trated its attention. It can be said that after the appearance of the Revised Single Negotiating Text these "key issues" absorbed the attention of the Conference.

37. The President in his note to the Conference outlined six main areas on which delegations should concentrate in their informal consultations and negotiations during the fifth session, held in New York, from 2 August to 17 September 1976. They were as follows:

"(a) The structure of the proposed International Sea-Bed Authority; the financial arrangements for the maintenance of the Authority and its activities; the basic conditions governing exploration and exploitation of the sea-bed resources and the measures required to prevent or mitigate the adverse consequences to the economies of developing countries that may result from sea-bed mining;

"(b) The accommodation of the interests and concerns of those countries whose peculiar geographical location might, for want of such accommodation, deprive them of any real benefit from the establishment of an exclusive economic zone or of a fair share in the common heritage of mankind;

"(c) The precise legal relationship between the concept of the exclusive economic zone and the doctrine of the high seas at present understood;

"(d) The régime to be applied to marine scientific research in all areas outside the territorial sea;

"(e) A viable mechanism for the compulsory settlement of disputes designed to ensure finality; and

"(f) The formulation of final clauses which would preserve the legal unity of the Convention."³⁰

38. It was left, in the end, to each Committee to decide what were the main issues facing the Committee using, if it so desired, the President's list as a guide. The order in which these issues should be taken up and the way in which such negotiations were conducted were also left within the competence of the Committee to determine.

39. The First Committee adopted the "workshop method". The workshop was presided over by two co-Chairmen and was empowered to negotiate all issues within the mandate of the First Committee.³¹ The two co-Chairmen presided over alternate meetings but when one co-Chairman presided, the second co-Chairman would sit on his right-hand side rather than with his own delegation. With the help of the Secretariat they prepared joint reports which were submitted at regular intervals to the formal meetings of the Committee.

40. The pattern of work established by the Second Committee was different. The Committee created three negotiating groups. The first dealt with the legal status of the exclusive economic zone, and the rights and duties of other States to participate in the exploitation of the living resources of the zone. The second concerned itself with the right of access to and from the sea and the freedom of transit for land-locked States. The third dealt with the definition of the outer limit of the continental margin and the question of payments and contributions in respect of the exploitation of the continental shelf

beyond 200 miles. All three groups were presided over by the Chairman of the Committee and were open to all members.³²

41. In the Third Committee most of the negotiations based on the revised single negotiating text were conducted by the Chairman of the Committee. However, two informal groups were formed, one chaired by Mr. Val-larta (Mexico), discussing issues related to marine pollution, and the other by Mr. Metternich (Federal Republic of Germany), discussing issues connected with marine scientific research and the transfer of technology.³³

42. Informal negotiations continued in the sixth session with a view to resolving the "key issues" facing the Conference. However, as the organization of work revealed, more emphasis was beginning to be placed significantly on the issues relating to the First Committee. This trend has continued. In the programme of work it was stated that the first two or three weeks of the session should be devoted to First Committee matters to enable it to reach the same stage of progress as the Second and Third Committees.³⁴

43. The programme for the sixth session also envisaged what became the next important stage in the work of the Conference. There it was declared that at the end of the sixth week, the President, with the Chairmen of the Committees, adopting the collegiate method, would prepare an informal single composite text to serve as a basis for a draft convention.³⁵

44. At the sixth session, held in New York from 23 May to 15 July 1977, there was some debate as to the *modus operandi* which should be adopted for the consolidation of the Revised Single Negotiating Text.³⁶ The core of the matter was whether the informal single negotiating text should be prepared by the President jointly,³⁷ or in consultation with the Chairmen of the Main Committees, the Chairman of the Drafting Committee and the Rapporteur-General.³⁸

45. In the end it was decided at the 78th plenary meeting of the Conference that the President, as leader of the "team",³⁹ should undertake, jointly with the Chairmen of the three Committees, the preparation of the Informal Composite Negotiating Text. The idea was to consolidate in one document the draft articles relating to the subjects and issues embodied in parts I, II, III and IV⁴⁰ of the Revised Single Negotiating Text. The Chairman of the Drafting Committee and the Rapporteur-General would be associated with the team as the former should be fully aware of the considerations that determined the contents of the Informal Composite Negotiating Text, and the latter should, *ex officio*, be kept informed of the manner in which the work of the Conference has proceeded in all stages.⁴¹

46. In putting the text together each Chairman bore full responsibility for the provisions of the text which were the exclusive and special concern of his Committee and for the adoption of any changes in the text which reflected the progress achieved in the negotiations.

47. The Informal Composite Negotiating Text has not retained the order of the four parts of the Revised Single Negotiating Text. It is so structured that its provisions progress from areas falling under national jurisdiction, such as the territorial sea, through an intermediate area such as the exclusive economic zone, to areas of international jurisdiction. It has been suggested that this pro-

gression will constitute the principle on which the proposed convention on the law of the sea will be based.⁴²

48. The Informal Composite Negotiating Text was meant to enjoy the same status as the Informal Single Negotiating Text and the Revised Single Negotiating Text. Thus, it is informal in character and is designed to serve purely as a procedural device and to provide a basis for negotiation without affecting the right of any delegation to suggest revisions.

49. It is important to cite these observations on the nature of the text:

“It would not have the character and status of the text which was prepared by the International Law Commission and presented to the Geneva Conference of 1958 and would, therefore, not have the status of a basic proposal that would stand unless rejected by the requisite majority.”⁴³

50. It can be fairly said that the quest of the Conference for a basic negotiating text, which could serve as an effective procedural device, culminated in the appearance of the Informal Composite Negotiating Text.

6. *The Negotiating Groups*

51. There is general agreement that a consensus was largely achieved on a substantial part of the Informal Composite Negotiating Text. From its appearance the Conference was obliged to channel all its energies to the resolution of the remaining issues, the important “hard-core issues”. It is an accepted fact that without a settlement of these “hard-core issues”, no generally acceptable convention on the law of the sea can emerge from the Third United Nations Conference on the Law of the Sea.

52. In order to give priority to the resolution of such issues, the Conference at its seventh session, held in Geneva from 21 March to 19 May 1978, and resumed in New York from 21 August to 15 September 1978, was obliged once again to devise a new negotiating mechanism.⁴⁴

53. The Conference decided to establish seven negotiating groups on the following “hard-core issues”:

1. System of exploration and exploitation and resource policy, taking note of the work of the informal group of technical experts invited to consider the technical problems associated with any formula that might be used to limit production of minerals from the area, chaired by a member of the United Kingdom delegation;

2. Financial arrangements;

3. Organs of the Authority, their composition, powers and functions;

4. Right of access of land-locked States and certain developing coastal States in a sub-region or region to the living resources of the exclusive economic zone;

Right of access of land-locked and geographically disadvantaged States to the living resources of the economic zone;

5. The question of the settlement of disputes relating to the exercise of the sovereign rights of coastal States in the exclusive economic zone;

6. Definition of the outer limits of the continental shelf and the question of payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles;

Definition of the outer limits of the continental shelf and the question of revenue sharing;

7. Delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon.⁴⁵

54. It should be remarked here that though it was generally acknowledged that the issues outlined above were the outstanding issues which would impede the progress of the Conference as long as they remained unsettled, other issues seemed, in the eyes of certain States, at least, as important. Paragraph 6 of document A/CONF.62/62 was an attempt to deal with this concern. It stated that other issues might also be considered including, *inter alia*: (i) régime of islands and (ii) enclosed and semi-enclosed seas. The topic of the preamble and final clauses also appeared in this paragraph as a question which had not been discussed at the Conference.

55. In order to deal with a problem which has already been mentioned,⁴⁶ that is, the desire of many delegations to participate in the work of the Conference, the negotiating groups were open-ended. It was expressly stated that "negotiating groups whether constituted by the Plenary or Main Committee should comprise a nucleus of those countries principally concerned but with a clear understanding that they would be open-ended in the sense that any participant not included in the original nucleus would be free to join the groups with the same status as the original members. Each Negotiating Group could also have the right to form smaller groups in order to expedite the process of negotiation."⁴⁷ In a sense, this arrangement was designed to fulfil two important objectives: the need to ensure universal participation in the important negotiations of the Conference and the necessity to preserve the effectiveness of small negotiating groups.

56. The eighth session, held at Geneva, from 19 March to 27 April 1979, and resumed in New York, from 19 July to 24 August 1979, witnessed another modification of the negotiating machinery of the Conference. The special character of the problems confronting the First Committee led the Conference to devise another negotiating mechanism—the Group of 21.⁴⁸ There was established a group of 21 delegations, in addition to the Chairmen of negotiating groups 1, 2 and 3, and of the group of legal experts, on the settlement of disputes concerning Part XI. The group's mandate was "to co-ordinate, without review or alteration, the results achieved in the three negotiating groups and determine outstanding issues and find acceptable solutions."⁴⁹

57. In order to ensure that all interests were represented alternate members were appointed from delegations other than those which constituted the principal members of the Group of 21. There were to be seven alternate members representing the Group of 77 and seven alternate members representing the industrialized countries.⁵⁰

7. *The role of the collegium in the revisions of the Informal Composite Negotiating Text*

58. The mechanism for revising the Informal Composite Negotiating Text differs in some important respects from that adopted for the compilation

of the Informal Single Negotiating Text, the Revised Single Negotiating Text, and the Informal Composite Negotiating Text. In contradistinction to the method adopted for these earlier texts, the process has become more open and perhaps less exposed to the personal appreciation of the Chairmen or that of the President.

59. Paragraphs 10 and 11 of document A/CONF.62/62 stated that:

“Any modifications or revisions to be made in the Informal Composite Negotiating Text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a Chairman of a Committee, unless presented to the Plenary and found, from the widespread and substantial support prevailing in Plenary, to offer a substantially improved prospect of a consensus.”

“The revision of the Informal Composite Negotiating Text should be the collective responsibility of the President and the Chairmen of the Main Committees, acting together as a team headed by the President. The Chairman of the Drafting Committee and the Rapporteur-General should be associated with the team as the former should be fully aware of the considerations that determined any revision and the latter should, *ex officio*, be kept informed of the manner in which the Conference has proceeded at all stages.”

60. The role of the collegium in the revisions of the text⁵¹ was significant. For in practice, the collegium assumed the responsibility of determining what criteria to apply in deciding whether a given text emerging from the negotiations enjoyed widespread and substantial support in plenary and, therefore, offered a substantially improved prospect of consensus.⁵²

61. The mechanism outlined above was first utilized at the eighth session of the Conference, held in Geneva, from 19 March to 27 April 1979, when the collegium effected the first revision of the Informal Composite Negotiating Text.⁵³ A second revision was carried out by the collegium at the ninth session held in New York, from 3 March to 4 April 1980.⁵⁴ A further revision was made by the collegium at the resumed ninth session held in Geneva, from 28 July to 29 August 1980.⁵⁵

62. It should be noted that at certain sessions the Conference was unable to revise the Informal Composite Negotiating Text. It nevertheless received reports submitted to the plenary by the Chairmen of the Committees and of the Negotiating Groups.⁵⁶ In some of these reports the Chairmen proposed compromise formulae which were designed to aid the search for consensus.

63. The status of these revised texts remained the same as the Informal Composite Negotiating Text itself. Thus, they were informal in character and were of a negotiating nature. The status of these revised texts was quite clearly brought out in the following observations by the President of the Conference on the occasion of the second revision of the text. He stated that

“...the very nature of the concept of a package deal required that no delegation's position on a particular issue should be treated as irrevocable until at least all the elements of the package had formed the subject of agreement and that, therefore, every delegation had the right to reserve its position on any particular issue until it had received satisfaction on other issues which it considered to be of vital importance to it.”

To avoid any misunderstanding as to the status of the second revision which is now presented, the President would wish to emphasize that it must be regarded as "a negotiating text which provides, in the best judgement of the collegium, a better basis of negotiation and one that offers a substantially improved prospect of a consensus."⁵⁷

64. These observations applied with equal force to the other two revisions of the Informal Composite Negotiating Text.⁵⁸

65. The programme of work for the tenth session, held in New York, from 9 March to 17 April 1981, envisaged the adoption of the Convention during 1981, and the signature of the final act at a date to be determined in consultation with the Government of Venezuela.⁵⁹ The ninth session was to be regarded as the last negotiating session except on those issues on which there had as yet been no agreement.⁶⁰ However, certain unforeseen circumstances delayed the work of the Conference.⁶¹

66. At the resumed tenth session of the Conference held in Geneva from 3 to 28 August 1981, the text was again revised pursuant to the decision taken by the Conference at its 153rd meeting on 27 August 1981, on the basis of recommendations by the collegium (A/CONF.62/BUR.14) endorsed by the General Committee (A/CONF.62/114*). In accordance with A/CONF.62/62, this revision incorporated the recommendations of the Drafting Committee, approved by the Informal Plenary, the decisions taken by the Informal Plenary on the site of the International Sea-Bed Authority and the International Law of the Sea Tribunal and a new proposal of delimitation of the exclusive economic zone and of the continental shelf between States with opposite or adjacent coasts.⁶²

67. On this occasion, however, the text lost its informal character. The Conference agreed by consensus that the draft Convention should be elevated from the status of an informal text to that of an official Conference document and it recognized that the text was no longer an informal text but the official Draft Convention (A/CONF.62/L.78).⁶³

68. The Conference has recommended that the General Assembly should convene the final decision-making session of the Third United Nations Conference on the Law of the Sea for the adoption of the Convention from 8 March to 30 April 1982.⁶⁴

8. *The Drafting Committee*

(a) *Membership and competence*

69. The Drafting Committee of the Third United Nations Conference on the Law of the Sea consists of 23 members, including its Chairman.⁶⁵ The function of the Committee is embodied in Rule 53 of the Rules of Procedure which states:

"It shall, without re-opening substantive discussion on any matter, formulate drafts and give advice on drafting as requested by the Conference or by a Main Committee, co-ordinate and refine the drafting of all texts referred to it, without altering their substance, and report to the Conference or to the Main Committee as appropriate. It shall have no power of or responsibility for initiating texts."

70. This explicit statement on the competence of the Drafting Committee was the consequence of amendments to the draft rules of procedure which were submitted to and discussed at the second session of the Conference.⁶⁶

(b) *Modus operandi of the Committee*

71. At the seventh session of the Conference, the Drafting Committee was requested to commence work⁶⁷ by addressing itself to the provisions of the informal composite negotiating text that appeared to be settled, and recommended changes that were considered necessary from a technical and drafting point of view, particularly the adoption of uniform terminology.⁶⁸

72. The procedure adopted by the Drafting Committee for carrying out its task is novel. The Committee operates on three levels. On the first level, there are the language groups of the Drafting Committee representing the six official languages of the United Nations: Arabic, Chinese, English, French, Russian and Spanish.⁶⁹ These language groups are open to all delegations.⁷⁰ On the second level, there are the co-ordinators of the language groups who meet under the direction of the Chairman of the Drafting Committee. It should be noted that since the informal inter-sessional meeting of the Drafting Committee held in New York from 12 January to 27 February 1981, the meetings of the co-ordinators of the language groups are open to all members of the Drafting Committee and of the language groups,⁷¹ which means that these meetings are in effect open to all delegations attending the Conference. Finally, on the third level, there is the Drafting Committee itself.

73. The work of the Drafting Committee begins at the level of the language groups. Each language group discusses drafting proposals coming from members of that language group, from other language groups and from the Secretariat, and on the basis of these discussions it submits to the co-ordinators of the language groups suggestions for drafting changes to the text. These suggestions are considered at meetings of the co-ordinators of the language groups under the direction of the Chairman of the Drafting Committee. On the basis of their deliberations, the co-ordinators of the language groups in turn submit to the Drafting Committee proposals for changes to the text. After examining these proposals, the Drafting Committee then submits recommendations to the Conference.

74. The Drafting Committee's work can be divided into two parts: first, the process of harmonization of words and expressions recurring in the text and, second, the textual review, article by article, of the provisions of the Draft Convention. At first, the Committee directed its attention almost solely to the process of harmonization—seeking to ensure uniformity in the use of words and expressions in the text taken as a whole. The Committee commenced the review, article by article, of the text at the informal inter-sessional meeting of the Drafting Committee held in New York from 12 January to 27 February 1981, and continued this review at the tenth session,⁷² at the informal inter-sessional meeting of the Committee held at Geneva from 29 June to 31 July 1981,⁷³ and at the resumed tenth session.⁷⁴

(c) *The procedure for adoption of the Committee's recommendations*

75. Two types of procedures have been utilized for the adoption of the Drafting Committee's recommendations. The procedure for incorporating in

the various revisions of the text the recommendations emerging from the early work of the Committee—the process of harmonization—was left largely to the discretion of the Chairmen of the Main Committees. For example, in a reply to a letter dated 26 March 1980 from the Chairmen of the Drafting Committee,⁷⁵ requesting the incorporation of the Drafting Committee's recommendations in the revision of the Informal Composite Negotiating Text/Rev.1, the Chairman of the Second Committee indicated which recommendations of the Drafting Committee should be applied at that stage.⁷⁶

76. The Conference devised a different procedure for dealing with recommendations emanating from the textual review, article by article, of the provisions of the Draft Convention. These recommendations were considered at informal meetings of the plenary and not in the Main Committees. When the informal plenary met to consider the recommendations of the Drafting Committee, the Chairmen of the relevant Committees as well as the Chairman of the Drafting Committee would sit on the podium with the President.⁷⁷ It was noted that this procedure was adopted to ensure that the process of examining these recommendations should not result in any lack of harmonization or co-ordination.⁷⁸

(d) *The language groups*

77. The use of language groups by the Drafting Committee is a particularly significant feature. In the first place, the existence of these groups has enabled all language versions of the text to be examined more closely than would otherwise have been the case.⁷⁹ The interaction between the language groups and the co-ordinators of the language groups has been of immense value in ensuring the concordance of the six language versions of the text.⁸⁰ Finally, these groups being open to all delegations has in fact allowed all delegations to participate in the work of the Drafting Committee⁸¹—a fact which has facilitated the adoption of the recommendations of the Drafting Committee by the Conference.

9. *Conclusions*

78. The Third United Nations Conference on the Law of the Sea is engaged in law-making with respect to issues—perhaps the most important of which are of an essentially political nature—which was the reason in the first place that the item concerning the peaceful uses of the sea-bed beyond national jurisdiction was in fact allocated to the First Committee.⁸² It should also be recalled that it was due to the “large political element” in item 25⁸³ that a proposal at the twenty-fifth session of the General Assembly to have sub-items (c) and (d) referred to the Sixth Committee was rejected in both the General Committee⁸⁴ and the General Assembly,⁸⁵ with the consequence that the preparation of the Conference was entrusted to a political and not a juridical body.

79. The sharp clash of interests on some of these issues facing the Conference, their complexity and the relatively large number of participants at the Conference have rendered the task of finding an adequate and effective negotiating mechanism a fairly long and arduous process and have led the Conference to devise a variety of procedures to achieve that end.

80. There was also need for a basic working document around which negotiations could be centred. The first step towards that goal took place at the second session of the Conference when the Second Committee produced the so-called "main-trends" paper. At the third session in 1975, the Conference endorsed the President's proposal that a single negotiating text should be prepared by the Chairmen of the three Committees. This Informal Single Negotiating Text formed the basis for negotiations at the fourth session, and from this emerged the Revised Single Negotiating Text. At its sixth session the Conference decided to consolidate the various parts of the Revised Single Negotiating Text. With the appearance of this consolidated text—the Informal Composite Negotiating Text—it can be said that the Conference found a basic negotiating text. The emergence of the Informal Composite Negotiating Text threw into bold relief the so-called "hard-core issues" facing the Conference. These "hard-core issues" were entrusted to the negotiating groups.

81. The mechanism utilized for the subsequent revisions of the Informal Composite Negotiating Text is particularly significant. It was not within the competence of either the President or a Chairman of a Committee to introduce any modifications or revisions in the Informal Composite Negotiating Text unless such modifications or revisions were submitted to the Plenary and found, from the widespread and substantial support prevailing there, to offer a substantially improved prospect of a consensus. It was the role of the collegium to determine what criteria to apply in deciding whether a modification or revision of the text enjoyed the widespread and substantial support necessary to offer a substantially improved prospect of consensus.

82. The procedures of the Third United Nations Conference on the Law of the Sea are essentially informal and flexible. The mechanism adopted by the Drafting Committee of the Conference for processing its recommendations provides a particularly interesting example of these features. The formation of language groups by the Drafting Committee is noteworthy. The task of coping with drafting problems in a text comprised of more than 400 articles, in six official languages, drafted by the three Main Committees with the Informal Plenary has been facilitated by the existence of the language groups, which are open to all delegations.

83. The objective of the Conference, as set out in its mandate, remains the adoption of a "comprehensive convention dealing with all matters relating to the law of the sea . . . bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole". The nature of this mandate has obligated States to look at the provisions of the proposed Convention in their entirety, in short, to adopt the so-called "package-deal" approach. The structure of the Informal Composite Negotiating Text itself has further strengthened this approach.

84. It must be noted too that, as the rules of procedure indicate, the spirit of consensus constitutes the *leitmotif* of the Conference. The concept of consensus applies not only to the decision-making processes whereby the Convention will be adopted, but in practice to every step taken towards that end. But voting, of course, is not excluded once the Conference has determined that all efforts at reaching general agreement have been exhausted.

85. These two elements—the concept of consensus and the “package-deal” approach—have influenced the Conference throughout its history. Their roles remain significant in the stage the Conference has now reached.

86. It should be remarked that the proposed Convention will contain a novel combination of international law provisions. It will codify certain aspects of the law of the sea, e.g. in the provisions dealing with the territorial sea and contiguous zone, continental shelf and high seas. There are certain aspects involving progressive development of international law, e.g. in the provisions dealing with the establishment of, and the juridical régime governing, the exclusive economic zone, the legal status of archipelagoes and the creation of an international sea-bed régime. Perhaps it is more accurate to state that the provisions dealing with the establishment of an international sea-bed régime are seeking to create a novel régime of law.⁸⁶ In attempting to create an international sea-bed régime the proposed Convention will also be in fact providing the constitutional framework or the constituent instrument of an international organization, i.e. the International Sea-Bed Authority. In this respect, it should be noted that provision has also been made for a Statute of the Enterprise. Finally, there are dispute-settlement provisions which have the character of a multilateral compromise conferring jurisdiction on a court or other tribunal.

87. The Third United Nations Conference has not yet finished its task, that is, the adoption of a comprehensive convention on the law of the sea. That is why, of course, it is somewhat difficult at this stage to assess the efficacy or otherwise of the procedures and devices adopted in the first place by the international community and then by the Conference itself to achieve its goal. Nevertheless, it must be pointed out that the transactions at the Conference, in particular the emergence of the negotiating text, have had an undoubted influence on the national maritime legislation of several States. In fact, the maritime legislation of several coastal States is closely based on the Draft Convention. In this sense the Conference has already exerted a significant influence on the practice of States.

NOTES

¹ See, for example, R. Y. Jennings, “Law-making and Package Deal,” in *Mélanges offerts à Paul Reuter*, 1981, p. 350, and Guy de Lacharrière, “La Réforme du Droit de la Mer et le rôle de la Conférence des Nations Unies”, *Revue Générale du Droit International Publique*, Tome 84, p. 245.

² See summary record A/CONF.62/SR.109—declaration by Ambassador Nandan of Fiji on behalf of the Group of 77 and declarations by the representatives of the USSR, China, Romania, Norway, Canada, New Zealand, Australia, German Democratic Republic and Poland.

³ See summary record A/CONF.62/SR.109—declarations by the United States, France, Federal Republic of Germany, Italy, Belgium, Japan and Netherlands.

⁴ *Official Records of the General Assembly, Twenty-second Session*, A/BUR/SR.165-173.

⁵ *Ibid.*, *Twenty-eighth Session*, Supplement No. 21, A/9021.

⁶ *Ibid.*, *Twenty-third Session*, A/7230.

⁷ *Ibid.*, *Twenty-eighth Session*, Supplement No. 21, A/9021.

⁸ Resolution 2467 C (XXIII) had requested the Secretary-General to undertake a study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of this area, and the use of these resources in the interests of mankind, irrespective of the geographical location of

States, and taking into special consideration the interests and needs of the developing countries, and to submit a report thereon to the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction for consideration during one of its sessions in 1969.

⁹ An earlier resolution—resolution 2574 A (XXIV)—had requested the Secretary-General to ascertain the views of Member States on the desirability of convening at an early date a conference on the law of the sea to review the régimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing and conservation of the living resources of the high seas, particularly in order to arrive at a clear, precise and internationally accepted definition of the area of the sea-bed and ocean floor which lies beyond the limits of national jurisdiction, in the light of the international régime to be established for that area.

¹⁰ *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 21, A/9021.*

¹¹ General Assembly resolution 2881 (XXVI).

¹² *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 21, A/9021.*

¹³ *Official Records of the General Assembly, Twenty-eighth Session, First Committee, document A/C.1/PV.1924.*

¹⁴ Approved by the United Nations General Assembly at its 2179th meeting of 16 November 1973. It was made by the President and endorsed by the Conference at its 19th meeting on 27 June 1974.

¹⁵ The meetings of the Drafting Committee have all been informal.

¹⁶ *Official Records of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.75.V.10), vol. IV, 8th General Committee meeting, para. 9.

¹⁷ *Ibid.*, 10th General Committee meeting, para. 39. For similar observations see *ibid.*, vol. XIII, 128th plenary meeting, para. 92 and documents A/CONF.62/SR.134 and A/CONF.62/SR.136.

¹⁸ See Section 6 below.

¹⁹ *Ibid.* (United Nations publication, Sales No. E.75.V.5), vol. III, document A/CONF.62/L.7.

²⁰ *Ibid.* (United Nations publication, Sales No. E.75.V.4), vol. II, 1st Second Committee meeting, para. 3.

²¹ *Ibid.* (United Nations publication, Sales No. E.75.V.5), vol. III, p. 107.

²² *Ibid.* (United Nations publication, Sales No. E.75.V.10), vol. IV, 11th General Committee meeting.

²³ The Chairman had observed that the expression "single negotiating text", used by the representative of Singapore was preferable to the term "unified text" which he himself had used. *Ibid.*, para. 49.

²⁴ *Ibid.*, 55th plenary meeting, para. 92.

²⁵ *Ibid.*, document A/CONF.62/WP.8, p. 137.

²⁶ *Ibid.* (United Nations publication, Sales No. E.76.V.8), vol. V, 57th plenary meeting, para. 17.

²⁷ *Ibid.*, document A/CONF.62/WP.8/Rev.1, p. 125.

²⁸ *Ibid.*

²⁹ *Ibid.*, document A/CONF.62/WP.9/Rev.1, pp. 185-201.

³⁰ *Ibid.* (United Nations publication, Sales No. E.77.V.2), vol. VI, document A/CONF.62/L.12/Rev.1.

³¹ *Ibid.*, 22nd General Committee meeting, para. 3.

³² *Ibid.*, 22nd General Committee meeting, para. 9.

³³ *Ibid.*, para. 12. It should be noted that discussion of Part IV of the draft articles on settlement of disputes was carried out, article by article, in informal plenary meetings. *Ibid.*, para. 19.

³⁴ *Ibid.*, vol. VI, 76th plenary meeting, para. 33.

³⁵ *Ibid.* It was observed that it was essential to draft a consolidated text for three main reasons: "... from the legal standpoint, the Conference had a mandate to draft a convention covering all aspects of the law of the sea; from a political standpoint, Governments could take a final decision only on the basis of a package agreement; from an organizational standpoint, it was necessary to establish a single text in order to coordinate the work of the three Committees and the plenary". *Ibid.*, 24th General Committee meeting, para. 15.

³⁶ *Ibid.* (United Nations publication, Sales No. E.78.V.3), vol. VII, 29th General Committee meeting.

³⁷ *Ibid.* (United Nations publication, Sales No. E.77.V.2), vol. VI, 76th plenary meeting, para. 33.

³⁸ *Ibid.* (United Nations publication, Sales No. E.78.V.3), vol. VII, 29th General Committee meeting, para. 1.

³⁹ Referred to hereafter as the collegium.

⁴⁰ The single negotiating text on the settlement of disputes was revised at the fifth session after informal sessions in plenary. Consequently the Revised Single Negotiating Text on the settlement of disputes (A/CONF.62/WP.9/Rev.2) enjoyed the same status as the other parts.

⁴¹ *Ibid.* (United Nations publication, Sales No. E.78.V.4), vol. VIII, document A/CONF.62/WP.10/Add.1, p. 65.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ See Section 3 above.

⁴⁵ *Ibid.* (United Nations publication, Sales No. E.79.V.4), vol. X, document A/CONF.62/62, p. 11. Negotiating Groups 1, 4, 5 and 7 were established by the plenary. See *ibid.*, vol. IV, 94th plenary meeting, para. 3.

⁴⁶ See Section 3 above.

⁴⁷ A/CONF.62/62.

⁴⁸ See Note by the President: A/CONF.62/BUR.11/Rev.1.

⁴⁹ *Ibid.* (United Nations publication, Sales No. E.80.V.12), vol. XII, 117th plenary meeting, para. 4.

⁵⁰ *Ibid.* (United Nations publication, Sales No. E.80.V.6), vol. XI, 45th General Committee meeting, para. 7.

⁵¹ The Conference had approved, at the 118th plenary meeting, a programme of work for the ninth session which envisaged giving the Revised Informal Composite Negotiating Text the status of a final Conference document that would serve as a draft Convention. However, the circumstances and, in particular "the difficulty encountered in one of the Main Committees of resolving issues of fundamental importance prevented the Conference from adhering to this schedule and compelled it to prolong the stages of final negotiation and to accept the need for not merely a second revision of the ICNT as had been foreseen but a third revision as well". See document A/CONF.62/BUR.13/Rev.1.

⁵² Explanatory memorandum by the President of the Conference, A/CONF.62/WP.10/Rev.3/Add.1, p. xix.

⁵³ Informal Composite Negotiating Text/Rev.1: A/CONF.62/WP.10/Rev.1.

⁵⁴ Informal Composite Negotiating Text/Rev.2: A/CONF.62/WP.10/Rev.2.

⁵⁵ This revision carried the title "Draft Convention on the Law of the Sea (Informal Text)", document A/CONF.62/WP.10/Rev.3.

⁵⁶ Such reports were submitted at the seventh session, held in New York from 21 March to 19 May 1978; at the resumed seventh session, held in New York from 21 August to 15 September 1978, and at the resumed eighth session held in New York from 19 July to 24 August 1979. See *Official Records of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.79.V.4), vol. X, documents A/CONF.62/RCNG/1 and A/CONF.62/RCNG/2; *ibid.* (United Nations publication, Sales No. E.80.V.12), vol. XII, document A/CONF.62/91.

⁵⁷ Document A/CONF.62/WP.10/Rev.2, pp. 21-22.

⁵⁸ See document A/CONF.62/WP.10/Rev.1, p. 18, and document A/CONF.62/WP.10/Rev.3, p. xx.

⁵⁹ See document A/CONF.62/BUR.13/Rev.1.

⁶⁰ The issues were: the work of the Drafting Committee and the manner in which its recommendations should be processed, the participation clause, the Preparatory Commission and the treatment to be accorded to the preparatory investments made before the Convention entered into force. *Ibid.*, and see also the President's remark at the tenth session of the Conference at its 145th plenary meeting.

⁶¹ It was reported that the United States was not prepared to finalize the text of the Convention at that session and had in fact decided to undertake a review of the Convention. At the 59th General Committee meeting the United States delegate stated that a decision concerning the Convention would be taken by his Government only after a thorough review of the text and its history, in particular Part XI.

⁶² The following observations were made on this issue: "It was not by chance that it was the only issue for which representative groups had been established, with their own Chairmen who had reported on their work at several sessions; and it was not by chance that the highest officer of the Conference had been involved in the negotiations. No other issue had been treated with such importance or given so much time for consideration". Document A/CONF.62/SR.154.

⁶³ This was done subject to the following conditions: "First, the door would be kept open for the continuation of consultations and negotiations on certain outstanding issues. The results of these consultations and negotiations, if they satisfy the criterion in A/CONF.62/62, will be incorporated in the Draft Convention by the collegium without the need for formal amendments. Secondly, the Drafting Committee will complete its work and its further recommendations, approved by the Informal Plenary, will be incorporated in the text. Thirdly, in view of the fact that the process of consultations and negotiations on certain outstanding issues will continue, the time has, therefore, not arrived for the application of rule 33 of the Rules of Procedure of the Conference. At this stage, delegations will not be permitted to submit amendments. Formal amendments may only be submitted after the termination of all negotiations". See document A/CONF.62/114.

⁶⁴ The Conference adopted the following programme of work:

First Stage (8-26 March 1982)

During the first three weeks of the session, the Conference will continue consultations and negotiations on pending issues.

The Informal Plenary will meet to process the recommendations of the Drafting Committee resulting from its final intersessional meeting.

Second Stage (29 March-1 April 1982)

Beginning Monday, 29 March, the Plenary will meet for three days (29-31 March) to discuss the results of the consultations and negotiations. In accordance with A/CONF.62/L.46, statements will be limited to 15 minutes.

In the light of the Plenary debate and taking into account the criteria established in document A/CONF.62/62, the President of the Conference, the Chairmen of the Main Committees, the Chairman of the Drafting Committee and the Rapporteur-General will meet on Thursday, 1 April, and decide on the incorporation of the results of the consultations and negotiations into the Draft Convention.

In order to enable delegations to prepare themselves for the next stage, the Collegium will issue a memorandum containing all the changes that will be incorporated in the Draft Convention. These changes will be referred to the Drafting Committee for its consideration and recommendations. The Drafting Committee's report and its processing by Plenary will be completed by 12 April.

Third Stage (6-12 April 1982)

During this stage, the Conference will decide the date on which Rule 33 will become operative. Delegations could also use this period to consult their respective Governments on the decision-making stages of the session.

Fourth Stage (13-22 April 1982)

Should delegations at this point of time feel it necessary to submit formal amendments to the Draft Convention, such amendments would have to be submitted to the Secretariat by 6 p.m. on Tuesday, 13 April. Should the President, in accordance with Rule 37, defer the taking of a vote on amendments, the Plenary will give an opportunity to delegations, during the interval, to make statements on the amendments. During that period, the President, assisted by the General Committee, will make every effort conducive to the attainment of general agreement.

Fifth Stage (23-30 April 1982)

By Friday, 23 April, the Conference will have to determine whether all efforts at reaching general agreements have been exhausted.

During the last week which will end on 30 April, the Conference will adopt the Convention, the text of the draft resolution on the establishment of the Preparatory Commission, the Final Act and any other pertinent decisions.

Should the fifth stage have started and more time be needed to complete the work of the Conference, it shall, in consultation with the Secretary-General, be authorized to extend its formal work beyond 30 April exclusively for that purpose. Document A/CONF.62/116.

⁶⁵The members of the Drafting Committee are: Afghanistan, Bangladesh, Argentina, Ecuador, El Salvador, Ghana, India, Italy, Lesotho, Malaysia, Mauritania, Mauritius, Mexico, Netherlands, Philippines, Romania, Sierra Leone, Spain, Syria, Union of Soviet Socialist Republics, United Republic of Tanzania and United States of America. Thailand replaced Bangladesh and Austria replaced the Netherlands as members of the Drafting Committee on a rotating basis.

⁶⁶See document A/CONF.62/4 submitted by Cameroon, Chile, Colombia, Kenya, Mexico and United Republic of Tanzania, and the subamendment to this document submitted by Pakistan. Both documents are incorporated in document A/CONF.62/L.1: *Official Records of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.75.V.5), vol. III, p. 77.

⁶⁷Attempts to have the Drafting Committee begin its work earlier were unsuccessful. See *ibid.* (United Nations publication, Sales No. E.75.V.8), vol. V, 70th plenary meeting, and 14th General Committee meeting.

⁶⁸*Ibid.* (United Nations publication, Sales No. E.70.V.3), vol. IX, 93rd plenary meeting, para. 7.

⁶⁹Note also that article 320 of the Draft Convention on the Law of the Sea states, *inter alia*, that the "Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic".

⁷⁰*Ibid.* (United Nations publication, Sales No. E.79.V.4), vol. X, A/CONF.62/RCNG/2, p. 199.

⁷¹See document A/CONF.62/L.67 of 26 February 1981, para. 2.

⁷²See document A/CONF.62/L.73 of 26 June 1981, para. 1.

⁷³See document A/CONF.62/L.75 of 3 August 1981. There will be another inter-sessional meeting of the Drafting Committee in New York from 18 January to 26 February 1981.

⁷⁴See document A/CONF.62/L.83.

⁷⁵Document A/CONF.62/L.57/Rev.1 of 1 August 1980, annex I, p. 1.

⁷⁶*Ibid.*, p. 2. See also the letter dated 29 April 1980 from the Chairman of the Third Committee: *ibid.*, p. 3. Further recommendations were in fact examined at the resumed ninth session of the Conference by both the Second and Third Committees before their incorporation in the text. See letter dated 26 August 1980 from the Chairman of the Second Committee to the Chairman of the Drafting Committee (A/CONF.62/L.63/Rev.1, Annex 11, p. 10, and the statements in plenary by the Chairman of the Third Committee (A/CONF.62/SR.134).

⁷⁷See document A/CONF.62/110 of 16 March 1981, para. 5.

⁷⁸ *Ibid.* For the reports of these informal plenary meetings, see document A/CONF.62/L.72 of 23 April 1981 and document A/CONF.62/L.82 of 30 September 1981.

⁷⁹ In a letter dated 25 February 1981, the co-ordinator of the Arabic language group noted that since "no Arabic translation of the Law of the Sea Conventions has previously been made, the Group felt that part of its programme of work should be devoted to a meticulous examination of the Arabic text in order to bring it to the highest level of accuracy. Consequently, the Group found it necessary to engage in performing this task in addition to the drafting exercise that it has been mandated to perform". See document A/CONF.62/L.67/Add.1/Rev.1 of 2 March 1981, annex III.

⁸⁰ The Drafting Committee considers this issue of ensuring the concordance of the six language versions particularly important. The Chairman of the Drafting Committee has observed that "it should be noted that, with respect to the requirements for concordance of the six language texts of the Draft Convention, the Drafting Committee sought to improve linguistic concordance, to the extent possible, and juridical concordance in all cases". Document A/CONF.62/L.67 of 26 February 1981.

⁸¹ On this issue, see Sections 3 and 6 above.

⁸² See Section 2.

⁸³ Item 25 reads as follows:

(a) Question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind: report of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction;

(b) Marine pollution and other hazardous and harmful effects which might arise from the exploration and exploitation of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction: report of the Secretary-General;

(c) Views of Member States on the desirability of convening at an early date a conference on the law of the sea: report of the Secretary-General;

(d) Question of the breadth of the territorial sea and related matters (1933).

⁸⁴ *Official Records of the General Assembly, Twenty-fifth Session, A/BUR/SR.188.*

⁸⁵ *Official Records of the General Assembly, Twenty-fifth Session, 1823rd plenary meeting.*

⁸⁶ R. Y. Jennings, "The Discipline of International Law", *International Law Association, report of the 57th Conference*, pp. 622-632, on p. 629.

L. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

1. *Origin and organization of UNCITRAL*

(a) *The Commission*

1. In response to the need for the United Nations to play a more active role in removing or reducing legal obstacles to the flow of international trade, at its twenty-first session in 1966 the General Assembly established the United Nations Commission on International Trade Law (UNCITRAL—hereinafter sometimes referred to as "the Commission").¹

2. The mandate given to UNCITRAL by the General Assembly is to "further the progressive harmonization and unification of the law of international trade" by, *inter alia*, promoting wider participation in existing international conventions in the field of international trade law; preparing or promoting the adoption of new international conventions in this field; promoting the codification and wider acceptance of international trade terms, provisions, cus-

toms and practices; promoting ways and means of ensuring a uniform interpretation and application of international conventions in the field of international trade law.²

3. The Commission is composed of 36³ member States representing the various geographic regions and the principal economic and legal systems of the world. All members of UNCITRAL are elected by the General Assembly for a term of six years. The following States are currently members: Australia, Austria, Burundi, Chile, Colombia, Cuba, Cyprus, Czechoslovakia, Egypt, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Guatemala, Hungary, India, Indonesia, Iraq, Italy, Japan, Kenya, Nigeria, Peru, Philippines, Senegal, Sierra Leone, Singapore, Spain, Trinidad and Tobago, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, and Yugoslavia.

(b) *Working Groups*

4. Much of the work of UNCITRAL is carried out in Working Groups which concentrate on specific subjects assigned to them by the Commission. The size of each Working Group varies, depending upon the nature of the topics to be dealt with by it and the interests of member States. Member States are encouraged to send to each Working Group representatives who are experts in the field to be covered. There currently exist three Working Groups of UNCITRAL.

(c) *Observers*

5. Because of the importance of participation of all interested parties in the development of a text for the unification of law from its earlier stages to its final form, all States and interested international organizations are invited to attend sessions of the Commission and its Working Groups as observers.⁴ Observers are permitted to participate in discussions in almost the same manner as member States.

(d) *Secretariat*

6. The International Trade Law Branch of the Office of Legal Affairs serves as the UNCITRAL secretariat. In September 1979, it was transferred from New York to Vienna.

2. *Initiation of the treaty-making process by UNCITRAL*

(a) *Original UNCITRAL programme of work*

7. When UNCITRAL was established in 1966, it was not assigned specific subjects to consider pursuant to its mandate to further the progressive harmonization and unification of international trade law. Rather, the Commission itself decided upon the topics that it would take up.

8. At its first session in 1968, after considering a number of topics suggested by member States, the Commission adopted nine topics as the basis of its future work programme, according priority status to three of them.⁵ The priority topics were the international sale of goods, international payments and international commercial arbitration. After deciding on these three priority

topics, the Commission settled on particular items within each topic which it would consider separately and in depth.⁶

9. One topic in UNCITRAL's original work programme emanated from outside UNCITRAL. In 1968, several members of the Trade and Development Board of UNCTAD expressed the wish that the Commission should add the subject of international shipping legislation to its list of priority topics.⁷ The General Assembly noted this wish and recommended that UNCITRAL consider the inclusion of this subject among its priority topics.⁸ Following the suggestions of UNCTAD and the General Assembly, UNCITRAL, at its second session in 1969, decided to include international legislation on shipping among the priority topics in its work programme and established a Working Group to deal with this subject.⁹

(b) *UNCITRAL's current long-term programme of work*

(i) *Proposals from the international community*

10. At its ninth session (1976), the Commission noted that it had completed, or soon would complete, work on many of the priority items included in its original programme of work, and considered it desirable to establish a new long-term work programme.¹⁰ The Commission requested the Secretariat to submit a report, after consultation with international organizations and trade institutions, containing suggestions as to the contents of the Commission's long-term programme of work.¹¹

11. The Secretary-General solicited proposals from Governments¹² and engaged in consultations with various international organizations.¹³ The responses and views obtained by the Secretariat were compiled and synthesized in a report submitted to the Commission.¹⁴ Based on these responses and views, the report proposed a list of topics for possible inclusion in the Commission's future work programme. The Secretariat also prepared and annexed to the report brief studies concerning three of the suggested topics, discussing some of the legal and policy issues which they presented.¹⁵

(ii) *Proposals from within UNCITRAL*

12. Suggestions of new topics for inclusion in UNCITRAL's long-term programme of work have also arisen in the course of other work carried on by the Commission. For example, during consideration by UNCITRAL of the draft Convention on the International Sale of Goods in 1977, a proposal was made that the Convention include a provision on liquidated damage clauses in sales contracts.¹⁶ The ensuing discussion revealed that there was considerable support for the idea behind the proposal. However, due to the complexity of the issue, and the applicability of liquidated damage clauses to a wide variety of situations in addition to sales contracts, it was thought preferable to deal with the subject as a separate matter.¹⁷ Accordingly, the Commission requested the Secretary-General to consider the subject as part of its study on the Commission's future programme of work.¹⁸ It was included in the list of proposed topics contained in the Secretary-General's report on the programme of work,¹⁹ and was considered in one of the studies annexed to that report.²⁰

13. The legal aspects of international electronic funds transfer also arose out of other work of the Commission. At its third session (1975), in connection with its assessment of the desirability of preparing uniform rules applicable to

international cheques, the Commission's Working Group on International Negotiable Instruments requested the Secretariat to obtain information concerning the impact of the increased use of electronic funds transfer and inter-bank settlements.²¹ This subject, too, was included in the Secretary-General's list of proposed topics,²² and was considered in one of the studies annexed to the report.²³

(iii) *Consideration of proposed topics by the Commission*

14. The proposed list of topics and the studies by the Secretary-General were before the Commission at its eleventh session (1979).²⁴ In the Commission there was wide agreement that the new work programme should be composed of specific identified topics which had global significance. In addition, in accordance with the mandate given to the Commission by the General Assembly, it was agreed that an attempt should be made to identify topics of special interest to developing countries.²⁵ After deliberation and consideration of a report of an *ad hoc* Working Group established to consider the matter, the Commission decided to take note of all topics proposed in the report of the Secretary-General, but selected ten topics which it suggested should be accorded priority by the Commission.²⁶ Furthermore, the Commission decided to accord high priority to legal implications of the new international economic order, as detailed in section 3(b), below.

3. *Consideration of a subject by a Working Group*

(a) *Usual UNCITRAL practice*

15. The preparatory and substantive work leading to the adoption of a multilateral convention by UNCITRAL on a particular subject is usually performed in one of the Commission's Working Groups. Normally, however, before a subject is referred to a Working Group, the Commission requests the Secretariat to engage in further studies of the issues arising in connection with the topic, including the suitability and feasibility of creating uniform international legal rules on the subject.

16. At its eleventh session (1978), the Commission adopted the following policy concerning the referral of a topic to a Working Group:

"As a general rule, the Commission should not refer subject-matters to a Working Group until after preparatory studies had been made by the Secretariat and the consideration of these studies by the Commission had indicated not only that the subject-matter was a suitable one in the context of the unification and harmonization of a law, but that the preparatory work was sufficiently advanced for a working group to commence work in a profitable manner."²⁷

(b) *The new international economic order (NIEO)*²⁸

17. The Commission's work on the new international economic order has evolved differently from the foregoing pattern. In recognition of the mandate given to it by the General Assembly to take account of relevant General Assembly resolutions concerning the NIEO and to participate in the implementation of those resolutions,²⁹ the Commission, at its eleventh session (1978), requested the Secretary-General to carry out a study of issues related

to the NIEO that would be suitable for consideration by the Commission. At the same time it established a Working Group on the New International Economic Order to examine this report and to recommend specific topics which could be undertaken by the Commission.³⁰ The report of the Secretary-General was presented to the twelfth session of the Commission (1979)³¹ and was subsequently considered by the Working Group.³² At the thirteenth session of the Commission (1980) the Working Group proposed six topics for inclusion in the Commission's programme of work.³³ After considering this report, the Commission decided to accord priority to one of these topics³⁴ for study by the Working Group. Thus, unlike the practice with respect to other topics undertaken by the Commission,³⁵ the Working Group on the New International Economic Order itself recommended specific topics for inclusion in the Commission's programme of work.

(c) *Work in UNCITRAL Working Groups*

18. For most sessions of an UNCITRAL Working Group, the Secretariat of UNCITRAL prepares background research studies analysing various aspects of the subjects as requested by the Working Group. Such studies, which are issued in the working languages of UNCITRAL, examine the existing law on both the national and international levels, highlight existing problems and difficulties in legal interpretation, and suggest possible ways to harmonize and unify the law on the subject. They also often contain draft provisions which are intended to assist the Working Group in its deliberations.

19. In the past, at various stages of work on a subject, the Secretariat of UNCITRAL has often circulated questionnaires to all States and interested international organizations requesting comments concerning existing problems and areas of needed reform, and soliciting concrete suggestions and proposals for consideration by the Working Group. Sometimes, the UNCITRAL Secretariat has prepared for the Working Group an analysis of the replies received; on other occasions, the substance of the replies has been incorporated in the research studies prepared by the Secretariat.

20. Deliberations in the Working Group usually have as their starting point the background research studies prepared by the Secretariat, including any draft provisions that may have appeared therein. Proposals made during a session of the Working Group by its members and observers are issued as conference room papers in the working languages of UNCITRAL.

21. UNCITRAL Working Groups make very strong efforts to agree by consensus on draft texts that will be acceptable to States with different social, economic and legal systems. Small, informal groups are often established on an *ad hoc* basis in an attempt to find compromise solutions when the initial views expressed by representatives regarding a particular draft provision differ widely.

22. When engaged in the formulation and adoption of draft articles for multilateral treaties, UNCITRAL Working Groups create Drafting Committees to recommend the text of the draft provisions and to suggest where and how the provisions should be incorporated in the draft treaty.

23. When the preparation of a draft treaty is at an advanced stage, the Working Group engaged in its formulation often requests the UNCITRAL Secretariat to prepare an explanatory commentary on the draft treaty as it

stands at that time. These commentaries, prepared in the working languages of UNCITRAL, are intended only to aid the Working Group in its deliberations and are not considered as official, authorized commentaries interpreting the draft provisions.

24. After concluding its initial consideration of all the subject matters and substantive provisions that in the view of the Working Group should be included in a multilateral treaty, the Working Group reviews the draft provisions on which no agreement could be reached and as a consequence of which either no provision was approved at all or the text was placed between square brackets in order to denote a divergence of views within the Working Group.

25. The UNICTRAL Secretariat, based on decisions by the Working Group, proposals received from Working Group members and observers, as well as its own views, may prepare a conference room paper for the Working Group, containing a possible structure outline for a treaty and amalgamating the approved or bracketed draft provisions into the substantive portion of a draft treaty.

26. The Working Group then decides definitively on the structure of the treaty and arranges all the approved or still bracketed draft articles in the form of a draft treaty. Following this, in a second reading, the Working Group reviews all the draft articles and considers whether any of them should be modified or deleted and whether any further substantive provisions should be added. A thorough editorial review of the draft treaty is undertaken in all language versions and a final draft text is prepared in all languages for submission to UNCITRAL. If a commentary was previously prepared, the Secretariat is normally requested to prepare, for submission to UNCITRAL, a revised commentary taking into account all the modifications by the Working Group of the text of the draft treaty since the preparation of the original commentary.

(d) *Study Group on International Payments*

27. Some UNCITRAL Working Groups have had the benefit of consultations with and advice from the Study Group on International Payments, a group of experts from several banking institutions. The assistance of the Study Group has been sought in matters of a highly technical and complex nature in respect of bank practices in the international collection of negotiable instruments, electronic funds transfer and a universal unit of account of constant value for use in international conventions.

4. *Consideration of draft treaty by UNCITRAL*

28. Under the practice followed heretofore by UNCITRAL, the texts of draft treaties adopted by a Working Group have been circulated for comments to all States and to interested international organizations. The full texts of these comments, together with an analysis of them prepared by the Secretariat, have been submitted to the Commission when it considered the draft treaties.

29. When a draft multilateral treaty is placed before it, UNCITRAL devotes the major part of its annual session to a consideration of the draft text. The debate in UNCITRAL is based on the following general distribution documents, issued in the working languages of UNCITRAL: text of the draft

treaty; commentary to the draft treaty, if any; reports by the Working Group on the sessions in which the draft treaty was discussed; text of comments by Governments and international organizations on the draft treaty; and an analysis of those comments by the UNCITRAL Secretariat.

30. During its deliberations concerning a draft treaty, UNCITRAL considers its structure and scope and examines its provisions article by article. Written proposals for modifying the draft treaty made by UNCITRAL members and observers are issued as conference room papers in the working languages of UNCITRAL. The Commission may decide to make substantive modifications and additions to the draft text, and it may also alter the order in which various draft articles appear. Before UNCITRAL formally adopts a draft treaty, a Drafting Committee is established, charged with editing the text and ensuring the accuracy and conformity of all language versions.

31. The customary practice of UNCITRAL has been to recommend that the General Assembly convene an international conference of plenipotentiaries to adopt a treaty on the basis of the draft approved by UNCITRAL.³⁶ Thus far, the Sixth Committee and the General Assembly have followed the recommendations of UNCITRAL and have approved resolutions convening conferences as requested by UNCITRAL.

5. *Consideration of draft treaty by diplomatic conference*

32. All draft treaties approved by UNCITRAL thus far have been submitted for adoption by diplomatic conferences convened for this purpose by the General Assembly. The General Assembly resolutions convening the Conferences have governed their duration and date, participation, terms of reference, servicing requirements and preparatory documentation.

33. Prior to each Conference, the draft treaty, draft formal and final clauses and commentary, if any, have been circulated to Governments and interested international organizations for comments. An analysis of these comments prepared by the Secretariat has also been distributed prior to each Conference.

34. In the past, all States have been invited to participate in these Diplomatic Conferences and interested international organizations have been invited to attend as observers. Each Conference has established two Main Committees, a Drafting Committee and a Credentials Committee. For meetings of the plenary and Main Committees, summary records have been kept. The proceedings of the plenary, the Main Committees, the Drafting Committee and the Credentials Committee have been interpreted into the languages of the Conference. Sometimes, group meetings have also been interpreted but they have not been recorded in summary records. Informal consultations and meetings of small *ad hoc* Working Groups have often taken place, but without interpretation and without any formal record. Proposals by representatives and observers, reports of Committees of the Whole, summary records, and the text of the treaty as adopted, have been issued during the Conference in all the languages of the Conference. This documentation has been collected after the conclusion of the Conference and published in the languages of the Conference, in one or more volumes, as the Official Records of the Conference.

6. *Opening of the treaty for signature, ratification or accession*

35. The elaboration of a multilateral treaty ends with the adoption of the treaty by the Conference. The Final Act of the Conference and the terms of the newly adopted treaty specify the time and place when it is to be open for signature, the method to be used by States for ratifying or acceding to the treaty, and the requirements for its entry into force. The treaties concluded so far on the basis of drafts prepared by UNCITRAL have been opened for signature on the last day of the Conference.

7. *Nature and scope of elaboration of multilateral treaties by UNCITRAL*

(a) *Revision of work done by other agencies*

36. Some of the multilateral treaties prepared by UNCITRAL have constituted revisions of texts previously elaborated by other agencies. For example; UNCITRAL's work leading to the United Nations Convention on Contracts for the International Sale of Goods, adopted on 10 April 1980 at Vienna,³⁷ was undertaken to render the 1964 Hague Conventions relating to a Uniform Law on the International Sale of Goods, and to the Formation of Contracts for the International Sale of Goods, capable of wider acceptance by countries of different legal, social and economic systems.³⁸ Similarly, the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg),³⁹ elaborated by UNCITRAL and adopted on 31 March 1978, was designed to revise and amplify the International Convention for the Unification of Certain Rules relating to Bills of Lading (the Brussels Convention of 1924), and the Protocol to amend that Convention (the Brussels Protocol of 1968).⁴⁰

(b) *Elaboration of new uniform rules*

37. In other cases UNCITRAL has generated new international legal rules on subjects for which none previously existed. In doing so it has sometimes had occasion to use as models rules contained in existing regional, national or private texts. Such was the case with the work of the Commission leading to the Convention on the Limitation Period in the International Sale of Goods, adopted on 12 June 1974, in New York.⁴¹ Similarly, the work of the Commission on a draft Convention on International Bills of Exchange and International Promissory Notes has been based on a synthesis of the 1930 Geneva Uniform Law on Bills of Exchange and Promissory Notes, the British Bills of Exchange Act and the American Uniform Commercial Code.⁴²

8. *Alternative methods and procedures for the elaboration of multilateral treaties*

38. In the course of their work the Commission and some of its Working Groups have dealt with questions concerning forms and procedures for the elaboration of multilateral treaties. Issues which have arisen in this regard include the form that rules drafted by the Commission should take (i.e. convention, model law or recommendation) and the preferred forum to adopt a multilateral convention (i.e. conference of plenipotentiaries, or the General Assembly upon a recommendation by the Sixth Committee).

(a) *Form of rules*

39. At the time of its adoption of draft rules on liquidated damages and penalty clauses, the Working Group on International Contract Practices considered the question of the form that the rules should take.⁴³ It was decided to leave this issue for decision by the Commission, which would have before it a study examining the possible approaches to the question.⁴⁴ That study discussed the respective advantages and disadvantages of a convention, model law and recommendation.⁴⁵

40. After deliberating the advantages, appropriateness and effectiveness of the various forms,⁴⁶ the Commission deferred to a later session the decision as to the form which the draft uniform rules should take, and requested the Secretary-General to elicit the views of Governments and international organizations on this issue.⁴⁷ The responses will be submitted to the fifteenth session of UNCITRAL in 1982.

(b) *Preferred forum to adopt a convention*

41. The Commission had before it at its fourteenth session (1981) a note by the Secretariat on "Alternative methods for the final adoption of conventions emanating from the work of the Commission".⁴⁸ As a possible method to simplify the procedures for adopting texts emanating from the Commission, the study noted that a convention could be adopted by the General Assembly on the recommendation of the Sixth Committee, rather than by a separate conference of plenipotentiaries,⁴⁹ and discussed some advantages and disadvantages of such a procedure.

42. At its fourteenth session, the Commission agreed that after the texts on international bills of exchange and international promissory notes, and on international cheques, were finalized by the Working Group on International Negotiable Instruments, the appropriate procedure for their adoption as (a) convention(s) would be through a Diplomatic Conference, rather than by the General Assembly upon recommendation by the Sixth Committee.⁵⁰

9. *Status of treaties adopted based on the work of UNCITRAL and draft treaties currently under consideration*

(a) *Status of conventions*

43. The following multilateral instruments elaborated by UNCITRAL have been adopted by Diplomatic Conferences. The status of each instrument, as of 11 November 1981, is also indicated.

(a) Convention on the Limitation Period in the International Sale of Goods (New York, 1974):⁵¹

Signatures only:	14
Ratifications:	3
Accessions:	3
Ratifications or accessions necessary to go into force:	10

(b) United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978):⁵²

Signatures only:	26
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Ratifications:	1
Accessions:	5
Ratifications, acceptances, approvals or accessions necessary to go into force:	20
(c) United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980): ⁵³	
Signatures only:	21
Ratifications:	1
Ratifications, acceptances, approvals or accessions necessary to go into force:	10
(d) Protocol amending the Convention on the Limitation Period in the International Sale of Goods (Vienna, 1980): ⁵⁴	
No accessions to date	
Accessions necessary to go into force: ⁵⁵	2
(b) <i>Draft treaties currently under consideration</i>	

44. At its second session (April 1981), the Working Group on International Contract Practices finalized a set of draft uniform rules on liquidated damages and penalty clauses.⁵⁶ The form that the uniform rules should take (i.e. convention, model law or recommendation) was left for determination by the Commission.⁵⁷

45. Also in 1981, at its eleventh session, the Working Group on International Negotiable Instruments completed its work on two draft texts, adopting a draft Convention on International Bills of Exchange and International Promissory Notes,⁵⁸ and a draft Convention on International Cheques.⁵⁹

NOTES

¹ Resolution 2205 (XXI) of 17 December 1966 (*Yearbook of the United Nations Commission on International Trade Law*, volume I, 1968-1970, part one, II, E). (Hereinafter volumes of the UNCITRAL Yearbook are cited as "*Yearbook*, (year)").

² *Ibid.*, part II, operative para. 8.

³ Increased from twenty-nine in 1973. Resolution 3108 (XXVIII) of 12 December 1973 (*Yearbook*, 1974, part one, I, C).

⁴ See resolution 31/99 of 15 December 1976, operative para. 10 (c) (*Yearbook*, 1977, part one, I, C), and resolution 36/32 of 13 November 1981, operative para. 9.

⁵ These were: international sale of goods, commercial arbitration, transportation, insurance, international payments, intellectual property, elimination of discrimination in laws affecting international trade, agency, and legalization of documents. *Report of the United Nations Commission on International Trade Law on the work of its first session*, para. 40 (*Yearbook*, 1968-1970, part two, I, A). (Hereinafter UNCITRAL Reports are cited as "*Report*, (session)").

⁶ *Ibid.*, para. 48. Work by UNCITRAL in the area of international sale of goods has resulted in the Convention on the Limitation Period in the International Sale of Goods (New York, 1974) (A/CONF.63/15, reproduced in *Yearbook*, 1974, part three, I, B), the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (A/CONF.97/18, annex I; reproduced in *Yearbook*, 1980, part three, I, B) and the Protocol amending the Convention on the Limitation Period in the International Sale of Goods (Vienna, 1980) (A/CONF.97/18, annex II; reproduced in *Yearbook*, 1980, part three, I, C). In the area of international payments, the Working Group dealing with this

topic has produced a draft Convention on International Bills of Exchange and International Promissory Notes (A/CN.9/WG.IV/WP.24 and Add.1 and 2) and a draft Convention on International Cheques (A/CN.9/WG.IV/WP.25 and Add.1), both of which, together with their commentaries, will be circulated to Governments during 1982. The Commission's work on the third original priority topic—international commercial arbitration—has not resulted in any multilateral conventions. However, in 1976 UNCITRAL adopted the UNCITRAL Arbitration Rules (*Report*, ninth session, para. 57 (*Yearbook*, 1976, part one, II, A)), and in 1980 it adopted the UNCITRAL Conciliation Rules (*Report*, thirteenth session, para. 106 (*Yearbook*, 1980, part one, II, A)). The topic of international commercial arbitration is still under active consideration by the Commission.

⁷ *Official Records of the General Assembly, Twenty-third Session, Supplement No. 14 (A/7214)*, para. 74.

⁸ Resolution 2421 (XXIII) of 18 December 1968, operative para. 6 (b) (reproduced in *Yearbook*, 1968-1970, part two, I, B, 3).

⁹ *Report*, second session, para. 133 (*Yearbook*, 1968-1970, part two, II, A). Work by UNCITRAL on this topic resulted in the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) (A/CONF.89/13, annex I, reproduced in *Yearbook*, 1978, part three, I, B).

¹⁰ *Report*, ninth session, para. 65 (*Yearbook*, 1976, part one, II, A).

¹¹ *Ibid.*, para. 66.

¹² A/CN.9/149, fn. 7 (*Yearbook*, 1978, part two, IV, A).

¹³ *Ibid.*, paras. 4, 5, 6; fn. 7.

¹⁴ A/CN.9/149, *supra*; see also A/CN.9/154; A/CN.9/155 (*Yearbook*, 1978, part two, IV, B); A/CN.9/156 (*Yearbook*, 1978, part two, IV, C).

¹⁵ A/CN.9/149/Add.1, 2 and 3 (*Yearbook*, 1978, part two, IV, A, annexes I to III).

¹⁶ *Report*, tenth session, annex I, para. 510 (*Yearbook*, 1977, part one, II, A).

¹⁷ *Ibid.*, para. 512.

¹⁸ *Ibid.*, para. 513.

¹⁹ A/CN.9/149, *supra*, list of subject-matters for possible inclusion in the future work programme, I(3) (x).

²⁰ A/CN.9/149/Add.1, *supra*.

²¹ A/CN.9/149/Add.3, *supra*, para. 1.

²² A/CN.9/149, *supra*, list of subject-matters for possible inclusion in the future work programme, I(4) (a).

²³ A/CN.9/149/Add.3, *supra*.

²⁴ *Report*, eleventh session, para. 39 (*Yearbook*, 1978, part one, II, A).

²⁵ *Ibid.*, para. 43.

²⁶ *Ibid.*, para. 67.

²⁷ *Ibid.*, paras. 67-68.

²⁸ While the current efforts of the Commission in relation to the NIEO are not expected to result in a multilateral treaty, these efforts do not preclude further steps being undertaken in the future if they appear necessary. See *Report*, fourteenth session, para. 74.

²⁹ Resolution 3494 (XXX) of 15 December 1975 (*Yearbook*, 1976, part one, I, C); and 32/145 of 16 December 1977 (*Yearbook*, 1978, part one, I, C).

³⁰ *Report*, eleventh session, para. 71 (*Yearbook*, 1978, part one, II, A); see also *Report*, twelfth session, para. 100 (*Yearbook*, 1979, part one, II, A).

³¹ *Report*, twelfth session, paras. 90-92 (*Yearbook*, 1979, part one, II, A).

³² A/CN.9/176.

³³ *Report*, thirteenth session, para. 123 (*Yearbook*, 1980, part one, II, A).

³⁴ This topic is contracts in the field of industrial development; *ibid.*, para. 143. Under this topic the Working Group has been requested by the Commission to engage in work concerning contracts on supply and construction of large industrial works and on industrial co-operation. It has also been requested to draft a legal guide identifying the

legal issues involved in contracts for the supply and construction of large industrial works and suggesting possible solutions to assist parties, in particular from developing countries, in their negotiations (*Report*, fourteenth session, para. 84).

³⁵ See paras. 15-16, *supra*.

³⁶ See paras. 41-42, *infra*.

³⁷ A/CONF.97/18, annex I (*Yearbook*, 1980, part three, I, B).

³⁸ *Report*, second session, para. 38 (*Yearbook*, 1968-1970, part two, II, A).

³⁹ A/CONF.89/13, annex I (*Yearbook*, 1978, part three, I, B).

⁴⁰ *Report*, fourth session, para. 19 (*Yearbook*, 1971, part one, II, A).

⁴¹ A/CONF.63/15 (*Yearbook*, 1974, part three, I, B). See A/CN.9/203, paras. 54-55.

⁴² A/CN.9/203, paras. 56-57.

⁴³ A/CN.9/197, paras. 45-46.

⁴⁴ *Ibid.*, para. 46.

⁴⁵ A/CN.9/203, paras. 114-122.

⁴⁶ *Report*, fourteenth session, paras. 40-43.

⁴⁷ *Ibid.*, paras. 43-44.

⁴⁸ A/CN.9/204.

⁴⁹ *Ibid.*, para. 11.

⁵⁰ *Report*, fourteenth session, para. 21.

⁵¹ A/CONF.63/15 (*Yearbook*, 1974, part three, I, B).

⁵² A/CONF.89/13, annex I (*Yearbook*, 1978, part three, I, B).

⁵³ A/CONF.97/18, annex I (*Yearbook*, 1980, part three, I, B).

⁵⁴ A/CONF.97/18, annex II (*Yearbook*, 1980, part three, I, C).

⁵⁵ Pursuant to Article IX(1) of the Protocol, the 1974 Limitation Convention and the 1980 Sales Convention must both be in force before the Protocol can enter into force.

⁵⁶ *Report*, fourteenth session, para. 38.

⁵⁷ *Ibid.*, para. 43. See paras. 39-40, *supra*.

⁵⁸ A/CN.9/WG.IV/WP.24 and Add.1 and 2.

⁵⁹ A/CN.9/WG.25 and Add.1.

M. UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)

I. Introduction

1. UNEP carries out a number of activities which involve the development of multilateral treaties relating to the protection of the environment. This function is a part of its general mandate. Since its establishment in 1973 UNEP activities have resulted in the conclusion of a number of multilateral conventions and related protocols. UNEP is also assisting Governments in developing draft instruments (concerning environmental protection).

2. The analysis of the UNEP treaty-making process in this paper will be limited to the development of two regional sea conventions: (a) the 1976 Convention for the protection of the Mediterranean Sea against Pollution (Barcelona Convention) and its protocols; (b) the 1978 Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (Kuwait Convention) and its protocols. In these instances, UNEP developed a systematic approach to the formulation and adoption of regional agreements. They are as follows.

2. The initiative

3. The preparation of a survey of the existing state of a specific environmental problem lays the groundwork for a formal proposal to initiate action

for the prevention and control of pollution in the area. A special field mission can then be organized to prepare a report of its findings and recommendations. This is then followed by the adoption at an appropriate intergovernmental forum of a decision authorizing the initiation of action for the development of a multilateral agreement addressed to a specific environmental problem.

4. Such an initiative may be taken outside UNEP. For example, in the case of the Mediterranean, the intergovernmental consultation on the Protection of Living Resources and Fisheries from Pollution, convened in Rome in 1974 under FAO/GFCM (the FAO General Fisheries Council for the Mediterranean) auspices, proposed the development of a framework convention. UNEP was requested by the meeting to follow this initiative, which was subsequently endorsed by the Governing Council of UNEP. In the case of the Kuwait Convention, the initiative was taken by the Governing Council of UNEP itself.

3. *Preparation of guidelines and related materials for the drafting of the proposed agreement*

5. In the case of the Barcelona Convention, a number of documents were first prepared for the Rome Consultation, which resulted in the adoption of "Guidelines for the Drafting of a Framework Convention". On the basis of guidelines and comments thereon received from Governments, preliminary drafts were prepared of a framework convention and protocol.

6. In the case of the Kuwait Convention and Protocol, the initial document, "Draft Agreement for Co-operation", was submitted by the Government of Kuwait. UNEP also prepared a draft.

7. These were then followed by the convening of inter-agency and/or intergovernmental consultations to discuss the preliminary drafts and to consider steps for the preparation and adoption of the proposed agreement. Thus, the Intergovernmental Meeting was convened in Barcelona in January 1975 by UNEP in co-operation with other international organizations. The meeting made preliminary comments on the draft and adopted the Action Plan for the Mediterranean, which consists of, *inter alia*, the Framework convention and related protocols for protection of the Mediterranean environment, with technical annexes and with approximate timing of the successive steps required for the preparation of these instruments, including the convening of Working Groups to elaborate the texts of instruments and a plenipotentiary conference for their adoption.

8. Two expert meetings were convened in 1977 to consider and further elaborate the draft instruments concerning the Kuwait Convention.

4. *Finalization of the draft instruments by a special Working Group or by the UNEP secretariat*

9. In the case of the Barcelona Convention and Protocol, the three draft instruments were submitted after the Intergovernmental Meeting to a Working Group of Experts on Draft Legal Instruments which met under UNEP auspices in April 1975. The final clauses of the three instruments were, in accordance with the recommendations of the Working Group, reviewed and harmonized by the secretariat of the Group. The drafts were further revised to

include alternative provisions proposed by the Working Group. After the draft text had been circulated to Governments, the Executive Director of UNEP convened a meeting of experts in January 1976, to discuss the provisions of the draft in order to find some alternative for a number of provisions.

10. In the case of the Kuwait Convention and Protocol, the above-mentioned two expert meetings revised and finalized the draft texts, leaving provisions on which no agreement was reached in brackets. No special working group was convened to revise or modify the text after two meetings and it was circulated to Governments for adoption at a conference of plenipotentiaries. The secretariat sought comments from the Office of Legal Affairs of the United Nations to the drafts; the comments were considered in subsequent meetings held to revise the text.

5. *Adoption of the draft instruments at a conference of plenipotentiaries*

11. In the case of the Barcelona Convention, a conference of plenipotentiaries of the Coastal States was convened in February 1975 to adopt the instruments. The level of changes introduced into the text at the Conference was not considerable. In the case of the Kuwait Convention, the Kuwait Regional Conference of Plenipotentiaries was convened by UNEP in April 1974. The level of changes was again not very considerable.

6. *Characteristics of the UNEP approach to the development of multilateral treaties*

12. The general procedures adopted by UNEP are not very different from those adopted by other United Nations bodies. Certain aspects are quite unique. The approach adopted by UNEP in the context of the Barcelona and Kuwait Conventions was therefore to limit the main agreement to general obligations and financial and administrative matters only, leaving detailed provisions to related protocols or likewise. This approach speeded up the pace of negotiations considerably. Furthermore, these conventions were supplemented by technical annexes which would require constant review and amendments. It is therefore not difficult to amend them, when they do not form the main body of the instrument.

13. UNEP considers that the early involvement of government experts in the process of development of the proposed instrument is essential to success. UNEP considers that all environmental problems require co-operation of all the organizations competent in various aspects of the solution of the problem.

II. SPECIALIZED AND RELATED AGENCIES

A. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

1. *Decision as to the type of instrument*

1. In FAO, the type of instrument to be developed is usually envisaged by its governing bodies or the secretariat at an early stage in the multilateral